

No. _____

IN THE UNITED STATES SUPREME COURT

PEDRIITO MORETA,
PETITIONER

VS.

UNITED STATES OF AMERICA,
RESPONDENT

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

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below:

PRIOR COURT

This is an appeal from a federal court decision. On January 30, 2025 the United States Court of Appeals for the Third Circuit filed an Order and Opinion denying Petitioner's Appeal. On February 25, 2025 the Third Circuit Court denied the Petition for Order hearing *en banc*.

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Haverford, PA 19041
610-891-1989
CJA Counsel for Petitioner

QUESTIONS PRESENTED

1. Did the Third Circuit Court of Appeals err when it held that the Sentencing Court met the requirements of 18 U.S.C. §3553(a), and established case law related thereto, by merely reciting the factors when it sentenced Mr. Moreta above the sentencing guidelines?

2. Did the Third Circuit Court of Appeals err when it ruled against Mr. Moreta's substantive claim that no reasonable sentencing Court would have sentenced him to 16 months above the guideline range for the reasons the District Court provided?

CASE HISTORY

United States District Court - Eastern District of PA

Case No. 06-CR-000096

Judgment of Sentence entered November 13, 2007.

Joint Motion for Re-sentencing granted.

New Judgment and Sentence ordered March 20, 2024.

United States Court of Appeals for the Third Circuit

Case No. 24-1541

Order Denying Appeal January 30, 2025.

Order Denying Re-Hearing *en banc* February 25, 2025.

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CONCISE STATEMENT OF JURISDICTION

This is an appeal from a federal court decision. The Third Circuit Court of Appeals of the United States decided this case on January 30, 2025. A petition for rehearing was filed and denied on February 25, 2025.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Sixth Amendment of the United States Constitution
2. 28 U.S.C. §2255
3. 18 U.S.C. §3553(a) and (c).

STATEMENT OF THE CASE

This is an appeal from the re-sentencing of appellant after 17 years of incarceration. Following the United States Supreme Court's decisions in Johnson v. United States, 135 S.Ct. 2552 (2015), and United States v. Taylor, 142 S. Ct. 2015 (2022), the United States and appellant moved jointly to re-sentence Mr. Moreta pursuant to 28 U.S.C. §2255. The District Court granted the motion and resentenced Mr. Moreta.

Prior to re-sentencing, a supplemental pre-sentence report was prepared which calculated Mr. Moreta's new guideline range as 151 to 188 months with an additional mandatory 84 months for an effective range of 235 to 272 months.

Mr. Moreta was re-sentenced to 204 months plus 84 months for a total sentence of 288 months, which is 16 months greater than the high end of his guideline range.

The District Court gave scant explanation for its variance despite acknowledging that Mr. Moreta had little likelihood of recidivism. In his appeal to the Third Circuit Court of Appeals, Mr. Moreta argued the District Court abused its discretion procedurally by not properly considering required factors at sentencing, not meaningfully considering Mr. Moreta's arguments, and by sentencing him above the standard range without properly setting forth its reasons for the variance.

Mr. Moreta also claimed the District Court abused its

discretion substantively because "no reasonable sentencing court would have imposed the same sentence on that particular defendant for the reasons the district court provided." United States v. Tomko, 562 F.3d 558, 568 (3d Cir.2009) (en banc).

On January 30, 2025, a panel of three Judges from the Third Circuit Court of Appeals affirmed the judgment and sentence of the District Court finding that the Court had met the requirements of Tomko.

The total explanation for sentencing Mr. Moreta above the guidelines follows.

The Court stated, "The factors which I must consider are the nature and circumstances of the offenses and the history and characteristics of you the Defendant. The seriousness of the offenses, the need to promote respect for the law, the need to provide a just punishment for the offenses, the need to afford adequate deterrence to criminal conduct, the need to protect the public for further crimes of you, the Defendant, and the need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct."

The Court then stated:

"First, Mr. Moreta, I think we all agree that the crimes which you committed were serious indeed. You put a Brink's guard in fear of his life. You put the owner of a check-cashing agency in fear of his life. And in one case of the victim was wounded,

guns were involved. The Court always has to be concerned about deterrence, both general deterrence and individual deterrence. I think it's unlikely, I agree with your counsel, that you'll again be involved in the criminal justice system, but the Court must be concerned about general deterrence to deter others who have similar mindsets that you had back in years ago to try to deter them from committing such serious crimes.

The Court also must be concerned about a just punishment. And in thinking about that, I must consider the interest of society in general, and particularly the interest of the victims, who I'm sure will never forget the incidents involved here. The Court must also take into account your nature and circumstances of the offenses, which as I've described are quite -- were quite serious. And also, your history and characteristics. You do have five criminal history points. However, you have certainly seemed to have turned your life around in the last few years in prison and I commend you for that.

Under the totality of the circumstances, Mr. Moreta, I'm going to commit you into the custody of the Attorney General of the United States for a period of imprisonment of two hundred and four months on each of counts one, two, and four. Those sentences are to run concurrently. I also impose a sentence of eighty-four months on count three to run consecutively to the

concurrent terms on counts one, two, and four for a total imprisonment of two hundred and eighty-eight months."

Following the imposition of the sentence, counsel for Mr. Moreta sought further clarification from the Court:

MR. BROSE: Your Honor. It -- it is my understanding that the Court has sentenced Mr. Moreta to be outside the sentencing guideline range.

THE COURT: That is correct.

MR. BROSE: And so does the Court need to put on record what the reasons for variance --?

THE COURT: I have explained that, the reasons for it, when I went over the factors under Title 18, Section -- U.S.C. Section 3553(a), the seriousness of the offense, the interest of the victims, the need for general deterrence, the need for a just punishment. The -- the -- these crimes were terrible. And while one was an attempted robbery, I understand that under the categorical approach, they were serious nonetheless. People were put in fear of their lives. One person was shot.

MR. BROSE: And understood, Your Honor. And I think all of that's accounted for inside the guideline ranges, and that's why --.

THE COURT: Well, you know where you can take it for further review?

MR. BROSE: I do, Your Honor. (Sentencing Transcript, March

20, 2024 attached as Exhibit "D").

The United States District Court for the Eastern District of Pennsylvania had jurisdiction of the underlying case pursuant to 18 U.S.C. §3231 and 18 U.S.C. §1951.

REASONS FOR GRANTING THE PETITION

Mr. Moreta was given a sentence of incarceration that was 16 months above the applicable sentencing guidelines in his case. The Sentencing Court failed to give any individualized reasons for its variance, and when the Third Circuit' Court of Appeals did not remand the case for re-sentencing it failed to uphold the law requiring an explanation for a deviation from the sentencing guidelines set forth by the United States Supreme Court in Gall v. United States, 128 S. Ct. 586, 169 L.Ed.2d 445, 552 U.S. 38 (2007).

"Regardless of whether the sentence imposed is inside or outside the Guidelines range, the appellate court must review the sentence under an abuse-of-discretion standard. It must first ensure that the district court committed no significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the §3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence—including an explanation

for any deviation from the Guidelines range.” Gall, 552 U.S. 38, at 51 (2007).

When sentencing outside the guideline range a Sentencing Judge should be required to do more than just read the factors set forth in 18 U.S.C. §3553(a). Just calling an armed robbery “serious” provides no explanation for a sentence above the guidelines. This Honorable Court should enforce its prior holdings by accepting this appeal and ordering a remand for resentencing.

Further, the Third Circuit erred by failing to finding the sentence in this case was substantively reasonable. There is no Court that would reasonably sentence Mr. Moreta to 16 months above the guidelines based on the reasons provided by the District Court Judge in this case.

This is a defendant who spent 17 years incarcerated on this very case when he was re-sentenced. He presented evidence of his remarkable turnaround in prison which led to him being a model prisoner the past 10 years, and the sentencing Judge acknowledged as much. His reward for his hard work and transformation? A sentence 16 months above the HIGH end of the applicable sentencing guideline range.

The District Court’s sentencing Order smacks of an underlying policy disagreement with the United States Supreme

Court's decisions in Johnson v. United States, 135 S.Ct. 2552 (2015), and United States v. Taylor, 142 S. Ct. 2015 (2022).

CONCLUSION

The Petition for a writ of certiorari should be granted.

Respectfully Submitted,

/s/ James F. Brose
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610-891-1989

May 21, 2025

PROOF OF SERVICE

I, James F. Brose, hereby swear and declare that I am an attorney appointed under the Criminal Justice Act of 1964, and that I have on this date, as required by Supreme Court Rule 29, 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 and with first class postage pre-paid.

The name and address of those served are as follows:

Solicitor General of the United States
Room 5616, Department of Justice
950 Pennsylvania Ave., N. W.
Washington, DC 20530-0001

Robert Zauzmer, Esq.
United States Attorney's Office
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106

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

/s/ James F. Brose
James F. Brose, Esq.
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617 Railroad Ave.
Haverford, PA 19041
610-891-1989

May 21, 2025

APPENDIX "A"

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-1541

UNITED STATES OF AMERICA

v.

PEDRITO SANTIAGO MORETA,
also known as TRU,
Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 2:06-cr-00096-001)
U.S. District Judge: Honorable Harvey Bartle III

Submitted Under Third Circuit L.A.R. 34.1(a)
January 27, 2025

Before: SHWARTZ, KRAUSE, and PORTER, Circuit Judges.

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted pursuant to Third Circuit L.A.R. 34.1(a) on January 27, 2025.

On consideration whereof, it is now hereby ORDERED and ADJUDGED by this

Court that the judgment of the District Court entered on March 21, 2024, is hereby AFFIRMED. All of the above in accordance with the Opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: January 30, 2025

APPENDIX "B"

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-1541

UNITED STATES OF AMERICA

v.

PEDRITO SANTIAGO MORETA,
also known as TRU,
Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 2:06-cr-00096-001)
U.S. District Judge: Honorable Harvey Bartle III

Submitted Under Third Circuit L.A.R. 34.1(a)
January 27, 2025

Before: SHWARTZ, KRAUSE, and PORTER, Circuit Judges.

(Filed: January 30, 2025)

OPINION*

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

SHWARTZ, Circuit Judge.

Pedrito Santiago Moreta appeals his sentence for his Hobbs Act and firearms convictions. Because the sentence is procedurally and substantively reasonable, we will affirm.

I

In August 2005, Moreta and co-conspirators robbed a Brinks truck. Moreta sprayed mace in the truck driver's face while another co-conspirator pointed a gun at the driver. United States v. Moreta, 310 F. App'x 534, 537 (3d Cir. 2009). The pair stole \$781,000 but dropped the money after the driver fired at them with his own gun. Moreta and his co-conspirators then sought to rob a check cashing store. Moreta entered the premises with a gun, shots were fired, and one of the co-conspirators and the storeowner were hit. The storeowner shot Moreta, foiling the robbery attempt.

In 2006, a jury found Moreta guilty of (1) conspiracy to commit Hobbs Act robberies; (2) Hobbs Act robbery of the truck; and (3) attempted Hobbs Act robbery of the store, all in violation of 18 U.S.C. § 1951(a). The jury also convicted Moreta of carrying, or aiding and abetting in the carrying of, a firearm during the robbery and attempted robbery in violation of 18 U.S.C. § 924(c). Moreta was sentenced to 421 months' imprisonment with five years of supervised release.¹

¹ This prison sentence was comprised of (1) 37 months' imprisonment for each of the Hobbs Act convictions, all to run concurrently, (2) a consecutive 84 months' imprisonment for the § 924(c) conviction stemming from the truck robbery, and (3) 300 months' imprisonment for the § 924(c) conviction stemming from the attempted check cashing robbery, to run consecutively to all other counts.

In 2022, the United States Supreme Court held that an attempted Hobbs Act robbery was not a “crime of violence” within the meaning of § 924(c). United States v. Taylor, 596 U.S. 845, 851-52 (2022). Accordingly, the District Court vacated Moreta’s § 924(c) conviction based on the attempted robbery and resentenced him. On resentencing, the Presentence Report calculated the Guidelines range for Moreta’s Hobbs Act convictions as 151 to 188 months and for his § 924(c) conviction associated with the truck robbery as 84 months to run consecutive to his Hobbs Act sentence, for a total range of 235 to 272 months.

Each party sought a variance. The United States sought 300 months’ imprisonment based on the violent nature of the offenses, while Moreta sought 204 months’ imprisonment based on his successful rehabilitation during his seventeen years in prison. After calculating the advisory Guidelines range and considering the § 3553(a) factors, the District Court imposed 288-months’ imprisonment—a sixteen-month upward variance. The Court found the sentence was justified by (1) the seriousness of the crimes, (2) the fear and injuries experienced by the victims, (3) the use of firearms, (4) the need for just punishment and general deterrence, and (5) Moreta’s criminal history.² The Court acknowledged Moreta’s rehabilitation, noting that it seemed unlikely that Moreta would reoffend, but found this mitigating factor was outweighed by the need for general deterrence.

² When Moreta’s counsel asked the District Court its reasons for the variance, the Court stated that, even though one of Moreta’s crimes was only an attempted robbery, it was “serious nonetheless.” App. 30.

Moreta appeals.

II³

On appeal, Moreta argues that his sentence is both procedurally and substantively unreasonable, but his arguments fail.

A

In reviewing a sentence's procedural reasonableness, we focus on whether the district court (1) correctly calculated the applicable Guidelines range, (2) considered any departure motions, and (3) meaningfully considered all relevant 18 U.S.C. § 3553(a) factors, including any variance requests. United States v. Merced, 603 F.3d 203, 215 (3d Cir. 2010).

Moreta claims that the District Court erred in parts of its § 3553(a) analysis. The record, however, shows that the District Court meaningfully considered (1) Moreta's rehabilitation and whether the sentence imposed was needed to provide him education or training, 18 U.S.C. § 3553(a)(2)(D), (2) specific deterrence, 18 U.S.C. § 3553(a)(2)(C), and (3) his variance request. After Moreta informed the Court about his improvement in prison and asserted that he did not need "more time for education or training," App. 19, the Court noted his rehabilitation and low risk of recidivism, but nonetheless concluded that the "totality of the circumstances" warranted a sentence that (1) deters others, (2)

³ The District Court had jurisdiction pursuant to 18 U.S.C. § 3231. We have jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a). Where, as here, the defendant challenges a sentence's procedural and substantive reasonableness, we review the District Court's reasoning for abuse of discretion. See United States v. Tomko, 562 F.3d 558, 567 (3d Cir. 2009) (en banc).

protects the interests of society and victims, and (3) accounts for the seriousness of the crimes, App. 28. The District Court thus considered Moreta’s rehabilitation and his claimed lack of a need of additional education but found them outweighed by other § 3553(a) factors.⁴ See Tomko, 562 F.3d at 569 & n.8 (holding that a district court adequately considered deterrence when, after argument on the issue, it issued a sentence which it stated met the “goals of punishment, deterrence, and rehabilitation”).

The District Court also justified its sixteen-month upward variance. When varying from the advisory Guidelines range, a district court must make “an individualized determination” that a sentence within the Guidelines range is insufficient to serve the goals of punishment outlined in § 3553. Tomko, 562 F.3d at 570. The District Court here considered (1) the crime’s severity and harm to the victims; (2) the fact that firearms were involved; (3) the need for just punishment; (4) general and specific deterrence; and (5) Moreta’s rehabilitation.⁵ Because the District Court correctly calculated the Guidelines range, considered the § 3553(a) factors, and provided its individualized reasons for the variance, its sentence is procedurally reasonable.⁶

⁴ To the extent Moreta takes issue with how the Court weighed those factors, he challenges the sentence’s substantive reasonableness, which is discussed later in this opinion. See United States v. Fountain, 792 F.3d 310, 323 (3d Cir. 2015).

⁵ The Court also acknowledged the change in law that precipitated the resentencing—namely, the Supreme Court’s holding that attempted Hobbs Act robbery was not a “crime of violence” under the categorical approach, Taylor, 596 U.S. at 851-52—but concluded that the crimes here were “serious nonetheless,” and specifically noted a victim was shot. App. 30.

⁶ Moreta argues that the District Court erred because the factors it cited in justifying its variance “were already contemplated in the calculation of the [G]uideline[s] range sentence.” Appellant’s Br. at 19. Moreta is mistaken. A sentencing court may base a variance on factors that played a role in generating the Guidelines range. See

B

Having concluded that the sentence “is procedurally sound, we will affirm it unless no reasonable sentencing court would have imposed the same sentence on that particular defendant for the reasons the district court provided.” Tomko, 562 F.3d at 568. “Our substantive review requires us not to focus on one or two factors, but on the totality of the circumstances.” Id. at 567 (citing Gall v. United States, 552 U.S. 38, 51 (2007)).

Moreta asserts that no reasonable sentencing court would have imposed an above-Guidelines sentence for the reasons the District Court provided. We disagree. Courts have varied upward for similar reasons, including the seriousness of the crime, injury to victims, and use of firearms. See e.g., United States v. Johnson, 803 F.3d 610, 619 (11th Cir. 2015) (holding fifteen-month upward variance for armed robbery was substantively reasonable given the nature of the crime, defendant’s use of firearms in other robberies, and to ensure just punishment); United States v. Nelson, 793 F.3d 202, 207 (1st Cir. 2015) (upholding forty-seven-month upward variance for two Hobbs Act violations, where the district court justified the variance by stating that it “balance[d] [] the severity of the crimes with [the defendant’s] stated desire to reform his behavior”). Considering the totality of the circumstances, including Moreta’s rehabilitation, the violent nature of the offenses, the impact on the victims, the role of firearms in the crimes, and the need for

Tomko, 562 F.3d at 571 (considering defendant’s “negligible criminal history” despite the fact that such history was already factored into Guidelines range); cf. United States v. Philiposian, 267 F.3d 214, 217, 219-20 (3d Cir. 2001) (holding that the district court did not commit procedural error by departing upward based on extreme pain suffered by the victim, even though the Guidelines range already accounted for the victim’s pain).

just punishment and general deterrence, we cannot say that no reasonable sentencing court would have imposed the same sentence on Moreta. Thus, Moreta's substantive reasonableness challenge fails.

III

For the foregoing reasons, we will affirm.

APPENDIX "C"

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-1541

UNITED STATES OF AMERICA

v.

PEDRITO SANTIAGO MORETA,
also known as TRU,
Appellant

(D.C. Crim. No. 2:06-cr-00096-001)

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES, and CHUNG, Circuit Judges

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/Patty Shwartz
Circuit Judge

Date: February 25, 2025
PDB/cc: All Counsel of Record

APPENDIX "D"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

TRANSCRIPT OF RESENTENCING HEARING
BEFORE THE HONORABLE HARVEY BARTLE, III
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS

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[PAGES 2-9 DELETED AS NOT RELEVANT]

1 Court finds that it's serious or permanent, that's
2 understandable. And -- and that's where we are.

3 THE COURT: All right. Thank you. All right.
4 Now, we can turn to remainder of the matter.

5 MS. MCCOOL: Thank you, Your Honor. With that
6 then I would submit that the guidelines are a hundred and
7 fifty-one to a hundred and eighty-eight months plus
8 eighty-four for the brandishing, not for nine twenty-four
9 C making the final total two thirty-five to two hundred
10 and seventy-two months. The Government is seeking an
11 upward variance from that, a sentence of three hundred
12 months, which is still a substantial significant amount
13 lower than what he was originally sentenced to. But Your
14 Honor, we ask that you, despite, I guess, the -- the
15 litigation and the categorical approach, looking at only
16 the elements of the crime that you look at specifically
17 what happened in this case, which was unquestionably
18 violent.

19 Both robberies were -- the robbery -- completed
20 robbery and the attempted robbery were both unquestionably
21 violent. We're asking again for a sentence of -- of three
22 hundred months. There's numerous cases cited in our
23 motion, Your Honor, where Courts have refashioned
24 sentences that are consistent with the conduct in this
25 case. The Government appreciates the fact, and -- and

1 counsel pointed out, I'm sure he'll point out again, that
2 for the last decade or so despite a rocky start in prison,
3 the Defendant has been seemingly behaving. And the
4 government can appreciate that. But we need to balance
5 that with the conduct and the severity of -- of the
6 conduct in this case, both for general deterrence as well
7 as specific deterrence. And we would ask that the Court
8 reimpose a sentence of three hundred months. Thank you.

9 THE COURT: Mr. Brose?

10 MR. BROSE: Thank you, Your Honor. With regard
11 to the sentencing guideline range of two hundred and
12 thirty-five to two hundred and seventy-two months, Your
13 Honor, it's our question and request that the Court
14 sentence Mr. Moreta to the low end of this guideline range
15 of two hundred and thirty-five months as set forth in our
16 memorandum. And I'm not sure, did the Court have an
17 opportunity to review the letters that were sent in on
18 behalf of Mr. Moreta?

19 THE COURT: I got them this morning and I have
20 read them. Yes.

21 MR. BROSE: Thank you. With regard to Mr.
22 Moreta's conduct in -- well, let me just speak from a
23 personal point of view. This is the first time in my life
24 in my career where I had somebody in trial and then saw
25 them seventeen years later after a stint in prison. And

1 the change in Mr. Moreta is remarkable. He's completely a
2 different person than the person that went into prison.
3 And I think that's a credit to our system, which often
4 takes a beating for not really rehabilitating people. Mr.
5 Moreta is somebody who saw the light, as I've indicated in
6 my memorandum, about ten years ago. And he's been nothing
7 but a -- a quality inmate, model inmate since that point
8 in time.

9 He helps out around the prison wherever he can.
10 He helps out with other inmates. He helps out with prison
11 administrators. He's essentially just a big help. And
12 one thing that I didn't include, and I want to mention it
13 before I forget, I didn't include this in my memorandum,
14 but the prison that he's in now does a recidivism rating.
15 And Mr. Moreta has a copy of his -- of his report here.
16 And essentially the prison has qualified him as low for
17 recidivism. So they've -- they've sort of undertaken a
18 study of this person and -- and what his accomplishments
19 have been inside the -- inside the prison system. And
20 again, they have an individual plan that they do every six
21 months for these prisoners. And again, he's -- he's --
22 he's considered a low-risk recidivism level.

23 And that just in line with essentially what I
24 said, what I was indicating to the Court that Mr. Moreta
25 has, and I hope the Court will take and will have an

1 opportunity to hear from Mr. Moreta and you'll hear what
2 kind of a person he is and has become and what he's
3 learned in prison. But again, in my experience with him,
4 having watched him seventeen years ago to now, completely
5 different person. I mean, he's intelligent. I'm not
6 saying he wasn't intelligent before, but he helped me with
7 his defense. He was -- he's been articulate, respectful,
8 he respects the entire system. He understands the
9 circumstances. With regard to an upward variance here, I
10 see no need for an upward variance. The -- the cases on
11 point essentially have knocked out this twenty-five year
12 mandatory minimum.

13 The guidelines have been recalculated on the
14 basis of -- of the withdrawal or the -- the exception of
15 that mandatory minimum. And they are what they are. Yes,
16 this was a -- a heinous act, a heinous day of activity.
17 But the man's already been punished. Seventeen years he's
18 been sitting in incarcerated for this day -- for that day
19 of, you know, heinous activity. And the -- I guess my
20 point at this point, Your Honor, is there's no further
21 need for incarceration. I respect the guidelines and I
22 respect if the Court wants to stay within the guidelines.
23 Understandable. But there's certainly no reason to up --
24 to -- to -- to -- to vary upward in this case.

25 Mr. Moreta has been, again, a model citizen

1 inside the -- inside the prison. He's got family that are
2 ready and willing and able to support him in his life upon
3 his release. This is a distinction. The last time that I
4 met with Mr. Moreta seventeen years ago, the only person
5 in his life was his mother. And they had had some
6 difficulties. Now he's got cousins, he's got uncles, he's
7 got people in his life that are here that have seen the
8 change in him and that they're here for him to support him
9 upon his release. And I have complete confidence that Mr.
10 Moreta is going to be a -- a productive and honorable
11 member of society upon his release given the amount of
12 time that he's already served and the amount of learning
13 that he's done.

14 I indicated inside my memorandum that he's taken
15 a number of classes. He's -- he's somebody who wants to
16 better himself. And I think he has bettered himself quite
17 a bit. And so it's our -- it's our position and our
18 contention that he served enough time on this case. We
19 would ask that the Court vary downward and give him a
20 sentence of two hundred and four months which would
21 essentially amount to a sentence of time served at this
22 point, because he's got fifteen years in and he's got two
23 more years of credit for time served, which is about
24 seventeen years. And -- and so that's essentially two
25 hundred and four months.

1 So we put to the Court the question and the
2 request that Mr. Moreta be released. He's done enough
3 time. He doesn't need any more time for education or
4 training. There's no -- there's not going to be any
5 benefit to the community in terms of deterrence of him
6 doing another couple years in prison. There's not going
7 to be any lessened consequence of this activity. A young
8 man like this to have spent already seventeen years. Plus
9 he had two years in state prison stint that he had to --
10 to finish before his federal incarceration stint. So he's
11 been incarcerated for the past nineteen years. He's forty
12 years old. And it's just my -- I have utmost confidence
13 in Mr. Moreta being able to abide by the rules of society
14 upon his release. And we ask that the Court consider a
15 sentence of two hundred and four months.

16 THE COURT: Ms. McCool, anything further?

17 MS. MCCOOL: Thank you, Your Honor. Again,
18 respecting everything that's said here, I -- I -- it's --
19 I think, easier being removed from this to look back and
20 not appreciate the gravity and the heinous nature of this
21 crime. And it -- it's just -- we're still here for
22 resentencing for everything that was committed on that day
23 in -- in Counsel's words, the heinous day. And I would
24 submit to the Court that three hundred months is certainly
25 warranted in this case. Thank you.

1 THE COURT: Thank you. Anything further, Mr.
2 Brose, before we --?

3 MR. BROSE: Your Honor, the only thing I will
4 mention is and -- and the Government's pointed out that,
5 you know, we shouldn't look at new evidence in this
6 situation, but some of the things that -- this is a
7 difficult situation for Mr. Moreta. For example, his
8 juvenile convictions or adjudications count against him as
9 a prior record score. Now, these are things that happen
10 over twenty years ago in this man's life. But of course,
11 he's been in prison for all that time, so it's no -- you
12 know, we can't really say what he would've done had he
13 been on the streets. But -- and it is, you know, the
14 language is clear that those -- those sentences count
15 because they happened within a certain time of the
16 offense.

17 I think, again it's my position that yes, this
18 is a new hearing. The -- the Court should consider things
19 de novo in -- in -- in a sense and consider that he is
20 being penalized to a certain extent for his prior record
21 that happened many, many years ago. You know, he
22 certainly hasn't committed any crimes in the last ten
23 years. So I want -- I want to just point that out to the
24 Court and I did want to give Mr. Moreta an opportunity to
25 speak to the Court.

1 THE COURT: Sure.

2 MR. BROSE: I don't know when you want to do
3 that.

4 THE COURT: Well, we'll -- we'll do it. Ms.
5 Spicer, will you please swear in the Defendant.

6 DEPUTY CLERK: Please stand and raise your right
7 hand. Do you swear and/or affirm that the testimony
8 you're about to give to the Court is the truth, the whole
9 truth, and nothing but the truth, so help you God, or you
10 do so affirm?

11 MR. MORETA: Yes, ma'am.

12 PEDRITO SANTIAGO MORETA; Sworn.

13 DEPUTY CLERK: Thank you.

14 MR. BROSE: And the other thing I wanted to
15 point out, Your Honor, is that --.

16 THE COURT: You may be seated, Mr. Moreta. Go
17 ahead.

18 MR. BROSE: And -- and one more thing with
19 regard to his circumstances here. He -- he also doesn't
20 get credit for accepting responsibility because he went to
21 trial --

22 THE COURT: Right.

23 MR. BROSE: -- but he clearly accepts
24 responsibility. I want the Court to know that, and I'm
25 going to give Mr. Moreta an opportunity to -- to address

1 the Court. He has -- we have submitted a letter that he's
2 written on his behalf. So we're not going to go through
3 that. But anything that you want to tell the Court that's
4 -- that you feel is important for the Court to hear.

5 THE COURT: Okay. Before we hear from you on
6 that subject, Mr. Moreta, I ask you if you read the
7 supplemental pre-sentence report?

8 MR. MORETA: Yeah, I received that yesterday.

9 THE COURT: Okay. Have you read it?

10 MR. MORETA: Yes, ma'am -- yes, sir.

11 THE COURT: Do you have any comments about it or
12 any criticisms of it other than what your attorney has
13 raised here in court?

14 MR. MORETA: Other than accepting
15 responsibility, no.

16 THE COURT: All right. This is now your
17 opportunity to address the Court to advise me about
18 anything you think I should know about you and your
19 circumstances before I determine what sentence to impose.

20 MR. MORETA: All right. So I wrote this letter.
21 All right. Can I just -- I just thank my family for
22 showing up, if you don't mind?

23 THE COURT: Yes, you may. Thank you for being
24 here.

25 MR. MORETA: So give me one second.

1 THE COURT: Take your time.

2 MR. MORETA: I know I wrote, Your Honor, a
3 lengthy letter delving into various relevant topics, you
4 know, that brought us here today.

7 MR. MORETA: But while on the record, I'd like
8 to reiterate my apology to the victims of my crimes. Back
9 in 2005 I attempted two attempted armed robberies that
10 affected lives of -- of those involved as well as the
11 community. Those same effects affected my family and to
12 -- and to all involved even minutely, I apologize. I
13 mean, being in prison is no easy task. I came into the
14 system in 2009 after serving an unrelated state sentence.
15 Back then, the B.O.P. was a different place. I mean, it
16 was violent, you know, just a lot of things going on. You
17 just, you either went with the program or you were a
18 victim. So at that time, I just found myself going
19 through the phase at that time.

20 I spent a lot of time in the SHU. From there I
21 went from being in the SHU to being a backseat passenger
22 into my life, so to speak. Like, I felt like I had no
23 control because the environment that I was in. After
24 circumstances arose and, you know, I -- I -- I didn't
25 speak to the family for a long time. I just shut myself

1 off in the world. I didn't want to be like the rest of
2 the guys I've seen. I mean, I -- I don't want to just go
3 from one situation to the next, go from one SHU to the
4 next, one jail after the next, just going through
5 circumstances. So I decided to make a change. I mean, I
6 -- I can't say I took a ten-step program, but like a ten-
7 step program, I decided to do certain things to better
8 myself.

9 I mean, start taking certain programs. Fell in
10 love with art again. Like I did a lot of drawing. And
11 that-- that -- that helps me, you know, it centers me, so
12 to speak. My family got back into my life. They reached
13 out. I decided to not push them away, decided to
14 communicate more often. You know, try to envelop myself
15 within their -- within their lives, you know, give input
16 where I can, you know, share the information that I've
17 received from the books that I've read. I've helped a lot
18 of people since I've -- since I've been incarcerated.
19 Developed positive relationship with the C.O.s that are in
20 the institution I was at. I helped mitigate -- mediate
21 between the staff and the inmates. So that situations
22 that if they arose, I was able to try to quash it as quick
23 -- as quickly as I can, or make sure it doesn't spiral out
24 of control.

25 I just did a lot with my time other than just

1 dwell upon what I did. I mean, I know I did wrong. I
2 mean, but back then I didn't see that. I -- I can't see
3 that. As a youth, I -- I -- all I thought, all I saw was
4 what was in front of me, not what was down the road. You
5 know, you don't see that. But now I'm, what, forty years
6 last week? I turned forty years old last Wednesday. I've
7 been locked up since I was twenty-one. All my twenties
8 are gone. All my thirties are gone. Now I'm here at
9 forty. I mean so in essence, I was incapacitated for a
10 large portion of my life. And I'm just asking the Courts,
11 I mean, show me some mercy. That's it.

12 THE COURT: Mr. Moreta, you were found guilty by
13 a jury of conspiracy to interfere with interstate commerce
14 by robbery. You were also found guilty of two counts of
15 interference with interstate commerce by robbery and
16 aiding and abetting. And you were also found guilty of
17 carrying and using a firearm during and in relation to a
18 crime of violence and aiding and abetting. The base
19 offense level in your case, and I must first calculate
20 your sentence under the advisory sentencing guidelines,
21 the base offense level with respect to counts one and two
22 is twenty, victim suffered bodily injury. So I must
23 enhance the base of level by two levels.

24 The robbery of the Brink's guard involved seven
25 hundred and eighty-one thousand dollars for an increase of

1 three additional levels for adjusted offense level twenty-
2 five. With respect to counts one and four, the base
3 offense level is twenty, a firearm is discharged during
4 the attempted robbery. I must add seven levels. I find
5 there was a serious bodily injury to the owner of the
6 cash-checking agency. I add four levels. He suffered
7 nerve damage and loss of mobility in his left hand. That
8 gives us an adjusted offense level of thirty-one. And
9 under the advisory guidelines, the total offense level is
10 thirty-two. You have five criminal history points for
11 criminal history category three.

12 Under the advisory sentencing guidelines, you
13 could be sentenced between one hundred and fifty-one and
14 one hundred and eighty-eight months plus a mandatory
15 minimum sentence of eighty-four months on count three for
16 a guideline range of two hundred and thirty-five to two
17 hundred and seventy-two months. Before determining what
18 sentence to impose, I must take into account the various
19 factors under Title 18, United States Code, Section
20 3553(a) and fashion a sentence which is sufficient but not
21 greater than necessary. The factors which I must consider
22 are the nature and circumstances of the offenses and the
23 history and characteristics of you the Defendant.

24 The seriousness of the offenses, the need to
25 promote respect for the law, the need to provide a just

1 punishment for the offenses, the need to afford adequate
2 deterrence to criminal conduct, the need to protect the
3 public for further crimes of you, the Defendant, and the
4 need to avoid unwarranted sentencing disparities among
5 defendants with similar records who have been found guilty
6 of similar conduct.

7 First, Mr. Moreta, I think we all agree that the
8 crimes which you committed were serious indeed. You put a
9 Brink's guard in fear of his life. You put the owner of a
10 check-cashing agency in fear of his life. And in one case
11 of the victim was wounded, guns were involved. The Court
12 always has to be concerned about deterrence, both general
13 deterrence and individual deterrence. I think it's
14 unlikely, I agree with your counsel, that you'll again be
15 involved in the criminal justice system, but the Court
16 must be concerned about general deterrence to deter others
17 who have similar mindsets that you had back in years ago
18 to try to deter them from committing such serious crimes.

19 The Court also must be concerned about a just
20 punishment. And in thinking about that, I must consider
21 the interest of society in general, and particularly the
22 interest of the victims, who I'm sure will never forget
23 the incidents involved here. The Court must also take
24 into account your nature and circumstances of the
25 offenses, which as I've described are quite -- were quite

1 serious. And also, your history and characteristics. You
2 do have five criminal history points. However, you have
3 certainly seemed to have turned your life around in the
4 last few years in prison and I commend you for that.

Under the totality of the circumstances, Mr. Moreta, I'm going to commit you into the custody of the Attorney General of the United States for a period of imprisonment of two hundred and four months on each of counts one, two, and four. Those sentences are to run concurrently. I also impose a sentence of eighty-four months on count three to run consecutively to the concurrent terms on counts one, two, and four for a total imprisonment of two hundred and eighty-eight months. With respect to supervised release, I impose a term of three years on counts one, two, and four and five years on count three, all terms of supervised release to run concurrently.

1 sentence to the United States Court of Appeals for the
2 Third Circuit. If you cannot afford Counsel, the Court
3 will appoint counsel to represent you free of charge. Any
4 notice of appeal must be filed within fourteen days after
5 I sign the judgment and commitment order.

6 If you wish a notice of appeal to be entered,
7 you may indicate that to the deputy clerk that you want a
8 notice of appeal on your behalf. And just to round things
9 out, count five will be dismissed. Anything further at
10 this time?

11 MS. MCCOOL: Not from the government, Your
12 Honor.

13 THE COURT: Mr. Brose?

14 MR. BROSE: Yes, Your Honor. It -- it is my
15 understanding that the Court has sentenced Mr. Moreta to
16 be outside the sentencing guideline range.

17 THE COURT: That is correct.

18 MR. BROSE: And so does the Court need to put on
19 record what the reasons for variance --?

20 THE COURT: I have explained that, the reasons
21 for it, when I went over the factors under Title 18,
22 Section -- U.S.C. Section 3553(a), the seriousness of the
23 offense, the interest of the victims, the need for general
24 deterrence, the need for a just punishment. The -- the --
25 these crimes were terrible. And while one was an

1 attempted robbery, I understand that under the categorical
2 approach, they were serious nonetheless. People were put
3 in fear of their lives. One person was shot.

4 MR. BROSE: And understood, Your Honor. And I
5 think all of that's accounted for inside the guideline
6 ranges, and that's why --.

7 THE COURT: Well, you know where you can take it
8 for further review?

9 MR. BROSE: I do, Your Honor.

10 THE COURT: I mentioned that to you and that's
11 why we have a Court of Appeals.

12 MR. BROSE: Very well, Your Honor.

13 THE COURT: Anything further at this time?

14 MS. MCCOOL: No, Your Honor.

15 MR. BROSE: No, Your Honor.

16 DEPUTY CLERK: All rise.

17 MR. BROSE: I apologize.

18 THE COURT: Thank you.

19 (The hearing concluded at 10:33 a.m.)

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1 CERTIFICATION

2 I, Judith Spriggs, court approved transcriber, certify that
3 the foregoing is a correct transcription from the official
4 electronic sound recording of the proceeding in the above-
5 entitled matter.

6 

7 _____ /
8 Judith Spriggs
Associated Reporters Int'l., Inc. 13th day of May, 2024

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