



# FEDERAL DEFENDER

Middle District of Florida

April 27, 2018

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Honorable Scott S. Harris  
Clerk  
Supreme Court of the United States  
Washington, D.C. 20543

*RE: Gregory Eugene Allen v. United States  
No. 17-5684*

Dear Mr. Harris:

Late yesterday, the Solicitor General filed a letter indicating for the first time, that it intended to rely on Mr. Allen's prior conviction for "resisting arrest," citing PSR ¶¶ 43-44, as a "crime of violence" pursuant to § 4B1.2 to support application of the career-offender guideline in Mr. Allen's resentencing, should he prevail.

However, the Solicitor General is mistaken. Mr. Allen was convicted of "resisting arrest *without violence*," a first-degree misdemeanor under Florida law. *See* attached Judgment & Sentence; *see also* Fla. Stat. § 843.02. A first-degree misdemeanor is punishable by a "term of imprisonment not exceeding 1 year." Fla. Stat. § 775.082(4)(a).

A "crime of violence" pursuant to § 4B1.2 "means any offense under federal or state law, punishable by imprisonment for a term exceeding one year. . ." U.S.S.G § 4B1.2(a).

Thus, Mr. Allen's "resisting arrest" conviction *cannot* be relied upon to support his resentencing as a career offender. Should he prevail, Mr. Allen would receive a six level reduction in his sentencing guidelines under the current advisory sentencing

guidelines.<sup>1</sup> The Petitioner would appreciate if you could distribute this letter and attachment to the Members of the Court. Thank you for your consideration.

Sincerely,



Michelle Yard  
Federal Defender Attorney

Enclosure

cc: See Attached Service List

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<sup>1</sup> Based upon the findings in his original PSR, his base offense level under § 2D1.1 would be 30. The three level adjustment for his timely acceptance would yield a total offense level of 27. See PSR ¶¶ 15-23.

17-5684  
Allen, Gregory Eugene

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STATE OF FLORIDA

UNIFORM COMMITMENT TO CUSTODY  
OF DEPARTMENT OF CORRECTIONS

The Circuit Court of POLK COUNTY  
in the FALL Term, 1988, in, the case of

State of Florida

vs

GREGORY E. ALLEN, JR. CF87-1225A1-XX

Defendant

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA, TO THE  
SHERIFF OF SAID COUNTY AND THE DEPARTMENT OF CORRECTIONS OF SAID  
STATE, GREETING:

The above named defendant having been duly charged with the offense specified herein  
in the above styled Court, and he having been duly convicted and adjudged guilty of and  
sentenced for said offense by said Court, as appears from the attached certified copies of  
Indictment/Information, Judgement and Sentence, and Felony Disposition and Sentence  
Data from which are hereby made parts hereof;

Now therefore, this is to command you, the said Sheriff, to take and keep and, within  
a reasonable time after receiving this commitment, safely deliver the said defendant, to-  
gether with any pertinent Investigation Report prepared in this case, into the custody of  
the Department of Corrections of the State of Florida: and this is to command you, the  
said Department of Corrections, by and through your Secretary, Regional Directors, Super-  
intendents, and other officials, to keep and safely imprison the said defendant for the term  
of said sentence in the institution in the state correctional system to which you, the said  
Department of Corrections, may cause the said defendant to be conveyed or thereafter  
transferred. And these presents shall be your authority for the same. Herein fail not.

WITNESS the Honorable J. TIM STRICKLAND  
Judge of said Court, as also E. D. "BUD" DIXON  
Clerk, and the Seal thereof, this the 20th day of  
JANUARY, 19 89  
(Month)

E.D. "BUD" DIXON, CLERK

By: Mary Lou Olson  
Deputy Clerk

CERTIFICATION ON LAST PAGE  
STACY M. BUTTERFIELD  
CLERK OF THE CIRCUIT COURT

PROBATION VIOLATOR  
(Check if Applicable)

IN THE CIRCUIT COURT, TENTH  
JUDICIAL CIRCUIT, IN AND FOR

POLK COUNTY, FLORIDA

DIVISION ONE

CASE NUMBER CF87-1225A.44

STATE OF FLORIDA

-vs-

Gregory Eugene Allen  
Defendant

FILED AND RECORDED  
BOOK 129 PAGE 933

MAY 28 1987

F. D. "BUD" DIXON, Clerk  
By \_\_\_\_\_

### JUDGMENT

The Defendant, GREGORY EUGENE ALLEN, being personally before this

Court represented by ASSISTANT PUBLIC DEFENDER LARRY BRYANT, his attorney of record, and having:

- (Check Applicable Provision)
- Been tried and found guilty of the following crime(s)
  - Entered a plea of guilty to the following crime(s)
  - Entered a plea of nolo contendere to the following crime(s)

| COUNT    | CRIME                                     | OFFENSE STATUTE NUMBER(S)                | DEGREE OF CRIME | CASE NUMBER |
|----------|---|--|-----------------|-------------|
| <u>1</u> | <u>ATTEMPTED BURGLARY</u>                 | <u>F.S. 777.04</u><br><u>F.S. 810.02</u> | <u>F 3</u>      |             |
| <u>2</u> | <u>RESISTING OFFICER WITHOUT VIOLENCE</u> | <u>F.S. 843.02</u>                       | <u>M 1</u>      |             |
|          |   |  |                 |             |
|          |   |  |                 |             |
|          |   |  |                 |             |
|          |   |  |                 |             |
|          |   |  |                 |             |
|          |   |  |                 |             |

and no cause having been shown why the Defendant should not be adjudicated guilty, IT IS ORDERED THAT the Defendant is hereby ADJUDICATED GUILTY of the above crime(s).

The Defendant is hereby ordered to pay the sum of twenty dollars pursuant to F.S. 960.20 (Crimes Compensation Trust Fund). The Defendant is further ordered to pay the sum of three dollars as a court cost pursuant to F.S. 943.25(4).

- (Check if Applicable)
- The Defendant is ordered to pay an additional sum of two dollars (\$2.00) pursuant to F.S. 943.25(8).  
(This provision is optional; not applicable unless checked).
  - The Defendant is further ordered to pay a fine in the sum of \$ \_\_\_\_\_ pursuant to F.S. 775.0835.  
(This provision refers to the optional fine for the Crimes Compensation Trust Fund, and is not applicable unless checked and completed. Fines imposed as part of a sentence pursuant to F.S. 775.083 are to be recorded on the Sentence page(s)).
  - The Court hereby imposes additional court costs in the sum of \$ \_\_\_\_\_

CERTIFICATION ON LAST PAGE  
STACY M. BUTTERFIELD  
CLERK OF THE CIRCUIT COURT

Imposition of Sentence Stayed and Withheld (Check if Applicable)

The Court hereby stays and withholds the imposition of sentence as to count(s) \_\_\_\_\_ and places the Defendant on probation for a period of \_\_\_\_\_ under the supervision of the Department of Corrections (conditions of probation set forth in separate order.)

Sentence Deferred Until Later Date (Check if Applicable)

The Court hereby defers imposition of sentence until \_\_\_\_\_ (date)

The Defendant in Open Court was advised of his right to appeal from this Judgment by filing notice of appeal with the Clerk of Court within thirty days following the date sentence is imposed or probation is ordered pursuant to this adjudication. The Defendant was also advised of his right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

C. Palmer  
JUDGE

FINGERPRINTS OF DEFENDANT

|             |             |              |            |               |
|-------------|-------------|--------------|------------|---------------|
| 1. R. Thumb | 2. R. Index | 3. R. Middle | 4. R. Ring | 5. R. Little  |
| 6. L. Thumb | 7. L. Index | 8. L. Middle | 9. L. Ring | 10. L. Little |

Fingerprints taken by: [Signature]

Name and Title

DONE AND ORDERED in Open Court at BARTOW, POLK County, Florida, this 28th day of MAY A.D., 1987. I HEREBY CERTIFY that the above and foregoing fingerprints are the fingerprints of the Defendant, GREGORY EUGENE ALLEN and that they were placed thereon by said Defendant in my presence in Open Court this date.

C. Palmer  
JUDGE

CERTIFICATION ON LAST PAGE  
STACY M. BUTTERFIELD  
CLERK OF THE CIRCUIT COURT

FILED AND RECORDED  
BOOK 129 P. 234

MAY 28 1987

F. D. BUD DIXON, CLERK  
By \_\_\_\_\_

FILED AND RECORDED  
BOOK 142 PAGE 290

JAN 20 1969

Defendant GREGORY E. ALLEN, JR.

E.D. "BOB" DIXON, Clerk  
BY \_\_\_\_\_

Case Number CF87-1225A1-XX

### SENTENCE

(As to Count 1)

The Defendant, being personally before this Court, accompanied by his attorney, Assistant Public Defender Deborah Goins, and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he should not be sentenced as provided by law, and no cause being shown,

- and the Court having on \_\_\_\_\_ (date) deferred imposition of sentence until this date.
  - and the Court having placed the Defendant on probation and having subsequently revoked the Defendant's probation by separate order entered herein.
- (Check either provision if applicable)

#### IT IS THE SENTENCE OF THE LAW that:

- The Defendant pay a fine of \$ \_\_\_\_\_, plus \$ \_\_\_\_\_ as the 5% surcharge required by F.S. 960.25.
- The Defendant is hereby committed to the custody of the Department of Corrections
- The Defendant is hereby committed to the custody of the Sheriff\* of \_\_\_\_\_ County, Florida  
(Name of local corrections authority to be inserted at printing, if other than Sheriff)

To be imprisoned (check one; unmarked sections are inapplicable)

- For a term of Natural Life
  - For a term of six (6) years
  - For an indeterminate period of 6 months to \_\_\_\_\_ years.
  - Followed by a period of \_\_\_\_\_ on probation under the supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.
  - However, after serving a period of \_\_\_\_\_ imprisonment in \_\_\_\_\_ the balance of such sentence shall be suspended and the Defendant shall be placed on probation for a period of \_\_\_\_\_ under supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.
- If "split" sentence complete either of these two paragraphs

#### SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed in this section:

- Firearm — 3 year mandatory minimum**  It is further ordered that the 3 year minimum provisions of F.S. 775.087(2) are hereby imposed for the sentence specified in this count, as the Defendant possessed a firearm.
- Drug Trafficking — mandatory minimum**  It is further ordered that the \_\_\_\_\_ year minimum provisions of F.S. 893.135(1)( ) are hereby imposed for the sentence specified in this count.
- Retention of Jurisdiction**  The Court pursuant to F.S. 947.16(3) retains jurisdiction over the defendant for review of any Parole Commission release order for the period of \_\_\_\_\_. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.
- Habitual Offender**  The Defendant is adjudged a habitual offender and has been sentenced to an extended term in this sentence in accordance with the provisions of F.S. 775.084(4)(a). The requisite findings by the court are set forth in a separate order or stated on the record in open court.
- Jail Credit**  It is further ordered that the Defendant shall be allowed a total of 457 days credit for such time as he has been incarcerated prior to imposition of this sentence. Such credit reflects the following periods of incarceration (optional):

Consecutive/Concurrent It is further ordered that the sentence imposed for this count shall run  consecutive to  concurrent with (check one) the sentence set forth in count \_\_\_\_\_ above.

CERTIFICATION ON LAST PAGE  
STACY M. BUTTERFIELD  
CLERK OF THE CIRCUIT COURT

Defendant Gregory E. Allen, Jr.  
Case Number CF87-1225A1XX

**Consecutive/Concurrent  
(As to other convictions)**

It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run  consecutive to  concurrent with (check one) the following:

- Any active sentence being served.
- Specific sentences: CF87-1132A1-XX

In the event the above sentence is to the Department of Corrections, the Sheriff of POLK County, Florida is hereby ordered and directed to deliver the Defendant to the Department of Corrections together with a copy of this Judgment and Sentence.

The Defendant in Open Court was advised of his right to appeal from this Sentence by filing notice of appeal within thirty days from the date with the Clerk of this Court, and the Defendant's right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

In imposing the above sentence, the Court further recommends \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DONE AND ORDERED in Open Court at BARTOW, POLK County, Florida, this 20th day of JANUARY A.D., 19 89.

[Signature]  
JUDGE



STATE OF FLORIDA, COUNTY OF POLK  
This is to certify that the foregoing is a true and correct copy of the document now of record in this office. Witness my hand and Official Seal on 4-26-89  
This copy has been reviewed, and if required by law, redacted.  
STACY M. BUTTERFIELD, CLERK CIRCUIT COURT  
By [Signature] D.C.

FILED AND RECORDED  
BOOK 142 PAGE 291  
JAN 20 1989  
E.D. "BUO" DIXON, Clerk  
BY \_\_\_\_\_