

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AUG 18 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MICHEAL LEE VILLAMONTE,

Defendant-Appellant.

No. 23-50013

D.C. No.
2:21-cr-00497-AB-DMG-1
Central District of California,
Los Angeles

ORDER

Before: TASHIMA, S.R. THOMAS, and FORREST, Circuit Judges.

Appellee’s motion to dismiss this appeal in light of the valid appeal waiver (Docket Entry No. 17) is granted. *See United States v. Harris*, 628 F.3d 1203, 1205 (9th Cir. 2011) (knowing and voluntary appeal waiver whose language encompasses the right to appeal on the grounds raised is enforceable). As appellant acknowledges, his appeal waiver, which expressly applies to “arguments that the statute to which defendant is pleading guilty is unconstitutional,” bars this appeal. *See United States v. Goodall*, 21 F.4th 555, 562-65 (9th Cir. 2021). This court has not previously applied a “miscarriage of justice” exception to the enforcement of an appeal waiver, and we decline to do so here.

DISMISSED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

-000-

HONORABLE DOLLY M. GEE, UNITED STATES DISTRICT JUDGE

8 UNITED STATES OF AMERICA,
9 Plaintiff,
10 v.
11 MICHEAL LEE VILLAMONTE,
12 Defendant.

No. 2:21-cr-00497-AB-DMG

16 REPORTER'S TRANSCRIPT OF CHANGE OF PLEA
17 LOS ANGELES, CALIFORNIA
18 NOVEMBER 8, 2021

21 SUZANNE M. MCKENNON, CRR, RMR
22 UNITED STATES COURT REPORTER
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24 UNITED STATES COURTHOUSE
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1 APPEARANCES:

2

3 On Behalf of the Government:

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5 CATHY OSTILLER, Assistant United States Attorney
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8

9 On Behalf of the Defendant:

10 AMY E. JACKS, Attorney at Law
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11 315 East 8th Street, Suite 801
12 Los Angeles, California 90014

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1 (Proceedings commenced on November 8, 2021, at 4:11 p.m.)

2 THE COURTROOM DEPUTY: Calling Item Number 2,
3 CR 21-497-DMG, United States of America versus Micheal Lee
4 Villamonte.

5 For the government, we have?

6 MS. PALMER: Good afternoon, Your Honor. Carley
7 Palmer on behalf of the United States, and with me is AUSA
8 Cathy Ostiller.

9 THE COURTROOM DEPUTY: On behalf of defendant?

10 MS. JACKS: Good afternoon, Your Honor. Amy Jacks
11 for Mr. Villamonte. He is present.

12 THE COURT: Good afternoon, everyone.

13 Ms. Jacks and Mr. Villamonte, will you please stand at the
14 lectern?

15 All right. And, Ms. Jacks, you'll probably need to stand
16 in front of a microphone.

17 MS. JACKS: How's that?

18 THE COURT: That's good. Each of you should have
19 your own microphone.

20 MS. JACKS: Okay. We're good.

21 THE COURT: I understand that Mr. Villamonte is going
22 to enter his plea of guilty, pursuant to the plea agreement
23 that was filed on October 25th, and I'm going to incorporate
24 and make that agreement a part of today's proceeding.

25 Mr. Villamonte, before I accept your plea of guilty, I am

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1 going to need to make sure that you are informed of your
2 rights, that you understand your rights, and that you
3 understand the nature of this proceeding. So I'm going to be
4 asking you a series of questions. And if at any time you don't
5 understand something that I say or you need me to repeat
6 something, please interrupt me or ask your attorney to
7 interrupt me. All right?

8 THE DEFENDANT: Okay.

9 THE COURT: Will the clerk please administer the
10 oath?

11 THE COURTROOM DEPUTY: Will the defendant, please,
12 raise his right hand?

13 Do you solemnly swear that the testimony you shall give in
14 the cause now before this Court -- one second. Wrong one.

15 Do you solemnly swear that the answers to such questions,
16 as put to you by this Court, shall be the truth, the whole
17 truth, and nothing but the truth, so help you God?

18 THE DEFENDANT: Yes.

19 THE COURTROOM DEPUTY: Thank you.

20 THE COURT: All right. Mr. Villamonte, do you
21 understand that you are now under oath and that, if you answer
22 any of my questions falsely, your answers may later be used
23 against you in a further proceeding for perjury or making a
24 false statement?

25 THE DEFENDANT: Yes.

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1 THE COURT: You understand that you have a right to
2 remain silent and not to answer any of my questions?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you give up that right?

5 THE DEFENDANT: Yes.

6 THE COURT: Ms. Jacks, do you join?

7 MS. JACKS: I do.

8 THE COURT: What is your true and correct full name?

9 THE DEFENDANT: Micheal Lee Villamonte.

10 THE COURT: Is your first name spelled M-I-C-H-E-A-L
11 or A-E-L?

12 THE DEFENDANT: E-A-L.

13 THE COURT: Okay. And is your last name spelled with
14 an "s" at the end or no "s"?

15 THE DEFENDANT: No "s."

16 THE COURT: Okay. Are how old are you?

17 THE DEFENDANT: 31.

18 THE COURT: How many years of school have you
19 completed?

20 THE DEFENDANT: To the ninth grade.

21 THE COURT: And have you been treated recently for
22 any mental illness or addiction to narcotics of any kind?

23 THE DEFENDANT: No.

24 THE COURT: Have you -- are you currently under the
25 influence of any drug, medication, or alcohol?

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1 THE DEFENDANT: No.

2 THE COURT: Have you had any drugs, medication, or
3 alcohol within the last three days?

4 THE DEFENDANT: No. _____

5 THE COURT: Do you currently suffer from any mental
6 condition or disability that would prevent you from fully
7 understanding the nature of the charge against you or the
8 consequences of your guilty plea?

9 THE DEFENDANT: Yes, I understand.

10 THE COURT: No. I am asking you, do you suffer from
11 any --

12 THE DEFENDANT: No, I don't. I'm sorry.

13 THE COURT: Let me repeat the question so the record
14 is clear.

15 Do you suffer from any mental condition or disability that
16 would prevent you from fully understanding the nature of the
17 charge against you?

18 THE DEFENDANT: I'm sorry. I'm just -- I need to --
19 no.

20 THE COURT: Is there any reason why we should not go
21 forward to take your guilty plea today?

22 THE DEFENDANT: No.

23 THE COURT: All right. Ms. Jacks, have you had an
24 adequate opportunity to talk with your client about the nature
25 of today's proceeding?

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1 MS. JACKS: I have, Your Honor.

2 THE COURT: And do you have any reason to believe
3 that he should not go forward?

4 MS. JACKS: No.

5 THE COURT: Do you believe that your client is in
6 full possession of his faculties and is competent to proceed?

7 MS. JACKS: I do.

8 THE COURT: All right. Mr. Villamonte, based on your
9 statements and your Counsel's statements, I find that the
10 defendant -- that you are in full possession of your faculties
11 and you're competent to proceed.

12 You are charged with being a prohibited person in
13 possession of a firearm, in violation of Title 18, United
14 States Code Section 922(g)(9), which is a felony.

15 Do you understand the charge against you?

16 THE DEFENDANT: Yes.

17 THE COURT: You have a constitutional right to be
18 charged by an indictment returned by a grand jury. You can
19 give up that right and consent to being charged by an
20 Information filed by the United States Attorney's Office. And
21 in this case, the felony charge against you has been brought by
22 the filing of an Information.

23 Have you discussed giving up your right to an indictment
24 by a grand jury with your attorney?

25 THE DEFENDANT: Yes.

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1 THE COURT: Do you understand your right to an
2 indictment by a grand jury?

3 THE DEFENDANT: Yes.

4 THE COURT: Has anyone attempted, in any way, to
5 threaten you, your family, or anyone close to you in order to
6 get you to give up your right to a grand jury indictment?

7 THE DEFENDANT: No.

8 THE COURT: Do you want to give up your right to a
9 grand jury indictment?

10 THE DEFENDANT: Yes.

11 THE COURT: Ms. Jacks, have you spoken with your
12 client about his right to be charged by an indictment?

13 MS. JACKS: Yes, Your Honor.

14 THE COURT: And do you know of any reason why he
15 should not waive indictment?

16 MS. JACKS: No.

17 THE COURT: Are you satisfied that his waiver is
18 knowingly, voluntarily, and intelligently made?

19 MS. JACKS: Yes.

20 THE COURT: Do you join and concur in the waiver?

21 MS. JACKS: I do.

22 THE COURT: All right. I do have a signed waiver of
23 Indictment Form filed on October 28th.

24 Is that your signature on the waiver of Indictment Form?

25 THE DEFENDANT: Yes.

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1 THE COURT: And you understood and read that waiver
2 before you signed it?

3 THE DEFENDANT: Yes.

4 THE COURT: All right. In the case of United States
5 versus Micheal Lee Villamonte, the Court finds that the
6 defendant is fully competent and aware of the nature of his
7 right to require that the government proceed by way of an
8 indictment. The Court further finds that the waiver is freely,
9 intelligently, and voluntarily made. The Court, therefore,
10 accepts the waiver.

11 Mr. Villamonte, have you received a copy of the
12 Information? That's the written statement of the charge
13 against you.

14 THE DEFENDANT: Yes.

15 THE COURT: You have a right to have that Information
16 read to you.

17 Do you wish me to read it to you?

18 THE DEFENDANT: No. That's okay.

19 THE COURT: You give up that right?

20 THE DEFENDANT: Yes.

21 THE COURT: You also have the following
22 constitutional rights, that you will be giving up if you plead
23 guilty. You have the right to plead not guilty to any offense
24 charged against you and to persist in that plea. You have the
25 right to a speedy and public trial. You have the right to a

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1 trial by jury. At trial, you would be presumed to be innocent,
2 and the government would have to prove your guilt by proving
3 each element of the offense beyond a reasonable doubt. If both
4 you and the government give up the right to a jury trial, you
5 have a right to be tried by the Court.

6 You have the right to the assistance of Counsel for your
7 defense, even if you do not enter into a plea agreement. If
8 you cannot afford Counsel, the Court would appoint Counsel for
9 you, free of charge, to assist you at trial and at every other
10 stage of the proceedings.

11 You have the right to confront and cross-examine the
12 witnesses against you, that is, to see and hear all the
13 witnesses and to have them questioned by your lawyer. You have
14 the right to have witnesses subpoenaed and compelled to testify
15 on your behalf.

16 You have the right to testify yourself on your own behalf.
17 You have the privilege against self-incrimination, which means
18 that you have the right not to testify or incriminate yourself
19 in any way. If you went to trial and you decided not to
20 testify, that fact could not be used against you. But by
21 pleading guilty today, you are giving up that right, and you
22 are incriminating yourself.

23 You have the right to appeal your conviction and your
24 sentence if you go to trial and you are convicted.

25 Has your attorney advised you of all of these rights?

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1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand all of them?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you have any questions about any of
5 them?

6 THE DEFENDANT: No.

7 THE COURT: Do you need any more time to confer with
8 your attorney about them?

9 THE DEFENDANT: No.

10 THE COURT: Do you understand that, if your plea is
11 accepted, you will be incriminating yourself, and you will have
12 given up your right to a trial and all of the other rights that
13 I just described.

14 THE DEFENDANT: Yes, I understand.

15 THE COURT: Do you give up those rights?

16 THE DEFENDANT: Yes.

17 THE COURT: Ms. Jacks, are you satisfied that each of
18 these waivers is knowingly, voluntarily, and intelligently
19 made?

20 MS. JACKS: Yes, Your Honor.

21 THE COURT: Do you join and concur in each of the
22 waivers?

23 MS. JACKS: I do.

24 THE COURT: All right. Mr. Villamonte, as I stated
25 before, you are charged with being a prohibited person in

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1 possession of a firearm.

2 Ms. Ostiller or Ms. Palmer, would you please state the
3 elements of the charge against Mr. Villamonte?

4 MS. PALMER: Yes, Your Honor.

5 For defendant to be guilty of the crime charged in the
6 sole count of the Information, that is, being a prohibited
7 person in possession of a firearm, in violation of Title 18,
8 United States Code Section 922(g)(9), the following must be a
9 true: One, defendant knowingly possessed a firearm or
10 ammunition; two, the firearm or ammunition had been transported
11 from one state to another or between a foreign nation and the
12 United States; and, three, at the time defendant possessed the
13 firearm or ammunition, defendant knew he had been convicted of
14 a misdemeanor crime of domestic violence.

15 THE COURT: Thank you.

16 Mr. Villamonte, do you understand the nature of the charge
17 against you?

18 THE DEFENDANT: Yes.

19 THE COURT: Have you discussed the charge and the
20 elements of the charge with your lawyer?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you have any questions about the
23 charge?

24 THE DEFENDANT: No.

25 THE COURT: Have you been advised of the maximum

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1 penalty?

2 THE DEFENDANT: Yes.

3 THE COURT: Ms. Palmer, would you please state the
4 penalties for the record.

5 MS. PALMER: The statutory maximum sentence that the
6 Court can impose for a violation of Title 18, United States
7 Code Section 922(g)(9) is ten years imprisonment; a three-year
8 period of supervised release; a fine of \$250,000 or twice the
9 gross gain or gross loss resulting from the offense, whichever
10 is greatest; and a mandatory special assessment of \$100.

11 THE COURT: Thank you.

12 Mr. Villamonte, do you understand the possible
13 consequences of your guilty plea, including the maximum
14 sentence that you can receive and the other terms that
15 Ms. Palmer just stated?

16 THE DEFENDANT: Yes.

17 THE COURT: You may be subject to what is called
18 supervised release for a number of years after your release or
19 after whatever your sentence is, depending on whether you
20 successfully complete the CASA program or not.

21 Have you discussed with your lawyer and do you understand
22 the concept of supervised release?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand that you are -- if you
25 are sentenced to serve some time in prison and you are placed

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1 on supervised release after that and you violate one or more of
2 the conditions of supervised release, you could be returned to
3 prison for all or part of the term of supervised release?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand that, if that happens,
6 that could potentially result in your serving a total term of
7 imprisonment greater than the statutory maximum?

8 THE DEFENDANT: Yes, I do.

9 THE COURT: Do you understand that, if you are
10 currently on parole, probation, or supervised release in some
11 other criminal case, this plea alone could be the basis for
12 revocation of that parole, probation, or supervised release,
13 and as a result, you could be returned to prison in that other
14 case?

15 THE DEFENDANT: Yes.

16 THE COURT: You are pleading guilty to a felony
17 offense. If your plea is accepted, I will find you guilty.
18 That may deprive you of valuable civic rights such as the right
19 to vote, the right to hold public office, the right to serve on
20 a jury, and the right to possess a firearm of any kind.

21 Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: Have you discussed the possible
24 punishment, the facts of your case, and any possible defenses
25 that you might have with your lawyer?

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1 THE DEFENDANT: Yes.

2 THE COURT: All right. Mr. Villamonte, you will be
3 sentenced under the Sentencing Reform Act of 1984. The United
4 States Sentencing Commission has issued certain guidelines
5 which this Court must take into account in determining
6 sentences in criminal cases but is not required to follow them.

7 In determining your sentence, the Court will calculate the
8 applicable sentencing guidelines range, consider any possible
9 departures from that range, as well as consider other
10 sentencing factors under Title 18, United States Code Section
11 3553(a).

12 In this case, you and the government have entered into
13 what is called a binding plea agreement, in which you have
14 agreed to participate in the Conviction And Sentence
15 Alternatives program, also known as the CASA program.

16 Do you know what I'm referring to when I refer to the CASA
17 program?

18 THE DEFENDANT: Yes.

19 THE COURT: In paragraph 13 of your plea agreement,
20 you and the government have agreed to a specific sentence if
21 you successfully complete the CASA program, that is, that you
22 will be sentenced to a three-year term of probation subject to
23 certain conditions that I will impose.

24 Do you understand that?

25 THE DEFENDANT: Yes.

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1 THE COURT: But if you do not successfully complete
2 the CASA program or you breach a material term of your plea
3 agreement, you and the government will have no agreement about
4 what the sentence will be in your case.

5 Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand that, if you do not
8 successfully complete the CASA program, I may sentence you to
9 prison up to the maximum time allowed by law?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you also understand that, if you do
12 not successfully complete the CASA program, neither the Court
13 nor your lawyer will be able to determine the precise
14 guidelines range for your case until after the presentence
15 investigation report has been prepared?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand that, if you do not
18 successfully complete the CASA program, the Court can impose a
19 sentence that is more severe than what the guidelines provide?

20 THE DEFENDANT: Yes.

21 THE COURT: And if you do not successfully complete
22 the CASA program, you will not be able to withdraw your guilty
23 plea.

24 Do you understand that?

25 THE DEFENDANT: Yes.

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1 THE COURT: Did you read the plea agreement
2 thoroughly and discuss it with your lawyer before you signed
3 it?

4 THE DEFENDANT: Yes.

5 THE COURT: And did you and your lawyer discuss
6 thoroughly the terms of the CASA agreement, which is attached
7 as an exhibit to your plea agreement?

8 THE DEFENDANT: Yes, I did.

9 THE COURT: Is that your signature on both the plea
10 agreement and the CASA agreement?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand the terms of the plea
13 agreement and the CASA agreement?

14 THE DEFENDANT: Yes.

15 THE COURT: Are the terms of the plea agreement,
16 including the CASA agreement, the entire understanding that you
17 have with the government regarding your case?

18 THE DEFENDANT: Yes.

19 THE COURT: Other than what's contained in the plea
20 agreement and the CASA agreement, has anyone made any promises,
21 representations, or guarantees either to you or your lawyer in
22 order to get you to plead guilty?

23 THE DEFENDANT: No.

24 THE COURT: Has anyone attempted, in any way, to
25 threaten you, your family, or anyone close to you in order to

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1 get you to plead guilty in this case?

2 THE DEFENDANT: No.

3 THE COURT: Are you pleading guilty voluntarily and
4 of your own free will?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that, by entering into
7 this plea agreement and entering a plea of guilty, you will be
8 giving up or limiting your right to appeal or collaterally
9 attack all or part of your sentence?

10 THE DEFENDANT: Yes.

11 THE COURT: All right. Ms. Palmer, would you please
12 read the limited mutual waiver of appeal rights into the
13 record?

14 MS. PALMER: Yes, Your Honor. Defendant agrees that,
15 if defendant successfully completes the CASA program and the
16 Court imposes a sentence of probation, as specified in
17 paragraph 13 of the plea agreement, defendant gives up the
18 right to appeal any portion of that sentence.

19 The United States Attorney's Office agrees that, if
20 defendant successfully completes the CASA program and the Court
21 imposes a sentence of probation, as specified in paragraph 13
22 of the plea agreement, the United States Attorney's Office
23 gives up its right to appeal any portion of that sentence.

24 Additionally, with the exception of an appeal based on a
25 claim that defendant's guilty plea was involuntary, by pleading

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1 guilty, defendant is waiving and giving up any right to appeal
2 defendant's conviction on the offense to which defendant is
3 pleading guilty. Defendant understands that this waiver
4 includes, but is not limited to, arguments of the statute to
5 which defendant is pleading guilty is unconstitutional and any
6 and all claims that the statement of facts provided in the plea
7 agreement is insufficient to support defendant's plea of
8 guilty.

9 THE COURT: Thank you.

10 Mr. Villamonte, did you discuss giving up these appeal
11 rights with your attorney?

12 THE DEFENDANT: Yes.

13 THE COURT: Based on that discussion and having
14 considered this issue, do you agree that you are giving up your
15 appeal rights on the terms and conditions just stated by
16 Ms. Palmer?

17 THE DEFENDANT: Yes.

18 THE COURT: All right. The plea agreement,
19 Ms. Jacks, indicates that it was signed by both you and your
20 client on October 3rd; is that correct?

21 MS. JACKS: Yes.

22 THE DEFENDANT: Yes.

23 THE COURT: I'm going to ask questions of your
24 attorney now.

25 THE DEFENDANT: Okay.

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1 THE COURT: All right. And, Ms. Jacks, did
2 Mr. Villamonte sign the plea agreement in your presence?

3 MS. JACKS: Yes, he did, Your Honor.

4 THE COURT: Did you discuss the contents of the plea
5 agreement and the CASA agreement thoroughly with him before he
6 signed those agreements?

7 MS. JACKS: Yes.

8 THE COURT: Did you review the facts of the case and
9 the discovery provided by the government with him before he
10 signed those agreements?

11 MS. JACKS: Yes.

12 THE COURT: Did you review with him any potential
13 defenses that he might have?

14 MS. JACKS: Yes.

15 THE COURT: To the best of your knowledge, is he
16 pleading guilty because of any illegally-obtained evidence in
17 the possession of the government?

18 MS. JACKS: No.

19 THE COURT: Do you believe that your client entered
20 into the plea agreement freely and voluntarily, with full
21 knowledge of the charge and the consequences of his plea?

22 MS. JACKS: Yes.

23 THE COURT: Have there any been any promises,
24 representations, or guarantees made to either you or your
25 client other than what's contained in the plea agreement and

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1 the CASA agreement?

2 MS. JACKS: No.

3 THE COURT: Do you join in the waiver of jury trial
4 and concur in the plea?

5 MS. JACKS: Yes.

6 THE COURT: All right. Ms. Palmer, other than what
7 is expressly contained in the written plea agreement and the
8 CASA agreement, has the government made any promises,
9 representations to the defendant or his Counsel?

10 MS. PALMER: No, Your Honor.

11 THE COURT: Does the government waive jury trial?

12 MS. PALMER: Yes, Your Honor.

13 THE COURT: All right. Mr. Villamonte, are you
14 satisfied with the representation that your lawyer has provided
15 to you?

16 THE DEFENDANT: Yes.

17 THE COURT: I hope so. She got you into the CASA
18 program.

19 THE DEFENDANT: Yeah, I know.

20 THE COURT: Have you told your lawyer everything that
21 you know about your case?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you believe that your lawyer has fully
24 considered any defense that you might have to the charge?

25 THE DEFENDANT: I'm sorry. Can you repeat the

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1 question?

2 THE COURT: Do you believe that your lawyer has
3 considered any defenses that you might have to the charge?

4 THE DEFENDANT: No. I'm sorry. Yes. That was a big
5 word for me.

6 THE COURT: Okay. You understand what a "defense"
7 is?

8 THE DEFENDANT: Yeah, I do. Sorry.

9 THE COURT: So has your lawyer considered any defense
10 that you might have to the charge?

11 THE DEFENDANT: Yes.

12 THE COURT: All right. Do you believe that your
13 lawyer has fully advised you regarding all aspects of this
14 case?

15 THE DEFENDANT: Yes.

16 THE COURT: Have you had enough time to discuss this
17 matter with her?

18 THE DEFENDANT: Yes.

19 THE COURT: You understand, then, that, if I accept
20 your plea of guilty, I may impose a term of imprisonment if you
21 do not successfully complete the CASA program?

22 THE DEFENDANT: Yes.

23 THE COURT: Having in mind all that we have discussed
24 regarding your plea of guilty, the rights that you will be
25 giving up, and the maximum sentence that you can receive, do

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1 you still want to plead guilty?

2 THE DEFENDANT: Yes.

3 THE COURT: All right. Please listen carefully,
4 then. I'm going to ask Ms. Palmer to state the facts that the
5 government would be prepared to prove if this case were to have
6 gone to trial.

7 MS. PALMER: If this case were to proceed to trial,
8 the government would be prepared to prove beyond a reasonable
9 doubt the following facts: On or about March 30, 2018, at his
10 home in Los Angeles County, within the Central District of
11 California, defendant knowingly possessed a firearm as defined
12 by Title 18, United States Code Section 921(a)(3), namely, an
13 Aero Precision model X15 5.56mm caliber semi-automatic pistol,
14 bearing serial number X095733.

15 The firearm was a semi-automatic firearm capable of
16 accepting a large-capacity magazine within the meaning of
17 United States Sentencing Guideline Section 2K2.1(a)(4)(B),
18 because two empty large-capacity magazines, each capable of
19 accepting 30 rounds of 5.56mm caliber ammunition were stored in
20 the same cloth gun case as the firearm and thus were in close
21 proximity to it.

22 Prior to the defendant's possession of the firearm, it had
23 been manufactured in Tacoma, Washington and had traveled in and
24 affected interstate commerce. At the time defendant possessed
25 the firearm, he knew that he had been convicted of a

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1 misdemeanor crime of domestic violence; namely, battery of the
2 person who is the parent of the defendant's child, in violation
3 of California Penal Code Section 243(e)(1), in the Superior
4 Court of the State of California, County of Los Angeles, in
5 Case Number 0DY-03713 on or about February 10, 2011.

6 THE COURT: Thank you.

7 Mr. Villamonte, did you understand everything that
8 Ms. Palmer said?

9 THE DEFENDANT: Yes.

10 THE COURT: Is everything that she said about you,
11 your conduct and intent true and correct?

12 THE DEFENDANT: Yes.

13 THE COURT: Are you pleading guilty because you did
14 the things that are charged in the single count of the
15 Information?

16 THE DEFENDANT: Yes.

17 THE COURT: Are you pleading guilty because you are
18 guilty?

19 THE DEFENDANT: Yes.

20 THE COURT: Is the government satisfied with the
21 factual basis?

22 MS. PALMER: Yes, Your Honor.

23 THE COURT: Do Counsel agree that the Court has
24 complied with the requirements of Rule 11?

25 MS. PALMER: Yes, Your Honor.

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1 MS. JACKS: Yes, Your Honor.

2 THE COURT: okay. Micheal Lee Villamonte, in Case
3 Number CR 21-497, how do you plead to the single count of the
4 Information?

5 THE DEFENDANT: Guilty.

6 THE COURT: In the case of United States versus
7 Micheal Lee Villamonte, the Court, having questioned the
8 defendant and his Counsel on the offer of his plea of guilty to
9 the single count of the Information, a felony, the defendant
10 and his Counsel, having advised the Court that they have
11 conferred concerning the offered plea of guilty and all aspects
12 of the charge against the defendant and any defendant -- and
13 any defenses that he might have, and the Court having observed
14 that the defendant does not appear to be under the influence of
15 any medicine, drug, or other substance or factor that might
16 impair his actions or judgment in any manner, the Court finds
17 that the plea of guilty is knowingly, voluntarily, and
18 intelligently made, with a full understanding of the nature of
19 the charge, the consequences of the plea, and defendant's
20 constitutional rights.

21 The Court further finds that the plea is supported by an
22 independent factual basis containing each of the essential
23 elements of the offense. The Court, therefore, accepts the
24 plea and orders that the plea be entered.

25 The Court will defer setting this sentencing date until

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1 after defendant completes the CASA program, but I will accept
2 the binding plea agreement at this time.

3 Mr. Villamonte, did you attend the CASA program yet?

4 THE DEFENDANT: No.

5 THE COURT: Okay. So your first meeting of the CASA
6 program will be next Monday at 3:30 p.m., in Courtroom 8B,
7 which is the courtroom across from this courtroom.

8 THE DEFENDANT: Okay.

9 THE COURT: Usually, it would be in this courtroom,
10 but because I am in trial, I am not able to be at the CASA
11 sessions until after, probably, December. But they will let
12 you know when you will start reporting to this courtroom.

13 THE DEFENDANT: Okay.

14 THE COURT: Until you're told otherwise, though, you
15 will report every Monday at 3:30 to the courtroom across the
16 way, Courtroom 8B.

17 I congratulate you on being accepted into the CASA
18 program, and I want to just emphasize to you that this is a
19 really great opportunity for you to change the direction of
20 your life.

21 THE DEFENDANT: Thank you.

22 THE COURT: And one of the most important aspects of
23 this program is honesty. So I hope that you will take the
24 program seriously, be honest with yourself and to all the CASA
25 team members, and make the most of this opportunity that you've

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1 been given.

2 THE DEFENDANT: I will.

3 THE COURT: As I tell most of the people who come
4 into the CASA program, this is like being struck by lightning
5 or winning the lottery.

6 THE DEFENDANT: Okay.

7 THE COURT: Winning the lottery is probably better
8 than being struck by lightning.

9 THE DEFENDANT: All right.

10 THE COURT: But that is how rare it is to be accepted
11 into the CASA program, and so I hope that you will -- I hope
12 that you will realize what a special opportunity this is.

13 THE DEFENDANT: Thank you.

14 THE COURT: And thank your attorney for having gotten
15 you into it.

16 THE DEFENDANT: Thank you.

17 THE COURT: I look forward to working with you, as do
18 all of the other CASA team members. Many of -- several of whom
19 are here. Right now, you've probably already met Cathy
20 Ostiller, and Raul Ayala in the back.

21 THE DEFENDANT: Yes.

22 THE COURT: And Michelle Ries, who is on Zoom. If
23 you haven't met her yet, you will.

24 And for the time that Mr. Villamonte is participating in
25 the CASA program, Ms. Jacks, you will be relieved of your

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1 duties as Counsel. And Mr. Ayala and the Federal Public
2 Defender's Office will represent Mr. Villamonte.

3 MS. JACKS: He's in good hands.

4 THE COURT: Yes, he is.

5 All right. Well, good luck, Mr. Villamonte, and I look
6 forward to seeing you soon.

7 THE DEFENDANT: Thank you.

8 MS. JACKS: Thank you.

9 THE DEFENDANT: Appreciate it. Thank you.

10 MS. PALMER: Thank you, Your Honor.

11 (Adjourned at 4:37 p.m.)

12 -000-

13

14 REPORTER'S CERTIFICATE

15

16

17 I certify that the foregoing is a correct transcript of
18 proceedings in the above-entitled matter.

19

20 /s/ Suzanne M. McKennon, CSR, CRR, RMR

21 United States Court Reporter

Date: 03/23/2023

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24

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2

1 APPEARANCES

2 FOR THE GOVERNMENT:
3 MR. TIMOTHY SEARIGHT
4 MS. MONICA E. TAIT
5 Assistant United States Attorney
6 312 North Spring Street
7 Los Angeles, California 90012

8 FOR THE DEFENDANT:
9 MS. AMY E. JACKS
10 Amy E. Jacks Law Offices
11 315 East 8th Street, Suite 801
12 Los Angeles, California 90014

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ER157

1 (Proceedings commenced at 2:02 p.m.)

2 COURTROOM DEPUTY: Calling Item Number 3,
3 CR-21-497-DMG, United States of America versus Michael Lee
4 Villamonte.

5 For the Government, we have?

6 MR. SEARIGHT: Good afternoon, your Honor. Tim
7 Searight and Monica Tait on behalf of the Government.

8 COURTROOM DEPUTY: And on behalf of defense?

9 MS. JACKS: Good afternoon, your Honor. Amy Jacks
10 for Mr. Villamonte, and he is present.

11 THE COURT: This is the time set for sentencing. Is
12 there any reason why judgment and sentence should not be
13 imposed at this time?

14 MS. JACKS: No, your Honor.

15 MR. SEARIGHT: Nothing from the Government.

16 THE COURT: All right. I've read and considered Mr.
17 Villamonte's modified pre-sentence report filed on December 9,
18 2021, and I've also reviewed and considered Mr. Villamonte's
19 sentencing memorandum and letter filed on January 4, 2023, and
20 the Government's sentencing memorandum filed on January 6,
21 2023.

22 Mr. Villamonte, have you had a chance to confer with
23 your attorney about the Government's sentencing position?

24 THE DEFENDANT: Yes.

25 THE COURT: And do you need any more time to do

1 that?

2 THE DEFENDANT: No.

3 THE COURT: Could you and Ms. Jacks please stand at
4 the lectern.

5 THE DEFENDANT: Yes.

6 MS. JACKS: Certainly.

7 THE COURT: All right. Ms. Jacks, would you like to
8 be heard with regard to the Government's response?

9 MS. JACKS: Your Honor, I think I laid out our
10 arguments in my papers. I would note the Government says that
11 there's no binding authority for our position that the count of
12 conviction is likely unconstitutional. I would submit the
13 Supreme Court's *Bruen* decision is that binding authority, and I
14 think a clear reading of that case suggests that this is a
15 statute that's likely to be found unconstitutional under the
16 2nd Amendment.

17 With respect to our request, I think Mr. -- I think
18 it's pretty much without dispute that Mr. Villamonte has
19 performed in CASA in an exceptional manner, and given the
20 operation of law on some of his prior convictions, he is not
21 currently a felon. And that's a big deal and it's something
22 that I think Mr. Villamonte should try to avoid at all costs,
23 and I would ask the Court to treat him as a CASA Phase 1 or
24 Class 1 --

25 THE COURT: Track 1.

1 MS. JACKS: Track 1, excuse me. -- participant.

2 THE COURT: Mr. Searight, would you like to be
3 heard?

4 MR. SEARIGHT: Only to state that I hope that the
5 defendant Mr. Villamonte realizes that nothing in the
6 Government's position is meant to take away from his very
7 excellent performance in the CASA program, and I think he has
8 really turned his life around and was, in fact, a leader in the
9 program. And that is wonderful.

10 In terms of the other arguments, I don't believe
11 that the Supreme Court's decision speaks particularly to
12 922(g)(9). And I would also say that this is not the forum for
13 raising such an issue.

14 THE COURT: All right. Well, I for one was hoping
15 that the Government would go ahead and change its mind and give
16 Mr. Villamonte Track 1 because I think he deserves it. And
17 given the performance of Mr. Villamonte in the CASA program and
18 the equities of his case and his prior criminal convictions, I
19 think that the Government would have been well within its
20 discretion to change Mr. Villamonte to Track 1.

21 However, they did not do that, and since that did
22 not happen, I do not have the power to change the binding plea
23 agreement that I already accepted at the time of your change of
24 plea and that you entered into at the time of your change of
25 plea. I think the 9th Circuit authority is clear that I cannot

1 reject a sentence for a binding plea agreement that I have
2 already accepted. And in that plea agreement, Mr. Villamonte
3 also agreed to waive any Constitutional challenges to his
4 conviction, so I must decline to consider the challenge to the
5 offense of conviction at this time.

6 MS. JACKS: Your Honor, may I just be heard about
7 that, because I should have addressed that? I don't know how
8 Mr. Villamonte can be deemed to have waived a Constitutional
9 challenge that didn't exist at the time he entered his plea.
10 There is no doubt that the *Bruen* decision was reached by the
11 Supreme Court during the pendency of the CASA program and after
12 he had entered into his plea, so I would just --

13 THE COURT: Do you have any authority that, once
14 having entered into a binding plea agreement, that once the law
15 changes after that, that that causes the agreement to no longer
16 be valid?

17 MS. JACKS: I don't. And that's not -- no, I don't
18 at this time.

19 THE COURT: All right. So I'm not going to address
20 the Constitutional challenge. I wish I could. I think that
21 Mr. Villamonte deserves to be in Track 1, under the
22 circumstances, and I wish I could do that, but I don't have the
23 authority to do that.

24 MS. JACKS: I appreciate that, your Honor, and I
25 hope with some creative lawyering we'll be able to find a way

1 for the Court to ultimately address that.

2 THE COURT: All right. Given Mr. Villamonte's solid
3 performance in CASA, however, I would ask the Government if it
4 would be willing at least to reduce his period of probation
5 from three years down to one year because I think that three
6 years is more than necessary at this juncture.

7 MR. SEARIGHT: Yes, the Government would make that
8 motion, or agreement.

9 THE COURT: All right.

10 MS. JACKS: And, your Honor, with respect to the
11 terms and conditions of probation, the only thing that
12 Mr. Villamonte and I would request is, with regard to travel,
13 Mr. Villamonte would like to be able to travel to Mexico where
14 he has family and travel within the state of California without
15 having to get permission from his probation officer. I would
16 leave it to the Court's discretion whether to give him that
17 flexibility.

18 THE COURT: Traditionally, that is something that he
19 can address with his probation officer when the time comes for
20 him to need to travel. I will not have any opposition to him
21 traveling since he was already doing it during the CASA program
22 without any problems, but it's not a typical condition of
23 probation, so I will just let Mr. Villamonte work that out with
24 his probation officer. And if it becomes a problem, then it
25 can be presented to me at that time. All right?

1 THE DEFENDANT: Thank you.

2 THE COURT: All right. Mr. Villamonte, would you
3 like to make a statement before I impose sentence?

4 THE DEFENDANT: Yeah. I just -- I want to say thank
5 you to everyone here in CASA and yourself for taking me in.
6 Thank you, Mr. Tim. And I'm really thankful for everything
7 that you guys have done for me. And I appreciate it deep down
8 inside, and I'm thankful for everything. Thank you, guys.

9 THE COURT: All right. Thank you.

10 In this case -- oh, and, Mr. Villamonte, I have a
11 question for you.

12 THE DEFENDANT: Yes.

13 THE COURT: We have different spellings for your
14 first name all over the docket. Sometimes it's spelled
15 M-I-C-H-E-A-L, sometimes it's spelled A-E-L. Can you confirm
16 what it is?

17 THE DEFENDANT: Yes. It's E-A-L.

18 THE COURT: Oh, it's E-A-L?

19 THE DEFENDANT: Yes.

20 THE COURT: All right. Thank you.

21 In this case, Mr. Villamonte pled guilty to the
22 single count of the information, which charges him with being a
23 prohibited person in possession of a firearm, in violation of
24 18 U.S.C., Section 922(g)(9).

25 The parties stipulated to a base offense level of 20

1 under guideline Section 2K2.1(a)(4)(B). Applying a three-level
2 decrease under Section 3E1.1(a) and (b) for acceptance of
3 responsibility, this results in a total offense level of 17.

4 According to the modified pre-sentence report, there
5 are six criminal history points, so the Criminal History
6 Category is III. I find that the modified pre-sentence report
7 is accurate and correct and, therefore, adopt the modified
8 pre-sentence report and its calculation of the Criminal History
9 Category.

10 Given the count of the information to which
11 Mr. Villamonte pled guilty, I'm consulting and taking into
12 account the November 2021 edition of the guidelines. The total
13 offense level is 17. The Criminal History Category is III.
14 The guideline range for custody is 30 to 37 months. The
15 guidelines range for supervised release is one to three years,
16 and the guideline range for the fine is \$10,000 to \$95,000.

17 In weighing the factors under Section 3553(a), I've
18 taken into account the facts set forth in the modified
19 pre-sentence report, the parties' plea agreement, and my own
20 experience with Mr. Villamonte's participation in the CASA
21 program.

22 Mr. Villamonte is a 33-year-old man whose parents
23 were undocumented immigrants. His father died when he was only
24 three years old. Mr. Villamonte's upbringing was challenging
25 and chaotic because his mother became a methamphetamine addict

1 and went on to have eight other children. Mr. Villamonte,
2 being the oldest child, did his best to protect and guide his
3 younger half siblings, but that was difficult given that his
4 mother abandoned the family and moved to Mexico when he was 15
5 years old.

6 Mr. Villamonte dropped out of school and lived with
7 his aunt and uncle. He became friends with someone who was not
8 the best influence on him, and it was this friend whose firearm
9 Mr. Villamonte was keeping that led to the conviction at issue
10 in this case.

11 To Mr. Villamonte's credit, he has maintained steady
12 and responsible employment in the construction industry and is
13 the sole financial support for his five children. Throughout
14 his participation in CASA, he has maintained his sobriety and
15 taken seriously his commitment to mental health treatment and
16 changing to a healthier lifestyle. He has reconciled with his
17 mother, set healthy boundaries, and has kept away from negative
18 influences. He has been helpful to his fellow CASA
19 participants, including offering them employment when his
20 construction business allowed him to do so.

21 Mr. Villamonte, you have truly started a new chapter
22 in your life. We are proud of you, and we wish you every
23 success as you go forward to a brighter future. If it were up
24 to me, I would not saddle you with a felony conviction, but it
25 is not within my authority to change that sentence that you

1 agreed to in your binding plea agreement.

2 I will now state the sentence, which will be
3 consistent with the parties' binding plea agreement. In light
4 of the totality of the circumstances, I find that the following
5 sentence is reasonable and is sufficient but is no greater than
6 necessary to comply with the purposes stated in 18 U.S.C.,
7 Section 3553(a): It is ordered that the defendant shall pay to
8 the United States a special assessment of \$100, which is due
9 immediately. Pursuant to guideline section 5E1.2(a), all fines
10 are waived, as the Court finds that the defendant has
11 established that he is unable to pay and is not likely to
12 become able to pay any fine.

13 Pursuant to the Sentencing Reform Act of 1984, it is
14 the judgment of the Court that the defendant Michael Lee
15 Villamonte is hereby placed on probation on the single count of
16 the information for a term of one year under the following
17 terms and conditions:

18 One, the defendant shall comply with the rules and
19 regulations of the United States Probation and Pre-Trial
20 Services Office and Second Amended General Order 20-04.

21 Two, the defendant shall not commit any violation of
22 Federal, State, or local law or ordinance.

23 Three, during the period of supervision, the
24 defendant shall pay the special assessment in accordance with
25 this judgment's orders pertaining to such payment.

1 Four, the defendant shall refrain from any unlawful
2 use of a controlled substance. The defendant shall submit to
3 one drug test within 15 days of entry of judgment and at least
4 two periodic drug tests thereafter, not to exceed four tests
5 per month, as directed by the probation officer.

6 Five, the defendant shall participate in an
7 outpatient substance abuse treatment and counseling program
8 that includes urinalysis, breath and/or sweat patch testing, as
9 directed by the probation officer. The defendant shall abstain
10 from using illicit drugs and alcohol and abusing prescription
11 medications during the period of supervision.

12 Six, the defendant shall participate in mental
13 health treatment, which may include evaluation and counseling,
14 until discharged from the treatment by the treatment provider
15 with the approval of the probation officer.

16 Seven, as directed by the probation officer, the
17 defendant shall pay all or part of the costs of treating the
18 Court-ordered treatment to the after-care contractor during the
19 period of community supervision pursuant to 18 U.S.C., Section
20 3672. The defendant shall provide payment and proof of payment
21 as directed by the probation officer. If the defendant has no
22 ability to pay, no payment shall be required.

23 And, eight, the defendant shall cooperate in the
24 collection of a DNA sample from the defendant.

25 The Court authorizes the Probation and Pre-Trial

1 Services Office to disclose the pre-sentence report to the
2 modified -- I mean to the substance abuse treatment provider to
3 facilitate the defendant's treatment for narcotic addiction or
4 alcohol dependency. Further re-disclosure of the pre-sentence
5 report by the treatment provider is prohibited without the
6 consent of the sentencing judge.

7 I believe there's a bond that needs to be
8 exonerated; is that correct?

9 MS. JACKS: I, for some reason, thought that had
10 been taken care of before he -- or at the time he entered into
11 CASA.

12 THE COURT: I think that they still usually have a
13 bond even during the pendency of CASA, so I'm going to go ahead
14 and exonerate the bond on the assumption that it does exist.

15 MS. JACKS: Thank you.

16 THE COURT: All right. The statement of reasons
17 will be included in the commitment order and judgment and will
18 be provided to the probation office and to the United States
19 Sentencing Commission. A complete copy of the modified
20 pre-sentence report will be provided to the Sentencing
21 Commission. Any other copies of the report and related
22 materials will remain confidential.

23 Mr. Villamonte, I must inform you that generally a
24 defendant has a right to appeal his conviction if he believes
25 that his guilty plea was unlawful or involuntary or if there

1 was some other fundamental defect in the proceedings or he
2 thinks that his sentence is contrary to the law. In your case,
3 though, as I said, you entered into a binding plea agreement in
4 which you gave up your right to appeal the sentence itself, as
5 well as other Constitutional challenges. Such waivers are
6 generally enforceable, but if you have some theory that you
7 wish to raise with the 9th Circuit Court of Appeals, with few
8 exceptions, a notice of appeal must be filed within 14 days of
9 judgment being entered. Do you understand?

10 THE DEFENDANT: Yes, I do.

11 THE COURT: All right. Does either side have
12 anything further?

13 MR. SEARIGHT: No, your Honor. Thank you.

14 MS. JACKS: No, your Honor. Thank you very much.

15 THE COURT: All right. Thank you, and good luck to
16 you, Mr. Villamonte.

17 THE DEFENDANT: Thank you. Thank you for that.

18 (Proceedings concluded at 2:18 p.m.)

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1 CERTIFICATE OF OFFICIAL REPORTER

2
3 COUNTY OF LOS ANGELES)
4 STATE OF CALIFORNIA)
5

6 I, JUDY K. MOORE, FEDERAL OFFICIAL REALTIME COURT
7 REPORTER, IN AND FOR THE UNITED STATES DISTRICT COURT FOR THE
8 CENTRAL DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT
9 TO SECTION 753, TITLE 28, UNITED STATES CODE THAT THE FOREGOING
10 IS A TRUE AND CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY
11 REPORTED PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER AND THAT
12 THE TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE
13 REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

14

15

16

17 DATED THIS 14TH OF MARCH, 2023.

18

19

/s/Judy K. Moore

20

21 JUDY K. MOORE, CRR, RMR
FEDERAL OFFICIAL COURT REPORTER

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ER170

United States District Court
Central District of California

JS-3

UNITED STATES OF AMERICA vs.

Docket No. CR 21-497-AB-DMG

Defendant MICHEAL LEE VILLAMONTE

Social Security No. 9 8 2 7

akas: _____

(Last 4 digits)

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government, the defendant appeared in person on this date.

MONTH	DAY	YEAR
JAN	9	2023

COUNSEL

Amy Jacks, Appointed

(Name of Counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea.

NOLO
CONTENDERE

NOT
GUILTY

FINDING

There being a finding/verdict of GUILTY, defendant has been convicted as charged of the offense(s) of:

Prohibited Person in Possession of a Firearm in violation of Title 18 U.S.C. § 922(g)(9) as charged in the Single-Count Information.

**JUDGMENT
AND PROB/
COMM
ORDER**

The Court asked whether there was any reason why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant is hereby placed on PROBATION for a term of: ONE (1) YEAR.

It is ordered that the defendant shall pay to the United States a special assessment of \$100, which is due immediately.

Pursuant to Guideline Section 5E1.2(a), all fines are waived as the Court finds that the defendant has established that he is unable to pay and is not likely to become able to pay any fine.

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant is hereby placed on PROBATION on the single count of the Information for a term of ONE (1) YEAR under the following terms and conditions:

1. The defendant shall comply with the rules and regulations of the United States Probation and Pretrial Services Office and Second Amended General Order 20-04.
2. The defendant shall not commit any violation of federal, state, or local law or ordinance.
3. During the period of community supervision, the defendant shall pay the special assessment in accordance with this judgment's orders pertaining to such payment.
4. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of entry of judgment and at least two periodic drug tests thereafter, not to exceed four tests per month, as directed by the Probation Officer.
5. The defendant shall participate in an outpatient substance abuse treatment and counseling program that includes urinalysis, breath, and/or sweat patch testing, as directed by the Probation Officer. The defendant shall abstain from using illicit drugs and alcohol, and abusing prescription medications during the period of supervision.
6. The defendant shall participate in mental health treatment, which may include evaluation and counseling, until discharged from the treatment by the treatment provider, with the approval of the Probation Officer.
7. As directed by the Probation Officer, the defendant shall pay all or part of the costs of treating the court-ordered treatment to the aftercare contractor during the period of community supervision, pursuant to 18 U.S.C. § 3672. The defendant shall provide payment and proof of payment as directed by the Probation Officer. If the defendant has no ability to pay, no payment shall be required.

USA vs. MICHEAL LEE VILLAMONTE

Docket No.: CR 21-497-AB-DMG

8. The defendant shall cooperate in the collection of a DNA sample from the defendant.

The Court authorizes the Probation & Pretrial Services Office to disclose the Presentence Report to the substance abuse treatment provider to facilitate the defendant's treatment for narcotic addiction or alcohol dependency. Further redisclosure of the Presentence Report by the treatment provider is prohibited without the consent of the sentencing judge.

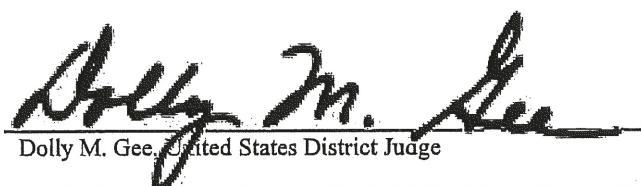
The bond is exonerated.

The Court informs the defendant of his right to appeal.

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised Release within this judgment be imposed. The Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.

January 12, 2023

Date



Dolly M. Gee, United States District Judge

It is ordered that the Clerk deliver a copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Clerk, U.S. District Court

January 12, 2022

Filed Date

By /s/ Kane Tien

Deputy Clerk

USA vs. MICHEAL LEE VILLAMONTE

Docket No.: CR 21-497-AB-DMG

The defendant must comply with the standard conditions that have been adopted by this court (set forth below).

STANDARD CONDITIONS OF PROBATION AND SUPERVISED RELEASE

While the defendant is on probation or supervised release pursuant to this judgment:

1. The defendant must not commit another federal, state, or local crime;
2. The defendant must report to the probation office in the federal judicial district of residence within 72 hours of imposition of a sentence of probation or release from imprisonment, unless otherwise directed by the probation officer;
3. The defendant must report to the probation office as instructed by the court or probation officer;
4. The defendant must not knowingly leave the judicial district without first receiving the permission of the court or probation officer;
5. The defendant must answer truthfully the inquiries of the probation officer, unless legitimately asserting his or her Fifth Amendment right against self-incrimination as to new criminal conduct;
6. The defendant must reside at a location approved by the probation officer and must notify the probation officer at least 10 days before any anticipated change or within 72 hours of an unanticipated change in residence or persons living in defendant's residence;
7. The defendant must permit the probation officer to contact him or her at any time at home or elsewhere and must permit confiscation of any contraband prohibited by law or the terms of supervision and observed in plain view by the probation officer;
8. The defendant must work at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons and must notify the probation officer at least ten days before any change in employment or within 72 hours of an unanticipated change;
9. The defendant must not knowingly associate with any persons engaged in criminal activity and must not knowingly associate with any person convicted of a felony unless granted permission to do so by the probation officer. This condition will not apply to intimate family members, unless the court has completed an individualized review and has determined that the restriction is necessary for protection of the community or rehabilitation;
10. The defendant must refrain from excessive use of alcohol and must not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
11. The defendant must notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
12. For felony cases, the defendant must not possess a firearm, ammunition, destructive device, or any other dangerous weapon;
13. The defendant must not act or enter into any agreement with a law enforcement agency to act as an informant or source without the permission of the court;
14. The defendant must follow the instructions of the probation officer to implement the orders of the court, afford adequate deterrence from criminal conduct, protect the public from further crimes of the defendant; and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

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Docket No.: CR 21-497-AB-DMG

The defendant must also comply with the following special conditions (set forth below).

STATUTORY PROVISIONS PERTAINING TO PAYMENT AND COLLECTION OF FINANCIAL SANCTIONS

The defendant must pay interest on a fine or restitution of more than \$2,500, unless the court waives interest or unless the fine or restitution is paid in full before the fifteenth (15th) day after the date of the judgment under 18 U.S.C. § 3612(f)(1). Payments may be subject to penalties for default and delinquency under 18 U.S.C. § 3612(g). Interest and penalties pertaining to restitution, however, are not applicable for offenses completed before April 24, 1996. Assessments, restitution, fines, penalties, and costs must be paid by certified check or money order made payable to "Clerk, U.S. District Court." Each certified check or money order must include the case name and number. Payments must be delivered to:

United States District Court, Central District of California
Attn: Fiscal Department
255 East Temple Street, Room 1178
Los Angeles, CA 90012

or such other address as the Court may in future direct.

If all or any portion of a fine or restitution ordered remains unpaid after the termination of supervision, the defendant must pay the balance as directed by the United States Attorney's Office. 18 U.S.C. § 3613.

The defendant must notify the United States Attorney within thirty (30) days of any change in the defendant's mailing address or residence address until all fines, restitution, costs, and special assessments are paid in full. 18 U.S.C. § 3612(b)(1)(F).

The defendant must notify the Court (through the Probation Office) and the United States Attorney of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay a fine or restitution, as required by 18 U.S.C. § 3664(k). The Court may also accept such notification from the government or the victim, and may, on its own motion or that of a party or the victim, adjust the manner of payment of a fine or restitution under 18 U.S.C. § 3664(k). See also 18 U.S.C. § 3572(d)(3) and for probation 18 U.S.C. § 3563(a)(7).

Payments will be applied in the following order:

1. Special assessments under 18 U.S.C. § 3013;
2. Restitution, in this sequence (under 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid):
 - Non-federal victims (individual and corporate),
 - Providers of compensation to non-federal victims,
 - The United States as victim;
3. Fine;
4. Community restitution, under 18 U.S.C. § 3663(c); and
5. Other penalties and costs.

CONDITIONS OF PROBATION AND SUPERVISED RELEASE PERTAINING TO FINANCIAL SANCTIONS

As directed by the Probation Officer, the defendant must provide to the Probation Officer: (1) a signed release authorizing credit report inquiries; (2) federal and state income tax returns or a signed release authorizing their disclosure and (3) an accurate financial statement, with supporting documentation as to all assets, income and expenses of the defendant. In addition, the defendant must not apply for any loan or open any line of credit without prior approval of the Probation Officer.

When supervision begins, and at any time thereafter upon request of the Probation Officer, the defendant must produce to the Probation and Pretrial Services Office records of all bank or investments accounts to which the defendant has access, including any business or trust accounts. Thereafter, for the term of supervision, the defendant must notify and receive approval of the Probation Office in advance of opening a new account or modifying or closing an existing one, including adding or deleting signatories; changing the account number or name, address, or other identifying information affiliated with the account; or any other modification. If the Probation Office approves the new account, modification or closing, the defendant must give the Probation Officer all related account records within 10 days of opening, modifying or closing the account. The defendant must not direct or ask anyone else to open or maintain any account on the defendant's behalf.

The defendant must not transfer, sell, give away, or otherwise convey any asset with a fair market value in excess of \$500 without approval of the Probation Officer until all financial obligations imposed by the Court have been satisfied in full.

These conditions are in addition to any other conditions imposed by this judgment.

USA vs. MICHEAL LEE VILLAMONTE

Docket No.: CR 21-497-AB-DMG

RETURN

I have executed the within Judgment and Commitment as follows:

Defendant delivered on _____ to _____

Defendant noted on appeal on _____

Defendant released on _____

Mandate issued on _____

Defendant's appeal determined on _____

Defendant delivered on _____ to _____

at _____

the institution designated by the Bureau of Prisons, with a certified copy of the within Judgment and Commitment.

United States Marshal

By _____

Date _____

Deputy Marshal

CERTIFICATE

I hereby attest and certify this date that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

Clerk, U.S. District Court

By _____

Filed Date _____

Deputy Clerk

FOR U.S. PROBATION OFFICE USE ONLY

Upon a finding of violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

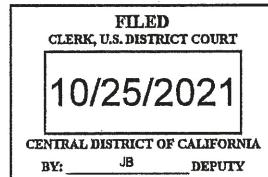
These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) _____
Defendant

Date _____

U. S. Probation Officer/Designated Witness

Date _____



UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
MICHEAL LEE VILLAMONTE,
Defendant.

No. 2:21-cr-00497-ODW

I N F O R M A T I O N

[18 U.S.C. § 922(g)(9): Prohibited Person in Possession of a Firearm]

The Acting United States Attorney charges:

[18 U.S.C. § 922(g)(9)]

On or about March 30, 2018, in Los Angeles County, within the Central District of California, defendant MICHEAL LEE VILLAMONTE knowingly possessed a firearm, namely, an Aero Precision model X15 5.56 mm caliber semiautomatic pistol, bearing serial number X095733, in and affecting interstate and foreign commerce.

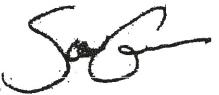
Defendant VILLAMONTE possessed such firearm knowing that he had previously been convicted of a misdemeanor crime of domestic violence, namely, Battery of a Person Who is the Parent of the Defendant's Child, in violation of California Penal Code Section

///

ER10

1 243(e)(1), in the Superior Court of the State of California, County
2 of Los Angeles, Case Number 0DY03713, on or about February 10, 2011.
3

4 TRACY L. WILKISON
5 Acting United States Attorney



6
7 SCOTT M. GARRINGER
8 Assistant United States Attorney
Chief, Criminal Division

9 SHAWN J. NELSON
10 Assistant United States Attorney
11 Chief, International Narcotics,
Money Laundering, and Racketeering
Section

12 A. CARLEY PALMER
13 Assistant United States Attorney
14 Deputy Chief, General Crimes
Section

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CERTIFICATE OF SERVICE

I, **Simonia White**, declare:

That I am a citizen of the United States and a resident of or employed in Los Angeles County, California; that my business address is the Office of United States Attorney, 312 North Spring Street, Los Angeles, California 90012; that I am over the age of 18; and that I am not a party to the above-titled action;

That I am employed by the United States Attorney for the Central District of California, who is a member of the Bar of the United States District Court for the Central District of California, at whose direction I served a copy of:

INFORMATION; SUMMONS TO APPEAR; PLEA AGREEMENT FOR DEFENDANT
MICHAEL LEE VILLAMONTE

15 Placed in a closed envelope Placed in a sealed envelope
16 for collection and inter-office for collection and mailing via
 delivery, addressed as follows: United States mail, addressed
17
18 By hand delivery, addressed as By facsimile, as follows:
 follows:
19
20 Via email, as follows: By Federal Express, as
 follows:
21 in the charles@charlesbhart.com

This Certificate is executed on **October 25, 2021**, at Los Angeles, California. I certify under penalty of perjury that the foregoing is true and correct.

Simonia White

Simonia White
Legal Assistant

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

DEC 1 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
MICHEAL LEE VILLAMONTE,
Defendant-Appellant.

No. 23-50013

D.C. No.
2:21-cr-00497-AB-DMG-1
Central District of California,
Los Angeles

ORDER

Before: TASHIMA, S.R. THOMAS, and FORREST, Circuit Judges.

Villamonte's motion (Docket Entry No. 21) for reconsideration is denied and the motion for reconsideration en banc is denied on behalf of the court. *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11.