

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

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OSRIC TYRONE DAISE,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

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

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PETITION FOR WRIT OF CERTIORARI

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Paul K. Sun, Jr.

*Counsel of Record*

Kelly Margolis Dagger

Ellis & Winters LLP

Post Office Box 33550

Raleigh, North Carolina 27636

(919) 865-7000

paul.sun@elliswinters.com

*Counsel for Petitioner*

*Osric Tyrone Daise*

## **QUESTION PRESENTED**

Whether the district court committed plain error in revoking Mr. Daise's supervised release pursuant to 18 U.S.C. § 3583(e) when the court's expressed purpose in imposing the revocation sentence was to punish Mr. Daise.

## **PARTIES TO THE PROCEEDINGS BELOW**

All parties appear in the caption of the case on the cover page.

## **RELATED CASES**

*United States v. Osrice Tyrone Daise*, No. 24-4303, United States Court of Appeals for the Fourth Circuit. Opinion and Judgment filed Sept. 10, 2025.

*United States v. Osrice Tyrone Daise*, No. 7:23-CR-72-D-BM-1, United States District Court for the Eastern District of North Carolina. Judgment filed May 24, 2024.

*United States v. Osrice Tyrone Daise*, No. 7:10-CR-152-D-1, United States District Court for the Eastern District of North Carolina. Judgment filed Sept. 21, 2011.

*United States v. Osrice Tyrone Daise*, No. 7:10-CR-152-D-1, United States District Court for the Eastern District of North Carolina. Judgment filed May 24, 2024.

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## **CITATION OF PRIOR OPINION**

The United States Court of Appeals for the Fourth Circuit decided this case in an unpublished per curiam opinion issued on September 10, 2025. The opinion appears at Appendix 1a-5a.

## **JURISDICTIONAL STATEMENT**

This petition seeks review of an opinion affirming petitioner's sentence imposed upon revocation of supervised release that was part of Mr. Daise's sentence for Hobbs Act robbery, and aiding and abetting, in violation of 18 U.S.C. §§ 1951 and 2, and using and carrying a firearm in furtherance of a crime of violence, and aiding and abetting, in violation of 18 U.S.C. §§ 924(c)(1)(A) and 2.

The Fourth Circuit filed the opinion and judgment on September 10, 2025. This petition is being filed within the time permitted by the Rules of this Court. *See* S. Ct. R. 13. This Court has jurisdiction to review the Fourth Circuit's decision pursuant to 28 U.S.C. § 1254(1).

## **STATUTORY PROVISIONS INVOLVED**

Section 3553(a) of Title 18 provides, in relevant part:

(a) Factors To Be Considered in Imposing a Sentence.—The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed—



(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner[.]

Section 3583(e) of Title 18 provides, in relevant part:

(e) Modification of Conditions or Revocation.—The court may, after considering the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)—

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(3) revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on post-release supervision, if the court, pursuant to the Federal Rules of Criminal Procedure applicable to revocation of probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be required to serve on any such revocation more than 5 years in prison if the offense that resulted in the term of supervised release is a class A felony, more than 3 years in prison if such offense is a class B felony, more than 2 years in prison if such offense is a class C or D felony, or more than one year in any other case[.]

## STATEMENT OF THE CASE

*Mr. Daise's Conviction and Sentence in Case No. 7:10-CR-152-D-1 (2010 Case)*

Mr. Daise pleaded guilty to Hobbs Act Robbery and aiding and abetting, and use of a firearm in furtherance of a crime of violence and aiding and abetting.

JA96.<sup>1</sup> The United States District Court for the Eastern District of North Carolina imposed a sentence of 102 months' imprisonment and 5 years of supervised release. JA96.

*Mr. Daise's Indictment and Plea in Case No. 7:23-CR-72-D-BM-1 (2023 Case)*

Mr. Daise was charged by indictment with possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924; possession with intent to distribute a quantity of cocaine, in violation of 21 U.S.C. § 841(b)(1)(C); possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c); and use and maintaining a place for the purpose of distributing and using a controlled substance, in violation of 21 U.S.C. § 856(a)(1). JA58. Mr. Daise pleaded guilty to possession of a firearm by a felon and possession with intent to distribute a quantity of cocaine. JA58.

*Revocation of Supervised Release in the 2010 Case.*

The Probation Office filed a Second Amended Motion for Revocation of Supervised Release based on Mr. Daise's guilty plea and conviction in the 2023 case to possession of a firearm by a felon and possession with intent to distribute cocaine. JA58-59.

The district court combined in a joint hearing Mr. Daise's sentencing in the 2023 case with the revocation proceeding in the 2010 case. App. 7a-42a. After

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<sup>1</sup> "JA" refers to the Joint Appendix filed by the parties in the Fourth Circuit.

imposing an above-guidelines sentence of 120 months in the 2023 case, the court turned to the revocation matter. *Id.* at 11a, 30a, 33a.

Mr. Daise admitted violating the conditions of supervised release by committing the crimes he had pleaded guilty to. *Id.* at 34a. The court found, without objection by either party, that Mr. Daise committed a Grade A violation, that the applicable guidelines policy statement range was 27 to 33 months, and that the statutory maximum sentence was 60 months. *Id.* at 34a-35a. The court said that in determining a revocation sentence, “the focus is on breach of trust principally.” *Id.* at 35a.

Mr. Daise argued, based on facts already argued and based on the parties’ agreement that the revocation sentence would be consecutive to the sentence already imposed, that a sentence within the policy range was sufficient. *Id.* at 35a-36a. The United States asked the court to impose a sentence of the statutory maximum of 60 months. *Id.* at 36a-37a. Upon invitation from the court, a probation officer advised the court that the Probation Office had worked diligently to help Mr. Daise “stay on the right path.” *Id.* at 37a-38a.

The court announced that it had considered the arguments of the parties, the information from the probation officer, and the policy statement range. *Id.* at 38a. The court repeated that its “principal focus” was “on the breach of trust.” *Id.* The court stated that the court’s first expectation of a defendant on supervised release is “don’t commit any more felonies while you’re on supervision.” *Id.* at 39a. The

court noted that there are different kinds of violations of release conditions and said this was “the kind of kick-the-door-down, spit-in-the-face-of-the-Court violation that says I am back at it. I am a felony drug dealer. I got a gun and got my dope and I don’t care.” *Id.* The court stated the violation was “egregious and appalling and worthy of punishment.” *Id.* The court concluded:

Having fully considered the entire record, particularly the egregious nature of the breach of trust involving armed drug dealing while on federal supervision for a Hobbs Act robbery where you stuck a gun in the face of a woman working as a manager at a fast food restaurant and so much time to reflect on your life and your choices and chose to get back at it, it’s the judgment of the Court that Mr. Daise is committed to the custody of the Bureau of Prisons to be imprisoned for 48 months.

*Id.* The court stated the 48-month sentence would be consecutive to the 120-month sentence and terminated supervision in the 2010 case. *Id.* at 40a. The court added that it believed it had properly calculated the advisory policy statement range, but further added that “I’d impose the same sentence as an alternative variant sentence if I have in any way miscalculated the policy statement range.” *Id.*

#### *Appeal*

The United States Court of Appeals for the Fourth Circuit affirmed. *Id.* at 2a, 5a.

Under Fourth Circuit precedent, the court will affirm a revocation sentence if the sentence is not “plainly unreasonable.” *Id.* at 2a. The Fourth Circuit recognized that this Court ruled in *Esteras v. United States* that “district courts

cannot consider § 3553(a)(2)(A) when revoking supervised release.” *Id.* at 3a (quoting *Esteras v. United States*, 606 U.S. 185, 195 (2025)). The court said that in explaining the sentence, “a court need not be as detailed or specific when imposing a revocation sentence as it must be when imposing a post-conviction sentence.” App. 3a (quoting *United States v. Thompson*, 595 F.3d 544, 547 (4th Cir. 2010)). The court further explained that “a revocation sentence is substantively reasonable if the court sufficiently states a proper basis for its conclusion that the defendant should receive the sentence imposed.” App. 3a (quoting *United States v. Slappy*, 872 F.3d 202, 207 (4th Cir. 2017)).

The court said that it would review Mr. Daise’s appeal for plain error because he did not object to the district court’s reliance on § 3553(a)(2)(A). App. 3a. “In that event, the district court’s order revoking supervised release and requiring reimprisonment will be affirmed unless it is clear or obvious that the district court actually relied on § 3553(a)(2)(A)—because it did so either expressly or by unmistakable implication.” *Id.* (quoting *Esteras*, 606 U.S. at 202-03 (quotations omitted)).

The court ruled as follows:

In imposing the sentence, the district court adequately considered the policies underlying the supervised release statute, the various applicable sentencing factors, and the available sentencing options. Although the court stated that Daise’s offenses were “worthy of punishment” (J.A. 92),\* “mere reference to such considerations does not render a revocation sentence procedurally unreasonable when [that] factor[] [is] relevant to, and considered in conjunction with, the enumerated § 3553(a) factors,” [*United States v.*]Webb, 738 F.3d [638,]

] 642 [4th Cir. 2013)]; *see Esteras*, 145 S. Ct. at 2043-44 (observing that, “if the defendant’s original offense was particularly violent, that fact might inform the [district] court’s judgment as to whether revocation is necessary to protect the public from further crimes of the defendant” but that “the [district] court could not revoke based on the view that, given the violent nature of the underlying offense, the defendant deserve[d] additional punishment” (citation modified)); *see Webb*, 738 F.3d at 641. Because the district court focused primarily on Daise’s breach of trust and the need to protect the public from future crimes, we conclude that the district court did not plainly err in explaining the sentence and, therefore, that the revocation sentence is reasonable.

*Id.* at 4a. The court affirmed the district court’s revocation judgment. *Id.* at 5a.

### **MANNER IN WHICH THE FEDERAL QUESTION WAS RAISED AND DECIDED BELOW**

The question presented was argued and reviewed in Mr. Daise’s appeal. Mr. Daise’s claim is appropriate for this Court’s consideration.

### **REASON FOR GRANTING THE WRIT**

Mr. Daise respectfully contends that the Fourth Circuit’s decision conflicts with this Court’s decision in *Esteras v. United States*, 606 U.S. 185 (2025). *See* S. Ct. R. 10(c).

### **DISCUSSION**

THE DISTRICT COURT COMMITTED PLAIN ERROR WHEN ITS EXPRESSED PURPOSE IN SENTENCING MR. DAISE UPON REVOCATION OF HIS SUPERVISED RELEASE WAS TO PUNISH MR. DAISE, AND *ESTERAS V. UNITED STATES* REQUIRES THE CASE TO BE REMANDED TO THE DISTRICT COURT FOR RESENTENCING CONSISTENT WITH THE REQUIREMENTS OF § 3583(e).

Under *Esteras v. United States*, 606 U.S. 185, 195 (2025), “District courts cannot consider § 3553(a)(2)(A) when revoking supervised release.” Section

3553(a)(2)(A) reflects “the retributive purposes of sentencing,” speaking to the question, “What sentence does the defendant deserve.” *Id.* at 192. In revoking Mr. Daise’s supervised release and imposing a sentence substantially above the policy statement range, the district court expressly relied on the retributive purpose of § 3553(a)(2)(A) when it declared that Mr. Daise’s conduct was “worthy of punishment.” App. 39a. The Fourth Circuit cited *Esteras*, but did not follow its directives. *See* App. 3a, 4a. This Court will reinforce the teachings of *Esteras* by granting this petition to review and correct Fourth Circuit’s opinion that affirmed the district court’s plain error in sentencing Mr. Daise for his supervised release violation.

A. Section 3583(e) Precludes Sentencing Courts From Punishing A Defendant When Revoking Supervised Release.

In 18 U.S.C. § 3583(e), Congress set out the § 3553(a) factors the district court properly considers in the supervised release revocation context, specifically, “the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7).” 18 U.S.C. § 3583(e). Thus, “[w]hen a court ‘determin[es] whether to include a term of supervised release,’ as well as the length and conditions of such a term, it must ‘consider the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7).’” *Esteras*, 606 U.S. at 192 (quoting 18 U.S.C. § 3583(c)). Section 3553(a)(2)(A) is “absent from this list.” *Id.* The *Esteras* Court resolved a circuit split, *id.* at 190 & n.1, and held that “District courts cannot consider § 3553(a)(2)(A) when revoking supervised release,”

*id.* at 195.

Section 3553(a)(2)(A) requires the sentencing court to consider the need for the sentence imposed “to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense.” 18 U.S.C. § 3553(a)(2)(A). That section evinces the “retributive purposes of sentencing.” *Esteras*, 606 U.S. at 192; *see id.* (“§ 3553(a)(2) captures the traditional heartland of criminal sentencing”—“retribution, deterrence, incapacitation, and rehabilitation”) (quotations omitted). Thus, “District courts may not consider the retributive purpose of § 3553(a)(2)(A) before revoking supervised release.” *Id.* at 203.

The Court focused on the word “offense” in § 3553(a)(2)(A) in analyzing what district courts may not consider in a revocation proceeding under § 3583(e). *Id.* at 193-94. “In the context of a revocation hearing, the ‘offense’ is the underlying crime of conviction, not the violation of the supervised-release conditions.” *Id.* A district court may not “account for the need to exact retribution for the defendant’s underlying crime.” *Id.* at 194-95; *see id.* at 205 (Sotomayor, J., concurring in part and concurring in the judgment). The Court did not decide whether § 3583(e) precludes sentencing courts from exacting retribution for the defendant’s supervised release violation. *Id.* at 194 n.5.

B. The District Court’s Express Purpose In Imposing The Revocation Sentence Was To Punish Mr. Daise.

In sentencing Mr. Daise for his supervised release violation, the district court declared its intent to impose a “serious sanction” because it deemed Mr. Daise



“worthy of punishment.” App. 39a.

The district court expressed its intent to punish Mr. Daise further for the new criminal conduct that violated his supervised release conditions and for the offenses that underlay the imposition of supervised release. The court had already punished Mr. Daise for his new firearm and drug possession offenses by imposing an above-guidelines sentence. *See* App. 11a (finding guidelines range of 57 to 71 months, but noting consideration of upward departure under U.S.S.G. § 5K2.21); *id.* at 30a (imposing sentence of 120 months’ imprisonment). But the court punished Mr. Daise again for that conduct, describing his supervised release violation as “I got a gun and I got my dope and I don’t care,” which was “worthy of punishment.” App. 39a. *Esteras* does not authorize such double punishment, 606 U.S. at 194 n.5, and as the Court explained in *Johnson v. United States*, 529 U.S. 694, 700 (2000), “[w]here the acts of violation are criminal in their own right, they may be the basis for separate prosecution, which would raise an issue of double jeopardy if the revocation of supervised release were also punishment for the same offense.” The court also highlighted the underlying criminal conduct as worthy of punishment, “a Hobbs Act robbery where you stuck a gun in the face of a woman working as a manager at a fast food restaurant.” App. 39a. *Esteras* expressly precludes exacting retribution for the underlying crime. *See* 606 U.S. at 193-94.

The district court effected its retributive intent by sentencing Mr. Daise to 48 months’ imprisonment for the supervised release violation, substantially above the

top of the policy statement range of 27 to 33 months. *See id.* at 35a, 39a.

Applicable Fourth Circuit precluded sentencing courts from considering retributive purposes when revoking supervised release even before the *Esteras* decision. *See Esteras*, 606 U.S. at 190 n.1 (citing *United States v. Crudup*, 461 F.3d 433, 439 (4th Cir. 2006), as holding district courts may not consider § 3553(a)(2)(A) when considering revocation of supervised release). Punishing Mr. Daise by sentencing him to 48 months’ imprisonment therefore was plain error because the district court’s statements make it both “clear” and “obvious” that the district court was actually relying on the retributive purposes of § 3553(a)(2)(A). *See Esteras*, 606 U.S. at 203 (quoting *United States v. Olano*, 507 U.S. 725, 734 (1993)).

C. The Fourth Circuit Cited But Did Not Follow *Esteras* When It Affirmed The District Court.

In rejecting Mr. Daise’s arguments, the Fourth Circuit cited and quoted from *Esteras*. *See* App. 3a, 4a. But the Fourth Circuit did not follow *Esteras*; when it affirmed the district court’s revocation sentence because the district court’s statements show that its predominant purpose was to punish Mr. Daise.

The Fourth Circuit quoted the holding in *Esteras* that “district courts cannot consider § 3553(a)(2)(A) when revoking supervised release.” App. 3a (quoting *Esteras*, 606 U.S. at 195). The Fourth Circuit understood this Court’s directive that district courts in a revocation proceeding cannot consider “the retributive purposes of sentencing.” App. 3a (quoting *Esteras*, 606 U.S. at 192). But as discussed above, *supra* pp. 9-11, the district court’s expressed purpose in imposing

the revocation sentence in this case was retribution—to punish Mr. Daise.

According to the Fourth Circuit, “the district court focused primarily on Daise’s breach of trust and the need to protect the public from future crimes.” App. 4a. As support for its conclusion that the district court did not err, the Fourth Circuit quoted the observations in *Esteras* that “if the defendant’s original offense was particularly violent, that fact might inform the [district] court’s judgment as to whether revocation is necessary to protect the public from further crimes of the defendant” but that “the [district] court could not revoke based on the view that, given the violent nature of the underlying offense, the defendant deserves additional punishment.” App. 4a (quoting *Esteras*, 606 U.S. at 200) (alterations by Fourth Circuit). The district court made no mention of the need to protect the public when it revoked Mr. Daise’s supervised release. *See* App. 38a-40a. But in revoking Mr. Daise’s supervised release, the district court expressed its belief that Mr. Daise deserved additional punishment by declaring that Mr. Daise was “worthy of punishment.” App. 39a. The court effected that belief by ordering Mr. Daise to serve a revocation sentence significantly longer than the Sentencing Commission’s policy statement range, and it made that revocation sentence consecutive to the above-guidelines sentence it had already imposed for the same conduct. *See* App. 30a, 35a, 39a. The district court did exactly what *Esteras* forbids, and the Fourth Circuit nevertheless affirmed.

The Fourth Circuit’s ruling in this case also is inconsistent with that court’s

precedents predating *Esteras* that discussed the proper application of § 3583(e). See *United States v. Lewis*, 90 F.4th 288 (4th Cir. 2024); *United States v. Webb*, 738 F.3d 638 (4th Cir. 2013). In *Lewis*, the Fourth Circuit explained how the Sentencing Commission followed Congressional dictates by treating a supervised release violation as a “breach of trust” and creating “three broad grades of violations,” so “the recommended sanction correlates with the extent of the defendant’s breach of trust, ‘taking into account, to a limited degree, the seriousness of the underlying violation.’” 90 F.4th at 296 (quoting U.S.S.G. ch. 7, pt. A, n.3(b)). “But the Commission also admonished courts that the object of a revocation sentence should not be to impose ‘an appropriate punishment’ for the conduct constituting the supervised release violation.” *Id.* (quoting U.S.S.G. ch. 7, pt. A, n.3(b)).

The district court in *Lewis* had explained that its reasons for the revocation sentence were the defendant’s “horrendous” criminal history, his “good” institutional record, and his physical condition. *Id.* at 299. The Fourth Circuit affirmed the district court’s revocation sentence because “these facts all directly relate to § 3553(a) factors that § 3583(e)(3) required the court to consider.” *Id.* at 300; see 18 U.S.C. § 3553(a)(1) (requiring sentencing courts to consider “the history and characteristics of the defendant”). The sentencing court’s reference to “all the factors set forth in 3553(a)” and “just punishment” were “too broad,” but “the factors on which the court *actually made its decision* were fully authorized.” *Id.* at 299,

300.

In *Webb*, the Fourth Circuit quoted the district court’s sentencing rationale.

After considering the evidence and argument from the government and the defendant, the specific sentence recommended includes the nature and circumstances, the seriousness of the violation, provides just punishment, reveals the history and characteristics of the defendant, promotes respect for the conditions of supervision imposed by the court, and affords adequate deterrence to noncompliant behavior, and provides protection from the public from further crimes of the defendant.

738 F.3d at 640. The Fourth Circuit found that the district court considered the Chapter 7 policy statements and § 3553(a) factors that sentencing courts properly consider. *See id.* at 642 (“the history and characteristics of the defendant, the need for the sentence to afford adequate deterrence to noncompliant behavior, and the need for the sentence to provide protection to the public from Webb’s criminal behavior”). The sentencing court’s “mere reference” to § 3553(a)(2)(A) factors that are precluded by § 3583(e)—the need for the sentence imposed to promote respect for the law and provide just punishment—did not render the sentence procedurally unreasonable. *See id.* While the sentencing court can consider, to a limited degree, the seriousness of the violation, “a district court may not impose a revocation sentence based predominately on the seriousness of the releasee’s violation or the need for the sentence to promote respect for the law and provide just punishment.” *Id.*; *see Lewis*, 90 F.4th at 300 (“It is clear that the district court did not base Lewis’s revocation sentence ‘predominately on’ the retributive factor—the

standard adopted in *Webb*, 738 F.3d at 642.”)<sup>2</sup>

In this case, the district court’s statements clearly showed its intent to punish Mr. Daise for the criminal conduct that violated his supervised release conditions was its predominant motivation. The court began its discussion by saying it recognized that its principal focus is breach of trust, App. 35a, 38a, but “only paying lip service to the requirements of [Fourth Circuit] precedent” is not enough. *See United States v. Nixon*, 130 F.4th 420, 435 (4th Cir. 2025). The district court said that there are different kinds of violations of release conditions and this was “the kind of kick-the-door-down, spit-in-the-face-of-the-Court violation that says I am back at it. I am a felony drug dealer. I got a gun and got my dope and I don’t care.” App. 39a. The district court characterized Mr. Daise’s violation as “egregious and appalling and worthy of punishment.” *Id.* The court listed first in determining Mr. Daise’s revocation sentence that it was “particularly” relying on “the egregious nature of the breach of trust involving armed drug dealing.” *Id.* The Fourth Circuit’s ruling in this case is thus inconsistent with *Esteras* and the Fourth Circuit’s own relevant precedents.

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<sup>2</sup> Consistent with *Esteras*, the *Lewis* court explained that “[t]he word ‘offense’ as used throughout § 3553(a) refers to the offense of conviction for which the defendant was originally sentenced, not the new conduct violating his supervised release conditions.” 90 F.4th at 297. The *Webb* court did not reflect this understanding when it said the district court in that case referenced “the seriousness of Webb’s offense.” 738 F.3d at 642.

## CONCLUSION

For the reasons shown above, Petitioner Osric Tyrone Daise respectfully contends that the district court committed plain error when its purpose in imposing the revocation sentence was to punish Mr. Daise, and the Fourth Circuit erred in affirming that sentence. Mr. Daise respectfully requests that the Court grant certiorari, remand to the Fourth Circuit, and order Mr. Daise's case to be remanded to the district court for resentencing.

This the 9th day of December, 2025.

/s/ Paul K. Sun, Jr.

Paul K. Sun, Jr.

*Counsel of Record*

Kelly Margolis Dagger

Ellis & Winters LLP

Post Office Box 33550

Raleigh, North Carolina 27636

(919) 865-7000

paul.sun@elliswinters.com

*Counsel for Petitioner*

*Osric Tyrone Daise*



## **APPENDIX**

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**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 24-4303**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

OSRIC TYRONE DAISE,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of North Carolina, at  
Wilmington. James C. Dever III, District Judge. (7:10-cr-00152-D-1)

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Submitted: August 25, 2025

Decided: September 10, 2025

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Before GREGORY, AGEE, and HEYTENS, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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**ON BRIEF:** Paul K. Sun, Jr., Kelly Margolis Dagger, ELLIS & WINTERS LLP, Raleigh, North Carolina, for Appellant. Daniel P. Bubar, Acting United States Attorney, David A. Bragdon, Assistant United States Attorney, Katherine Englander, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

## PER CURIAM:

In 2011, Osric Tyrone Daise pleaded guilty to robbery of a business engaged in interstate commerce and use of a firearm during and in relation to a crime of violence. The district court sentenced Daise to a total of 102 months' imprisonment and five years' supervised release. Daise began his supervised release term in May 2018. In July 2021, Daise pleaded guilty to possession of a firearm by a felon, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2) (2018), and possession with intent to distribute cocaine, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C). The district court revoked Daise's supervised release relating to his 2011 convictions and sentenced him to 48 months' imprisonment with no supervised release to follow. On appeal, Daise contends that his revocation sentence is plainly unreasonable. We affirm.

We “adopt a more deferential appellate posture” when reviewing a district court's sentence imposed upon revocation of supervised release. *United States v. Gibbs*, 897 F.3d 199, 203 (4th Cir. 2018) (citation modified). Because of the district court's “broad discretion” in imposing a revocation sentence, “we will affirm [the] sentence if it is within the statutory maximum and is not plainly unreasonable.” *United States v. Webb*, 738 F.3d 638, 640 (4th Cir. 2013) (citation modified). To determine whether a revocation sentence is plainly unreasonable, “we first consider whether the sentence imposed is procedurally or substantively unreasonable.” *Id.* “Only if we find the sentence unreasonable must we decide whether [the sentence] is plainly so.” *Id.* (citation modified).

“A revocation sentence is procedurally reasonable if the district court adequately explains the chosen sentence after considering the Chapter Seven policy statement range[,

the parties’ arguments,] and the applicable [18 U.S.C.] § 3553(a) sentencing factors.” *United States v. Patterson*, 957 F.3d 426, 436-37 (4th Cir. 2020); *see* 18 U.S.C. § 3583(e) (setting forth § 3553(a) factors relevant to supervised release revocation proceedings). But “district courts cannot consider § 3553(a)(2)(A) when revoking supervised release,” *Esteras v. United States*, 145 S. Ct. 2031, 2040 (2025) (citation modified), meaning the court cannot consider “the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense, *i.e.*, the retributive purposes of sentencing,” *id.* at 2039 (citing § 3553(a)(2)(A)). In explaining the sentence, “a court need not be as detailed or specific when imposing a revocation sentence as it must be when imposing a post-conviction sentence.” *United States v. Thompson*, 595 F.3d 544, 547 (4th Cir. 2010) (citation modified). Finally, “a revocation sentence is substantively reasonable if the court sufficiently states a proper basis for its conclusion that the defendant should receive the sentence imposed.” *United States v. Slappy*, 872 F.3d 202, 207 (4th Cir. 2017) (citation modified).

In cases like Daise’s, where “the defendant [did] not make the district court aware that it may be impermissibly relying on § 3553(a)(2)(A), then the defendant’s appeal will be governed by plain-error review.” *Esteras*, 145 S. Ct. at 2045; *see Rosales-Mireles v. United States*, 585 U.S. 129, 134-35 (2018) (discussing plain-error standard of review). “In that event, the district court’s order revoking supervised release and requiring reimprisonment will be affirmed unless it is clear or obvious that the district court actually relied on § 3553(a)(2)(A)—because it did so either expressly or by unmistakable implication.” *Esteras*, 145 S. Ct. at 2045 (citation modified). Because Daise did not bring

to the district court's attention that it might have impermissibly relied on § 3553(a)(2)(A), our review is for plain error. *See id.*

In imposing the sentence, the district court adequately considered the policies underlying the supervised release statute, the various applicable sentencing factors, and the available sentencing options. Although the court stated that Daise's offenses were "worthy of punishment" (J.A. 92),\* "mere reference to such considerations does not render a revocation sentence procedurally unreasonable when [that] factor[] [is] relevant to, and considered in conjunction with, the enumerated § 3553(a) factors," *Webb*, 738 F.3d at 642; *see Esteras*, 145 S. Ct. at 2043-44 (observing that, "if the defendant's original offense was particularly violent, that fact might inform the [district] court's judgment as to whether revocation is necessary to protect the public from further crimes of the defendant" but that "the [district] court could not revoke based on the view that, given the violent nature of the underlying offense, the defendant deserve[d] additional punishment" (citation modified)); *see Webb*, 738 F.3d at 641. Because the district court focused primarily on Daise's breach of trust and the need to protect the public from future crimes, we conclude that the district court did not plainly err in explaining the sentence and, therefore, that the revocation sentence is reasonable.

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\* "J.A." refers to the joint appendix filed by the parties.

Accordingly, we affirm the district court's revocation judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*





UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION

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UNITED STATES OF AMERICA,

Plaintiff, Case Nos: 7:23-CR-72-D-BM-1  
7:10-CR-152-D-1

vs.

OSRIC TYRONE DAISE,

Defendant.

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MAY 24, 2024  
SENTENCING HEARING/REVOCATION HEARING  
**(Restricted Transcript under Standing Order 22-SO-1)**  
BEFORE THE HONORABLE JAMES C. DEVER III  
UNITED STATES DISTRICT JUDGE

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

On Behalf of the Government:

ASHLEY FOXX, ASSISTANT U.S. ATTORNEY  
U.S. Attorney's Office  
150 Fayetteville Street, Suite 2100  
Raleigh, North Carolina 27601

On Behalf of the Defendant:

PAUL SUN, Jr. ESQ.  
Ellis & Winters, LLP  
P.O. Box 33550  
Raleigh, North Carolina 27636

AMY M. CONDON, CRR, RPR, CSR  
Official Court Reporter  
United States District Court  
Raleigh, North Carolina  
Stenotype with computer-aided transcription

1 (Friday, May 24, 2024, commencing at 10:06 a.m.)

2 **P R O C E E D I N G S**

3 THE COURT: We'll next take up the sentencing of  
4 Osrice Daise.

5 (Pause in the proceeding.)

6 THE COURT: Good morning, Mr. Sun. Are you and  
7 Mr. Daise ready to proceed?

8 MR. SUN: Good morning, Your Honor. We're ready to  
9 proceed. Thank you.

10 THE COURT: Good morning, Ms. Foxx. Is the United  
11 States ready?

12 MS. FOXX: We are, Your Honor. Good morning.

13 THE COURT: At this time I'd ask that Mr. Daise be  
14 sworn or affirmed.

15 (The defendant, Osrice Daise, was duly sworn.)

16 THE COURT: Mr. Daise, do you understand that having  
17 been sworn, that your answers to my questions are subject to  
18 the penalty of perjury; and if you were to lie to me, you  
19 could be prosecuted for perjury or for making a false  
20 statement, sir?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Have you taken any kind of medicine or  
23 any other substance in the last 48 hours that affects your  
24 ability to hear and understand this proceeding?

25 THE DEFENDANT: No, sir.

1 THE COURT: Do you know why you're here today?

2 THE DEFENDANT: Yes, sir, for sentencing.

3 THE COURT: And, Mr. Sun, do you have any reason to  
4 doubt Mr. Daise's competence to go forward today?

5 MR. SUN: No, Your Honor.

6 THE COURT: Does the United States have any reason  
7 to doubt Mr. Daise's competence to go forward today?

8 MS. FOXX: No, Your Honor.

9 THE COURT: Based on Mr. Daise's answers to my  
10 questions, my observations of him and the answers from  
11 counsel, I find that he is competent.

12 Mr. Daise, you're here today having entered a plea  
13 of guilty to two charges. The first charge is possession of a  
14 firearm by a felon. The second charge is possession with  
15 intent to distribute a quantity of cocaine.

16 You entered a plea of guilty to those charges  
17 pursuant to a plea agreement. I hereby accept the plea  
18 agreement.

19 The sentencing guidelines are no longer mandatory;  
20 they're advisory. Nevertheless, I'm to take into account the  
21 now-advisory guidelines.

22 I do this by initially making findings of fact and  
23 calculating an advisory guideline range. I'll then consider  
24 any motion that might be made that might move that range  
25 either up or down. I'll then consider all arguments that

1 Mr. Sun makes on your behalf, any statement you'd like to  
2 make, and the arguments of the Assistant United States  
3 Attorney. I'll then determine your sentence, and I'll  
4 announce it here in court today. That'll be the process we'll  
5 follow.

6 Mr. Sun, did you receive a copy of the presentence  
7 report?

8 MR. SUN: Yes, Your Honor.

9 THE COURT: And, Mr. Daise, did you speak with your  
10 lawyer, Mr. Sun, about that report?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: At this time the Court directs that the  
13 presentence report be placed in the record under seal.

14 In accordance with Rule 32 of the Federal Rules of  
15 Criminal Procedure, the Court accepts as accurate the  
16 presentence report, except as to matters in dispute as set  
17 forth in the addendum.

18 I have reviewed the entire report, including the  
19 addendum. The addendum indicates that the defendant does  
20 object. One is to paragraph 21. That doesn't seem to affect  
21 the guidelines; is that correct, Mr. Sun?

22 MR. SUN: Correct, Your Honor. None of the  
23 objections affect the guidelines.

24 THE COURT: And then likewise -- I will say under  
25 5K2.21, that does provide the notice under Rule 32. And

1 reading -- I read a lot of PSRs, and I am contemplating an  
2 upward departure under 5K2.21.

3           Again, I know as part of the plea agreement, the  
4 924(c) charge got dismissed which would have been five years'  
5 consecutive, and I know there's a gun enhancement in the  
6 advice of the guidelines, but it's not the 924(c). And I am  
7 very concerned about the life Mr. Daise is leading.

8           And so the PSR provides the requisite notice the way  
9 5 -- unlike 4A1.3, which it's my practice when I'm upwardly  
10 departing under 4A1.3 to establish a new guideline range.  
11 That's not how the cases work for 5K2.21. Instead the Court  
12 can just upwardly depart or alternatively upwardly vary, but I  
13 do think there's a significant issue under 5K2.21 and the need  
14 to reflect the actual seriousness of the offense based on  
15 conduct underlying a charge dismissed as part of a plea  
16 agreement that did not enter into the determination of the  
17 applicable advisory guideline range. So I'm just putting  
18 everybody on notice that it's on my mind.

19           So I'll hear first -- after saying all of that, the  
20 total offense level is 23. The criminal history category is  
21 III. The advisory guideline range is 57 to 71 months.

22           Does the defense object to that?

23           MR. SUN: No, Your Honor.

24           THE COURT: Does the United States object to that?

25           MS. FOXX: No, Your Honor.

1           THE COURT: Again, I'll hear you on the 3553(a)  
2 factors; and to the extent you want to talk about 5K2.21, I'll  
3 hear you on that too as part of your presentation.

4           I'll hear first from Mr. Sun, then Mr. Daise, then  
5 Ms. Foxx, and I'll give Mr. Sun the last word.

6           Mr. Daise, you can have a seat while your lawyer  
7 speaks.

8           MR. SUN: This will address all of those issues,  
9 Your Honor, if it please the Court.

10          Under the factors, the Court will consider to set a  
11 sentence sufficient but not greater than necessary to serve  
12 the purposes of sentencing. I'll highlight these things and  
13 ask the Court to consider them.

14          The nature and circumstances of the offense. What  
15 stands out are unfavorable facts here, Your Honor. They do.  
16 This is a guns and drugs case, but it's a guns and drugs case  
17 with a home and children; and that's a very negative fact, and  
18 Mr. Daise understands that.

19          What stands out with regard to the history and  
20 characteristics, Your Honor, is another unfavorable fact, and  
21 that is that this is the second time Mr. Daise has been in  
22 front of Your Honor, and he understands that.

23          So what I'd ask the Court to consider is the  
24 question Your Honor thinks about in every one of these cases  
25 where there is a history; and that is, what can predict for

1 the Court whether someone will change patterns that have led  
2 them here in front of you? And that's the hardest question  
3 that I know Your Honor wrestles with every time in one of  
4 these cases, but I can ask the Court to consider these things  
5 and reasons why you can consider that Mr. Daise isn't going to  
6 be back in your courtroom again and can lead a productive  
7 life.

8 First, Your Honor, just from my personal  
9 interactions, Mr. Daise is bright and articulate and  
10 thoughtful. The kind of person -- and it is rare that I can  
11 have and have had discussions about the law. I mean, he asks  
12 good questions. He's thoughtful. Not how do I get out of  
13 this, but how does this work? You know, why is this like  
14 this? Things that can go into thinking in the future, he can  
15 turn those positive aspects in the right direction instead of  
16 in the wrong direction.

17 As I say, Your Honor, questions. I've spent a good  
18 amount of time with Mr. Daise talking about questions, but  
19 never excuses. He recognizes this isn't a forum where he has  
20 anything to say other than, I've done wrong and I'm here to  
21 ask you to consider that I'll do it right going forward. And  
22 "I'm done with this" is another phrase that I've heard  
23 consistently.

24 Mr. Daise does have some marketable skills. He's  
25 got a CDL. He's got other marketable skills. And tying the

1 two things that I've talked about, those marketable skills and  
2 this personal interaction, what I'd ask the Court to think  
3 about -- and he'll speak to you. He's going to be brief  
4 because he told me he wants to be brief. I've encouraged him  
5 to speak to Your Honor because in a lot of cases, frankly, I  
6 don't, but this is an occasion where you can at least get some  
7 impression of someone who has real genuine interpersonal  
8 skills; not shuck and jive interpersonal skills, but  
9 look-you-in-the-eye interpersonal skills, listen to what  
10 you're saying and ask follow-up questions in a way that -- I  
11 mean, what I think about in that circumstance, that's what  
12 anyone in a good customer-facing relationship does. You  
13 listen to what the other person is saying. You try to respond  
14 to that. A good salesperson, a good customer service, all  
15 those things are things that I've experienced.

16           And if I could just add I guess one and a half  
17 anecdotes. Since I've been back at work, it has always been  
18 the case when I've talked to Mr. Daise that he's said, You  
19 know, I'm so glad to see you. How are you doing? And that's  
20 not unusual. But what stood out to me, the very first time  
21 that I met Mr. Daise, he was at Onslow County jail. And I  
22 went down there, and I had an afternoon appointment with him,  
23 and he said something like, You know, you've probably been  
24 very busy. It took you a long time to get down here. I  
25 really appreciate that. You're probably busy today.



1           And I said, Well, actually I wasn't working today.  
2 We have a senior dog, and I had been at the vet with the dog.  
3 Every time I've spoken to Mr. Daise since then, he's asked  
4 about our dog. And again, that's just someone who thinks,  
5 listens, and then in a positive way can interact with people  
6 going forward.

7           That doesn't excuse the past behavior. It doesn't  
8 explain the past behavior, but I would ask the Court to think  
9 about going forward, what can give the Court reason to  
10 think -- and it isn't statistics, which probably would not cut  
11 very favorably here for someone with a criminal record like  
12 this. The statistics would probably be not good. But what is  
13 it that can say to the Court, "I have some level of confidence  
14 that he won't do this again?" And those are the things that I  
15 would ask the Court to think about. And in that regard, it's  
16 setting the sentence sufficient but not greater than  
17 necessary, respectfully ask that the Court conclude that an  
18 upward variance or upward departure is not necessary, a  
19 guideline sentence.

20           He's also going to be punished for the abuse of  
21 trust before the Court for the supervised release violation.  
22 I know that's coming up too, so it's all going to be part and  
23 parcel of what's coming today. Mr. Daise understands he's  
24 going to get a serious, a long sentence, but his mindset is  
25 one that I think will be positive in the future.

1           Thank you, Your Honor.

2           THE COURT: Thank you.

3           At this time I'll hear from Mr. Daise, if you'd like  
4 to make a statement, sir.

5           THE DEFENDANT: Yes, sir.

6           First, Judge, I'd like to apologize to the Court for  
7 being part of this process today. I'd also like to apologize  
8 to my family and the community for being an additive to the  
9 decay that, you know, we're all somewhat being affected by.

10           I'm tired of this, Judge. I'm exhausted. This  
11 is -- I've been wrestling with this reality for the last three  
12 years of just accepting this, and I've grown to that point.  
13 I'm embarrassed about this situation right here. If I could  
14 paint a picture like a dog chasing its tail, it would be even  
15 more vivid. It's like a bulldog chasing his tail. You know,  
16 I'm chasing something that I'm never going to get. This is  
17 something that I just, you know -- you know, I'm not a very  
18 good speaker. This is something that I just -- you know, I  
19 gained respect for the law since I've been here this time. I  
20 don't want this anymore. This is exhausting for me. This  
21 is -- my family is being affected by this. I've had to  
22 develop an awareness to understand that. My actions are not  
23 just affecting me, but it's affecting the people around me as  
24 well.

25           I throw myself at the mercy of the courts. This is

1 my second time ever being in front of you. I know all you got  
2 to read about me is what's on paper, and all I got to know of  
3 you is just the rumors that I hear, but I come to you in  
4 sincerity. I'm really over this, Judge. You know, this is  
5 exhausting for me.

6 THE COURT: Thank you, Mr. Daise.

7 At this time I'll hear from Ms. Foxx on behalf of  
8 the United States.

9 MS. FOXX: Your Honor, I'm going to first talk a  
10 little bit about the mention of the 5K2.21 and the Court  
11 possibly upward departing or upward variance based on charge  
12 dismissed.

13 We did enter into a plea agreement in which the  
14 924(c) was dismissed. I believe Your Honor indicated at one  
15 point that he was looking at an additional 60 months with that  
16 dismissal. He was not. He was looking at an additional 25  
17 years. It is the second 924(c).

18 Due to that additional 25-year penalty, and we do  
19 have different policies within the office, it was appropriate  
20 in looking at this case and in looking at the fact in part  
21 that a search warrant was executed at this residence. They  
22 needed to execute this search warrant after all parties had  
23 left the residence because there were so many young children  
24 at the residence. Because of that, there was no one there  
25 when they executed the search warrant. And the 924(c) charge,

1 I believe the Government could have proven that beyond a  
2 reasonable doubt; but to resolve the case, it was, in fact,  
3 dismissed, in part because of the 25-year penalty. However, I  
4 don't think that there should have been no penalty, and I do  
5 not believe that a plus-four enhancement of -- in connection  
6 with another felony appropriately encompasses the behavior  
7 that was exhibited and the criminal mindset that was exhibited  
8 on that day by Mr. Daise.

9           Ultimately, I do -- I'm grateful that the Court is  
10 considering an upward variance, an upward departure. I did  
11 want to provide that additional, but I also want to note that  
12 the 25-year penalty, again, I think that the case law is  
13 supportive of the fact that it is not truly a determination  
14 that has been appropriately encompassed based on the  
15 guidelines, specifically as it pertains to Mr. Daise.

16           If we had proceeded on the plea, there was no  
17 ability to make that a 60-month plea or to reduce it. It is a  
18 statutory requirement that he was looking at a 25-year  
19 minimum. So that I wanted to provide the Court and just be  
20 sure that it was clear that he was looking at a 25-year  
21 penalty.

22           As to the 3553(a) factors, a sentence that is  
23 sufficient but not greater than necessary is at the absolute  
24 top of the guideline as it pertains to this case. You know,  
25 Your Honor, we were in here, and we sentenced the

1 co-defendant, Ms. Brooks. And when we came into court, you  
2 know, all parties had agreed to a probationary sentence, and  
3 Your Honor ended up sentencing her I believe to nine months of  
4 active time. And at that time, what was of concern and the  
5 reason we proceeded against the co-defendant was in looking at  
6 the pictures of the discovery and seeing the children's things  
7 intermixed with drugs, drug paraphernalia, and things  
8 throughout the house was incredibly concerning to the  
9 Government.

10 I do have two pictures here with me, Your Honor,  
11 that I would like for the Court to consider. I've shown them  
12 to counsel. But when you walked into the residence when they  
13 executed the search warrant, you walked in and at the counter,  
14 you saw a bag that was full of narcotics and a gun. And then  
15 you see limes and you see organic fruit and you see a scale  
16 and a cup with shake in it and then children sippy cups to the  
17 side. And it was just out there in the kitchen. And I'll  
18 note that these children that are in the residence are  
19 children that are school age. It's not like they can't reach  
20 a counter. They can reach a stolen firearm that's just left  
21 out in the open for anybody to touch.

22 And so I've shown these to defense counsel, and I'd  
23 like to give them to the Court for the record.

24 If I may approach?

25 THE COURT: You may.

1 MS. FOXX: So when talking about the nature and  
2 circumstances of this case, that is why the nature and  
3 circumstances as it pertains specifically to this case are so  
4 problematic.

5 And, you know, when counsel said that defendant has  
6 the ability to talk and communicate, in essence he has the  
7 ability to woo people. That is probably how he talked this  
8 co-defendant into allowing him to come into her home with her  
9 other children. She has a baby with this defendant, just one,  
10 but her other children; allow him to come in where she pays  
11 like \$100 a month in rent to her father who provides this  
12 residence on a golf course with beautiful front-end washing  
13 machines and dryers, beautiful home. Allow him to come in  
14 and, in essence, run his drug business. That is how he is  
15 able to do it. He has a silver tongue.

16 But the reality of it is, that is not something that  
17 should be admirable. If he had used those things for the  
18 good, but instead he has chosen to use them to further his  
19 criminal mindset.

20 What can predict his past? That's what counsel  
21 asked. What is clear in looking at this PSR and his past is  
22 that he's going to be back. That's clear. Everything on this  
23 PSR says that he would come back.

24 You know, normally we get in here and we hear these  
25 arguments about the 3553(a) factor about upbringing and how

1 they have all these mental health issues and, you know, how  
2 that this was what got the defendant here. There is none of  
3 that here. This defendant had a great upbringing, great  
4 upbringing. A mother and a stepfather that loved him, took  
5 care of him. He chose to go down this path. No mental health  
6 concerns anywhere in this PSR. We rarely see that. Not even  
7 a diagnosis for ADHD. Yet he still chose to be here.

8           Those specifically go to recidivism, likelihood of  
9 recidivism, and specifically to deterrence. He got a sentence  
10 for robbery with a dangerous weapon on the state side and the  
11 federal side. And on the state side, they ended up  
12 retroactively coming back and running his sentence concurrent  
13 with the federal system. He got a break there. And instead  
14 of him coming out and trying to use these skills that he has,  
15 these skills that he indicated that he got his first time in  
16 BOP on welding and all these trade work and his GED, instead  
17 he chose to start selling drugs in a house with children.  
18 Those are choices.

19           So when you look at the 3553 factors and you look at  
20 whether or not a sentence that should be fashioned that is  
21 sufficient but not greater than necessary as it pertains to  
22 this defendant, his history, his background, everything is  
23 indicative of the fact that he's going to re-offend and that  
24 society needs to be protected. And generally to deter him and  
25 others from continuing this type of behavior, we would ask

1 that you sentence at the absolute highest of the guideline  
2 range, and we are thankful that you are considering a  
3 motion -- or to considering to upwardly depart or vary. Thank  
4 you.

5 THE COURT: Thank you.

6 Mr. Sun, anything else, and any recommendations?

7 MR. SUN: I do have, Your Honor, and I forgot. I  
8 should have mentioned those, but thank you.

9 We'd ask the Court to recommend vocational training.  
10 We'd ask the Court to recommend intensive substance abuse  
11 training, and we'd ask the Court to recommend Bennettsville.

12 THE COURT: Thank you.

13 MR. SUN: Thank you, Your Honor.

14 (Pause in the proceeding.)

15 THE COURT: All right, Mr. Daise. The Court  
16 recognizes its obligation to impose a sentence sufficient but  
17 not greater than necessary to comply with the purposes set  
18 forth in the statute.

19 I have considered all arguments that Mr. Sun has  
20 made on your behalf. I have considered your statement. I  
21 have considered the position of the United States. I have  
22 considered the advisory guideline range.

23 Among other things, I'm to consider the nature and  
24 circumstances of the offense and the history and  
25 characteristics of the defendant, the need for the sentence



1 imposed to reflect the seriousness of the offense, to promote  
2 respect for the law, and to provide just punishment; the need  
3 for the sentence imposed to deter others who might choose to  
4 engage in the criminal behavior that brings you here; the need  
5 for the sentence imposed to protect the public from further  
6 crime by you; the need for the sentence imposed to provide you  
7 with needed educational or vocational training, medical care,  
8 or other correctional treatment in the most effective manner.

9           The statute lists numerous other factors. I've  
10 considered all those factors, although I won't mention each  
11 one individually.

12           As for the nature and circumstances of the offense,  
13 you did plead guilty to possession of a firearm by a felon and  
14 possession with intent to distribute a quantity of cocaine.

15           As we've talked about as part of the plea agreement,  
16 the Government agreed to dismiss Counts 3 and 4 at sentencing,  
17 and Count 3 was the 924(c) which, as Ms. Foxx mentioned, would  
18 be your second and then would have a 25-year mandatory  
19 minimum.

20           As the offense conduct, in April of 2021, again,  
21 it's important to kind of put this in context because I read  
22 these reports in some detail. So it's April of 2021. This is  
23 about six weeks after you got your CDL. The report says you  
24 got your CDL on February 19th, 2021. You operated a business,  
25 but then it was administratively dissolved. Obviously, you

1 chose to be an armed drug dealer instead of a truck driver.

2 In April 2021, deputies with the Onslow County  
3 Sheriff's Office received a tip that you possessed multiple  
4 firearms from selling marijuana and cocaine. You were living  
5 with your then girlfriend, Alicia Rodriguez Brooks, on  
6 Shoreham Drive in Jacksonville.

7 On July 7, 2021, officers with the Jacksonville  
8 Police Department conducted a trash pull at your residence and  
9 retrieved a vacuum-sealed bag containing 24 grams of marijuana  
10 and other evidence suggesting that you were, in fact, dealing  
11 drugs.

12 The trash also included homework for one of Brooks'  
13 children. Due to the size of the vacuum-sealed bag,  
14 detectives suspected the bag originally contained over a pound  
15 of marijuana.

16 On July 27, 2021, sheriff deputies conducted a  
17 second trash pull and revealed four vacuum sealed bags  
18 containing 23.3 grams of marijuana and other evidence  
19 suggesting drug dealing. The trash also included a school  
20 folder with identification for one of Ms. Brooks' children.

21 July 29th, 2021, officers executed a search warrant  
22 at the residence. You were detained during a traffic stop  
23 near the residence. Brooks arrived at the residence and was  
24 detained.

25 Search of the residence revealed a stolen loaded .40

1 caliber handgun, a magazine containing 15 rounds of .40  
2 caliber ammunition, a box of .40 caliber ammunition, 19 rounds  
3 of 7.62-millimeter ammunition, 1.339 kilograms of marijuana,  
4 14,200 milligrams of THC, 157.99 grams of cocaine, 9.9 grams  
5 of mushrooms, \$830 in currency, drug paraphernalia, four cell  
6 phones.

7           Officers seized \$1,364 in currency from you. While  
8 the search was in progress, you told Brooks to go see a dude  
9 and get you 17. You and Brooks were arrested. You're  
10 accountable for the drugs referenced in the PSR.

11           Your criminal history began at age 19. As the  
12 report indicated, your father spent most of his life in  
13 prison, but you were raised by your mother and your  
14 stepfather. There were some financial hard times, the report  
15 indicates at times, but otherwise a good childhood, certainly  
16 where you were taught right from wrong.

17           You have your GED. You're 36 years old. You're  
18 intelligent. You're articulate. Yet time and again and again  
19 and again you return to the life you embrace; the life of a  
20 criminal.

21           Got your first conviction at age 19, carrying a  
22 concealed gun. Another carrying a concealed gun conviction at  
23 paragraph 20. Leniency in each instance, understandably from  
24 the state judge; failed on probation.

25           Came to Federal Court when you were 22. Right here.

1 Standing in the same place. Me sitting in the same place.

2 Not quite 13 years to the day. Here we are again.

3 Last time you were here, you had pleaded guilty to  
4 robbery of a business engaged in interstate commerce and  
5 aiding and abetting and using a firearm during and in relation  
6 to a crime of violence and aiding and abetting.

7 The facts in that case were that on October 16th,  
8 2020, you and Brady Williams entered a Captain D's restaurant  
9 in Jacksonville. You possessed a firearm, proceeded to the  
10 kitchen where you pointed the gun at a restaurant manager,  
11 demanded money and threatened to shoot the manager and cook.  
12 The manager knelt to open the safe, and you pointed the  
13 firearm at her head and said, "I'm going to blow your brains  
14 out."

15 The manager gave you \$138. And she escaped with her  
16 life. You told the manager and the cook that they were going  
17 to go with you and ordered them at gunpoint to proceed to the  
18 exit. When you opened the door, you were confronted by law  
19 enforcement and were arrested.

20 I gave you 18 months on the robbery count and 84  
21 months consecutive on the 924(c). Certainly enough time to  
22 reflect on your life, on your choices, on the exercise of the  
23 greatest power that you have and that every human being has;  
24 the power of free will; the power to choose to do right or do  
25 wrong; the power to aim up or to drag as many people into the

1 gutter as you can.

2           While you were in, you had some infractions.  
3 Ms. Foxx pointed out that you had a concurrent State Court  
4 case in 2010 as well. The robbery at the Captain D's wasn't  
5 the only robbery you committed. In 2010 you were prosecuted  
6 in State Court for robbery with a dangerous weapon, got a  
7 concurrent sentence, 38 to 55 months.

8           You say you're tired. This is exhausting. I would  
9 agree that this is exhausting to see you again. But this  
10 isn't about me; this is about you. What's exhausting is your  
11 commitment to a life of crime; your commitment to not only  
12 destroy your life, but to try to destroy the lives of others  
13 by being an armed drug dealer and by doing it out of a home  
14 with children present.

15           I appreciate Mr. Sun's argument. He's an excellent  
16 lawyer. I don't have any doubt that at some point you  
17 expressed to him and asked him how's his dog. If only you  
18 showed a fraction of that care for the children in the home  
19 where you dealt drugs and had guns and had the narcotics out.

20           You don't really care about anyone but yourself.  
21 Selfishness and nihilism define everything about you and have  
22 for quite some time again.

23           Again, I don't doubt that you're intelligent, that  
24 you're articulate. And the report says you had the CDL. You  
25 got it right before you started doing this because this was

1 more profitable. Hours are easier. Yeah, you poison people,  
2 you put kids at risk, but Osric Daise, he wants his money,  
3 whether it's by sticking a gun in the face of a woman working  
4 as a manager at a fast food restaurant who he told "I'm going  
5 to blow your brains out" because he needed that \$138, or  
6 whether it's getting out, moving to Jacksonville, being  
7 committed to the life of an armed drug dealer.

8 Society needs protection from Osric Daise; today it  
9 will get it. The guidelines are woefully inadequate.

10 As I mentioned, Section 5K2.21 provides that a Court  
11 may depart upward to reflect the actual seriousness of the  
12 offense based on conduct underlying a charge dismissed as part  
13 of a plea agreement in the case and that did not enter into  
14 the determination of the applicable guideline range.

15 Count 3 is a 924(c). And as Ms. Foxx indicated, if  
16 the Government had pursued it, obtained a conviction, you  
17 would get a minimum of 300 months here today.

18 Under 5K2.21, a Court must set forth enough to  
19 satisfy the Appellate Court that the district court has  
20 considered the parties' arguments and had a reasonable basis  
21 for exercising its own legal decision making to impose a  
22 departure sentence. United States v. Thorpe, 816 F.App'x 811,  
23 813 (4th Cir. 2020).

24 Here, I find an upward departure is appropriate to  
25 reflect the actual seriousness of the offense based on conduct

1 underlying a charge dismissed as part of the plea agreement  
2 that did not enter into the determination. I've already  
3 recounted the facts, and they're terrible.

4 As I mentioned, the search warrant was executed on  
5 July 29th, 2021, and at the residence, officers recovered a  
6 stolen loaded .40 caliber handgun, magazine containing 15  
7 rounds of .40 caliber ammunition, box of .40 caliber  
8 ammunition, 19 rounds of 7.62mm ammunition and significant  
9 quantities of marijuana and cocaine. An upward departure is  
10 appropriate on these facts. See United States v. Gibson, 636  
11 F.App'x 134, 138-141 (4th Cir. 2015).

12 Other cases supportive of an upward departure also  
13 include U.S. v. McKinnie, 21 F.4th 283, 288-289 (4th Cir.  
14 2021); U.S. v. Diaz-Galiana, 43 F.App'x 840, 842 (4th Cir.  
15 2012); United States v. Pittman, 328 F.App'x 176, 177 (4th  
16 Cir. 2009).

17 You do have the capacity to live a different life.  
18 You've had that capacity for 18 years as an adult now that  
19 you're 36, yet you choose the life you have. It's a  
20 destructive life. It's a life not worthy of emulation. It's  
21 a life that cries out for societal protection.

22 You may well be exhausted, but the good people of  
23 Onslow County are even more exhausted, and today they'll get  
24 some protection for a good while to be kept safe from you to  
25 give you yet another chance to go to prison to reflect on your

1 choices, on your decisions on whether you want to come back  
2 one last time for the last final installment of life in prison  
3 on the installment plan because that's what it will be if you  
4 stand there again and I sit here again. And that's fair.

5           Having fully considered the entire record in the  
6 case, the need to impose just punishment, the need to reflect  
7 the serious nature of the offense conduct and the offenses of  
8 conviction and the need to reflect the seriousness of the  
9 offense conduct based on an underlying charge dismissed as  
10 part of a plea agreement that did not enter into the  
11 determination of the applicable guideline range, the need to  
12 protect society from Osric Daise, the need to generally deter  
13 others who might think engaging in this behavior is worthy --  
14 it's not. It's not worthy of praise. It's worthy of  
15 punishment. It's worthy of years in prison -- having fully  
16 considered all the arguments of counsel, it's the judgment of  
17 the Court that Osric Daise is hereby committed to the custody  
18 of the Bureau of Prisons to be imprisoned for 120 months on  
19 each count to be served concurrently.

20           Pursuant to the plea agreement, Counts 3 and 4 are  
21 dismissed.

22           Upon release from imprisonment, you'll be placed on  
23 supervised release for three years. This consists of three  
24 years on Count 1 and three years on Count 2 to run  
25 concurrently.



1           After carefully considering the provisions of 18  
2 U.S.C. 3583(d) and the sentencing factors outlined in 3553(a),  
3 you shall comply with the mandatory and standard conditions of  
4 supervision adopted in the Eastern District of North Carolina  
5 as referenced in the governing standing order.

6           You shall comply with the following additional  
7 conditions:

8           One, you shall participate as directed in a program  
9 approved by probation for the treatment of narcotic addiction,  
10 drug dependency or alcohol dependency, which will include  
11 urinalysis testing or other drug detection measures or may  
12 require residence or participation in a residential treatment  
13 facility.

14           In light of your serious offense conduct and abysmal  
15 performance on supervision, both in the state system and now  
16 in the federal system, you shall submit to a search at any  
17 time, with or without a warrant, and by law enforcement or  
18 probation officer of your person, and any property, house,  
19 residence, vehicle, and effects upon reasonable suspicion  
20 concerning a violation of a condition of supervised release or  
21 unlawful conduct by the defendant, or by any probation officer  
22 in the lawful discharge of the officer's supervision function.

23           You shall support your dependents.

24           You shall cooperate in the collection of DNA.

25           You shall pay a special assessment of \$200 which is

1 due immediately.

2 I'm not going to impose a fine.

3 I recommend the most intensive substance abuse  
4 treatment.

5 I recommend vocational/educational opportunities.

6 I recommend Bennettsville.

7 I think I've properly calculated the advisory  
8 guideline range, and I think I've properly upwardly departed,  
9 but I announce pursuant to U.S. v. Gomez-Jimenez, 750 F.3d 370  
10 (4th Cir. 2014) and U.S. v. Hargrove, 701 F.3d 156 (4th Cir.  
11 2012), that I'd impose the same sentence as an alternative  
12 variant sentence if I have in any way miscalculated the  
13 advisory guideline range.

14 This is the sentence sufficient but not greater than  
15 necessary for Osric Tyrone Daise in light of all the 3553(a)  
16 factors.

17 In imposing this sentence, I've imposed a sentence  
18 different than what the lawyers asked for, not because I  
19 didn't carefully consider each word that they said to me. I  
20 did. I balanced the 3553(a) factors differently than they  
21 suggested that I balance them. And in doing so, I rejected  
22 their arguments for a different balance, even if I didn't  
23 parrot back every word they said to me.

24 Mr. Daise, you can appeal your conviction if you  
25 believe that your guilty plea was somehow unlawful or

1 involuntary or if there's some other fundamental defect in the  
2 proceeding that was not waived by your guilty plea.

3 You also have a statutory right to appeal your  
4 sentence under certain circumstances, particularly if you  
5 think your sentence is contrary to law.

6 However, you did enter into a plea agreement that  
7 contains an appellate waiver. Such waivers generally are  
8 enforceable, but if you believe the waiver in your plea  
9 agreement is unenforceable or inapplicable for any reason, you  
10 can present that theory to the Appellate Court.

11 With few exceptions, any Notice of Appeal must be  
12 filed within 14 days of the judgment being entered on the  
13 docket in your case.

14 If you're unable to pay the cost of an appeal, you  
15 may apply for leave to appeal *in forma pauperis*.

16 If you so request, the Clerk of Court will prepare  
17 and file a Notice of Appeal on your behalf.

18 Anything else before we go on to the revocation  
19 matter, Mr. Sun?

20 MR. SUN: No, Your Honor.

21 THE COURT: Anything else, Ms. Foxx?

22 MS. FOXX: No, Your Honor. Thank you.

23 THE COURT: We'll now proceed with the revocation  
24 matter involving Mr. Daise.

25 Mr. Daise has already been sworn.

1           Second amended motion for revocation at Docket Entry  
2 83 in Case Number 7:10-CR-152 recounts that Mr. Daise appeared  
3 here on September 21st, 2011, after pleading guilty to robbery  
4 of a business engaged in interstate commerce and use of a  
5 firearm during and in relation to a crime of violence.

6           I sentenced him to 102 months' imprisonment followed  
7 by 60 months of supervised release. Supervision started on  
8 May 11th, 2018.

9           Motion recounts earlier court action in that he had  
10 a positive drug test in October of 2019. Had him continue  
11 with substance abuse treatment when he submitted another one.

12           Criminal conduct is the violation in that on  
13 July 11th, 2023, four-count indictment was returned in Eastern  
14 District of North Carolina charging him with possession of a  
15 firearm by a convicted felon, possession with intent to  
16 distribute a quantity of cocaine, possession of a firearm in  
17 furtherance of a drug trafficking crime, and use and maintain  
18 a place for purpose of distributing and using any controlled  
19 substance. Pleaded guilty to Counts 1 and 2 pursuant to a  
20 plea agreement.

21           Does the defendant admit the violations, Mr. Sun?

22           MR. SUN: Yes.

23           THE COURT: We have the judgment. We have the sworn  
24 admission. I do find that he did commit the Grade A  
25 violation.

1           His criminal history category is II. The policy  
2 statement range is 27 to 33 months. The stat max is 60  
3 months.

4           Does the defense object to that policy statement  
5 range or stat max?

6           MR. SUN: No, Your Honor.

7           THE COURT: Does the United States object to that  
8 policy statement range or stat max?

9           MS. FOXX: No, Your Honor.

10          THE COURT: Does probation object to that policy  
11 statement range or stat max?

12          THE PROBATION OFFICER: No, Your Honor.

13          THE COURT: We'll now focus on the consequences.  
14 Under Chapter 7 and from cases from the Fourth Circuit to  
15 include U.S. v. Lewis, 90 F.4th 288 (4th Cir. 2024), U.S. v.  
16 Webb, 738 F.3d 638 (4th Cir. 2013), U.S. v. Thompson, 595 F.3d  
17 544 (4th Cir. 2010), and U.S. v. Crudup, 461 F.3d 433 (4th  
18 Cir. 2006), the focus is on the breach of trust principally,  
19 so I'll hear first from Mr. Sun, then from Mr. Daise, then  
20 from the Assistant U.S. Attorney and then from probation.

21          Mr. Sun.

22          MR. SUN: May it please the Court. As the Court  
23 will have seen in the plea agreement, we've agreed that  
24 whatever the sentence that the Court imposes will be  
25 consecutive to the sentence from the offense conduct, and it

1 is our belief that a guidelines policy range is sufficient in  
2 this circumstance. It is a breach of trust.

3 It's, as I said before, the unfavorable and most  
4 unfavorable fact is being back in front of Your Honor, and  
5 that is the breach of trust. And it is our contention that  
6 the guidelines sufficiently punishes Mr. Daise for that  
7 conduct; and adding that on top of the sentence that you've  
8 already imposed will ensure that he receives a severe  
9 punishment which he understands is part and parcel of today's.

10 THE COURT: Thank you.

11 At this time I'll hear from Mr. Daise, if you'd like  
12 to make a statement, sir.

13 THE DEFENDANT: I don't even know what to say about  
14 this. I'm not sure about it. We never really went over the  
15 revocation, what to speak about the revocation.

16 THE COURT: Okay. Thank you.

17 I'll hear from Ms. Foxx.

18 MS. FOXX: Your Honor, the breach of trust that's  
19 involved in this case was fairly significant. It is the  
20 second type of a similar violation, which is the use of a  
21 firearm to -- in the first instance based on the underlying  
22 conviction for a violent crime, and then here we now have the  
23 use of a firearm in order to traffic drugs in which he did, in  
24 fact, plead guilty, but ultimately it's the use of the firearm  
25 that seems to continue to be problematic as it pertains to

1 this defendant.

2           The breach of trust as it pertains to this Court is  
3 significant. And we understand that, you know, the  
4 recommendation is 27 to 33 months. The Government was  
5 prepared and is still prepared and would ask the Court based  
6 on this breach of trust to give the full 60 months statutory  
7 max. Thank you.

8           THE COURT: Thank you.

9           At this time I'll hear from probation.

10           THE PROBATION OFFICER: Thank you, Your Honor.  
11 While I did not supervise Mr. Daise, I was working in the  
12 office that he was supervised in for the entirety of the three  
13 years that he was on supervised release, and I can say with  
14 confidence that the officers involved in his case worked very  
15 diligently to help him get treatment when he needed it, to  
16 assist him with seeking his CDL.

17           When his girlfriend became pregnant, they inquired  
18 kind of routinely about what's his plan, was he planning to  
19 move in with her. The address that the investigators  
20 conducted this search was not approved by our office. He was  
21 not approved to be living there. He was supposed to be living  
22 with his mother, and I think there was a foster child who has  
23 now been adopted in that house where he was supposed to be  
24 living in Hubert, so the Jacksonville address was not  
25 approved, so our office was made aware of that when the search

1 was conducted.

2 Approximately 10 days before he was arrested,  
3 Officer Meeks, who had recently taken over his case, attempted  
4 to assist him in finding a job with his CDL. He had some  
5 connections that he knew about that they were hiring. So not  
6 only did he recently obtain his CDL, but his officer was  
7 diligently working to help him find a job.

8 So for three years the Jacksonville office worked  
9 really hard to try to help him stay on the right path, and it  
10 was disappointing that he chose this other route.

11 THE COURT: Thank you.

12 Anything else, Mr. Sun?

13 MR. SUN: No, Your Honor.

14 (Pause in the proceeding.)

15 THE COURT: All right, Mr. Daise. The Court has  
16 considered the arguments of counsel. I have considered your  
17 statement. I have considered the position of the United  
18 States. I have considered the position of probation. I have  
19 considered the policy statement range.

20 As I said, the principal focus under Chapter 7 and  
21 under cases applying Chapter 7 post-Booker is on the breach of  
22 trust. When a person is on supervised release, the Court  
23 places trust in them. It's essentially this transition period  
24 after you've been in prison while you're then being supervised  
25 by probation officers, who really try to help a person succeed



1 to do better, to aim up, to be virtuous. There's a lot of  
2 things a person has to do when they're on supervision. There  
3 are expectations of the Court.

4           The first expectation is don't commit any more  
5 felonies while you're on supervision. You see, there can be  
6 different kinds of violations, right? Somebody tests positive  
7 for smoking marijuana, that's one violation. You shouldn't do  
8 it. I usually get a report about that and get somebody into  
9 treatment. Then there's the kind of kick-the-door-down,  
10 spit-in-the-face-of-the-Court violation that says I am back at  
11 it. I am a felony drug dealer. I got a gun and I got my dope  
12 and I don't care. That's the kind of violation we have here.  
13 That's the kind of breach of trust we have here. That's the  
14 kind of breach of trust that will result in a serious  
15 sanction; and it should, because it's egregious and appalling  
16 and worthy of punishment.

17           Having fully considered the entire record,  
18 particularly the egregious nature of the breach of trust  
19 involving armed drug dealing while on federal supervision for  
20 a Hobbs Act robbery where you stuck a gun in the face of a  
21 woman working as a manager at a fast food restaurant and so  
22 much time to reflect on your life and your choices and chose  
23 to get back at it, it's the judgment of the Court that  
24 Mr. Daise is committed to the custody of the Bureau of Prisons  
25 to be imprisoned for 48 months.

1           This sentence will run consecutive to the sentence  
2 imposed in Docket Number 7:23-CR-721D.

3           His supervision in case number 7:10-CR-152 is  
4 terminated.

5           I think I've properly calculated the advisory  
6 guideline range -- excuse me, the advisory policy statement  
7 range, but I announce pursuant to U.S. v. Gomez-Jimenez, 750  
8 F.3d 370 (4th Cir. 2014) and U.S. v. Hargrove, 701 F.3d 156  
9 (4th Cir. 2012), that I'd impose the same sentence as an  
10 alternative variant sentence if I have in any way  
11 miscalculated the policy statement range.

12           Any Notice of Appeal must be filed within 14 days of  
13 the judgment being entered on the docket in your case.

14           If you're unable to pay the cost of an appeal, you  
15 may apply for leave to appeal *in forma pauperis*.

16           If you so request, the Clerk of Court will prepare  
17 and file a notice of appeal on your behalf.

18           I've imposed a sentence different than what the  
19 parties asked for, but I did it after carefully considering  
20 their advocacy.

21           I recommend Bennettsville.

22           I recommend vocational/educational opportunities.

23           I recommend the most intensive substance abuse  
24 treatment available so that Mr. Daise can use his intelligence  
25 to learn to live a life free of any mind-altering substances,

1 learn additional skills so that in whatever time he has  
2 remaining on earth, he opts not to go for the trifecta that  
3 will complete life in prison on the installment plan and  
4 instead lives as a law-abiding, productive member of society.

5 Anything else, Mr. Sun?

6 MR. SUN: No, Your Honor.

7 THE COURT: Anything else, Ms. Foxx?

8 MS. FOXX: No, Your Honor. Thank you.

9 THE COURT: Anything else from probation?

10 THE PROBATION OFFICER: No. Thank you, Your Honor.

11 THE COURT: Thank you.

12 Good luck to you, sir.

13 \* \* \*

14 (The proceedings concluded at 11:06 a.m.)  
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1 UNITED STATE DISTRICT COURT  
2 EASTERN DISTRICT OF NORTH CAROLINA  
3

4 CERTIFICATE OF OFFICIAL REPORTER  
5

6 I, Amy M. Condon, CRR, RPR, CSR, Federal Official  
7 Court Reporter, in and for the United States District Court  
8 for the Eastern District of North Carolina, do hereby certify  
9 that pursuant to Section 753, Title 28, United States Code,  
10 that the foregoing is a true and correct transcript of the  
11 stenographically reported proceedings held in the  
12 above-entitled matter and that the transcript page format is  
13 in conformance with the regulations of the Judicial Conference  
14 of the United States.  
15  
16

17 Dated this 29th day of July, 2024.  
18  
19

20 \_\_\_\_\_  
21 /s/ Amy M. Condon  
22 Amy M. Condon, CRR, CSR, RPR  
23 U.S. Official Court Reporter  
24  
25