

No. 24-_____

**IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2024**

**TEVON NGOMBA,
PETITIONER,**

v.

**UNITED STATES OF AMERICA,
RESPONDENT.**

***ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIRST CIRCUIT***

PROOF OF SERVICE

I, J. Daniel Silverman, do swear or declare that on this date, the 21st day of October, 2024, as required by Supreme Court Rule 29, I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them with first-class postage prepaid, or by delivering to a third-party commercial carrier for delivery within three (3) calendar days.

The names and addresses of those served are as follows:

Elizabeth Barchas Prelogar
Solicitor General of the United States
Room 5614, Department of Justice, 9500 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

I declare under penalty of perjury that the foregoing is true and correct.



J. Daniel Silverman

No. 24-_____

**IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2021**

**TEVON NGOMBA,
PETITIONER,**

v.

**UNITED STATES OF AMERICA,
RESPONDENT.**

***ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE THIRD CIRCUIT***

PETITION FOR A WRIT OF CERTIORARI

J. DANIEL SILVERMAN
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QUESTIONS PRESENTED FOR REVIEW

- I. Whether the Court of Appeals for the First Circuit erred by summarily affirming the district court's imposition of a two-level offense increase for obstruction of justice under § 3C1.1 of the United States Sentencing Guidelines.
- II. Whether the Court of Appeals for the First Circuit erred by summarily affirming the district court's denial of credit for acceptance of responsibility under § 3E1.1(a) of the United States Sentencing Guidelines.

RELATED PROCEEDINGS

- I. United States District Court for the District of Massachusetts
United States of America v. Tevon Ngomba, No. 1-20-cr-10192-IT-1
- II. United States Court of Appeals for the First Circuit
United States v. Tevon Ngomba, No. 23-1529

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**IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2024**

**TEVON NGOMBA,
PETITIONER,**

v.

**UNITED STATES OF AMERICA,
RESPONDENT.**

**ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIRST CIRCUIT**

PETITION FOR A WRIT OF CERTIORARI

Petitioner Tevon Ngomba respectfully requests the Court to issue a Writ of Certiorari to review the judgment of the United States Court of Appeals for the First Circuit entered in the above-captioned matter on July 9, 2024.

OPINION BELOW

The formal mandate of the United States Court of Appeals for the First Circuit, affirming Tevon Ngomba’s convictions and sentence, is reproduced in the appendix to this petition at 001a. The Court’s Judgment is reproduced at 002a.

JURISDICTION

28 U.S.C. § 1254(1) confers the jurisdiction to review the judgment of the United States Court of Appeals for the First Circuit by writ of certiorari.

STATUTORY PROVISIONS INVOLVED

Section 3C1.1 of the United States Sentencing Guidelines calls for a two-level enhancement “[i]f . . . 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.” U.S. SENTENCING GUIDELINES MANUAL § 3C1.1 (U.S. SENTENCING COMM’N 2022).

Section 3E1.1 of the United States Sentencing Guidelines provides a two-level reduction “[i]f the defendant clearly demonstrates acceptance of responsibility for his offense.” U.S. SENTENCING GUIDELINES MANUAL § 3E1.1(a) (U.S. SENTENCING COMM’N 2022).

STATEMENT OF THE CASE

Tevon Ngomba had a tumultuous childhood. He grew up in a housing development in Somerville, Massachusetts, where violence and drug activity were rampant. His father verbally abused him and often struck him with a cord or belt when he misbehaved as a child. He was eleven when his father sent him to the African nation of Cameroon to live with relatives.

Mr. Ngomba has lifelong emotional scarring due to his time in Cameroon. He attended a military-style school there, where he endured physical discipline and other forms of violence. He was tortured, forced to stay in rooms with dead animals, forced to kill animals, and handled human corpses. The experience was extremely traumatic, causing him to endure flashbacks and other posttraumatic disorder-like symptoms that continue to this day. At about thirteen, he returned to the United States, but his childhood did not get easier.

Mr. Ngomba was in jail in 2018 when his mother died of lung cancer. In June 2020, as the world endured the COVID-19 pandemic, he was released from prison and returned to a housing development. He did not have any role models and had scant community support. All the while, he struggled to cope with his mother's death.

Since positive goals seemed out of reach, Mr. Ngomba found an escape in drugs. He began to abuse Fentanyl and Percocet. He was soon addicted and sold drugs to support his habit.

On July 16, 2020, a government cooperating witness and Mr. Ngomba coordinated a meetup for a drug sale. They met at an agreed-upon location, at which time police officers watched Mr. Ngomba go into an apartment and exit holding a plastic bag. He then entered the cooperating witness's car, which was equipped with hidden audio and video recording equipment.

Mr. Ngomba handed the informant a clear plastic bag containing controlled substances in exchange for approximately \$1,800 cash. Lab testing confirmed that the bag had almost seventy grams of Fentanyl in it.

Mr. Ngomba set up another meeting with the informant to sell a handgun for \$1,500. On August 3, 2020, police surveillance observed him enter the cooperating witness' vehicle, which had hidden audio and video recording equipment. After a discussion about payment, the informant requested to see the firearm.

Mr. Ngomba exited and went to the trunk of his vehicle before returning to the informant's car. He then showed the cooperating witness a gun and its loaded

magazine, stating, “Drive around,” as he appeared to place the firearm under the driver’s seat. The cooperating witness handed Mr. Ngomba \$1,500 and then dropped him off at his car.

Law enforcement watched Mr. Ngomba go to his car’s trunk, pat himself down, and sprint after the informant’s vehicle. Meanwhile, the informant checked the car for the firearm and did not find it. Instead, he recovered Mr. Ngomba’s cell phone on the back seat.

The authorities stopped Mr. Ngomba, who clutched \$1,500 in his hand. They searched his vehicle and found narcotics in the glove box. Lab testing confirmed the drugs consisted of approximately sixteen grams of a substance containing Fentanyl. Law enforcement recovered a loaded firearm with an obliterated serial number in the trunk.

On September 15, 2020, the government charged Mr. Ngomba with Distribution of and Possession with Intent to Distribute 40 or More Grams of Fentanyl, Possession with Intent to Distribute Fentanyl, and Felon in Possession of Firearm and Ammunition. On November 7, 2022, he pleaded guilty to those three offenses.

Mr. Ngomba objected to the Presentence Investigation Report (“PSR”). First, he objected to the sentencing enhancement of four levels that the PSR applied under § 2K2.1(b)(6)(B) of the Sentencing Guidelines. The district court agreed with the objection but imposed a two-level enhancement under § 2D1.1(b)(1). Second, Mr. Ngomba objected to the two-level offense increase for obstruction of justice under §

3C1.1. The court overruled this objection. Lastly, he objected because the PSR did not award him a two-level decrease for acceptance of responsibility under § 3E1.1(a). The court overruled this objection.

The district court determined that Mr. Ngomba's offense level was 28 and his criminal history category was III, resulting in a Guidelines calculation of 97 to 121 months of incarceration. The court sentenced him to imprisonment for 97 months on each charge. The court ordered the sentences to run concurrently.

On July 9, 2024, the Court of Appeals for the First Circuit granted the government's motion for summary disposition and affirmed Mr. Ngomba's judgment of sentence. *See* 002a.

This petition appeal follows.

REASONS RELIED ON FOR GRANTING THE PETITION

I. THE DISTRICT COURT CLEARLY ERRED IN IMPOSING A TWO-LEVEL OFFENSE INCREASE FOR OBSTRUCTION OF JUSTICE UNDER SECTION 3C1.1 OF THE SENTENCING GUIDELINES.

The district court clearly erred by improperly calculating the Guidelines because the court erroneously applied a two-level increase to Mr. Ngomba's offense level pursuant to U.S.S.G. § 3C1.1. The enhancement was inappropriate because he did not provide false information to the district court. Accordingly, this Court should grant Mr. Ngomba's petition.

Section 3C1.1 of the Guidelines calls for a two-level enhancement "[i]f . . . 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.” U.S. SENTENCING GUIDELINES MANUAL § 3C1.1 (U.S. SENTENCING COMM’N 2022). Pertinent conduct includes “providing materially false information to a judge or magistrate judge.” *Id.* at cmt. n.4. Providing false information to a judge during a bail hearing can serve as a basis for the obstruction of justice enhancement. *United States v. Lasseque*, 806 F.3d 618, 624 (1st Cir. 2015) (citation omitted).

The government bears the burden of proving the facts underlying its sentencing enhancement recommendation by a preponderance of the evidence. *United States v. Cannon*, 589 F.3d 514, 517 (1st Cir. 2009) (“Where, as here, a defendant challenges the factual predicate supporting the district court’s application of a sentencing enhancement, ‘we ask only whether the court clearly erred in finding that the government proved the disputed fact by a preponderance of the evidence.’” (quoting *United States v. Luciano*, 414 F.3d 174, 180 (1st Cir. 2005))).

The level of culpability required by the obstruction of justice enhancement is willfulness. U.S. SENTENCING GUIDELINES MANUAL § 3C1.1 cmt. n.2 (U.S. SENTENCING COMM’N 2022); *see also United States v. Reynoso*, 336 F.3d 46, 50 (1st Cir. 2003) (“[F]alse testimony caused by mistake, confusion or poor memory is not perjurious.”). § 3C1.1’s commentary, however, describes limitations to the enhancement’s application. Inaccurate testimony or statements that “result from confusion, mistake, or faulty memory” does not constitute obstruction of justice. U.S. SENTENCING GUIDELINES MANUAL § 3C1.1 cmt. n.2 (U.S. SENTENCING COMM’N 2022). In this case, Mr. Ngomba’s actions were outside the reach of § 3C1.1 because

they did not cause the district court to receive information proven to be false.

Here, the district court enhanced Mr. Ngomba's sentence by two levels for obstruction of justice because he produced "a false, altered, or counterfeit document or record during an official proceeding[.]" He used an associate to assist him in drafting and submitting to counsel two letters purportedly from friends or acquaintances in support of his pretrial release. Counsel then transmitted the letters to the district court but later moved to strike them from the record upon learning that Mr. Ngomba's acquaintances did not approve them.

Mr. Ngomba was wrong to provide counsel with forged affidavits that counsel filed with the district. However, the conduct did not warrant the court applying the enhancement under U.S.S.G. § 3C1.1.

The government did not meet its burden to prove by a preponderance of the evidence that the information in the affidavits was false. Therefore, Mr. Ngomba's situation is distinguishable from the First Circuit's precedent, where the obstruction enhancement was appropriate because the defendant provided false information to the district court. *See, e.g., United States v. Coffin*, 946 F.3d 1, 8 (1st Cir. 2019) (Defendant's letter asked someone to corroborate his "false" alibi); *Lasseque*, 806 F.3d at 624 (Obstruction enhancement appropriate because defendant used an affidavit to influence a bail decision, and the affidavit was "clearly false.").

In conclusion, the government did not meet its burden to prove Mr. Ngomba willfully obstructed, 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.” U.S. SENTENCING GUIDELINES MANUAL § 3C1.1 (U.S. SENTENCING COMM’N 2022). Therefore, the district court clearly erred in applying the obstruction enhancement. As a result, the Court of Appeals for the First Circuit erred by summarily affirming Mr. Ngomba’s judgment of conviction, and this Court should grant this petition.

II. THE DISTRICT COURT CLEARLY ERRED BY DENYING MR. NGOMBA CREDIT FOR ACCEPTING RESPONSIBILITY UNDER § 3E1.1(A) OF THE SENTENCING GUIDELINES.

The district court clearly erred by improperly calculating the Guidelines because the court erroneously denied Mr. Ngomba’s request for a downward adjustment under U.S.S.G. § 3E1.1. The court should have granted the downward adjustment because he accepted responsibility for his criminal conduct. As a result, this Court should grant this petition.

Section 3E1.1 provides a two-level reduction “[i]f the defendant clearly demonstrates acceptance of responsibility for his offense.” U.S. SENTENCING GUIDELINES MANUAL § 3E1.1(a) (U.S. SENTENCING COMM’N 2022). A defendant who enters a guilty plea is not automatically entitled to this adjustment. *United States v. Franky-Ortiz*, 230 F.3d 405, 408 (1st Cir. 2000). For the two-level reduction to apply, the defendant must demonstrate “candor and authentic remorse as opposed to mouthing a pat recital of the vocabulary of contrition.” *United States v. McLaughlin*, 378 F.3d 35, 39-40 (1st Cir. 2004) (citation and internal quotation marks omitted). The defendant has “the burden of proving his entitlement to an

acceptance-of-responsibility credit.” *Franky-Ortiz*, 230 F.3d at 408 (citation omitted).

The Sentencing Commission has provided guidance for courts in determining whether heartfelt remorse exists. *See* U.S. SENTENCING GUIDELINES MANUAL § 3E1.1 cmt. n.1 (U.S. SENTENCING COMM’N 2022) (a non-exclusive list of factors that courts may consider). The list’s non-exclusivity suggests that the sentencing court should look to all relevant data to reach a just result. *McLaughlin*, 378 F.3d at 37-38.

A. The district court clearly erred in requiring Mr. Ngomba to prove exceptional circumstances to receive a reduction in the offense level because the obstruction of justice enhancement was inapplicable.

Since the enhancement for obstruction of justice under U.S.S.G. § 3C1.1 did not apply, the district court clearly erred in requiring Mr. Ngomba to prove the case’s exceptional circumstances to receive a downward adjustment under § 3E1.1. Therefore, this Court should grant this petition.

Application Note 4 to § 3E1.1 states that conduct resulting in an obstruction of justice enhancement usually indicates that the defendant has not accepted responsibility. U.S. SENTENCING GUIDELINES MANUAL § 3E1.1 cmt. n.4 (U.S. SENTENCING COMM’N 2022). However, the Application Note acknowledges that there may be an extraordinary case in which the downward adjustment may apply despite a finding of obstruction of justice. *Id.* “In such instances, the defendant has the burden of proving that an adjustment for acceptance of responsibility is

warranted.” *United States v. Maguire*, 752 F.3d 1, 6 (1st Cir. 2014) (citation omitted).

Here, the district court required Mr. Ngomba to prove his case was extraordinary before he could receive a downward adjustment for acceptance of responsibility. The court stated that

if you have this obstruction of justice, that is equivalent unless there are exceptional circumstances to not accepting responsibility. And I think the question here is what would be an exceptional circumstance to justify that or to make that argument?

After Mr. Ngomba’s counsel argued the case’s extraordinary nature, the court denied the two-level decrease.

The district court committed clear error by requiring Mr. Ngomba to prove the exceptional nature of his case because, as established above, the obstruction enhancement did not apply. As a result, based on his guilty plea, efforts at rehabilitation while incarcerated, and allocution, Mr. Ngomba met his burden to prove he accepted responsibility under § 3E1.1. Therefore, the court should have ruled that he demonstrated “candor and authentic remorse as opposed to mouthing a pat recital of the vocabulary of contrition” and awarded a two-level reduction in the offense level. *McLaughlin*, 378 F.3d at 39-40. Thus, this Court should grant this petition.

B. Even if the obstruction enhancement was appropriate, the reduction for acceptance of responsibility applied because Mr. Ngomba’s case presented “extraordinary” circumstances.

Even if the obstruction of justice enhancement was appropriate, Mr. Ngomba's case was extraordinary for purposes of the U.S.S.G. § 3E1.1 two-level adjustment. As a result, this Court should vacate the sentence imposed.

Application of the obstruction of justice enhancement should not have precluded a downward adjustment for acceptance of responsibility. And though the Court of Appeals for the First Circuit has opined that a case where both an obstruction of justice enhancement and credit for acceptance of responsibility coexist is rare to the point of non-existence, that exceptional situation was present in Mr. Ngomba's case. *See Maguire*, 752 F.3d at 6 (1st Cir. 2014) (stating that downward adjustment under § 3E1.1 when a sentence is enhanced for obstruction of justice is "hen's-teeth rare").

Mr. Ngomba's case is extraordinary, and the district court failed to recognize this fact. Before the sentencing hearing, he submitted documentation about the programs he completed while incarcerated. These exhibits proved his tireless efforts to rehabilitate himself and distinguished his circumstances from those of the typical defendant who pleads guilty.

Accordingly, Mr. Ngoma showed that his case was extraordinary, meriting a two-level downward adjustment under U.S.S.G. § 3E1.1. Thus, the district court clearly erred in refusing to award this reduction. As a result, this Court should grant Mr. Ngomba's petition.

CONCLUSION

For the foregoing reasons, the district court clearly erred when it applied a

sentencing enhancement and denied Mr. Ngomba's request for a downward adjustment. Accordingly, the Court of Appeals for the First Circuit Court of Appeals erred in affirming the judgment of sentence, and this Court should grant this petition.

Respectfully submitted,



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Date: October 21, 2024

United States Court of Appeals For the First Circuit

No. 23-1529

UNITED STATES,

Appellee,

v.

TEVON NGOMBA, a/k/a Chow,

Defendant - Appellant.

MANDATE

Entered: July 31, 2024

In accordance with the judgment of July 9, 2024, and pursuant to Federal Rule of Appellate Procedure 41(a), this constitutes the formal mandate of this Court.

By the Court:

Maria R. Hamilton, Clerk

cc:

Donald Campbell Lockhart

Tevon Ngomba

Kaitlin R. O'Donnell

J. Daniel Silverman

Fred M. Wyshak III

United States Court of Appeals For the First Circuit

No. 23-1529

UNITED STATES,

Appellee,

v.

TEVON NGOMBA, a/k/a Chow,

Defendant - Appellant.

Before

Barron, Chief Judge,
Kayatta and Rikelman, Circuit Judges.

JUDGMENT

Entered: July 9, 2024

Defendant Tevon Ngomba was charged with one count of distribution and possession with intent to distribute 40 grams or more of fentanyl in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B)(vi); one count of possession with intent to distribute fentanyl in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C); and one count of being a felon in possession of a firearm and ammunition in violation of 18 U.S.C. § 922(g)(1). Defendant pleaded guilty to all counts pursuant to a straight plea and was sentenced to 97 months of imprisonment for all counts to be served concurrently.

On appeal, defendant claims for the first time that the district court committed error when it imposed a two-level firearm sentence enhancement under USSG §2D1.1(b)(1). Defendant also claims error in the imposition of a two-level upward adjustment for obstruction of justice under USSG §3C1.1, and the denial of a downward adjustment for acceptance of responsibility pursuant to USSG §3E1.1. Defendant avers that these assignments of error warrant vacatur of the sentence. The government has moved for summary disposition and defendant has responded.

After careful review of the parties' submissions, and the district court record, we grant the motion for summary disposition.

The government contends that defendant's first claim was waived and is meritless even if deemed preserved. Defendant disagrees, contending that the issue was preserved. However, the record belies this assertion. "Waiver . . . is the intentional relinquishment of a known right" and it ordinarily precludes appellate review. United States v. Eisom, 585 F.3d 552, 556 (1st Cir. 2009). Accordingly, "when a party explicitly affirms a fact in the district court, that party risks waiving 'both existing and yet-to-be-recognized rights.'" United States v. Orsini, 907 F.3d 115, 119 (1st Cir. 2018) (quoting United States v. Bauz -Santiago, 867 F.3d 13, 24 (1st Cir. 2017)). In addition to an explicit affirmation that abandons a right, this court has made clear "that, 'when the "subject matter [is] unmistakably on the table, and the defense's silence is reasonably understood only as signifying agreement that there was nothing objectionable," the issue is waived on appeal.'" United States v. Corbett, 870 F.3d 21, 30–31 (1st Cir. 2017) (quoting United States v. Soto, 799 F.3d 68, 96 (1st Cir. 2015)).

When a defendant instead fails to timely assert a right, be it by "oversight, inadvertence, or neglect[.]" that lack of intentionality prompts a finding of forfeiture instead of waiver allowing for appellate review; under those circumstances, the claim will proceed under the onus of plain error. Eisom, 585 F.3d at 556; United States v. Olano, 507 U.S. 725, 733 (1993).

Here, the record shows that defendant clearly denied having a disagreement with the district court's statement during sentencing that the two-level firearm possession enhancement was applicable. Therefore, notwithstanding defendant's protestations, the record supports a finding of waiver. Orsini, 907 F.3d at 119. Moreover, defendant had myriad opportunities to object to the two levels for possession of a firearm but failed to do so. And resting on the belief that the issue was preserved, defendant's opening brief "has made no attempt to bear his burden under plain-error review" and his challenge "is therefore [doubly] waived." United States v. Franklin, 51 F.4th 391, 400 (1st Cir. 2022); United States v. Espinoza-Roque, 26 F.4th 32, 36 (1st Cir. 2022).

But even if we deem the issue forfeited instead of waived and subject to plain error review, it still fails. Under this exacting standard, defendant would have to meet the following conditions: "First, there must be an error. Second, the error must be plain. Third, the error must affect 'substantial rights,' which generally means that there must be 'a reasonable probability that, but for the error, the outcome of the proceeding would have been different.'" Greer v. United States, 593 U.S. 503, 507-08 (2021) (quoting Rosales-Mireles v. United States, 585 U.S. 129, 134–35(2018)). If those provisos are met, an appellate court can act if the error seriously affects the "fairness and integrity of a judicial proceeding." United States v. Cheveres-Morales, 83 F.4th 34, 43–44 (1st Cir. 2023). Defendant has failed to meet this standard.

A review of the record shows ample support for the district court's application of the enhancement. "The sentencing guidelines provide for a two-level enhancement in drug offenses when a defendant possesses a dangerous weapon, including a firearm. . . . According to the commentary, '[t]he adjustment should be applied if the weapon was present, unless it is clearly improbable that the weapon was connected with the offense.'" United States v. Thongsopaporn, 503 F.3d 51, 58 (1st Cir. 2007) (quoting USSG  2D1.1(b)(1), comment. (n.11(A))). None of defendant's contentions are sufficiently persuasive to show error, much less error that is plain.

The obstruction-of-justice challenge fares no better. The government adduces this claim is similarly waived. Defendant claims the issue was duly preserved. There is no need to explore whether the claim is waived because even if deemed preserved the record reveals no clear error. Instructing an associate to fabricate letters and email them to defendant's attorney from false email addresses harmonizes with Application Note 4(C)'s example of covered conduct. USSG §3C1.1, comment. (n.4(C)). United States v. Nygren, 933 F.3d 76, 84 (1st Cir. 2019) (quoting United States v. Cates, 897 F.3d 349, 354 (1st Cir. 2018)) (noting that except when "it conflicts with federal law" the sentencing guidelines' commentary is "generally treat[ed] as authoritative").

As to the final issue on appeal, under a clear error standard of review, no error is discerned. "We apply a clear error standard of review to the sentencing court's factfinding — a standard that extends to any findings based on inferences drawn from discerned facts." United States v. Montañez-Quñones, 911 F.3d 59, 66 (1st Cir. 2018). The "baseline rule" for granting a downward adjustment for acceptance of responsibility is that "[c]onduct resulting in an enhancement [for obstruction of justice] ordinarily indicates that the defendant has not accepted responsibility." United States v. Maguire, 752 F.3d 1, 6 (1st Cir. 2014) (quoting USSG §3E1.1, comment. (n.4)). The onus is on the defendant to prove the adjustment is justified and while the guidelines allow for "extraordinary cases" where a court may grant the downward adjustment alongside the obstruction of justice finding, "practice has proven such largesse to be hen's-teeth rare." Id. Moreover, "[w]hether a defendant 'clearly demonstrates a recognition and affirmative acceptance of personal responsibility' is a fact-dominated issue, and the district court's decision to withhold a reduction in the offense level will not be overturned unless clearly erroneous." United States v. Royer, 895 F.2d 28, 29 (1st Cir. 1990).

We will "reverse for clear error only if the district court's factual findings are not plausible on the record as a whole and if we 'form[] a strong, unyielding belief that a mistake has been made.'" United States v. Walker, 89 F.4th 173, 184 (1st Cir. 2023) (quoting Montañez-Quñones, 911 F.3d at 66). In this case the facts advanced by the defendant to justify the downward adjustment fail to move the needle towards clear error. Entering a guilty plea, the acceptance of charges, or efforts made towards rehabilitation while detained do not correlate to extraordinary circumstances. See, e.g., United States v. D'Angelo, 802 F.3d 205, 211 (1st Cir. 2015) (noting that "a defendant who enters a guilty plea is not automatically entitled to this adjustment").

The district court's observation that those arguments were not emblematic of "exceptional circumstances" was not erroneous considering the particularities of this case. After all, "[a]lthough this court has noted that an exception may be made in 'extraordinary cases,' district courts are certainly not required to give such a credit to defendants whenever they waive formal indictment or do not object to the government's characterization of their offense in the PSR." United States v. Pérez-Crisostomo, 899 F.3d 73, 76 (1st Cir. 2018). In this case nothing in the record evinces clear error in the court's reasoning.

Accordingly, the sentence is summarily affirmed. See 1st Cir.R. 27.0(c).

By the Court:

Maria R. Hamilton, Clerk

cc:

Donald Campbell Lockhart

Kaitlin R. O'Donnell

Fred M. Wyshak III

J. Daniel Silverman

Tevon Ngomba

UNITED STATES DISTRICT COURT

District of Massachusetts

UNITED STATES OF AMERICA

v.

TEVON NGOMBA,
also known as
Chow

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:20-cr-10192-IT-1

USM Number: 15845-509

J. Daniel Silverman

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1, 2, 3☐ pleaded nolo contendere to count(s)
which was accepted by the court.☐ was found guilty on count(s)
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. § 841(a)(1),	Distribution of and Possession with Intent to Distribute 40 Grams or	7/16/2020	1
21 U.S.C. § 841(b)(1)(B)(vi)	or more of Fentanyl		
	(cont'd next page)		

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.☐ The defendant has been found not guilty on count(s)☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.

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

5/17/2023

Date of Imposition of Judgment



Signature of Judge

Indira Talwani, U.S.D.J.

Name and Title of Judge

5/18/2023

Date

DEFENDANT: TEVON NGOMBA, also known as Chow
CASE NUMBER: 1:20-cr-10192-IT-1

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(C)	Possession with Intent to Distribute Fentanyl	8/3/2020	2
18 U.S.C. § 922(g)(1)	Felon in Possession of Firearm and Ammunition	8/3/2020	3

DEFENDANT: TEVON NGOMBA, also known as Chow
CASE NUMBER: 1:20-cr-10192-IT-1

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
97 months on all counts to be served concurrently, with credit for time served.

- ☒ The court makes the following recommendations to the Bureau of Prisons:
The court recommends defendant be designated to a facility commensurate with his security level where he can engage in vocational programs. The court further recommends the defendant's participation in the Residential Drug Abuse Program (RDAP).
- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
- ☐ at _____ ☐ a.m. ☐ p.m. on _____.
- ☐ as notified by the United States Marshal.
- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☐ before 2 p.m. on _____.
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: TEVON NGOMBA, also known as Chow
CASE NUMBER: 1:20-cr-10192-IT-1

SUPERVISED RELEASE

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

4 years on all counts to be served concurrently. The 4-year term of supervised release consists of 4 years on Counts 1 & 2, and 3 years on Count 3, such terms to run concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: TEVON NGOMBA, also known as Chow
CASE NUMBER: 1:20-cr-10192-IT-1

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: TEVON NGOMBA, also known as Chow

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SPECIAL CONDITIONS OF SUPERVISION

1. You are to reside for a period of up to 6 months in a Residential Re-Entry Center (RRC) or until suitable housing approved by the Probation Office is obtained, and you must observe the rules of the RRC facility.
2. You must submit to substance use testing, not to exceed 104 drug tests per year to determine if you have used a prohibited substance. You must not attempt to obstruct or tamper with the testing methods.
3. You are prohibited from drinking alcohol to the point of intoxication, as defined by Massachusetts State Law as a .10 blood alcohol level.
4. You must participate in a mental health treatment program as directed by the Probation Office.
5. You shall be required to contribute to the costs of evaluation, treatment, programming, and/or monitoring (see Special Conditions # 2 & 4), based on the ability to pay or availability of third-party payment.

DEFENDANT: TEVON NGOMBA, also known as Chow

CASE NUMBER: 1:20-cr-10192-IT-1

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 300.00	\$	\$	\$	\$

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

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

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

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

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

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

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

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

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

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

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

DEFENDANT: TEVON NGOMBA, also known as Chow

CASE NUMBER: 1:20-cr-10192-IT-1

SCHEDULE OF PAYMENTS

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

- A ☒ Lump sum payment of \$ 300.00 due immediately, balance due
- ☐ not later than _____, or
- ☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number
Defendant and Co-Defendant Names
(including defendant number)

Total Amount

Joint and Several
Amount

Corresponding Payee,
if appropriate

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

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