

A P P E N D I X

APPENDIX

Decision of the Court of Appeals for the Eleventh Circuit,
United States v. Anderson, 723 F. App'x 833 (11th Cir. Jan. 26., 2018),
reh'g denied (11th Cir. Mar. 29, 2018) A-1

Order Denying Rehearing..... A-2

Judgment imposing sentence A-3

A-1

723 Fed.Appx. 833

This case was not selected for publication in West's Federal Reporter. See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S. Ct. of App. 11th Cir. Rule 36-2. United States Court of Appeals, Eleventh Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.
Tyrone ANDERSON, Defendant-Appellant.

No. 16-11424

|
(January 26, 2018)**Synopsis**

Background: Defendant pleaded guilty, in the United States District Court for the Southern District of Florida, No. 1:15-cr-20694-JEM-1, to possession of a firearm and ammunition as a convicted felon. He appealed.

[Holding:] The Court of Appeals held that under the Armed Career Criminal Act (ACCA), defendant's Florida conviction for possession of narcotics with intent to sell qualified as a serious drug offense for purposes of his sentencing.

Affirmed.

West Headnotes (5)

[1] Sentencing and Punishment

🔑 Particular offenses

350H Sentencing and Punishment
350HVI Habitual and Career Offenders
350HVI(C) Offenses Usable for Enhancement
350HVI(C)2 Offenses in Other Jurisdictions
350Hk1283 Violent or Nonviolent Character of Offense
350Hk1285 Particular offenses

Under the Armed Career Criminal Act (ACCA), defendant's Florida conviction for

armed robbery qualified as a violent felony for purposes of his sentencing for possession of a firearm and ammunition as a convicted felon. 18 U.S.C.A. §§ 922(g)(1), 924(e); Fla. Stat. Ann. § 812.13(2)(a).

Cases that cite this headnote

[2] Sentencing and Punishment

🔑 Miscellaneous particular offenses

350H Sentencing and Punishment
350HVI Habitual and Career Offenders
350HVI(C) Offenses Usable for Enhancement
350HVI(C)2 Offenses in Other Jurisdictions
350Hk1273 Miscellaneous particular offenses
Under the Armed Career Criminal Act (ACCA), defendant's Florida conviction for possession of narcotics with intent to sell qualified as a serious drug offense for purposes of his sentencing for possession of a firearm and ammunition as a convicted felon. 18 U.S.C.A. §§ 922(g)(1), 924(e); Fla. Stat. Ann. § 893.13.

Cases that cite this headnote

[3] Sentencing and Punishment

🔑 Guilty and nolo contendere pleas


350H Sentencing and Punishment
350HVI Habitual and Career Offenders
350HVI(D) Convictions and Dispositions Usable for Enhancement
350Hk1289 Guilty and nolo contendere pleas
For purposes of his sentencing after being convicted of possession of a firearm and ammunition as a convicted felon, defendant's plea of guilty in Florida prosecution on narcotics charges constituted a "conviction" for purposes of the Armed Career Criminal Act (ACCA), even though the plea was followed by a withholding of adjudication. 18 U.S.C.A. §§ 922(g)(1), 924(e).

Cases that cite this headnote

[4] Sentencing and Punishment

🔑 Necessity of special allegations or charges

Sentencing and Punishment

 [Existence and eligibility of prior conviction](#)

350H Sentencing and Punishment
 350HVI Habitual and Career Offenders
 350HVI(K) Proceedings
 350Hk1363 Recidivist or Habitual Offender Charge
 350Hk1365 Necessity of special allegations or charges
 350H Sentencing and Punishment
 350HVI Habitual and Career Offenders
 350HVI(K) Proceedings
 350Hk1375 Evidence
 350Hk1380 Degree of Proof
 350Hk1380(2) Existence and eligibility of prior conviction
 Sentence imposed upon defendant's conviction for possession of a firearm and ammunition as a convicted felon was not rendered unconstitutional by fact that his three prior convictions which raised his mandatory minimum sentence were neither admitted, nor charged in the indictment and proved beyond a reasonable doubt. 18 U.S.C.A. §§ 922(g)(1), 924(e).

[Cases that cite this headnote](#)

[5] [Sentencing and Punishment](#)

 [Fact of prior conviction or adjudication](#)

350H Sentencing and Punishment
 350HVI Habitual and Career Offenders
 350HVI(K) Proceedings
 350Hk1375 Evidence
 350Hk1381 Sufficiency
 350Hk1381(2) Fact of prior conviction or adjudication
 Use of defendant's prior convictions, pursuant to the Armed Career Criminal Act (ACCA), to enhance sentence imposed upon his conviction for possession of a firearm and ammunition as a convicted felon, did not require sentencing court to find facts about his convictions, rather than simply rely of the fact of those convictions. 18 U.S.C.A. §§ 922(g)(1), 924(e).

[Cases that cite this headnote](#)

*834 Appeal from the United States District Court for the Southern District of Florida, D.C. Docket No. 1:15-cr-20694-JEM-1

Attorneys and Law Firms

[Laura Thomas Rivero](#), [Michelle B. Alvarez](#), Robert James Emery, [Wifredo A. Ferrer](#), [Tonya R. Long](#), Assistant U.S. Attorney, Emily M. Smachetti, U.S. Attorney's Office, Miami, FL, for Plaintiff-Appellee

Katherine Anna Carmon, [Michael Caruso](#), Federal Public Defender, [Tracy Michele Dreispul](#), Federal Public Defender's Office, Miami, FL, for Defendant-Appellant

Before [JORDAN](#) and [JILL PRYOR](#), Circuit Judges, and [DUFFEY](#), * District Judge.

* Honorable William S. Duffey, Jr., United States District Judge for the Northern District of Georgia, sitting by designation.

Opinion

PER CURIAM:

*835 Tyrone Anderson appeals his 180-month sentence, imposed after he pled guilty to one count of possession of a firearm and ammunition as a convicted felon, in violation of 18 U.S.C. § 922(g)(1). Anderson argues the district court erred in enhancing his sentence under the Armed Career Criminal Act (“ACCA”), 18 U.S.C. § 924(e). Specifically, he argues the district court improperly found he possessed three prior convictions that qualified as predicates for the ACCA enhancement. He also argues his constitutional rights were violated because the predicate convictions were neither charged in the indictment nor admitted by him. Because binding circuit precedent forecloses Anderson’s arguments on appeal, we affirm.

I. BACKGROUND

Anderson pled guilty to one count of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). That charge carries a maximum punishment of 10 years’ imprisonment, but if an individual has had three or more prior convictions for a “serious drug offense” or “violent felony,” or some combination thereof, ACCA increases the term of incarceration to a mandatory

minimum of 15 years. *Id.* § 924(a)(2), (e). Anderson’s presentence investigation report (“PSI”) indicated that Anderson qualified for the ACCA enhancement. It identified three qualifying prior convictions: one “violent felony” conviction for armed robbery, in violation of [Florida Statutes § 812.13\(2\)\(a\)](#), and two “serious drug offense” convictions, both for possession of narcotics with intent to sell, in violation of [Florida Statutes § 893.13](#).

Anderson objected to the PSI’s finding that the ACCA enhancement applied. He argued that his armed robbery conviction was not a “violent felony” under ACCA and that possession of narcotics with intent to sell was not a “serious drug offense” under ACCA. He also argued that one of his prior narcotics charges, to which he pled guilty but where adjudication was withheld,¹ did not constitute a “conviction” for ACCA purposes. Finally, he argued that the imposition of an ACCA enhancement violated his constitutional rights because the facts supporting the enhancement were neither admitted nor charged in the indictment and proven beyond a reasonable doubt. The district court rejected Anderson’s arguments and sentenced him to 180 months’ imprisonment, followed by five years of supervised release. This is Anderson’s appeal.

¹ Under Florida law, a court may withhold adjudication of guilt if it determines “that the defendant is not likely again to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that the defendant presently suffer the penalty imposed by law.” [Fla. Stat. § 948.01\(2\)](#).

II. STANDARD OF REVIEW

We review *de novo* whether a prior conviction qualifies as an ACCA predicate. [United States v. Esprit](#), 841 F.3d 1235, 1238 (11th Cir. 2016). We review questions of statutory interpretation *de novo*. [United States v. Santiago](#), 601 F.3d 1241, 1243 (11th Cir. 2010). We also review *de novo* whether a sentence is constitutional. [United States v. Rozier](#), 598 F.3d 768, 770 (11th Cir. 2010).

III. ANALYSIS

A. Under Our Binding Precedent, Florida Armed Robbery and Possession of Narcotics with Intent to Sell Are ACCA Predicates.

[1] On appeal, Anderson argues that armed robbery under [*836 Florida Statutes § 812.13\(2\)\(a\)](#) is not a “violent felony” under ACCA. Our prior panel precedent forecloses this argument. See [United States v. Fritts](#), 841 F.3d 937, 944 (11th Cir. 2016) (“[A] Florida armed robbery conviction under § 812.13 categorically qualifies as a ‘violent felony’ under ... ACCA’s elements clause.”). Under our prior panel precedent rule, “a prior panel’s holding is binding on all subsequent panels unless and until it is overruled or undermined to the point of abrogation by the Supreme Court or by this court sitting en banc.” [United States v. Archer](#), 531 F.3d 1347, 1352 (11th Cir. 2008). Anderson’s argument thus is foreclosed.

[2] Anderson’s argument that possession of narcotics with intent to sell, in violation of [Florida Statutes § 893.13](#), is not a “serious drug offense” under ACCA because the Florida statute lacks a mens rea element is also foreclosed by our binding precedent. See [United States v. Smith](#), 775 F.3d 1262, 1268 (11th Cir. 2014) (holding that [Florida Statutes § 893.13\(1\)](#) is a “serious drug offense” that qualifies as an ACCA predicate despite the absence of a mens rea requirement).

B. Under Our Binding Precedent, a Florida Guilty Plea Followed by a Withholding of Adjudication Constitutes a “Conviction” for the Purposes of ACCA.

[3] Anderson next argues that one of his narcotics charges, to which he entered a guilty plea followed by a withholding of adjudication, does not constitute a “conviction” for the purposes of ACCA.² We are again bound by our prior panel precedent to reject this argument.

² Anderson asserts that he did not enter a guilty plea because he failed to actually plead guilty during his plea colloquy. But in [Custis v. United States](#), 511 U.S. 485, 487, 114 S.Ct. 1732, 128 L.Ed.2d 517 (1994), the Supreme Court held that, with the “exception of convictions obtained in violation of the right to counsel[.]” a defendant “in a federal sentencing proceeding may [not] collaterally attack the validity of previous state convictions that are used to enhance his sentence under ... ACCA.” Anderson’s judgment indicates that he was found guilty upon the entry of a

guilty plea. Although the state court may have erred in conducting Anderson's plea colloquy, Anderson cannot raise this argument here.

Title 18 U.S.C. § 921(a)(20) instructs that “[w]hat constitutes a conviction [for the purposes of ACCA] shall be determined in accordance with the law of the jurisdiction in which the proceedings were held.” Under Florida’s statute regarding sentence enhancements for habitual felony offenders, a guilty plea followed by a withholding of adjudication is treated as a conviction. See Fla. Stat. § 775.084(2) (“For the purposes of this section, the placing of a person on probation ... without an adjudication of guilt shall be treated as a prior conviction.”). Relying on that statute as the state-law analog to ACCA, a panel of this Court held that a defendant’s guilty plea in Florida state court, followed by a withholding of adjudication, also constituted a “conviction” for the purpose of enhancing a sentence under ACCA. *Santiago*, 601 F.3d at 1245-47.

Anderson acknowledges this precedent, but insists that in light of the Supreme Court of Florida’s decision in *Clarke v. United States*, 184 So.3d 1107 (Fla. 2016), *Santiago* is no longer good law.³ In *Clarke*, the Supreme Court of Florida held that a Florida guilty plea followed by a withholding *837 of adjudication was not a “conviction” for the purposes of Florida Statutes § 790.23(1), Florida’s felon in possession of a firearm statute. 184 So.3d at 1108.

³ Although we are bound by prior panel decisions with respect to federal law, if “subsequent decisions of the ... Florida courts cast doubt on our interpretation of state law,” we are “free to reinterpret state law in light of the new precedents.” *Hattaway v. McMillian*, 903 F.2d 1440, 1445 n.5 (11th Cir. 1990) (emphasis omitted).

But *Clarke* did not speak directly to the issue here. The relevant statute in that case, Florida’s felon in possession of a firearm statute, was silent on whether a withholding of adjudication qualified as a “conviction” for the purposes the felon in possession statute. Here, our binding precedent holds that the relevant statute for ACCA purposes is not Florida’s felon in possession of a firearm statute, but Florida’s statute regarding sentence enhancements for habitual felony offenders. That statute, unlike the one at issue in *Clarke*, expressly states that for its purposes “the placing of a person on probation or community control without an adjudication of guilt shall be treated as a prior conviction.” Fla. Stat. §

775.084(2) (emphasis added). Indeed, *Clarke* specifically cited Florida Statutes § 775.084 as an example of an “express[] inclu[sion of] withheld adjudications within the definition of conviction ... for purposes of” enhancing the sentence of habitual felony offenders. 184 So.3d at 1113-14. *Clarke* therefore does not sufficiently cast doubt on our “interpretation of state law” in *Santiago. Hattaway v. McMillian*, 903 F.2d 1440, 1445 n.5 (11th Cir. 1990). Thus we conclude that Anderson’s argument is foreclosed by *Santiago*.

C. Under Our Binding Precedent, Anderson’s ACCA-Enhanced Sentence is Constitutional.

[4] Finally, Anderson argues that his sentence is unconstitutional because his three prior convictions increased his mandatory minimum sentence but were neither admitted, nor charged in the indictment and proved beyond a reasonable doubt. This argument, too, is foreclosed by binding precedent. As a general rule, “[f]acts that increase the mandatory minimum sentence ... must be submitted to the jury and found beyond a reasonable doubt.” *Alleyn v. United States*, 570 U.S. 99, 108, 133 S.Ct. 2151, 186 L.Ed.2d 314 (2013). But the Supreme Court has explained that the fact of a prior conviction is an exception to that rule. See *Almendarez-Torres v. United States*, 523 U.S. 224, 226-27, 118 S.Ct. 1219, 140 L.Ed.2d 350 (1998).

[5] Anderson also argues that the use of his prior convictions to enhance his sentence under ACCA required the sentencing court to find facts *about* his convictions, rather than simply rely on the fact *of* his convictions. This argument also is foreclosed. See *United States v. Greer*, 440 F.3d 1267, 1275 (11th Cir. 2006) (rejecting the argument that although a sentencing court properly could “determine the existence of a prior conviction,” it was forbidden from “determining the factual nature of a prior conviction” (internal quotation marks omitted)).

IV. CONCLUSION

Because each of his arguments is foreclosed by binding precedent, Anderson’s sentence must be affirmed.

AFFIRMED.

All Citations

723 Fed.Appx. 833

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**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

March 29, 2018

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 16-11424-AA
Case Style: USA v. Tyrone Anderson
District Court Docket No: 1:15-cr-20694-JEM-1

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Tonya L. Searcy, AA/lt
Phone #: (404) 335-6180

REHG-1 Ltr Order Petition Rehearing

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-11424-AA

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

TYRONE ANDERSON,

Defendant - Appellant.

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

BEFORE: JORDAN and JILL PRYOR, Circuit Judges, and DUFFEY,* District Judge.

PER CURIAM:

The petition(s) for panel rehearing filed by Appellant Tyrone Anderson is DENIED.

ENTERED FOR THE COURT:


UNITED STATES CIRCUIT JUDGE

ORD-41

* Honorable William S. Duffey, Jr., United States District Judge for the Northern District of Georgia,
sitting by designation.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-11424-AA

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

TYRONE ANDERSON,

Defendant - Appellant.

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

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

BEFORE: JORDAN and JILL PRYOR, Circuit Judges, and DUFFEY,* District Judge.

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

* Honorable William S. Duffey, Jr., United States District Judge for the Northern District of Georgia, sitting by designation.

UNITED STATES DISTRICT COURT
Southern District of Florida
Miami Division

UNITED STATES OF AMERICA
 v.
TYRONE ANDERSON

JUDGMENT IN A CRIMINAL CASE

Case Number: **15-20694-CR-MARTINEZ**
 USM Number: **06319-104**

Counsel For Defendant: **Katherine Carmon**
 Counsel For The United States: **Robert Emery**
 Court Reporter: **Tamra Piderit**

The defendant pleaded guilty to count(s) 1 of the Indictment.

The defendant is adjudicated guilty of these offenses:

<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
18 U.S.C. §§ 922(g)(1) and 924(e)(1).	possession of a firearm and ammunition by a convicted felon	08/21/2015	1

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Date of Imposition of Sentence: **3/24/2016**



Jose E. Martinez
United States District Judge

Date: 3/24/16

DEFENDANT: **TYRONE ANDERSON**
CASE NUMBER: **15-20694-CR-MARTINEZ**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **180 months** as to Count One.

The court makes the following recommendations to the Bureau of Prisons: The defendant shall be assigned to a facility as close to the Southern District of Florida as possible commensurate with his background and the offense of which he stands convicted.

The Court also recommends that the defendant be screened for substance problems and be referred to participate in an appropriate drug education/treatment program as deemed appropriate by the Bureau of Prisons. This may include placement in the Residential Drug Abuse Treatment Program (i.e. 500-hour drug treatment program) at a designated Bureau of Prisons institution.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

DEPUTY UNITED STATES MARSHAL

DEFENDANT: TYRONE ANDERSON
CASE NUMBER: 15-20694-CR-MARTINEZ

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **5 years** as to Count One.

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

The defendant shall not commit another federal, state or local crime.

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

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

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

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

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11. The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: **TYRONE ANDERSON**
CASE NUMBER: **15-20694-CR-MARTINEZ**

SPECIAL CONDITIONS OF SUPERVISION

No New Debt Restriction - The defendant shall not apply for, solicit or incur any further debt, included but not limited to loans, lines of credit or credit card charges, either as a principal or cosigner, as an individual or through any corporate entity, without first obtaining permission from the United States Probation Officer.

Permissible Search - The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

Self-Employment Restriction - The defendant shall obtain prior written approval from the Court before entering into any self-employment.

Substance Abuse Treatment - The defendant shall participate in an approved treatment program for drug and/or alcohol abuse and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

DEFENDANT: **TYRONE ANDERSON**
CASE NUMBER: **15-20694-CR-MARTINEZ**

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	\$0.00	\$0.00

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>NAME OF PAYEE</u>	<u>TOTAL LOSS*</u>	<u>RESTITUTION ORDERED</u>	<u>PRIORITY OR PERCENTAGE</u>
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* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

**Assessment due immediately unless otherwise ordered by the Court.

DEFENDANT: **TYRONE ANDERSON**
CASE NUMBER: **15-20694-CR-MARTINEZ**

SCHEDULE OF PAYMENTS

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

A. Lump sum payment of \$100.00 due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

This assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

**U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 08N09
MIAMI, FLORIDA 33128-7716**

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

<u>CASE NUMBER</u> <u>DEFENDANT AND CO-DEFENDANT NAMES</u> <u>(INCLUDING DEFENDANT NUMBER)</u>	<u>TOTAL AMOUNT</u>	<u>JOINT AND SEVERAL</u> <u>AMOUNT</u>
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The preliminary order of forfeiture entered by this Court on December 23, 2015, [ECF No. 24] is incorporated into this Judgment and Commitment.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.