

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 2025

SHANTE ANTHONY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**APPENDIX TO PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT
OF APPEALS FOR THE NINTH CIRCUIT**

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SUBMITTED: August 14, 2026

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAY 28 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SHANTE MAURICE ANTHONY,

Defendant - Appellant.

No. 25-4801

D.C. No.

2:24-cr-00039-DLC-1

District of Montana,

Butte

ORDER

Before: S.R. THOMAS, MILLER, and H.A. THOMAS, Circuit Judges.

The motion (Docket Entry No. 14) to stay this appeal is denied.

The motion (Docket Entry No. 12) to dismiss this appeal in light of the valid appeal waiver is granted. *See United States v. Harris*, 628 F.3d 1203, 1205 (9th Cir. 2011) (knowing and voluntary appeal waiver whose language encompasses the right to appeal on the grounds raised is enforceable). To the extent appellant argues the waiver should not be enforced because his sentence is illegal, this argument is unavailing. *See United States v. Wells*, 29 F.4th 580, 584-87 (9th Cir. 2022) (explaining the “very limited and precise meaning” of “illegal sentence” in the context of enforcement of an appeal waiver).

DISMISSED.

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**Ninth Circuit Court of Appeals No. 25-4801
District Court Number CR 24-39-BU-DLC**

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

-vs-

SHANTE MAURICE ANTHONY,
Defendant-Appellant.

**DEFENDANT-APPELLANT’S OPPOSED MOTION FOR
STAY OF THIS APPEAL PENDING THE UNITED STATES
SUPREME COURT’S DECISION IN *HUNTER v. UNITED STATES*,
NO. 24-1063, ARGUED ON MARCH 3, 2026**

INTRODUCTION

This is a direct appeal from a sentence imposed by the United States District Court for the District of Montana, the Honorable Dana L. Christensen, United States

District Judge, presiding. After pleading guilty under a plea agreement containing an appeal waiver, Appellant was sentenced to 180 months in prison. However, at the sentencing hearing, Appellant was adjudged by the district court (over objection) to be a Career Offender under the Guidelines for an applicable Guideline range of 262-327 months. Moreover, without that claimed erroneous designation as a Career Offender, Appellant 's Guideline range would have been 120-150 months.

Appellant timely filed his Opening Brief (DktEntry No. 8) on January 13, 2026. However, the government contends that Appellant's waiver of appeal in his plea agreement justifies dismissal of this appeal challenging the Career Offender designation (CA No. 25-4801, DktEntry No. 12). Appellant has opposed that motion (*Id.* at DktEntry No. 13).

On Thursday, March 3, 2026, the Supreme Court heard argument in *Hunter v. United States* referenced above in the caption/title of this motion. *Hunter* raises two issues that have divided the federal circuit courts of appeals. Whether claims of ineffective counsel or sentences in excess of the statutory maximum are the only recognized exceptions to an appeal waiver. And second, if the district court tells a defendant he or she has the right to appeal, does the government waive protection under the appeal waiver if it fails to object.

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MOTION FOR STAY OF THIS APPEAL

Against this background, Appellant moves to stay this appeal pending the Supreme Court's decision in *Hunter*. As grounds the undersigned states that after reading the oral argument transcript of yesterday's hearing in *Hunter*, it seems evident that the Supreme Court is going to issue a decision that will carefully address if and when appeal waivers are lawful and/or enforceable.

Inasmuch as Appellant argues that his designation as a Career Offender was a serious error resulting in an unlawful sentence, we respectfully submit that this appeal should be stayed pending the outcome of the *Hunter* case.

BAIL STATUS

Appellant is currently serving his 180-month sentence at FCI Herlong in Herlong, California, with a projected release date of September 6, 2037, according to the Bureau of Prisons website.

GOVERNMENT'S POSITION ON THIS MOTION

The government, through its counsel of record, Timothy A. Tatarka, opposes this motion for stay.

DATED this 4th day of March, 2026.

/s/ Michael Donahoe
MICHAEL DONAHOE
Deputy Federal Defender
Counsel for Defendant-Appellant

**CERTIFICATE OF SERVICE
Fed.R.App.P.25**

I hereby certify that on March 4, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate ACMS system.

Participants in the case who are registered ACMS users will be served by the appellate ACMS system.

I further certify that some of the participants in the case are not registered ACMS users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party carrier for delivery within 3 calendar days, to the following non-ACMS participants:

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**Ninth Circuit Court of Appeals No. 25-4801
District Court Number CR 24-39-BU-DLC**

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

-vs-

SHANTE MAURICE ANTHONY,
Defendant-Appellant.

RESPONSE TO GOVERNMENT’S MOTION TO DISMISS

INTRODUCTION

Defendant-Appellant Shante Maurice Anthony (Mr. Anthony) filed his opening brief on January 13, 2026. Instead of filing an answering brief, the government elected to file a motion to dismiss the appeal. Mr. Anthony responds to the government’s motion to dismiss as follows.

ARGUMENT

The government’s motion to dismiss because of the appeal waiver in Mr. Anthony’s plea agreement should be denied because broadly speaking the operative characteristics of a valid sentencing appeal waiver are at issue in both this Court’s pending *en banc* review in *United States v. Atherton*, No. 21-30266; as well as in the now pending oral argument in the United States Supreme Court scheduled for Tuesday, March 3, 2026, in the matter styled as *Hunter v. United States*, Supreme Court No. 24-1063.

Furthermore, relevant here is that during the *en banc* oral argument in *Atherton* before this Court in San Francisco on September 9, 2025, the government, through its counsel, Suzanne Miles, took the position that the enforceability of an appeal waiver ought to be determined by the seriousness or severity of the error at issue. (See <https://www.ca9.uscourts.gov/media/video/?20250909/21-30266/> at 27:20 – 01:02:30).

Thus, Mr. Anthony argues that his guideline range as calculated by the district court was seriously in error because he was not lawfully adjudged by the district court to be a “career offender” under the United States Sentencing Guidelines. Given the government’s argument before the *en banc* court in *Atherton*, an unlawful classification of an individual as a career offender would constitute “particularly serious” error. *Molina-Martinez v. United States*, 578 U.S. 189, 199 (2016). Hence

where, as here, Mr. Anthony’s guideline calculation argument involves an increase in his guideline range from 120-150 months upward to 262-327 months the gravity of this error fits snugly within the government’s *Atherton* advocacy; that is for the seriousness or severity of the error being the guiding criterion for enforceability of an appeal waiver. To quote from *Molina-Martinez*:

The Guidelines' central role in sentencing means that an error related to the Guidelines can be *particularly serious*. A district court that “improperly calculat[es]” a defendant's Guidelines range, for example, has committed a “significant procedural error.” *Gall, supra*, at 51, 128 S.Ct. 586. That same principle explains the Court's ruling that a “retrospective increase in the Guidelines range applicable to a defendant creates a sufficient risk of a higher sentence to constitute an *ex post facto* violation.” *Peugh*, 569 U.S., at —, 133 S.Ct., at 2084.

578 U.S. at 199 (emphasis added).

CONCLUSION

WHEREFORE, the government’s motion to dismiss ought to be denied because the proceedings before the *en banc* court in *Atherton* have been stayed, pending the outcome of the Supreme Court’s decision in *Hunter*. Accordingly, this case likewise ought to be stayed pending the outcome of those cases, as well. Especially considering that the government in the *Atheron* case is advocating for a rule that the enforceability of an appeal waiver ought to be judged by the seriousness or severity of the sentencing error at issue. Which is the case here.

///

RESPECTFULLY SUBMITTED this 27th day of February, 2026.

/s/ Michael Donahoe
MICHAEL DONAHOE
Deputy Federal Defender
Counsel for Defendant-Appellant

CERTIFICATE OF COMPLIANCE

I hereby certify that this Response to Government's Motion to Dismiss is in compliance with Ninth Circuit Rule 27(d)(2)(A). The Response's line spacing is double spaced. The brief is proportionately spaced, the body of the argument has a Times New Roman typeface, 14-point size and contains less than 5,200 words, including footnotes and quotations. (Total number of words: 505 excluding tables and certificates).

DATED this 27th day of February, 2026.

/s/ Michael Donahoe
MICHAEL DONAHOE
Deputy Federal Defender
Counsel for Defendant-Appellant

**CERTIFICATE OF SERVICE
Fed.R.App.P.25**

I hereby certify that on February 27, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate ACMS system.

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No. 25-4801

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
PLAINTIFF-APPELLEE,

V.

SHANTE MAURICE ANTHONY,
DEFENDANT-APPELLANT.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
D.C. No. CR-24-39-BU-DLC

APPELLEE UNITED STATES' MOTION TO DISMISS APPEAL

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INTRODUCTION

The United States moves to dismiss this appeal because it violates a valid appeal waiver in Shante Anthony's plea agreement. Ninth Circuit Rule 27-9.2.

Anthony's opening brief was filed on January 13, 2026. The United States' response is due February 17, 2026. Pursuant to Ninth Circuit Rule 27-11, the filing of this motion to dismiss stays the briefing schedule pending the Court's ruling.

STATEMENT OF FACTS

I. Anthony commits drug trafficking crimes in the area of Bozeman, Montana.

In July 2023, Drug Enforcement Administration Special Agent John Hensley received information that Shante Anthony was involved in illegal drug distribution in Bozeman and surrounding areas since 2022. ER-133.¹ SA Hensley learned that Mr. Anthony resides in California, and over that time he repeatedly traveled to the Bozeman, Montana area. ER-134. Informants stated Mr.

¹ The facts in this section are taken from the United States' offer of proof at the change of plea hearing. Anthony affirmed that there was nothing in the offer of proof he disagreed with. ER-135.

Anthony would mail drugs to Bozeman and then he would fly to Bozeman, pick up the drugs, and distribute them. ER-134. One source reported Mr. Anthony had been traveling to Bozeman for approximately five to six months to distribute methamphetamine and fentanyl. ER-134. SA Hensley obtained records from the Transportation Security Administration that confirmed Mr. Anthony would travel to Bozeman one to two times a month. ER-134.

On November 20, 2024, Mr. Anthony was planning a trip to Bozeman on November 21, 2024, and he was sending a package that likely contained drugs for distribution to Bozeman scheduled to arrive the following day. ER-134.

On November 22, 2024, Mr. Anthony contacted the United States Postal Service to check the status of the package. ER-134. Mr. Anthony entered shipment tracking number ER115506858US as the package tracking number and the automated system advised Mr. Anthony that the package was out for delivery. ER-134.

SA Hensley contacted a United States Postal Inspector who located the parcel at the Bozeman Post Office. On November 25, 2024, the Honorable Kathleen L. DeSoto signed a warrant

authorizing the search of the parcel. ER-134-35. On the same day, the Postal Inspector executed the warrant and seized approximately 1,000 pills (which returned a presumptive positive test for the presence of fentanyl) and approximately one-quarter pound of crystal substance (which returned a presumptive positive test for the presence of methamphetamine. ER-135. Text messages and phone conversations corroborated that Mr. Anthony was distributing methamphetamine and fentanyl. ER-135.

The U.S. Department of Justice Drug Enforcement Agency Western Laboratory completed a laboratory analysis on substances seized from the package on November 25, 2024, and it was determined to be 50 grams or more of actual methamphetamine and 40 grams or more of a substance containing a detectable amount of fentanyl. ER-135.

II. Anthony pleads guilty to drug trafficking crimes.

On December 19, 2024, Shante Anthony was indicted on one count conspiracy to distribute and to possess with intent to distribute controlled substances, in violation of 21 U.S.C. § 846, and one count

possession with intent to distribute controlled substances, in violation. ER-157.

On March 5, 2025, pursuant to a plea agreement, Anthony pleaded guilty before the magistrate judge to one count felon in possession of a firearm. ER-97. Anthony's plea agreement contained the following waiver of appeal:

8. Waiver of Appeal of the Sentence – Conditional: The defendant understands the law provides a right to appeal and collaterally attack the sentence imposed in this case. 18 U.S.C. § 3742(a); 28 U.S.C. §§ 2241, 2255. The prosecution has a comparable right of appeal. 18 U.S.C. § 3742(b). *By this agreement the defendant waives the right to appeal or collaterally attack any aspect of the sentence, including conditions of probation or supervised release, if the sentence imposed is within or below the Guideline range calculated by the Court, regardless of whether the defendant agrees with that range.* This waiver includes challenges to the constitutionality of any statute of conviction and arguments the admitted conduct does not fall within any statute of conviction. This waiver does not prohibit the right to pursue a collateral challenge alleging ineffective assistance of counsel. The United States waives its right to appeal any aspect of the sentence if the sentence imposed is within or above the Guideline range calculated by the Court.

ER-151-52 (emphasis added).

Anthony signed the plea agreement and initialed the pages containing the appeal waiver. ER-146-55.

The magistrate began the change of plea hearing by establishing Anthony's competency. ER-105. Anthony confirmed that he was "fully competent and capable of going forward." ER-106. The court also confirmed that Anthony was satisfied with his present counsel's representation. ER-109.

During the change of plea hearing, the court confirmed that Anthony had read and understood the plea agreement. ER-113. The government, pursuant to the court's request, summarized the agreement including that "[t]here is a conditional waiver in which the defendant waives any appeal or collateral attack of his sentence and conviction if the sentence imposed is within or below the guideline range." ER-114. The court then confirmed Anthony understood the appeal waiver:

THE COURT: By virtue of this paragraph, you are waiving your right to appeal as well as collaterally attack any sentence that you get if the sentence that you get is either within or below the applicable guideline range.

So if it's above the guideline range, you're not waiving your right to appeal at all. But assuming that it's below or within, you are waiving your right to appeal the sentence that you get.

Any questions about that?

THE DEFENDANT: No, ma'am.

ER-117.

And, a final time, Anthony confirmed he understood he was waiving his right to appeal along with his other trial rights. ER-127.

The magistrate concluded that Anthony pleaded guilty on a voluntary and informed basis and recommended that the district court accept the plea. ER-136. The district court did so. ER-166.

III. At sentencing, the district court sentenced Anthony to 180 months imprisonment, varying downward more than 80 months from the low end of the calculated guideline range.

On July 16, 2025, the district court presided over Anthony's sentencing hearing. ER-12. Anthony objected to the application of the career offender enhancement. ER-15. The court noted that it "carefully read the arguments of counsel as it relates to the objections," ER-20, and indicated it was "convinced that the career offender enhancement applies in this case under the current status of the guidelines and the law." ER-21. The court explained that it "wanted to make it clear on the record that I am going to consider all of this when I get to considering the factors under 18 United States Code Section 3553(a)." ER-22.

The court did so. Although it calculated the guideline range as being 262 to 327 months, ER-23, the court varied downward to a sentence of 180 months. ER-36.

At the conclusion of sentencing the court reiterated that Anthony waived his right to appeal. The court began by asked the United States to describe the appeal waiver, which it did:

AUSA: Mr. Anthony has agreed to waive his right to appeal or collaterally attack any aspect of the sentence. That includes challenges to the constitutionality of any statute of conviction and arguments that the admitted conduct does not fall within any statute of conviction. This does not preclude an appeal based on ineffective assistance.

THE COURT: And, [defense counsel], do you agree that your client has waived his right of appeal as described?

DEFENSE COUNSEL: I do.

THE COURT: And do you understand that, Mr. Anthony, that you've waived your right of appeal?

THE DEFENDANT: Yes, sir.

THE COURT: Although you have waived your right of appeal, if you believe that waiver is unenforceable or you wish to appeal for any other reason that is not part of that waiver, you will have 14 days from the date of entry of judgment in which to appeal to the Ninth Circuit Court of Appeals. Judgment will be entered today, so that 14-day time clock will begin to run today. If you do not appeal within the next 14 days, then any appeal would be barred. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Now in advising you of this right of appeal, I am not suggesting that you, in fact, have such a right, which, again, you have waived as part of the plea agreement in this case. So if you appeal and the Ninth Circuit determines that you waived your right to file that appeal, your appeal may be dismissed. Understood?

THE DEFENDANT: Um-hmm.

THE COURT: All right. Thank you, Mr. Anthony. ER-41-42.

Nevertheless, Anthony appealed. The sole issue raised on appeal is “whether Mr. Anthony was correctly designated a career offender under the United States Sentencing guidelines.” Doc. 8 at 3. Anthony acknowledges the appeal waiver in his plea agreement but contends “this appeal waiver is unenforceable here because the waiver purports to regulate this Court’s jurisdiction over illegal sentences under 18 U.S.C. § 3742. Doc. 8 at 2.

SUMMARY OF ARGUMENT

Anthony’s appeal should be dismissed because he waived his right to appeal his sentence in the plea agreement, and the waiver is valid. None of the exceptions to enforcement of an appeal waiver apply here. Anthony does not allege the district court failed to comply with Federal Rule of Criminal Procedure 11. He does not claim that he was informed he had a right to an appeal. The

government did not breach the plea agreement. The sentence is not an illegal sentence, despite Anthony's claim that the career offender sentencing enhancement was incorrectly applied.

ARGUMENT

I. Anthony's appeal should be dismissed because he waived his right to challenge his sentence in the plea agreement.

Standard of Review: This Court reviews de novo the validity of an appeal waiver. *United States v. Charles*, 581 F.3d 927, 931 (9th Cir. 2009). A waiver of appellate rights “is enforceable if (1) the language of the waiver encompasses his right to appeal on the grounds raised, and (2) the waiver is knowingly and voluntarily made.” *United States v. Medina-Carrasco*, 815 F.3d 457, 461 (9th Cir. 2016).

Argument: Anthony's plea agreement states that he agrees to waive “the right to appeal or collaterally attack any aspect of the sentence, including conditions of probation or supervised release, if the sentence imposed is within or below the Guideline range calculated by the Court, *regardless of whether the defendant agrees with that range.*” ER-52 (emphasis added). He now asks the Court

to permit his appeal precisely because he disagrees with the guideline range the court calculated. Anthony is simply incorrect that the imposed sentence is illegal and he is, thus, bound by his agreement.

This Court will “decline to enforce an appeal waiver only if the district court failed to comply with Federal Rule of Criminal Procedure 11, the court informed the defendant that [he] retained the right to appeal, the sentence did not comport with the terms of the plea agreement, or the sentence violated the law.” *United States v. Brizan*, 709 F.3d 864, 866 (9th Cir. 2013). None of the exceptions to enforcement of a plea agreement apply in this case.

Anthony does not allege that the district court failed to comply with Federal Rule of Criminal Procedure 11, that the district court informed Anthony he retained the right to appeal, or that the sentence did not comport with the terms of the plea agreement. *See* Doc. 8.

While Anthony does claim that the waiver is unenforceable because his sentence is illegal, he simply misunderstands that term. An illegal sentence is a sentence which is in excess of the permissible

statutory penalty for the crime or violates the Constitution. *United States v. Bibler*, 495 F.3d 621, 624 (9th Cir. 2007). Anthony was convicted of possession with intent to distribute controlled substances. The statutory maximum penalty for the counts of conviction is life in prison. ER-157. Anthony was sentenced to 180 months.

The sole issue raised by Anthony is that it was unreasonable for the district court to apply a particular sentencing enhancement, but this Court has been clear that neither an incorrect guideline range calculation nor a reasonableness challenge to a sentence within the statutory range renders the sentence illegal. *See United States v. Lococo*, 511 F.3d 956, 959 (9th Cir. 2007) (knowing and voluntary waiver of right to appeal their sentences “barred defendants from appealing the district court’s interpretation of the Guidelines, its calculation of the Guidelines range, its alleged failure to consider the sentencing factors in 18 U.S.C. § 3553(a), and the reasonableness of the sentences imposed.”).

The Court has squarely rejected the argument that an incorrect guideline calculation renders a sentence illegal²:

[T]o allow an allegedly incorrect guidelines calculation to render inapplicable a waiver of the right to appeal sentencing guidelines determinations would nullify the waiver based on the very sort of claim it was intended to waive.

Medina-Carrasco, 815 F.3d at 462 (quoting *United States v. Smith*, 500 F.3d 1206, 1213 (10th Cir. 2007)). This Court has repeatedly enforced appeal waivers “even if the claims that could have been made on appeal absent that waiver appear meritorious, because the whole point of a waiver is the relinquishment of claims *regardless* of their merit.” *Id.* at 463 (cleaned up; emphasis in or original).

CONCLUSION

For the foregoing reasons, Anthony’s appeal should be dismissed.

² Anthony notes that the Supreme Court and the Ninth Circuit have cases pending addressing the validity of appeal waivers in plea agreements. Doc. 8 at 3 n.1 (citing *Hunter v. United States*, Supreme Court No. 24-1063, and *United States v. Atherton*, Ninth Cir. No. 21-30266). Neither case, however, addresses established law that a defendant can bargain away the right to appeal and cannot invalidate that bargain based on a disagreement over the applied guideline range.

DATED this 17th day of February, 2026.

Respectfully submitted,

KURT G. ALME
United States Attorney

/s/ Timothy A. Tatarka
TIMOTHY A. TATARKA
Assistant United States Attorney
Attorney for Plaintiff/Appellee

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C) and Ninth Circuit Rule 32-1, I certify that the attached Motion to Dismiss Appeal is proportionately spaced, has a typeface of 14 points or more, and the body of the argument contains 2,304 words.

/s/ Timothy A. Tatarka

TIMOTHY A. TATARKA

Assistant United States Attorney

Attorney for Plaintiff/Appellee

CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Timothy A. Tatarka
TIMOTHY A. TATARKA
Assistant United States Attorney
Attorney for Plaintiff/Appellee

Ninth Circuit Court of Appeals No. 25-4801
IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-vs-

SHANTE MAURICE ANTHONY,

Defendant-Appellant

OPENING BRIEF OF DEFENDANT-APPELLANT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA, BUTTE DIVISION
DISTRICT COURT NO. CR 24-39-BU-DLC
HONORABLE DANA L. CHRISTENSEN
UNITED STATES DISTRICT JUDGE

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SUBMITTED: January 13, 2026

***Counsel for Defendant-Appellant**

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(A) Mr. Anthony’s 2012 prior conviction for conspiracy (PSR ¶46) under 21 USC §846 is not a “controlled substance offense” under the Guidelines because §846 does not require proof of an overt act, but under the generic definition of conspiring an overt act is required.	6

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(B) Mr. Anthony’s conviction from Arkansas (PSR ¶50) should not have counted as a “controlled substance offense” for Career Offender eligibility because hemp had been removed from the federal drug schedules in 2018 but currently a person can be convicted under Arkansas law for possession of hemp as a controlled substance..... 9

(C) Mr. Anthony’s California conviction for assault with a deadly weapon (PSR ¶51) was a California “wobbler” and thus a misdemeanor, not a felony, therefore that conviction does not render Mr. Anthony eligible for Career Offender status..... 10

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ABBREVIATIONS

Excerpts of Record	“__-ER-__”
Presentence Report	“PSR”
Controlled Substances Act	“CSA”

Ninth Circuit Court of Appeals No. 25-4801
IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-vs-

SHANTE MAURICE ANTHONY,

Defendant-Appellant

OPENING BRIEF OF DEFENDANT-APPELLANT

I. STATEMENT OF JURISDICTION

A. Subject Matter Jurisdiction in the District Court

The district court below had jurisdiction over this case under 18 USC §3231 because the grand jury handed up an Indictment charging Appellant Shante Maurice Anthony (Mr. Anthony) with the federal offenses of Conspiracy to Distribute and to Possess with the Intent to Distribute Controlled Substances, in violation of 21 USC §846 (Count I); and Possession with Intent to Distribute Controlled Substances, in violation of 21 USC §841(a)(1) (Count II) (I-ER-156-158).

///

B. Jurisdiction in the Court of Appeals

This Court’s jurisdiction arises under 28 USC §1291 and 18 USC §3742(a)(1) because, as set forth immediately below, Mr. Anthony filed a timely notice of appeal on July 30, 2025 (I-ER-159-161).

C. Appealability of District Court Order and Timeliness of the Appeal

The district court sentenced Mr. Anthony on July 16, 2025. A written judgment was filed the same day (I-ER-5-11). Mr. Anthony filed his notice of appeal on July 30, 2025 (I-ER-159-161) in compliance with Rule 4(b)(1)(A) of the Federal Rules of Appellate Procedure.

Mr. Anthony alerts the Court that there is a sentence appeal waiver at paragraph 8 of his plea agreement (I-ER-151-152). Mr. Anthony contends that this appeal waiver is unenforceable here because the waiver purports to regulate this Court’s jurisdiction over illegal sentences under 18 USC §3742. Parties have no power to “contractually expand the grounds or nature of judicial review”. *AT&T Mobility, LLC v. Concepcion*, 563 U.S. 333, 351 (2011). Moreover, in *United States v. Bibler*, 495 F.3d 621, 624 (9th Cir. 2007), this Court held that “[a]n appeal waiver will not apply if . . . the *sentence violates the law*” (emphasis added). *Cf.* 18 USC §3742(a)(1)-(4) describing grounds for sentence appeal. *Also see United States v. Ruiz*, 536 U.S. 622 (2002) (explaining jurisdictional nature of sentence appeal under

§3742¹.

II. BAIL STATUS

Mr. Anthony is currently serving his 180-month sentence at FCI Herlong in Herlong, California, with a projected release date of September 6, 2037, according to the Bureau of Prisons website.

III. STATEMENT OF THE ISSUE

WHETHER MR. ANTHONY WAS CORRECTLY DESIGNATED A CAREER OFFENDER UNDER THE UNITED STATES SENTENCING GUIDELINES.

IV. PERTINENT CONSTITUTIONAL PROVISIONS, RULES AND STATUTES

In satisfaction of Circuit Rule 28-2.7 where the constitutional provision, rule and/or statute is not set forth in the body of this brief, it is included in a separate Addendum to this brief introduced by its own table of contents.

V. STATEMENT OF THE CASE

On September 18, 2025, Mr. Anthony was indicted in the District of Montana, Butte Division, in two counts: Conspiracy to Distribute and to Possess with the Intent to Distribute Controlled Substances (methamphetamine and fentanyl), in violation of

¹ In addition, both the Supreme Court and this Court sitting *en banc* have plea agreement waivers and their validity under consideration. (*See Hunter v. United States*, United States Supreme Court No. 24-1063 and *United States v. Atherton*, Ninth Circuit CA No. 21-30266).

21 USC §846 (Count I); and Possession with Intent to Distribute those substances, in violation of 21 USC §841(a)(1) (Count II) (I-ER-139-141). Mr. Anthony was arraigned on November 27, 2024, after which he was detained during the pendency of his case.

On March 5, 2025, Mr. Anthony pled guilty under a plea agreement to Count II of the Indictment (I-ER-80-124). On July 16, 2025, Mr. Anthony was sentenced to the Bureau of Prisons to a term of 180 months of imprisonment followed by five years of supervised release (I-ER-5-11, 12-44).

VI. BACKGROUND PERTINENT TO THIS APPEAL

Around June of 2024, Montana law enforcement targeted Mr. Anthony as a possible source of both methamphetamine and fentanyl for sale in Montana. According to unnamed sources in the discovery, Mr. Anthony mailed packages containing drugs from California to Montana, followed by Mr. Anthony's travel to Montana to engage in the sale and distribution of those drugs.

On November 22, 2024, law enforcement learned that Mr. Anthony had mailed a package from California to an address in Bozeman. Agents knew this, in part, because Mr. Anthony had checked the status of the package using his cell phone by entering the postal service tracking number into the automatic postal tracking system, which showed the package was out for delivery. Furthermore, discovery in the case also showed, by post office lobby camera video, that it was Mr. Anthony who had

mailed that package from California to Bozeman. Later, on November 25, 2024, after the package had been intercepted, law enforcement conducted a warranted search on the parcel finding approximately 1,000 pills containing fentanyl and approximately four ounces of methamphetamine. In addition, the government lab reports showed that the package contained 112.9 grams of fentanyl and 107 grams of actual methamphetamine. Based on those drug amounts, Mr. Anthony's base offense level under the United States Sentencing Guidelines (USSG) was 30; and with a three-point reduction for acceptance of responsibility, a total adjusted offense level of 27. At criminal history category V, Mr. Anthony's Guideline range was 120-150 months.

However, as calculated by the probation office, Mr. Anthnoy qualified as a Career Offender under USSG §4B1.1, *et seq* (*see* PSR, p. 6, ¶31). This enhancement increased Mr. Anthony's base offense level to 34 and his criminal history category to VI, yielding a Guideline range of 262-327 months (PSR, p. 24, ¶107). Mr. Anthony objected to this increase and his designation as a Career Offender in his objection letter during informal dispute resolution (*see* PSR and PSR Addendum *filed under seal*). Mr. Anthony then objected, again, in his sentencing memorandum (I-ER-83-85).

VII. REVIEWABILITY

Mr. Anthony preserved the Career Offender issues discussed in this brief by presenting objections and arguments to the district court in both his sentencing objection letter (PSR Addendum *filed under seal*) and in his sentencing memorandum

(I-ER-83-85). The district court overruled these objections at the sentencing hearing by determining that Mr. Anthony qualified as a Career Offender under the Guidelines (I-ER-20-24).

VIII. STANDARDS OF REVIEW

The Court reviews the district court's interpretation of the Sentencing Guidelines and its determination that Mr. Anthony qualified as a Career Offender *de novo*. *United States v. Kovac*, 367 F.3d 1116, 1118 (9th Cir. 2004). Moreover, it is plain error under this Court's decision in *United States v. Bautista*, 989 F.3d 698 (9th Cir. 2021) to designate a defendant as a Career Offender if a conviction or convictions failed to qualify as a controlled substance offense under the applicable definitions in USSG §4B1.2. *Also compare United States v. Trice*, 2021 WL 02462 (Dist. Ct. W.D. VA 2021) (recognizing as a matter of compassionate release that if defendant was sentenced "today" he would not qualify as a Career Offender).

IX. ARGUMENTS

(A) Mr. Anthony's 2012 prior conviction for conspiracy (PSR ¶46) under 21 USC §846 is not a "controlled substance offense" under the Guidelines because §846 does not require proof of an overt act, but under the generic definition of conspiracy, an overt act is required.

The issue here centers on whether Mr. Anthony's 2012 federal conviction for violation of 21 USC §846 (conspiring to distribute drugs) is a "controlled substance offense" as that term is defined in the Career Offender Guideline set forth in USSG

§4B1.1, *et seq.* This is an important question for this Court to resolve for two reasons.

In *United States v. Garcia-Santana*, 774 F.3d 528 (9th Cir. 2014), this Court canvassed both relevant state criminal codes and the Model Penal Code to determine the generic definition of the crime of conspiracy. Under *Garcia-Santana* at 774 F.3d at 534, the Court concluded:

“A survey of state conspiracy statutes reveals that the vast majority demand an overt act to sustain conviction. By our count, thirty-six states do so; if the District of Columbia, Guam, Puerto Rico, and the Virgin Islands are included, then the tally rises to forty of fifty-four jurisdictions.” *Id.* at 534–35. These state statutes, it should be noted, were general conspiracy statutes — i.e., they applied generally to all crimes within the state. *Id.*

Thus, this Court has held that the generic definition of conspiracy requires an overt act. 774 F.3d at 537. Also, in *Garcia-Santana*, this Court determined that the United States’ general conspiracy statute (18 USC §371) contains an overt act requirement as do major criminal law treatises on the subject. Again, the upshot being that this Court holds that the generic definition of conspiracy requires an overt act. 774 F.3d at 537.

Later, however, in *United States v. Riveria-Constantino*, 798 F.3d 900 (9th Cir. 2015) (although acknowledging its ruling in *Garcia-Santana* that generic conspiracy contains an overt act element), this Court nevertheless held that in drafting the Guidelines the Sentencing Commission always intended to include a federal drug conspiracy under 21 USC §846, despite its lack of an overt act element. Because the

“plain meaning of [the] term” conspiracy “is readily apparent from the text, context, and structure of the relevant Guidelines provision and commentary” 798 F.3d at 904.

These decisions [*United States v. Garcia-Santana* and *United States v. Rivera-Constantino*] conflict with decisions from the Fourth and the Tenth Circuits. Specifically, the Fourth Circuit holds in *United States v. Norman*, 935 F.3d 232, 239 (4th Cir. 2019), that drug conspiracy offenses under 21 USC §846 are not categorically controlled substance offenses under the Guidelines Career Offender provisions because such offenses do not contain an overt act as an element. Likewise, the Tenth Circuit reaches the same conclusion as *Norman* in *United States v. Martinez-Cruz*, 836 F.3d 1305 (10th Cir. 2016), in part, relying on Judge Paez’s dissent in *Rivera-Constantino*. *See Martinez-Cruz*, 836 F.3d at 1312-1313.

Accordingly, although Mr. Anthony concedes that despite the lack of an overt act element this Court’s precedent in *Rivera-Constantino* recognizes that conspiracy convictions under 21 USC §846 nevertheless count for Career Offender definition purposes. Therefore, Mr. Anthony brings this claim in order to preserve it for further review before this Court *en banc* and/or the United States Supreme Court. *See e.g., McKnight v. General Motors Corp.*, 511 U.S. 659, 659-660 (1994) (Raising an issue foreclosed by circuit precedent is the only way to preserve it for review in the Supreme Court).

///

(B) Mr. Anthony’s conviction from Arkansas (PSR ¶50) should not have counted as a “controlled substance offense” for Career Offender eligibility because hemp had been removed from the federal drug schedules in 2018 but currently a person can be convicted under Arkansas law for possession of hemp as a controlled substance.

Mr. Anthony’s Arkansas conviction listed at ¶50 of the PSR required that the district court compare Mr. Anthony’s prior Arkansas conviction with the federal law at the time of the federal sentencing. *United States v. Bautista*, 989 F.3d 698 (2021). The district court, however, did not conduct this comparison. Accordingly, the sentence in this case should be vacated and remanded so that the district court can engage in that process. *United States v. Lee*, 704 F.3d 785, 789 (9th Cir. 2012) (government’s burden to establish qualifying predicates for Career Offender enhancement under the Guidelines).

In this connection, Mr. Anthony notes that recently the Eighth Circuit decided *Bio Gen, LLC v. Sanders*, 142 F.4th 591 (8th Cir. 2025) which explains, among other things, that more recent restrictions passed by the Arkansas legislature regarding the legality of hemp are lawful and not pre-empted by the Federal Farm Bill, which removed hemp as a controlled substance within the federal Controlled Substances Act (CSA). *See Brown v. United States*, 602 U.S. 101, 107 (2024). Instead, the 2018 Farm Bill merely created space for states to legalize hemp production if they wished to do so “by removing the biggest hurdle—federal criminalization.” *Bio Gen*, 142 F.4th at 603.

Thus, Mr. Anthony submits that on remand at his re-sentencing it would be appropriate for the district court to consider that under the current law of Arkansas there is a material mismatch between the federal government's definition of hemp and Arkansas's definition of hemp such that the latter is more restrictive than the former. Hence, at re-sentencing the district court ought to conclude under this Court's decision in *Bautista* that Mr. Anthony's marijuana conviction from Arkansas is not a "controlled substance offense" under USSG §4B1.2. *See Griffith v. Kentucky*, 479 U.S. 314 (1987) (new rule for conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final).

(C) Mr. Anthony's California conviction for assault with a deadly weapon (PSR ¶51) was a California "wobbler" and thus a misdemeanor, not a felony, therefore that conviction does not render Mr. Anthony eligible for Career Offender status.

Turning to PSR ¶51, Mr. Anthony was sentenced for that offense to misdemeanor-type incarceration (less than one year). Under this Court's interpretation of *United States v. Robinson*, 967 F.2d 287 (9th Cir. 1992), in its subsequent decision styled as *United States v. Bridgeforth*, 441 F.3d 864 (2006) Mr. Anthony's conviction at PSR, ¶51 became a misdemeanor for all purposes when he was sentenced to probation and county jail. (I-ER-89-96).

Unlike the situation in *Robinson*, in the *Bridgeforth* case the conviction at issue did result in a judgment imposing punishment. Such is the case here too. Mr. Anthony

was sentenced to 364 days in jail and two years of probation (I-ER-89). As the *Bridgeforth* decision notes. Upon imposition of such a sentence, Mr. Anthony's conviction "became a misdemeanor 'for all purposes'". 441 F.3d at 872.

X. CONCLUSION

WHEREFORE, Mr. Anthony prays that the Court will resolve the issue of an overt act requirement for generic conspiracy consistent with the Fourth Circuit's decision in *Norman*; and then vacate his sentence and remand to the district court for re-sentencing with directions not to impose the Career Offender enhancement based on Mr. Anthony's Arkansas or California convictions either. In short, Mr. Anthony should be sentenced within his original Guideline range of 120-150 months.

RESPECTFULLY SUBMITTED this 13th day of January, 2026.

/s/ Michael Donahoe

MICHAEL DONAHOE

Deputy Federal Defender

Counsel for Defendant-Appellant

XI. STATEMENT OF RELATED CASES

The undersigned, counsel of record for the Defendant-Appellant, pursuant to Rule 28-2.6 of the Rules of the United States Court of Appeals for the Ninth Circuit, states that, to his knowledge, there are no related cases pending in this Court.

DATED this 13th day of January, 2026.

/s/ Michael Donahoe

MICHAEL DONAHOE

Deputy Federal Defender

Counsel for Defendant-Appellant

XII. CERTIFICATE OF COMPLIANCE

I hereby certify that this Opening Brief of Defendant-Appellant is in compliance with Ninth Circuit Rule 32(a). The Brief's line spacing is double-spaced. The brief is proportionately spaced, the body of the argument has a Times New Roman typeface, 14-point size and contains less than 14,000 words at an average of 280 words (or less) per page, including footnotes and quotations. (Total number of words: 2,282 excluding tables and certificates).

DATED this 13th day of January, 2026.

/s/ Michael Donahoe

MICHAEL DONAHOE

Deputy Federal Defender

Counsel for Defendant-Appellant

XIII. CERTIFICATE OF SERVICE
Fed.R.App.P. 25

I hereby certify that on January 13, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate ACMS system.

Participants in the case who are registered ACMS users will be served by the appellate ACMS system.

I further certify that some of the participants in the case are not registered ACMS users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party carrier for delivery within 3 calendar days, to the following non- ACMS participants:

SHANTE MAURICE ANTHONY, #69099-097
FCI Herlong
FEDERAL CORRECTIONAL INSTITUTION
P.O. BOX 800
HERLONG, CA 96113
Defendant-Appellant

/s/ Michael Donahoe
MICHAEL DONAHOE
Deputy Federal Defender
Counsel for Defendant-Appellant

Ninth Circuit Court of Appeals No. 25-4801
IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-vs-

SHANTE MAURICE ANTHONY,

Defendant-Appellant

ADDENDUM TO OPENING BRIEF
OF DEFENDANT-APPELLANT

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UNITED STATES CODE

18 USC §371

18 U.S. Code § 371 - Conspiracy to commit offense or to defraud United States.

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

ADDENDUM - page 1

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UNITED STATES CODE

18 USC §3231

18 U.S. Code §3231 - District courts.

The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.

Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.

ADDENDUM - page 2

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UNITED STATES CODE

18 USC §3742(a)(1)-(4)

18 U.S. Code § 3742 - Review of a sentence.

(a) APPEAL BY A DEFENDANT.—A defendant may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence—

(1) was imposed in violation of law;

(2) was imposed as a result of an incorrect application of the sentencing guidelines; or

(3) is greater than the sentence specified in the applicable guideline range to the extent that the sentence includes a greater fine or term of imprisonment, probation, or supervised release than the maximum established in the guideline range, or includes a more limiting condition of probation or supervised release under section 3563(b)(6) or (b)(11) [1] than the maximum established in the guideline range; or

(4) was imposed for an offense for which there is no sentencing guideline and is plainly unreasonable.

ADDENDUM - page 3

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UNITED STATES CODE

21 USC §841(a)(1)

21 U.S. Code § 841 - Prohibited acts.

(a) Unlawful Acts

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—

- (1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance.

ADDENDUM - page 4

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UNITED STATES CODE

21 USC §846

21 U.S. Code § 846 - Attempt and conspiracy.

Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

ADDENDUM - page 5

APPENDIX - page 55

UNITED STATES CODE

28 USC §1291

28 U.S. Code §1291 - Final decisions of district courts.

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

ADDENDUM - page 6

APPENDIX - page 56

FEDERAL RULES OF APPELLATE PROCEDURE

Rule 4(b)(1)(A)

Rule 4. Appeal as of Right—When Taken.

...

(b) Appeal in a Criminal Case.

(1) Time for Filing a Notice of Appeal.

(A) In a criminal case, a defendant's notice of appeal must be filed in the district court within 14 days after the later of:

- (i) the entry of either the judgment or the order being appealed; or
- (ii) the filing of the government's notice of appeal.

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UNITED STATES SENTENCING GUIDELINE**§4B1.1****§4B1.1. Career Offender.**

(a) A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense.

(b) Except as provided in subsection (c), if the offense level for a career offender from the table in this subsection is greater than the offense level otherwise applicable, the offense level from the table in this subsection shall apply. A career offender's criminal history category in every case under this subsection shall be Category VI.

Offense Statutory Maximum	Offense Level*
(1) Life	37
(2) 25 years or more	34
(3) 20 years or more, but less than 25 years	32
(4) 15 years or more, but less than 20 years	29
(5) 10 years or more, but less than 15 years	24
(6) 5 years or more, but less than 10 years	17
(7) More than 1 year, but less than 5 years	12.

*If an adjustment from [§3E1.1](#) (Acceptance of Responsibility) applies, decrease the offense level by the number of levels corresponding to that adjustment.

(c) If the defendant is convicted of 18 U.S.C. § 924(c) or § 929(a), and the defendant is determined to be a career offender under subsection (a), the applicable guideline range shall be determined as follows:

(1) If the only count of conviction is 18 U.S.C. § 924(c) or § 929(a), the applicable guideline range shall be determined using the table in subsection (c)(3).

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(2) In the case of multiple counts of conviction in which at least one of the counts is a conviction other than a conviction for 18 U.S.C. § 924(c) or § 929(a), the guideline range shall be the greater of—

(A) the guideline range that results by adding the mandatory minimum consecutive penalty required by the 18 U.S.C. § 924(c) or § 929(a) count(s) to the minimum and the maximum of the otherwise applicable guideline range determined for the count(s) of conviction other than the 18 U.S.C. § 924(c) or § 929(a) count(s); and

(B) the guideline range determined using the table in subsection (c)(3).

(3) Career Offender Table for 18 U.S.C. § 924(c) or § 929(a) Offenders

§3E1.1 Reduction	Guideline Range for the 18 U.S.C. § 924(c) or § 929(a) Count(s)
No reduction	360–life
2-level	reduction 292–365
3-level reduction	262–327.

UNITED STATES SENTENCING GUIDELINE

§4B1.2

§4B1.2. Definitions of terms used in section 4B1.1.

(a) **Crime of Violence.**—The term “crime of violence” means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that—

(1) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(2) is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use or unlawful possession of a firearm described in 26 U.S.C. § 5845(a) or explosive material as defined in 18 U.S.C. § 841(c).

(b) **Controlled Substance Offense.**—The term “controlled substance offense” means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that—

(1) prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense; or

(2) is an offense described in 46 U.S.C. § 70503(a) or § 70506(b).

(c) **Two Prior Felony Convictions.**—The term “two prior felony convictions” means

(1) the defendant committed the instant offense of conviction subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense (i.e., two felony convictions of a crime of violence, two felony convictions of a controlled substance offense, or one felony conviction of a crime of violence and one felony conviction of a controlled substance offense), and (2) the sentences for at least two of the aforementioned felony convictions are counted separately under the provisions of §4A1.1(a), (b), or (c). The date that a defendant sustained a conviction shall be the date that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of nolo contendere.

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(d) Inchoate Offenses Included.—The terms “crime of violence” and “controlled substance offense” include the offenses of aiding and abetting, attempting to commit, or conspiring to commit any such offense.

(e) Additional Definitions.—

(1) Forcible Sex Offense.—“Forcible sex offense” includes where consent to the conduct is not given or is not legally valid, such as where consent to the conduct is involuntary, incompetent, or coerced. The offenses of sexual abuse of a minor and statutory rape are included only if the sexual abuse of a minor or statutory rape was (A) an offense described in 18 U.S.C. § 2241(c) or (B) an offense under state law that would have been an offense under section 2241(c) if the offense had occurred within the special maritime and territorial jurisdiction of the United States.

(2) Extortion.—“Extortion” is obtaining something of value from another by the wrongful use of (A) force, (B) fear of physical injury, or (C) threat of physical injury.

(3) Robbery.—“Robbery” is the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining. The phrase “actual or threatened force” refers to force that is sufficient to overcome a victim’s resistance.

(4) Prior Felony Conviction.—“Prior felony conviction” means a prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed. A conviction for an offense committed at age eighteen or older is an adult conviction. A conviction for an offense committed prior to age eighteen is an adult conviction if it is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted (e.g., a federal conviction for an offense committed prior to the defendant’s eighteenth birthday is an adult conviction if the defendant was expressly proceeded against as an adult).

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UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA BUTTE DIVISION

UNITED STATES OF AMERICA

v.

SHANTE MAURICE ANTHONY

JUDGMENT IN A CRIMINAL CASE

Case Number: CR 24-39-BU-DLC-1

USM Number: 69099-097

Michael Donahoe

Defendant's Attorney

THE DEFENDANT:

☒	pleaded guilty to count(s)	Count 2 of the 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 Offense21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(A) – Possession with Intent to Distribute
Controlled Substances**Offense Ended**

11/25/2024

Count

2

The defendant is sentenced as provided in pages 2 through 7 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 1 of the Indictment ☒ is 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.

July 16, 2025

Date of Imposition of Judgment

Signature of Judge

Dana L. Christensen, District Judge

United States District Court

Name and Title of Judge

July 16, 2025

Date

AO 245B (Rev. 10/21) Judgment in a Criminal Case

Judgment -- Page 2 of 7

DEFENDANT: SHANTE MAURICE ANTHONY
CASE NUMBER: CR 24-39-BU-DLC-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: **180 months.**

- ☒ The court makes the following recommendations to the Bureau of Prisons:
- (1) Defendant shall participate in the Bureau of Prisons' 500-hour Residential Drug Treatment Program (RDAP) if eligible.
 - (2) Defendant shall be placed at the Bureau of Prisons' facility at FCI Terminal Island in California or FCI Phoenix in Arizona or another facility closest to Defendant's family.

- ☒ 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: SHANTE MAURICE ANTHONY
CASE NUMBER: CR 24-39-BU-DLC-1

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **5 years**.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must 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 you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

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

DEFENDANT: SHANTE MAURICE ANTHONY
CASE NUMBER: CR 24-39-BU-DLC-1

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at <https://www.mtp.uscourts.gov/post-conviction-supervision>.

Defendant's Signature _____

Date _____

DEFENDANT: SHANTE MAURICE ANTHONY
CASE NUMBER: CR 24-39-BU-DLC-1

SPECIAL CONDITIONS OF SUPERVISION

1. You must participate in an outpatient program for mental health treatment as approved by the probation officer. You must remain in the program until you are released by the probation officer in consultation with the treatment provider. You must pay part or all of the costs of this treatment as directed by the probation officer.
2. You must submit your person, residence, place of employment, vehicles, and papers, to a search, with or without a warrant by any probation officer based on reasonable suspicion of contraband or evidence in violation of a condition of release. Failure to submit to search may be grounds for revocation. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. You must allow seizure of suspected contraband for further examination.
3. You must abstain from the consumption of alcohol and are prohibited from entering establishments where alcohol is the primary item of sale.
4. You must participate in substance abuse testing to include not more than 180 urinalysis tests, not more than 180 breathalyzer tests, and not more than 36 sweat patch applications annually during the period of supervision. You must pay part or all of the costs of testing as directed by the probation officer.
5. You must participate in substance abuse treatment or alcohol abuse treatment program, which may include inpatient treatment, and follow the rules and regulations of that program. The probation officer will obtain the authorization of the Court before requiring residential or inpatient treatment pursuant to this condition. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.). The program may include urinalysis testing to determine if you have used drugs or alcohol. You must not attempt to obstruct or tamper with the testing methods. You must pay part or all of the costs of this treatment as directed by the probation officer.
6. You must not purchase, possess, use, distribute or administer marijuana, including marijuana that is used for recreational or medicinal purposes under state law.
7. You must not possess, ingest or inhale any psychoactive substances that are not manufactured for human consumption for the purpose of altering your mental or physical state. Psychoactive substances include, but are not limited to, synthetic marijuana, kratom and/or synthetic stimulants such as bath salts and spice.

AO 245B (Rev. 10/21) Judgment in a Criminal Case

Judgment -- Page 6 of 7

DEFENDANT: SHANTE MAURICE ANTHONY
CASE NUMBER: CR 24-39-BU-DLC-1

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>JVTA</u> <u>Assessment**</u>	<u>AVAA</u> <u>Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	\$ 0.00	\$ 0.00	\$.00	\$.00

- ☐ The determination of restitution is deferred until *An Amended Judgment in a Criminal Case*
(AO245C) will be entered after such determination.
☐ The defendant must 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. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

- ☐ 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 the | ☐ fine | ☐ restitution |
| ☐ the interest requirement for the | ☐ fine | ☐ restitution is modified as follows: |

*Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

*** 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.

AO 245B (Rev. 10/21) Judgment in a Criminal Case

Judgment -- Page 7 of 7

DEFENDANT: SHANTE MAURICE ANTHONY
CASE NUMBER: CR 24-39-BU-DLC-1

SCHEDULE OF PAYMENTS

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

- A ☒ Lump sum payments 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 20 (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:
Criminal monetary penalty payments are due during imprisonment at the rate of not less than \$25.00 per quarter, and payment shall be through the Bureau of Prisons' Inmate Financial Responsibility Program. Criminal monetary payments shall be made to the Clerk, United States District Court, P.O. Box 8537, Missoula, MT 59807 or online at <https://www.pav.gov/public/form/start/790999918>. Please see www.mtd.uscourts.gov/criminal-debt for more information on how to pay online.

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

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

- ☐ Joint and Several
See above for Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- ☐ Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
- ☐ 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) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT Assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

1 JoAnn Jett Corson
2 Registered Diplomat Reporter
3 Certified Realtime Reporter
4 P. O. Box 8006
5 Missoula, Montana 59807-8006
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7 joann_corson@mtd.uscourts.gov
8
9 United States Court Reporter
10
11
12
13
14
15

16 **IN THE UNITED STATES DISTRICT COURT**
17 **FOR THE DISTRICT OF MONTANA**
18 **BUTTE DIVISION**

19 UNITED STATES OF AMERICA,)
20 Plaintiff,) No. CR 24-39-BU-DLC
21 vs.)
22) **TRANSCRIPT OF SENTENCING**
23 SHANTE MAURICE ANTHONY,)
24 Defendant.)
25 _____)

16 **BEFORE THE HONORABLE DANA L. CHRISTENSEN**
17 **UNITED STATES DISTRICT COURT JUDGE**
18 **FOR THE DISTRICT OF MONTANA**

19 Russell Smith United States Courthouse
20 201 East Broadway
21 Missoula, Montana 59802
22 Wednesday, July 16, 2025
23 09:01:22 to 09:50:57
24
25

26 Proceedings recorded by machine shorthand
27 Transcript produced by computer-assisted transcription

APPEARANCES

For the Plaintiff: MR. BRIAN CALLAN LOWNEY
Assistant U.S. Attorney
P.O. Box 8329
Missoula, Montana 59807

For the Defendant: MR. MICHAEL DONAHOE
Attorney at Law
Federal Defenders of Montana
50 West 14th Street, Suite 300
Helena, Montana 59624

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EXHIBITS

For the Defendant:	Received
500 12/19/2024 Proposed Amendments to the Sentencing Guidelines	7
501 02/03/2025 Letter to Reeves from Gotsch	7

REPORTER'S NOTE: "Uh-huh" and "Um-hmm" indicate affirmative responses. "Huh-uh" and "Hm-umm" indicate negative responses.

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PROCEEDINGS

(Open court.)

(Defendant present.)

THE LAW CLERK: All rise. The United States District Court for the District of Montana is now in session, Honorable Dana L. Christensen presiding.

THE COURT: Good morning. Please be seated.

Amanda, would you please call the first matter on the Court's calendar this morning?

THE CLERK: This is the time set for sentencing in Case No. CR 24-39-BU-DLC, *United States of America v. Shante Maurice Anthony*.

THE COURT: Counsel, Mr. Anthony, good morning.

THE DEFENDANT: Good morning.

THE COURT: Mr. Lowney, I'm assuming you have read the presentence investigation report in this case?

MR. LOWNEY: I have, Your Honor.

THE COURT: And does the United States have any objections to the presentence report?

MR. LOWNEY: No, Your Honor.

THE COURT: It appears the United States is recommending a 2-level decrease for acceptance of responsibility and further moving for an additional 1-level decrease for timely notification of plea; is that correct?

MR. LOWNEY: Yes, Your Honor.

1 THE COURT: That motion is granted. Thank you.

2 Mr. Donahoe, good morning.

3 MR. DONAHOE: Good morning, Your Honor.

4 THE COURT: I'm assuming you have read the
5 presentence investigation report?

6 MR. DONAHOE: I have.

7 THE COURT: And, Mr. Anthony, have you read the
8 presentence investigation report in this case?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And have you had adequate opportunity to
11 discuss it with your attorney, Mr. Donahoe?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay.

14 Mr. Donahoe, we have some objections, all directed
15 to the career offender enhancement. I've read the briefs, but
16 I'm certainly open to any additional argument you might want
17 to make this morning.

18 MR. DONAHOE: Thank you.

19 And I do have some. I'm just gonna begin -- I won't
20 take up a lot of the Court's time, but in preparation for
21 sentencing, we had arranged a meeting with the family, and I
22 did meet with Mr. Anthony's wife and his sons, who are present
23 here this morning, yesterday. And prior to that, we had phone
24 contact through my office, and my assistant had received
25 apparently an email where Mr. Anthony's wife indicated she had

1 contacted Families Against Mandatory Minimums, and they
2 indicated to her that there were changes afoot in the
3 guidelines, and, in particular, with regard to the career
4 offender guideline itself.

5 And I'll tell the Court that I knew that these
6 changes were forthcoming; I just didn't know specifically what
7 the content was.

8 So in yesterday's meeting, we took a little deeper
9 dive into the proposed changes, and those documents that I've
10 marked as 500 and 501 are the proposed amendments relevant to
11 the career offender guideline and some commentary from an
12 agency that discusses those proposed amendments.

13 And the long and the short of it is is that
14 apparently the Sentencing Commission has under consideration
15 just removing, from the analysis here for career offender,
16 state-type drug offenses. We have two of those that are
17 operative here.

18 So in an anticipatory way, I'm asking Your Honor to
19 consider that these changes may occur, certainly not certainly
20 occur, but they could occur, and, if they did, that would
21 neutralize two of the convictions, I think, at 48 --
22 paragraph 48 and paragraph 50.

23 So that would reduce the issue to the remaining
24 convictions that are in play here, and that would be
25 paragraph 46, which was the conspiracy in federal court in

1 Seattle in 2012, and then 51, the California assault issue.
2 Those two.

3 So I guess, in the interest of transparency, I am
4 asking Your Honor to consider this. There's different ways we
5 could think about this maybe. Given that the amendments
6 aren't operative or haven't been adopted, Your Honor could
7 consider them maybe as part of the 3553(a) analysis --

8 THE COURT: Correct.

9 MR. DONAHOE: -- and just look at them from that
10 perspective.

11 So if those two went by the wayside, I think the
12 *Norman* case for paragraph 56 becomes important, the Fourth
13 Circuit decision. It says that 846, Section 846, is not
14 generic conspiracy and can't count toward the career offender
15 assessment.

16 And I guess, in the interest of ultra-transparency,
17 those amendments that I'm showing the Court would apparently
18 include, if they take out the state convictions and dismiss
19 those as relevant to the categorical analysis, they're gonna
20 mark 846 as a controlled substance offense.

21 THE COURT: Um-hmm.

22 MR. DONAHOE: Okay?

23 THE COURT: Yeah. I'm just looking at them here,
24 Mr. Donahoe. I know that the commission is looking at this
25 career offender collection of guidelines. And what they do, I

1 don't know -- I mean, I don't know what they're going to do,
2 but this is the first that I've seen the actual proposed
3 amendments.

4 MR. DONAHOE: Yeah. And I guess --

5 THE COURT: And then this other document -- by the
6 way, Mr. Lowney, do you have any objection to me receiving
7 Defendant's 500 and 501?

8 MR. LOWNEY: No. No, Your Honor.

9 THE COURT: Thank you.

10 (Defendant's Exhibits 500 and 501 were received in
11 evidence.)

12 MR. DONAHOE: I did provide copies.

13 THE COURT: Yeah.

14 MR. DONAHOE: Yeah.

15 THE COURT: And then the essence of 501 appears
16 that, The Sentencing Project, they're advocating or arguing
17 that the career offender disproportionally has been applied to
18 Black individuals.

19 MR. DONAHOE: Right, which is particularly
20 applicable here. I was gonna point that out.

21 THE COURT: Yeah.

22 MR. DONAHOE: Yeah. So I just think it's an
23 interesting twist. I didn't mean to -- I wasn't holding back
24 intentionally; I just didn't know specifically the content.
25 And when I did see that this is in the offing here -- you

1 know, there's all sorts of procedural things.

2 The plea agreement, I guess, by exception, says 2255
3 could be brought. I don't know how that might work. I don't
4 know that the guidelines will -- these amendments will be
5 retroactive. There's a lot of questions there.

6 But to avoid it, I guess my argument to Your Honor
7 is the best signal here for a sentence is the mandatory
8 minimum. If we move off of or -- I hate to use the word
9 "disregard" but "pretermit," maybe would be the word to use,
10 the application of the career offender guideline, that
11 120-month mandatory minimum is the perfect sentence for this
12 case.

13 THE COURT: Okay, Mr. Donahoe.

14 Anything further on your objections?

15 MR. DONAHOE: No. I guess the last thing I should
16 say, if Your Honor was inclined, we would certainly be
17 receptive to putting it over, the sentencing, putting it over
18 until such time as we know for certain whether those
19 amendments are gonna become effective.

20 THE COURT: Right. Well, yeah, I'm not sure -- I'm
21 not inclined to do that.

22 MR. DONAHOE: Okay.

23 THE COURT: I mean, today is the day for sentencing.
24 Mr. Anthony's family is here. I think we should go ahead and
25 complete it.

1 MR. DONAHOE: And that's fine.

2 THE COURT: Okay. All right. Thank you.

3 MR. DONAHOE: Thank you, Your Honor.

4 THE COURT: Mr. Lowney, anything you wish to add
5 other -- beyond what was contained within your colleague's
6 sentencing memorandum?

7 MR. LOWNEY: Well, I think all I'm hoping to say to
8 the Court in this moment is as far as the objections go, I
9 take Mr. Donahoe's argument here to be a bit of a "What should
10 the sentence be?"

11 THE COURT: Right.

12 MR. LOWNEY: So I will get there at the appropriate
13 time.

14 THE COURT: Yes.

15 MR. LOWNEY: But as far as the objections go, I
16 don't think there's a legal basis to sustain Mr. Donahoe's
17 objections to the PSR.

18 THE COURT: Right. Okay.

19 Well, I carefully read the arguments of counsel as
20 it relates to the objections themselves, and let's just make
21 sure that we've got a record here on that.

22 The defendant is objecting to the application of the
23 career offender enhancement specifically as it relates to
24 specific convictions that are documented within the
25 presentence investigation report. And those convictions that

1 are being called into question are the convictions found at --
2 I've got a lot of paper up here -- paragraph 46, a conviction
3 out of the Western District of Washington from 2013,
4 2012-2013, conspiracy to distribute controlled substances; a
5 conviction documented at paragraph 48; and then paragraph 50
6 and paragraph 51.

7 Now in applying the career offender enhancement
8 here, it makes a significant difference in Mr. Anthony's
9 sentence. Without the career offender, he would be looking at
10 a total offense level of 27. His criminal history category
11 would not be a VI; it would be a V. That would result in a
12 recommended custodial sentence of 120 to 150 months as opposed
13 to how it is currently calculated in the presentence
14 investigation report, which is a total offense level of 34 and
15 a criminal history category of VI, resulting in a recommended
16 custodial sentence of 262 to 327 months, essentially twice as
17 long based on the application of the career offender
18 enhancement.

19 However, I think the best way for me to get at
20 this -- because I'm convinced, based upon the arguments of
21 counsel, I am convinced that the career offender enhancement
22 applies in this case under the current status of the
23 guidelines and the law, notwithstanding the fact that there
24 very well may be an amendment forthcoming from the United
25 States Sentencing Commission that would strike some of the

1 convictions that are being relied upon here this morning. So
2 I'm going to overrule the objections, but I want to make it
3 clear on the record that I am going to consider all of this
4 when I get to considering the factors under 18 United States
5 Code Section 3553(a). I think that's where, where I need to
6 focus my analysis this morning.

7 So with that in mind, let me indicate for purposes
8 of the record that I am going to accept the plea agreement in
9 this case, and I will rely on the presentence investigation
10 report for purposes of calculating the advisory guidelines on
11 the count of conviction.

12 Mr. Anthony has pled guilty to Count 2 charging
13 possession with intent to distribute controlled substances
14 pursuant to 21 United States Code Section 841(a)(1) and
15 21 United States Code Section 841(b)(1)(A).

16 It is my obligation to summarize the punishments
17 available to me this morning pursuant to both the United
18 States Sentencing Guidelines as well as the applicable
19 statutes.

20 So let's start with the guidelines. They're
21 summarized beginning at paragraph 24 of the presentence
22 investigation report. We start here with a base offense level
23 of 30. That is also the adjusted offense level, again, being
24 30. And then as indicated in paragraph 31, pursuant to
25 Section 4B1.1(b)(1), Mr. Anthony is deemed to be a career

1 offender which bumps up the base offense level to 37, from
2 which I then subtract the 2 levels for acceptance of
3 responsibility and an additional 1 level for timely
4 notification of plea, resulting in a total offense level
5 of 34.

6 We then focus on Mr. Anthony's criminal history,
7 well documented within the presentence investigation report.
8 There are a number of convictions that score under the
9 guidelines. There are also 20-plus charges that are
10 documented in paragraphs 57 to 80 that do not count or that
11 were dismissed and did not result in convictions.

12 In any event, the criminal history score for the
13 convictions documented in the report is 10. That establishes
14 a criminal history category of V. However, again, because
15 Mr. Anthony is a career offender, his criminal history gets
16 elevated to Category VI pursuant to Section 4B1.1(b).

17 So with a total offense level of 34, a criminal
18 history category of VI -- again, we're focusing on the
19 guidelines -- that results in a recommended custodial sentence
20 of 262 to 327 months to be followed by supervised release for
21 a period of five years.

22 Mr. Anthony is not eligible for probation pursuant
23 to the guidelines.

24 A fine could be assessed in the range of \$35,000 to
25 \$10 million.

1 Restitution is not applicable in this case, and we
2 have a special assessment of \$100.

3 Pursuant to the applicable statutes, I could
4 sentence Mr. Anthony to a custodial sentence of ten years to
5 life -- the ten years, as Mr. Donahoe has indicated, is a
6 mandatory minimum -- to be followed by supervised release for
7 a period of five years to life.

8 Mr. Anthony is not eligible for probation pursuant
9 to statute.

10 A fine could be assessed up to \$10 million.

11 Restitution, again, is not applicable, and we have
12 the same special assessment of \$100 owing pursuant to statute.

13 Mr. Lowney, have I accurately summarized the
14 punishments available to me this morning?

15 MR. LOWNEY: Yes, to the government's view.

16 THE COURT: Do you agree, Mr. Donahoe?

17 MR. DONAHOE: I do.

18 THE COURT: Okay. So I have read the parties' --
19 I've read the government's opening sentencing memorandum.
20 I've read the defendant's sentencing memorandum. I've read
21 the government's response to the defendant's sentencing
22 memorandum. And I've read the character letters, Mr. Donahoe,
23 that you submitted on Mr. Anthony's behalf.

24 So with all of that in mind, I'm going to turn this
25 over to you and Mr. Anthony at this time.

1 MR. DONAHOE: Thank you, Your Honor.

2 I just want to say that it's been a pleasure to
3 represent Mr. Anthony. He's interested, I think, in his case,
4 in his life. He's attentive to his situation. He deeply
5 regrets the conduct that's at issue here.

6 He'll have some things to say about his background
7 that I'd like to just give a little preface to.

8 I had a lot of meetings with Mr. Anthony personally
9 at the jail. We did a lot of visits because I figured it was
10 good for me to get to know him. I needed to know more of his
11 background. And in bits and pieces, he described for me how
12 things were when he was a toddler and growing up and a young
13 boy and a young man, et cetera.

14 And it was interesting because I was probably in
15 California in either the service or in law school at the time
16 just south of him when he was a boy, so -- and I'm familiar
17 with some of the history of Oakland where he grew up. I've
18 read books about that area. I'm sure Your Honor is familiar
19 with the Black Panthers and that organization and how they
20 were influential in those neighborhoods.

21 And those neighborhoods were difficult. They were
22 violent. There were things that went on there. They were
23 crime-ridden. The schools were not good.

24 Mr. Anthony can talk about all of those things. And
25 it's not a criticism, but I see it differently than he does,

1 you know, because I'm older and I have more of a sensitivity
2 to what it looks like from a historical perspective. But he
3 sees it on the ground as a young boy.

4 He has a mother who is drug-addicted, a father who
5 is absent. He loses his father and his grandmother in
6 succession, I think, within a year, and he lives in the
7 street. He doesn't do well in school. He doesn't have job
8 skills.

9 This is the quintessential background that we want
10 to give some attention to, I think, in the setting here today.
11 He just didn't have the tools.

12 I guess he gets to a point where he should have made
13 up his own mind and went his own way. And he certainly
14 doesn't blame his mother, and we've talked that through. He
15 still has a relationship with her today. She's clean and
16 sober today. She lives in Reno, Nevada. And he loves her
17 very much. He talks to her probably at least once a week.

18 So having said all that, and in view of the opening
19 comments about the career offender status here, I recognize
20 the seriousness of that, and it certainly weighs on the Court.
21 You know, people have made decisions that folks like
22 Mr. Anthony with a background like that should be separated
23 out, maybe, but I'm asking for just one more opportunity to
24 let him be given the ten-year mandatory minimum.

25 I think he can thrive now. He's old enough. He's

1 aged out. He's gonna be 47 years old --

2 THE DEFENDANT: Forty-eight.

3 MR. DONAHOE: -- 48 years old, sorry, and his family
4 is with him. They're here for him today. They came a long
5 way. They're interested. They want to help.

6 He tells me stories about the boys and how he did --
7 he was a drug dealer, and he'll admit that to Your Honor this
8 morning, I think. But he tried to segregate his family, you
9 know, from those activities -- it wasn't rampant through the
10 house -- which would be in contradistinction to what he
11 experienced. The drugs were always in the house when he was
12 growing up.

13 So for all those reasons, Your Honor, I would ask
14 that Your Honor please sentence him to that mandatory minimum
15 sentence.

16 And he'd like to make a statement.

17 THE COURT: All right. Thank you, Mr. Donahoe.

18 Mr. Anthony, you do have a right, absolute right, to
19 speak to me this morning before I impose sentence in your case
20 if you would like to do so.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You may proceed.

23 THE DEFENDANT: First of all, I apologize to my --
24 to the State of Montana. I want to apologize to my family and
25 my sons. I feel like a failure at this age sitting in front

1 of my grown kids and my wife on my way to sentence -- prison
2 right now.

3 For as my past, my upbringing, like when I was a
4 kid, my -- like my mother, she used drugs. I'm not blaming
5 her, but my mom like never taught me and my sisters -- she
6 never taught us anything. She never was interested in our
7 up- -- coming up, like sending us to any programs, schools, I
8 mean, to like putting us in football or putting my sisters in
9 ballet classes. The only thing she did was use drugs. That's
10 like the only thing I seen growing up.

11 And even at school, it was like -- the kids at
12 school, it was all party. The kids at school was either --
13 they was young drug dealers, young drug addicts, and it was
14 like -- there was nothing where we grew up at. And my mom,
15 she only cared about like really using drugs. She like really
16 never was there for us. I don't hold any resentments towards
17 my mom because today she's clean and sober. She just recently
18 got out of a drug treatment program -- I believe this year,
19 actually -- and I still love her. I just always wanted her to
20 do better. You know what I'm saying?

21 As I grew older, I went with my -- I lived with my
22 grandmother because, you know, my mom, she was into drugs, in
23 the streets, so we went with my grandmother. My grandmother
24 was already up in age. My grandmother was older, and my
25 grandmother couldn't handle us. She sent us to -- sent me to

1 live with my father which was in Seattle, Washington. And
2 that was like around 13, 14 years old. And I lived with him
3 for like a year, and he passed away. He died. Then it was
4 like I really didn't have nobody. It was like everybody who I
5 like loved or I could learn something from was dying.

6 So that's what like led me to the streets, so I felt
7 like, I felt like I was actually a drug addict at a young age
8 already without using drugs already because that's all I had
9 seen. That's all I was taught. I never was taught how to
10 basically do right.

11 And, you know, the lack of the support from my mom,
12 like there was no attention there, and we was, we was seeking
13 attention so we would kind of like act up to see if we could
14 get some attention from my mother, but we, we never did.

15 Then my father died, and it was like, man, who can I
16 run to now? So I had like ran to the streets. Maybe I was
17 looking for like really like love in the streets, you know,
18 but then as time, time -- as I got older and stuff, I met my
19 wife right there, who I love, right there, so much, and she
20 really -- she taught me how to be like, you know, like a man
21 to my kids. You know what I'm saying? And I had to fight.
22 You know, I loved drugs and addictions, and I was fighting my
23 addiction demons. You know what I'm saying?

24 I just want peace with my past, and I just want to
25 do better for my grandkids now.

1 I feel like a failure. I really apologize. I wish
2 I would have never gotten involved in what I did.

3 That's it.

4 THE COURT: Anything further, Mr. Anthony?

5 THE DEFENDANT: I just want to apologize. I just
6 apologize. That's all I want to say. I want to apologize,
7 even apologize to my mother, too, for holding resentments over
8 the years, but today I don't. I still love her to death, even
9 though she never taught us nothing. I just want to heal up in
10 my healing process. I just want to be here for my grandkids.

11 That's kind of it.

12 And I want to thank Michael for all the talks. I
13 really appreciate you, Michael, for all the talks that we had.

14 MR. DONAHOE: (Nodded head affirmatively.)

15 THE DEFENDANT: That's it, sir.

16 MR. DONAHOE: Thank you, Your Honor.

17 THE COURT: All right. Thank you.

18 Thank you, Mr. Anthony.

19 THE COURT: Mr. Lowney.

20 MR. LOWNEY: Thank you, Your Honor.

21 The government is recommending a guideline sentence.

22 I take Mr. Donahoe's arguments -- I think he makes
23 good arguments about the potential changes that are coming up
24 here. And the defendant's reflections on his own childhood, I
25 think, are appropriate for the Court to consider.

1 My difficulty here is that we've been here a lot.
2 This defendant has been here a lot, including in front of a
3 federal court. And it is appropriate to talk about the
4 circumstances of his life, how they led him to where he is.
5 But he's 47 today, and for the last 30 years of his life, he's
6 been a drug dealer. Consistently.

7 There were so many opportunities, so many times he
8 stood in front of a court like Your Honor's court and likely
9 made a similar pitch, that he wanted to be better, that he
10 wanted to turn from the path that he was on. And, yet, what
11 happens after he's out of custody? He continues to deal
12 drugs. This was not some isolated incident in this case. The
13 indictment alleged this happened over the course of a couple
14 years.

15 The career offender guidelines, regardless of what
16 the parties think of them or how they might change, I think,
17 here are an accurate reflection of the life of crime that this
18 defendant has led. Whatever circumstances led him there, he
19 had lots of opportunities not to go back to this, including a
20 federal intervention. And at some point, the question is:
21 What could change this behavior?

22 There has been myriad opportunities to do so, and I
23 think the Court, in this moment, I think should have a
24 difficult time being convinced that affording him some
25 leniency is going to turn him on a different path. I hope, I

1 hope that what he says here is accurate, that he's decided to
2 stop, that this is, this is not what he wants for his life,
3 but his actions say otherwise.

4 I'll just note that when he's been on supervision
5 federally, he was revoked the last time because he committed a
6 new crime, identity theft. He has, by my count, 15
7 convictions. Again, 15 times he stood in front of the Court
8 to pitch why he should be given some leniency. Twenty-four
9 other arrests. Many of those are drug-related.

10 I don't doubt that he was given very little in his
11 life, but he's 47 at this point, and he continues to engage in
12 this behavior.

13 So in the government's view, the road has got to end
14 here, and we ask for a guideline sentence.

15 THE COURT: All right. Thank you, Mr. Lowney.

16 Well, the overriding consideration for me this
17 morning, as in any sentencing, is that I am to impose a
18 sentence that is sufficient but not greater than necessary,
19 taking into consideration not only the punishments that are
20 available to me, which I have summarized on the record this
21 morning, but also taking into consideration a number of
22 factors that are found within a United States statute, that
23 statute being very familiar to counsel and to me: 18 United
24 States Code Section 3553(a).

25 That statute requires me to consider the nature and

1 circumstances of the offense, the history and characteristics
2 of Mr. Anthony; the need for the sentence imposed to reflect
3 the seriousness of the offense, promote respect for the law,
4 provide just punishment for the offense; to afford adequate
5 deterrence to criminal conduct; protect the public from
6 further crimes by Mr. Anthony; address any needed educational
7 or vocational training, medical care, or other correctional
8 treatment in the most effective manner; and, finally, the need
9 to avoid unwarranted sentence disparities amongst defendants
10 with similar records who have been found guilty of similar
11 conduct.

12 That particular factor, I'll get to it here shortly,
13 but that particular factor, sentence disparity, is relevant to
14 me as I look at where we are in terms of the guideline range
15 in this case.

16 262 to 327 months for the offense conduct in this
17 case, notwithstanding Mr. Anthony's long and troubling
18 criminal history, in my opinion, the guideline range in this
19 case, as calculated based on the career offender application,
20 is too high.

21 So the question, then, becomes: What is the
22 appropriate sentence?

23 And I think the answer to that can be found within
24 the analysis of the remaining factors within 3553(a). So let
25 me speak to those now.

1 Mr. Anthony, we know you are 47 years old. You are
2 standing before the Court after entering a plea of guilty to
3 the offense of possession with intent to distribute controlled
4 substances.

5 You were a distributor of fentanyl and
6 methamphetamine in Montana, primarily transporting the
7 substances through the mail by sending the packages from
8 California to your local distributors in Montana.

9 A package sent by you was ultimately seized and
10 determined to contain 112.9 grams of fentanyl and 107 grams of
11 actual methamphetamine.

12 Your criminal history begins at the age of 19. It's
13 been consistent. You have numerous felony convictions for
14 drug distribution offenses, including possession of cocaine
15 base with intent to distribute, conspiracy to distribute
16 controlled substances, possession of marijuana with intent to
17 distribute. You've also been convicted of assault with a
18 deadly weapon, identity theft, and numerous misdemeanors.

19 You, yourself, have an extensive and long history of
20 drug and alcohol use since the age of 17. Your most
21 significant substance abuse involves heroin and other opiates,
22 and you have a limited treatment history.

23 You're relatively healthy, physically healthy,
24 mentally healthy. You were diagnosed somewhere along the way
25 with attention deficit disorder, but that's never -- you've

1 never been medicated for that.

2 You have expressed a desire to explore future
3 treatment in this area, and, as I've indicated, you have no
4 significant physical health concerns.

5 As has been discussed this morning -- and I
6 acknowledge fully the difficulties that you confronted in your
7 childhood: your mother's drug addiction, your father passing
8 away when you were young. So that's, you know, that's clearly
9 relevant to my considerations this morning, and I am taking
10 all of that into effect.

11 Your spouse and your sons are here supporting you
12 this morning. The character letters that have been submitted
13 on your behalf indicate that you do have significant support
14 within your family and close friends.

15 Unfortunately, you've never received a high school
16 diploma or a GED. I think you've gotten close to completing a
17 GED. And your employment history is somewhat limited due to
18 the fact that you've been in and out of custody for most of
19 your adult life, but you were most recently employed cleaning
20 large ships in San Francisco and assisting your wife with her
21 businesses.

22 So what is the appropriate -- what is a sufficient
23 but not greater than necessary sentence in this case? When I
24 take all of this into consideration, I have concluded that a
25 downward variance is appropriate in this case. I'm going to

1 impose a custodial sentence of 180 months. That's 15 years.
2 And I'm going to follow that with five years of supervised
3 release, Mr. Anthony.

4 So that's going to be my sentence this morning. I
5 believe it is sufficient but not greater than necessary. And,
6 again, it is a downward variance, and I'm varying downward
7 primarily on the basis of disparity.

8 So if you would please rise, and I will pronounce
9 sentence at this time.

10 THE DEFENDANT: (Complied with request.)

11 THE COURT: Shante Maurice Anthony, pursuant to the
12 authority vested in me by the Constitution of the United
13 States and the laws enacted by the United States Congress as
14 they have been interpreted by the United States Supreme Court
15 and the Ninth Circuit Court of Appeals, it is my obligation to
16 impose sentence on you.

17 I do so having considered all of the material that
18 has been provided to me, the recommendations of counsel, your
19 own statement of acceptance of responsibility, and the
20 character letters that have been submitted on your behalf.

21 And having considered all of those matters, the
22 United States Sentencing Guidelines, and the factors found
23 within 18 United States Code Section 3553(a), it is the
24 judgment of this Court that you be committed to the custody of
25 the United States Bureau of Prisons for a term of 180 months.

1 Upon release from imprisonment, you shall be placed
2 on supervised release for a term of five years.

3 Within 72 hours of release from custody of the
4 Bureau of Prisons, you shall report in person to the probation
5 office in the district to which you are released.

6 I'm recommending that you participate in the Bureau
7 of Prisons 500-hour residential drug treatment program, if
8 eligible.

9 While on supervised release, you shall not commit
10 any federal, state, or local crime and shall not possess a
11 controlled substance.

12 You shall be prohibited from owning, using, or being
13 in constructive possession of firearms, ammunition, or other
14 destructive devices while on supervision and anytime after the
15 completion of the period of supervision unless granted relief
16 by the Secretary of the Treasury.

17 You shall cooperate in the collection of DNA as
18 directed by the United States probation office.

19 You shall comply with the standard conditions of
20 supervision as recommended by the United States Sentencing
21 Commission and which have been approved and adopted by this
22 Court.

23 Mr. Anthony, there are 13 standard conditions. They
24 were listed in the presentence investigation report as
25 paragraphs 1 through 13 at pages 28 and 29. You have an

1 absolute right to have me read these to you this morning, or,
2 in the alternative, if you have read them, if you understand
3 them, and if you have no objection to the 13 standard
4 conditions, you can waive the reading of the 13 standard
5 conditions this morning.

6 Would you like me to read them to you, or do you
7 waive the reading?

8 THE DEFENDANT: I waive the reading.

9 THE COURT: Any objection, Mr. Lowney, to waiving
10 the reading of the 13 standard conditions?

11 MR. LOWNEY: No, Your Honor.

12 THE COURT: Okay.

13 I'm also going to impose some special conditions,
14 and, Mr. Anthony, you and Mr. Donahoe may be seated for the
15 balance of this.

16 I'm going to impose the following special
17 conditions:

18 Special Condition 1. You must participate in an
19 outpatient program for mental health treatment as approved by
20 the probation officer. You must remain in the program until
21 you are released by the probation officer in consultation with
22 the treatment provider. You must pay part or all of the costs
23 of this treatment as directed by the probation officer.

24 Special Condition 2. You must submit your person,
25 residence, place of employment, vehicles, and papers to a

1 search, with or without a warrant, by any probation officer
2 based on reasonable suspicion of contraband or evidence in
3 violation of a condition of release. Failure to submit to
4 search may be grounds for revocation. You must warn any other
5 occupants that the premises may be subject to searches
6 pursuant to this condition, and you must allow seizure of
7 suspected contraband for further examination.

8 Special Condition 3. You must abstain from the
9 consumption of alcohol and are prohibited from entering
10 establishments where alcohol is the primary item of sale.

11 Special Condition 4. You must participate in
12 substance abuse testing to include not more than
13 180 urinalysis tests, not more than 180 Breathalyzer tests,
14 and not more than 36 sweat patch applications annually during
15 the period of supervision. You must pay part or all of the
16 costs of testing as directed by the probation officer.

17 Special Condition 5. You must participate in
18 substance abuse treatment or alcohol abuse treatment program
19 which may include inpatient treatment and follow the rules and
20 regulations of that program. The probation officer will
21 obtain the authorization of the Court before requiring
22 residential or inpatient treatment pursuant to this condition.
23 The probation officer will supervise your participation in the
24 program. The program may include urinalysis testing to
25 determine if you have used drugs or alcohol. You must not

1 attempt to obstruct or tamper with the testing methods. You
2 must pay part or all of the costs of this treatment as
3 directed by the probation officer.

4 Special Condition 6. You must not purchase,
5 possess, use, distribute, or administer marijuana, including
6 marijuana that is used for recreational or medicinal purposes
7 under state law.

8 And final Special Condition 7. You must not
9 possess, ingest, or inhale any psychoactive substances that
10 are not manufactured for human consumption for the purpose of
11 altering your mental or physical state. "Psychoactive
12 substances" include but are not limited to synthetic
13 marijuana, kratom, and/or synthetic stimulants such as bath
14 salts and spice.

15 Mr. Anthony, I find you do not have the ability to
16 pay a fine. I waive the obligation to pay a fine in this
17 case.

18 I am ordering, however, that you shall pay to the
19 United States the special assessment of \$100 which shall be
20 due immediately.

21 During your custodial sentence, you'll be making
22 criminal monetary penalty payments through the Bureau of
23 Prisons Inmate Financial Responsibility Program. Those
24 payments will be made at a rate of not less than \$25 per
25 quarter, and they shall be made to the Clerk of Court, United

1 States District Court, the address of which is P.O. Box 8537,
2 Missoula, Montana 59807.

3 Mr. Lowney, I believe Count 1 needs to be dismissed.

4 MR. LOWNEY: Yes. The government so moves,
5 Your Honor.

6 THE COURT: Count 1 of the indictment is dismissed
7 with prejudice.

8 And, Mr. Lowney, could you describe the appeal
9 waiver in this matter?

10 MR. LOWNEY: Yes.

11 Mr. Anthony has agreed to waive his right to appeal
12 or collaterally attack any aspect of the sentence. That
13 includes challenges to the constitutionality of any statute of
14 conviction and arguments that the admitted conduct does not
15 fall within any statute of conviction. This does not preclude
16 an appeal based on ineffective assistance.

17 THE COURT: And, Mr. Donahoe, do you agree that your
18 client has waived his right of appeal as described?

19 MR. DONAHOE: I do.

20 THE COURT: And do you understand that, Mr. Anthony,
21 that you've waived your right of appeal?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Although you have waived your right of
24 appeal, if you believe that waiver is unenforceable or you
25 wish to appeal for any other reason that is not part of that

1 waiver, you will have 14 days from the date of entry of
2 judgment in which to appeal to the Ninth Circuit Court of
3 Appeals. Judgment will be entered today, so that 14-day time
4 clock will begin to run today. If you do not appeal within
5 the next 14 days, then any appeal would be barred.

6 Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Now in advising you of this right of
9 appeal, I am not suggesting that you, in fact, have such a
10 right, which, again, you have waived as part of the plea
11 agreement in this case. So if you appeal and the Ninth
12 Circuit determines that you waived your right to file that
13 appeal, your appeal may be dismissed. Understood?

14 THE DEFENDANT: Um-hmm.

15 THE COURT: All right. Thank you, Mr. Anthony.

16 There's a request for placement; is that right,
17 Mr. Donahoe? Lompoc, Terminal Island, or Phoenix?

18 MR. DONAHOE: Yes.

19 THE COURT: Is there, is there a preference?

20 THE DEFENDANT: Terminal Island.

21 THE COURT: Terminal Island? I'll make that
22 recommendation, Mr. Anthony. I assume that's because you wish
23 to be close to family.

24 As you know, it's ultimately up to the Bureau of
25 Prisons where you are placed, but I will make that

1 recommendation in the judgment, and my experience has been
2 they generally follow my recommendations.

3 Mr. Lowney, any legal objections to this sentence?

4 MR. LOWNEY: No, Your Honor.

5 THE COURT: Any legal objections, Mr. Donahoe?

6 MR. DONAHOE: No, Your Honor.

7 THE COURT: Anything further, Counsel?

8 MR. DONAHOE: No.

9 MR. LOWNEY: No.

10 THE COURT: All right.

11 Mr. Anthony, I'm going to remand you back to the
12 custody of the Marshals Service to carry out the judgment of
13 the Court, and we'll be in recess.

14 Thank you.

15 (Proceedings were concluded at 09:50:57.)
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REPORTER'S CERTIFICATE

I, JoAnn Jett Corson, a Registered Diplomat
Reporter and Certified Realtime Reporter, certify that the
foregoing transcript is a true and correct record of the
proceedings given at the time and place hereinbefore
mentioned; that the proceedings were reported by me in machine
shorthand and thereafter reduced to typewriting using
computer-assisted transcription; that after being reduced to
typewriting, a certified copy of this transcript will be filed
electronically with the court.

I further certify that I am not attorney for, nor
employed by, nor related to any of the parties or attorneys to
this action, nor financially interested in this action.

IN WITNESS WHEREOF, I have set my hand at Missoula,
Montana this 25th day of August, 2025.

/s/ JoAnn Jett Corson

JoAnn Jett Corson
United States Court Reporter

FILED

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FEB 07 2025
Clerk, U.S. Courts
District of Montana
Missoula Division

**ATTORNEY FOR PLAINTIFF
UNITED STATES OF AMERICA**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

UNITED STATES OF AMERICA, Plaintiff, vs. SHANTE MAURICE ANTHONY, Defendant.	CR 24-39-BU-DLC PLEA AGREEMENT (pursuant to Rule 11(c)(1)(A) and (B), <i>Federal Rules of Criminal Procedure</i>)
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Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the United States of America, represented by Jennifer S. Clark, Assistant United States Attorney for the District of Montana, and the defendant, Shante Maurice Anthony, and the defendant's attorney, Michael Donahoe, have agreed upon the following:

1. **Scope:** This plea agreement is between the United States Attorney's Office for the District of Montana and the defendant. It does not bind any other

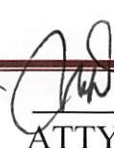
  
AUSA DEF ATTY

federal, state, or local prosecuting, administrative, or regulatory authority, or the United States Probation Office.

2. Charges: The defendant agrees to plead guilty to count 2 of the indictment, which charges the crime of possession with intent to distribute controlled substances in violation of 21 U.S.C. § 841(a)(1). This offense carries a maximum penalty of a mandatory minimum of ten years to life imprisonment, a \$10,000,000 fine, at least five years of supervised release, for the quantity of methamphetamine involved in the offense, and a mandatory minimum five to 40 years of imprisonment, a \$5,000,000 fine, and at least four years of supervised release for the quantity of fentanyl involved in the offense. The defendant must also pay a \$100 special assessment for a conviction on count 2.

At the time of sentencing, if the Court accepts this plea agreement, the United States will move to dismiss count 1 of the indictment.

3. Nature of the Agreement: The parties agree that this plea agreement will be governed by Rule 11(c)(1)(A) and (B), *Federal Rules of Criminal Procedure*. The defendant acknowledges that the agreement will be fulfilled provided the United States: a) moves to dismiss, and the Court agrees to dismiss, count 1 of the indictment; and b) makes the recommendations provided below. The defendant understands that if the agreement is accepted by the Court, and count 1 is dismissed, there will not be an automatic right to withdraw the plea even

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if the Court does not accept or follow the recommendations made by the United States.

4. Admission of Guilt: The defendant will plead guilty because the defendant is guilty of the crime charged in count 2 of the indictment. In pleading guilty to count 2, the defendant acknowledges that:

First, the defendant knowingly possessed methamphetamine and fentanyl, both Schedule II controlled substances;

Second, the defendant possessed the substances with the intent to distribute them to another; and

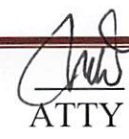
Third, the offense involved at least 50 grams of actual methamphetamine and at least 40 grams of a substance containing a detectable amount of fentanyl.

5. Waiver of Rights by Plea:

(a) The government has a right to use against the defendant, in a prosecution for perjury or false statement, any statement given under oath during the plea colloquy.

(b) The defendant has the right to plead not guilty or to persist in a plea of not guilty.

(c) The defendant has the right to a jury trial unless, by written waiver, the defendant consents to a non-jury trial. The United States must also consent, and the Court must approve a non-jury trial.

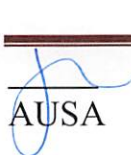
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(d) The defendant has the right to be represented by counsel and, if necessary, have the Court appoint counsel at trial and at every other stage of these proceedings.

(e) If the trial is a jury trial, the jury would be composed of 12 laypersons selected at random. The defendant and the defendant's attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that the defendant is presumed innocent, and that it could not convict unless, after hearing all the evidence, it was persuaded of the defendant's guilt beyond a reasonable doubt.

(f) If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all of the evidence, whether or not the judge was persuaded of the defendant's guilt beyond a reasonable doubt.

(g) At a trial, whether by a jury or a judge, the United States would be required to present its witnesses and other evidence against the defendant. The defendant would be able to confront those government witnesses and the defendant's attorney would be able to cross-examine them. In turn, the defendant could present witnesses and other evidence. If the witnesses for the defendant

  
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would not appear voluntarily, their appearance could be mandated through the subpoena power of the Court.

(h) At a trial, there is a privilege against self-incrimination so that the defendant could decline to testify, and no inference of guilt could be drawn from the refusal to testify. Or the defendant could exercise the choice to testify.

(i) If convicted, and within 14 days of the entry of the Judgment and Commitment, the defendant would have the right to appeal the conviction to the Ninth Circuit Court of Appeals for review to determine if any errors were made that would entitle the defendant to reversal of the conviction.

(j) The defendant has a right to have the district court conduct the change of plea hearing required by Rule 11, Federal Rules of Criminal Procedure. By execution of this agreement, the defendant waives that right and agrees to hold that hearing before and allow the Rule 11 colloquy to be conducted by, the U.S. Magistrate Judge, if necessary.

(k) If convicted in this matter, a defendant who is not a citizen of the United States may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

The defendant understands that by pleading guilty pursuant to this agreement, the defendant is waiving all the rights set forth in the prior paragraph,

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except as provided in paragraph 3. The defendant's attorney has explained those rights to the defendant and the consequences of waiving them.

6. Recommendations: The United States will recommend the defendant's offense level be decreased by two levels for acceptance of responsibility, pursuant to USSG §3E1.1(a), unless the defendant is found to have obstructed justice prior to sentencing, pursuant to USSG §3C1.1, or acted in any way inconsistent with acceptance of responsibility. The United States will move for an additional one-level reduction, pursuant to USSG §3E1.1(b), if appropriate under the Guidelines. The parties reserve the right to make any other arguments at the time of sentencing. The defendant understands that the Court is not bound by this recommendation.

7. Sentencing Guidelines: Although advisory, the parties agree that the U.S. Sentencing Guidelines must be applied, and a calculation determined, as part of the protocol of sentencing to determine what sentence will be reasonable.

8. Waiver of Appeal of the Sentence – Conditional: The defendant understands the law provides a right to appeal and collaterally attack the sentence imposed in this case. 18 U.S.C. § 3742(a); 28 U.S.C. §§ 2241, 2255. The prosecution has a comparable right of appeal. 18 U.S.C. § 3742(b). By this agreement the defendant waives the right to appeal or collaterally attack any aspect of the sentence, including conditions of probation or supervised release, if the

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sentence imposed is within or below the Guideline range calculated by the Court, regardless of whether the defendant agrees with that range. This waiver includes challenges to the constitutionality of any statute of conviction and arguments the admitted conduct does not fall within any statute of conviction. This waiver does not prohibit the right to pursue a collateral challenge alleging ineffective assistance of counsel. The United States waives its right to appeal any aspect of the sentence if the sentence imposed is within or above the Guideline range calculated by the Court.

The defendant also waives the right to appeal any aspect of a sentence imposed below or within the Guideline range upon a revocation of supervised release in this case number, except where the defendant unsuccessfully objects to the grade of violation applied by the court during the district court revocation proceedings. In that event, this waiver does not apply and the defendant may appeal the sentence imposed upon a revocation of supervised release, even if that sentence falls below or within the guideline range calculated by the court.

9. Detention/Release After Plea: Pursuant to 18 U.S.C. § 3143(a)(2), the defendant acknowledges that the defendant will be detained upon conviction unless (A)(i) the Court finds there is a substantial likelihood that a motion for acquittal or new trial will be granted or (ii) this agreement provides that the United States will recommend that no sentence of imprisonment be imposed; and (B) the

  
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Court finds, by clear and convincing evidence, that the defendant is not likely to flee or pose a danger to any other person or the community. Then, if exceptional circumstances exist, the defendant may be released upon conditions.

10. Voluntary Plea: The defendant and the defendant's attorney acknowledge that no threats, promises, or representations have been made to induce the defendant to plead guilty, and that this agreement is freely and voluntarily endorsed by the parties.

11. Loss of Federal Benefits: The defendant acknowledges that, based on the plea of guilty to a federal controlled substances crime, the defendant may be ineligible for assistance under any state program funded under Part A of Title IV of the Social Security Act or benefits under the Food Stamp Act. 21 U.S.C. § 862a. The Court may also deny the defendant eligibility to participate in any federal grant, contract, loan, professional license, or commercial license. 21 U.S.C. § 862.

12. Breach: If the defendant breaches this plea agreement, at any time, in any way, including but not limited to appealing or collaterally attacking the conviction or sentence, the United States may prosecute the defendant for any counts, including those with mandatory minimum sentences, dismissed or not charged pursuant to this plea agreement. Additionally, the United States may use, in its case-in-chief, any factual admissions made by the defendant pursuant to this plea agreement in any such prosecution.

  
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13. FOIA Waiver: The defendant waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

14. Entire Agreement: Any statements or representations made by the United States, the defendant, or defense counsel prior to the full execution of this plea agreement are superseded by this plea agreement. No promises or representations have been made by the United States except as set forth in writing in this plea agreement. This plea agreement constitutes the entire agreement

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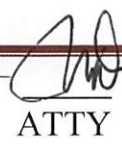
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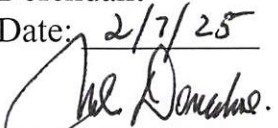
  
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between the parties. Any term or condition which is not expressly stated as part of this plea agreement is not to be considered part of the agreement.

JESSE A. LASLOVICH
United States Attorney


JENNIFER S. CLARK
Assistant U. S. Attorney
Date: 2/7/2025


SHANTE MAURICE ANTHONY
Defendant
Date: 2/7/25


MICHAEL DONAHOE
Defense Counsel
Date: 2-7-25.


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FILED

DEC 19 2024

Clerk, US District Court
District of Montana - Billings

**ATTORNEY FOR PLAINTIFF
UNITED STATES OF AMERICA**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

UNITED STATES OF AMERICA,	CR 24-³⁹-BU-DLC
Plaintiff,	INDICTMENT
vs.	CONSPIRACY TO DISTRIBUTE AND TO POSSESS WITH THE INTENT TO DISTRIBUTE CONTROLLED SUBSTANCES (Count 1)
SHANTE MAURICE ANTHONY,	Title 21 U.S.C. § 846
Defendant.	(Penalty for Methamphetamine: Mandatory minimum 10 years to life imprisonment, \$10,000,000 fine, and at least five years of supervised release)
	(Penalty for Fentanyl: Mandatory minimum five years to 40 years of imprisonment, \$5,000,000 fine, and at least four years of supervised release)

	POSSESSION WITH INTENT TO DISTRIBUTE CONTROLLED SUBSTANCES (Count 2) Title 21 U.S.C. § 841(a)(1) <u>(Penalty for Methamphetamine:</u> Mandatory minimum 10 years to life imprisonment, \$10,000,000 fine, and at least five years of supervised release) <u>(Penalty for Fentanyl:</u> Mandatory minimum five years to 40 years of imprisonment, \$5,000,000 fine, and at least four years of supervised release) TITLE 21 PENALTIES MAY BE ENHANCED FOR PRIOR DRUG-RELATED FELONY CONVICTIONS
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THE GRAND JURY CHARGES:

COUNT 1

That beginning in December 2022, and continuing until on or about November 25, 2024, at Bozeman, in Gallatin County, in the State and District of Montana, and elsewhere, the defendant, SHANTE MAURICE ANTHONY, knowingly and unlawfully conspired with others both known and unknown to the Grand Jury, to distribute and to possess with the intent to distribute, in violation of 21 U.S.C. § 841(a)(1), 50 grams or more of actual methamphetamine, a Schedule II controlled substance, and 40 grams or more of a substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide, commonly known as “fentanyl,” a Schedule II controlled substance, in violation of 21 U.S.C. § 846.

COUNT 2

That beginning in December 2022, and continuing until on or about November 25, 2024, at Bozeman, in Gallatin County, in the State and District of Montana, and elsewhere, the defendant, SHANTE MAURICE ANTHONY, knowingly and unlawfully possessed with the intent to distribute, 50 grams or more of actual methamphetamine, a Schedule II controlled substance, and 40 grams or more of a substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide, commonly known as “fentanyl,” a Schedule II controlled substance, in violation of 21 U.S.C. § 841(a)(1).

A TRUE BILL.

Foreperson signature redacted. Original document filed under seal.

FOREPERSON



JESSE A. LASLOVICH
United States Attorney



CYNDEE L. PETERSON
Criminal Chief Assistant U.S. Attorney

UNITED STATES CODE

28 USC §1254(1)

28 U.S. Code §1254 - Courts of appeals; certiorari; certified questions.

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

- (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

UNITED STATES SENTENCING GUIDELINE

USSG §4B1.2

§4B1.2. Definitions of terms used in section 4b1.1.

(a) **Crime of Violence.**—The term “crime of violence” means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that—

(1) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(2) is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use or unlawful possession of a firearm described in 26 U.S.C. § 5845(a) or explosive material as defined in 18 U.S.C. § 841(c).

(b) **Controlled Substance Offense.**—The term “controlled substance offense” means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that—

(1) prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense; or

(2) is an offense described in 46 U.S.C. § 70503(a) or § 70506(b).

(c) **Two Prior Felony Convictions.**—The term “two prior felony convictions” means (1) the defendant committed the instant offense of conviction subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense (i.e., two felony convictions of a crime of violence, two felony convictions of a controlled substance offense, or one felony conviction of a crime of violence and one felony conviction of a controlled substance offense), and (2) the sentences for at least two of the aforementioned felony convictions are counted separately under the provisions of §4A1.1(a), (b), or (c). The date that a defendant

sustained a conviction shall be the date that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of nolo contendere.

(d) Inchoate Offenses Included.—The terms “crime of violence” and “controlled substance offense” include the offenses of aiding and abetting, attempting to commit, or conspiring to commit any such offense.

(e) Additional Definitions.—

(1) Forcible Sex Offense.—“Forcible sex offense” includes where consent to the conduct is not given or is not legally valid, such as where consent to the conduct is involuntary, incompetent, or coerced. The offenses of sexual abuse of a minor and statutory rape are included only if the sexual abuse of a minor or statutory rape was (A) an offense described in 18 U.S.C. § 2241(c) or (B) an offense under state law that would have been an offense under section 2241(c) if the offense had occurred within the special maritime and territorial jurisdiction of the United States.

(2) Extortion.—“Extortion” is obtaining something of value from another by the wrongful use of (A) force, (B) fear of physical injury, or (C) threat of physical injury.

(3) Robbery.—“Robbery” is the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining. The phrase “actual or threatened force” refers to force that is sufficient to overcome a victim’s resistance.

(4) Prior Felony Conviction.—“Prior felony conviction” means a prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed. A conviction for an offense committed at age eighteen or older is an adult conviction. A conviction for an offense committed prior to age eighteen

is an adult conviction if it is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted (e.g., a federal conviction for an offense committed prior to the defendant's eighteenth birthday is an adult conviction if the defendant was expressly proceeded against as an adult).