

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2017

JEFFERY BLAKE ELLIS
Aka,
"Jealous"

Petitioner

vs.

THE UNITED STATES OF AMERICA

Respondent

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

APPENDICES A-E

APPENDIX A

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT.

FIFTH CIRCUIT in No. 16-11538: UNITED STATES V. JEFFERY
BLAKE ELLIS

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16-11538
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

November 10, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JEFFREY BLAKE ELLIS, Also Known as "Jealous",

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
No. 4:16-CR-121-2

Before HIGGINBOTHAM, JONES, and SMITH, Circuit Judges.

PER CURIAM:*

Jeffrey Ellis was convicted of one charge of conspiring to possess

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 16-11538

methamphetamine with intent to distribute and was sentenced to 240 months in prison and a three-year term of supervised release. He maintains that the district court erred by denying him the sentencing adjustment for acceptance of responsibility and imposing the adjustment for obstruction of justice.

Ellis has shown no clear error in connection with the imposition of the U.S.S.G. § 3C1.1 adjustment for obstruction of justice. *See United States v. Juarez-Duarte*, 513 F.3d 204, 208 (5th Cir. 2008). The presentence report, on which the district court was entitled to rely, set forth facts leading to a reasonable inference that Ellis had tried to intimidate a codefendant. *See United States v. Alaniz*, 726 F.3d 586, 619 (5th Cir. 2013); *United States v. Caldwell*, 448 F.3d 287, 290 (5th Cir. 2006). In light of those facts, the conclusion that Ellis obstructed justice is plausible and is not clearly erroneous. *See Juarez-Duarte*, 513 F.3d at 208; U.S.S.G. § 3C1.1, comment.(n.4(A)). Ellis also has not shown that his is the exceptional case in which a defendant who receives the § 3C1.1 adjustment for obstruction of justice should also receive the U.S.S.G. § 3E1.1(a) reduction for acceptance of responsibility. *See United States v. Chung*, 261 F.3d 536, 540 (5th Cir. 2001).

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16-11538
Summary Calendar

D.C. Docket No. 4:16-CR-121-2

United States Court of Appeals
Fifth Circuit

FILED

November 10, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

JEFFREY BLAKE ELLIS, also known as "Jealous",

Defendant - Appellant

Appeal from the United States District Court for the
Northern District of Texas

Before HIGGINBOTHAM, JONES, and SMITH, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is affirmed.



Certified as a true copy and issued
as the mandate on Dec 04, 2017

Attest:

Lyle W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

APPENDIX B

DOCKET ENTRIES: UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS

**U.S. District Court
Northern District of Texas (Fort Worth)
CRIMINAL DOCKET FOR CASE #: 4:16-cr-00121-A-2**

Case title: USA v. Allen et al

Magistrate judge case number: 4:16-mj-00169-BJ

Date Filed: 05/18/2016

Date Terminated: 10/21/2016

Assigned to: Judge John McBryde

Appeals court case number:

16-11538 U S Court of Appeals 5th
Circuit

Defendant (2)

Jeffrey Blake Ellis

TERMINATED: 10/21/2016

also known as

"Jealous"

TERMINATED: 10/21/2016

represented by **Ronald G Couch**

Law Office of Ronald G Couch

5005 Colleyville Blvd.

217

Colleyville, TX 76034

817/514-4918

Fax: 817/514-4919 FAX

Email: ronalcouch@juno.com

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Designation: CJA Appointment

Bar Status: Admitted/In Good Standing

Pending Counts

21:846 CONSPIRACY TO
DISTRIBUTE CONTROLLED
SUBSTANCE

(2)

Disposition

BOP 240 months; S/R 3 yrs; MSA \$100

Highest Offense Level (Opening)

Felony

Terminated Counts

None

Disposition

Highest Offense Level

(Terminated)

None

Complaints

21:841(a)(1) & (b)(1)(B) Possession
with intent to distribute controlled
substance; 21:846 Conspiracy to
possess with intent to distribute
controlled substance

Disposition**Plaintiff**

USA

represented by **Shawn Smith-DOJ**
US Attorney's Office
801 Cherry St
Burnett Plaza Suite 1700 Unit #4
Fort Worth, TX 76102-6882
817/252-5200
Fax: 817-252-5455
Email: shawn.smith2@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Assistant US Attorney
Bar Status: Admitted/In Good Standing

Date Filed	#	Docket Text
03/28/2016	<u>1 (p.7)</u>	SEALED COMPLAINT (Clerk note: This case is to remain sealed until all defendants have been arrested.) as to Ashleigh Lyn Allen (1), Brian Matthew Brown (2), William Randy Crisp (3), Jeffrey Blake Ellis (4), Holly Leanne Frantzen (5), Nikie Nicole Frye (6), Michael Sean Goss (7), Jake Lindsey Hardin (8), Kevin Kyle Killough (9), James Marcus Laxson (10), Timothy Eric Nimerfroh (11), Sarah Sueanne Ragsdale (12), Lonnie Lee Rotenberry (13), Melissa Mae Sherman (14), Jeri Ann Weiler (15). (jah) [4:16-mj-00169-BJ] (Entered: 03/29/2016)
04/01/2016	<u>4</u>	(Document Restricted) APPLICATION FOR WRIT OF HABEAS CORPUS, ORDER, AND WRIT ISSUED as to Jeffrey Blake Ellis to Appear Instantly before United States Magistrate Judge Jeffrey L Cureton, Issued Writ of Habeas Corpus Ad Prosequendum. (Ordered by Magistrate Judge Jeffrey L Cureton on 4/1/2016) (jah) [4:16-mj-00169-BJ] (Entered: 04/04/2016)
04/22/2016		Jeffrey Blake Ellis appeared on writ (jah) [4:16-mj-00169-BJ] (Entered: 04/22/2016)
04/22/2016	<u>74 (p.19)</u>	CJA 20 Order appointing attorney. Attorney Ronald G Couch for Jeffrey Blake Ellis appointed. This appointment continues through any appeal unless counsel is relieved by court order for good cause shown. Appointed counsel should use the <u>Attorney Timekeeping System</u> immediately and throughout representation in district court. Any work done on an appeal must be billed per circuit instructions. For questions, consult the <u>CJA Attorney</u>

		<u>Information</u> page or use the <u>directory</u> to contact the appointing judges courtroom deputy. Copies of public documents filed prior to this appointment may be obtained via PACER. (Ordered by Magistrate Judge Jeffrey L Cureton on 4/21/2016) (tln) [4:16-mj-00169-BJ] (Entered: 04/25/2016)
04/22/2016	<u>75 (p.20)</u>	Minute Entry for proceedings held before Magistrate Judge Jeffrey L Cureton: Initial Appearance as to Jeffrey Blake Ellis held on 4/22/2016. Date of Arrest (Appeared on writ): 4/22/2016. Attorney Appearances: AUSA - Shawn Smith; Defense - Ron Couch. (Court Reporter: Digital File) (No exhibits) Time in Court - :02. (Interpreter n/a.) (tln) [4:16-mj-00169-BJ] (Entered: 04/25/2016)
04/22/2016	<u>76</u>	(Document Restricted) CJA 23 Financial Affidavit by Jeffrey Blake Ellis. (tln) [4:16-mj-00169-BJ] (Entered: 04/25/2016)
04/22/2016	<u>77 (p.21)</u>	NOTICE OF ATTORNEY APPEARANCE by Ronald G Couch appearing for Jeffrey Blake Ellis. (tln) [4:16-mj-00169-BJ] (Entered: 04/25/2016)
04/22/2016	<u>78 (p.22)</u>	MOTION for Pretrial Detention filed by USA as to Jeffrey Blake Ellis. (tln) [4:16-mj-00169-BJ] (Entered: 04/25/2016)
04/22/2016	<u>79 (p.23)</u>	ORDER OF DETENTION PENDING TRIAL as to Jeffrey Blake Ellis (4). (Ordered by Magistrate Judge Jeffrey L Cureton on 4/22/2016) (tln) [4:16-mj-00169-BJ] (Entered: 04/25/2016)
05/18/2016	<u>92 (p.24)</u>	INFORMATION as to Ashleigh Lyn Allen (1) count(s) 2, Jeffrey Blake Ellis (2) count(s) 2, Nikie Nicole Frye (3) count(s) 2, Michael Sean Goss (4) count(s) 2, Timothy Eric Nimerfroh (5) count(s) 1, Sarah Sueanne Ragsdale (6) count(s) 2, Jeri Ann Weiler (7) count(s) 2, Lonnie Lee Rotenberry (8) count(s) 2. (wrb) (Entered: 05/18/2016)
05/18/2016	<u>94 (p.27)</u>	Standing ORDER Concerning Paper Filing in Cases Assigned to District Judge John McBryde...see order for specifics. (Ordered by Judge John McBryde on 5/18/2016) (wrb) (Entered: 05/18/2016)
05/23/2016	<u>96 (p.30)</u>	ORDER as to Jeffrey Blake Ellis, Nikie Nicole Frye: Arraignment set for 5/26/2016 10:00 AM before Judge John McBryde. (Ordered by Judge John McBryde on 5/23/2016) (wrb) (Entered: 05/23/2016)
05/27/2016	<u>121 (p.31)</u>	ORDER as to Jeffrey Blake Ellis: The court ORDERS that the arraignment of the Information and proposed guilty plea hearing of defendant JEFFREY BLAKE ELLIS be, and is reset for 10:00 a.m. on June 2, 2016 (Thursday), before the undersigned in the 4th Floor Courtroom of the United States Courthouse, Fort Worth, Texas. (Ordered by Judge John McBryde on 5/27/2016) (tln) (Entered: 05/27/2016)
06/02/2016	<u>122 (p.32)</u>	Minute Entry for proceedings held before Judge John McBryde: Guilty Plea at Arraignment Hearing as to Jeffrey Blake Ellis held on 6/2/2016. Plea entered by Jeffrey Blake Ellis (2) Guilty Count

		2. Sentencing set October 21, 2016 at 9:00 a.m. PSI due: August 29, 2016. Deft Custody/Detention continued. Govt read the Waiver of Indictment for the record. Attorney Appearances: AUSA - Shawn Smith; Defense - Ronald Couch. (Court Reporter: Debbie Saenz) (No exhibits) Time in Court - :15. (Interpreter n/a.) (tln) (Entered: 06/02/2016)
06/02/2016	<u>123 (p.33)</u>	WAIVER OF INDICTMENT by Jeffrey Blake Ellis. (tln) (Entered: 06/02/2016)
06/02/2016	<u>124 (p.34)</u>	Factual Resume as to Jeffrey Blake Ellis. (tln) (Entered: 06/02/2016)
06/02/2016	<u>136 (p.36)</u>	Sentencing Scheduling Order as to Jeffrey Blake Ellis, Michael Sean Goss, Timothy Eric Nimerfroh, Jeri Ann Weiler: Presentence Investigation Report due by 8/29/2016. Objections to Presentence Investigation Report due by 9/12/2016. Presentence Investigation Addendum due by 9/26/2016. Objections to Presentence Investigation Addendum due by 10/3/2016. Sentencing set for 10/21/2016 09:00 AM before Judge John McBryde. (Ordered by Judge John McBryde on 6/2/2016) (tln) (Entered: 06/02/2016)
06/02/2016	<u>137 (p.40)</u>	NOTICE Regarding Acceptance of Responsibility filed by USA as to Jeffrey Blake Ellis. (tln) (Entered: 06/02/2016)
09/02/2016	<u>153 (p.42)</u>	MOTION for Relief filed by USA as to Jeffrey Blake Ellis (trt) (Entered: 09/02/2016)
09/13/2016	<u>172 (p.45)</u>	ORDER as to Ashleigh Lyn Allen, Jeffrey Blake Ellis, Nikie Nicole Frye, Timothy Eric Nimerfroh, Sarah Sueanne Ragsdale, Jeri Ann Weiler: The court's tentative conclusion is that the govt should be required to conduct lab analysis to determine purity levels. See order for specifics. (Ordered by Judge John McBryde on 9/13/2016) (wrb) (Entered: 09/14/2016)
10/14/2016	<u>210 (p.48)</u>	ORDER as to Jeffrey Blake Ellis: After having reviewed the presentence report pertaining to deft Ellis, objections, and other sentencing items, the court tentatively has concluded that all objections made by Ellis are w/o merit. The parties should take such tentative conclusion into account in making decisions as to what presentations to make at the sentencing hearing. (Ordered by Judge John McBryde on 10/14/2016) (wrb) (Entered: 10/14/2016)
10/21/2016	<u>245 (p.49)</u>	Minute Entry for proceedings held before Judge John McBryde: Sentencing held on 10/21/2016 for Jeffrey Blake Ellis (2), Count(s) 2, BOP 240 months; S/R 3 yrs; MSA \$100. Court recommends BOP deft be allowed to participate in drug abuse treatment prgm; deft cont'd in custody. Attorney Appearances: AUSA - Shawn Smith; Defense - Ronald Couch, appt. (Court Reporter: Debbie Saenz) (No exhibits) Time in Court - :21. (wrb) (Entered: 10/21/2016)
10/21/2016	<u>246 (p.50)</u>	Notice of Right to Appeal Conviction and Sentence Imposed After Plea of Guilty as to Jeffrey Blake Ellis (wrb) (Entered: 10/21/2016)

10/21/2016	<u>258 (p.51)</u>	NOTICE OF APPEAL to the Fifth Circuit by Jeffrey Blake Ellis. T.O. form to appellant electronically at <u>Transcript Order Form</u> or US Mail as appropriate. Copy of NOA to be sent US Mail to parties not electronically noticed. IMPORTANT ACTION REQUIRED: Provide an electronic copy of any exhibit you offered during a hearing or trial that was admitted into evidence to the clerk of the district court within 14 days of the date of this notice. Copies must be transmitted as PDF attachments through ECF by all ECF Users or delivered to the clerk on a CD by all non-ECF Users. See detailed instructions <u>here</u> . (Exception: This requirement does not apply to a Defendant proceeding pro se.) Please note that if original exhibits are in your possession, you must maintain them through final disposition of the case. (Couch, Ronald) (Entered: 10/21/2016)
10/21/2016	<u>263 (p.53)</u>	JUDGMENT as to Jeffrey Blake Ellis (2), Count(s) 2, BOP 240 months; S/R 3 yrs; MSA \$100 Sentence concurrent with deft's term of imprisonment in Case Nos 1358699, 1358702, and 1362039. Court recommends drug treatment program. (Ordered by Judge John McBryde on 10/21/2016) (wrk) (Entered: 10/21/2016)
10/24/2016	<u>269 (p.58)</u>	NOTICE OF APPEAL to the Fifth Circuit as to <u>263 (p.53)</u> Judgment, by Jeffrey Blake Ellis. T.O. form to appellant electronically at <u>Transcript Order Form</u> or US Mail as appropriate. Copy of NOA to be sent US Mail to parties not electronically noticed. IMPORTANT ACTION REQUIRED: Provide an electronic copy of any exhibit you offered during a hearing or trial that was admitted into evidence to the clerk of the district court within 14 days of the date of this notice. Copies must be transmitted as PDF attachments through ECF by all ECF Users or delivered to the clerk on a CD by all non-ECF Users. See detailed instructions <u>here</u> . (Exception: This requirement does not apply to a Defendant proceeding pro se.) Please note that if original exhibits are in your possession, you must maintain them through final disposition of the case. (tle) [Duplicate NOA] Modified on 10/24/2016 (tle). (Entered: 10/24/2016)
10/26/2016		USCA Case Number as to Jeffrey Blake Ellis 16-11538 for <u>258 (p.51)</u> Notice of Appeal, filed by Jeffrey Blake Ellis, <u>269 (p.58)</u> Notice of Appeal, filed by Jeffrey Blake Ellis. (tle) (Entered: 10/26/2016)
11/22/2016	<u>281 (p.61)</u>	Transcript Order Form: transcript requested for Sentencing held 10/21/16. <u>269 (p.58)</u> (Court Reporter: Debbie Saenz.) Payment method: CJA Funds (Note to the CJA Attorney: The CJA 24 form must be completed through eVoucher. If you are not registered, have questions, or need assistance, email the eVoucher help desk at eVoucher@txnd.uscourts.gov.) ((Couch, Ronald) Modified on 11/23/2016 (tle). (Main Document 281 replaced on 11/23/2016) (tle). (Entered: 11/22/2016)
01/10/2017	<u>286 (p.63)</u>	

		ORDER of USCA 16-11538 as to Jeffrey Blake Ellis re <u>281 (p.61)</u> Notice of Appeal, <u>258 (p.51)</u> Notice of Appeal, <u>269 (p.58)</u> Notice of Appeal. The court has granted your request for an extension of time until 3/10/17. This also extends the Judicial Council's discount date accordingly. (tle) (Entered: 01/10/2017)
03/20/2017	<u>305 (p.64)</u>	Notice of Filing of Official Electronic Transcript of Sentencing Proceedings as to Jeffrey Blake Ellis held on 10/21/16 before Judge John McBryde. Court Reporter/Transcriber Debbie Saenz, Telephone number 817.850.6661 or debbie.saenz@yahoo.com. Parties are notified of their duty to review the transcript. See <u>Misc Order 61</u> and <u>Second Amended Special Order 19-1</u> . A copy may be purchased from the court reporter or viewed at the clerk's office. If redaction is necessary, a <u>Redaction Request - Transcript</u> must be filed within 21 days. If no such Request is filed, the transcript will be made available via PACER without redaction after 90 calendar days. If redaction request filed, this transcript will not be accessible via PACER; see redacted transcript. The clerk will mail a copy of this notice to parties not electronically noticed. (21 pages) Redaction Request due 4/10/2017. Redacted Transcript Deadline set for 4/20/2017. Release of Transcript Restriction set for 6/19/2017. (dgs) (Entered: 03/20/2017)

APPENDIX C

THE INFORMATION

ORIGINAL

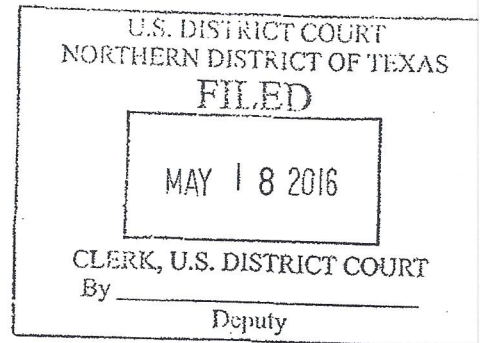
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA

v.

ASHLEIGH LYN ALLEN	(01)
JEFFREY BLAKE ELLIS	
a/k/a "Jealous"	(02)
NIKIE NICOLE FRYE	(03)
MICHAEL SEAN GOSS	
a/k/a "Killer"	(04)
TIMOTHY ERIC NIMERFROH	
a/k/a "Kaos"	(05)
SARAH SUEANNE RAGSDALE	(06)
JERI ANN WEILER	(07)
LONNIE LEE ROTENBERRY	(08)
a/k/a "Thrown Off"	

Case No.



4- 16CR 121 A

INFORMATION

The United States Attorney Charges:

Count One

Conspiracy to Possess with Intent to Distribute a Controlled Substance
(Violation of 21 U.S.C. § 846)

Beginning in or before January 2014, and continuing until in or around January 2015, and beyond, in the Fort Worth Division of the Northern District of Texas, and elsewhere, defendant **Timothy Eric Nimerfroh**, also known as Kaos, along with others known and unknown, including the individuals identified as defendants in Count Two but

not named as defendants in this Count, did knowingly and intentionally combine, conspire, confederate, and agree to engage in conduct in violation of 21 U.S.C §§ 841(a)(1) and (b)(1)(B), namely to possess with intent to distribute 50 grams or more of a mixture and substance containing a detectable amount of methamphetamine, a Schedule II controlled substance.

In violation of 21 U.S.C. § 846 (21 U.S.C. §§ 841(a)(1) and (b)(1)(B)).

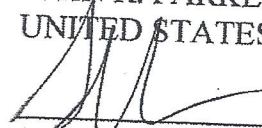
Count Two

Conspiracy to Possess with Intent to Distribute a Controlled Substance
(Violation of 21 U.S.C. § 846)

Beginning in or before January 2015, and continuing until in or around April 2016, in the Fort Worth Division of the Northern District of Texas, and elsewhere, defendants **Ashleigh Lyn Allen, Jeffrey Blake Ellis**, also known as Jealous, **Nikie Nicole Frye, Michael Sean Goss**, also known as Killer, **Sarah Sueanne Ragsdale, Lonnie Lee Rotenberry**, also known as Thrown Off, and **Jeri Ann Weiler**, along with others known and unknown, including the individuals identified as defendants in Count One but not named as defendants in this Count, did knowingly and intentionally combine, conspire, confederate, and agree to engage in conduct in violation of 21 U.S.C §§ 841(a)(1) and (b)(1)(C), namely to possess with intent to distribute a mixture and substance containing a detectable amount of methamphetamine, a Schedule II controlled substance.

In violation of 21 U.S.C. § 846 (21 U.S.C. §§ 841(a)(1) and (b)(1)(C)).

JOHN R. PARKER
UNITED STATES ATTORNEY



SHAWN SMITH
Assistant United States Attorney
Texas State Bar No. 24033206
801 Cherry Street, Suite 1700
Fort Worth, Texas 76102
Telephone: 817.252.5200
Facsimile: 817.252.5455

APPENDIX D

PUNISHMENT HEARING (Portions)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA,) CASE NO. 4:16-CR-121-A
Government,)
VERSUS) FORT WORTH, TEXAS
JEFFREY BLAKE ELLIS (02),) OCTOBER 21, 2016
Defendant.) 10:13 A.M.

VOLUME 1 OF 1
TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE JOHN McBRYDE
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S :

FOR THE GOVERNMENT: MR. SHAWN SMITH
UNITED STATES DEPARTMENT OF JUSTICE
NORTHERN DISTRICT OF TEXAS
801 Cherry Street, Suite 1700
Fort Worth, Texas 76102-6882
Telephone: 817.252.5200

FOR THE DEFENDANT: MR. RONALD G. COUCH
5005 Colleyville Blvd., Suite 217
Colleyville, Texas 76034
Telephone: 817.514.4918

COURT REPORTER: MS. DEBRA G. SAENZ, CSR, RMR, CRR
501 W. 10th Street, Room 424
Fort Worth, Texas 76102
Telephone: 817.850.6661
E-Mail: debbie.saenz@yahoo.com

Proceedings reported by mechanical stenography, transcript
produced by computer.

Debbie Saenz, CSR, RMR, CRR, TCRR
United States District Court
(817) 850-6661

16-11538.64

P R O C E E D I N G S

October 21, 2016 - 10:13 a.m.

THE COURT: Okay. I'm now calling for sentencing in this same case, 4:16-CR-121-A, United States of America, this time the defendant is Jeffrey Blake Ellis.

And Mr. Smith, of course, is here for the government, and Mr. Couch is here for Mr. Ellis.

Mr. Ellis, state your full name for the record.

THE DEFENDANT: Jeffrey Blake Ellis.

THE COURT: Okay. You appeared before me on June 2, 2016, when you entered a plea of guilty to the offense charged by Count 2 of the two-count information filed by the government in this case on May 18, 2016, and that count charged you with the offense of conspiracy to possess with intent to distribute a controlled substance, having reference to methamphetamine, and we're here today for sentencing based on the conviction resulting from that plea of guilty.

Mr. Couch, did you and your client receive in a timely manner the Presentence Report and the addendum to it?

MR. COUCH: Yes, Your Honor.

THE COURT: And did both of you read those items and then discuss them with each other?

MR. COUCH: Yes, sir.

THE COURT: Okay. There were some objections filed to the Presentence Report, and I tentatively have concluded

Debbie Saenz, CSR, RMR, CRR, TCRR
United States District Court
(817) 850-6661

16-11538.66

1 they are without merit. You've seen that order, and you've
2 seen the government's response, and the probation officer's
3 response by way of an addendum.

4 Do you still want to pursue any objections?

5 MR. COUCH: Yes, Your Honor.

6 THE COURT: Okay. Let's take them up one at a time.

7 Okay. The first objection has to do with your
8 client's denial of acceptance of responsibility or the
9 probation officer's denial of your client's -- denying to your
10 client acceptance of responsibility reduction.

11 Do you have any evidence you want to offer on that
12 subject?

13 MR. COUCH: No, Your Honor, just argument. Just
14 argument on that point.

15 THE COURT: Okay. Go ahead and make whatever
16 argument you would like to make.

17 MR. COUCH: Thank you. The denial of acceptance of
18 responsibility, I believe, in this situation is unreasonable
19 for the reason that my client's already pled guilty to this
20 offense in state court in April of 2014. It's the same fact
21 situation, so he's admitted and accepted responsibility two
22 years ago.

23 Again, when he came to this court, he told you that
24 he was guilty, he told the probation officer that he was
25 guilty, and he was remorseful about what he had done.

1 The assault on Mr. Shulka was unfortunate, but I
2 don't believe my client was closely enough involved in that
3 assault to justify withdrawal of the three points, plus two
4 points for obstruction.

5 According to the report that I read and what I saw
6 in the presentence investigation report, Mr. Ellis is not a
7 gang member. As I pointed out in my objection, FCI did not
8 see fit to punish him for what happened to Mr. Shulka, but
9 four other people were punished.

10 So, as I pointed out in the objection, I think FCI
11 personnel are closest to the situation to determine who was
12 involved and who wasn't, so I don't think Mr. Ellis was
13 involved enough in the assault committed by other people to
14 warrant the denial of acceptance of responsibility.

15 He did not file any objections to the amounts of
16 drugs, as other people have, or the times and places or guns
17 or anything like that, because he does accept responsibility
18 for what he's done. So I think the combination of the three
19 points, plus two points, is excessive.

20 If the three points were given to him for acceptance
21 of responsibility, I believe he would be -- if you go with the
22 guidelines, he would be at 210. He's capped at 240, but if he
23 was given all five points, if this incident with Mr. Shulka
24 had not happened, he would be at 168 months.

25 So, my feeling is that the combination of the three

1 and the two is excessive. If the Court was to say, okay, he
2 was involved in this to some extent, then I could see the
3 point -- the Court assessing the two points for obstruction,
4 but I think going on to find that he has not accepted
5 responsibility does not make any sense.

6 That's our argument on those two points, which are
7 basically combined.

8 *THE COURT:* Okay. The government responded to the
9 objection by providing the Court with an inmate investigative
10 report pertaining to the serious assault on Inmate Shulka, and
11 on page 15 of that, there's a description of what a video
12 showed, and also covers certain other features, and it says
13 that on June 20, 2016, a review of the video footages
14 surrounding the assault of Inmate Shulka was conducted.

15 At 1:15 p.m., Inmate Ellis -- and that refers to
16 your client -- returned to the jail unit from court. He
17 proceeds to his assigned cell for a couple of minutes before
18 proceeding to the area by the ice machine where he is talking
19 to Inmate Delfeld.

20 Inmate Ellis proceeds to the tables where the other
21 Aryan Brotherhood of Texas associates are playing cards.
22 Inmate Nichols stands up and goes to the library with Inmate
23 Ellis. Inmate Young is at the first table with Inmate Delfeld
24 watching television. After a minute, Inmate Delfeld proceeds
25 to the library. Inmate Nichols exits the library for his

1 room, followed by Inmate Delfeld.

2 A couple of minutes later, Inmates Young and Ellis
3 are talking at the table. Less than a minute later, Inmates
4 Young, Wallace and Nichols go to the downstairs showers while
5 Inmate Ellis, Coleman, and another inmate stand by the library
6 entrance.

7 A minute later, Inmates Young, Wallace, and Nichols
8 exit the showers, returning to the table. As they approach
9 the table, Inmate Young slides what appears to be a piece of
10 white paper into the front pocket of Inmate Zimmerman's
11 jumpsuit.

12 Inmates Wallace and Zimmerman leave for the showers.
13 Inmate Shulka takes Inmate Zimmerman's seat at the table.
14 Inmate Nichols joins the two in the showers while Inmate
15 Delfeld goes to his cell. Several minutes later, Inmate
16 Delfeld joins the rest in the showers while Inmate Ellis
17 returns to his cell.

18 A minute later, Inmate Delfeld walks to Inmate
19 Shulka, who is then at the table, tapping him on the shoulder
20 and motioning him to the showers. Inmate Shulka walks to the
21 showers, following Inmate Delfeld, until the entrance in
22 the -- until the entrance of the showers. Inmate Delfeld lets
23 Inmate Shulka enter first. The video shows inmates Clark,
24 Ellis, and Young watching from the library door.

25 I don't think there's any question but what this

1 defendant was a part of the planning and execution of that
2 serious assault on Inmate Shulka, and I think the probation
3 officer correctly concluded that he willfully obstructed or at
4 least attempted to obstruct justice.

5 Apparently, from what I see here, the thought was
6 that Inmate Shulka was providing information to the government
7 to the disadvantage of some of the other inmates, and the
8 assault on him, I'm satisfied and find, had as its objective
9 impeding the investigation and prosecution and sentencing of
10 the defendant in the instant offense related to information
11 that Defendant Shulka might -- that Inmate Shulka might have
12 been in a position to apply to -- supply as to this defendant.

13 So I'm going to overrule that objection. I find
14 that the probation officer correctly concluded that there was
15 obstruction of justice and correctly denied -- and gave a
16 two-level increase for that, and correctly denied the
17 three-level decrease based on acceptance of responsibility.

18 I can't -- I'm not persuaded that the defendant has
19 accepted responsibility for his criminal conduct and agree
20 with the probation officer's decision that he should not
21 receive a two-level increase based on that. (sic)

22 Okay. Is that the only objection?

23 MR. COUCH: Yes, sir.

24 THE COURT: Okay. There being no further objections
25 to the Presentence Report, the Court adopts as the fact

APPENDIX E

FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

"No person shall be held to answer for a capital, or otherwise infamous crime unless on a presentment or indictment of 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 offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be 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."