NO.:

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2017

DEANDRE GRAY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Where a defendant raises a sentencing error for the first time on appeal, it is reviewed only for plain error. *United States v. Olano*, 507 U.S. 725 (1993). Under plain-error review, there must be (1) an error, (2) that is plain, and (3) that affects substantial rights. *Id*. 507 U.S. at 732. When these three factors are met, a court may then exercise its discretion and correct the error if it seriously affects the fairness, integrity, or public reputation of the judicial proceedings. *Id.* Here Mr. Gray did not object to the district court's determination that he was a career offender under USSG §4B1.1, but argued on appeal that that it was plain error for the district court to find that his three prior convictions for violating Texas Health and Safety Code § 481.112 were "controlled substance offenses" under USSG §4B1.2(b). *United States v. Gray*, 698 F. App'x 589, 590 (11th Cir. 2017). The question presented is:

Whether the Eleventh Circuit Court of Appeals violated Mr. Gray's right to Due Process by holding that the district court did not commit plain error, in light of *Mathis v. United States*, 136 S.Ct. 2243 (2016), *United States v. Tanksley*, 848 F.3d 347, 352 (5th Cir.), *supplemented*, 854 F.3d 284 (5th Cir. 2017), and the Texas Court of Criminal Appeals' opinion in *Lopez v. State*, 108 S.W. 3d 293 (Tex. Crim. App. 2003); where the error resulted in a sentence harsher than his otherwise applicable sentencing guidelines range.

INTERESTED PARTIES

There are no parties to the proceeding other than those named in the caption of the case.

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TABLE OF AUTHORITIES

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STATUTORY AND OTHER AUTHORITY:

IN THE

SUPREME COURT OF THE UNITED STATES

No:

DEANDRE GRAY,

Petitioner,

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UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

PETITION FOR WRIT OF CERTIORARI

Deandre Gray respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number 17-10524 in that court on October 3, 2017, which affirmed the judgment and commitment of the United States District Court for the Middle District of Florida.

OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, *United States v. Gray*, 698 F. App’x 589 (11th Cir. 2017) (unpublished), which affirmed the judgment and commitment of the United States District Court for the Middle District of Florida, is contained in Appendix A-1.

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Part III of the RULES OF THE SUPREME COURT OF THE UNITED STATES. The decision of the court of appeals was entered on October 3, 2017. Accordingly, this petition is timely filed pursuant to SUP. CT. R. 13.1. The district court had jurisdiction because petitioner was charged with violating federal criminal laws. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, which provide that courts of appeals shall have jurisdiction for all final decisions of United States district courts.

STATUTORY AND OTHER PROVISIONS INVOLVED

Petitioner intends to rely on the following provisions:

U.S. Const., Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Rule 52(b), Federal Rules of Criminal Procedure

(b) Plain Error. A plain error that affects substantial rights may be considered even though it was not brought to the court's attention.

USSG § 4B1.1(a)

(a) A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense.

USSG § 4B1.2(b)

(b) The term “controlled substance offense” means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.

Tex. Health & Safety Code Ann. § 481.112(a)

(a) Except as authorized by this chapter, a person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in Penalty Group 1.

(b) An offense under Subsection (a) is a state jail felony if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, less than one gram.

(c) An offense under Subsection (a) is a felony of the second degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, one gram or more but less than four grams.

(d) An offense under Subsection (a) is a felony of the first degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, four grams or more but less than 200 grams.

(e) An offense under Subsection (a) is punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed $100,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.

(f) An offense under Subsection (a) is punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 15 years, and a fine not to exceed $250,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

STATEMENT OF THE CASE

Mr. Gray committed a crime that began in Texas and ended in Florida. He sold cocaine in Houston, Texas that was then transported it to Bradenton, Florida. Mr. Gray was ultimately convicted in federal court in Florida. When he was sentenced, the district court determined that he was a career offender based on three prior Texas drug convictions. While he did not raise any objections in the district court, on appeal Mr. Gray argued that it was plain error for the district court to sentence him as a career offender, because his Texas convictions were not career offender predicates. In support of this argument, Mr. Gray cited to the Fifth Circuit Court of Appeals' decision in *United States v. Tanksley*, 848 F.3d 347 (5th Cir. 2017), which held that violations of Texas Health and Safety Code § 481.112(a) do not qualify as a controlled substance offenses. *Tanksley* applied this Court's opinion in *Mathis v. United States*, 136 S.Ct. 2243 (2016), which held that the modified categorical approach is not appropriate for statutes, which do not provide alternative elements, but instead list "various factual means of committing a single element" *Mathis* at 2249. In *Tanksley*, the Fifth Circuit applied the reasoning of *Mathis*, and concluded that the modified categorical approach could not be used to narrow Section 481.112(a) offenses, because the Texas court of last resort for criminal appeals had held that the statute provided different means of committing the offense and not different elements. *See Tanksley, at 352 citing Lopez v. State*, 108 S.W. 3d 293, 299-300 (Tex. Crim. App. 2003).

Had Mr. Gray been charged in federal court in Texas, or had simply not been determined to be a career offender, then his sentencing range would have been 168 to 210 months, which is considerably lower than his sentence of 240 months. Therefore, Mr. Gray now seeks a writ of certiorari to correct the Eleventh Circuit's holding.

The Proceedings Before the District Court

Mr. Gray's federal case began in Houston, Texas, where he sold cocaine that was transported to Florida. Mr. Gray was charged by indictment, in July 2016, with one count of conspiracy to possess with intent to distribute five kilograms or more of cocaine in violation of sections 21 U.S.C. §§ 841(a)(1) and (b)(1)(A)(ii), 21 U.S.C. § 846. He entered a plea of guilty as charged, without the benefit of a plea agreement.

The Probation Office prepared a Presentence Investigation Report and determined that his offense involved 50 kilograms of cocaine. Under USSG § 2D1.1, Mr. Gray's base offense level was determined to be 34. The Probation Office also determined that Mr. Gray was a career offender as defined in USSG § 4B1.1. The PSR listed three prior Texas convictions as the predicate career offender offenses:

> (a) Possession with Intent to Manufacture or Deliver a Controlled Substance Namely Cocaine 4-200 Grams (felony), Harris County Circuit Court, docket no. 0686328, a felony controlled substance offense, sentenced on August 30, 1995;
>
> (b) Possession of a Controlled Substance with Intent to Deliver Cocaine, docket no. 0729076, a felony controlled substance offense, sentenced on February 5, 1997; and
>
> (c) Possession with Intent to Deliver Cocaine 4 -200 Grams (felony), docket no. 1188746, a felony controlled substance offense, sentenced on November 20, 2009.

The PSR did not state the Texas statute or statutes that were violated.

Because Mr. Gray was a career offender, his adjusted offense level was increased from 34 to 37. Mr. Gray's criminal history score was 11 points, which would have resulted in a criminal history category of V, but because he was a career offender, his criminal history category was increased to VI. His guidelines sentencing range for 37/VI was 262 to 327 months.

The district court adopted the guideline calculations contained in the PSR, granted Mr. Gray a downward variance, and sentenced him to 240 months' imprisonment. Defense counsel did not object to the career offender designation, the calculation of the guideline sentencing range, or the imposition of sentence.

<u>The Appeal to the Eleventh Circuit</u>

On appeal, Mr. Gray argued that the district court committed plain error when it determined that he was a Career Offender under USSG § 4B1.1 and sentenced him to twenty years in prison. Specifically, Mr. Gray argued that none of the three drug convictions from Texas listed in the PSR were controlled substance offenses, because the Fifth Circuit Court of Appeals had held that violations of Texas Health and Safety Code § 481.112(a) do not qualify as controlled substance offenses. In support of this argument, Mr. Gray cited the Fifth Circuit's decision in *United States v. Tanksley*, 848 F.3d 347 (5th Cir. 2017). In *Tanksley*, the Fifth Circuit applied the reasoning of *Mathis*, to conclude that the modified categorical approach could not be used to narrow Section 481.112(a) offenses, because the Texas court of last resort for criminal appeals had held that the statute provided different means of committing the offense and not different elements. *See Tanksley, at 352 citing Lopez v. State*, 108 S.W. 3d 293, 299-300 (Tex. Crim. App. 2003).

The government argued, *inter alia*, Mr. Gray had not suffered any prejudice because his sentence was within the sentencing range that would have been applicable had he not been sentenced as a career offender. However, the government incorrectly stated that his sentencing range would have been 235 to 293 months without the career offender designation, based on a total offense level of 31 and criminal-history category of V. In reply, Mr. Gray stated the correct sentencing range for offense level 31 and criminal history category V is 168 to 210 months. *See* USSG ch. 5, pt. A.

The Eleventh Circuit's Decision

On October 3, 2017, without the benefit of oral argument, the Eleventh Circuit affirmed Mr. Gray's sentence. *Gray*, 698 F. App'x at 590. Eleventh Circuit held that Mr. Gray had not established plain error, stating:

> DeAndre Gray appeals the 240-month sentence the district court imposed after he pled guilty to one count of conspiracy to possess with intent to distribute 5 kilograms or more of cocaine, in violation of 21 U.S.C. § 846. Mr. Gray argues that the district court improperly sentenced him as a career offender under U.S.S.G. § 4B1.1(b)(1) because it relied on three prior Texas convictions that the Fifth Circuit recently held do not qualify as controlled substance offenses under the Sentencing Guidelines. *See United States v. Tanksley*, 848 F.3d 347, 352 (5th Cir.), *supplemented*, 854 F.3d 284 (5th Cir. 2017).
>
> At the time of his sentencing, Mr. Gray failed to object to the district court's application of the career-offender enhancement under the Sentencing Guidelines, so we review his challenge for plain error. Under that highly circumscribed review, there can be no plain error unless, at the time of the district court's ruling, controlling precedent from the Supreme Court or this Circuit directly established that the district court's ruling was erroneous. *See United States v. Lejarde-Rada*, 319 F.3d 1288, 1291 (11th Cir. 2003).
>
> Mr. Gray failed to establish plain error because he has not cited a single case from the Supreme Court or this Circuit directly holding that the Texas convictions at issue on this appeal do not qualify as controlled substance offenses under the Sentencing Guidelines. Indeed, by relying almost exclusively on *Tanksley*, Mr. Gray all but concedes that no binding precedent existed to establish plain error.

Gray, 698 F. App'x 589-590.

The Eleven Circuit also held that Mr. Gray had not established that he had suffered any prejudice, because it adopted the government's mistaken opinion as to what that his sentencing range would have been, stating:

> Mr. Gray, moreover, has not shown that he was prejudiced by any error because the district court sentenced him to 240 months' imprisonment, which is within the guidelines range (235–293 months) he would have been subject to but for his career offender status, and he has not demonstrated that the district court would have imposed an even lower sentence.

Gray, 698 F. App'x 589-590.

REASONS FOR GRANTING THE WRIT

Whether the Eleventh Circuit Court of Appeals violated Mr. Gray's right to Due Process by not holding that the district court committed plain error, in light of *Mathis v. United States,* 136 S.Ct. 2243 (2016), *United States v. Tanksley*, 848 F.3d 347, 352 (5th Cir.), *supplemented*, 854 F.3d 284 (5th Cir. 2017), and the Texas Court of Criminal Appeal's opinion in *Lopez v. State*, 108 S.W. 3d 293 (Tex. Crim. App. 2003); where the error resulted in a sentence harsher than his otherwise applicable sentencing guidelines range?

An appellant must meet three requirements to prevail under a plain-error standard: "(1) there must be an error; (2) that error must be plain; and (3) the plain error must affect substantial rights." *Olano,* at 732. If the appellant proves these three elements, a court will recognize the error only if it "seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Id.* Here, Mr. Gray met all the requirements for holding that he is entitled to a reversal under plain error, but the Eleventh Circuit affirmed the district court. The Eleventh Circuit held that any error was not clear because there was no binding precedent at the time and that Mr. Gray was not prejudiced, because his sentence was within the range that would have been applicable had he not been a career offender. *Gray,* 698 F. App'x at 590.

Mr. Gray established that it was plain error to find that his Texas convictions were controlled substance offenses under the career offender guidelines given this

Court's holding in *Mathis*. He argued on appeal that violations of Texas Health and Safety Code § 481.112 did not qualify as a controlled substance offenses under § USSG § 4B1.1 and cited to the Fifth Circuit's holding in *Tanksley* which reversed an earlier decision in light of this Court's subsequent decision in *Mathis v. United States,* 136 S.Ct. 2243, 195 L.Ed.2d 604 (2016). *United States v. Tanksley*, 848 F.3d 347, 352 (5th Cir. 2017). In *Mathis*, this Court held that the modified categorical approach is not appropriate for statutes, which do not provide alternative elements, but instead list "various factual means of committing a single element" *Mathis* at 2249. In *Tanksley*, the Fifth Circuit applied the reasoning of *Mathis*, and concluded that the modified categorical approach could not be used to narrow Section 481.112(a) offenses, because the Texas court of last resort for criminal appeals had held that the statute provided different *means* of committing the offense and not different *elements*. *See Tanksley, at 352 citing Lopez v. State*, 108 S.W. 3d 293, 299-300 (Tex. Crim. App. 2003). Therefore, the Fifth Circuit held it could only "look to Section 481.112(a) as a whole" to determine whether convictions under that statute qualify as controlled substance offenses. *Tanksley*, at 352. The Fifth Circuit held that because section 481.112(a) "criminalizes a greater swath of conduct than the elements of the relevant [Guidelines] offense," including mere delivery of a controlled substance, a "conviction under that statute does not qualify as a controlled substance offense under the Guidelines." *Id*.

In their opinion, the Eleventh Circuit held that Mr. Gray did not prove that the error was plain, because he did not cite to controlling authority from this Court or the Supreme Court to establish that an error occurred. *Gray*, 698 F. App'x at 590. To the contrary, as explained above, in Mr. Gray's initial brief explained why his Texas prior convictions could not be controlled substance offenses under *Mathis v. United States*, 136 S.Ct. 2243 (2016). Therefore, Mr. Gray had demonstrated how the district court had committed error under U.S. Supreme Court precedent.

The Eleventh Circuit also held that Mr. Gray did not establish prejudice, because he received a downward variance which resulted in a sentence of 240 months which is within his unenhanced guideline range of 235 to 293 months. *Gray*, 698 F. App'x at 590. That was not correct. Mr. Gray's unenhanced total offense level was 31 and his unenhanced criminal-history category V, which would have resulted in a sentencing range of 168 to 210 months. *See* USSG ch. 5, pt. A. His 240-month sentence is well above the top of his unenhanced guideline range, and therefore, the error was prejudicial.

The Eleventh Circuit Court of Appeals denial of Mr. Gray's right to Due Process resulted in the fundamental unfairness of a defendant being sentenced based on incorrect sentencing guidelines. It is particularly troubling, that had Mr. Gray been sentenced in Texas, where his crime began, as opposed to Florida, then he would most likely have received a much shorter sentence of imprisonment. Furthermore, given the number of federal defendants which prior convictions from other circuits, it calls into question the Eleventh Circuit's ability and willingness to be guided by the opinions of the state courts of last resort. Thus it is necessary for this Court to exercise its supervisory power and accept jurisdiction over this case in order to correct the Eleventh Circuit.

CONCLUSION

Based on the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,
DONNA ELM
FEDERAL PUBLIC DEFENDER

/s/*Meghan Ann Collins*
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APPENDIX

Appendix A-1

Decision of the Court of Appeals
for the Eleventh Circuit
Affirming Judgment and Sentence

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-10524
Non-Argument Calendar

D.C. Docket No. 8:16-cr-00303-JDW-JSS-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DEANDRE MARQUI GRAY,

Defendant - Appellant.

Appeal from the United States District Court
for the Middle District of Florida

(October 3, 2017)

Before HULL, WILSON, and JORDAN, Circuit Judges.

PER CURIAM:

DeAndre Gray appeals the 240-month sentence the district court imposed after he pled guilty to one count of conspiracy to possess with intent to distribute 5 kilograms or more of cocaine, in violation of 21 U.S.C. § 846. Mr. Gray argues that the district court improperly sentenced him as a career offender under U.S.S.G. § 4B1.1(b)(1) because it relied on three prior Texas convictions that the Fifth Circuit recently held do not qualify as controlled substance offenses under the Sentencing Guidelines. *See United States v. Tanksley*, 848 F.3d 347, 352 (5th Cir.), *supplemented*, 854 F.3d 284 (5th Cir. 2017).

At the time of his sentencing, Mr. Gray failed to object to the district court's application of the career-offender enhancement under the Sentencing Guidelines, so we review his challenge for plain error. Under that highly circumscribed review, there can be no plain error unless, at the time of the district court's ruling, controlling precedent from the Supreme Court or this Circuit directly established that the district court's ruling was erroneous. *See United States v. Lejarde-Rada*, 319 F.3d 1288, 1291 (11th Cir. 2003).

Mr. Gray failed to establish plain error because he has not cited a single case from the Supreme Court or this Circuit directly holding that the Texas convictions at issue on this appeal do not qualify as controlled substance offenses under the Sentencing Guidelines. Indeed, by relying almost exclusively on *Tanksley*, Mr. Gray all but concedes that no binding precedent existed to establish plain error.

Mr. Gray, moreover, has not shown that he was prejudiced by any error because the district court sentenced him to 240 months' imprisonment, which is within the guidelines range (235–293 months) he would have been subject to but for his career offender status, and he has not demonstrated that the district court would have imposed an even lower sentence.

Accordingly, we affirm Mr. Gray's sentence.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

October 03, 2017

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 17-10524-EE
Case Style: USA v. Deandre Gray
District Court Docket No: 8:16-cr-00303-JDW-JSS-1

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Elora Jackson, EE at (404) 335-6173.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Jeff R. Patch
Phone #: 404-335-6161

OPIN-1 Ntc of Issuance of Opinion

Appendix A-2
Judgment Imposing Sentence

AO 245B (Rev 06/05) Sheet 1 - Judgment in a Criminal Case

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

CASE NUMBER: 8:16-cr-303-T-27JSS
USM NUMBER: 14658-479

vs.

DEANDRE MARQUI GRAY

Defendant's Attorney: Mark P. Rankin, Esquire

THE DEFENDANT:

X pleaded guilty to count(s) One.
_ pleaded nolo contendere to count(s) which was accepted by the court.
_ was found guilty on count(s) after a plea of not guilty.

TITLE & SECTION	NATURE OF OFFENSE	OFFENSE ENDED	COUNT
21 U.S.C. § 841(a)(1) and (b)(1)(A)(ii) 21 U.S.C. § 846	Conspiracy to Possess with Intent to Distribute Five Kilograms or More of Cocaine	May 11, 2015	One

The defendant is sentenced as provided in pages 2 through 6 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 FURTHER 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 any material change in economic circumstances.

Date of Imposition of Sentence: January 17, 2017

JAMES D. WHITTEMORE
UNITED STATES DISTRICT JUDGE
DATE: January 19th, 2017

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **TWO HUNDRED AND FORTY MONTHS (240) MONTHS**, consecutive to any term of imprisonment that defendant may receive as a result of violating Parole in the three (3) Texas cases, docket: 1188746, 1188747 and 1219696.

_X_ The court makes the following recommendations to the Bureau of Prisons: The Court recommends confinement at the closest facility to Houston, Texas.

_X_ The defendant is remanded to the custody of the United States Marshal.
__ The defendant shall surrender to the United States Marshal for this district.

__ at __ a.m./p.m. on __.
__ as notified by the United States Marshal.

__ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons.

__ before 2 p.m. on ___.
__ as notified by the United States Marshal.
__ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

____
____
____

Defendant delivered on ________________ to ____________________
__ at __________________________, with a certified copy of this judgment.

____
United States Marshal

By:______________________________

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **FIVE (5) YEARS.**

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

The defendant shall not commit another federal, state, or local crime.
The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

__ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable).

_ The defendant shall not possess a firearm, destructive device, or any other dangerous weapon. (Check, if applicable.)

X The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

_ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works or is a student, as directed by the probation officer. (Check, if applicable.)

_ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

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

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

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Defendant: DEANDRE MARQUI GRAY
Case No.: 8:16-cr-303-T-27JSS

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall also comply with the following additional conditions of supervised release:

X The defendant shall participate, as directed by the Probation Officer, in a program (outpatient and/or inpatient) for treatment of narcotic addiction or drug or alcohol dependency. This program may include testing for the detection of substance use or abuse. Further, the defendant shall be required to contribute to the costs of services for such treatment not to exceed an amount determined reasonable by the Probation Officer's Sliding Scale for Substance Abuse Treatment Services.

X The defendant shall participate in 500 hour intensive drug treatment.

X The defendant shall perform **250** hours of community service over the period of supervision, as directed by the United States Probation Officer.

CRIMINAL MONETARY PENALTIES

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

	Assessment	**Fine**	**Total Restitution**
Totals:	**$100.00**	**Waived**	**N/A**

_ 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 non-federal victims must be paid before the United States.

Name of Payee	**Total Loss***	**Restitution Ordered**	**Priority or Percentage**
Totals:	$	$	

_ Restitution amount ordered pursuant to plea agreement $ ____________.

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

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

_ the interest requirement is waived for the ___ fine ___ restitution.

_ the interest requirement for the ___ fine ___ restitution is modified as follows:

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

SCHEDULE OF PAYMENTS

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

A. _X_ Lump sum payment of $100.00 due immediately, balance due

___ not later than ________, or

___ in accordance __ 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 ________ days (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 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

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and 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) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.