

App. No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

BRIAN HOSKINS,
Petitioner
v.
UNITED STATES OF AMERICA,
Respondent

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

APPENDIX A—Court of Appeals Opinion (Sept. 26, 2018 (2d. Cir.))

17-70-cr

United States v. Hoskins

**In the
United States Court of Appeals
For the Second Circuit**

August Term, 2017

Argued: January 9, 2018
Decided: September 26, 2018

Docket No. 17-70-cr

UNITED STATES OF AMERICA,

Appellant,

v.

BRIAN HOSKINS,

Defendant-Appellee.

Appeal from the United States District Court
for the District of Vermont
No. 11-cr-69-1, Murtha, *Judge.*

Before: JACOBS, RAGGI, and HALL, *Circuit Judges.*

The Government appeals the district court's decision to grant Defendant-Appellee Brian Hoskins's ("Hoskins") 28 U.S.C. § 2255 motion and resentence him to a lesser term of imprisonment than was initially imposed. Hoskins pled guilty

to one count of knowingly and intentionally distributing cocaine base, a schedule II controlled substance, in violation of 21 U.S.C. § 841(a)(1), and, in accordance with the parties' Rule 11(c)(1)(C) plea agreement, was sentenced to 112 months' imprisonment. Hoskins had two prior convictions, and the 112-month sentence was below the Guidelines range for a career offender but within the Guidelines range for a non-career offender. After Hoskins was sentenced in this case, his conviction on one of those predicate offenses was vacated, which became the basis for his § 2255 motion. We hold that Hoskins has not met his heavy burden of demonstrating a miscarriage of justice, and remand with instructions for the district court to re-impose the original sentence.

VACATED AND REMANDED.

WILLIAM B. DARROW, Assistant United States Attorney (Gregory L. Waples, *on the brief*), for Christina E. Nolan, United States Attorney for the District of Vermont, Burlington, VT.

BARCLAY T. JOHNSON, Assistant Federal Public Defender, Office of the Federal Public Defender District of Vermont, Burlington, VT, for Defendant-Appellee.

HALL, *Circuit Judge*:

We are asked to decide whether a defendant asserts a cognizable claim when he seeks to challenge through a 28 U.S.C. § 2255 motion a sentence imposed pursuant to the district court's adoption of the parties' Federal Rule of Criminal Procedure 11(c)(1)(C) plea agreement where a judgment on a predicate offense that factored into the Guidelines analysis for his sentencing has since been vacated.

Because this defendant has failed to show on the record before us that the original sentence, if allowed to stand, effects a miscarriage of justice, we hold it was error to vacate that sentence in the § 2255 proceedings. The judgment of the district court imposing the reduced sentence in the § 2255 proceedings is thus vacated, and we remand for the district court to reinstate the original sentence.

I.

On May 22, 2012, Defendant-Appellant Brian Hoskins (“Hoskins”) pled guilty in accordance with the parties’ binding Rule 11(c)(1)(C) plea agreement to one count of knowingly and intentionally distributing cocaine base, a schedule II controlled substance, in violation of 21 U.S.C. § 841(a)(1). The agreement provided for Hoskins to be sentenced to 112 months’ imprisonment, five years of supervised release, and assessed a \$100.00 penalty.

Hoskins’s Presentence Report (“PSR”), the Government’s Sentencing Memorandum, and Defendant’s Motion for Variance and Sentencing Memorandum all identified the defendant as a “career offender” under the Sentencing Guidelines due to two predicate felony offenses: a 2002 Vermont drug conviction, and a 2003 federal drug conviction.¹ Such a classification raised his

¹ United States Sentencing Guideline § 4B1.1(a) defines a “career offender” as a defendant:
(1) aged 18 or older;

Guidelines offense level from 20 to 32. *See* U.S. Sentencing Guidelines Manual § 4B1.1 (2011) (“Guidelines”). As a result, Hoskins’s calculated Guidelines range, with a downward adjustment for acceptance of responsibility, recommended a prison sentence of 151 to 188 months. The calculated Guidelines range, if Hoskins were not a career offender, would have been 100 to 125 months.

The parties’ Rule 11(c)(1)(C) plea agreement and their sentencing memoranda urged the district court to adopt the agreement and impose a sentence of 112 months. At the sentencing hearing in May 2012 the district court found that Hoskins qualified as a career offender subject to “[e]nhanced penalties” under the relevant Guidelines provisions. App’x at 76. Nevertheless, after considering the sentencing factors specified in 18 U.S.C. § 3553(a), the district court accepted the parties’ Rule 11(c)(1)(C) plea agreement and sentenced Hoskins to a below-Guidelines prison term of 112 months, explaining that “the career offender category [had] substantially increased his Guidelines range,” that the agreed-to term of 112 months was substantial enough to encourage deterrence, and that the sentence was thus appropriate. App’x at 77–78. Hoskins did not appeal.

(2) facing sentencing for a felony crime of violence or a controlled substance offense; who
(3) has “at least two prior felony convictions of either a crime of violence or a controlled substance offense.”

U.S. Sentencing Guidelines Manual § 4B1.1 (2011).

In May 2013, Hoskins collaterally challenged his 2002 Vermont drug conviction, which was also obtained by guilty plea. In March 2015, the Vermont Superior Court vacated the state conviction, identifying procedural errors in the plea colloquy. *See Hoskins v. Vermont*, No. 574-5-13-Cncv (Vt. Sup. Ct. Mar. 31, 2015).² Specifically, it faulted the sentencing court for relying on defense counsel's representation that there was a factual basis for the plea rather than eliciting the relevant facts directly from Hoskins as required by Vermont Rule of Criminal Procedure 11(f). *See id.* at 2.³

Hoskins filed this § 2255 motion in December 2015, challenging the federal sentence imposed pursuant to the Rule 11(c)(1)(C) plea agreement. Hoskins

² The court determined that it had jurisdiction notwithstanding Hoskins's completion of his state prison term because the conviction informed his federal sentence. *See Hoskins*, No. 574-5-13-Cncv at 2.

³ In short, this is not a case in which a prior conviction was vacated because a defendant was actually innocent of the crime of conviction, the conduct at issue was no longer criminal, or there was reason to question the reliability of inculpatory evidence. *See, e.g., Davis v. United States*, 417 U.S. 333, 346 (1974) (collaterally reviewing conviction where conduct for which defendant was incarcerated was determined to no longer be illegal, determining "no room for doubt that" incarcerating person for "act that the law does not make criminal" "results in a complete miscarriage of justice"); *Cuevas v. United States*, 778 F.3d 267, 272 (1st Cir. 2015) (holding, in self-characterized "narrow holding," that defendant could challenge federal conviction under § 2255 in "exceptional" circumstances where state conviction raising defendant's criminal history score triggering mandatory minimum supervised release term was vacated based on history of evidence tampering by chemist who had participated in drug analysis in defendant's case). Thus, we have no reason to consider here how such circumstances might inform a miscarriage-of-justice analysis.

argued that his “sentence was driven by the fact that the Court determined that [he] qualified as a career offender based on his prior federal conviction as well as a Vermont state conviction,” a determination rendered invalid by the vacatur of the Vermont conviction. App’x at 83. In other words, Hoskins maintained that because his 2002 Vermont drug conviction was vacated, he was entitled to a reduced sentence, and the continued imposition of the formerly agreed-upon 112-month sentence was a miscarriage of justice.

The Government argued in opposition that Hoskins was not entitled to collateral relief because: (i) he was not serving a “‘career offender sentence’ – he [was] serving a Rule 11(c)(1)(C) sentence” that he bargained for, in part, to avoid the government’s pursuit of additional charges and an enhanced mandatory minimum sentence of ten years; (ii) the 112-month Rule 11(c)(1)(C) sentence did not fall within Hoskins’s applicable Guidelines range as a career offender but, rather, fell within the middle of the Guidelines range that would have applied without career offender enhancements; and (iii) Hoskins’s motion was untimely because more than a year had elapsed between the time Hoskins was sentenced and when he challenged the 2002 state conviction. App’x at 106.

The motion was referred to Magistrate Judge Conroy, who issued a Report and Recommendation (“the R&R”). The magistrate judge first recommended that Hoskins’s § 2255 motion be found timely. Next, the magistrate judge recommended that the district court hold that Hoskins’s § 2255 motion raises a cognizable collateral attack on his original sentence, even though Hoskins had entered into a Rule 11(c)(1)(C) plea agreement. The magistrate judge determined that “Hoskins’s[] now-vacated state conviction clearly led to a significant enhancement of his sentence.” App’x at 286. This conclusion was based on e-mails between counsel during plea negotiations discussing the applicable career offender Guidelines range, the PSR’s reliance on the Guidelines’ career offender provisions in calculating Hoskins’s recommended sentencing range, and the district court’s own career offender Guidelines calculations before accepting the parties’ Rule 11(c)(1)(C) plea agreement at the 2012 sentencing.

The district court adopted the R&R, concluding that Hoskins’s § 2255 motion was timely under § 2254(f)(4), and that his claim was not a general sentencing challenge that must be made on direct appeal. *United States v. Hoskins*, No. 1:11-cr-69-jgm, 2016 WL 4154344 at *1, *3. (D. Vt. Aug. 5, 2016) (Murtha, J.). As to the latter point, the district court observed that Hoskins was not complaining of

a Guidelines miscalculation at the time of sentencing, which is not cognizable under § 2255. *Id.* at *3. Rather, Hoskins was claiming that his federal sentence was rendered invalid post-conviction by Vermont's vacatur of a state conviction that had been a necessary predicate for his identification as a career offender.

The district court also rejected the Government's argument that Hoskins's sentence was not a Guidelines sentence, but rather a sentence reflective of the parties' Rule 11(c)(1)(C) plea agreement. *Id.* It explained that, in deciding whether to adopt or reject the parties' Rule 11(c)(1)(C) agreement, it had to calculate Hoskins's Guidelines range, and weigh that range among the § 3553(a) factors. Because Hoskins's career offender status informed the Guidelines calculation, that status formed part of the basis for the court's acceptance of the parties' Rule 11(c)(1)(C) plea agreement. *Id.*

The district court held a new sentencing proceeding, calculated Hoskins's applicable Guidelines range without a career offender enhancement as 100 to 125 months, and sentenced him to a below-Guidelines sentence of 86 months' imprisonment, three-years' supervised release, and a \$100 special assessment.⁴

⁴ In imposing this sentence, the district court concluded that Hoskins could withdraw from the Rule 11(c)(1)(C) agreement without withdrawing his guilty plea, relying on *United States v. Hyde*, 520 U.S. 670, 674 (1997), and *United States v. Lopez*, 385 F.3d 245, 251 (2d Cir. 2004). The government conceded this point before the district court, and, thus, we do not address it here.

Hoskins has completed his 86-month prison sentence and is currently on supervised release.

II.

This Court's appellate jurisdiction is not in issue. *United States v. Gordon*, 156 F.3d 376, 378 (2d Cir. 1998). We review the district court's factual findings for clear error and its legal determinations *de novo*. *Zhang v. United States*, 506 F.3d 162, 166 (2d Cir. 2007).

III.

Pursuant to § 2255, a federal prisoner may move to vacate, set aside, or correct his sentence on four grounds: (1) "that the sentence was imposed in violation of the Constitution or laws of the United States, or [(2)] that the court was without jurisdiction to impose such sentence, or [(3)] that the sentence was in excess of the maximum authorized by law, or [(4)] is otherwise subject to collateral attack." 28 U.S.C. § 2255(a). Hoskins here seeks relief pursuant to the first ground, arguing that his initial sentence violates United States law because, upon vacatur of his 2002 Vermont drug conviction, he cannot be deemed a career offender under Guidelines § 4B1.1(a). Review of such an argument is controlled by Supreme Court precedent holding that "an error of law does not provide a basis for collateral

attack unless the claimed error constituted ‘a fundamental defect which inherently results in a complete miscarriage of justice.’” *United States v. Addonizio*, 442 U.S. 178, 185 (1979) (citation omitted); *see also Davis v. United States*, 417 U.S. 333, 346 (1974). Further, our own precedent instructs that § 2255 review is “narrowly limited in order to preserve the finality of criminal sentences and to effect the efficient allocation of judicial resources.” *Graziano v. United States*, 83 F.3d 587, 590 (2d Cir. 1996) (internal quotation marks omitted).

The Government argues that no “miscarriage of justice” occurred because Hoskins’s 112-month sentence was agreed to by the parties pursuant to Rule 11(c)(1)(C) and resulted from negotiations wherein the Government agreed, *inter alia*, not to pursue a superseding indictment adding charges and exposing Hoskins to a mandatory minimum prison sentence of ten years upon conviction. *See* 21 U.S.C. §§ 841(b)(1)(a), 851. Further, the original 112-month sentence cannot be deemed a miscarriage of justice even after the Vermont conviction supporting his career offender status was vacated, because the 112-month sentence fell below the 151 to 188-month career offender Guidelines range and fell within the 100 to 125-month range applicable to Hoskins as a non-career offender.⁵

⁵ Hoskins responds that the Government failed to argue to the magistrate judge that Hoskins’s § 2255 was not cognizable and that such argument has been waived. This argument is based on a

Hoskins asserts that his § 2255 challenge is cognizable because the district court accepted the parties' Rule 11(c)(1)(C) plea agreement only after performing a Guidelines calculation that applied the career offender enhancement. Because that calculation is rendered invalid by the post-sentencing vacatur of a necessary state predicate conviction, that failure to grant him resentencing would be a miscarriage of justice.

IV.

The district court erred in concluding that, after vacatur of Hoskins's 2002 Vermont conviction, the 112-month sentence entered pursuant to the parties' Rule 11(c)(1)(C) plea agreement constituted a miscarriage of justice. *See Addonizio*, 442 U.S. at 186. Certainly, at the time the district court initially imposed that sentence, applying the career offender enhancement to his Guidelines calculation was not error—constitutional, legal, or jurisdictional. *See Graziano*, 83 F.3d at 589–90. Even if Hoskins could no longer be deemed a career offender after his Vermont conviction was vacated, that does not mean the continued imposition of his 112-

piecemeal dissection of the record that we find unpersuasive. In its initial opposition to Hoskins's § 2255 motion, the Government indeed squarely addressed Hoskins's argument "that a defendant has a cognizable § 2255 claim when 'his sentence is enhanced based on a prior conviction that is subsequently vacated.'" App'x at 107.

month sentence was a miscarriage of justice. *See United States v. Bokun*, 73 F.3d 8, 12 (2d Cir. 1995) (holding that habeas petitioner must show “an error of law or fact that constitutes ‘a fundamental defect which inherently results in a complete miscarriage of justice’” (quoting *Hill v. United States*, 368 U.S. 424, 428 (1962))); *see also United States v. Lucas*, 963 F.2d 8, 12–14 (2d Cir. 1992) (applying miscarriage of justice standard to defendant’s § 2255 challenge to his guilty plea). Hoskins fails to hurdle this high bar.⁶

In *Addonizio*, the Supreme Court considered whether a district court’s assumption that a defendant would likely benefit from a certain Parole Commission policy and, thus, serve a lesser sentence, when proved wrong by a subsequent change in policy, provided a cognizable basis for collateral attack. 442 U.S. at 185–86. In concluding that it did not, the Supreme Court reiterated that § 2255 “does not encompass all claimed errors in conviction and sentencing.” *Id.* at 185. Rather, those instances where an error in conviction or sentencing rise to the level to be a cognizable basis for a collateral attack are reserved for when the “error of fact or law [is] of the ‘fundamental’ character that renders the entire proceeding irregular and invalid.” *Id.* at 186. A “later development” that “did not

⁶ The burden is on Hoskins to demonstrate miscarriage of justice, and the district court erred in placing it on the government.

affect the lawfulness of the judgment itself—then or now,” is not enough to vacate the sentence imposed. *Id.* at 186–87.

Applying this reasoning here, we conclude that Hoskins’s 112-month sentence, which he bargained for as part of his 11(c)(1)(C) guilty plea, is not rendered a miscarriage of justice by the vacatur of an earlier conviction to which he had also pled guilty. The unique facts of this case lead us to that conclusion.

First, although Hoskins’s Guidelines range was enhanced by his identification as a career offender, his Rule 11(c)(1)(C) plea agreement provided for a sentence well below that Guidelines range. The agreement also allowed Hoskins to avoid a superseding indictment and enhanced mandatory minimum sentence of ten years. Together, these circumstances show that, even with a career offender enhancement applied to calculate Hoskins’s Guidelines range at 155 to 181 months, in securing agreement to a sentence of 112 months, Hoskins left the bargaining table with a deal that secured him real benefit, hardly indicating a miscarriage of justice.

Second, even though the district court was obliged to calculate and consider Hoskins’s Guidelines range before deciding whether to accept the Rule 11(c)(1)(C) agreement, *see generally Peugh v. United States*, 133 S. Ct. 2072 (2013), the range was

advisory, not mandatory.⁷ This means that the district judge could not even “presume” that a sentence within the applicable Guidelines range was proper, *see Rita v. United States*, 551 U.S. 338, 351 (2007), rather he had to make an “individualized assessment” of the sentence that best served the purposes identified in 18 U.S.C. § 3553(a), including the obligation to impose sentences “sufficient, but not greater than necessary” to satisfy its stated sentencing purposes. *Gall v. United States*, 552 U.S. 38, 50 & n.6 (2007); *accord United States v. Jones*, 531 F.3d 163, 170 (2d Cir. 2008). In these circumstances, the vacatur of a state conviction that supported a career offender Guidelines calculation that was *not*

⁷ Several circuits have concluded that sentences imposed pursuant to advisory Guidelines based on an erroneous or later invalidated career offender determination did not result in a complete miscarriage of justice sufficient to warrant collateral relief. *See United States v. Foote*, 784 F.3d 931, 932, 935, 940 (4th Cir. 2015) (denying § 2255 relief where change in law reduced punishment for state crime supporting career offender designation to less than one year, noting “hesitan[cy] to undermine the judicial system’s interest in finality [by] classifying a[n advisory] Sentencing Guidelines error as a fundamental defect”); *Spencer v. United States*, 773 F.3d 1132, 1138 (11th Cir. 2014) (*en banc*) (holding that erroneous designation of defendant as career offender “is not a fundamental defect that inherently results in a complete miscarriage of justice”); *Hawkins v. United States*, 706 F.3d 820 (7th Cir. 2013) (holding Guidelines calculation error did not justify collateral relief for post-*Booker* sentences), *opinion supplemented on denial of reh’g*, 724 F.3d 915 (7th Cir. 2013); *cf. United States v. Doe*, 810 F.3d 132, 159 (3d Cir. 2015) (holding erroneous designation as career offender cognizable on collateral review “at least in cases arising under the mandatory Guidelines”). We need not make any categorical conclusion. Rather, we identify the advisory nature of the challenged career offender Guidelines as one factor, among others, that preclude Hoskins from showing that his below Guidelines 112-month sentence is a complete miscarriage of justice.

applied is insufficient, by itself, to show that the below-Guidelines 112-month sentence manifests a complete miscarriage of justice.⁸

Third, Hoskins's 112-month sentence falls in the middle of the Guidelines range applicable to him without a career offender enhancement. This makes it particularly difficult for him to show that such a sentence manifests a complete miscarriage of justice. While district courts cannot presume the reasonableness of a Guidelines sentence, on direct appeal we recognize that, in the absence of procedural error, within-Guidelines sentences will rarely be unreasonable. *Rita*, 551 U.S. at 341 (holding that courts of appeal may presume that within-Guidelines sentences are reasonable). The conclusion applies with equal, if not more, force on collateral review where there is the added interest in finality.

In urging otherwise, Hoskins relies on the Supreme Court's decisions in *Johnson v. United States*, 544 U.S. 295 (2005), *Daniels v. United States*, 532 U.S. 374 (2001), and *Custis v. United States*, 511 U.S. 485 (1994). When the Supreme Court stated in *Daniels* and *Custis* that defendants who successfully challenge state court convictions may apply to reopen federal sentences enhanced by those convictions,

⁸ The "complete miscarriage of justice" standard applicable on § 2255 review is higher than the "significant risk of a higher sentence" standard applicable on direct appeal. *Addonizio*, 442 U.S. at 184 ("It has, of course, long been settled law that an error that may justify reversal on direct appeal will not necessarily support a collateral attack on a final judgment.").

at issue was the application of statutory mandatory minimum sentences under the Armed Career Criminal Act. *See Daniels v. United States*, 532 U.S. at 382; *Custis v. United States*, 511 U.S. at 497. While *Johnson* cited *Daniels* and *Custis* to make the same observation in the Guidelines context, the holding in *Johnson* was narrow, addressing timeliness, not cognizability. *See Johnson v. United States*, 544 U.S. at 304; *see also United States v. Foote*, 784 F.3d 931, 936 n.5 (4th Cir. 2015). The *Johnson* petitioner, moreover, was sentenced as a career offender in 1994, under then-mandatory Guidelines. *See Johnson v. United States*, 544 U.S. at 298.

We further note that none of these three cases involved Rule 11(c)(1)(C) sentences that fell below an originally applicable advisory career offender Guidelines range and within the applicable non-career offender Guidelines. Those are the circumstances present here, which preclude Hoskins from showing that his 112-month sentence was fundamentally unfair and a complete miscarriage of justice. Simply put, Hoskins's original sentence remains lawful and is not a miscarriage of justice.

The district court thought it permissible to re-open Hoskins's 112-month sentence on collateral review because it had considered Hoskins's career offender status at the time of sentencing. That reasoning, however, ignores § 2255

jurisprudence, requiring more than a mistake of fact or law to justify collateral relief from a final sentencing judgment. *See Davis*, 417 U.S. at 346. That is especially so here, where Hoskins's challenged 112-month sentence falls in the middle of a corrected non-career offender Guidelines range. Nor is Hoskins's § 2255 motion cognizable because the district court may not have accepted the parties' Rule 11(c)(1)(C) plea agreement had it known that the 2002 Vermont drug conviction would not stand. Although the underlying prosecution and sentencing were before Judge Murtha, frustration of a sentencing judge's subjective intent does not, by itself, render a sentence a miscarriage of justice sufficient to support a cognizable collateral challenge to that sentence. *See Addonizio*, 442 U.S. at 187.

V.

The Supreme Court's recent decision in *Hughes v. United States*, 138 S. Ct. 1765 (2018), warrants no different conclusion. At issue in *Hughes* was the proper interpretation of 18 U.S.C. § 3582(c)(2). That statute authorizes a district court to modify a sentence "in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission." 18 U.S.C. § 3582(c)(2). The Supreme Court held that "a sentence imposed pursuant to a Type-C agreement is 'based on' the defendant's Guidelines range so long as that range was part of the framework the district court

relied on in imposing the sentence or accepting the agreement.” *Hughes*, 138 S. Ct. at 1775.

Although Hoskins like *Hughes* pled guilty pursuant to a Rule 11(c)(1)(C) agreement, the similarities end there. Hoskins does not seek relief from his original sentence under § 3582(c)(2) but, rather, under § 2255. Whereas § 3582(c)(2) is properly construed to further “uniformity” of post-*Booker* sentencing, *see Hughes*, 138 S. Ct. at 1775 (internal quotation marks omitted), relief under § 2255 is “narrowly limited in order to preserve the finality of criminal sentences,” *Graziano*, 83 F.3d at 590 (internal quotation marks omitted). Thus, the determinative question on a § 2255 sentence challenge is not whether the original sentence was based on a Guidelines range that subsequent events rendered inapplicable, but whether maintenance of the sentence in light of those events manifests a complete miscarriage of justice. For the reasons stated, Hoskins fails to satisfy this more demanding standard.

VI.

We have considered all of Hoskins’s remaining arguments and conclude that they are without merit. The district court’s 2016 judgment vacating Hoskins’s original 112-month sentence and resentencing him to an 86-month prison term is

vacated, and the case is remanded for the district court to reinstate the original 112-month sentence of imprisonment.

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

A circular seal with the text "UNITED STATES COURT OF APPEALS SECOND CIRCUIT" around the perimeter and two stars on either side. The seal is partially overlaid by the signature.
Catherine O'Hagan Wolfe

App. No. _____

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PETITION FOR WRIT OF CERTIORARI
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FOR THE SECOND CIRCUIT

APPENDIX B—Order denying rehearing (Dec. 10, 2018 (2d. Cir.))

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 10th day of December, two thousand eighteen.

United States of America,

Appellant,

v.

Brian Hoskins,

Defendant - Appellee.

ORDER


Docket No: 17-70

Appellee Brian Hoskins, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk




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

APPENDIX C—District Court Decision (Aug. 5, 2016)

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA	:	
	:	
v.	:	Case No. 1:11-cr-69-jgm-1
	:	
BRIAN HOSKINS,	:	
	:	
Defendant.	:	
_____	:	

ORDER
(Doc. 83)

I. Introduction

Defendant Brian Hoskins filed a motion to correct his sentence under 28 U.S.C. § 2255. (Doc. 62.) The government opposed the motion. (Doc. 64.) The motion was referred to Magistrate Judge Conroy, who, following an evidentiary hearing, issued a Report and Recommendation on April 28, 2016. (Doc. 83.) The government timely filed an objection to the Report and Recommendation. (Doc. 84.) In response, Hoskins filed motions to strike the objection, to disqualify government counsel, and for an extension of time to file a response regarding the Report and Recommendation. (Docs. 86, 87.) The government replied to the motions to strike and to disqualify, and moved for leave to file an oversize memorandum. (Doc. 88.) The Court granted in part and denied in part the motion to strike and to disqualify counsel, granted in part and denied in part the government’s motion for leave to file an oversize memorandum, and granted Hoskins’ motion for an extension. (Doc. 89.) The government’s objection was refiled (Doc. 90) and Hoskins responded (Doc. 93). For the reasons discussed below, after de novo review, the Report and Recommendation is AFFIRMED, APPROVED and ADOPTED. See 28 U.S.C. § 636(b)(1).

Defendant Hoskins’ motion to correct sentence under 28 U.S.C. § 2255 (Doc. 62) is GRANTED in part.

II. Background

On January 11, 2012, Hoskins pleaded guilty to one count of knowingly and intentionally distributing cocaine base, a Schedule II controlled substance, in violation of 21 U.S.C. § 841(a)(1). (Dkt. Entry No. 42 (minute entry for change of plea hearing); see also Doc. 41 (Plea Agreement). On May 22, 2012, Hoskins was sentenced to a term of imprisonment of 112 months, followed by a five-year term of supervised release, under a binding plea agreement under Federal Rule of Civil Procedure 11(c)(1)(C). (Doc. 56 (Judgment); Dkt. Entry No. 55 (minute entry for sentencing hearing).) Hoskins did not appeal. Instead, on May 12, 2013, Hoskins challenged his 2002 Vermont state drug conviction. (Doc. 62-2.) On March 31, 2015, his petition was granted and his conviction vacated. (Doc. 62-1.) The State later dropped the charges. See Doc. 62 at 3.

Here, in a § 2255 motion filed on December 14, 2015, Hoskins challenges his sentence because, based on a 2003 federal conviction and the 2002 Vermont state conviction, he qualified as a career offender and, since he was sentenced, his Vermont conviction was vacated. (Doc. 62 at 1.) Accordingly, he asserts he no longer qualifies as a career offender and allowing his 112-month sentence to stand violates the laws of the United States, violates due process of law and results in a fundamental miscarriage of justice. Id. He asserts without the career offender status, his guideline range was 37-46 months' imprisonment, more than 100 months less than the enhanced guideline range of 151-188 months. Id. at 1-2.

On April 28, 2016, following a contentious April 7 hearing, the Honorable John M. Conroy, United States Magistrate Judge, issued a Report and Recommendation ("R&R") responding to Hoskins' § 2255 motion. (Doc. 83.) The R&R recommends this Court find the motion timely under § 2255(f)(4), id. at 8-12, and cognizable under § 2255 even though he was sentenced under a Rule 11(c)(1)(C) plea agreement, id. at 12-18. Judge Conroy concluded denial of collateral relief

would result in a miscarriage of justice and, accordingly, this Court should grant Hoskins' 28 U.S.C. § 2255 motion to correct his sentence. Id. at 18-19.

The government filed a timely objection (“Objection”) to the R&R’s recommended grant of the § 2255 motion, raising the following issues: (1) the magistrate judge erred as a matter of law in recommending the claim be found cognizable under § 2255; (2) the magistrate judge erred as a matter of fact in recommending the claim be found cognizable under § 2255; and (3) the magistrate judge erred in recommending the § 2255 motion be found timely. (Doc. 90.)

When a party objects to a magistrate judge’s Report and Recommendation, the Court reviews the record de novo. See 28 U.S.C. § 636(b)(1). After review, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” Id. Having reviewed the record de novo, and considered the government’s objections, the Court affirms, approves, and adopts the R&R’s recommendations that this Court find the § 2255 motion timely and cognizable.

III. Discussion

Hoskins bears the burden of demonstrating he is entitled to relief. 28 U.S.C. § 2255 provides a federal prisoner “may move the court which imposed the sentence to vacate, set aside or correct the sentence” on one of the following four grounds: (1) the sentence was imposed in violation of the Constitution or laws of the United States; (2) the court was without jurisdiction to impose such sentence; (3) the sentence was in excess of the maximum authorized by law; or (4) is otherwise subject to collateral attack. 28 U.S.C. § 2255(a). As applicable here, a one-year statute of limitation applies, running from “the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.” 28 U.S.C. § 2255(f)(4).

A. Timeliness

The government objects to the magistrate judge's conclusion Hoskins' § 2255 motion was timely. See Doc. 90 at 23-24. The Supreme Court has addressed the issue of "when the 1-year statute of limitations in 28 U.S.C. § 2255 . . . begins to run in a case of a prisoner's collateral attack on his federal sentence on the ground that a state conviction used to enhance that sentence has since been vacated." Johnson v. United States, 544 U.S. 295, 298 (2005). The Court held the vacatur of the state conviction was a "fact" triggering a new 1-year limitations period under 28 U.S.C. § 2255(f)(4), but a petitioner may only take advantage of the provision if he "sought [the vacatur] with due diligence in state court, after entry of judgment in the federal case with the enhanced sentence." Id. at 302.

Here, the vacatur of the state court conviction occurred in March 2015 and Hoskins filed his § 2255 motion in December 2015, within one year of the vacatur. The government asserts Hoskins motion is nonetheless untimely because he did not act with due diligence in waiting "nearly two years—from 2011 to 2013—before filing his challenge in State court." (Doc. 90 at 23.) The Court rejects this argument and objection to the R&R because this is an inaccurate application of Johnson which requires due diligence from the date of judgment in the federal case, not from the date the federal case was initiated. Here, Hoskins was sentenced in May 2012. He was moved through four correctional facilities before arriving at his designated facility, where he began working on his state court motion filed on May 12, 2013. (Doc. 79-1.) The Court accepts and adopts the finding of the R&R that while a delay of 11½ months "approaches the outer limit" of due diligence, it was a reasonable delay under the circumstances and, accordingly, the motion is timely under 28 U.S.C. § 2255(f)(4) and Johnson. See Johnson, 544 U.S. at 311 (concluding defendant not reasonably

diligent where he waited more than three years after the entry of judgment in the federal case to file a state petition).

B. Cognizability

The government's initial argument asserting the magistrate judge erred in finding Hoskins' § 2255 motion cognizable is that miscalculations or misapplications of advisory Sentencing Guidelines ranges are not cognizable on 28 U.S.C. § 2255(a) review if not raised on direct appeal. See Doc. 90 at 7 (quoting Graziano v. United States, 83 F.3d 587, 590 (2d Cir. 1996)). While Hoskins did not file a direct appeal, the Court rejects this argument and objection to the R&R because this is an inaccurate characterization of Hoskins' claim. There is no dispute here that the Court's calculations were legally correct at the time of sentencing. The claim of error is that Hoskins is entitled to resentencing because a conviction upon which those calculations were based is no longer valid. See Spencer v. United States, 773 F.3d 1132, 1143 (11th Cir 2014) (distinguishing claim of legal error in application of the Guidelines from a claim where an underlying conviction was vacated: "Spencer's prior conviction has not been vacated, and that distinction matters").

The second argument that the motion is not cognizable is because Hoskins did not receive a Guidelines sentence but was sentenced under a binding plea agreement under Rule 11(c)(1)(C).¹ Even under Rule 11(c)(1)(C), the Court is required to perform a Sentencing Guidelines calculation and justify any variance accepted under the parties' agreement. See Fed. R. Civ. P. 11(b)(1)(M) (noting "the court's obligation to calculate the applicable sentencing-guideline range and to consider

¹ The government seeks to import language from 18 U.S.C. § 3582(c) that courts have interpreted as barring a sentence modification under that statute if the case involved a Rule 11(c)(1)(C) agreement. (Doc. 90 at 15-18.) Section 3582(c) provides a court may modify a term of imprisonment if, inter alia, a defendant "has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission." 18 U.S.C. § 3582(c)(2). As that is not the case here, and Hoskins' motion is made under 28 U.S.C. § 2255, the Court declines the invitation.

that range”). Accordingly, the career offender calculation provided the framework for the Court’s acceptance of the agreement:

[T]he guidelines apply. . . . Enhanced penalties under the career offender provisions apply in this case. . . . [T]he defendant has at least two prior felony convictions for controlled substance offenses. . . . The Court . . . will accept the 11C1C agreement [a]nd the reason I’m doing that in effect finding that the sentence is appropriate under 3553(a) and also is obviously outside the guidelines range, for justifiable reasons for the following reasons . . . the career offender category substantially increased his guidelines range.

(Doc. 58 at 13-14 (Sentencing Hr’g Tr.)) While it is true, as the government notes, that the Court found the agreement “appropriate” and “reasonable,” (Doc. 90 at 15; see also Doc. 58 at 12-14), those findings were made in light of the career offender enhancement and the Court accepted the agreement because, as the Court noted, Hoskins was “facing a lot more time.” (Doc. 58 at 12.) There is no dispute Hoskins’ career offender guidelines range was 151-188 months’ imprisonment. As a result of the enhancement, his offense level was increased from 20 to 32 and his criminal history category was increased from IV to VI. (Presentence Investigation Report (“PSR”) at 5-6, 11.) In the absence of the career offender enhancement, and with credit for acceptance of responsibility and entering a timely guilty plea, Hoskins’ guidelines range would have been 37-46 months. See PSR at 5-6, 11; U.S. Sentencing Guidelines Manual Sentencing Table (U.S. Sentencing Comm’n 2011); Doc. 64-3 at 2-3. The magistrate judge determined this argument “elevates form over substance” (Doc. 83 at 13) and the Court agrees; accordingly, the Court rejects this argument and objection to the R&R.

The third argument that the motion is not cognizable is because the magistrate judge created a new legal rule expanding § 2255 review by probing the plea negotiations. (Doc. 90 at 18-21.) The Court rejects this objection to the R&R because, in light of the analysis of the government’s second argument above, “probing” of the parties’ plea negotiations is unnecessary. The Court has not relied

on the parties' subjective intents and motivation. The Court further notes, as Hoskins points out, it was the government that submitted the numerous emails revealing the parties' plea negotiations and invited the magistrate judge to review them. See Doc. 93 at 11. It also sought to put those emails directly before this Court on consideration of the R&R through an affidavit submitted in support of its initial objection. See Docs. 84, 89.

Finally, the government objects to the R&R on the basis that the magistrate judge erred as a matter of fact in concluding the career offender enhancement was the dominant influence over the parties' plea negotiations and the offense conduct involved only 13.6 grams of cocaine base. (Doc. 90 at 21-22 & n.7.) The Court has already rejected the objection regarding the effect of the career offender enhancement on the acceptance of the plea agreement and resulting sentence. Likewise, it is clear from the PSR, to which the government did not object, see Doc. 58, and the sentencing transcript that the amount of cocaine base involved in the offense to which Hoskins pleaded guilty under the Rule 11(c)(1)(C) agreement was between 11.2 grams and 16.8 grams--specifically 13.6 grams. (PSR at 5-6; Doc. 58 at 13.) The government's objection is rejected.

IV. Conclusion

For the above reasons, after de novo review, the Report and Recommendation is **AFFIRMED, APPROVED and ADOPTED**. See 28 U.S.C. § 636(b)(1). Hoskins' motion to correct sentence under 28 U.S.C. § 2255 (Doc. 62) is **GRANTED** in part. His 112-month sentence is vacated.

The magistrate judge also recommends the Court vacate the judgment of conviction and hold a new sentencing proceeding. (Doc. 83 at 2.) The government asserts the guilty plea is at issue here, in addition to the sentence. (Doc. 90 at 13.) Hoskins requests the Court "vacate his plea and sentence, and schedule a new sentencing hearing." (Doc. 62 at 1, 7.) In light of the

apparent agreement that the guilty plea is implicated by the granting of Hoskins' motion, the parties shall file memoranda, on or before August 19, 2016, regarding the posture of the plea, plea agreement and resentencing.

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 5th day of August, 2016.

/s/ J. Garvan Murtha
Hon. J. Garvan Murtha
United States District Judge

App. No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

BRIAN HOSKINS,
Petitioner
v.
UNITED STATES OF AMERICA,
Respondent

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

APPENDIX D—Report and Recommendation (April 28, 2016)

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

United States of America

v.

Crim. No. 1:11-cr-69

Brian Hoskins

REPORT AND RECOMMENDATION

(Doc. 62)

Brian Hoskins, proceeding through counsel, has moved under 28 U.S.C. § 2255 to vacate, set aside, or correct a sentence imposed upon him in this district following his plea of guilty to one count of knowingly and intentionally distributing cocaine base, a Schedule II controlled substance, in violation of 21 U.S.C. § 841(a)(1). (Doc. 62.) On May 22, 2012, United States District Judge J. Garvan Murtha sentenced Hoskins to a term of imprisonment of 112 months, to be followed by a five-year term of supervised release, pursuant to a binding plea agreement under Federal Rule of Criminal Procedure 11(c)(1)(C). (Doc. 56 at 2, 3.) As explained in greater detail below, Hoskins's offense conduct involved the sale or possession of 13.6 grams of cocaine base.

At the time of sentencing, Hoskins had sustained two prior drug felony convictions. (See Doc. 62 at 2.) These convictions played a significant role in the determination of Hoskins's sentencing exposure. One of those convictions, a "felony sale of heroin," has recently been vacated by the Vermont Superior Court. (Doc. 62-1 at 1, 2.) Accordingly, Hoskins asks this Court to vacate his federal plea and sentence, and "hold a new

sentencing hearing.” (Doc. 62 at 1.) The government opposes Hoskins’s Motion, arguing the Motion is barred by the statute of limitations. (Doc. 64 at 11–12.) The government also contends that despite the vacatur of the state conviction, Hoskins is barred from § 2255 relief because his plea agreement required the Court to impose the 112-month sentence under Rule 11(c)(1)(C). (*Id.* at 7–11.) A hearing on the § 2255 Motion was held on April 7, 2016, at which time the parties were afforded the opportunity to present evidence. (Doc. 81.) For the reasons set forth below, I recommend that Hoskins’s § 2255 Motion (Doc. 62) be GRANTED, and that the Court vacate the judgment of conviction and hold a new sentencing proceeding.

Background

I. The Charge and Conviction

On October 13, 2011, the federal grand jury returned a single-count Superseding Indictment charging Hoskins with knowingly and intentionally distributing a quantity of cocaine base, in violation of 21 U.S.C. § 841(a)(1). (Doc. 30.) Attorney William Kraham was appointed to represent Hoskins pursuant to the Criminal Justice Act. (*See* Docket Entry for 06/29/2011, “CJA 20: appointing Attorney William E. Kraham, Esq[.] for Brian Hoskins.”)

Following arraignment, the parties engaged in extensive plea negotiations, which are documented in electronic communications between counsel. (*See* Doc. 64-1.) Specifically, Assistant United States Attorney (AUSA) Bill Darrow advised Attorney Kraham that, if convicted at trial, Hoskins would be subject to the career offender provisions of the Federal Sentencing Guidelines. (*Id.* at 1.) The career offender provisions

provide for a significantly enhanced Sentencing Guideline imprisonment range for offenders who commit a serious drug felony offense and who have previously sustained two prior qualifying drug felony convictions. *See* United States Sentencing Commission, Guidelines Manual § 4B1.1 (U.S. Sentencing Comm’n 2011) (USSG);¹ *see also* USSG § 4B1.1 (U.S. Sentencing Comm’n 2016). Darrow wrote to Kraham: “Hoskins is a USSG ‘career offender’ based upon three prior drug felonies, two of which appear to qualify under USSG [§] 4B1.1.” (Doc. 64-1 at 1.) Darrow explained that Hoskins’s 2003 federal conviction for distribution of cocaine base and his 2002 conviction in the Vermont Superior Court for sale of heroin were the two predicate convictions that would trigger application of the career offender provisions. (*Id.*) Darrow advised Kraham that if in fact the Court concluded that Hoskins was a career offender under USSG § 4B1.1, he would be subject to a sentencing range of 151–188 months, assuming Hoskins manifested an acceptance of responsibility for his offense conduct pursuant to USSG § 3E1.1 by pleading guilty. (*Id.*) Darrow further advised Kraham that if the government pursued other sentencing enhancements and Hoskins went to trial and was convicted, Hoskins’s sentencing exposure could be as great as 262–327 months in prison. (*Id.*) Darrow proposed that Hoskins enter into a binding plea agreement pursuant to Rule 11(c)(1)(C) “in the 120–150[-]month range” to avoid the possibility of this exposure. (*Id.* at 2.) In response, Kraham acknowledged the likelihood of Hoskins facing career offender

¹ The Presentence Investigation Report (PSR) relies on the Sentencing Guidelines that were in effect in November 2011, so the Court cites to that version here. (PSR at 5, ¶ 22.)

exposure and proposed a sentence of 105 months. (*Id.* at 5.) Ultimately, counsel settled on a binding sentence of imprisonment for 112 months. (*See* Doc. 64-3 at 3; Doc. 41.)

On January 11, 2012, a Plea Agreement was filed in the district court, whereby Hoskins agreed to plead guilty to the charge of distribution of cocaine base. (Doc. 41.) The government agreed that: (1) Hoskins would not be prosecuted in the District of Vermont for any other criminal offenses known to the United States to have been committed by Hoskins in the District of Vermont relative to the distribution of narcotics; and (2) it would recommend that Hoskins receive an offense level reduction under the advisory United States Sentencing Commission Guidelines for his manifestation of an acceptance of responsibility pursuant to USSG § 3E1.1(a) and (b). (Doc. 41 at 3–4.) The parties agreed pursuant to Rule 11(c)(1)(C) that a term of imprisonment of 112 months was “the appropriate disposition of the case as regards to imprisonment.” (*Id.* at 3.)

II. The Plea Proceeding

On January 11, 2012, Hoskins appeared before Judge Murtha to plead guilty to the offense charged in the Superseding Indictment. (Doc. 42.) The Clerk of Court for this district has advised the undersigned Magistrate Judge that the change of plea proceeding was not recorded by stenographical or electronic means, in contravention of Federal Rule of Criminal Procedure 11(g). Thus, there is no direct record of what was said or what otherwise occurred at Hoskins’s change of plea proceeding.

III. The Presentence Investigation Report

In May of 2012, a Presentence Investigation Report (PSR) was prepared by the United States Probation Office and submitted to the Court in anticipation of sentencing.

The government's position during negotiations that Hoskins was a career offender under USSG § 4B1.1 was reflected in the PSR's sentencing calculation. (PSR at 6, ¶ 29.)

With regard to offense conduct, the PSR described eight controlled purchases of a total of 9.6 grams of cocaine base from Hoskins and two confederates. (*Id.* at 3–5, ¶¶ 7–17; 6, ¶ 23.) It also described the anticipated sale of an additional 4 grams of cocaine base for which Hoskins was held accountable. (*Id.* at 5, ¶ 17.) No other offense conduct is described in the PSR.

The PSR concluded that as a career offender Hoskins faced an advisory Sentencing Guidelines imprisonment range of 151–188 months, based on an adjusted offense level of 29 and a Criminal History Category (CHC) of VI. (*Id.* at 18, ¶ 82.) This sentencing range was determined as follows. Hoskins's base offense level was placed at level 20, based on the conclusion that Hoskins had trafficked in 13.6 grams of cocaine base. (*Id.* at 5–6, ¶ 23.) However, because Hoskins had sustained two countable drug felony convictions,² and was thus deemed to be a career offender, his offense level was increased to level 32. (*Id.* at 6, ¶ 29.) Pursuant to USSG § 3E1.1(a) and (b), three levels were subtracted from the offense level calculation because Hoskins had manifested an acceptance of responsibility. (*Id.* ¶ 30.) These adjustments resulted in a total offense level of 29. (*Id.* at 7, ¶ 31.) Hoskins's prior convictions, which included the two prior drug felony convictions, yielded nine criminal history points, placing him in CHC IV. (*Id.* at 11, ¶ 44.)

² The PSR detailed the two predicate prior drug felony convictions at ¶ 37 and ¶ 41. (*Id.* at 8, ¶ 37; 10, ¶ 41.)

However because the career offender provisions controlled, Hoskins's CHC was placed at VI. (*Id.*)

IV. Sentencing

On May 22, 2012, Hoskins appeared before Judge Murtha for sentencing. (Doc. 58.) The Court ascertained that Hoskins had no objection to the factual information set forth in PSR. (*Id.* at 9.) The government asserted no objections to the PSR. In its Sentencing Memorandum, the government stated that the PSR's recommendations and findings, which included a description of Hoskins's trafficking in 13.6 grams of cocaine base, were "uncontested." (Doc. 48 at 3.)

After hearing from counsel and Hoskins, Judge Murtha adopted the conclusions of the PSR as the findings of the Court. (Doc. 58 at 13–14.) Judge Murtha concluded that Hoskins's offense level calculation was based on a determination that Hoskins had distributed a range of "at least 11.2 grams but less than 16.8 grams of cocaine base." (*Id.* at 13.) The Court also found that Hoskins sustained nine criminal history points for a CHC of IV. (*Id.* at 14.) However, the Court ruled that Hoskins was subject to sentencing as a career offender, resulting in an adjusted offense level of 29 and a CHC of VI, yielding a sentencing range of 151 to 188 months. (*Id.* at 14.) According to Attorney Kraham, under the calculations and assumptions set forth in the PSR, had Hoskins not been subject to the career offender provisions of the Sentencing Guidelines, his offense level would have been level 17 and his CHC IV, yielding an imprisonment range of 37–46 months. (*See* Doc. 64-3 at 2–3.)

Judge Murtha stated his intention to accept the Rule 11(c)(1)(C) agreement and imposed the agreed-upon sentence of 112 months. (Doc. 58 at 15.) Hoskins was advised of his right of direct appeal. (*Id.* at 17.) No appeal was pursued.

V. State Court Proceedings

On May 31, 2013, while Hoskins was incarcerated in federal custody, a motion for post-conviction relief was filed in the Chittenden Superior Court.³ (*See* Doc. 62-2.) Hoskins sought to have his 2002 state conviction for sale of heroin vacated. He brought a number of challenges to his conviction, including assertions that his conviction was not supported by an independent basis in fact and that the state court did not make an appropriate inquiry to satisfy itself that there was a factual basis for Hoskins's plea of guilty as required by Vermont Rule of Criminal Procedure 11(f). (*Id.* at 4.)

On March 31, 2015, the Superior Court granted Hoskins's motion and vacated his sale-of-heroin conviction. (Doc. 62-1 at 2.) Judge Helen M. Toor concluded that the state trial court failed to comply with Rule 11(f) of the Vermont Rules of Criminal Procedure in accepting Hoskins's plea of guilty. (*Id.*) More precisely, Judge Toor concluded that the trial court failed to question Hoskins about the factual basis for the plea, in violation of Rule 11. (*Id.*) Judge Toor also acknowledged the effect Hoskins's state conviction had in the determination of the federal sentence (*id.*), but her decision was plainly based on the Rule 11 deficiencies in the state plea colloquy. Hoskins reports that the State later dismissed the charge. (Doc. 62 at 3.)

³ The motion was signed by Hoskins on May 12, 2013. (*Id.* at 8.)

Discussion

I. Legal Standards Governing § 2255 Motions

As noted above, Hoskins has now moved to vacate his plea and sentence because of the state court's vacatur of the 2002 sale-of-heroin conviction. A person in custody under a sentence of a federal court may seek to vacate that conviction under 28 U.S.C. § 2255(a) if (1) the sentence was imposed in violation of the Constitution or laws of the United States, (2) the Court was without jurisdiction to impose such a sentence, (3) the sentence was in excess of the maximum authorized by law, or (4) the sentence is otherwise subject to collateral attack. Relief under § 2255 for non-constitutional claims is warranted only where a petitioner has shown "a fundamental defect which inherently results in a complete miscarriage of justice." *Davis v. United States*, 417 U.S. 333, 346 (1974) (quoting *Hill v. United States*, 368 U.S. 424, 429 (1962)). A habeas petitioner bears the burden of establishing that he is entitled to relief under § 2255. *See Napoli v. United States*, 45 F.3d 680, 683 (2d Cir. 1995).

II. Analysis

A. Statute of Limitations

The government argues that Hoskins's Motion is barred by the one-year statute of limitations which governs § 2255 motions. (Doc. 64 at 11–12.) Section 2255(f) provides as follows:

A federal prisoner seeking relief under § 2255 must generally file a motion within one year from the latest of four benchmark dates: (1) when the judgment of conviction becomes final; (2) when a government-created impediment to making such a motion is removed; (3) when the right asserted is initially recognized by the Supreme Court, if it has been made

retroactively available to cases on collateral review; or (4) when the facts supporting the claim(s) could have been discovered through the exercise of due diligence.

Holmes v. United States, Nos. 09 Cr. 126(JGK), 14 Cv. 6626(JGK), 2014 WL 6879061, at *1 (S.D.N.Y. Dec. 5, 2014) (emphasis omitted); *see also* 28 U.S.C. § 2255(f).

Here, § 2255(f)(4) controls the determination of the timeliness of Hoskins's petition. The United States contends that Hoskins was fully aware of his career offender status at his May 22, 2012 federal sentencing, yet he waited until May 31, 2013 to file a challenge in state court to his 2002 conviction. (Doc. 64 at 6, 12.) The government asserts that Hoskins has failed to demonstrate that he acted with the requisite due diligence for his current Motion to be timely under § 2255(f)(4). (*Id.* at 12.) I disagree.

In *Johnson v. United States*, 544 U.S. 295 (2005), the U.S. Supreme Court addressed the issue of “when the 1-year statute of limitations in [§ 2255] begins to run in a case of a prisoner's collateral attack on his federal sentence on the ground that a state conviction used to enhance that sentence has since been vacated.” *Id.* at 298. The petitioner, Robert Johnson, Jr., had been sentenced in federal court in 1994 as a career offender under USSG § 4B1.1 on the basis of two 1989 drug convictions in Georgia. *Id.* In 1998, one of those convictions was vacated, and Johnson then filed a § 2255 motion in federal district court seeking to vacate the enhanced federal sentence on the basis of the vacatur of the state conviction. *Id.* at 300–01. The district court denied the motion as untimely under § 2255(f)'s one-year statute of limitations, and the Eleventh Circuit affirmed. *Id.* at 301–02.

The Supreme Court held that the vacatur of the state conviction was a “fact” that triggered a new one-year limitations period under 28 U.S.C. § 2255(f)(4), but that a petitioner may only take advantage of that provision if he has “sought [the vacatur of the predicate conviction] with due diligence in state court, after entry of judgment in the federal case with the enhanced sentence.” *Id.* at 298. Because Johnson had waited three years to commence the challenge to his underlying conviction, he had unreasonably delayed attacking his state court conviction. *Id.* at 311. As a result, the Court affirmed the dismissal of his § 2255 motion. *Id.*

Here, Hoskins has plainly acted within one year of the March 31, 2015 vacatur of his state conviction by filing his § 2255 Motion on December 14, 2015. Thus, the essential question is whether Hoskins demonstrated “due diligence” in his efforts to have his state conviction vacated after May 22, 2012, the date judgment was entered.

Multiple appellate courts “have held that, ‘[Section] 2255(f)(4) does not require maximum feasible diligence, but only “due” or reasonable diligence. Due diligence therefore does not require a prisoner to undertake repeated exercises in futility or to exhaust every imaginable option, but rather to make reasonable efforts.’” *United States v. Longshore*, 644 F. Supp. 2d 658, 661 (D. Md. 2009) (alteration in original) (quoting *Aron v. United States*, 291 F.3d 708, 712 (11th Cir. 2002) (citing *Wims v. United States*, 225 F.3d 186, 190 n.4 (2d Cir. 2000))). It has also been observed that “in determining whether the § 2255 petitioner acted with due diligence, consideration should be given to his ‘individual circumstances . . . , including the practical realities of [his] confinement.’” *Brown v. United States*, Civil No. CCB–13–2060, Criminal No. CCB–07–0437, 2014 WL

98797, at *2 (D. Md. Jan. 9, 2014) (alterations in original) (quoting *Longshore*, 644 F. Supp. 2d at 662).

Defendant Hoskins has filed a Declaration which states that, following his May 22, 2012 sentencing, he was housed on an interim basis at four separate correctional facilities until finally arriving at his designated facility in Otisville, N.Y. in approximately mid-July 2012. (*See* Doc. 79-1 at 1.) Once at Otisville, Hoskins began the process of obtaining and assembling documents from the Chittenden Superior Court. (*Id.* at 1–2.) Hoskins reports that he thereupon researched and wrote his motion, soliciting another inmate to prepare the final document for filing. (*Id.* at 2.) As stated above, the motion was signed on May 12, 2013, and it was mailed “that day or the next day.” (*Id.*)

At the outset it must be noted that, pursuant to the “prison mailbox” rule, May 12 or 13, 2013 is the date the motion was “filed” for purposes of Hoskins’s motion seeking collateral relief. *See Fernandez v. Artuz*, 402 F.3d 111, 113–16 (2d Cir. 2005) (applying federal mailbox rule to determination of when state post-conviction application was filed for tolling purposes under § 2244(d)(2)). Thus, Hoskins’s motion was filed in the Chittenden Superior Court approximately eleven and a half months after his May 22, 2012 federal sentencing date. Hoskins’s Declaration describes his incarceration at multiple interim facilities following his sentencing and adequately details his efforts to gather supporting documents and prepare and file the state court motion. An implicit requirement of diligence is a showing of directed activity, and Hoskins has satisfied that requirement. Although a delay of eleven and a half months approaches the outer limit of the definition of due diligence, given the practical realities of incarceration faced by Hoskins, I conclude

that this was a reasonable delay under the circumstances and that Hoskins has established that he pursued the vacatur of his state court conviction with due diligence. *See Brown*, 2014 WL 98797, at *2. Accordingly, I find that Hoskins's Motion is timely under § 2255(f)(4).

B. Whether Hoskins's Claim Is Cognizable Under § 2255

To begin, it is undisputed that in a series of cases the Supreme Court has “assume[d] . . . that a defendant given a sentence enhancement for a prior conviction is entitled to a reduction if the earlier sentence is vacated.” *Johnson v. United States*, 544 U.S. 295, 303 (2005) (citing *Custis v. United States*, 511 U.S. 485 (1994); *Daniels v. United States*, 532 U.S. 374 (2001)). Several appellate courts, including the Second Circuit, have relied on *Johnson*, *Custis*, and *Daniels* to conclude that a prisoner may seek a reduction in a prior sentence when a state court conviction that enhanced that sentence has been vacated. *See Cuevas v. United States*, 778 F.3d 267, 274 (1st Cir. 2015); *United States v. Devost*, 609 F. App'x 47, 48 (2d Cir. 2015); *United States v. Gadsen*, 332 F.3d 224, 228 (4th Cir. 2003); *Turner v. United States*, 183 F.3d 474, 477 (6th Cir. 1999); *United States v. Walker*, 198 F.3d 811, 814 (11th Cir. 1999).

Despite this authority, the government argues that Hoskins's claim is not cognizable under § 2255 because he was sentenced pursuant to a binding plea agreement under Federal Rule of Criminal Procedure 11(c)(1)(C), and not as a career offender. (Doc. 64 at 7–11; *see also* Doc. 72.) The government thus contends that the vacatur of the state conviction is of no consequence. (Doc. 64 at 7.) The government asserts that the *Johnson* line of cases, which affords a prisoner collateral relief when an underlying state conviction

has been vacated, does not apply to Hoskins because those cases did not involve a binding Rule 11(c)(1)(C) sentencing agreement. (*See id.*)

The government's argument elevates form over substance. Hoskins's now-vacated state conviction clearly led to a significant enhancement of his sentence. The e-mails between counsel during the plea negotiations plainly show that Hoskins's exposure as a career offender was the dominant influence over all aspects of the plea negotiations. (*See* Doc. 64-1.) In fact, as posited by the government during those negotiations, the PSR concluded that Hoskins was subject to the career offender provisions. (PSR at 6, ¶ 29.) At sentencing, Judge Murtha engaged in the Sentencing Guidelines calculation and concluded that Hoskins was subject to the career offender provisions of the Sentencing Guidelines, in part because of his "two prior felony convictions," which included the state conviction at issue here. (Doc. 58 at 13.) The Court elected to accept the agreement of the parties and grant a variance from the career offender sentencing range. (*Id.* at 14.) But any reading of the record leads to the conclusion that the now-vacated state court drug conviction played a significant, if not a controlling role, in the ultimate determination of the sentence. Certainly, the resulting career offender calculation provided the framework for the negotiations, the plea agreement, and the sentence. The government sought to somewhat ameliorate the severity of the career offender provisions, but only in part. It compelled Hoskins to choose between the agreed-upon sentence of 112 months or face the far harsher prospect of a full career offender guideline. (*See* Doc. 64-1 at 1–6.) Without the application of the career offender provisions, Hoskins faced a sentencing range of

37–46 months in prison. With the conviction included in the sentencing calculus, he faced a range of 151–188 months with a plea of guilty, or, as the government suggested, perhaps as much as 262–327 months if he proceeded to trial. (*See id.* at 1.)

Based on the foregoing, it is evident that the state drug conviction enhanced Hoskins’s offense level calculation and added points within his CHC, which was category IV; and the career offender status then increased his CHC to VI. (*See* PSR at 11, ¶ 44.) To suggest that these conclusions played no role in either Hoskins’s acceptance of the plea agreement or the Court’s decision to accept the binding nature of that agreement, ignores the harsh reality of the career offender provisions. *Peugh v. United States*, 133 S. Ct. 2072 (2013), offers guidance on this point. There, the Supreme Court held that the Ex Post Facto Clause is violated when an offender is sentenced under a current Sentencing Guideline higher than that in effect at the time of the offense. *Id.* at 2078. Writing for the majority, Justice Sotomayor observed that the Sentencing Guidelines, although advisory in nature, continue to serve as the “lodestone” of federal sentencing. *Id.* at 2084. Moreover, the Court observed: “That a district court may ultimately sentence a given defendant outside the Guidelines range does not deprive the Guidelines of force as the framework for sentencing.” *Id.* at 2083.

Nonetheless, the government argues that Hoskins is barred from relief by drawing on the language of 18 U.S.C. § 3582(c)(2) and a line of cases interpreting the relationship between binding plea agreements under Rule 11(c)(1)(C) and that statute. (Doc. 64 at 9–11; Doc. 72.) Generally, a federal court is forbidden to modify a term of imprisonment once it has been imposed. *See United States v. Parrado*, 20 F. Supp. 3d 297,

299 (E.D.N.Y. 2014); *see also Freeman v. United States*, 131 S. Ct. 2685, 2690 (2011).

However, 18 U.S.C. § 3582(c)(2) permits a court to modify a previously imposed sentence *if* the Sentencing Commission later lowers the sentencing range. The statute provides, in part, that a sentencing modification may occur:

in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o).

18 U.S.C. § 3582(c)(2).

In *Freeman*, the Supreme Court considered whether defendants who enter into plea agreements recommending a particular sentence as a condition of the guilty plea are eligible for § 3582(c)(2) relief. 131 S. Ct. at 2689. No majority of the justices agreed on a single rationale. *See id.* The narrowest, most case-specific basis for deciding *Freeman* was Justice Sotomayor's concurrence. *See United States v. Figueroa*, No. 00 CR 778-1(RJD), 2012 WL 2923288, at *2 (E.D.N.Y. July 18, 2012) (referring to Justice Sotomayor's concurrence as "narrower" than the plurality opinion). Justice Sotomayor stated that generally a sentence imposed pursuant to a binding plea agreement under Rule 11(c)(1)(C) is based on that agreement, not on the Sentencing Guideline range, such that no relief is available under § 3582(c)(2). *Freeman*, 131 S. Ct. at 2696 (Sotomayor, J., concurring) ("The term of imprisonment imposed by the sentencing judge is dictated by the terms of the agreement entered into by the parties, not the judge's Guidelines

calculation.”)⁴ In his plurality opinion, Justice Kennedy noted the significant role of the Sentencing Guidelines calculation in binding plea agreements under Rule 11(c)(1)(C):

Rule 11(c)(1)(C) makes the parties’ recommended sentence binding on the court “once the court accepts the plea agreement,” but the governing policy statement confirms that the court’s acceptance is itself based on the Guidelines. That policy statement forbids the district judge to accept an 11(c)(1)(C) agreement without first evaluating the recommended sentence in light of the defendant’s applicable sentencing range. The commentary to § 6B1.2 advises that a court may accept an 11(c)(1)(C) agreement “only if the court is satisfied either that such sentence is an appropriate sentence within the applicable guideline range or, if not, that the sentence departs from the applicable guideline range for justifiable reasons.” Any bargain between the parties is contingent until the court accepts the agreement. The Guidelines require the district judge to give due consideration to the relevant sentencing range, even if the defendant and prosecutor recommend a specific sentence as a condition of the guilty plea.

Id. at 2692 (citations omitted).

Numerous courts, both before and after *Freeman*, have followed the rule—or predecessor of the rule—set forth in Justice Sotomayor’s *Freeman* concurrence. Those courts have concluded that where a sentencing range has been lowered by the Sentencing Commission in a case involving a sentence imposed pursuant to a binding plea agreement under Rule 11(c)(1)(C), the person is not entitled under § 3582(c)(2) to benefit from the subsequent Sentencing Commission’s action because the original sentence was “based on” the Rule 11(c)(1)(C) agreement and not “based on a sentencing range.” *See, e.g., United*

⁴ However, two limited exceptions to this prohibition were found to apply. The first is where the parties “agree that a specific . . . sentencing range is the appropriate disposition of the case.” *Id.* at 2697 (quoting Fed. R. Civ. P. 11(c)(1)(C) (alteration in original)). Under this type of plea agreement, “the district court’s acceptance of the agreement obligates the court to sentence the defendant accordingly, and there can be no doubt that the term of imprisonment the court imposes is ‘based on’ the agreed-upon sentencing range within the meaning of § 3582(c)(2).” *Id.* For the second exception to apply, the plea agreement itself must “make clear that the basis for the specified term” is the applicable Guideline range. *Id.* (stating that the “sentencing range [must be] evident from the agreement itself”).

States v. Main, 579 F.3d 200, 203 (2d Cir. 2009) (“We therefore hold that Main’s sentence was ‘based on’ his Rule 11(c)(1)(C) agreement with the government, and not a sentencing range that the Sentencing Commission subsequently lowered, and conclude that the district court was without authority to reduce the sentence pursuant to 18 U.S.C. § 3582(c)(2).”); *United States v. Brown*, No. 04–CR–01016 (NGG), 2014 WL 2653986, at *3 (E.D.N.Y. June 13, 2014) (“[U]nder the Supreme Court’s holding in *Freeman*, because Defendant’s sentence was not ‘based on’ the applicable Guidelines he is ineligible for a sentence reduction under 18 U.S.C. § 3582(c)(2).”).

However, *Freeman*, its progeny, and other cases cited by the government were based solely on the interpretation of a statute not at issue here. For instance, in *Main*, the Court of Appeals made it abundantly clear that the only issue on appeal was whether petitioner Main was eligible for a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2). *Main*, 579 F.3d at 202. The *Main* decision had no effect on the existing law of the Second Circuit that “defendants who successfully attack state convictions may seek review of federal sentences that were enhanced on account of such state convictions.” *United States v. Doe*, 239 F.3d 473, 475 (2d Cir. 2001).

In fact, the government advances no authority to support its assertion that the *Freeman* Court’s concurring opinion—rather than the *Johnson* line of cases—should control here. *Freeman* is clearly limited to its analysis of claims where resentencing occurs under the statutory authority of § 3582(c), and there is no suggestion that *Johnson* was overruled or narrowed in any relevant way. While the Court in *Freeman* affirmed the continued vitality of plea agreements under Rule 11 (c)(1)(C), it also recognized the

determinative force that the Sentencing Guidelines have in Rule 11(c)(1)(C) plea agreements. This case does not involve statutory interpretation. Rather, this case involves a prior state drug trafficking conviction, now proven to be invalid, and therefore a fundamental defect in the determination of the appropriate sentence. Accordingly, it is the *Johnson* line of cases that governs consideration of Hoskins's Motion.⁵

Finally, the government contends that it possessed other evidence of Hoskins's drug trafficking activities which, if presented, would have increased Hoskins's sentencing exposure well beyond the non-career offender sentencing range of 37–46 months. (Doc. 64 at 10–11 n.6.) The relevance of these assertions is not immediately clear, although it may be to suggest that Hoskins had other reasons beyond career offender status to plead guilty under a binding plea agreement. But none of this evidence is described in the PSR. (*See id.*) In fact, the determination that Hoskins sold, or intended to sell, 13.6 grams of cocaine base was not challenged by the government at sentencing. In any event, it is not known what may have been stated at the change of plea hearing, if anything, about this purported evidence, given that the proceeding was not recorded. The Court should decline the government's invitation to engage in such speculation.

Conclusion

It is undisputed that Hoskins's state conviction, which initially resulted in a substantially enhanced sentence, has now been vacated by the State of Vermont. As a consequence Hoskins has now filed a timely petition for collateral relief, and denial of the

⁵ By extension, the government's argument concerning Rule 11(c)(1)(C) plea agreements would bar collateral relief even where it has been shown that the prior state conviction was obtained through unlawful conduct such as officer perjury or other gross misconduct.

relief sought would result in a miscarriage of justice. Accordingly, I recommend that Hoskins's § 2255 Motion to Vacate, Set Aside, or Correct Sentence (Doc. 62) be GRANTED and that further proceedings be held consistent with this recommendation.

Dated at Burlington, in the District of Vermont, this 28th day of April, 2016.

/s/ John M. Conroy
John M. Conroy
United States Magistrate Judge

Any party may object to this Report and Recommendation within 14 days after service thereof, by filing with the Clerk of the Court and serving on the Magistrate Judge and all parties, written objections which shall specifically identify those portions of the Report and Recommendation to which objection is made and the basis for such objections. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(d), 72(b)(2); L.R. 72(c). Failure to timely file such objections "operates as a waiver of any further judicial review of the magistrate's decision." *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989).

App. No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

BRIAN HOSKINS,
Petitioner
v.
UNITED STATES OF AMERICA,
Respondent

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

APPENDIX E—Dec. 28, 2016 Amended Judgment of Conviction (11-cr-069)

UNITED STATES DISTRICT COURT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FLETC

District of

Vermont

UNITED STATES OF AMERICA

V.

BRIAN HOSKINS

AMENDED JUDGMENT IN AUGUSTINE CASES

Case Number: 1:11-cr-00069-jgm-1
CLERK KAK

USM Number:

Barclay T. Johnson, Esq., AFPD

Defendant's Attorney

Date of Original Judgment: 5/22/2012
(Or Date of Last Amended Judgment)

Reason for Amendment:

- Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
- Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
- Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
- Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

- Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
- Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
- Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
- Direct Motion to District Court Pursuant to 28 U.S.C. § 2255 or 18 U.S.C. § 3559(c)(7)
- Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

pleaded guilty to count(s) 1s of the Superseding Indictment

pleaded nolo contendere to count(s) _____ which was accepted by the court.

was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. § 841(a)(1)	Distribution of cocaine base	5/13/2011	1s

The defendant is sentenced as provided in pages 2 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____

Count(s) 1 is are dismissed on the motion of the United States.

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.

December 28, 2016

Date of Imposition of Judgment

[Handwritten Signature]

Signature of Judge

Hon. J. Garvan Murtha, U.S. District Judge

Name and Title of Judge

December 28, 2016

Date

JUDGMENT ENTERED ON DOCKET
DATE 12-28-2016

DEFENDANT: BRIAN HOSKINS
CASE NUMBER: 1:11-cr-00069-jgm-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of : 86 months, to be served concurrently with any undischarged term of imprisonment imposed by the State of Vermont (Vermont Superior Court, Chittenden Circuit, Dkt. No. 822-3-10).

The court makes the following recommendations to the Bureau of Prisons:
That the defendant be designated to serve his sentence at FCI Danbury.

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

The defendant shall surrender to the United States Marshal for this district:

- at _____ a.m. p.m. on _____
- as notified by the United States Marshal.

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

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

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: BRIAN HOSKINS
CASE NUMBER: 1:11-cr-00069-jgm-1

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: three (3) years.

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

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

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

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

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

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

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 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, personal history, or characteristics and shall permit the probation officer to make such notifications and confirm the defendant's compliance with such notification requirement.

DEFENDANT: BRIAN HOSKINS
CASE NUMBER: 1:11-cr-00069-jgm-1

ADDITIONAL SUPERVISED RELEASE TERMS

The defendant shall participate in a program approved by the United States Probation Office for substance abuse, which program may include testing to determine whether the defendant has reverted to the use of drugs or alcohol. The defendant shall contribute to the cost of services rendered in an amount to be determined by the probation officer based on ability to pay or the availability of third-party payment. The defendant shall refrain from the use of alcohol and other intoxicants during and after treatment.

The defendant shall submit his person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. §1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches under this condition. An officer may conduct a search under this condition only when reasonable suspicion exists that the defendant has violated a condition of his supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

DEFENDANT: BRIAN HOSKINS
 CASE NUMBER: 1:11-cr-00069-jgm-1

CRIMINAL MONETARY PENALTIES

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

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

- The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all 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>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$ _____	\$ _____
---------------	----------	----------

- Restitution amount ordered pursuant to plea agreement \$ _____
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest, and it is ordered that:
 - the interest requirement is waived for fine restitution.
 - the interest requirement for the fine restitution is modified as follows:

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

DEFENDANT: BRIAN HOSKINS
CASE NUMBER: 1:11-cr-00069-jgm-1

SCHEDULE OF PAYMENTS

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

- A Lump sum payment of \$ 100.00 due immediately, balance due
 - not later than _____, or
 - in accordance with C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:

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

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

- Joint and Several
Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount, and corresponding payee, if appropriate.
- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

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

App. No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

BRIAN HOSKINS,
Petitioner
v.
UNITED STATES OF AMERICA,
Respondent

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

APPENDIX F—Docket Entries (11-cr-069 (D.Vt.))

CLOSED

**U.S. District Court
District of Vermont (Burlington)
CRIMINAL DOCKET FOR CASE #: 2:11-cr-00069-cr-1**

Case title: USA v. Hoskins
Magistrate judge case number: 2:11-mj-00060-jmc

Date Filed: 06/23/2011
Date Terminated: 05/22/2012

Assigned to: Judge Christina
Reiss

Defendant (1)

Brian Hoskins
TERMINATED: 05/22/2012

represented by **FPD**
Office of the Federal Public Defender
District of Vermont
126 College Street, Suite 410
Burlington, VT 05401
(802) 862-6990
Email: samantha_barrett@fd.org
TERMINATED: 06/27/2011
ATTORNEY TO BE NOTICED
*Designation: Public Defender or Community
Defender Appointment*

Barclay T. Johnson , AFD
Office of the Federal Public Defender
District of Vermont
126 College Street, Suite 410
Burlington, VT 05401
(802) 862-6990
Email: Barclay_T_Johnson@fd.org
ATTORNEY TO BE NOTICED

Michael L. Desautels , FPD
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District of Vermont
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(802) 862-6990
Email: Michael_Desautels@fd.org
ATTORNEY TO BE NOTICED
*Designation: Public Defender or Community
Defender Appointment*

William E. Kraham , Esq.
William E. Kraham, PLC
15 Grove Street
P.O. Box 447
Brattleboro, VT 05302-0447
(802) 258-2550
Fax: (802) 258-2551
Email: will.kraham@gmail.com
TERMINATED: 03/13/2015
ATTORNEY TO BE NOTICED
Designation: CJA Appointment

Pending Counts

Disposition

054

21:841(a)(1).F NARCOTICS –
SELL, DISTRIBUTE, OR
DISPENSE – distribution of
cocaine base
(1s)

Term of imprisonment of 86 months, to be served concurrently with any undischarged term of imprisonment imposed by the State of Vermont, followed by a 3-year term of S/R with the following conditions: participate in a substance abuse program as approved by USPO, not possess a firearm or other dangerous weapon, submit person or property to search at anytime and cooperate in the collection of DNA. Fine wvd; \$100 S/A

Highest Offense Level
(Opening)

Felony

Terminated Counts

21:841(a)(2).F NARCOTICS –
SELL, DISTRIBUTE, OR
DISPENSE – distribute cocaine
base
(1)

Disposition

Dismissed on govt motion

Highest Offense Level
(Terminated)

Felony

Complaints

21:841(a)(1).F – NARCOTICS –
SELL, DISTRIBUTE, OR
DISPENSE – distribution of crack
cocaine

Disposition

Plaintiff

USA

represented by **Barbara A. Masterson , AUSA**
United States Attorney's Office
District of Vermont
P.O. Box 570
Burlington, VT 05402-0570
(802) 951-6725
Email: barbara.masterson@usdoj.gov
TERMINATED: 12/15/2015
Designation: Assistant US Attorney

Paul J. Van de Graaf , AUSA
United States Attorney's Office
District of Vermont
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(802) 951-6725
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TERMINATED: 02/22/2019
Designation: Assistant US Attorney

William B. Darrow , AUSA
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District of Vermont
P.O. Box 570
Burlington, VT 05402-0570
(802) 951-6725
Fax: (802) 951-6540

Email: bill.darrow@usdoj.gov
 ATTORNEY TO BE NOTICED
 Designation: Assistant US Attorney

Date Filed	#	Docket Text
06/13/2011	<u>1</u>	APPLICATION for Search Warrant re: 3 Village Glen, Essex Junction, VT as to Brian Hoskins. (Attachments: # <u>1</u> Attachment A, # <u>2</u> Attachment B, # <u>3</u> Affidavit of Robert L. Estes) (law) Unsealed on 6/17/2011 (law). [2:11-mj-00060-jmc] (Entered: 06/13/2011)
06/13/2011	<u>3</u>	APPLICATION for Search Warrant re: 13B Gardenside Lane, Essex, VT as to Brian Hoskins. (Attachments: # <u>1</u> Attachment A, # <u>2</u> Attachment B, # <u>3</u> Affidavit of Robert L. Estes) (law) Unsealed on 6/17/2011 (law). [2:11-mj-00060-jmc] (Entered: 06/13/2011)
06/13/2011	<u>5</u>	MOTION to Seal <u>3</u> Application for Search Warrant and Search Warrant re: 13B Gardenside Lane, Essex, VT by USA as to Brian Hoskins. (law) Unsealed on 6/17/2011 (law). [2:11-mj-00060-jmc] (Entered: 06/13/2011)
06/13/2011	<u>6</u>	MOTION to Seal <u>1</u> Application for Search Warrant and Search Warrant re: 3 Village Glen, Essex Junction, VT by USA as to Brian Hoskins. (law) Unsealed on 6/17/2011 (law). [2:11-mj-00060-jmc] (Entered: 06/13/2011)
06/13/2011	<u>7</u>	ORDER granting <u>5</u> Motion to Seal <u>3</u> Application for Search Warrant and Search Warrant re: 13B Gardenside Lane, Essex, VT as to Brian Hoskins (1). Sealed until further order of the Court. Signed by Judge John M. Conroy on 6/13/2011. (law) Unsealed on 6/17/2011 (law). [2:11-mj-00060-jmc] (Entered: 06/13/2011)
06/13/2011	<u>8</u>	ORDER granting <u>6</u> Motion to Seal <u>1</u> Application for Search Warrant and Search Warrant re: 3 Village Glen, Essex Junction, VT as to Brian Hoskins (1). Sealed until further order of the Court. Signed by Judge John M. Conroy on 6/13/2011. (law) Unsealed on 6/17/2011 (law). [2:11-mj-00060-jmc] (Entered: 06/13/2011)
06/16/2011	<u>9</u>	COMPLAINT as to Brian Hoskins (1). (Attachments: # <u>1</u> Affidavit of Robert L. Estes) (hbc) [2:11-mj-00060-jmc] (Entered: 06/16/2011)
06/16/2011	<u>10</u>	MOTION for Detention by USA as to Brian Hoskins. (hbc) [2:11-mj-00060-jmc] (Entered: 06/16/2011)
06/16/2011	<u>11</u>	CJA 23 Financial Affidavit by Brian Hoskins. (Document image is sealed) (jjj) [2:11-mj-00060-jmc] (Entered: 06/17/2011)
06/16/2011	<u>12</u>	ORDER Appointing FPD for Brian Hoskins. Signed by Deputy Clerk Jarvis on 06/16/2011. (jjj) [2:11-mj-00060-jmc] (Entered: 06/17/2011)
06/16/2011	<u>13</u>	MINUTE ENTRY for proceedings held before Judge John M. Conroy: Initial Appearance as to Brian Hoskins held on 6/16/2011. Deft present with Steven Barth, AFD and William Darrow, AUSA present for Govt. ORDERED: <u>10</u> Motion for Detention is granted absent objection at this time. Preliminary Hearing set for 6/30/2011 02:00 PM in Burlington Courtroom 440 before Judge John M. Conroy. (Court Reporter: recorded) (jjj) [2:11-mj-00060-jmc] (Entered: 06/17/2011)
06/16/2011	<u>14</u>	ORDER OF DETENTION as to Brian Hoskins. Signed by Judge John M. Conroy on 6/16/2011. (jjj) Image replaced on 6/17/2011 (law). [2:11-mj-00060-jmc] (Entered: 06/17/2011)
06/17/2011	<u>16</u>	NOTICE OF DOCKET ENTRY CORRECTION as to Brian Hoskins re: <u>14</u> Order of Detention. The original entry was missing the image. The image is now attached to <u>14</u> and is also attached to this entry. (law) [2:11-mj-00060-jmc] (Entered: 06/17/2011)
06/17/2011	<u>15</u>	MOTION to Unseal Documents by USA as to Brian Hoskins. (hbc) [2:11-mj-00060-jmc] (Entered: 06/17/2011)
06/17/2011	<u>17</u>	ORDER granting <u>15</u> Motion to Unseal Documents. <u>1</u> Application for Search Warrant re: 3 Village Glen, Essex Junction, VT, <u>3</u> Application for Search Warrant re 13B Gardenside Lane, Essex, VT, <u>5</u> , <u>6</u> MOTION to Seal, <u>6</u> MOTION to Seal, <u>7</u> ORDER on <u>5</u> Motion to Seal, <u>8</u> ORDER on <u>6</u> Motion to Seal are ORDERED unsealed. Signed

		by Judge John M. Conroy on 6/17/2011. (This is a text only Order.) (hbc) [2:11-mj-00060-jmc] (Entered: 06/17/2011)
06/23/2011	<u>19</u>	INDICTMENT as to Brian Hoskins (1) count(s) 1. (law) (Entered: 06/23/2011)
06/29/2011		ATTORNEY UPDATE as to Brian Hoskins. Attorney William E. Kraham, Esq for Brian Hoskins added. (jjj) (Entered: 06/29/2011)
06/29/2011		CJA 20: appointing Attorney William E. Kraham, Esq for Brian Hoskins. Signed by Deputy Clerk on 6/29/2011. (law) (Entered: 06/29/2011)
06/30/2011	<u>21</u>	NOTICE OF APPEARANCE by William E. Kraham, Esq appearing for Brian Hoskins.(kak) (Entered: 06/30/2011)
06/30/2011	<u>22</u>	NOTICE OF HEARING as to Brian Hoskins: Arraignment set for 7/7/2011 02:15 PM in Brattleboro Courtroom before District Judge J. Garvan Murtha.(kak) (Main Document 22 replaced on 6/30/2011) (jlh). (Entered: 06/30/2011)
06/30/2011	<u>23</u>	NOTICE OF DOCKET ENTRY CORRECTION as to Brian Hoskins re: <u>22</u> Notice of Hearing. The document image was missing and has been attached to the docket. The image is now attached to <u>22</u> as well as this entry. (jlh) (Entered: 06/30/2011)
07/07/2011	<u>24</u>	MINUTE ENTRY for proceedings held before Judge J. Garvan Murtha: Arraignment as to Brian Hoskins held on 7/7/2011. Dft present with counsel William Kraham, Esq. AUSA Timothy Doherty, Jr. present by videoconference for govt. Clerk swears dft and Court makes inquiries. Dft waives reading of indictment and enters a plea of not guilty to Count 1. Govt will file amended indictment to correct citation. Dft remains detained pending trial. (recorded) (kak) (Entered: 07/08/2011)
07/07/2011	<u>25</u>	CRIMINAL PRETRIAL SCHEDULING ORDER as to Brian Hoskins. Motions due by 10/7/2011. Time excluded from 7/7/2011 to 10/7/2011. Signed by District Judge J. Garvan Murtha on 7/7/2011. (kak) (Entered: 07/08/2011)
10/05/2011	<u>26</u>	MOTION to Dismiss <u>19</u> Indictment by Brian Hoskins. (wjf) (Entered: 10/05/2011)
10/07/2011	<u>27</u>	MOTION for Review of <u>14</u> Order of Detention by Brian Hoskins. (Attachments: # <u>1</u> Exhibit A)(wjf) (Main Document 27 replaced on 10/17/2011) (jlh). (Entered: 10/11/2011)
10/07/2011	<u>28</u>	MOTION to Suppress Statement by Brian Hoskins. (wjf) (Entered: 10/11/2011)
10/07/2011		MOTIONS as to Brian Hoskins REFERRED to Magistrate Judge: <u>27</u> MOTION for Reconsideration re <u>14</u> Order of Detention. (kak) (Entered: 10/11/2011)
10/13/2011	<u>29</u>	NOTICE OF HEARING as to Brian Hoskins re: <u>27</u> Motion for Reconsideration re <u>14</u> Order of Detention. : Motion Hearing set for 10/18/2011 11:30 AM in Burlington Courtroom 440 before Judge John M. Conroy.(jjj) (Entered: 10/13/2011)
10/13/2011	<u>30</u>	SUPERSEDING INDICTMENT as to Brian Hoskins (1) count(s) 1s. (wjf) (Entered: 10/14/2011)
10/17/2011	<u>31</u>	NOTICE OF DOCKET ENTRY CORRECTION as to Brian Hoskins re: <u>27</u> MOTION for Reconsideration re <u>14</u> Order of Detention. The document image was missing a page and has been replaced on the docket. The complete image is now attached to <u>27</u> as well as this entry. (jlh) (Entered: 10/17/2011)
10/18/2011	<u>32</u>	MINUTE ENTRY for proceedings held before Judge John M. Conroy. Arraignment and Motion Hearing as to Brian Hoskins held on 10/18/2011 re <u>27</u> Motion for Reconsideration re <u>14</u> Order of Detention. Deft present with William Kraham, Esq. and William Darrow, AUSA present for Govt. Dft plead not guilty to count 1 of Superseding Indictment. Clerk swears Bradley Hoskins on behalf of deft. Cross examination by gov't. ORDERED: <u>27</u> Motion for Reconsideration re <u>14</u> Order of Detention is denied. (Court Reporter: recorded) (jjj) Text clarified on 10/23/2011 (law). Text clarified to add arraignment text on 10/24/2011 (jlh). (Entered: 10/19/2011)
10/21/2011	<u>33</u>	RESPONSE to Motion by USA as to Brian Hoskins re <u>28</u> MOTION to Suppress Statements. (Attachments: # <u>1</u> Certificate of Service)(Darrow, William) Text clarified on 10/23/2011 (law). (Entered: 10/21/2011)

10/27/2011	34	ORDER finding as moot <u>26</u> Motion to Dismiss Indictment as to Brian Hoskins (1). Signed by District Judge J. Garvan Murtha on 10/27/2011. (This is a text only Order.) (kbl) (Entered: 10/27/2011)
12/12/2011	35	ORDER denying <u>28</u> Motion to Suppress Statements as to Brian Hoskins (1). <u>See 33</u> Response of the United States to Defendant's Motion to Suppress. This case will be placed on the 1/24/2012 trial calendar. Signed by District Judge J. Garvan Murtha on 12/12/2011. (This is a text only Order.) (kbl) (Entered: 12/12/2011)
12/14/2011	<u>36</u>	SEARCH AND SEIZURE WARRANT RETURNED EXECUTED on 6/16/2011 as to 3 Village Glen, Essex, VT in re: Brian Hoskins. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Inventory)(kak) Location modified on 12/14/2011 (jlh). (Entered: 12/14/2011)
12/14/2011	37	NOTICE OF DOCKET ENTRY CORRECTION as to Brian Hoskins re: <u>36</u> Search and Seizure Warrant Returned Executed. Docket text has been modified to indicate that the return is as to 3 Village Glen, Essex Junction, VT. (jlh) (Entered: 12/14/2011)
12/14/2011	<u>38</u>	SEARCH AND SEIZURE WARRANT RETURNED EXECUTED on 6/16/2011 as to 13B Gardenside Lane, Essex, VT in re: Brian Hoskins. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Inventory)(kak) (Entered: 12/14/2011)
12/22/2011	<u>39</u>	TRIAL CALENDAR as to Brian Hoskins: Trial Brief/Memorandum, Requests for Voir Dire and Requests to Charge due by 1/9/2012. Jury Draw set for 1/19/2012 at 9:30 AM in Brattleboro Courtroom before District Judge J. Garvan Murtha. (wjf) (Entered: 12/22/2011)
12/22/2011	<u>40</u>	NOTICE OF HEARING as to Brian Hoskins: Pretrial Conference or Change of Plea Hearing set for 1/11/2012 at 11:00 AM in Brattleboro Courtroom before District Judge J. Garvan Murtha. (wjf) (Entered: 12/22/2011)
01/11/2012	<u>41</u>	PLEA AGREEMENT as to Brian Hoskins. (kak) (Entered: 01/11/2012)
01/11/2012	42	MINUTE ENTRY for proceedings held before Judge J. Garvan Murtha: Change of Plea Hearing as to Brian Hoskins held on 1/11/2012. Dft present w/counsel William Kraham, Esq. AUSA William Darrow present for govt. Clerk swears dft and Court makes inquiries. Court informs dft of maximum penalties. Court reviews plea agreement w/dft. Statement of facts by govt. Dft pleads GUILTY to Count 1s. Court makes findings and accepts guilty plea. PSR to be completed by USPO. Sentencing set for 5/22/2012 at 10:00 a.m. in Brattleboro before Judge J. Garvan Murtha. Dft remains in custody pending sentencing. (Court Reporter: None) (kak) Text clarified on 1/12/2012 (law). (Entered: 01/11/2012)
01/12/2012	43	NOTICE OF DOCKET ENTRY CORRECTION as to Brian Hoskins re: 42 Minute Entry. Text has been clarified to indicate that <i>defendant remains in custody pending sentencing</i> . (law) (Entered: 01/12/2012)
01/12/2012	<u>44</u>	PROCEDURAL AND SCHEDULING ORDER as to Brian Hoskins: Sentencing Memoranda are due by 5/11/2012 . Sentencing set for 5/22/2012 at 10:00 AM in Brattleboro Courtroom before District Judge J. Garvan Murtha. Signed by District Judge J. Garvan Murtha on 1/11/2012. (kak) (Entered: 01/12/2012)
01/12/2012	<u>45</u>	NOTICE OF HEARING as to Brian Hoskins: Sentencing set for 5/22/2012 at 10:00 AM in Brattleboro Courtroom before District Judge J. Garvan Murtha.(kak) (Entered: 01/12/2012)
05/11/2012	<u>48</u>	SENTENCING MEMORANDUM by USA as to Brian Hoskins. (Attachments: # <u>1</u> Certificate of Service)(Darrow, William) (Entered: 05/11/2012)
05/14/2012	<u>49</u>	SENTENCING MEMORANDUM and MOTION for Variance by Brian Hoskins. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J)(kak) (Entered: 05/14/2012)
05/15/2012	<u>50</u>	Entry has been removed from the docket. (Entered: 05/15/2012)
05/16/2012	51	NOTICE OF DOCKET ENTRY REMOVAL as to Brian Hoskins. Document 50 has been removed from the docket. Pursuant to paragraph 5 of <u>44</u> Procedural and Scheduling Order, documents of this nature are to be filed with the US Probation

		Officer and not with the court. (jlh) (Entered: 05/16/2012)
05/17/2012	<u>52</u>	MOTION for Specific Performance Based on Government's Breach of Plea Agreement by Brian Hoskins. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(kak) (Entered: 05/18/2012)
05/18/2012		RECEIPT FOR PAYMENT as to Brian Hoskins. Payment of criminal debt in the amount of \$100.00, receipt # 00911. (kak) (Entered: 05/18/2012)
05/21/2012	<u>53</u>	ACKNOWLEDGEMENT OF PRESENTENCE REPORT by Brian Hoskins. (kak) (Entered: 05/21/2012)
05/21/2012	<u>54</u>	SUPPLEMENTAL DOCUMENT by Brian Hoskins re: <u>52</u> MOTION for Specific Performance Based on Government's Breach of Plea Agreement . (Kraham, William) Text clarified on 5/22/2012 (jlh). (Entered: 05/21/2012)
05/22/2012	<u>55</u>	MINUTE ENTRY for proceedings held before Judge J. Garvan Murtha: Sentencing Hearing as to Brian Hoskins held on 5/22/2012. Dft present with counsel William Kraham, Esq. AUSA William Darrow present for govt. Statements by counsel. Statement by Sandra Chittenden. Statement by defendant prior to imposition of sentence. Court makes findings. Court accepts parties' Rule 11 (c)(1)(C) plea agreement. ORDERED: <u>49</u> Motion for variance and <u>52</u> Motion for specific performance based on governments breach of plea agreement moot. SENTENCE: Count 1s: term of imprisonment of 112 months to be followed by a five year term of S/R with the following conditions: not possess a firearm or other dangerous weapon, participate in a substance abuse program as approved by USPO, submit person or property to search at anytime and cooperate in the collection of DNA. Fines wvd; \$100 S/A due immediately. Court recommends to BOP that dft (1) be allowed to participate in the 500-hour program or alternatively a non-residential substance abuse treatment program; (2) be designated to FCI Otisville; (3) participate in mental health treatment and vocational training. Court grants govt motion to dismiss Count 1. Dft notified of right to appeal. Dft remanded to custody of USMS. (Court Reporter: recorded) (kak) (Entered: 05/22/2012)
05/22/2012	<u>56</u>	JUDGMENT as to Brian Hoskins. Signed by District Judge J. Garvan Murtha on 5/22/2012. (kak) (Main Document 56 replaced on 5/22/2012) (law). (Entered: 05/22/2012)
05/22/2012	<u>57</u>	NOTICE OF DOCKET ENTRY CORRECTION as to Brian Hoskins re: <u>56</u> Judgment. The document image has been replaced to include a missing page. The corrected image is now attached to <u>56</u> and is also attached to this entry. (law) (Entered: 05/22/2012)
10/15/2013	<u>58</u>	TRANSCRIPT of Sentencing hearing as to Brian Hoskins held on 5/22/2012, before Judge J. Garvan Murtha. Court Reporter/Transcriber Anne Henry, Telephone number (802)747-9193. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 11/8/2013. Redacted Transcript Deadline set for 11/18/2013. Release of Transcript Restriction set for 1/16/2014. (kak) (Entered: 10/15/2013)
01/13/2015	<u>59</u>	MOTION to Appoint Counsel by Brian Hoskins. (esb) Text clarified on 1/14/2015 (law). (Entered: 01/13/2015)
03/13/2015	<u>60</u>	NOTICE OF APPEARANCE by Michael L. Desautels, FPD appearing for Brian Hoskins .(Desautels, Michael) (Entered: 03/13/2015)
03/27/2015	<u>61</u>	ORDER Appointing Federal Public Defender as to Brian Hoskins for the limited purpose of pursuing a reduction in sentence pursuant to 18 U.S.C. 3582(c). Signed by Deputy Clerk on 3/27/2015. (law) (Entered: 03/29/2015)
12/14/2015	<u>62</u>	MOTION to Vacate Under 28 U.S.C. 2255 by Brian Hoskins. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Johnson, Barclay) Event/text clarified on 12/15/2015 (law). (Entered: 12/14/2015)
12/15/2015		MOTION(S) REFERRED to Magistrate Judge as to Brian Hoskins : <u>62</u> MOTION to Vacate Under 28 U.S.C. 2255. (law) (Entered: 12/15/2015)

12/15/2015		Attorney substitution as to Brian Hoskins. Attorney Barbara A. Masterson, AUSA for USA substituted for Attorney William B. Darrow, AUSA as to USA. Pursuant to notification for Kate @ USAO. (law) (Entered: 12/15/2015)
12/15/2015		Attorney substitution as to Brian Hoskins. Attorney William B. Darrow, AUSA substituted for Attorney Barbara A. Masterson, AUSA as to USA. Pursuant to further notification from Kate @ USAO. (law) (Entered: 12/15/2015)
12/15/2015	<u>63</u>	ORDER as to Brian Hoskins: The government shall respond re <u>62</u> MOTION to Vacate Under 28 U.S.C. 2255 as required by Rule 5, 28 U.S.C. § 2255 within 30 days. Defendant shall file any reply within 30 days after the government's answer is filed with the Court. Signed by Judge John M. Conroy on 12/15/2015. (hbc) (Entered: 12/15/2015)
01/12/2016	<u>64</u>	RESPONSE in Opposition to <u>62</u> MOTION to Vacate Under 28 U.S.C. 2255 by USA as to Brian Hoskins. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Darrow, William) (Entered: 01/12/2016)
02/11/2016	<u>65</u>	MOTION to Appoint Counsel by Brian Hoskins. (Johnson, Barclay) (Entered: 02/11/2016)
02/11/2016	<u>66</u>	REPLY to Response to <u>62</u> MOTION to Vacate Under 28 U.S.C. 2255 by Brian Hoskins. (Johnson, Barclay) (Entered: 02/11/2016)
02/12/2016	67	ORDER granting <u>65</u> MOTION to Appoint Counsel as to Brian Hoskins. Signed by Judge John M. Conroy on 2/12/2016. (This is a text-only Order.) (hbc) (Entered: 02/12/2016)
02/12/2016	<u>68</u>	ORDER Appointing Federal Public Defender as to Brian Hoskins for the limited purpose of Defendant's 28 U.S.C. § 2255 claim. Signed by Deputy Clerk on 2/12/2016. (hbc) (Entered: 02/12/2016)
02/12/2016	<u>69</u>	NOTICE OF HEARING as to Brian Hoskins: Status Conference set for 2/17/2016 at 01:30 PM in Burlington Courtroom 440 before Judge John M. Conroy. Defendant's presence is not required. (jjj) (Entered: 02/12/2016)
02/17/2016	70	MINUTE ENTRY for proceedings held before Judge John M. Conroy: Status Conference conducted in chambers as to Brian Hoskins held on 2/17/2016. Deft not present represented by Michael Desautels, FPD and Barclay Johnson, AFD and William Darrow, AUSA present for the Govt. Hearing to be scheduled at a future date. (Court Reporter: recorded) (jjj) (Entered: 02/17/2016)
02/17/2016	71	ORDER as to Brian Hoskins: On or before 3/18/2016, the United States shall cause to be prepared and filed a transcript of 42 Change of Plea Hearing occurring on 1/11/2012. Signed by Judge John M. Conroy on 2/17/2016. (This is a text-only Order.) (hbc) (Entered: 02/17/2016)
02/23/2016	<u>72</u>	SUR-REPLY by USA as to Brian Hoskins to <u>62</u> MOTION to Vacate Under 28 U.S.C. 2255. (Darrow, William) Text/link clarified on 2/24/2016 (law). (Entered: 02/23/2016)
03/01/2016	73	ORDER as to Brian Hoskins: The Court has been informed by the Clerk of Court that the 42 Change of Plea Proceeding in this matter that occurred on 1/11/2012 was not recorded by stenographic or electronic means as is required by Fed. R. Crim. P. 11(g) due to error. Thus, for purposes of the pending <u>62</u> Motion to Vacate Under 28 U.S.C. 2255, there is no record of proceedings to review the factual basis for the plea of guilty or voluntary nature of the plea entered into by the defendant on that date. The parties are directed to file a memorandum of law not to exceed 10 pages, on or before 3/21/2016, with citation to controlling authority, on the impact, if any, this omission may have on the pending motion to vacate. Signed by Judge John M. Conroy on 3/1/2016. (This is a text-only Order.) (hbc) (Entered: 03/01/2016)
03/08/2016	<u>74</u>	NOTICE OF HEARING as to Brian Hoskins re: <u>62</u> Motion to Vacate Under 28 U.S.C. 2255 :The defendants presence at this hearing is required and the United States Attorney shall take all necessary steps to assure the defendant's presence at the hearing. Motion Hearing set for 4/7/2016 at 10:00 AM in Burlington Courtroom 440 before Judge John M. Conroy.(jjj) (Entered: 03/08/2016)

03/21/2016	<u>75</u>	POST-HEARING MEMORANDUM by USA as to Brian Hoskins re: <u>62</u> MOTION to Vacate Under 28 U.S.C. 2255 (Darrow, William) Text modified and link corrected on 3/22/2016 (jlh). (Entered: 03/21/2016)
03/21/2016	<u>76</u>	POST-HEARING MEMORANDUM by Brian Hoskins <u>62</u> MOTION to Vacate Under 28 U.S.C. 2255. (Johnson, Barclay) Text modified, link corrected on 3/22/2016 (jlh). (Entered: 03/21/2016)
04/04/2016	<u>77</u>	TRANSCRIPT of Initial Appearance hearing as to Brian Hoskins held on 6/16/2011 before Magistrate Judge John M. Conroy. Court Reporter/Transcriber Pamela Mayo Hamel, telephone number (802) 862-4593. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 4/28/2016. Redacted Transcript Deadline set for 5/9/2016. Release of Transcript Restriction set for 7/8/2016. (law) (Entered: 04/04/2016)
04/04/2016	<u>78</u>	TRANSCRIPT of Motion to Review Detention Order hearing as to Brian Hoskins held on 10/18/2011 before Magistrate Judge John M. Conroy. Court Reporter/Transcriber Pamela Mayo Hamel, telephone number (802) 862-4593. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 4/28/2016. Redacted Transcript Deadline set for 5/9/2016. Release of Transcript Restriction set for 7/8/2016. (law) (Entered: 04/04/2016)
04/05/2016	<u>79</u>	AFFIDAVIT in Support by Brian Hoskins re <u>62</u> MOTION to Vacate Under 28 U.S.C. 2255 . (Attachments: # <u>1</u> Declaration of Brian Hoskins, # <u>2</u> Exhibit C)(Johnson, Barclay) (Attachment 1 replaced on 4/7/2016) (jlh). (Attachment 2 replaced on 4/7/2016) (jlh). (Entered: 04/05/2016)
04/06/2016	<u>80</u>	SUPPLEMENTAL DOCUMENT(S) by Brian Hoskins re: <u>62</u> MOTION to Vacate Under 28 U.S.C. 2255. (Attachments: # <u>1</u> Exhibit D)(Johnson, Barclay) Text clarified on 4/7/2016 (jlh). (Entered: 04/06/2016)
04/07/2016	81	MINUTE ENTRY for proceedings held before Judge John M. Conroy: Motion Hearing as to Brian Hoskins held on 4/7/2016 re <u>62</u> Motion to Vacate Under 28 U.S.C. 2255 filed by Brian Hoskins. Petitioner present with Barclay Johnson, AFD and William Darrow, AUSA present for Govt. ORDERED: Motion taken under advisement. (Court Reporter: recorded) (jjj) (Entered: 04/07/2016)
04/07/2016		Motion Taken Under Advisement as to Brian Hoskins re <u>62</u> Motion to Vacate Under 28 U.S.C. 2255 (jjj) (Entered: 04/07/2016)
04/07/2016	<u>82</u>	NOTICE OF DOCKET ENTRY CORRECTION as to Brian Hoskins re: <u>79</u> Affidavit in Support of Motion. Both attachments were illegible and have been replaced on the docket. The corrected documents are now attached to <u>79</u> as well as this entry. (Attachments: # <u>1</u> Exhibit C) (jlh) (Entered: 04/07/2016)
04/28/2016	<u>83</u>	REPORT AND RECOMMENDATION as to Brian Hoskins recommending that Defendant's <u>62</u> MOTION to Vacate Under 28 U.S.C. 2255 be granted and that further proceedings be held consistent with this recommendation. Objections to R&R due by 5/16/2016. Signed by Judge John M. Conroy on 4/28/2016. (hbc) (Entered: 04/28/2016)
05/16/2016	<u>84</u>	OBJECTION to Report and Recommendation <u>83</u> by USA as to Brian Hoskins (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Affidavit of William B. Darrow)(Darrow, William) (Attachment 4 replaced on 5/17/2016) (law). (Additional attachment(s) added on 5/17/2016: # <u>5</u> Complaint, # <u>6</u> Letter, # <u>7</u> Emails) (law). (Entered: 05/16/2016)
05/17/2016	<u>85</u>	NOTICE OF DOCKET ENTRY CORRECTION as to Brian Hoskins re: <u>84</u> Objection to Report and Recommendation. The Affidavit of William Darrow was combined with that of its attachments, as well as an attachment was omitted at the time of filing. The images have been broken apart and replaced on the docket, and the omitted attachment appended. The images are now separately attached to <u>84</u> and this entry. (Attachments: # <u>1</u> Complaint, # <u>2</u> Letter, # <u>3</u> Emails) (law) (Entered: 05/17/2016)

05/31/2016	<u>86</u>	MOTION to Strike Objections to <u>83</u> Report and Recommendation and MOTION to Disqualify Counsel by Brian Hoskins. (Johnson, Barclay) Link added, motion relief added on 6/6/2016 (jlh) (Entered: 05/31/2016)
05/31/2016	<u>87</u>	MOTION for Extension of Time to File Response/Reply re: <u>83</u> Report and Recommendation by Brian Hoskins. (Johnson, Barclay) Event/Text clarified on 6/6/2016 (jlh). (Entered: 05/31/2016)
06/02/2016	<u>88</u>	MOTION for Leave to File <i>Oversize Memorandum and Response</i> re: <u>86</u> Motion to Strike by USA as to Brian Hoskins. (Attachments: # <u>1</u> Certificate of Service)(Darrow, William) Link added on 6/6/2016 (jlh). Modified on 6/6/2016 (jlh) (Entered: 06/02/2016)
06/23/2016	<u>89</u>	ORDER: <u>86</u> Motion to Strike is granted in part and denied in part. <u>86</u> Motion to Disqualify Counsel in denied at this time. <u>87</u> Motion for Extension of Time to File Response/Reply as to Brian Hoskins is granted; <u>88</u> Motion for Leave to File an oversize memorandum is granted in part and denied in part. Govt shall refile objection to Report and Recommendation limited to 25 pages by 7/15/2016. Dft may file a response (limited to 25 pages) to govt objection within 2 weeks of govt filing. Signed by District Judge J. Garvan Murtha on 6/23/2016. (kak) (Entered: 06/23/2016)
06/30/2016	<u>90</u>	OBJECTION to Report and Recommendation <u>83</u> by USA as to Brian Hoskins (Darrow, William) (Entered: 06/30/2016)
07/14/2016	<u>91</u>	MOTION for Extension of Time to File Response/Reply re: <u>90</u> Objection to Report and Recommendation by Brian Hoskins. (Johnson, Barclay) (Entered: 07/14/2016)
07/14/2016	<u>92</u>	ORDER granting <u>91</u> Defendant's Motion for One Week Extension of Time as to Brian Hoskins (1). Defendant's response re: <u>90</u> Objection to Report and Recommendation shall be filed on or before 7/21/2016. Signed by District Judge J. Garvan Murtha on 7/14/2016. (This is a text-only Order.) (kbl) (Entered: 07/14/2016)
07/21/2016	<u>93</u>	RESPONSE by Brian Hoskins to <u>90</u> Objection to Report and Recommendation filed by USA (Johnson, Barclay) (Entered: 07/21/2016)
08/05/2016	<u>94</u>	ORDER AFFIRMING, APPROVING AND ADOPTING <u>83</u> REPORT AND RECOMMENDATION as to Brian Hoskins for <u>62</u> Motion to Vacate/Set Aside/Correct Sentence (2255). Memorandum re: posture of the plea, plea agreement and resentencing due by 8/19/2016. Signed by District Judge J. Garvan Murtha on 8/5/2016. (esb) Text clarified on 8/19/2016 (jlh). (Entered: 08/05/2016)
08/05/2016		Case reopened as to Brian Hoskins. (kak) Date filed clarified on 8/22/2016 (law). (Entered: 08/19/2016)
08/19/2016	<u>95</u>	RESPONSE by USA as to Brian Hoskins to <u>94</u> Order Adopting Report and Recommendation. (Darrow, William) (Entered: 08/19/2016)
08/19/2016	<u>96</u>	RESPONSE by Brian Hoskins to <u>94</u> Order Adopting Report and Recommendation. (Johnson, Barclay) (Entered: 08/19/2016)
08/29/2016	<u>97</u>	NOTICE OF HEARING as to Brian Hoskins: Status Conference re: <u>62</u> 28 U.S.C. sect. 2255 Motion to Correct Sentence, and posture of the plea, plea agreement and sentence set for 10/5/2016 at 01:00 PM in Brattleboro Courtroom before District Judge J. Garvan Murtha. The defendant's presence at this hearing is required. The U.S. Attorney shall take all necessary steps to insure his presence at the hearing.(kak) (Entered: 08/29/2016)
10/05/2016	<u>98</u>	MINUTE ENTRY for proceedings held before Judge J. Garvan Murtha: Status Conference as to Brian Hoskins held on 10/5/2016. Dft present with counsel Barclay Johnson, AFPD. AUSA William Darrow present for govt. Statements by counsel. Clerk swears dft and Court makes inquiries. Dft states he does not wish to withdraw his plea. Post hearing memoranda due 10/21/2016 (limited to 5 pages). Dft remains detained. (Court Reporter: Verbatim Reporters) (kak) (Entered: 10/05/2016)
10/21/2016	<u>99</u>	SUPPLEMENTAL DOCUMENT(S) re: <u>62</u> MOTION to Vacate Under 28 U.S.C. 2255 by Brian Hoskins (Johnson, Barclay) Link corrected on 10/25/2016 (jlh). (Entered: 10/21/2016)

10/21/2016	<u>100</u>	POST-HEARING MEMORANDUM by USA as to Brian Hoskins re: <u>62</u> MOTION to Vacate Under 28 U.S.C. 2255. (Darrow, William) Link corrected on 10/25/2016 (jlh). (Entered: 10/21/2016)
11/02/2016	<u>101</u>	ORDER re <u>62</u> MOTION to Vacate Under 28 U.S.C. 2255 as to Brian Hoskins. USPO to prepare revised PSR. Sentencing set for 12/28/2016 at 10:30 a.m. in Brattleboro. Sentencing memoranda due by 12/19/2016. Signed by District Judge J. Garvan Murtha on 11/2/2016. (kak) (Entered: 11/02/2016)
11/02/2016	<u>102</u>	NOTICE OF HEARING as to Brian Hoskins: Sentencing set for 12/28/2016 at 10:30 AM in Brattleboro Courtroom before District Judge J. Garvan Murtha.(kak) (Entered: 11/02/2016)
11/02/2016	<u>103</u>	MOTION to Disclose Grand Jury Transcripts by USA as to Brian Hoskins. (esb) (Entered: 11/02/2016)
11/09/2016	<u>104</u>	PROPOSED Order by USA re <u>103</u> MOTION to Disclose Grand Jury Transcripts (Attachments: # <u>1</u> Certificate of Service)(Darrow, William) (Entered: 11/09/2016)
11/14/2016	<u>105</u>	ORDER granting <u>103</u> MOTION to Disclose Grand Jury Transcripts) as to Brian Hoskins (1). Signed by District Judge J. Garvan Murtha on 11/14/2016. (kak) (Entered: 11/14/2016)
12/19/2016	<u>106</u>	SENTENCING MEMORANDUM by USA as to Brian Hoskins (Darrow, William) (Entered: 12/19/2016)
12/19/2016	<u>107</u>	SENTENCING MEMORANDUM and MOTION for Downward Departure and/or Variance by Brian Hoskins (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E)(Johnson, Barclay) (Entered: 12/19/2016)
12/28/2016	108	MINUTE ENTRY for proceedings held before Judge J. Garvan Murtha: Sentencing as to Brian Hoskins held on 12/28/2016. Dft present with counsel Barclay Johnson, AFD. AUSA William Darrow present by telephone conference for govt. Statements by counsel re: <u>107</u> Motion for Departure or Variance. Statement by defendant prior to imposition of sentence. Court makes findings. <u>107</u> Motion for variance GRANTED; Motion for Departure moot. SENTENCE: Count 1s: Term of imprisonment of 86 months, to be served concurrently with any undischarged term of imprisonment imposed by the State of Vermont, followed by a 3-year term of S/R with the following conditions: participate in a substance abuse program as approved by USPO, not possess a firearm or other dangerous weapon, submit person or property to search at anytime and cooperate in the collection of DNA. Fine wvd; \$100 S/A due immediately. Court recommends to BOP that dft be designated to FCI Danbury. Dft and govt notified of right to appeal. Dft remanded to custody of USMS. (Court Reporter: O'Brien Reporters) (kak) (Entered: 12/28/2016)
12/28/2016	<u>109</u>	AMENDED JUDGMENT as to Brian Hoskins (1), Count(s) 1, Dismissed on govt motion; Count(s) 1s, Term of imprisonment of 86 months, to be served concurrently with any undischarged term of imprisonment imposed by the State of Vermont, followed by a 3-year term of S/R with the following conditions: participate in a substance abuse program as approved by USPO, not possess a firearm or other dangerous weapon, submit person or property to search at anytime and cooperate in the collection of DNA. Fine wvd; \$100 S/A. Signed by District Judge J. Garvan Murtha on 12/28/2016. (kak) (Entered: 12/28/2016)
01/06/2017	<u>110</u>	NOTICE OF APPEAL by USA as to Brian Hoskins re <u>109</u> Amended Judgment. (Attachments: # <u>1</u> Certificate of Service)(Darrow, William) (Entered: 01/06/2017)
01/10/2017	<u>111</u>	USCA Form B – Criminal Appeal Transcript Request for 12/28/2016 Resentencing by USA as to Brian Hoskins. (gmg) (Entered: 01/10/2017)
01/12/2017	<u>112</u>	TRANSMITTED Index on Appeal, Circuit No. 17-70 as to Brian Hoskins re: <u>110</u> Notice of Appeal. (gmg) (Entered: 01/12/2017)
01/12/2017		Attorney substitution as to Brian Hoskins. Attorney Paul J. Van de Graaf, AUSA for USA substituted for Attorney William B. Darrow, AUSA as to USA. Pursuant to notification from the U.S. Attorney's Office. (law) (Entered: 01/12/2017)

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01/18/2017	<u>113</u>	USCA Form B – Criminal Appeal Transcript Request by USA as to Brian Hoskins. (Van de Graaf, Paul) (Entered: 01/18/2017)
02/10/2017	<u>114</u>	TRANSCRIPT of Status Conference held on 10/5/2016 before Judge J. Garvan Murtha as to Brian Hoskins re <u>110</u> Notice of Appeal. Court Reporter/Transcriber Verbatim Reporters, telephone number (802) 869-1665. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.. Redaction Request due 3/6/2017. Redacted Transcript Deadline set for 3/16/2017. Release of Transcript Restriction set for 5/15/2017. (kak) (Entered: 02/10/2017)
02/14/2017	<u>115</u>	TRANSMITTED Supplemental Index on Appeal Circuit No. 17-70 as to Brian Hoskins re <u>110</u> Notice of Appeal. (gmg) (Entered: 02/14/2017)
08/24/2017	<u>116</u>	ORDER REASSIGNING CASE as to Brian Hoskins to Chief Judge Christina Reiss. District Judge J. Garvan Murtha no longer assigned to the case. Signed by District Judge J. Garvan Murtha on 8/24/2017. (law) (Entered: 08/24/2017)
01/09/2019	<u>117</u>	MANDATE of USCA Circuit No. 17-70 as to Brian Hoskins re <u>110</u> Notice of Appeal. It is ORDERED that the <u>109</u> judgment of the district court is VACATED and the case is REMANDED for the district court to reinstate the <u>56</u> original sentence of imprisonment. (Attachments: # <u>1</u> Opinion).(gmg) (Entered: 01/09/2019)
01/17/2019	<u>118</u>	NOTICE OF HEARING as to Brian Hoskins: Sentencing set for 3/28/2019 at 11:00 AM in Burlington Courtroom 542 before Judge Christina Reiss.(jbr) (Entered: 01/17/2019)
02/22/2019		Attorney substitution as to Brian Hoskins. William B. Darrow, AUSA for USA substituted for Attorney Paul J. Van de Graaf, AUSA. Pursuant to notification from the U.S. Attorney's Office. (law) (Entered: 02/22/2019)