

No. _____

IN THE
Supreme Court of the United States

JASON LEE DOVER,
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

Whether a prior conviction for drug trafficking under Fla. Stat. § 893.135 that rests upon the mere possession of a specified quantity of drugs qualifies as a “controlled substance offense” triggering federal sentencing enhancements, where the Florida statute lacks the requisite element of intent to distribute?

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PETITION FOR A WRIT OF CERTIORARI

Jason Lee Dover, the Petitioner, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINION AND ORDER BELOW

The Eleventh Circuit's unpublished opinion, *United States v. Jason Lee Dover*, 710 Fed.Appx. 380 (11th Cir. 2017), is provided in Appendix A. The Eleventh Circuit's order denying rehearing and rehearing en banc is provided in Appendix B.

JURISDICTION

The Eleventh Circuit issued its opinion on September 29, 2017 (App. A). On December 6, 2017, the Eleventh Circuit denied Petitioner's timely filed petition for rehearing en banc (App. B). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The U.S. Sentencing Guidelines provide for an enhanced guideline regime when a defendant qualifies as a "career offender" under U.S.S.G. § 4B1.1. Under U.S.S.G. § 4B1.1(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.

The Sentencing Guidelines define a "controlled substance offense" as follows:

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.

U.S.S.G. § 4B1.2(b).

Fla. Stat. § 893.135 proscribes trafficking in illegal drugs, including methamphetamine, and provides, in relevant part:

Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 14 grams or more of amphetamine, as described in s. 893.03(2)(c)2., or methamphetamine, as described in s. 893.03(2)(c)4., or of any mixture containing amphetamine or methamphetamine, or phenylacetone, phenylacetic acid, pseudoephedrine, or ephedrine in conjunction with other chemicals and equipment utilized in the manufacture of amphetamine or methamphetamine, commits a felony of the first degree, which felony shall be known as “trafficking in amphetamine,” punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

- a. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.
- b. Is 28 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$100,000
- c. Is 200 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$250,000.

Fla. Stat. § 893.135(1)(f)(1) (2006).¹

The Armed Career Criminal Act (“ACCA”), 18 U.S.C. § 924(e), provides in pertinent part:

- (1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any

¹ The current version of Fla. Stat. § 893.135 proscribes trafficking in methamphetamine using the same language that existed when Petitioner was charged under the statute in 2006. *See* Fla. Stat. § 893.135(1)(f)(1) (2017).

other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

(2) As used in this subsection—

(A) the term “serious drug offense” means—

- (i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46, for which a maximum term of imprisonment of ten years or more is prescribed by law; or
- (ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law.

STATEMENT OF THE CASE

1. Florida defines the offense of “trafficking in illegal drugs,” generally, and “trafficking in methamphetamine,” specifically, to include the mere possession of a specified quantity of drugs. *See* Fla. Stat. §§ 893.135(1)(c) and 893.135(f)(1). Florida law does not expressly or impliedly make “intent to distribute or dispense” a part of its trafficking statute. In Florida, a person can be convicted under Section 893.135(1)(f)(1) of the Florida Statutes, for example, by mere knowing possession of 14 grams or more of methamphetamine.

The elements of that offense are as follows, to convict, the fact-finder must find that a defendant: 1) knowingly sold, purchased, manufactured, delivered, brought into Florida, or possessed a certain substance; 2) the substance was methamphetamine; 3) the quantity of the substance was 14 grams or more [or 28 grams or more for enhanced penalties]; and (4) defendant knew that the substance was methamphetamine. *In re Standard Jury Instructions in Criminal*

Cases (No. 2005-3), 969 So. 2d 245, 265-66 (Fla. 2007). Significantly, an “intent to distribute or dispense” is not an element and does not have to be proven under Florida law. *Greenwade v. State*, 124 So. 3d 215, 220 (Fla. 2013) (describing the “three essential elements” of a trafficking-in-cocaine offense, § 893.135, as “(1) the defendant . . . possessed a certain substance; (2) the substance was cocaine; and (3) the quantity of the substance met the statutory weight threshold”); *Johnson v. State*, 712 So. 2d 380, 381 (Fla. 1998) (concluding that the possession component of § 893.135 does not have as an element the intent to sell); *Palmer v. State*, 180 So.3d 1096 (Fla. App. 2d Dist. 2015) (affirming conviction for trafficking in methamphetamine by possession); *Pallin v. State*, 965 So. 2d 1226, 1228 (Fla. App. 1st Dist. 2007) (“under Florida law, a conviction for trafficking may be obtained based on mere possession”); *Cogbill v. State*, 940 So.2d 537 (Fla. App. 1st Dist. 2006) (affirming conviction for trafficking in methamphetamine by possession); *Paey v. State*, 943 So. 2d 919, 921 (Fla. App. 2d Dist. 2006) (“an individual can be found guilty of trafficking in oxycodone for possessing ‘any mixture’ containing oxycodone that weighs at least four grams.”).

2. This Court has held that a prior conviction resting upon possession, lacking the element of intent to distribute, does not qualify as a “controlled substance offense” for federal sentencing guidelines purposes. *Salinas v. United States*, 547 U.S. 188, 188 (2006) (vacating and remanding because “the Fifth Circuit erred in treating petitioner’s conviction for simple possession as a ‘controlled substance offense’”).

3. In 2016, Petitioner was charged by indictment in the United States District Court for the Middle District of Florida with conspiring to distribute and possess with intent to distribute fifty grams or more of a mixture and substance containing methamphetamine (Count One) and three counts of possession with intent to distribute a mixture and substance containing

methamphetamine on three separate occasions (Counts Two through Four). Doc. 12. Petitioner pleaded guilty to Count One pursuant to a written plea agreement with the United States. Docs. 50 & 58.

The government sought to enhance Petitioner's sentence by arguing that the career offender designation should apply to him due to his two prior state convictions for trafficking in methamphetamine in violation of Fla. Stat. § 893.135. *See* App. C (*Shepard* documents). Petitioner lodged timely objections prior to and at the time of sentencing to his career offender designation arguing that his two prior convictions for trafficking in methamphetamine in violation of Fla. Stat. § 893.135 did not meet the sentencing guidelines definition of a "controlled substance offense." Doc. 78 at 3-9; Doc. 98 at 7, line 17 through 8. Over the course of three sentencing hearings, Petitioner urged the district court to look to Florida state law for the elements of this offense and to compare those elements with the guidelines definition of a controlled substance offense. *Id.* at 9, lines 9-15. If the court would have made this comparison, Petitioner argued, the district court should have held that a conviction for trafficking by mere possession cannot be a guidelines' controlled substance offense.

The district court applied the modified categorical approach² and after consulting the *Shepard* documents found, without consulting Florida law, that it could "infer" an intent to distribute and as a result the two prior state convictions did in fact qualify as "controlled substance offenses." Doc. 106 at 11. The district court also conceded that "there are cases that have gone the other way. So I think ultimately it's just going to have to be a determination the Eleventh Circuit

² Under the modified categorical approach, courts can look "to a limited class of documents (for example, the indictment, jury instructions, or plea agreement and colloquy) to determine what crime, with what elements, a [noncitizen] was convicted of." *Mathis v. United States*, 136 S. Ct. 2243, 2249 (2016). These documents are known as *Shepard* documents pursuant to *Shepard v. United States*, 544 U.S. 13 (2005).

is going to have to make.” *Id.* at 12, lines 7-9. Ultimately, the district court overruled his objection to the career offender designation and Petitioner was sentenced to 151 months of imprisonment along with a five-year term of supervised release. Doc. 88. Petitioner is currently incarcerated.

4. On appeal, The Eleventh Circuit also applied the modified categorial approach and affirmed the district court’s ruling regarding U.S.S.G. § 4B1.2 finding that “an intent to distribute is inferred in each conviction.” App. A at 5. The court of appeals relied, as the district court did, on the Eleventh Circuit’s prior decision in *United States v. James*, 430 F.3d 1150, 1154–55 (11th Cir. 2005), *overruled on other grounds by Johnson v. United States*, 576 U.S. ___, 135 S. Ct. 2551 (2015). App. A at 4. While not disagreeing with Petitioner’s argument that Florida law makes clear that “intent to distribute” is not an element of this offense, the court of appeals nonetheless relied upon an “inference” stating that the statute had “an implicit intent-to-distribute element.” *Id.*

5. The Eleventh Circuit issued two similar decisions just prior to Petitioner’s decision that also concluded that a non-elemental inference may be relied upon to determine that a prior conviction under Fla. Stat. § 893.135, resting upon the possession of a specified quantity of drugs, constitutes a “controlled substance offense.” *See United States v. Orr*, 705 F. App’x 892, 894-95 (11th Cir. 2017); *United States v. Kitchen*, 705 F. App’x 842, 844-45 (11th Cir. 2017). Petitioner, and each of these appellants, filed petitions for rehearing en banc, contending that the Eleventh Circuit’s decisions (i) directly conflict with the Fifth Circuit’s decision in *United States v. Sarabia-Martinez*, 779 F.3d 274, 276-77 (5th Cir. 2015), holding that a prior conviction under § 893.135 resting upon possession does not qualify as a guidelines predicate; and (ii) conflict with decisions of other circuits that reject the reliance upon a non-elemental inference for guidelines

enhancement purposes.³ The Eleventh Circuit denied rehearing en banc in all three cases.⁴ The other two defendants, Orr and Kitchen, have also filed petitions for writ of certiorari on the same question presented.⁵

6. On February 20, 2018, after Petitioner had exhausted his direct appellate options before the Eleventh Circuit, a panel of the Eleventh Circuit held for the first time that the Florida trafficking statute was not a divisible statute. *Cintron v. U.S. Att’y Gen*, Case Nos. 15-12344 & 15-14352, (11th Cir. February 20, 2018). The likely impact of this ruling would be that Florida trafficking convictions would no longer ever be career offender controlled substance offenses because courts cannot employ the modified categorical approach to indivisible statutes. That said, this new ruling is cold comfort to Petitioner because the Eleventh Circuit will not consider a motion to vacate, set aside, or correct a sentence under 28 U.S.C. § 2255 based upon an alleged error in computing the Sentencing Guidelines range.⁶ *Spencer v. United States*, 773 U.S. 1132 (11th Cir. 2014). Thus, Petitioner submits that seeking this Court’s review on the question presented is his only meaningful way to remedy the incorrect application of the Sentencing Guidelines to him.

³ See Petition for Rehearing and Rehearing En Banc, *United States v. Kitchen*, No. 16-13691 (11th Cir. Sept. 5, 2017); Petition for Rehearing En Banc, *United States v. Orr*, No. 14-12240 (11th Cir. Sept. 21, 2017); Petition for Rehearing En Banc, *United States v. Dover*, No. 16-17650 (11th Cir. Oct. 20, 2017).

⁴ See App. B; Order, *United States v. Orr*, No. 14-12240 (11th Cir. Nov. 2, 2017); Order, *United States v. Kitchen*, No. 16-13691 (11th Cir. October 20, 2017).

⁵ Jason Lydell Orr v. United States, 14-12240 (docketed February 8, 2018); Sadonnie Marquis Kitchen v. United States, 16-13691 (docketed January 22, 2018).

⁶ Petitioner filed a “Time Sensitive Motion to Recall the Mandate” with the Eleventh Circuit on February 22, 2018 based on *Cintron*. That motion was still pending when Petitioner filed this Petition for Writ of Certiorari.

REASONS FOR GRANTING THE WRIT

I. The Eleventh Circuit misapplied Supreme Court precedent and the plain language of the Sentencing Guidelines by inferring an intent to distribute where none existed under Florida law.

The Petitioner seeks the Writ of Certiorari because the Eleventh Circuit's decision is contrary to this Court's precedent and intractably conflicts with the law of other circuits. This Court has held that a prior conviction resting upon the possession of a controlled substance, without the element of intent to distribute, is not a "controlled substance offense" for purposes of the federal sentencing guidelines. *Salinas v. United States*, 547 U.S. 188, 188 (2006) (vacating and remanding because "the Fifth Circuit erred in treating petitioner's conviction for simple possession as a 'controlled substance offense'").⁷ Florida Statute § 893.135 defines the offense of "trafficking" to include the mere possession of specified quantities of drugs. Fla. Stat. § 893.135(1). Florida law is clear that an "intent to distribute" is not an element of the offense. *See* p. 3-4, *supra* (citing Florida law). Moreover, federal courts are "bound by the Florida Supreme Court's interpretation of state law, including its determination of the elements of" Florida crimes. *Johnson v. United States*, 559 U.S. 133, 138 (2010).

Despite this, the Eleventh Circuit relied on its own precedent in *James*, an ACCA case, to infer an intent to distribute that is not an element of the underlying offense of conviction under Florida law. App. A at 4-5. But this "implicit element" is not an element in any real sense because it does not have to be found by a jury applying Florida law to find a defendant guilty of trafficking by possession. All a Florida jury (or judge) would need to find was actual or constructive possession of a threshold amount of the drug. *E.g., In re Standard Jury Instructions in Criminal*

⁷ The federal sentencing guidelines define a "controlled substance offense" to include possession offenses only when the possession is "with intent to manufacture, import, export, distribute, or dispense." U.S.S.G. § 4B1.2(b); U.S.S.G. § 2K2.1(a) & cmt. n.1.

Cases (No. 2005-3), 969 So. 2d 245, 265-66 (Fla. 2007). Reliance on a non-elemental inference cannot be squared with this Court’s decisions in *Descamps v. United States*, 133 S. Ct. 2276 (2013), and *Mathis v. United States*, 136 S. Ct. 2243 (2016), requiring an elements-based analysis.

In *Descamps*, this Court held that when evaluating whether a prior conviction for a statute with a single, indivisible set of elements qualifies as an ACCA predicate, the sentencing court may not look beyond those elements: “[t]he key, we emphasized, is elements, not facts.” 133 S.Ct. 2276, 2283 (2013). This approach is known as the “categorical approach.” See *United States v. Taylor*, 495 U.S. 575, 602 (1990). When evaluating a statute with multiple, divisible elements some of which would qualify as a predicate offense and some of which would not, the sentencing court may utilize the so-called “modified categorical approach.” *Id.* at 2293. Thus, this Court was clear in *Descamps* that it did not expand the categorical approach into a facts-based inquiry of the prior offense. “The modified approach thus acts not as an exception, but instead as a tool. It retains the categorical approach’s central feature: a focus on the elements, rather than the facts, of a crime.” 133 S.Ct. at 2285. Consequently, even under the modified categorical approach, the focus is on comparing elements. Petitioner has consistently argued that if the district court had looked to the elements of trafficking in Florida, it would have been clear that the prior convictions could have been obtained without proving the elements present in the Guidelines’ definition of a controlled substance offense.

The Eleventh Circuit’s reliance in *James* upon a non-elemental inference to determine that a prior conviction qualifies as a “serious drug offense” under the ACCA is questionable following *Descamps* and *Mathis*. See *Descamps*, 133 S. Ct. at 2281-89; *Mathis*, 136 S. Ct. at 2251-56. But even if the Eleventh Circuit’s inference of an intent to distribute in ACCA “serious drug offense”

cases was appropriate, the ACCA and the Sentencing Guidelines use different language to define predicate offenses.

The ACCA defines a “serious drug offense” to include state offenses “involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance.” 18 U.S.C. § 924(e)(2)(A)(ii) (emphasis added). The lower courts have used the word “involving” to give “an expansive interpretation” to the ACCA’s definition of a serious drug offense. *See United States v. White*, 837 F.3d 1225, 1233-34 (11th Cir. 2016) (citing cases from other circuits), *pet. for cert. filed*, No. 17-6668 (U.S. Nov. 3, 2017). In contrast, the guidelines define a “controlled substance offense” to mean “an offense . . . that prohibits the . . . possession of a controlled substance . . . with intent to . . . distribute, or dispense.” U.S.S.G. § 4B1.2(b) (emphasis added). The term “prohibits” is much narrower than the term “involving.” *See White*, 837 F.3d at 1235 (“there is general agreement among the circuits that the ACCA’s definition of a serious drug offense is broader than the guidelines definition of a drug trafficking or a controlled substance offense because of the ACCA’s use of the term ‘involving’”). In short, the Eleventh Circuit’s decision affirming Petitioner’s career offender-enhanced sentence cannot be sustained based upon the plain language of the guidelines.

Simply put, inferences that the prosecution does not have to prove and the jury does not have to find are not elements. This principle was reaffirmed with this Court’s decision in *Mathis*. “Elements are the constituent parts of a crime’s legal definition—the things the “prosecution must prove to sustain a conviction.” 136 S.Ct. 2243, 2248 (2016) (internal quotations and citations omitted). Under Florida law, an “intent to distribute” is not only not a constituent part of the legal definition of trafficking under Section 893.135, it is not any part of the crime’s legal definition.

II. The Circuits are divided over the issue of whether a non-elemental inference may be used for federal sentencing enhancement purposes.

The Eleventh Circuit's opinion conflicts with decisions of the Fifth, Sixth, Ninth, and Tenth Circuits which have held that a sentencing court may not "infer" an element of intent to distribute when applying the modified categorical approach. For example, the Eleventh Circuit's decision in Petitioner's case is in direct conflict with the Fifth Circuit's decision in *United States v. Sarabia-Martinez*, 779 F.3d 274 (5th Cir. 2015).

In *Sarabia-Martinez*, the defendant had a prior conviction under the very same Florida statute as Petitioner, Fla. Stat. § 893.135, for trafficking in 14 grams or more of methamphetamine. *Id.* at 275-76. The Fifth Circuit observed what this Petitioner has stressed throughout his case proceedings, namely that "[b]y classifying mere possession as drug trafficking, the Florida statute defines drug trafficking more broadly than does the guidelines." *Id.* at 276. Thus, the Fifth Circuit refused to infer any presumption of an intent to distribute and held that the prior conviction was not a "drug trafficking offense" under U.S.S.G. § 2L1.2. *Sarabia-Martinez*, 779 F.3d at 277; *see also United States v. Lopez-Salas*, 513 F.3d 174, 180 (5th Cir. 2008) ("[t]he Guidelines could have defined a drug trafficking offense based on the quantity of drugs possessed. Instead, they require that a state prove an intent to manufacture, import, export, distribute, or dispense.").

The Eleventh Circuit's reliance upon an inferred intent to distribute is also in conflict with decisions of the Sixth, Ninth, and Tenth Circuits. In *United States v. Montanez*, the Sixth Circuit held that convictions under Ohio's drug trafficking statute were not "controlled substance offenses" under U.S.S.G. § 4B1.2(b) if based on "possession without the proof beyond a reasonable doubt of the requisite intent to 'manufacture, import, export, distribute, or dispense.'" 442 F.3d 485, 491-94 (6th Cir. 2006). The Sixth Circuit Court of Appeals found:

It is abundantly clear from the plain language of the statutes of conviction that each contains only the element of “possession” and does not contain the element of “intent to distribute.” Therefore our inquiry under *Shepard* is at an end.

Id. at 292; *see also United States v. Villa-Lara*, 451 F.3d 963, 965 & n.2 (9th Cir. 2006) (holding Nevada statute outlawing trafficking by possession did not qualify under U.S.S.G. § 2L1.2); *Herrera-Roldan*, 414 F.3d 1238 (10th Cir. 2005) (holding Texas statute prohibiting mere possession was not a “drug trafficking offense” under U.S.S.G. § 2L1.2(b)(1)).

These circuits all approach the issue in the manner urged by Petitioner and compelled by this Court’s precedent, that is, to compare the plain language of the guidelines’ “controlled substance offense” definition with the actual, not implied, elements of the state offense of conviction. Any concern about anomalous results, such as defendants with Florida trafficking by possession convictions not qualifying for career offender enhancements, should be addressed by the U.S. Sentencing Commission—who could broaden its definition of controlled substance offenses. *See Salinas*, 547 U.S. at 188; *Sarabia-Martinez*, 779 F.3d at 277; *Herrera-Roldan*, 414 F.3d at 1244 (“[w]e cannot rewrite the Sentencing Guidelines simply because they might, in future cases, produce an anomalous result. . . . If the government is concerned that a straightforward reading of the Guidelines might produce anomalous results in future cases, it should direct its argument to the Sentencing Commission.”).

Because the Eleventh Circuit’s decision conflicts with precedent of this Court and with decisions of other circuits, in some cases addressing the very same Florida trafficking statute, this is an important issue for the fair and consistent application of the Sentencing Guidelines. Petitioner fully preserved and litigated the issue before the district court and presented the circuit split to the court of appeals. The Eleventh Circuit is aware of the circuit split—stating that “[f]or the most part” the Fifth, Sixth, Ninth, and Tenth Circuits “do reject the rationale underlying

Madera-Madera,” which is the earlier case that served as the foundation to the Eleventh Circuit’s opinion in *James*. *United States v. White*, 837 F.3d 1225, 1234-35 (11th Cir. 2016).⁸ Despite this awareness, the Eleventh Circuit has made clear by denying three recent petitions for rehearing en banc (Dover, Orr, and Kitchen) that it will not re-visit its 2005 holding that an “intent to distribute” can be inferred from the Florida trafficking statute. Consequently, Petitioner respectfully seeks this Court’s review to resolve this intractable conflict.

CONCLUSION

For the foregoing reasons, the petition should be granted.

Respectfully submitted,



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Counsel of Record for Petitioner

⁸ Not only is the Eleventh Circuit aware of the circuit split, but at least one judge has called for *James* to be overturned:

This Court should discard the approach it adopted in *James*. Along with it, we should be rid of the notion that convictions under state statutes criminalizing the mere possession of drugs can categorically “involv[e] ... possessing [a controlled substance] with intent to manufacture or distribute” within the meaning of the ACCA. 18 U.S.C. § 924(e)(2)(A)(ii).

United States v. White, 868 F.3d 1285, 1289 (11th Cir. 2017) (Martin J., dissenting from the denial of rehearing en banc).

Appendix A

Decision Below

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-17650
Non-Argument Calendar

D.C. Docket No. 8:16-cr-00022-SCB-JSS-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JASON LEE DOVER,

Defendant-Appellant.

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

(September 29, 2017)

Before WILSON, JORDAN, and ROSENBAUM, Circuit Judges.

PER CURIAM:

Jason Dover appeals his sentence for conspiracy to distribute and possess with intent to distribute 50 grams or more of methamphetamine. He argues that the district court incorrectly applied a career-offender enhancement because the Florida drug-trafficking statute under which he was previously convicted does not have an element of intent to distribute, and therefore, cannot satisfy the controlled-substance offense definition under the enhancement. He further argues that because the Florida statute prohibits mere purchase, which is broader than the controlled-substance offense definition, the district court could not apply the enhancement as his plea of nolo contendere did not admit to any particular facts. After careful review of the record and the parties' briefs, we affirm.

I.

When reviewing the district court's findings with respect to guidelines issues, we consider legal issues de novo, factual findings for clear error, and the court's application of the United States Sentencing Guidelines (Guidelines) to the facts with due deference, which is akin to clear error review. *United States v. Rothenberg*, 610 F.3d 621, 624 (11th Cir. 2010). Whether the defendant qualifies as a career offender is a question of law that we review de novo. *United States v. Gibson*, 434 F.3d 1234, 1243 (11th Cir. 2006).

II.

The Guidelines provide for enhanced penalties for certain defendants with two or more prior felony convictions for either a crime of violence or a controlled-substance offense. U.S.S.G. § 4B1.1(a). A “controlled substance offense” is “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 the possession of a controlled substance ... with intent to manufacture, import, export, distribute, or dispense.” *Id.* § 4B1.2(b).

At the time of Dover’s convictions, Florida’s drug-trafficking statute provided felony penalties for any person “who knowingly sells, purchases, manufactures, delivers, or brings into [Florida], or who is knowingly in actual or constructive possession of ... 14 grams or more of ... methamphetamine.” Fla. Stat. § 893.135(1)(f)1 (2007).

A sentencing “court should look [only] at the elements of the convicted offense [and] not the conduct underlying the conviction, in determining [whether] a prior conviction is a controlled-substance offense under [U.S.S.G.] § 4B1.2.” *United States v. Lipsey*, 40 F.3d 1200, 1201 (11th Cir. 1994) (per curiam). Where the statutory language encompasses some offenses that would satisfy the enhancement statute and others that would not, the sentencing court may look to

*Shepard*¹ documents, which are a narrow universe of documents that includes any charging documents, the written plea agreement, the transcript of the plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented.” *United States v. Palomino Garcia*, 606 F.3d 1317, 1336–37 (11th Cir. 2010). This modified categorical approach may be used in cases where the defendant pleaded no contest to the prior offenses. *See, e.g., United States v. Diaz-Calderone*, 716 F.3d 1345, 1347–48 (11th Cir. 2013). With this background, we will address each of Dover’s arguments in turn.

III.

First, Florida’s drug-trafficking statute has an implicit intent-to-distribute element. We compared it to Georgia’s drug-trafficking statute and held that the statute infers intent to distribute from the quantity of drugs. *United States v. James*, 430 F.3d 1150, 1154–55 (11th Cir. 2005), *overruled on other grounds by Johnson v. United States*, 576 U.S. ___, 135 S. Ct. 2551 (2015). In *James*, we evaluated whether a conviction under Florida’s drug-trafficking statute qualified as a “serious drug offense” under the Armed Career Criminal Act (ACCA). *Id.* at 1153. We stated that it was not necessary that the statute include an explicit reference to the intent-to-distribute element under the ACCA’s definition of a “serious drug offense,” because that definition includes any offense “involving”

¹ *Shepard v. United States*, 544 U.S. 13, 26, 125 S. Ct. 1254, 1263 (2005).

intent to distribute.² *Id.* at 1154–55. We also explained that holding that a drug-trafficking conviction in Florida was not a serious drug offense would produce an anomalous result, as drug trafficking is the most serious drug offense in the state. *Id.* at 1155.

In *United States v. White*, we concluded that a defendant’s conviction under a similar Alabama statute was a serious drug offense under the ACCA and that the court is “bound under the prior precedent rule to follow our decision in *James* unless and until it is abrogated by an en banc decision or by a Supreme Court decision.” *United States v. White*, 837 F.3d 1225, 1235 (11th Cir. 2016) (per curiam), reh’g denied en banc, ___ F.3d ___ (11th Cir. August 24, 2017). We noted that *Descamps v. United States*, 570 U.S. ___, 133 S. Ct. 2276 (2013) and *Mathis v. United States*, 579 U.S. ___, 136 S. Ct. 2243 (2016) did not overrule or abrogate *James*, because they addressed only the question of when a court may use a modified categorical approach and did not address whether it is appropriate to infer intent to distribute based on the quantity of drugs. *Id.* at 1235 & n.13.

Therefore, because Dover’s predicate convictions met the threshold quantity amount, an intent to distribute is inferred in each conviction. Dover’s prior drug-trafficking convictions were for 14 and 28 grams of methamphetamine. At the

² The ACCA defines a serious drug offense, in part, as “an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance” and punishable by a maximum term of imprisonment of ten years or more. 18 U.S.C. § 924(e)(2)(A)(ii).

time of his convictions, 14 or more grams of methamphetamine was the threshold to trigger an element of intent to distribute. *See* Fla. Stat. § 893.135(1)(f)1 (2007).

Second, we can determine that Dover was not convicted of the purchase of methamphetamine, the least culpable conduct under the Florida statute, because the charging documents do not include it, and therefore, we can eliminate the possibility of his convictions not amounting to controlled-substance offenses.

Under the modified categorical approach, we are able to examine *Shepard* documents in order to decide whether Dover's convictions meet the career-offender enhancement requirements. *See Palomino Garcia*, 606 F.3d at 1328–29. In *Shannon*, we held that a conviction for purchase of drugs under Florida's drug-trafficking statute was not a controlled-substance offense, because § 4B1.2(b) does not include purchase of drugs as a controlled-substance offense. *United States v. Shannon*, 631 F.3d 1187, 1190 (11th Cir. 2011). Though we acknowledged that possession with intent to distribute was a controlled-substance offense, we explained that if a sentencing court could not determine the statutorily-prohibited act for which the defendant was convicted, it must assume that he was convicted for mere purchase, the least culpable conduct. *Id.* at 1189–90.

Here, unlike *Shannon*, the district court could determine that Dover's trafficking convictions were not based upon mere purchase, despite his no-contest plea. Although Dover did not admit to any particular set of facts in his plea

colloquy, the court could determine the basis for his convictions based on the other allowable documents. Specifically, the charging documents in those convictions charged him with sale, delivery, or possession of the requisite amount of drugs, not with purchase. Thus, although mere purchase is not a controlled-substance offense, the district court was not required to assume that Dover's convictions were for purchase.

IV.

The district court correctly determined that Dover's drug-trafficking offenses qualified as controlled-substance offenses. In those convictions, the charging documents did not charge Dover with purchase but rather with the sale, delivery, or possession of the requisite amount of drugs. These predicate felonies are enough to implicate the career-offender enhancement in light of his last conviction.

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

September 29, 2017

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 16-17650-FF
Case Style: USA v. Jason Dover
District Court Docket No: 8:16-cr-00022-SCB-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 Janet K. Mohler, FF at (404) 335-6178.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Djuanna Clark
Phone #: 404-335-6161

OPIN-1 Ntc of Issuance of Opinion

Appendix B

Denial of Rehearing and Rehearing En Banc

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-17650-FF

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JASON LEE DOVER,

Defendant - Appellant.

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

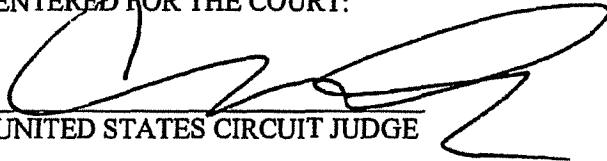
ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: WILSON, JORDAN, and ROSENBAUM, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:



UNITED STATES CIRCUIT JUDGE

ORD-42

Appendix C

Shepard Documents for Prior Convictions

**IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, STATE OF FLORIDA**

STATE OF FLORIDA

**CASE #: 53-2006-CF-001203-01XX-XX
FELONY DIVISION: F6**

vs.

JASON L. DOVER, W/M, 03/06/1980, 594-10-9504

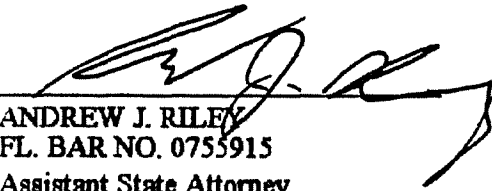
INFORMATION FOR:

- 1) TRAFFICKING IN METHAMPHETAMINE**
- 2) POSSESSION OF DRUG PARAPHERNALIA**

In the Name and by Authority of the State of Florida:

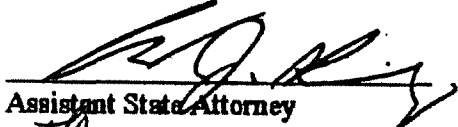
JERRY HILL, State Attorney for the Tenth Judicial Circuit, by and through his undersigned Assistant State Attorney, charges that JASON LEE DOVER on or about February 9, 2006, in the County of Polk and State of Florida, did unlawfully and knowingly traffic in amphetamine, by selling, delivering, or being in actual or constructive possession of 28 grams or more of amphetamine or methamphetamine or of any mixture containing amphetamine or methamphetamine, contrary to Florida Statute 893.135.(1 DEG FEL) (LEVEL 8) (7 YEAR MANDATORY MINIMUM) (MANDATORY \$100,000 FINE)

COUNT 2: Informant aforesaid, under oath, further information makes that JASON LEE DOVER on or about February 9, 2006, in the County of Polk and State of Florida, did knowingly and unlawfully possess a smoking device or packaging material, which was drug paraphernalia being used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, contrary to Florida Statute 893.147. (1 DEG MISD)

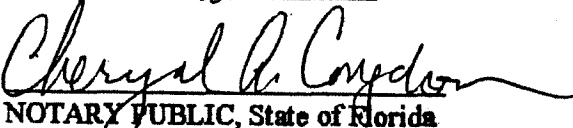

ANDREW J. RILEY
FL. BAR NO. 0755915
Assistant State Attorney
Polk County, Florida

**STATE OF FLORIDA
COUNTY OF POLK**

Appeared before me, ANDREW J. RILEY, Assistant State Attorney for Polk County, Florida, personally known to me, who, being first duly sworn, says that the allegations as set forth in the foregoing information are based upon facts that have been sworn to as true, and which, if true, would constitute the offense therein charged, that this prosecution is instituted in good faith, and certifies that testimony under oath has been received from the material witness or witnesses for the offense.


Assistant State Attorney

Sworn to and subscribed to before me this 10th day of March, 2006.


NOTARY PUBLIC, State of Florida

"Official Notary Seal"
CHERYAL A. CONGDON
Notary Public, State of Florida
My Commission Expires June 30, 2006
Commission Number DD125018

CO-DEFENDANT(S):

FILED
3-14-06
BW

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, STATE OF FLORIDA

STATE OF FLORIDA

CASE # : 53-2006-CT-001880-01XX-XX
FELONY DIVISION: F6

VS.

JASON LEE DOVER, W/M, 03/06/1980, 594-10-9504

AMENDED
INFORMATION FOR:

- 1) ARMED TRAFFICKING IN METHAMPHETAMINE (14 GRAMS OR MORE)
- 2) GRAND THEFT (FIREARM)
- 3) POSSESSION OF CANNABIS
- 1) RESISTING OFFICERS WITHOUT VIOLENCE (MULTIPLE OFFICERS)
- 5) POSSESSION OF DRUG PARAPHERNALIA

In the Name and by Authority of the State of Florida:

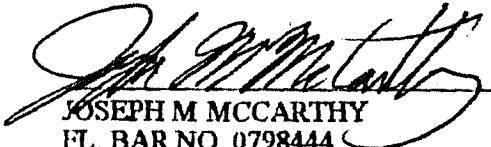
JERRY HILL, State Attorney for the Tenth Judicial Circuit, by and through his undersigned Assistant State Attorney, charges that JASON LEE DOVER on or about March 12, 2006, in the County of Polk and State of Florida, did unlawfully and knowingly traffic in amphetamine, by selling, delivering, or being in actual or constructive possession of 14 grams or more of amphetamine or methamphetamine or of any mixture containing amphetamine or methamphetamine, and in the course thereof actually possessed a firearm contrary to Florida Statutes 775.087 and 893.135. (LIFE FEL) (LEVEL 8) (10 YEAR MANDATORY MINIMUM) (MANDATORY \$50,000 FINE)

COUNT 2: Informant aforesaid, under oath, further information makes that JASON LEE DOVER on or about March 12, 2006, in the County of Polk and State of Florida, did knowingly obtain or use, or endeavor to obtain or use a firearm which was the property of JAMES GROOVER, with the intent to permanently or temporarily deprive JAMES GROOVER of the property or benefit therefrom or to appropriate the property to the use of JASON LEE DOVER or to the use of any person not entitled thereto, contrary to Florida Statute 812.014. (3 DEG FEL) (LEVEL 4)

COUNT 3: Informant aforesaid, under oath, further information makes that JASON LEE DOVER on or about March 12, 2006, in the County of Polk and State of Florida, did unlawfully and knowingly possess a material compound, mixture or preparation which contained cannabis, a controlled substance, contrary to Florida Statute 893.13. (1 DEG MISD)

COUNT 4: Informant aforesaid, under oath, further information makes that JASON LEE DOVER on or about March 12, 2006, in the County of Polk and State of Florida, did resist, obstruct, or oppose JOHNNY POLSTON, CHARLES BALDWIN, or RHONDA URTON, officers of the Polk County Sheriff's Office, in the execution of legal process or in the lawful execution of a legal duty, without offering or doing violence to the person of said officers, contrary to Florida Statute 843.02. (1 DEG MISD)

COUNT 5: Informant aforesaid, under oath, further information makes that JASON LEE DOVER on or about March 12, 2006, in the County of Polk and State of Florida, did knowingly and unlawfully possess a scale, which was drug paraphernalia being used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, contrary to Florida Statute 893.147. (1 DEG MISD)


JOSEPH M MCCARTHY
FL. BAR NO. 0798444
Assistant State Attorney
Polk County, Florida

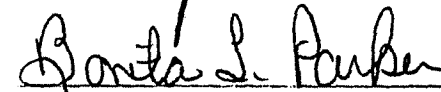
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FILED - CRIMINAL DIVISION
RICHARD M. WEISS, CLERK
CIRCUIT AND COUNTY COURTS

STATE OF FLORIDA
COUNTY OF POLK

Appeared before me, JOSEPH M MCCARTHY, Assistant State Attorney for Polk County, Florida personally known to me, who, being first duly sworn, says that the allegations as set forth in the foregoing information are based upon facts that have been sworn to as true, and which, if true, would constitute the offense therein charged, that this prosecution is instituted in good faith, and certifies that testimony under oath has been received from the material witness or witnesses for the offense.


Assistant State Attorney

Sworn to and subscribed to before me this 13th day of April, 2006.


NOTARY PUBLIC, State of Florida



BONITA L. PARKER
MY COMMISSION # 00201472
EXPIRES: April 30, 2007
Bonded Thru Budget Notary Services

06 APR 13 PM 3:53
FILED - CRIMINAL DIVISION
RICHARD H. WEISS, CLERK
CIRCUIT AND COUNTY COURTS

CO-DEFENDANT(S):

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR POLK COUNTY

STATE OF FLORIDA

DIVISION: F6

VS.

CASE NO.: 53-2006-CF-001880-01XX-XX

~~53-2006-CF-000310-01XX-XX~~ 53-2006-CF-00065

JASON LEE DOVER

53-2005-CF-009577-01XX-XX ✓

53-2005-CF-008627-01XX-XX ✓

53-2006-CF-001879-01XX-XX ✓ N/P

53-2006-CF-001878-01XX-XX ✓

53-2006-CF-001203-01XX-XX ✓

CF06-001880

FELONY PLEA FORM

I understand that I have been charged with the following crimes:

- | <u>CHARGES</u> | <u>MAXIMUM PENALTY</u> (10 yr min max) |
|--|--|
| 1) ARMED TRAFFICKING IN METHAMPHETAMINE (14 GRAMS OR MORE) | (F1) (Life) |
| 2) GRAND THEFT (FIREARM) (F3) | |
| 3) POSSESSION OF CANNABIS (M1) | |
| 4) RESISTING OFFICERS WITHOUT VIOLENCE (MULTIPLE OFFICERS) (F2) (M1) | |
| 5) POSSESSION OF DRUG PARAPHERNALIA (M1) | |

006593
53-2006-CF-000310-01XX-XX

- | <u>CHARGES</u> | <u>MAXIMUM PENALTY</u> |
|---|------------------------|
| 1) CARRYING A CONCEALED FIREARM (M1) | |
| 2) POSSESSION OF METHAMPHETAMINE WITH INTENT TO SELL (F2) | |
| 3) POSSESSION OF CANNABIS (M1) | |
| 4) POSSESSION OF DRUG PARAPHERNALIA (M1) | |

53-2005-CF-009577-01XX-XX

- | <u>CHARGES</u> | <u>MAXIMUM PENALTY</u> |
|-------------------------------------|------------------------|
| 1) BURGLARY OF A STRUCTURE (M1) | |
| 2) GRAND THEFT (\$300 OR MORE) (F3) | |

53-2005-CF-008627-01XX-XX

- | <u>CHARGES</u> | <u>MAXIMUM PENALTY</u> |
|---|------------------------|
| 1) FLEEING OR ATTEMPTING TO ELUDE (high speed) (F3) | |
| 2) RESISTING OFFICER WITHOUT VIOLENCE (M1) | |

53-2006-CF-001879-01XX-XX

- | <u>CHARGES</u> | <u>MAXIMUM PENALTY</u> |
|---------------------------------------|------------------------|
| 1) ROBBERY WITH A FIREARM (F1) (Life) | (10 yr min max) |

RECEIVED AND FILED
JAN 08 2007
RICHARD M. WEISS, CLERK

53-2006-CF-001878-01XX-XX

CHARGES

- 1) BURGLARY OF A CONVEYANCE (B)
- 2) GRAND THEFT(motor vehicle) (F3)

MAXIMUM PENALTY

53-2006-CF-001203-01XX-XX

CHARGES

- 1) TRAFFICKING IN METHAMPHETAMINE (F1)
- 2) POSSESSION OF DRUG PARAPHERNALIA (M1)

MAXIMUM PENALTY

(7yr min max)

I understand fully the charge(s) to which I am pleading guilty/no contest as set out below:

CF06-06880- Plea as charged

CF06-00310-01 - Plea as charged de CF6593

CF06-06957- Plea as charged

CF06-06862- Plea as charged

CF06-001879- Plea to lesser (Simplified) Agg Assault (Ag)

CF06-001203- Plea as charged

CF06-1878 Plea as charged KGu

COUNTS TO BE NOLLE PROSED: 4.1 in CF06-001879

For 1, 2 and 3 below check appropriate line:

- ☒ 1. (a) I am pleading guilty.
☐ (b) I am pleading nolo contendere, and by so doing acknowledge that I feel it is in my best interest to do so.
- ☒ 2. (a) I am pleading open to the court and admitting any violation(s) of probation/ community control and there is no agreement as to the sentence I will receive.
☐ (b) I am pleading to the above identified charges and admitting any violation(s) of probation/community control identified above pursuant to a plea agreement and the terms of that agreement are set forth below.
- ☐ (c) I admit violation(s) of probation/community control in the above identified cases and the terms of agreement as to disposition are set forth below.

Revised September, 2005

(10 yr min man)

FSP 11 ~~18~~ yrs PROBATION _____
COUNTY JAIL _____ COMMUNITY CONTROL _____
COMMUNITY SERVICE _____ SEXUAL PREDATOR/OFFENDER (circle) _____
WARRANTLESS SEARCH AND SEIZURE BY DOC & LE _____ DNA SAMPLE _____

_____ DRUG OFFENDER PROBATION (incl. but not limited to no use or possession of illegal drugs or contact with persons who use illegal drugs; warrantless search and seizure by DOC & LE; drug evaluation and recommended treatment; curfew to be set by court; no alcohol consumption).

_____ Defendant is pleading to a QUALIFYING SEXUAL OFFENSE. All additional standard conditions of Probation/Community as set forth in the Tenth Circuit Sentencing Order pursuant to F.S. 948.03(5) and (6) or FS 948.30, apply.

OTHER _____

3. (a) This plea is an above/below guideline plea.

_____ (b) Pre-1994 Sentencing Guidelines:

This plea is a guideline plea to the Recommended / Permitted Range, if not, either side may withdraw.

_____ (c) January 1, 1994 Sentencing Guidelines:

This plea anticipates that defendant will score fewer than _____ Total Sentence Points. If not, either side may withdraw.

_____ (d) October 1, 1995 Sentencing Guidelines: (for crimes committed on or between 5/24/97 and 9/30/98):

This plea anticipates that defendant will score fewer than _____ Total Sentence Points. If not, either side may withdraw.

✓ _____ (e) October 1, 1998 Criminal Punishment Code:

This plea anticipates that defendant will score fewer than 145 Total Sentence Points. If not, either side may withdraw.

All standard conditions of Probation/Community Control set forth in the Tenth Circuit Sentencing Order apply, including the submission of blood or other biological specimens to the Florida Department of Law Enforcement DNA Database per F.S. 943.325.

Defendant agrees to pay all mandatory and discretionary fines and other costs and restitution as a condition of probation/community control or otherwise, as set forth beginning on page three (3) of this agreement.

Any additional conditions of Probation/Community Control are up to the Court.

This plea offer is void if not accepted at or before Pre-Trial Conference.

7/17/05
DATE

[Signature]
ASSISTANT STATE ATTORNEY

Revised September, 2005

4. I understand that I have a right to plead not guilty and the right to be tried by a jury to determine whether I am guilty or not guilty. I understand what a jury trial is and that I can help select my jurors and have a right to require all jurors to agree on a verdict.
5. I understand that I have the right to be represented by an attorney at the trial and that if I cannot afford one, the Court will appoint an attorney to represent me.
6. I understand that I have the right to compel the attendance of witnesses on my own behalf; the right to confront and cross examine all witnesses testifying against me; and the right to testify, or to remain silent and have the jury instructed that my silence cannot be used against me.
7. I understand that if I plead guilty or nolo contendere, there will be no trial and I waive all the rights that go along with a trial.
8. I understand that if I plead guilty or nolo contendere without reserving the right to appeal, I am waiving my right to appeal all matters relating to the judgment including the issue of my guilt or innocence.
9. I understand that if I plead guilty or nolo contendere and that if I am not a United States citizen my plea may subject me to deportation.
10. I understand that after entering a plea the judge may ask me questions and if my answers are not true, it could lead to a perjury prosecution.
11. I understand that if the charge to which I am pleading is a drug related offense or other enumerated offense, my driver's license could be suspended or revoked.
12. I understand that if I am pleading to or have ever been convicted of a qualifying sexual offense, or if I have been designated a sexual predator, I will be subject to mandatory electronic monitoring pursuant to Section 948.30(3), Florida Statutes, if conditions therein are met.
13. I understand that if I am pleading to or have ever been convicted of a sexually motivated crime I could be subject to civil commitment as a sexually violent predator pursuant to Chapter 394, Florida Statutes, upon release from any prison sentence now or hereafter imposed in this or any future cases.
14. I understand that if I plead guilty or nolo contendere to a DUI/BUI offense, certain mandatory sentence requirements may apply, including but not limited to additional costs and fines, drivers license suspension or revocation, DUI school, and the use of an ignition-interlock device, at my expense.
15. I am not under the influence of drugs, or alcoholic beverages or medication to the extent that it impairs my understanding of this plea.
16. I am not suffering from any mental illness which would impair my understanding of this plea.
17. I certify that no one has promised me anything or threatened or coerced me in any way in order to get me to enter this plea, and I am pleading freely and voluntarily.
18. I certify that I have discussed the charges with my attorney including the maximum and minimum penalties and possible defenses and am satisfied with the representation of my attorney.
19. I understand that any representation by my attorney or any one else as to the amount of gain time I may earn on my sentence or as to how much of my sentence I will actually serve is only an estimate and is not a promise or guarantee. I understand that this plea agreement is not contingent upon any such representation and that I will not be able to withdraw from this agreement or otherwise challenge my conviction or sentence if the representation is in fact inaccurate or incorrect.
20. I understand that if I plead guilty or nolo contendere and I was under age of 18 at the time of the offense, I may be eligible for juvenile sentencing sanctions and by entering into this agreement I specifically waive my right to be considered for such juvenile sanctions and I further waive the statutory findings required by Chapter 39, Florida Statutes.
21. I understand that if I fail to timely appear for my Pre-Sentence Investigation interview or Sentencing that my plea will stand but the sentencing agreement is void and I may then receive the maximum sentence authorized by law.
22. I understand that I will be required to pay RESTITUTION as part of my sentence or as a condition of probation or community control to each victim who suffered damage or loss pursuant to F.S. 775.089, of and payable to: TO BE DETERMINED

23. In addition to restitution, I understand that some or all of the costs and fines indicated in paragraphs (1) through (25) below will be assessed against me on each count to which I have plead guilty or no contest, as part of my sentence or as a condition of probation or community control, and I agree to pay them as directed by the Court. I understand that some of the costs or fines indicated below are mandatory and must be imposed by law, and that I may not contest either the assessment or amount of mandatory costs or fines. I further understand that some of the costs or fines are discretionary and may be imposed against me by the Court. I understand that I have a right to a hearing with regard to the assessment or amount of discretionary costs or fines. By this agreement I do expressly agree to the imposition of all discretionary costs or fines imposed upon me by the Court and waive my right to a hearing to contest the assessment or amount of all discretionary costs or fines. Fines and costs are set forth below (additional cost or fines will apply to DUI/BUI charges):

- (1) \$ _____ MANDATORY FINE(S): FS 316.193(2)(b) (DUI); FS 327.35 (BUI); FS 893.135 (Drug Trafficking); FS 828.12 (Animal Cruelty); FS 775.0835 (Death or Injury) DISCRETIONARY FINE(S) UP TO COURT in amount(s) per count not exceeding \$15,000 (LF), \$10,000 (F1 or F2), \$5,000 (F3), \$1,000 (M1) and \$500 (M2) FS 775.083
- (2) 5% surcharge on FINE(S) FS 938.04, FS 960.21
- (3) \$3 FS 938.19 (Teen Court)
- (4) \$3 FS 938.01 (Clearing Trust Fund)
- (5) \$50 FS 938.03 (Crimes Compensation Trust Fund)
- (6) \$200 FS 938.05 (Criminal Justice Trust Fund) (FELONY), OR \$50 FS 938.05 (Criminal Justice Trust Fund) (MISDEMEANOR OR CRIMINAL TRAFFIC)
- (7) \$65 FS 939.185 (1)(a) (Law Library, Teen Court, Legal Aid, Court and Local Funding)
- (8) \$50 (Felony) or \$20 (Misdemeanor) FS 775.083(2) (Crime Prevention Programs)
- (9) \$2 FS 938.15 (Criminal Justice Education Fund) (Polk County Code §2-203)
- FELONY SUB-TOTAL w/o FINE: \$373 MISDEMEANOR SUB-TOTAL w/o FINE: \$193**
- (10) \$20 Crime Stoppers Trust Fund surcharge on FINE(S) FS 938.06
- (11) \$15 County Alcohol/Drug Abuse Trust Fund FS 938.13; Polk County Ord. 90-05, 98-64
- (12) \$ 165 INVESTIGATIVE COSTS payable to PCSO FS 939.27 (file affidavit)
- (13) \$ _____ EXTRADITION COSTS payable to PCSO FS 939.27 (file affidavit)
- (14) \$101 Child Advocacy Trust Fund FS 938.10(1)
- (15) \$151 Rape Crisis Program Trust Fund FS 938.085 (eff. Crimes committed after 7/1/03) for violations of FS 784.011, 784.021, 784.03, 784.041, 784.045, 784.48, 784.07, 784.08, 784.081, 784.082, 784.083, 784.085, 794.01 and any DV defined in 741.28
- (16) \$201 Domestic Violence Trust Fund Surcharge FS 938.08 applies to same crimes as para. (14)
- (17) \$250 Wildlife Violation Surcharge FS 372.7015
- (18) If Court determines Defendant is presently able to pay and payment will not prevent rehabilitation or restitution, an amount up to the amount of fine(s) Alcohol & Drug Abuse Programs FS 938.21
- (19) \$100 FDLE Operating Trust Fund FS 938.25 for non-trafficking drug violations of FS 893.13
- (20) \$101 FS 938.10(1) (Crimes against Minors for Children's Advocacy Centers)
- (21) \$15 FS 938.18(13)(a) (Surcharge on Criminal Traffic Fines)
- (22) A Public Defender Fee or Court Appointed Attorney Fee, if applicable FS 938.29
- (23) \$40 Application Fee for Public Defender or Court Appointed Attorneys, if applicable FS 27.52
- (24) The Court may reserve Jurisdiction to impose a Civil Restitution Lien pursuant to FS 960.291, et seq for damages or losses to victims or to the State of Florida or its local subdivisions
- (25) If placed on any form of community supervision, costs of supervision and rehabilitation of \$30 per month payable to the Department of Corrections will be assessed in addition to \$30 or \$50 for electronic monitoring, if ordered, \$1 (First Step) if ordered, and \$2 (FDOC Training Costs) FS 948.09 and FS 948.03 and Admin. Order 2-64.0

CP06-1920 →
CP65-9671
B107 PCSO
FBS-9577
B-708 PCSO
B-719
F6-100310
B-768.32
PCSO

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DATE 1-8-07

Jason Dover
DEFENDANT

STATEMENT OF ATTORNEY

I, as the attorney for the above Defendant, state that I have reviewed this plea form with my client and to the best of my knowledge and belief the Defendant fully understands its contents.

1/8/07

1/8/07

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JAN 08 2007

STATE OF FLORIDA vs. JASON DOVER
TRANSCRIPTION OF AUDIO FILE

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10 In Re: State of Florida v. Jason Dover

11 Case Nos.: 06CF001880-01XX, 06CF006593-01XX,

12 05CF009577-01XX, 05CF008627-01XX,

13 06CF001879-01XX, 06CF001878-01XX,

14 06CF001203-01XX

15 Date: January 8, 2007

16 Total Run Time: 00:48:05

17 Transcribed On: June 1, 2016

18 Transcribed By: Kelly Roma
19 Court Reporter and
Notary Public,
20 State of Florida at Large

21

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STATE OF FLORIDA vs. JASON DOVER
TRANSCRIPTION OF AUDIO FILE

2

1 This audio file was transcribed by

2 Kelly Roma, Court Reporter, Notary Public, State
3 of Florida at Large, as follows:

4 UNIDENTIFIED SPEAKER: Mr. Bradstock, are you
5 ready on Mr. Dover?

6 Jason Dover.

7 MR. BRADSTOCK: Your Honor, Guy Bradstock on
8 behalf of Mr. Dover. We're ready for trial. It
9 should be a one-day trial, and the defense has no
10 witnesses at this time.

11 MS. CHIPMAN: Good morning, Your Honor.
12 Heather Chipman for the State. We're ready for
13 trial as well, and Mr. Bradstock is correct, it
14 should just be one day. I believe we have four --
15 four to five witnesses for trial.

16 MR. BRADSTOCK: Thank you.

17 (End audio file 1; begin audio file 2.)

18 (Inaudible.)

19 MR. BRADSTOCK: Can we have the original
20 back, Judge? There's a problem with one of the
21 cost affidavits. Thank you.

22 MS. CHIPMAN: Yeah.

23 MR. BRADSTOCK: So what was it?

24 MS. CHIPMAN: 95, cost of affidavit is 719
25 instead of 768.

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1 MR. BRADSTOCK: Which one?

2 MS. CHIPMAN: This should be 719.

3 MR. BRADSTOCK: Oh, 719. Okay. Thank you.

4 May I approach, Your Honor?

5 THE COURT: You may.

6 MR. BRADSTOCK: And I think we need him.

7 MS. CHIPMAN: There are four costs of

8 affidavits, and then here is the score sheet.

9 THE COURT: You took the --

10 MR. BRADSTOCK: Original --

11 MS. CHIPMAN: Oh, it's right there.

12 MR. BRADSTOCK: Sorry, Judge.

13 THE COURT: I just want to get my files in

14 order here.

15 MR. BRADSTOCK: If you'd like, I can go over

16 all of the case numbers and --

17 THE COURT: Let me see here.

18 MR. BRADSTOCK: I believe there's a total of

19 seven files.

20 THE COURT: Okay. Let's see. Where was I?

21 On page 2 of the plea agreement or the

22 section that says what he's pleading to, there's a

23 reference to a 0600310.

24 MS. CHIPMAN: Your Honor, that's my mistake.

25 That was a case that was nolle prossed and refiled,

STATE OF FLORIDA vs. JASON DOVER
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1 and it's the same case as the 6593 case.

2 THE COURT: 6593.

3 MR. BRADSTOCK: It's the second case listed
4 on the plea agreement. That was a case that was
5 refiled, nolle prossed and refiled.

6 THE COURT: Okay. All right. I was looking
7 for it and not finding it --

8 MR. BRADSTOCK: That's all right.

9 THE COURT: -- and wondering what's going on.
10 Okay.

11 MR. BRADSTOCK: And that's also going to come
12 down at the bottom under cost of investigation, the
13 same thing.

14 THE COURT: Okay. And 9577. So 1878 and
15 1879 are going away?

16 MS. CHIPMAN: It's just one of the cases,
17 Your Honor, that's going away. It's just 1879.

18 MR. BRADSTOCK: Right, okay.

19 MS. CHIPMAN: It's going to be nolle prossed
20 by the State, Your Honor.

21 MR. BRADSTOCK: I think -- yeah. 1878 was
22 not listed on it --

23 MS. CHIPMAN: Oh, okay.

24 MR. BRADSTOCK: So I think that was just an
25 oversight. He was -- 1878 was also on here.

STATE OF FLORIDA vs. JASON DOVER
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1 THE COURT: So 1878 is as charged?

2 MS. CHIPMAN: Yes, Your Honor.

3 MR. BRADSTOCK: Yes, Your Honor.

4 THE COURT: Plea as charged?

5 All right. Raise your right hand, sir.

6 Do you solemnly swear or affirm the testimony
7 you're about to give is the truth, the whole truth,
8 and nothing but the truth?

9 THE WITNESS: Yes.

10 JASON DOVER,
11 a witness, having been duly sworn to tell the
12 truth, the whole truth, and nothing but the truth, was
13 examined and testified as follows:

14 EXAMINATION

15 BY THE COURT:

16 Q. State your name, sir.

17 A. Jason Dover.

18 Q. All right, sir. We're here on a number of
19 cases. I'm going to announce each one: 06CF001880-01XX,
20 06CF006593-01XX, 05CF009577-01XX, 05CF008627-01XX,
21 06CF001879-01XX, 06CF001878-01XX, 06CF001203-01XX.

22 Are you under the influence of drugs,
23 alcohol, or medication this morning?

24 A. No.

25 Q. Do you suffer from any mental illness?

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1 A. No.

2 Q. Do you understand what you're doing here
3 today?

4 A. Yes.

5 Q. All right, sir. In Case No. 06CF001800 --
6 excuse me, 1880-01XX, as to Count 1, that's armed
7 trafficking and methamphetamine, that's a first-degree
8 felony, ten-year minimum mandatory sentence, how do you
9 plead, sir?

10 A. No contest.

11 Q. As to Count 2, grand theft with a firearm,
12 third-degree felony, how do you plead?

13 A. No contest.

14 Q. As to possession of cannabis, first-degree
15 misdemeanor, how do you plead?

16 A. No contest.

17 Q. As to resisting an officer without force or
18 violence, third-degree felony, how do you plead?

19 A. No contest.

20 Q. As to possession of drug paraphernalia,
21 first-degree misdemeanor, how do you plead?

22 A. No contest.

23 Q. All right, sir. Case No. 06CF006593-01XX,
24 Count 1, carrying a concealed firearm, first-degree
25 misdemeanor, how do you plead?

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1 A. No contest.

2 Q. Count 2, possession of methamphetamine with
3 intent to sell, second-degree felony, how do you plead?

4 A. No contest.

5 Q. Count 3, possession of cannabis, first-degree
6 misdemeanor, how do you plead?

7 A. No contest.

8 Q. Count 4, possession of drug paraphernalia,
9 first-degree misdemeanor, how do you plead?

10 A. No contest.

11 Q. In Case No. 05CF009577-01XX, Count 1,
12 burglary of a structure, how do you plead? It's a
13 first-degree misdemeanor. How do you plead?

14 A. No contest.

15 Q. Count 2, grand theft, third-degree felony,
16 how do you plead?

17 A. No contest.

18 Q. In Case No. 05CF008827-01XX, Count 1, fleeing
19 or attempting to allude at a high speed, that's a
20 third-degree felony, how do you plead?

21 A. No contest.

22 Q. Count 2, resisting an officer without force
23 or violence, first-degree misdemeanor, how do you plead?

24 A. No contest.

25 Q. In Case No. 06CF001879-01XX, Count 1, robbery

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1 with a firearm, first-degree felony, ten-year minimum
2 mandatory, how do you plead? Is that the one we're
3 dropping?

4 MS. CHIPMAN: Yes, Your Honor.

5 THE COURT: Okay. All right. Then we'll
6 delete that.

7 BY THE COURT:

8 Q. 06CF001878-01XX, Count 1, burglary of a
9 conveyance, that's a third-degree felony, how do you
10 plead?

11 A. No contest.

12 Q. Count 2, grand theft, third-degree felony,
13 how do you plead?

14 A. No contest.

15 Q. In 06CF001203-01XX, Count 1, trafficking and
16 methamphetamine, first-degree felony, how do you plead?

17 A. No contest.

18 Q. Count 2, possession of drug paraphernalia,
19 first-degree misdemeanor, how do you plead?

20 A. No contest.

21 MS. CHIPMAN: And, Your Honor, in that case,
22 that's also a seven-year minimum.

23 BY THE COURT:

24 Q. The trafficking is a seven-year minimum
25 mandatory sentence. That was explained to you by your

STATE OF FLORIDA vs. JASON DOVER
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1 attorney?

2 A. Yes, ma'am.

3 Q. All right. Your attorney explained to you
4 the minimum and maximum penalties for each of those
5 offenses, sir?

6 A. Yes, ma'am.

7 Q. I have a plea agreement here that -- I think
8 it's -- it looks like it's five pages in length. Did you
9 have a chance to read and review this with your lawyer?

10 A. Yes, ma'am.

11 Q. Is this your signature at the bottom of this
12 page, sir?

13 A. Yes, ma'am.

14 Q. Anybody promise you anything to get you to
15 change your plea today?

16 A. No, I pled out because they're dropping the
17 armed robbery. I'm going to be able to get my jewelry
18 back. That's it.

19 MS. CHIPMAN: I want to make sure that he
20 understands, we have no way to get his -- there's
21 jewelry that was involved in the robbery case, but
22 we have no way of getting jewelry back to
23 Mr. Dover. So I want to make sure Mr. Dover knows
24 that we couldn't do that.

25 MR. BRADSTOCK: What I explained to Mr. Dover

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1 is once the case is over with and once the time for
2 appeal is passed, then he can file paperwork for
3 return of his property in that case. And he was
4 going to submit documentation to the sheriff's
5 office for the return of any property that they had
6 in evidence; but obviously the State's not agreeing
7 today, you know, to transfer that property. It
8 would be up to the sheriff's office.

9 BY THE COURT:

10 Q. Do you understand that, Mr. Dover?

11 A. So I'm going to be able to get my property
12 back?

13 Q. After the time for appeal has expired --

14 A. Then I'll be able to get my property.

15 Q. -- then you can make a request to the
16 sheriff's office for the return of your property.

17 It's being held only as evidence?

18 A. For evidence, yes, ma'am.

19 MS. CHIPMAN: Yes, Your Honor.

20 THE COURT: And that's the only purpose it
21 has?

22 MS. CHIPMAN: That's right, Your Honor.

23 THE COURT: Okay.

24 MR. BRADSTOCK: And there was no forfeiture
25 proceedings in this case.

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1 THE COURT: Okay. All right. So there's no
2 forfeiture proceedings, so, theoretically, you
3 should be able to get it back and --

4 MR. BRADSTOCK: It won't be automatic though.
5 He would have to file.

6 THE COURT: Right. You're going to have to
7 request it.

8 THE WITNESS: All right. That's not a
9 problem.

10 BY THE COURT:

11 Q. Okay. Anyone threaten you or coerce you to
12 get you to change your plea?

13 A. No.

14 Q. Did you have a chance to discuss any possible
15 defenses to these charges with your lawyer?

16 A. Yes.

17 Q. Was he able to answer all your questions?

18 A. Yes.

19 Q. Are you satisfied with the assistance he's
20 provided you?

21 A. Yes.

22 Q. Do you understand that by entering this plea
23 that there's not going to be a trial on these charges?

24 A. Yes.

25 Q. You're giving up your right to confront the

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1 State's witnesses against you, and you're giving up your
2 right to any legal defense to these charges?

3 A. Yes.

4 Q. I have to advise you, sir, if you're not a
5 citizen of the United States, what's here could be used
6 against you in deportation proceedings. If the offense
7 that you're pleading to is sexually violent, sexually
8 motivated, or if you've previously been adjudicated to
9 such an offense, your plea today could be used against
10 you in the future in involuntary civil commitment
11 proceedings.

12 Did your attorney explain to you that there's
13 a two-year revocation of your driving privileges
14 associated with each of the drug offenses?

15 A. Yes.

16 THE COURT: All right. And is DNA evidence
17 an issue in this case?

18 MR. BRADSTOCK: There were some items. I
19 don't think anything was submitted in for DNA, but
20 I believe in the -- certain fingerprint evidence
21 and so forth.

22 THE COURT: So there may be DNA evidence?

23 MR. BRADSTOCK: Yes, Your Honor.

24 THE COURT: All right. Was that submitted
25 for any analysis, Ms. Chipman?

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1 MS. CHIPMAN: There was no DNA evidence --
2 well, I guess -- I mean, there's nothing collected
3 and submitted for DNA analysis, only fingerprint --
4 you know, evidence was processed for fingerprint
5 but not for DNA.

6 THE COURT: All right. Defense stipulate
7 if the allegations in the probable cause
8 affidavits were proven that it would establish a
9 prima facie case of the charges that Defendant has
10 pled to today?

11 MR. BRADSTOCK: Yes, Your Honor.

12 THE COURT: All right, sir. I'm going to
13 accept your pleas as freely, voluntarily, and
14 intelligently being made. The Court is going to
15 find there's a factual basis to support the
16 charges. Is there any legal reason why sentence
17 can't be imposed?

18 MR. BRADSTOCK: No, Your Honor. At first we
19 thought we'd have to set dispositional, but we're
20 able to get everything resolved today so we would
21 like to proceed with sentencing. I would note that
22 we reviewed the score sheet, and it appears
23 correct. Mr. Dover would be entitled to a
24 pre-sentence investigation report, but as I said
25 earlier, we'd like to waive that and proceed with

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1 sentencing today.

2 THE COURT: All right. Okay. The score
3 sheet that the Court has been provided shows a
4 total of 141 points -- .4 points. Any exceptions
5 or objections to that?

6 MR. BRADSTOCK: No, Your Honor.

7 THE COURT: All right. And then I've got
8 affidavits here for one, two, three, four of the
9 cases. All right, sir. Pursuant to your plea
10 agreement, let's see. Let me take a look through
11 each one of these. All right. And the 1880 case,
12 the armed trafficking and methamphetamine, the
13 Court is going to sentence you to ten years --
14 excuse me, the -- yeah, ten years Florida State
15 Prison pursuant to your plea agreement. Is that
16 right?

17 MR. BRADSTOCK: Ten year minimum --

18 THE COURT: I mean eleven years.

19 MR. BRADSTOCK: Eleven years.

20 THE COURT: Ten years minimum mandatory.

21 MR. BRADSTOCK: Yes, ma'am.

22 THE COURT: On the grand theft, that would be
23 five years; possession of cannabis, Count 3, would
24 be time served; Count 4 would be five years;
25 Count 5 would be time served.

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1 In your 6593 case, Count 1, time served;
2 Count 2 would be the -- I'm going to put five years
3 on that; Count 3 would be time served, and Count 4
4 is time served. In the 9577 case, that would be
5 time served; Count 2, five years. In the 8627
6 case --

7 MR. BRADSTOCK: Your Honor, I hate to --

8 THE COURT: Yes, sir.

9 MR. BRADSTOCK: I just don't think -- I think
10 Count 1 is --

11 MS. CHIPMAN: F-3.

12 MR. BRADSTOCK: -- an F-3. It's labeled as a
13 first-degree misdemeanor, but it's a burglary
14 charge.

15 THE COURT: Oh, my goodness. I'm going down
16 here looking at the -- yes, burglary of a
17 structure. Okay. That would be five years. I'm
18 sorry. On 9577, it's down here as an M-1.

19 MS. CHIPMAN: My fault. My fault.

20 THE COURT: Okay. All right. So that would
21 be five years, and the grand theft, five years.
22 And that's concurrent with each other and
23 concurrent with the Count 1 on the 1880. Okay. In
24 the 8627 case, Count 1 is five years, concurrent;
25 Count 2 is time served. The 1879 is the one that

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1 the State's going to make an announcement on,
2 right?

3 MS. CHIPMAN: Yes.

4 MR. BRADSTOCK: And the 1878, Count 1 is five
5 years concurrent; Count 2, five years concurrent.
6 1203 is eleven years Florida State Prison, seven
7 years minimum mandatory, and that would be
8 concurrent with the Count 1 in the 1880. And
9 possession of drug paraphernalia with the Count 2
10 would be time served.

11 All right. Now -- and you're to receive
12 credit for any time that you've already served in
13 on the charge. I see here that there's an issue of
14 restitution to be determined?

15 MS. CHIPMAN: Yes, Your Honor.

16 THE COURT: Okay. The Court is going to
17 retain jurisdiction for 60 days for the purpose of
18 determining what, if any, restitution is owed. If
19 the -- if you can't agree with the State on the
20 amount of restitution, then we'll have a hearing on
21 it.

22 Now, Mr. Dover, you can be present for the
23 hearing, or you can waive your appearance at the
24 hearing. Some people want to be present, they want
25 to testify, you know; some don't because they don't

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1 want to lose time. You know, 'cause you have to be
2 transported back here for the purposes of the
3 hearing, and they don't want to lose their gain
4 time for purposes of the restitution hearing.
5 That's something you can discuss with your
6 attorney. If you decide you want to come, he'll
7 submit an order to transport to the court, and I
8 will have you brought back for the hearing, okay?

9 THE WITNESS: Thanks, Your Honor.

10 THE COURT: But we're going to set a date
11 certain today for that restitution hearing, and the
12 victims can bring forward any documentation or
13 evidence they have with regard to amounts of
14 restitution that arose, but the Court is retaining
15 jurisdiction for purposes of restitution.

16 Now, there are crossed affidavits here for
17 investigative costs, and I am going to impose that.
18 And 05CF008627, there's an affidavit in the amount
19 of \$187 in favor of the Polk County Sheriff's
20 Office, and in the 06CF001880-01XX, a crossed
21 affidavit in the amount of \$165 in favor of the
22 Polk County Sheriff's Office. In Case
23 No. 05CF9577, there's an affidavit in the amount of
24 \$719 in favor of the Polk County Sheriff's Office.
25 In 06CF006593, there's an affidavit for 763 --

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1 \$68.32 in favor of the Polk County Sheriff's
2 Office. I'm going to impose that. \$40 application
3 fee for the public defender.

4 Sir, would you agree with me that \$500 is a
5 reasonable fee for the services of a public
6 defender?

7 THE WITNESS: Yes, ma'am.

8 THE COURT: Okay. All right. Now, these
9 investigative costs and your public defender
10 application fee, and I'm going to impose court
11 costs in the amount of 373 in each of those cases.
12 I'm going to judgment lien the public defender fee,
13 and I'm going to judgment lien your court costs.
14 Your cost of investigation, you'll need to pay that
15 at a rate of \$30 per month to begin 60 days after
16 you've been released from prison.

17 MS. CHIPMAN: So you're imposing court costs
18 of 373 on each case?

19 THE COURT: Each case, yes, uh-huh.

20 MS. CHIPMAN: Okay.

21 UNIDENTIFIED SPEAKER: Doesn't he have, like,
22 a minimum mandatory fine he has to pay or
23 something?

24 MS. CHIPMAN: You're right about that.

25 THE COURT: Excuse me?

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1 UNIDENTIFIED SPEAKER: A minimum mandatory
2 fine he has to pay.
3 THE COURT: Yes, we're going to get to that.
4 On the 18 -- excuse me, the first case, the
5 1880, is that the \$50,000?
6 MS. CHIPMAN: Yes, Your Honor.
7 THE COURT: Fine?
8 MS. CHIPMAN: Yes. The other one is --
9 THE COURT: And the 1203, Count 1 --
10 MS. CHIPMAN: It's a \$100,000 fine.
11 THE COURT: For trafficking methamphetamine?
12 MS. CHIPMAN: Yes.
13 THE COURT: \$100,000 fine. The others are
14 court costs.
15 Okay. Did you announce a restitution date?
16 MS. CHIPMAN: No, ma'am.
17 UNIDENTIFIED SPEAKER: What cases need to be
18 set for restitution hearing, all of them?
19 MS. CHIPMAN: No. Just 9577 and 1878.
20 UNIDENTIFIED SPEAKER: How far away?
21 MS. CHIPMAN: A couple of weeks should be
22 fine.
23 THE COURT: More than a month, less than two?
24 MS. CHIPMAN: That's fine. Yes, Your Honor.
25 UNIDENTIFIED SPEAKER: Hold on, please. You

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1 have motions on the 9th.

2 THE COURT: March 9th?

3 UNIDENTIFIED SPEAKER: February 9th.

4 THE COURT: February 9th. Is that all right?

5 MS. CHIPMAN: That's fine with the State,
6 Your Honor.

7 THE COURT: Okay.

8 MS. CHIPMAN: It should be pretty brief.

9 THE COURT: All right.

10 UNIDENTIFIED SPEAKER: And that would be at
11 10:00.

12 I need to ask a question. On the 061880,
13 Count 4 is resisting without --

14 MR. BRADSTOCK: I believe that's a
15 misdemeanor. I was going to get into that.

16 THE COURT: Wait a minute. Which one, 06 --

17 UNIDENTIFIED SPEAKER: 1880.

18 MR. BRADSTOCK: That's -- Count 4 it shows a
19 third-degree felony, but on the information, it is
20 charged as a first-degree misdemeanor.

21 THE COURT: Oh, okay. I thought, well, maybe
22 it was actually with violence.

23 MR. BRADSTOCK: I checked on the -- I was
24 thinking the same thing and I checked the
25 information, and it was without violence.

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21

1 THE COURT: Well, then that's a time served.

2 Okay. Anything else?

3 MR. BRADSTOCK: I don't believe so,

4 Your Honor.

5 MS. CHIPMAN: Nothing from the State,

6 Your Honor.

7 THE COURT: All right. Mr. Dover, sir, you
8 have 30 days to appeal the judgment and sentence of
9 the Court if you wish to do so. If you cannot
10 afford to hire an attorney, the Court will appoint
11 the public defender to represent you. I hope
12 whatever is going on in your life, this is the end
13 of this chapter, okay?

14 (Audio ended.)

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22

1 CERTIFICATE OF TRANSCRIPTION

2

3 STATE OF FLORIDA:
4 COUNTY OF LAKE:

5

6 I, Kelly Roma, certify that I was authorized to and
7 did transcribe the audio that was provided to me and that
8 the foregoing Pages 2 through 21, inclusive, are a true
9 and complete record of said audio to the best of my
10 ability.

11 I further certify that I am not a relative or
12 employee of any of the parties, nor am I a relative or
13 counsel connected with the parties' attorneys or counsel
14 connected with the action, nor am I financially
15 interested in the outcome of the action.

16 DATED this 2nd day of June, 2016.

17

18

Kelly Roma

19

Kelly Roma
Court Reporter
Notary Public State Of Florida

20

21

22

23

24

25

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