

HOW TO BE AN APPEALING LAWYER: HANDLING 11TH CIRCUIT APPEALS AS COURT-APPOINTED COUNSEL

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PREFACE

Kristofferson: Coach, we don't have whack-bat where I'm from. What are the rules?

Coach Skip: There's no whack-bat on the other side of the river?

Kristofferson: No, we mostly just run grass sprints or play acorns.

Coach Skip: Well, it's real simple. Basically, there's three grabbers, three taggers, five twig runners, and the player at whack-bat. The center tagger lights a pine cone and chucks it over the basket and the player tries to hit the cedar stick off the cross rock. Then the twig runners dash back and forth until the pine cone burns out and the umpire calls "hotbox". Finally, you count up however many score-downs it adds up to and divide that by nine.

Kristofferson: Got it.

The Fantastic Mr. Fox
20th Century Fox (2009)

THE BEST OFFENSE IS A GOOD DEFENSE: PRESERVING ERROR

TAKEAWAY: Preserving error is essential to a successful appeal, because if you don't, you are faced with nearly impossible standards of review.

EVIDENCE

Fed. R. Evid. 103

(a) Preserving a Claim of Error. A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and:

(1) if the ruling ***admits*** evidence, a party, on the record:

(A) timely objects or moves to strike; and

(B) states the specific ground, unless it was apparent from the context; or

(2) if the ruling ***excludes*** evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.

(b) Not Needing to Renew an Objection or Offer of Proof. Once the court rules definitively on the record--either before or at trial--a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

GENERALLY

Fed. R. Crim. P. 51(b):

(b) Preserving a Claim of Error. A party may preserve a claim of

error by informing the court – when the court ruling or order is made or sought – of the action the party wishes the court to take, or the party's objection to the court's action and the grounds for that objection. If a party does not have an opportunity to object to a ruling or order, the absence of an objection does not later prejudice that party.

MOTIONS TO SUPPRESS

To preserve a challenge to a motion to suppress or any other pretrial motion on appeal after a guilty plea, you must enter a conditional guilty plea under Fed. R. Crim. P. 11(a)(2):

(2) Conditional Plea. With the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea.

Note, though, that a guilty plea does not bar a criminal defendant from later appealing his conviction on the ground that the statute of conviction violates the Constitution – even if the defendant did not enter into a conditional plea. *Class v. United States*, 138 S. Ct. 798 (2018).

A guilty plea generally waives a defendant's right to appeal his conviction, but an unconditional guilty plea does not waive the right to challenge jurisdictional defects. *See United States v. Saac*, 632 F.3d 1203, 1208 (11th Cir. 2011).

See also the discussion on objecting to Reports and Recommendations (below).

Note: Motions to suppress are immediately appealable by the government if it loses. If the defendant loses, the motion is appealable

REPORTS AND RECOMMENDATIONS

11th Cir. R. 3-1:

A party failing to object to a magistrate judge's findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice.

SENTENCING/PROCEDURAL REASONABLENESS

A defendant must specify the grounds on which she contends a sentence is procedurally unreasonable in order to preserve error on this basis: e.g., “The defendant contends that this sentence is procedurally unreasonable because the government had an improper reason for withholding the motion for the extra point acceptance reduction under §3E1.1(b).” *United States v. Johnson*, ___ F.3d ___, 2020 WL 6791226 at *10 (11th Cir. Nov. 19, 2020).

SENTENCING/SUBSTANTIVE REASONABLENESS

A defendant preserves a claim of substantive reasonableness simply by arguing for a shorter sentence. *See Holguin-Hernandez v. United States*, 140 S. Ct. 762 (2020).

Note that this case expressly did not decide “what is sufficient to preserve a claim that a trial court used improper *procedures* in arriving at its chosen sentence.” *Id.* at 767; *see also United States v. Sanders*, 2020 WL 4037277 at *4, n. 4 (11th Cir. 2020).

SUFFICIENCY OF THE EVIDENCE

Fed. R. Crim. P. 29:

There are two ways:

- 1) At trial, with a motion for judgment of acquittal at the close of the government's case *and* at the close of the defendant's case (if the defense puts up evidence). Fed. R. Crim. P. 29(a).

OR

- 2) A written motion for judgment of acquittal within 14 days after the guilty verdict. Fed. R. Crim. P. 29(c)(1). Note that you do not need to make a motion at trial as a prerequisite for filing a written motion after the verdict. Fed. R. Crim. P. 29(c)(3).

KNOW THY ENEMY: STANDARDS OF REVIEW AND YOU

Takeaway: The Eleventh Circuit rules require you to state the standards of review in your brief. You're going to have to address them, so you need to know them.

Abuse of discretion

“A district court abuses its discretion if it applies an incorrect legal standard, follows improper procedures in making the determination, or makes findings of fact that are clearly erroneous.” *Cordoba v. DIRECTV, LLC*, 942 F.3d 1259, 1267 (11th Cir. 2019). A district court also abuses its discretion when it commits a clear error of judgment. *United States v. Brown*, 415 F.3d 1257, 1266 (11th Cir. 2005). Abuse of discretion review means that the district court had a range of choice that the appellate court cannot reverse just because it may reached a different conclusion if it had made the call. *Sloss Indus. Corp. v. Eurisol*, 488 F.3d 922, 934 (11th Cir. 2007).

Cumulative error

Under the cumulative-error doctrine, the court “will reverse a conviction where an aggregation of non-reversible errors yields a denial of the constitutional right to a fair trial.” *United States v. Reeves*, 742 F.3d 487, 505 (11th Cir. 2014). The Court assesses cumulative-error claims by “first considering the validity of each claim individually, and then examining any errors that we find in the aggregate and in light of the trial as a whole to determine whether the appellant was afforded a fundamentally fair trial.” *Morris v. Sec'y, Dep't of Corr.*, 677 F.3d 1117, 1132 (11th Cir. 2012). But if overwhelming evidence supports the jury's verdict such that any errors had no “substantial influence” on the verdict, then even multiple errors can be rendered harmless.

See United States v. Baker, 432 F.3d 1189, 1223–25 (11th Cir. 2005), *abrogated on other grounds by Davis v. Washington*, 547 U.S. 813, 822 (2006).

Evidentiary rulings

The Court reviews evidentiary rulings for abuse of discretion. *Old Chief v. United States*, 519 U.S. 172, 174 n.1 (1997). If the rulings were erroneous, the Court will not reverse if the error was harmless. *United States v. Green*, 969 F.3d 1194, 1208 (11th Cir. 2020). The government has the burden of showing that any error was harmless. *United States v. Vonn*, 535 U.S. 55, 62 (2002).

Fact findings (generally)

The Court reviews the district court's factual findings for clear error. *United States v. Almand*, 992 F.2d 316, 318 (11th Cir. 1993).

A district court's fact-finding based on a credibility determination will almost never be clear error. *United States v. Rodriguez*, 398 F.3d 1291, 1296 (11th Cir. 2005).

Guidelines

The Court reviews the district court's findings of fact under the guidelines for clear error and its application of the guidelines to those facts *de novo*. *United States v. Pham*, 463 F.3d 1239, 1245 (11th Cir. 2006).

Habeas, denial of

When confronted with the district court's denial of a habeas corpus petition, an appellate court reviews legal issues *de novo* and fact findings for clear error. *Coloma v. Holder*, 445 F.3d 1282, 1284 (11th Cir. 2006).

Mistrial

The Court reviews the denial of a motion for mistrial for abuse of discretion. *United States v. Barsoum*, 763 F.3d 1321, 1338, 1340 (11th Cir. 2014).

Motion to suppress

Since an order denying a motion to suppress presents a mixed question of fact and law, the Court reviews the district court's fact findings for clear error and its legal conclusions *de novo*. *United States v. Johnson*, 777 F.3d 1270, 1273-74 (11th Cir. 2015).

Plain error (i.e., issue not preserved in district court)

A defendant must show (1) an error (2) that is plain and (3) that affects substantial rights. *United States v. Rodriguez*, 751 F.3d 1244, 1251 (11th Cir. 2014). Even if a defendant can satisfy these conditions, the Court may correct the error only if it "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." *United States v. Olano*, 507 U.S. 725, 732, 113 S. Ct. 1770, 1776 (1993). Thus, a defendant who does not object in district court must show a plain and prejudicial error that is "disreputable to the judicial system." *United States v. Vonn*, 535 U.S. 55, 65, 122 S. Ct. 1043, 1050 (2002).

Procedural reasonableness of sentence

A sentence may be procedurally unsound if the district court calculates incorrectly the guidelines range, treats the guidelines as mandatory, fails to consider the 18 U.S.C. § 3553(a) factors, chooses a sentence based on clearly erroneous facts, or fails to explain adequately the chosen sentence. *United States v. Gonzalez*, 550 F.3d 1319, 1323

(11th Cir. 2008); *see also United States v. Vandergrift*, 754 F.3d 1303, 1307 (11th Cir. 2014)(noting that the district court’s consideration of an improper factor is procedural error). In determining procedural reasonableness, the Court reviews de novo the district court's application of the Guidelines and review for clear error the district court's factual findings. *See United States v. Arguedas*, 86 F.3d 1054, 1059 (11th Cir. 1996).

Sentence reduction (§3582(c)(2))

A district court's decision whether to reduce a sentence under 18 U.S.C. §3582(c)(2) is reviewed for an abuse of discretion. *United States v. White*, 305 F.3d 1264, 1267 (11th Cir. 2002).

Substantive reasonableness

After determining a sentence is procedurally sound, the Court evaluates the substantive reasonableness of a sentence – whether one inside or outside the guidelines range – under a deferential abuse-of-discretion standard. *See Gall v. United States*, 552 U.S. 38, 51 (2007). In reviewing the substantive reasonableness of a sentence, the Court examines “the totality of the circumstances, including ... whether the statutory factors in § 3553(a) support the sentence in question.” *United States v. Gonzalez*, 550 F.3d 1319, 1324 (11th Cir. 2008).

Sufficiency of evidence (preserved)

The Court reviews de novo the denial of a motion for judgment of acquittal on sufficiency grounds. *United States v. Browne*, 505 F.3d 1229, 1253 (11th Cir. 2007). When determining sufficiency, the Court views the evidence in the light most favorable to the government, drawing all reasonable inferences and credibility choices in the government's favor. *Id.* The Court will affirm a district

court's denial of a motion for judgment of acquittal if a reasonable jury could conclude that the evidence established the defendant's guilt beyond a reasonable doubt. *Id.*

Sufficiency of evidence (unpreserved)

Where the defendant fails to challenge the sufficiency of the evidence on a particular count, this Court reviews the sufficiency of the evidence on that count for a manifest miscarriage of justice. *See United States v. Tagg*, 572 F.3d 1320, 1323 (11th Cir. 2009). A miscarriage of justice occurs when the evidence of an “element of the offense is so tenuous that a conviction would be shocking.” *Id.*

Supervised release revocation, review of

The Court reviews for an abuse of discretion a district court's revocation of supervised release. *United States v. Cunningham*, 607 F.3d 1264, 1266 (11th Cir. 2010).

Suppress, denial of motion to

A denial of a motion to suppress involves mixed questions of fact and law.” *United States v. Spivey*, 861 F.3d 1207, 1212 (11th Cir. 2017). The Court reviews the district court's findings of fact for clear error, considering all the evidence in the light most favorable to the prevailing party—in this case, the government. *Id.* But the Court reviews de novo the district court's application of the law to those facts. *United States v. Luna-Encinas*, 603 F.3d 876, 880 (11th Cir. 2010). The Court’s review is not moored to the evidence presented at the suppression hearing; it is free to look at the whole record. *United States v. Newsome*, 475 F.3d 1221, 1224 (11th Cir. 2007).

TIME IS NOT ON YOUR SIDE: APPELLATE DEADLINES

Takeaway: You know the importance of filing things on time, and it's always helpful to know what "on time" means. As long as you file the notice of appeal on time, the Eleventh Circuit usually (not always, but usually) gives you 14 days to fix things if you screw it up down the road.

Bonus: If you need a short extension of time, the clerk can grant you a 14-day extension over the phone. (11th Cir. R. 31-2(a))

NOTICE OF APPEAL

If a criminal defendant directs you to file a notice of appeal, you **MUST** file a notice of appeal – even if there is an appeal waiver or if you think that the appeal is meritless. *See Roe v. Flores-Ortega*, 528 U.S. 470 (2000)(presuming prejudice where a defendant directs an attorney to file a notice of appeal); *see also Garza v. Idaho*, ___ U.S. ___, 139 S. Ct. 738 (2019)(applying presumption of prejudice in *Flores-Ortega* even in cases where there is an appeal waiver).

In criminal cases: **14 days** from the entry of the WRITTEN judgment (FRAP 4(b)(1)(A)(i))

In civil cases, like a §2255, where the government is a party: 60 days from the entry of the judgment or order appealed (FRAP 4(a)(1)(B))

Can you file before entry of judgment? Yes – if so, it's treated filed on the date of the entry of judgment in both criminal (FRAP 4(b)(2)) and civil (FRAP 4(a)(2)) cases.

What happens if you forget to file a notice of appeal or your client changes her mind? "Upon a finding of excusable neglect or good cause, the district court may – before or after the time has expired, with or without motion and notice – extend the time to

file a notice of appeal for a period not to exceed 30 days” from the original 14 day period. (FRAP 4(b)(4))

Note: File the notice of appeal in district court.

See Notice of Appeal in forms directory.

APPEARANCE OF COUNSEL FORM

Due **14 days** from the date of docketing, although form requirement is waived for CJA counsel. Here is a link for the form:

<https://www.ca11.uscourts.gov/sites/default/files/courtdocs/clk/FormAOC.pdf>

See Appearance of Counsel in forms directory.

CERTIFICATE OF INTERESTED PERSONS

Due **14 days** from the date the case is docketed in the Eleventh Circuit. (11th Cir. R. 26.1-1(a)(2))

File the web-based CIP form at the same time. (11th Cir. R. 26.1-1(b)). This is found at www.ca11.uscourts.gov. In upper left corner, right under the court seal, there is a white box beginning with “Case Locator (PACER).” The web-based CIP is the third box.

See Certificate of Interested Persons in forms directory.

TRANSCRIPT INFORMATION FORM

Due **14 days** from the date the case is docketed in the Eleventh Circuit.

<https://www.ca11.uscourts.gov/sites/default/files/courtdocs/clk/FormTranscriptInformationDEC17.pdf>

See Transcript Information Form in forms directory.

BRIEF OF APPELLANT

Due **40 days** after record is filed – i.e., the date on which the court reporter files the transcript with the district court. If all necessary transcripts are already on file or none is ordered, the brief of appellant is due 40 days from docketing. (11th Cir. R. 12-1, 11th Cir. R. 31-1(a))

Electronic filing + 7 paper copies (blue cover) sent by mail

See Sample Brief in forms directory

APPENDIX

Due **7 days** after brief of appellant is filed. (11th Cir. R. 30-1(c))

Electronic filing + 2 paper copies (white cover) sent by mail

See Sample Appendix in forms directory

BRIEF OF APPELLEE

Due **30 days** after service of the brief of the last appellant. (11th Cir. R. 31-1(a))

REPLY BRIEF (Optional)

Due **21 days** after service of the brief of the last appellee (11th Cir. R. 31-1(a))

Electronic filing + 7 paper copies (gray cover) sent by mail

See Sample Reply Brief in forms directory

NOTE FOR BRIEFING DEADLINES: If there is electronic service (which is mandatory for everyone but *pro se* litigants), there is no

additional time for service. In other words: 21 days means 21 days.

EN BANC/PANEL REHEARING PETITIONS

Due **21 days** after entry of judgment in criminal cases. Due 45 days after entry of judgment in civil cases where the United States is a party, including 28 U.S.C. §2255 motions. (11th Cir. R. 35-2, 11th Cir. R. 40-3)

NOTE: Entry of judgment is the written opinion, not the mandate (FRAP 36)

PETITION FOR WRIT OF CERTIORARI

Due **90 days** from the date of the entry of the judgment or order sought to be reviewed – and explicitly NOT from the issuance of the mandate. (Sup. Ct. R. 13.1)

See Petition for Writ of Certiorari Form in forms directory

HELP! I'VE GOT NOTHING TO SAY!

THE *ANDERS* BRIEF

Takeaway: In Anders v. California, 386 U.S. 738 (1967), the Supreme Court set up a mechanism for appointed counsel to represent that she has examined the entire record and cannot find any issues of arguable merit.

There is an *Anders* brief and motion to withdraw in the forms directory, but here are common pitfalls and things you need to know:

- 1) You must present the Court with a complete record, so you will need to order the transcript of the guilty plea and sentencing hearings. It is rare, but possible, to file an *Anders* brief from a trial.
- 2) *Anders* brief often require more work than merits briefs, and they make clients really unhappy.
- 3) Especially if you are substitute appellate counsel, clients will encourage you to raise ineffective assistance of counsel claims on direct appeal. Unlike state appeals in Georgia, federal ineffective assistance of counsel claims typically cannot be raised on direct appeal and must await resolution in a §2255 motion. See *Massaro v. United States*, 538 U.S. 500 (2003).
- 4) You have to file a motion to withdraw with your *Anders* brief.
- 5) You must serve your client personally with both the motion to withdraw and the *Anders* brief, and you have to reflect that fact on the certificate of service.
- 6) Even though the court has to examine the entire record, you still must file an appendix. There are no special *Anders*-related rules for that appendix.
- 7) The government does not have to file a response to the *Anders* brief, and if the United States Attorney's Office does, it's usually

a letter saying, “You’re right!”

- 8) Your client has the opportunity to respond to your *Anders* brief, so make certain that you send him all publicly available information in his case that he might need. (When I think an *Anders* brief is appropriate, I tell clients as soon as possible that that is my intention, that they may respond to it, and that I will send them the transcripts, indictment, plea agreement, and judgment.)
- 9) Clients will often ask you to send the PSI. Don’t. It violates the BOP’s regulations. Suggest instead that they request a visit with their counselors to review it.

CREATING A THING OF BEAUTY: THE ELEVENTH CIRCUIT BRIEF

Takeaway: There are specific component parts in each Eleventh Circuit brief. While there is a sample brief in the forms directory, here is a list of those parts and some things you may want to incorporate in the Brief of Appellant.

Cover page

Certificate of Interested Persons

Statement Regarding Oral Argument

If you want oral argument, think in terms of FRAP 34 and 11th Cir. R. 34:

The appeal is not frivolous.

The dispositive issue has not been authoritatively decided.

The facts, legal argument, and decisional process would be significantly aided by oral argument because [state reason]

Table of Contents

Remember page numbering: The official page numbers of the brief don't start until the Statement of Subject-Matter and Appellate Jurisdiction. Before then, the cover page is unnumbered; the certificate of interested persons is numbered C-1 of 2, C-2 of 2; and the introductory tables are numbered i, ii, iii, iv – etc.

At a CLE, I heard one judge discuss how parties screw up their briefs by using bare bones descriptions in brief headings; he believed that he should be able to learn all about the brief just by reading the table of contents.

Table of Citations

Place a * by the cases on which you primarily rely. (11th Cir. R. 28-1(c))

Statement of Subject-Matter and Appellate Jurisdiction

I use this form:

A federal grand jury indicted Appellant [*] on [*] in violation of [*]. [Doc *] [*] pleaded guilty to this count pursuant to a plea agreement. [Doc *] By written order entered on [*], the district court adjudicated [*] guilty of [*] and sentenced him to [*] months' imprisonment. [Doc *-Pg *]

[*] filed a notice of appeal on [*]. [Doc *] This notice of appeal is timely because [*] filed it within 14 days of the entry of the written judgment. *See* Fed. R. App. 4(b)(1)(A)(i).

Since the count of conviction states a violation of the laws of the United States, the district court had jurisdiction pursuant to 18 U.S.C. §3231. This Court has jurisdiction over the appeal under 28 U.S.C. §1291 and 18 U.S.C. §3742.

Note that this statement is the first time you cite to the record. I use [Doc *-Pg *], which “Doc” meaning the document’s number on the docket sheet, and “Pg” meaning the page number within that document. The rules now require a specification of how you’re citing the record. Here’s the footnote that I use, which I place after the first record cite:

Pursuant to 11th Cir. R. 28-5, references to the record in a brief must be to document number and page number. This brief cites to transcripts by the document number reflected on the docket sheet and the page number assigned by the court reporter.

Statement of the Issues

Bearing in mind the whole table of contents comment (see above), I write statement of issues that include the issue itself, enough facts for a basic understanding, and the standard of review – e.g.,

Did the district court clearly err when all of the evidence presented at a motions hearing established without contradiction that Amy Lee is awesome but the court nonetheless found that she is not?

Statement of the Case

1. Course of proceedings and disposition in the court below.

This is a pretty basic summary of how you got to this point: Your client was indicted, she pleaded guilty, the court sentenced her, she preserved the errors she now raises, and she timely appealed.

2. Statement of the Facts

According to the Eleventh Circuit rules (11th Cir. 28-1(i)(ii)), “a proper statement of facts reflects a high standard of professionalism. It must state the facts accurately, those favorable and those unfavorable to the party. Inferences drawn from facts must be identified as such.”

As I like to think about it: Judges like to be reasonable. Make sure that you sound reasonable and propose reasonable things.

Don’t include irrelevant dates (does the court really need to know that the grand jury indicted your client on December 2, 2019?) or irrelevant names (“the FBI agent” is easier to remember than “Smith”). Refer to your client by name and to the government as the government, not the state or the United States.

I’ll give you some tips on how to write a helpful statement of facts during the CLE.

3. Statement of the Standards of Review

You're off to a good start here; you have a number of standards of review in these materials.

Summary of the Argument

This is a short summary of everything your brief is about; according to the rules, it should usually fewer than two pages, and never more than five pages. (11th Cir. R. 28-1(j))

If no one read anything else in your brief, she should be able to figure out exactly what the problem is by reading your summary of the argument. Include facts, the statement of review, and a simple statement about what you're arguing.

I usually write this last. I also have my assistant to read the summary and then ask her to tell me what my case is about.

Argument and Citation of Authority

You went to all the trouble to formulate some really great statements of the issue. Use those statements as the paragraph headings here.

Conclusion

Tell the court what you want: For the reasons cited in this brief, (your client) respectfully requests the Court to vacate and remand this matter for resentencing without the four-levels of enhancement related to vulnerable victims.

Certificate of compliance

Yes, there's a form for this. Use it. Remember: the word count starts with the Statement of Appellate and Subject-Matter Jurisdiction and ends with the conclusion. The word limit for principal briefs is 13,000 words (about 60 pages in 14-point font) and 6,500 words for

reply briefs.

THE WORD COUNT IS NOT A CHALLENGE.

Appellate nerds used to love Times New Roman. Century Schoolbook is the current font du jour. Your brief should be in a 14 point font.

Certificate of service

If this is an *Anders* brief, make sure you include your client's name and mailing address. Otherwise, service by filing it on the Eleventh Circuit's CM/ECF portal is sufficient. You do not need to send paper copies to the AUSA.

CHOOSE YOUR OWN ADVENTURE: BRIEF NOTES ON OTHER THINGS WE WILL DISCUSS

Takeaway: There are things that lend themselves to charts, forms, and brief snippets. There are other things that lend themselves to discussion. These are some of the other things we'll talk about at the CLE, in no particular order.

How to talk to your client (or why people in jail can never get enough mail)

Appeal waivers

The BOP

Why a sentence of a year and a day beats the socks off a sentence of a year

Ineffective assistance of counsel claims and you: How to prevent them by encouraging them

Your best bet is in district court, so don't blow it

How to track down and speak to your client during an appeal (a process that can be a lot more challenging than you've ever imagined)

The executive assistant

Befriending the counselor

The nuclear option: legal staff

The golden email: vshaw@bop.gov

Dealing with inquiries about whether your client is cooperating

My favorite practical websites:

www.ussc.gov (the Sentencing Commission's website)

www.bop.gov (the Bureau of Prison's website)

www.ca11.uscourts.gov (the Eleventh Circuit's website)

Armed Career Criminal Act and the Career Offender guideline

My email: ALC@roco.pro

YOU ARE WELCOME: A LIST OF FORMS INCLUDED IN THESE MATERIALS

Takeaway: It helps to know how things really look.

Timeline

Notice of appeal form

Appearance of counsel form

Rule 26.1 form

Transcript information form

Sample motion

Brief checklist

Sample *Anders* brief

Sample brief

Certificate of compliance

Appendix checklist

Sample appendix

Sample letter advising of cert. rights

Cert. petition form

2255 form

JUDGMENT



Due within 14 days

NOTICE OF APPEAL
(file in district court)



Due within 14 days

- ① APPEARANCE OF COUNSEL FORM
- ② CERTIFICATE OF INTERESTED PERSONS
- ③ WEB-BASED CIP
- ④ TRANSCRIPT INFORMATION FORM

file in
Eleventh
circuit

file in BOTH
district court
and Eleventh
circuit

ONCE THE COURT REPORTER FILES
THE LAST TRANSCRIPT OR RECORD IS
OTHERWISE COMPLETE



Due within 40 days

BRIEF OF APPELLANT



Due within 7 days

APPENDIX

REPLY BRIEF due within 21 days
of Brief of Appellee

United States District Court for the _____
District of _____
File Number _____

A.B., Plaintiff

v.

C.D., Defendant

Notice of Appeal

Notice is hereby given that ____ (here name all parties taking the appeal) __, (plaintiffs) (defendants) in the above named case,* hereby appeal to the United States Court of Appeals for the _____ Circuit (from the final judgment) (from an order (describing it)) entered in this action on the _____ day of _____, 20____.

(s) _____
Attorney for _____
Address: _____

[Note to inmate filers: If you are an inmate confined in an institution and you seek the timing benefit of Fed. R. App. P. 4(c)(1), complete Form 7 (Declaration of Inmate Filing) and file that declaration along with this Notice of Appeal.]

* See Rule 3(c) for permissible ways of identifying appellants.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

UNITED STATES OF AMERICA)	
)	
vs.)	No. CR417-090
)	
MICHAEL BRIAN ANDERSON,)	
)	
Defendant.)	

NOTICE OF APPEAL

Notice is given that Michael Brian Anderson, defendant in the above named case, hereby appeals to the United States Court of Appeals for the Eleventh Circuit from the final judgment entered in this action on September 4, 2018.

This 17th day of September, 2018.

ROUSE + COPELAND, LLC

/s/Amy Lee Copeland
Amy Lee Copeland
Georgia Bar No. 186730
Attorney for Defendant

602 Montgomery Street
Savannah, Georgia 31401
912.544.0910
912.335.0440 (fax)
ALC@roco.pro

CERTIFICATE OF SERVICE

The undersigned certifies that I served a copy of the foregoing Notice of Appeal on this date in accordance with the directives from the Court Notice of Electronic Filing (“NEF”) which was generated as a result of electronic filing.

This 17th day of September, 2018.

ROUSE + COPELAND, LLC

/s/Amy Lee Copeland

Amy Lee Copeland

Georgia Bar No. 186730

Attorney for Defendant

602 Montgomery Street
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UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
Appearance of Counsel Form

Attorneys who wish to participate in an appeal must be properly admitted either to the bar of this court or for the particular proceeding pursuant to 11th Cir. R. 46-1, et seq. An attorney not yet properly admitted must file an appropriate application. In addition, all attorneys (except court-appointed counsel) who wish to participate in an appeal must file an appearance form within fourteen (14) days after notice is mailed by the clerk, or upon filing a motion or brief, whichever occurs first. Application forms and appearance forms are available on the Internet at www.ca11.uscourts.gov.

Please Type or Print

Court of Appeals No. _____

_____ vs. _____

The Clerk will enter my appearance for these named parties: _____

In this court these parties are: ☐ appellant(s) ☐ petitioner(s) ☐ intervenor(s)
☐ appellee(s) ☐ respondent(s) ☐ amicus curiae

☐ The following related or similar cases are pending on the docket of this court:

☐ Check here if you are lead counsel.

I hereby certify that I am an active member in good standing of the state bar or the bar of the highest court of the state (including the District of Columbia) named below, and that my license to practice law in the named state is not currently lapsed for any reason, including but not limited to retirement, placement in inactive status, failure to pay bar membership fees or failure to complete continuing education requirements. I understand that I am required to notify the clerk of this court within 14 days of any changes in the status of my state bar memberships. See 11th Cir. R. 46-7.

State Bar: _____ State Bar No.: _____

Signature: _____

Name (type or print): _____ Phone: _____

Firm/Govt. Office: _____ E-mail: _____

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City: _____ State: _____ Zip: _____

U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT (CIP)**

_____ vs. _____ Appeal No. _____
11th Cir. R. 26.1-1(a) (enclosed) requires the appellant or petitioner to file a Certificate of Interested Persons and Corporate Disclosure Statement (CIP) with this court within 14 days after the date the case or appeal is docketed in this court, and to include a CIP within every motion, petition, brief, answer, response, and reply filed. Also, all appellees, intervenors, respondents, and all other parties to the case or appeal must file a CIP within 28 days after the date the case or appeal is docketed in this court. **You may use this form to fulfill these requirements.** In alphabetical order, with one name per line, please list all trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this case or appeal, including subsidiaries, conglomerates, affiliates, parent corporations, any publicly held corporation that owns 10% or more of the party's stock, and other identifiable legal entities related to a party.

(please type or print legibly):

ELEVENTH CIRCUIT TRANSCRIPT INFORMATION FORM

PART I. TRANSCRIPT ORDER INFORMATION

Appellant to complete and file with the District Court Clerk and the Court of Appeals Clerk within 14 days of the filing of the notice of appeal in all cases, including those in which there was no hearing or for which no transcript is ordered.

Short Case Style: _____ vs _____

District Court No.: _____ Date Notice of Appeal Filed: _____ Court of Appeals No.: _____
(If Available)

CHOOSE ONE: ☐ No hearing ☐ No transcript is required for appeal purposes ☐ All necessary transcript(s) on file
☐ I AM ORDERING A TRANSCRIPT OF THE FOLLOWING PROCEEDINGS:

Check appropriate box(es) and provide all information requested:

_____ HEARING DATE(S) _____ JUDGE/MAGISTRATE _____ COURT REPORTER NAME(S) _____

☐ Pre-Trial Proceedings _____

☐ Trial _____

☐ Sentence _____

☐ Plea _____

☐ Other _____

METHOD OF PAYMENT:

☐ I CERTIFY THAT I HAVE CONTACTED THE COURT REPORTER(S) AND HAVE MADE SATISFACTORY ARRANGEMENTS WITH THE COURT REPORTER(S) FOR PAYING THE COST OF THE TRANSCRIPT.

☐ CRIMINAL JUSTICE ACT. My completed AUTH-24 requesting authorization for government payment of transcripts has been uploaded in eVoucher and is ready for submission to the magistrate judge or district judge [if appointed by the district court] or to the circuit judge [if ordered by or appointed by the circuit court]. [A transcript of the following proceedings will be provided ONLY IF SPECIFICALLY AUTHORIZED in Item 13 on the AUTH-24: Voir Dire; Opening and Closing Statements of Prosecution and Defense; Prosecution Rebuttal; Jury Instructions.]

Ordering Counsel/Party: _____

Name of Firm: _____

Address: _____

E-mail: _____ Phone No.: _____

I certify that I have completed and filed PART I with the District Court Clerk and the Court of Appeals Clerk, sent a copy to the appropriate Court Reporter(s) if ordering a transcript, and served all parties.

DATE: _____ SIGNED: _____ Attorney for: _____

PART II. COURT REPORTER ACKNOWLEDGMENT

Court Reporter to complete and file with the District Court Clerk within 14 days of receipt. The Court Reporter shall send a copy to the Court of Appeals Clerk and to all parties.

Date Transcript Order received: _____

☐ Satisfactory arrangements for paying the cost of the transcript were completed on: _____

☐ Satisfactory arrangements for paying the cost of the transcript have not been made.

No. of hearing days: _____ Estimated no. of transcript pages: _____ Estimated filing date: _____

DATE: _____ SIGNED: _____ Phone No.: _____

NOTE: The transcript is due to be filed within 30 days of the date satisfactory arrangements for paying the cost of the transcript were completed unless the Court Reporter obtains an extension of time to file the transcript. _____

PART III. NOTIFICATION THAT TRANSCRIPT HAS BEEN FILED IN DISTRICT COURT

Court Reporter to complete and file with the District Court Clerk on date of filing transcript in District Court. The Court Reporter shall send a copy to the Court of Appeals Clerk on the same date.

This is to certify that the transcript has been completed and filed with the district court on (date): _____

Actual No. of Volumes and Hearing Dates: _____

Date: _____ Signature of Court Reporter: _____

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA,)	
)	
Appellee,)	
)	
vs.)	No. 20-10663-B
)	
BRYANT PITTMAN,)	
)	
Appellant.)	

CERTIFICATE OF INTERESTED PERSONS

As required by 11th Cir. Rule 26-1, Appellant Bryant Pittman files
his certificate of interested persons as follows:

Bodiford, Ricardo

Bustamante, Alejandro

Copeland, Amy Lee

City of Moultrie

Dismuke, Kristen

Feinberg, Lindsay B.

Fielder, James

Gardner, Hon. Leslie Abrams

USA v. Pittman, No. 20-10663-B

Gutierrez, Gricelda Bustamante

Gutierrez, Ricardo

Ham, James C.

Johnson, Johntavious

Jones, Trabian

Kirbo, John Hall

Lamar, Eric

McEwen, Leah E.

McLellan, Stacy

McNeal, Torranza Lemeke

Miller, Brenton

Miller, James Raymond IV

Miller, Regina

Monroe, Neil Matthew

Ouzts, Steven C.

Pittman, Bryant

Rouse + Copeland, LLC

USA v. Pittman, 20-10663-B

Spradley, David

Salazar-Mirales, Maria Del Carmen

Stamper, Tony

Tobias, Gabino

Townsend, Eric

Tuff, Brad

Waller, Mickey E.

West, Jarvis

Whaley, Josh

White, Ramon

There are no publicly traded corporations to disclose.

This 7th day of May, 2020.

/s/ Amy Lee Copeland
Amy Lee Copeland
Georgia Bar No. 186730
Attorney for Appellant

Rouse + Copeland LLC
602 Montgomery Street
Savannah, Georgia 31401
912-807-5000
912-335-3440 (fax)
ALC@roco.pro

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA,)	
)	
Appellee,)	
)	
vs.)	No. 20-10663-B
)	
BRYANT PITTMAN,)	
)	
Appellant.)	

MOTION TO WITHDRAW AS COUNSEL

COMES NOW Amy Lee Copeland, CJA counsel for appellant Bryant Pittman, and moves to withdraw as counsel for the reasons set forth in the *Anders* brief filed contemporaneously with this motion.

As required by 11th Cir. R. 27-1(a)(7), appointed counsel has informed the appellant that she would be filing an *Anders* brief and moving to withdraw from representation; the appellant disapproves of the relief sought.

This 7th day of May, 2020.

/s/ Amy Lee Copeland
Amy Lee Copeland
Georgia Bar No. 186730
Attorney for Appellant

602 Montgomery Street
Savannah, Georgia 31401
912-807-5000
ALC@roco.pro

CERTIFICATE OF COMPLIANCE

This motion complies with the length limits of Fed. R. App. P. 27(d)(2)(A) because it contains 71 words.

As required by Fed. R. App. P. 27(d)(1)(E) and 11th Cir. R. 27-1(10), this motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Century Schoolbook 14-point font.

This 7th day of May, 2020.

/s/ Amy Lee Copeland
Amy Lee Copeland
Georgia Bar No. 186730
Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that I served a copy of this Motion to Withdraw on counsel for the government by filing it on the Court's EC/CMF portal, which emails to all counsel of record a link to a file-stamped .pdf copy of the brief.

I also certify that I have served a copy of this Motion to Withdraw on the appellant himself, via United States Mail with sufficient postage attached addressed as follows:

Bryant Pittman
Reg. No. 00883-120
FCI Jesup
Federal Correctional Institution
2680 301 South
Jesup, Georgia 31599

This 7th day of May, 2020.

/s/ Amy Lee Copeland
Amy Lee Copeland
Georgia Bar No. 186730
Attorney for Appellant

602 Montgomery Street
Savannah, Georgia 31401
912-807-5000
ALC@roco.pro

BRIEFS CHECKLIST

Appeal Number: _____

☐ ☐ Pro Se IFP: 4 copies☐ ☐ Other: Original + 6 copies (7 total)☐ ☐ Filers Using the ECF System: E-file Brief + 7 paper copies

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Length (Page/Word/Line)	30/13,000/1,300	30/13,000/1,300	35/15,300/1,500	30/13,000/1,300	15/6,500/650	Half of Principal Brief	2,600 Words
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Certificate of Interested Persons (CIP)							
Statement Regarding Oral Argument	Wants O/A?	Wants O/A?	Wants O/A?	NO	NO	NO	NO
Table of Contents (w/page references)							
Table of Citations (w/page references)							
Statement re Adoption (option)							
Statement of Jurisdiction		Optional		NO	NO	NO	NO
*Statement of the Issues		Optional		NO	NO		
Statement of the Case		Optional	**	NO	NO	NO	NO
Summary of the Argument				NO	NO		
Argument/Citations of Auth.							
Conclusion				NO	NO		
Certificate of Compliance (not required unless principal brief>30, reply>15)							
Certificate of Service (if required by FRAP 25(d))							
E-file Brief							

*Page and type-volume limitations begin here and continue through Conclusion.

Rev.: 12/19

**Required, but need not include the course of proceedings and dispositions below, or a statement of facts, if satisfied with the appellant's statement.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-14108-J

UNITED STATES OF AMERICA,

Appellee,

vs.

ROBBIE LEE MOUZON,

Appellant.

DIRECT APPEAL FROM A CONVICTION
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

BRIEF PURSUANT TO ANDERS v. CALIFORNIA

Amy Lee Copeland
Rouse + Copeland LLC
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Attorney for Appellant

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA,)	
)	
Appellee,)	
)	
vs.)	No. 17-14108-J
)	
ROBBIE LEE MOUZON,)	
)	
Appellant.)	

CERTIFICATE OF INTERESTED PERSONS

COMES NOW appellant Robbie Lee Mouzon and files his certificate of interested persons pursuant to Fed. R. App. P. 26.1 and 11th Cir. R. 26.1. The following is a complete list of all persons and entities known to have an interest in the outcome of this particular case or appeal:

Christine, Bobby

Clark, C. Troy

Copeland, Amy Lee

Crowder, Kenneth D.

Crowder Stewart LLP

Hall, Hon. J. Randall

Jeweler's Bench

United States v. Mouzon
No. 17-14108-J

Lyons, Tara M.

Mouzon, Robbie Lee

Rafferty, Brian

Rouse + Copeland LLC

Saylors, Saul

Speedee Cash

Tarver, J. Edward

Respectfully submitted this 16th day of April, 2018.

/s/ Amy Lee Copeland

Amy Lee Copeland

Georgia Bar No. 186730

Attorney for Appellant

Rouse + Copeland LLC

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Savannah, GA 31403

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STATEMENT REGARDING ORAL ARGUMENT

Appellant does not request oral argument.

**STATEMENT OF SUBJECT-MATTER
AND APPELLATE JURISDICTION**

A federal grand jury charged Appellant Robbie Lee Mouzon and his co-defendant, Saul Edward Saylor, on seven counts related to the armed robbery of Speedee Cash and the Jeweler's Bench in Augusta, Georgia, on November 7, 2012. [Doc 1] The counts alleged violations of the Hobbs Act (18 U.S.C. §1951), firearm use (18 U.S.C. §924(c)), and felon in possession of a firearm (18 U.S.C. §922(g)(1)). [Doc 1] Mouzon proceeded to trial, where the jury found him guilty of all counts. [Doc 80]

By final written judgment entered on September 8, 2017, Mouzon received a total term of imprisonment of 500 months. [Doc 102-Pg 3] His sentence represented 116 months on counts one, two, three, five, and seven, to be served consecutively with his two §924(c) sentences of 84 and 300 months. [Doc 102-Pg 3] Mouzon filed a notice of appeal on September 11, 2017. [Doc 104] This filing occurred within 14 days of the written judgment, so it is timely. See Fed. R. App. P. 4(b)(1)(A)(i).

Since the charged offenses violated the laws of the United States, the district court had jurisdiction under 18 U.S.C. §3231. This Court has jurisdiction over this appeal under 28 U.S.C. §1291 and 18 U.S.C. §3742.

STATEMENT OF THE ISSUE

After examining the record, counsel (who is appointed) has elected to file a brief pursuant to Anders v. California. Thus, the only issue before this Court is whether there exists any arguably meritorious issue upon which to base Mouzon's appeal. To this end, counsel has analyzed five different issues:

1. Was there sufficient evidence to support the interstate nexus of Mouzon's Hobbs Act conviction for robbing the Jeweler's Bench, a local jewelry store?
2. Are Hobbs Act robberies "crimes of violence" under 18 U.S.C. §924(c)?
3. Did the district court abuse its discretion when it declined to appoint substitute counsel for Mouzon?
4. Was there any harm from the failure to file a motion to suppress? and
5. Was the sentence procedurally and substantively reasonable?

With this brief, counsel has filed a motion to withdraw.

STATEMENT OF THE CASE

1. Course of proceedings and disposition in the court below.

The grand jury charged Mouzon with one count of conspiracy to commit robbery of a commercial business in violation of 18 U.S.C. §1951 (count one); one

count of conspiracy to use and carry a firearm during crimes of violence in violation of 18 U.S.C. §924(c) (count two); robbery of a commercial business in violation of 18 U.S.C. §1951 (counts three and five); carrying, using, and brandishing a firearm during and in relation to a crime of violence in violation of 18 U.S.C. §924(c)(1)(A)(ii) (counts four and six); and possession of a firearm by a convicted felon in violation of 18 U.S.C. §922(g) (count seven). [Doc 1] A jury convicted Mouzon on all seven counts. [Doc 80]

On the underlying robberies, Mouzon scored total offense level 25, criminal history category VI, for an advisory guidelines range of 110 to 137 months on those charges. [Presentence Investigation Report (“PSI”) ¶¶43, 68, 97] Since the jury convicted Mouzon of two §924(c) counts involving brandishing, he faced consecutive sentences of seven years on the first §924(c) conviction and 25 years on the second §924(c) conviction under 18 U.S.C. §924(c)(1)(A)(ii) and (C)(i). Mouzon objected to the PSI on two bases: First, he maintained his innocence on the charges, and second, he believed that the consecutive §924(c) sentences constituted Eighth Amendment violations. [PSI Addendum]

At sentencing, the district court imposed a total sentence of 500 months, reflecting 116 months on the non-§924(c) counts and a total of 384 months, to run consecutively, on the two §924(c) counts. [Doc 114-Pg 16] Mouzon timely

appealed, and he is incarcerated.

2. Statement of the facts.

This case involved both federal charges stemming from the robbery of two businesses in Augusta, Georgia, and a client's dissatisfaction with his attorney.

Here are the facts relevant to this appeal.

a. The evidence adduced at trial.

Around 4 p.m. on November 7, 2012, a man came through the door of Speedee Cash, a title loan store in Augusta, and pointed a black gun at the only employee working there, demanding money. [Doc 117-Pgs 96-98, 101] The employee complied, handing the man less than \$200 in cash. [Doc 117-Pg 104] She could not see the man's face, and she could not say that Mouzon robbed her. [Doc 117-Pgs 110-11] She could say only that the man was dressed in black gloves, a black mask, and a black jacket; that she believed that he was a medium-skinned African American man; and that he was about 5'5" to 5'8," 120 to 130 pounds. [Doc 117-Pgs 108-11]

Sometime between 4:30 and 5:00 p.m. on November 7, 2012, a man came through the door of the Jeweler's Bench, a jewelry store in Augusta, Georgia; with a gun in his hand, he ordered everyone to the floor and demanded cash. [Doc 117-Pgs 121-123] The Jeweler's Bench gave him the \$230-\$250 in the store's register,

as well as a small box of cheaper jewelry from the safe. [Doc 117-Pgs 123-24, 134-35] The man was dressed in black, including a ski mask and gloves, and none of the store's four employees could see his face or identify him. [Doc 117-Pgs 125, 149, 155, 163, 168, 172] There was a CVS next door, and the man used a CVS bag to hold the money and the jewelry. [Doc 117-Pg 123]

During the Jeweler's Bench robbery, one of its employees ran out the back door and into that CVS; he asked people to make a 911 call, and when he came out of the CVS, he saw deputies pulling up to the front of the building. [Doc 117-Pg 146] Lakesha Oliver, who was waiting for her CVS shift to begin, was sitting in the parking lot and saw that employee – whom she described as “frantic” – running out of the Jeweler's Bench. [Doc 117-Pg 174-76] Shortly thereafter, she saw a man coming from the back side of the shopping plaza with a bag in his hand; this man jumped into the passenger side of a waiting vehicle, which took off behind the CVS. [Doc 117-Pg 177-78] She could not identify the man, but she identified the car – a white Chevrolet HHR¹ – for law enforcement. [Doc 117-Pgs 179-80, 189]

Meanwhile, Deputy Jason Vinson with the Richmond County Sheriff's Office responded to Speedee Cash and placed a BOLO, albeit without a

¹ The Chevrolet HHR was a retro-styled station wagon.

description of the car. [Doc 117-Pgs 205-08] While at Speedee Cash, Vinson heard a dispatch about the Jeweler's Bench robbery and a description of the car – first a white PT Cruiser, then a white HHR. [Doc 117-Pg 209] Given the situation, Deputy Vinson went straight to the Bobby Jones Expressway towards Interstate 20. [Doc 117-Pgs 212-13] Within two or three minutes, and approximately a mile from the Jeweler's Bench, Deputy Vinson pulled behind a white HHR in rush hour traffic on the Bobby Jones Expressway, following the car as it got off on the I-20 exit. [Doc 117-Pg 213]

Deputy Vinson saw the front seat passenger leaning forward and trying to remove some clothing, and he saw the passenger holding a “large black firearm” in his hand. [Doc 117-Pgs 214-15] Deputy Vinson activated his car's lights and sirens. [Doc 117-Pg 215] The HHR was driving erratically, traveling “[s]omewhere over 100 miles an hour,” running “off the shoulder of the road,” and “cutting in and out of traffic” into South Carolina. [Doc 117-Pgs 215-16] Deputy Vinson alerted South Carolina deputies and continued pursuit. [Doc 117-Pgs 216-17] In the town of Belvedere, South Carolina, the HHR went into a neighborhood, and the front seat passenger jumps out, with nothing in his hand, and “attempt[s] to run and limp off.” [Doc 117-Pgs 216-17] The HHR drove off, and Deputy Vinson followed the car. [Doc 117-Pg 217] Deputy Vinson ultimately took Saul

Saylors, the driver of the car, into custody. [Doc 117-Pg 220] At trial, he identified Mouzon as the man fleeing from the HHR. [Doc 117-Pg 227-28]

Phillip Bell and his adult son were driving home when a car came at them near Belvedere, almost causing a head-on collision. [Doc 117-Pg 192] Bell swerved to avoid the car and saw a police car in pursuit. [Doc 117-Pgs 192-93] Bell decided to follow the two vehicles. [Doc 117-Pg 193] He saw the two vehicles at the top of a hill, and then noticed that an African-American man clad in dark clothes was running down the hill toward him. [Doc 117-Pgs 193-94] Bell watched the man run into a yard, and figuring that the man was trying to elude the police, Bell's son called 911 and narrated the man's progress. [Doc 117-Pgs 194-95] While crouching by a shed, the man discarded his dark colored top and wore a white T-shirt. [Doc 117-Pgs 195-96] The man apparently notice the Bells' surveillance, became uncomfortable, and began walking toward a nearby dry cleaner. [Doc 117-Pg 196] The Bells pursued – only to watch responding officers fly by in their cars. [Doc 117-Pgs 196-97] The Bells continued to follow the man into a parking lot of a seafood place, watched him cross a four-lane to a strip plaza, and flagged down an Aiken County (South Carolina) sheriff's deputy who was responding. [Doc 117-Pg 197-98] A few seconds later, another deputy came to speak with the Bells, and they heard over her radio that the man had been

captured. [Doc 117-Pgs 198-99] While Bell's very detailed directions and descriptions suggested a larger area, this all occurred over "[t]wo small blocks." [Doc 117-Pgs 199-200]

An investigator with the Aiken County Sheriff's Office found the man crouched behind bushes, forced him to the ground, and took him into custody. [Doc 117-Pgs 348-49] A search of the man (whom the officer did not identify) resulted in the seizure of \$475 in cash from his pants pocket. [Doc 117-Pg 350] The investigator also found clothing where the Bells said it would be. [Doc 351-53] A Richmond County investigator later spoke with Mouzon. [Doc 117-Pgs 403-04] Mouzon said that he ran because he did not want to go to jail. [Doc 117-Pg 407]

Saul Saylors, the driver of the HHR, testified for the government at trial pursuant to a plea agreement that contained a cooperation provision. [Doc 117-Pg 268] He and Mouzon both lived in Columbia, South Carolina, and Saylors agreed to provide transportation for robberies that Mouzon would do. [Doc 117-Pg 271-74] The men drove to Augusta in Saylors' HHR and looked for a "plausible place" to rob – i.e., one that had easy access to the interstate, little foot traffic, and cash. [Doc 117-Pg 276-77] They decided on Speedee Cash, which they discovered via a Google search. [Doc 117-Pg 277] At Speedee Cash, Mouzon left the car and

returned a few minutes later, complaining that they had not gotten a lot of money; Saylor's drove off as quickly as possible. [Doc 117-Pgs 278-280] The two men then stopped for chicken and gasoline. [Doc 117-Pg 304] They scouted for another location to rob, and Saylor's eventually drove them to the Jeweler's Bench. [Doc 117-Pg 280] Saylor's stayed in the car, and Mouzon went in and returned a few minutes later. [Doc 117-Pgs 282-83] As the men drove back to South Carolina, a police car got behind them and hit the blue lights. [Doc 117-Pgs 284-85] Saylor's and Mouzon discussed whether or not to stop or flee, and they decided to flee. [Doc 117-Pg 285] When in South Carolina, the HHR's front tire got messed up, and Mouzon asked Saylor's to stop the car and let him exit; Saylor's did so, and Mouzon threw the gun onto the passenger seat and left. [Doc 117-Pgs 286-87] According to Saylor's, Mouzon had the gun with him all day. [Doc 117-Pg 287]

The jury deliberated from 11:52 a.m. to 1:33 p.m. before finding Mouzon guilty on all counts of the indictment. [Doc 117-Pgs 526, 528]

b. Mouzon's dissatisfaction with appointed trial counsel.

Mouzon presented a motion to the district court indicating that he was unhappy with his appointed counsel, and on January 26, 2017, the magistrate judge held an ex parte hearing to flesh out Mouzon's allegations. [Doc 116-Pg 2-3] Mouzon did not wish to represent himself, and he asked for replacement

counsel. [Doc 116-Pgs 2-3] Mouzon had no problem with appointed counsel personally; he described his attorney as “very, very competent.” [Doc 116-Pg 4] He was, however, dismayed with the attorney’s assessment of his “only defense” – i.e., reasonable doubt. [Doc 116-Pgs 4-5] Mouzon was distressed about this assessment, because he had been acquitted at the state level. [Doc 116-Pg 6] Mouzon also wanted counsel to file a suppression motion “due to insufficient warrant,” “because the warrant is illegal.” [Doc 116-Pgs 7-8]

Mouzon stated that he and his attorney had no problems communicating; they just disagreed about strategy. [Doc 116-Pg 8] And while the attorney used to be an AUSA, Mouzon knew of no conflict or impediment from counsel’s former job. [Doc 116-Pg 8] As Mouzon explained, “It is just the point of my defense.” [Doc 117-Pg 8] Mouzon allowed that counsel was “a good attorney,” but he wanted someone with a “better . . . attitude.” [Doc 116-Pgs 9-10]

As for the warrant, Mouzon gave this explanation:

. . . the warrant is illegal, but, I mean, that’s what happened in the state. That’s why the state couldn’t prosecute the charge because of the warrant, you know. They passed it on . . . to Richmond County . . . they was trying to violate me on a probation, but the judge was like “I can’t violate the man. He is not found guilty of anything.”

So they said I had an outstanding warrant for Richmond County – this charged from 2012. I filed an . . . Interstate Agreement Detainer. Sheriff [Richard] Roundtree never addressed it. That’s another reason

why I got the continuance because he did file the motion for me asking for all of the paperwork.

* * *

You know, they're saying they don't have anything on me. I filed a waiver of extradition. They never addressed it. They just kept the warrant in the NCIC so Judge Hood in South Carolina told my lawyer at the time. . . he's been in contact with her to address Richmond County and said that they're not going to . . . serve the warrant on me and prosecute the warrant, then they are going to have to let me go.

That's when they took to the warrant to the . . . ATF. . . [An ATF agent] was aware of this case from the day it happened since 2012. He had the firearm since 2012. They never did anything with it. . . and that's the reason why Richard Roundtree never took the case, . . . to give it to the federal government feeling that they could . . . do what they couldn't do. He even told me out of his own mouth . . . that this warrant wouldn't have flew in the state, but this is the federal government. And I am asking him how if the state can't use it, how can the federal government use it if it's inadmissible, and he won't address the issue.

[Doc 116-Pgs 10-11]

The magistrate judge discerned from the attorney that he had no conflict, and the attorney stated, "I have done everything I could think of." [Doc 116-Pg 11] As for a motion to suppress specifically, the attorney said he had "looked very closely at this," talked to Mouzon "multiple times" about it, and spoke with the co-defendant's attorney about it (who also could not ascertain any legitimate basis to file). [Doc 116-Pg 13] The attorney believed that there were "five or six reasons

why any one of which would be sufficient to defeat the motion, and so the culmination of those is that it would not be a good faith motion.” [Doc 116-Pg 13]² Counsel assured the magistrate judge that there would be “no hard feelings” if he were removed, but added that he would be happy to continue the representation, had worked very hard on the case, had “looked at a number of different angles,” and had “spent a lot of time on this case.” [Doc 116-Pgs 14-15]

The magistrate judge asked Mouzon again if he would be better off with the attorney representing him than his representing himself, and Mouzon replied, “Honestly, I don’t know.” [Doc 116-Pg 16] The magistrate judge then explained counsel’s competence and skill and asked again if Mouzon “really want[ed] to risk it by representing [him]self”; Mouzon said, “I don’t know.” Mouzon did not go to law school, but he had filed an unsuccessful motion to suppress in the state. [Doc

² The suppression issue apparently related to the search of the HHR after Saylors and Mouzon’s arrest. The government elicited testimony that a Richmond County, Georgia investigator searched the HHR in Aiken, South Carolina on November 8, 2012. [Doc 117-Pgs 365-66] In the HHR, the investigator found a box of jewelry from the Jeweler’s Bench, a plastic CVS bag, a camouflage glove, and a handgun on the passenger seat. [Doc 117-Pgs 374-75] Through his testimony, the government showed the jury 25 photographs from the search. [Doc 117-Pg 369, GX 40-64] This investigator gave “probable cause for the search warrant” to Aiken County deputies, who presented the case to a local judge. [Doc 117-Pg 389] When defense counsel noted that he never saw an executed copy of the search warrant, the witness testified that he actually saw a copy of the warrant before the vehicle was searched and that he had seen a signed copy of the warrant. [Doc 117-Pgs 389-90]

116-Pgs 20-21] Mouzon insisted, “I know the warrant wasn’t signed.” [Doc 116-Pg 21] Mouzon said he had helped select a jury in the 2014 state case when he was “fully acquitted on an armed robbery,” studied law in prison, and sent subpoenas in a civil case. [Doc 116-Pgs 25-26] Ultimately, Mouzon agreed with the magistrate judge that he was better off with his appointed counsel. [Doc 116-Pgs 33-34]

3. Statement of the standard of review.

The only issue to be determined by the Court is whether the record demonstrates that an appeal would be wholly frivolous. Anders v. California, 386 U.S. 738, 744-45, 87 S.Ct. 1396, 1400 (1967); see also United States v. Blackwell, 767 F.2d 1486, 1488 (11th Cir. 1985). Counsel is required to "set[] out any irregularities in the record which, although in his judgment not a basis for appellate relief, might, in the judgment of his client or another court, be arguably meritorious." Blackwell, 767 F.2d at 1487.

SUMMARY OF THE ARGUMENT

Counsel has reviewed the record, including all of the transcripts, and has been able to identify no arguably meritorious issues for appeal. She considered whether the robbery of the Jeweler’s Bench, a local jewelry store in Augusta, Georgia, provided a sufficient nexus with interstate commerce so as to sustain a

Hobbs Act conviction, but concluded that it did. Cases require only a minimal effect on interstate commerce, and here, there were a little testimony that the Jeweler's Bench purchased jewelry from out-of-state and served customers from out-of-state. More damning, though, was the fact that Mouzon and his co-defendant actually crossed state lines, driving from South Carolina to Georgia to conduct these two robberies.

Second, counsel reviewed whether the Hobbs Act convictions were crimes of violence for purposes of 18 U.S.C. §924(c). Recent Eleventh Circuit precedent forecloses any such argument.

Third, counsel analyzed whether the district court should have appointed substitute counsel for Mouzon. By Mouzon's own admission, there was no conflict, and he and his then-counsel kept open lines of communication. Mouzon's disagreement stemmed from counsel's legal analysis of his case. Any ineffective assistance of counsel claims await collateral attack.

Fourth, counsel focused on Mouzon's claims that trial counsel should have filed a motion to suppress the fruits of the search of the HHR. Based on the limited information in the record, it appears that while officers had a warrant, the search may have been justified as an inventory search. Alternatively, the evidence gathered from the search and admitted at trial echoed other evidence against

Mouzon.

Finally, counsel considered the procedural and substantive reasonableness of Mouzon's sentence. Most of Mouzon's sentence (i.e., a total of 384 months, to run consecutively, on the two §924(c) counts) was statutorily mandated. The remaining portion of the sentence (i.e., 116 months on the Hobbs Act convictions) came from guideline computations to which neither party objected. Counsel particularly reviewed the guidelines concerning grouping and multiple count adjustment and could discern no basis for a non-frivolous challenge. And the guidelines sentence was substantively reasonable, having fallen within the advisory range and below the statutory maximum.

ARGUMENT AND CITATION OF AUTHORITY

Counsel analyzed the pleadings and transcripts in this case, and after review, could find no arguably meritorious claims. Here is her analysis on the particular claims that she researched and considered.

1. Was there sufficient evidence to support the interstate nexus of Mouzon's Hobbs Act conviction for robbing the Jeweler's Bench, a local jewelry store?

The indictment charged Mouzon with two substantive and one conspiracy-based violations of the Hobbs Act, 18 U.S.C. §1951, based upon the robbery of Speedee Cash and the Jeweler's Bench in Augusta, Georgia. [Doc 1] Mouzon filed

no jurisdiction-based challenge to the Hobbs Act charges in district court, so any claim on direct appeal would be subject to plain error review. Counsel considered whether raising this claim on direct appeal would be frivolous; it is her professional judgment that it would be.

The Hobbs Act makes it a federal crime to obstruct, delay, or affect commerce or the movement of any article or commodity in commerce by robbery. 18 U.S.C. § 1951(a). In Hobbs Act cases, “it makes no difference . . . that any actual or threatened effect on commerce in a particular case is minimal.” Taylor v. United States, ___ U.S. ___, 136 S. Ct. 2074, 2081 (2016)(finding Hobbs Act commerce element established where government shows defendant robbed or attempt to rob drug dealer of drugs or proceeds). Indeed, “[t]he language of the Hobbs Act is unmistakably broad,” reaching any effect of commerce (even if small) and including in its sweep “all. . . commerce over which the United States has jurisdiction.” Id. at 2079. Evidence that businesses sold goods manufactured from out of state is sufficient to establish the required interstate commerce nexus. See United States v. Rodriguez, 218 F.3d 1243, 1245 (11th Cir. 2000). Robbery of a jewelry store has been found to violate the Hobbs Act. See United States v. Brewton, 659 Fed. Appx. 998, 1002 (11th Cir. 2016), cert. denied, ___ U.S. ___, 137 S. Ct. 2264 (2017). Robbery of a title loan business may be a proper predicate.

See United States v. Frazier, 703 Fed. Appx. 849, 850 (11th Cir. 2017)(noting defendant's guilty plea to Hobbs Act based on this conduct).

Here, the Speedee Cash employee who was robbed testified that Speedee Cash had stores in multiple states; that its headquarters was in Crestview, Florida; that it served customers across state lines; that the South Carolina store would send customers to the Augusta store; and that after the robbery, she turned away a customer who had pulled into the store's parking lot. [Doc 117-Pgs 96, 105] The robber depleted the store of \$200, its cash on hand. [Doc 117-Pg 105] Robbing a store that is part of a multistate network, taking money, and turning away customers due to the robbery suffices to meet the Hobbs Act's jurisdictional requirement. See United States v. Guerra, 164 F.3d 1358, 1361 (11th Cir. 1999).

The government attempted to establish an interstate commerce nexus for the Jeweler's Bench with these three questions directed to the owner:

Q. Now you were in the jewelry business. You sold jewelry and you repaired jewelry. Did you ever purchase jewelry for – from out of state as part of your stock in the store?

A. Yes.

Q. Did you ever have customers that came from maybe South Carolina to Augusta to buy jewelry from the Jeweler's Bench?

A. Yes.

Q. Did you ever repair things for people who were not from Georgia?

A. Yes.

[Doc 117-Pg 115] It asked a similar question to a store employee:

Q. Did you [have] some customers that were not from Georgia – maybe from South Carolina?

A. Yes.

[Doc 117-Pg 138] According to the owner, the store's hours were nine to five, and the robbery occurred "late afternoon around 5 o'clock, 4:30 something like that." [Doc 117-Pgs 115, 121]³ Store employees, but no customers, were there; the last customer had left five minutes before the robbery. [Doc 117-Pgs 121, 128, 165] The owner testified that the robbery deprived him of \$230 to \$250, although he got back the inexpensive jewelry that he had given the robber. [Doc 117-Pgs 134-35]

This is not much, but the Hobbs Act does not require much. For instance, the Court found a sufficient interstate nexus in a Hobbs Act robbery where the

³ An employee testified that the store remained open until 6 p.m., and that the robbery occurred "around 5'ish, 5:30'ish." [Doc 117-Pgs 149-50] Another employee thought the store remained open until 6 p.m., and testified that the robbery happened when "[w]e were getting ready to close." [Doc 117-Pg 163] The third employee affirmed that it "was late in the day," "very close to closing time." [Doc 117-Pg 165]

defendant took \$300 from an Amoco gas station in Florida that procured the majority of its products (including gas, cigarettes, and beer) from outside of Florida; the gas station lost business during the investigation and over the next few days, resulting in \$1,000 to \$1,500 in additional losses; and the owner testified that because of the robbery, he had less money to purchase out-of-state goods. United States v. Guerra, 164 F.3d 1358, 1359 (11th Cir. 1999). And in United States v. Paredes, 139 F.3d 840, 842 (11th Cir. 1998), the defendants robbed two independent convenience stores in Florida; the government's interstate nexus showing was that convenience stores sold products manufactured outside of Florida and that the gun used in the robberies was manufactured in California. The Court noted that the evidence showed only some – but not most – merchandise was manufactured out of state, and expressed concern that the Hobbs Act was “intended to address ‘offenses with a broad impact on interstate commerce, as opposed to local robberies normally prosecuted under state law,’ especially petty robberies.” Id. at 844. Nonetheless, the Court felt “constrained” to find a minimal effect on interstate commerce.

In United States v. Gray, 260 F.3d 1267, 1270 (11th Cir. 2001), Gray robbed a Church's Chicken, which did “significant business in interstate commerce, purchasing the vast majority of its food products (other than chicken),

uniforms, and equipment from supplies in states other than Georgia.” The robbery caused the restaurant to close its doors for several hours during a “relatively busy period for the restaurant.” Id. The Court found a sufficient interstate commerce nexus:

Although perhaps a closer question than the Government maintains, we conclude that, viewing the record in the light most favorable to the verdict, the Government proved a minimal effect on commerce. The robbery deprived the restaurant of cash contained in the money drawer as well as the money drawer itself (which concededly moved in interstate commerce). In addition, the robbery disrupted the restaurant’s normal operations during a relatively busy period of the day by forcing the closure of the interior and dining area in the aftermath of the incident. Moreover, the restaurant lost use of the cash register. A reasonable jury could infer that, as a result of these events, the restaurant—which acquired most of its products and equipment from out-of-state companies—had less money available to purchase goods and services from out-of-state suppliers and less ability to participate in transactions with out-of-state customers.

Id. at 1276.

This Court has discussed the Hobbs Act in the context of a jewelry store in United States v. Brewton, 659 Fed. Appx. 998 (11th Cir. 2016). There, the parties stipulated that the store operated in interstate commerce by selling products that traveled in and affected interstate commerce, and the owner (who was named as the victim) suffered a total loss of \$250,000. Id. at 1002. The Court upheld the interstate commerce nexus on the theory that Brewton’s actions caused the owner

to deplete the assets of an entity named in interstate commerce. Id.

And Mouzon and Saylor actually traveled back and forth over state lines, going from South Carolina to Georgia and back again. This travel shows an effect on interstate commerce. See United States v. Carcione, 272 F.3d 1297, 1301(11th Cir. 2001)(sustaining Hobbs Act conviction where defendant traveled from Chicago to Tampa for home invasion, robbery, and murder of wealthy 78 year-old woman); see also United States v. Le, 256 F.3d 1229, 1237 (11th Cir. 2001) (noting that preparation for robbery involved interstate travel, whether by car or air).

Although the government's showing on interstate commerce was scant, it does not take much to prove that nexus. Accordingly, counsel does not believe that this presents an arguably meritorious issue for appeal.

2. Are Hobbs Act robberies “crimes of violence” under 18 U.S.C. §924(c)?

Counsel also considered whether Hobbs Act convictions were crimes of violence as required for a conviction under 18 U.S.C. §924(c), a claim not raised in district court. Specifically, that statute describes a crime of violence as a felony offense that

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

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

18 U.S.C. §924(c)(3).

At the present, this Court has determined that Hobbs Act robbery serves as a predicate under the under both crime-of-violence prongs of 18 U.S.C. §924(c)(3). See United States v. St. Hubert, 883 F.3d 1319 (11th Cir. 2018)(discussing (A), the use of force clause, and (B), the risk of force/residual clause). There is a pending case in the Supreme Court of the United States concerning the residual clause of 18 U.S.C. §16(b), which is similarly worded to 18 U.S.C. §924(c)(3)(B). See Sessions v. Dimaya, No. 15-1498 (U.S., argued Oct. 2, 2017). But the St. Hubert court has determined that no matter the outcome of Dimaya, the defendant's §924(c) convictions premised on Hobbs Act robberies would be affirmed under both clauses of §924(c). St. Hubert, 883 F.3d at 1337. Counsel found one court that held that §924(c)(3)(B) is unconstitutionally vague. See United States v. Jackson, 865 F.3d 946, 956 (7th Cir. 2017). But there, the government conceded that Jackson's underlying sex trafficking conviction did not fall under §924(c)(3)(A) – making it only a residual clause case. Id. St. Hubert specified that Hobbs Act robbery met the definition of “crime of violence” under both clauses of §924(c)(3). St. Hubert, 883 F.3d at 1337; see also Ovalles v.

United States, 861 F.3d 1257, 1267-68 (11th Cir. 2017)(finding that even if attempted carjacking did not fall under §924(c)(3)(B), Ovalles’ claim failed because it fell under §924(c)(3)(A)).

Counsel thus rejected this challenge, too.

3. Did the district court abuse its discretion when it declined to appoint substitute counsel for Mouzon?

Based upon differences about appointed counsel’s legal strategy, Mouzon asked the district court to appoint new counsel to represent him prior to trial. [Doc 84, Doc 85] The magistrate judge held a hearing, and ruled against Mouzon. [Doc 116] Counsel does not believe that a challenge to this determination presents a non-frivolous issue.

The Sixth Amendment guarantees counsel, but it does not give defendants the unqualified right to counsel of their choice. United States v. Garey, 540 F.3d 1253, 1263 (11th Cir. 2008)(en banc). A court may appoint substitute counsel for good cause, a fundamental problem “such as a conflict of interest, a complete breakdown in communication or an irreconcilable conflict which leads to an apparently unjust verdict.” Id. Good cause does not encompass a general loss of confidence or trust in counsel. United States v. Roperto-Perdomo, 397 Fed. Appx. 603, 604 (11th Cir. 2010). “[W]hen a defendant expresses unhappiness with his

court-appointed counsel and requests that the court appoint new counsel, that decision is left to the sound discretion of the district court.” United States v. Melillo, 631 Fed. Appx. 761, 770 (11th Cir. 2015), cert. denied, ___ U.S. ___, 136 S. Ct. 1675 (2016). In its inquiry in this determination, this Court considers the timeliness of the motion, the adequacy of the lower court’s inquiry, and “whether the conflict was so great that it resulted in a total lack of communication between the defendant and his counsel thereby preventing an adequate defense.” United States v. Calderon, 127 F.3d 1314, 1343 (11th Cir. 1997).

Here, the magistrate judge heard Mouzon’s concerns, which generally were that Mouzon believed appointed counsel to be a good and diligent lawyer who had assessed the case differently than Mouzon. Mouzon, for instance, was dismayed that his attorney believed that reasonable doubt was his only defense at trial. Mouzon also wanted counsel to challenge a search warrant, but counsel had found (by his estimation) five or six reasons that that motion would be frivolous. There was no contention that Mouzon and counsel did not – or would not – communicate, and there was no conflict of interest between the attorney and his client. Thus, the magistrate judge declined to appoint substitute counsel prior to trial.⁴

⁴ This Court appointed new counsel for appeal.

Counsel cannot make a non-frivolous argument that challenges the district court's decision not to appoint substitute counsel for Mouzon at trial. If Mouzon wishes to make an ineffective assistance of counsel allegations, those await collateral attack, not direct appeal. See Massaro v. United States, 538 U.S. 500 (2003).

4. Was there any harm from the failure to file a motion to suppress?

As noted in the previous discussion, Mouzon and his previous attorney shared a difference of opinion about a search warrant, presumably one obtained for the HHR after the apprehension of Saylor and Mouzon. The government asked Investigator Beckman at trial about the fruits of the search, and without objection, the district court admitted 25 photographs taken during that search. [Doc 117-Pg 369] The photographs showed (among other things) camouflage gloves, a plastic box with a blue top with jewelry inside, a handgun, and a CVS bag. [Doc 117-Pgs 369-79] The government also introduced at trial without objection a pair of camouflage gloves, a South Carolina ID for Mouzon, a handgun, and the white CVS bag. [Doc 117-Pgs 380-86] Appointed counsel observed that he had not seen "an executed copy [of the warrant] afterwards returned by the judge," but Investigator Beckman testified that he saw a copy of the signed warrant prior to searching the vehicle. [Doc 117-Pg 389]

From the ex parte hearing transcript, it is apparent that the search warrant issue (apparently, the government had not provided the defendant with a signed copy) was important to Mouzon. From the circumstances described in the record, it appears that the HHR was impounded after its occupants' arrests. [Doc 117-Pgs 360-62] If so, officers could have undertaken an inventory search of the HHR, at least to the extent they followed standardized procedures, even without a warrant. See Colorado v. Bertine, 479 U.S. 367, 371-76 (1987)(noting that inventory search an exception to Fourth Amendment warrant requirement). Beyond the possibility of other avenues available to the officers, a successful motion to suppress would have resulted in the inadmissibility of this evidence: photographs of the car, the gloves, Mouzon's ID, a handgun, and the white CVS bag. Here, the evidence at trial accounted for all of these things. A police officer identified Mouzon as the person fleeing the HHR. Saylors, the co-defendant, said that Mouzon performed the actual robberies and left the gun in the car. An officer saw Mouzon put the gun in the car. The witness waiting to begin her shift at CVS saw a man running into the HHR carrying a CVS bag. One of the people present that the CVS robbery said that the robber had a CVS bag.

Even assuming that this evidence would have (or should have been) suppressed, any error in not moving for its suppress was harmless in light of the

evidence against Mouzon. See United States v. Qose, 679 Fed. Appx. 761, 765-66 (11th Cir. 2017).

5. Was the sentence procedurally and substantively reasonable?

An appellate court reviews a sentence first for procedural reasonableness and then substantive reasonableness. Gall v. United States, 552 U.S. 38, 51, 128 S. Ct. 586, 597 (2007). In its procedural reasonableness analysis, this Court considers whether the district court committed any significant procedural error, such as “failing to calculate (or improperly calculating)⁵ the Guidelines range, treating the Guidelines as mandatory, failing to consider the § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence.” Id. Where a defendant does not object to the procedural reasonableness of his sentence at the sentencing hearing, as in this case, the Court reviews his claims for plain error. United States v. Vandergrift, 754 F.3d 1303, 1307 (11th Cir. 2014). This analysis requires a defendant to ‘demonstrate (1) that the district court erred; (2) that the error was plain; and (3) that the error affected his substantial rights.’ Id. (quotation omitted). If all three prongs are met, the Court must determine whether the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. Id.

⁵ Counsel check the PSI for math errors, and could find none.

Here, the district court sentenced Mouzon to a total term of imprisonment of 500 months. His sentence represented 116 months on counts one, two, three, five, and seven, to be served consecutively with his two §924(c) sentences of 84 and 300 months. [Doc 102-Pg 3] The consecutive §924(c) sentences were statutorily mandated. See 18 U.S.C. §924(c)(1)(A)(ii) (requiring consecutive 7 year sentence for brandishing); 18 U.S.C. §924(c)(1)(C)(i)(requiring consecutive 25 year sentence for second or subsequent conviction under §924(c)). The verdict form required the jury to make a special finding as to brandishing, which it did. [Doc 80-Pgs 2-3] Since the jury found brandishing beyond a reasonable doubt, the district court could sentence Mouzon to the higher §924(c) brandishing sentence without running afoul of the Sixth Amendment. See Alleyne v. United States, 570 U.S. 99, 117 (2013). And since these are statutorily mandated sentences, there is no guidelines dispute to argue on appeal.

The remaining portion of Mouzon's sentence was 116 months for the Hobbs Act robbery and felon in possession charges. [PSI ¶¶19-43] Other than maintaining his innocence and making an Eighth Amendment challenge to the length of his sentence, there were no other objections to the PSI. [PSI Addendum] As for the Hobbs Act robberies, the only enhancement to the offense level was for reckless endangerment during flight under U.S.S.G. §3C1.2. [PSI ¶¶23, 29] The

evidence at trial was that the HHR engaged police in a high-speed chase on the interstate at rush hour. [Doc 117-Pgs 213-16] The same enhancement applied to the felon in possession guidelines; the evidence was that the HHR's passenger was seen holding a black firearm during the chase. [Doc 117-Pgs 214-15] Counsel can ascertain no arguably meritorious basis to challenge that enhancement.

The PSI grouped the offenses into three categories:

1. Counts one and three: conspiracy to commit robbery of a commercial business and the robbery of Speedee Cash;
2. Counts one and four: conspiracy to commit robbery of a commercial business and the robbery of Jeweler's Bench; and
3. Counts two and seven: conspiracy to use and carry a firearm during crimes of violence and possession of a firearm by a convicted felon.

[PSI ¶¶19-36] Using U.S.S.G. §3D1.4, the PSI then made a multiple count adjustment. [PSI ¶37] Since each of the three groups scored offense level 22, the three groups each scored an additional unit, for an adjusted offense level of 25.

[PSI ¶¶37-40]

Counsel considered whether the PSI properly made a multiple count adjustment in this case, which had not been challenged in district court. Specifically, counsel researched whether the firearm counts in group three should have been included in groups one and two. Firearms offenses under §2K2.1 are

grouped together; robbery offenses under §2B3.1 are not. See U.S.S.G. §3D1.2(d). There is commentary stating that “use of a firearm in a bank robbery and unlawful possession of that firearm are sufficiently related to warrant grouping of counts under [U.S.S.G. §3D1.2].” See U.S.S.G. §3D1.2, comment. (n. 5). Counsel concluded that this argument would not present an issue of arguable merit. Mouzon’s Hobbs Act groups did not include enhancements for use of a firearm; they omitted that enhancement due to his §924(c) convictions. [PSI ¶¶26, 32] As reflected in application note 5, the guidelines provide for grouping when conduct is a specific offense characteristic in the guideline applicable to another count. See U.S.S.G. §3D1.2(c). Since Mouzon received no enhancement for use of a firearm, these groups seem to contemplate different conduct.

In addition to finding no arguably meritorious bases for a procedural reasonableness challenge, counsel could ascertain no arguably meritorious bases for a substantive reasonableness challenge. While Mouzon’s sentence was very high, the vast majority of it (384 months, or 32 years) was mandated by 18 U.S.C. §924(c)(1)(A)(ii) and (C)(i). The remainder of it – 116 months on the Hobbs Act robberies – fell within the advisory guidelines range of 110 to 137 months found by the district court. [Doc 114-Pg 4] The Court ordinarily expects a sentence within the guidelines range to be reasonable. See United States v. Hunt, 526 F.3d

739, 746 (11th Cir. 2008). The Hobbs Act charges carried a 20 year statutory maximum. See 18 U.S.C. §1951(a). Mouzon's Hobbs Act-based sentence of 116 months was well below that cap, which indicates its reasonableness. See United States v. Gonzalez, 550 F.3d 1319, 1324 (11th Cir. 2008).

CONCLUSION

Counsel analyzed the record in this case, but she could find no issues of arguable merit. Thus, counsel elected to file an Anders brief and moved to withdraw.

Respectfully submitted this 16th day of April, 2018.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-column limitations of Fed. R. App. P. 32(a)(7)(B) because this brief contains 7,216 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word Perfect X6 in Time New Roman 14 point font.

Respectfully submitted this 16th day of April, 2018.

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CERTIFICATE OF SERVICE

The undersigned certifies that she served a copy of the foregoing Brief Pursuant to Anders v. California on counsel on this date in accordance with the directives from the Court Notice of Electronic Filing (“NEF”) that was generated as a result of electronic filing.

The undersigned certifies that she served a copy of the foregoing Brief Pursuant to Anders v. California on the defendant, Robbie Lee Mouzon, via United States Mail with sufficient postage attached addressed as follows:

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UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-12602-D

UNITED STATES OF AMERICA,

Appellee,

-vs-

HIPOLITO MARTINEZ-MARTINEZ,

Appellant.

On direct appeal from a conviction in the
United States District Court
for the Southern District of Georgia

BRIEF OF APPELLANT

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UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA,)	
)	
Appellee,)	
)	
vs.)	No. 18-12602-D
)	
HIPOLITO MARTINEZ-MARTINEZ,)	
)	
Appellant.)	

CERTIFICATE OF INTERESTED PERSONS

As required by 11th Cir. R. 26.1-1, Appellant Hipolito Martinez-Martinez files his certificate of interested persons as follows:

Christine, Bobby

Copeland, Amy Lee

Durham, James D.

Groover, Tania D.

Martinez-Martinez, Hipolito

Moore, Jr., Hon. William T.

Rafferty, Brian T.

Rouse + Copeland LLC

Smith, Hon. G.R.

United States v. Martinez-Martinez
No. 18-12602-D

Tanner, R. Brian

There are no corporations, publicly traded or otherwise, to
disclose. There are no victims.

/s/ Amy Lee Copeland

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STATEMENT REGARDING ORAL ARGUMENT'

Armed with a search warrant for 275 Milton Rahn Road, law enforcement officers searched 135 Milton Rahn Road, which led to the arrest of Appellant Hipolito Martinez-Martinez. Martinez asks for oral argument in this appeal. This case presents unusual facts and an important Fourth Amendment questions, and oral argument would significantly aid the decisional process.

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STATEMENT OF JURISDICTION

Appellant Hipolito Martinez-Martinez pleaded guilty to one count of being an illegal alien in possession of a firearm in violation of 18 U.S.C. §922(g)(5). [Doc 67] Martinez entered a conditional guilty plea under Fed. R. Crim. P. 11(a)(2), expressly reserving the right to seek appellate review of his motion to suppress evidence. [Doc 67-Pg 1] By written judgment entered June 13, 2018, the district court sentenced Martinez to 24 months' imprisonment. [Doc 70-Pg 2] On June 24, 2018, Martinez filed a notice of appeal. [Doc 72] The notice of appeal was filed within 14 days of the written judgment, so it was timely under Fed. R. App. P. 4(b)(A)(i).

Since the charged offense violated the laws of the United States, the district court had jurisdiction under 18 U.S.C. §3231. This Court has jurisdiction over this appeal under 28 U.S.C. §1291.

STATEMENT OF THE ISSUE

Martinez entered a conditional guilty plea under Fed. R. Crim. P. 11(a)(2) allowing him to appeal the denial of his motion to suppress. [Doc 67-Pg 1] Martinez thus raises a single issue on appeal:

Did the district court err by denying Martinez' motion to suppress where the search warrant permitted a search of 275 Milton Rahn Road but Martinez lived at 135 Milton Rahn Road in a separate trailer with "135" displayed on front and a separate mailbox also displaying "135 Milton Rahn Road" and officers could not have executed a search warrant directed at 275 Milton Rahn Road on 135 Milton Rahn Road in good faith?

STATEMENT OF THE CASE

1. Course of proceedings and disposition in the court below.

This case arose from a search warrant pertaining to 275 Milton Rahn¹ Road executed by numerous law enforcement officers on August 20, 2017. In Martinez' trailer at 135 Milton Rahn Road and in his truck parked outside, searching officers found a shotgun and several other firearms. Shortly after the search, a federal grand jury indicted Martinez on a single count of being an illegal alien in possession of a firearm in violation of 18 U.S.C. §922(g)(5). [Doc 11]

Martinez filed a motion to suppress, which the district court denied. [Doc 57] Reserving the right to appeal this motion's denial in a conditional plea agreement, Martinez pleaded guilty to the single count in the indictment. [Doc 60, Doc 67-Pg 1] The district court sentenced

¹ Pronounced "RON."

Martinez to 24 months' imprisonment, which represented a downward variance from the applicable guidelines range. [Doc 70-Pg 2] Martinez timely appealed. [Doc 72] He now challenges only the denial of his motion to suppress.

2. Statement of the facts.

This case involves a search warrant affidavit that the magistrate judge “wouldn’t have issued, not on this showing.” [Doc 49-Pg 149] It is a search warrant that the AUSA admittedly would not have brought to the magistrate judge: “We certainly would have edited and [made] it more specific.” [Doc 49-Pg 150] It is a search warrant that allowed the search of 275 Milton Rahn Road. Hipolito Martinez-Martinez – who was *never* mentioned in the search warrant – lived at 135 Milton Rahn Road, yet officers searched his home and pickup truck.

Martinez challenged this search warrant in a motion to suppress, arguing that it did not provide probable cause to search 135 Milton Rahn Road; that it lacked particularity in describing the place to be searched, a problem not remedied by the manner of execution; and that the executing officers could not invoke the good faith exception to the exclusionary rule. [Doc 22, Doc 39] The report and recommendation

(“R&R”) believed that “the warrant specifically and clearly described each of the multiple dwellings that the magistrate authorized to be searched,” including Martinez’ mobile home; that the warrant affidavit provided a substantial basis for the state magistrate to find probable cause; and that the executing officers had a good faith belief that the warrant was valid. [Doc 45-Pgs 1-2]

Martinez objected to the R&R’s findings [Doc 52], and the district court adopted the R&R in a cursory order. [Doc 57] Under his conditional guilty plea, Martinez now challenges the denial of his motion to suppress in this Court. His factual recitation focuses on the search warrant affidavit, a pictorial tour of 135 and 275 Milton Rahn Road, and the testimony at the evidentiary hearing.

a. The search warrant affidavit.

On August 20, 2017, Detective Roberto Rodriguez of the Garden City Police Department signed an affidavit and application for a search warrant in the Magistrate Court of Effingham County, Georgia. [Doc 22-1] This search warrant never mentions Martinez’ name or 135 Milton Rahn Road. Instead, it focused on a murder investigation that appeared to implicate Pablo Rangel, whom Detective Rodriguez

repeatedly referred to as the only suspect.

Specifically, Detective Rodriguez believed that he would find evidence of a crime “on the person, premises, or property” described as follows:

275 MILTON RAHN ROAD, RINCON GEORGIA, 31326. THE RESIDENCE AND PROPERTY CAN BE REACHED BY TRAVELING ON RAHN STATION ROAD FROM HIGHWAY 21 FOR 2 MILES MAKING A LEFT ONTO MILTON RAHN ROAD AND TRAVELING 1.2 MILES AND THE RESIDENCE (TAN IN COLOR) WILL BE LOCATED ON THE LEFT FOLLOWING BY THE MOBILE HOME (GRAY IN COLOR). SEE EXHIBIT A AND B.

PROPERTY IS OWNED BY PABLO RANGEL. PROPERTY IS LISTED WITH HAVING 26.65 ACRES. LAND HAS MULTIPLE DWELLINGS THAT CAN NOT BE ACCESSED WITHOUT DRIVING ON A PRIVATE DRIVE THAT DEAD ENDS ON THIS LAND. RESIDENCE HAS NEW STRUCTURE IDENTIFIED AS A MODULAR HOME, AS WELL AS MULTIPLE TRAILERS AS FOLLOWS. GRAY IN COLOR MOBILE HOME WITH WHITE TRIM LOCATED AT THE FAR END OF THE DRIVEWAY. LIGHT COLORED PULL BEHIND CAMPER LOCATED IN THE REAR OF THE GRAY MOBILE HOME. TAN IN COLOR RESIDENCE WITH WOODEN PORCH ON THE BACK LOCATED BEFORE REACHING THE GRAY MOBILE HOME. THERE ARE CURRENTLY 8-10 VEHICLES ON THE PROPERTY.

[Doc 22-1 at 6]

After stating his credentials, Detective Rodriguez launched into a probable cause recitation. [Doc 22-1 at 6-7] The recitation centered around the apparent murder of Eluid Montoya, whose body had been

found the day before at a location in Garden City, Georgia. [Id. at 7] A tree service work truck and a car registered to Montoya were found next to his body. [Id.] Montoya's mother told officers that she believed that Pablo Rangel, Montoya's boss, had killed him after a falling out at work and Montoya's decision to file an EEOC complaint against Rangel. [Id.] Montoya's wife later handed officers the package Montoya gave the EEOC, which included statements from other employees of Wolf Tree Service. [Id.] Those statements averred that its workers were in the country illegally; that they had been taken advantage of by Rangel, their supervisor; that Rangel kept some of their money; and that they obtained false documents to work in the United States for \$1500. [Id.] Montoya's car contained a notebook listing work-related grievances he had against Rangel, and a co-worker said that he had told Montoya to "leave Pablo alone since he was going to have him killed," possibly by a family member. [Id. at 8]

Although seeking a search warrant at an address in Rincon, Georgia, Detective Rodriguez stated that a criminal history check on Pablo Rangel indicated that "he has a nephew whom he lives with in *Springfield*, Georgia." [Id. at 8][emphasis added] A 2014 police report

on the nephew, Refugo Ramirez, indicated that Ramirez had been arrested with a .22 pistol. [Id.] Detective Rodriguez observed that that caliber “matches that which was suspected to be used to Murder Eliud [Montoya].” [Id.] Detective Rodriguez then wrote, “It should be noted not only does Refugo [sic] work with the same company as the victim but he also lives in a trailer located on his uncles property located at 275 Milton Rahn Road, *Springfield*, Georgia.” [Id.][emphasis added] He concluded that recitation by observing that “*Eliud* further has warrants out for his arrest through Chatham County Records court.

[Id.][emphasis added][error in original]

Here is how Detective Rodriguez ended his affidavit:

Your Affiant firmly believes enough probable cause has arisen to show Pablo [Rangel] is involved in the Murder of Eliud Montoya. Your Affiant Firmly believes the fruits of the crime due exist *inside the residence located at 275 Milton Rahn Road.*

[Id.][italicized emphasis added]

The Effingham County magistrate issued a search warrant based upon Detective Rodriguez’ affidavit. The warrant described the “person, premises, or property” to be searched in the same manner as the detective’s affidavit. [Id. at 2]

Neither the affidavit nor the warrant mentioned Hipolito Martinez, who lived in a mobile home bearing the discrete house number of 135 Milton Rahn Road. Yet agents searched Martinez' residence.

b. 135 and 275 Milton Rahn Road (a photographic tour).

A photographic tour of 135 Milton Rahn Road and 275 Milton Rahn Road is helpful to understand the issues presented on this appeal. The photographs below were taken by counsel on October 3, 2017, and incorporated into Martinez' motion to suppress. [Doc 22-Pgs 5-13] The magistrate judge considered these photographs at the evidentiary hearing, and they were introduced into evidence as Martinez' composite exhibit one. [Doc 49-Pgs 79-80, 86]

As Detective Rodriguez' affidavit notes, Milton Rahn Road may be reached by traveling on Rahn Station Road. [Doc 22-1 at 6] At the intersection of Rahn Station Road, which is paved, and Milton Rahn Road, which is not, there is a cluster of mailboxes.



The white mailbox on the right is for 275 Milton Rahn Road, while the mailbox two places to the left is for 135 Milton Rahn Road. Here is a close-up of the mailboxes for 135 (left) and 275 (right):



The writing on the side of the 135 mailbox reads 135 MILTON RAHN; Martinez averred that he received mail from that mailbox, and

he produced mail addressed to him and received at that address. [Doc 27-1, Doc 52-Pg 9] It is about .8 mile from these mailboxes to 275 Milton Rahn Road. [Doc 22-2] Here is the view as one drives onto the private drive referenced in the search warrant and affidavit:



The tan house visible through the trees is **“THE RESIDENCE (TAN IN COLOR) . . LOCATED ON THE LEFT”** described as 275 Milton Rahn Road in the search warrant. The picture below shows what it looks like continuing down the drive, with the tan residence on the left, a large shed behind the truck housing an RV, and a bright red container further down on the right:



Here is a photograph of the shed behind the blue SUV in the prior photograph. For scale, note the RV parked underneath:



Past this shed and the bright red container is the gray trailer at 135 Milton Rahn Road. To give the Court an idea of the distance between 135 Milton Rahn Road and the tan mobile home at 275 Milton Rahn Road, here is a photograph taken from the edge of 135 toward 275:



Finally, here is what 135 Milton Rahn Road looks like:



As will be demonstrated on the next page, 135 Milton Rahn Road has its own house number and a deadbolt on the door:



On Google Maps, the directions to 135 Milton Rahn Road and 275 Milton Rahn Road are not identical, and they reflect a distance between the two locations of roughly .4 miles. [Doc 22-2, Doc 22-3]

c. The testimony at the evidentiary hearing.

Garden City Police Department Detective Roberto Rodriguez prepared the search warrant himself; while a local ADA allegedly knew about the warrant, that attorney never personally reviewed it. [Doc 49-Pgs 13-14]

As recited previously, the search warrant affidavit contended that officers had probable cause to believe that Pablo Rangel was involved in the murder of Eliud Montoya and that fruits of the crime would be found “inside the residence located at 275 Milton Rahn Road in Rincon.” [Doc 22-1 at 8; Doc 49-Pg 68] Prior to drafting the affidavit, Rodriguez had never been to 275 Milton Rahn Road. [Doc 49-Pg 17] He relied on information from the Effingham County Sheriff’s Office, as well as the county’s property tax records website, which “showed that the residence was owned by Pablo Rangel.” [Doc 49-Pgs 17-18] From interviewing a witness, Rodriguez learned that Rangel’s nephew Refugio Ramirez lived in a trailer located on his uncle’s property, which

everyone referred to as “the farm.” [Doc 49-Pg 24] Detective Rodriguez’ search warrant used “dwelling,” “residence,” “trailer,” “camper,” and “land”: he explained that the “verbiage changed” for “no apparent reason. [Doc 49-Pg 26] On cross-examination, Rodriguez acknowledged that he distinguished between Pablo Rangel’s residence specifically and the general parcel on at least one occasion in the search warrant. [Doc 48-Pg 78] Although Rodriguez knew that there were other dwellings on the farm, he did not know whether the dwellings had different addresses. [Doc 49-Pgs 26-27] Rodriguez testified that he told the issuing magistrate that he intended to search every single trailer, camper, home, and dwelling on the property. [Doc 49-Pgs 32-33] Rodriguez’ report shows that he met with the magistrate at 11:23 a.m., and the search warrant shows that it was signed at 11:23 a.m. [Doc 39-1 at 5, Doc 49-Pgs 73, 75] When faced with this fact, he said that he had actually spoken with the issuing magistrate for three to five minutes. [Doc 49-Pg 76]

Twenty armed officers with guns drawn, snipers in all-terrain vehicles, at least six cars, and a K-9 unit (a big German Shepherd) executed the search warrant. [Doc 49-Pgs 73, 76, 95] On the day of the

search, officers entered four separate dwellings, including Martinez' light gray mobile home. [Doc 49-Pgs 37-40] They first went to the large tan house where Pablo Rangel lived. [Doc 49-Pg 77] Although the tan house was the first place officers stopped, they never asked the woman to whom they spoke if it was Pablo Rangel's residence – even though they suspected it to be his residence. [Doc 49-Pg 81] Rodriguez saw a tan Wolf Tree truck parked outside the tan mobile home, which was an important part of his investigation into Pablo Rangel. [Doc 49-Pgs 118-19] Indeed, Rodriguez told the issuing magistrate that he believed that Pablo Rangel lived in that particular tan mobile home. [Doc 49-Pgs 81-82] Despite these facts, Rodriguez decided to search every other trailer on the property, starting with the area where other agents had found Rangel. [Doc 49-Pg 89] Rodriguez acknowledged that the gray and white trailer had a separate house number (135) and a separate mailbox and that it was a “good bit of a walk” between it and the tan residence. [Doc 49-Pg 98]

Homeland Security Investigations Agent Anthony Miranda also testified at the evidentiary hearing. Miranda never read the search warrant; Rodriguez merely told the assembled officers about it at an

operational briefing. [Doc 49-Pg 139] Officers had not been told that Martinez was a suspect or a person of interest in the murder investigation. [Doc 49-Pg 143] Like Detective Rodriguez, Agent Miranda recalled that “main drag” dirt road wended its way around the property. [Doc 49-Pgs 83, 142] When asked if someone else told him where Pablo Rangel lived, Agent Miranda testified that he could not remember but added, “. . . I knew where Pablo Rangel lived *because of the search warrant. . .*” [Doc 49-Pg 142][emphasis added] Indeed, Pablo Rangel lived in the tan trailer, “[t]he bigger dwelling as you drive into the property,” “[t]he nicer house, yes,” with a “Wolf Tree truck there,” either “behind it or beside it.” [Doc 49-Pgs 142-143]

The search, which officers conducted in 100 degree weather on August 20, 2017, began between noon and 1 p.m. and took three to four hours. [Doc 49-Pgs 51-52] There were four men, three women, and five to six children at the farm that day. [Doc 49-Pgs 52-53] The women and children were allowed to remain in Pablo Rangel’s tan mobile home, which had air conditioning. [Doc 49-Pgs 52-53] The men, handcuffed, were put in an open carport for an hour to 90 minutes, until they were

moved to a covered porch on Rangel's house that featured ceiling fans.

[Doc 49-Pgs 53, 132] The move occurred because Martinez suffered heat exhaustion, necessitating the calling of an ambulance. [Doc 49-Pg 54]

d. The R&R

The R&R recommended denial of Martinez' suppression motion. [Doc 45] First, it rejected Martinez' particularity challenge, opining instead that the property description encompassed every single separate dwelling on the parcel of land and that Detective Rodriguez testified that he told the issuing magistrate that that was what he intended to search. [Id. at 8-10] As for the fact that the gray mobile home had an entirely separate address – 135 Milton Rahn Road – the R&R stated that Detective Rodriguez was unaware of the gray home's separate address when he applied for and executed the warrant, but in any event, the search warrant mentioned the gray home. [Id. at 11-15]

Second, the R&R rejected Martinez' probable cause argument, saying that “[n]othing in the warrant affidavit’s probable cause statement . . . gave greater evidentiary emphasis to Rangel’s personal residence than to any of the other dwellings (or vehicles) located inside the Rangel compound.” [Id. at 15] It opined that “the affidavit set forth

information suggesting that it was Rangel's nephew, not Rangel himself, who was the likely triggerman." [Id.] The R&R applied an "exceedingly deferential standard" to reviewing the issuing magistrate's probable cause determination and believed that the affidavit set forth the fact of an outstanding warrant for the arrest of Rangel's nephew, who three years earlier possessed a firearm. [Id. at 17] According to the R&R, under a charitable view of the state magistrate's determination, "it cannot be said that the facts presented were so insubstantial as to preclude any possible finding of probable cause to search the entirety of the Rangel estate." [Id. at 19]

Finally, the R&R recommended that the good faith exception to the exclusionary rule applied, and put the burden *on Martinez* as to that matter. [Id. at 20-21] In support of its conclusion, the R&R listed several points: 1) the detective acquired evidence that Rangel orchestrated Montoya's murder; 2) Rangel had a nephew who worked with Montoya; 3) the nephew lived in an unspecified trailer on the property and had a criminal record showing possession of a pistol; 4) local deputies said that "275 Milton Rahn Road served as the address for all of the dwellings on Rangel's property"; and 5) Rodriguez

“conferred with both his superiors and an assistant district attorney, who agreed that the probable cause threshold was met.” [Id. at 22-23]

Martinez filed objections to the R&R and pointed out facts that belied the magistrate judge’s findings. [Doc 52] The district court adopted the R&R’s findings in an order that said

Before the Court is the [R&R], to which objections have been filed . . . After a careful de novo review of the record, the Court finds Defendant’s objections to be without merit. Accordingly, the [R&R] is **ADOPTED** as the Court’s opinion in this case and Defendant’s Motion[] to Suppress . . . is **DENIED**.

[Doc 57] Martinez’ appeal ensued.

3. Statement of the standard of review.

Martinez appeals the denial of his motion to suppress under a conditional plea agreement. He preserved the claims in district court that he now raises on appeal.

“A denial of a motion to suppress involves mixed questions of fact and law.” United States v. Spivey, 861 F.3d 1207, 1212 (11th Cir. 2017). The Court thus reviews the district court’s factual determinations for clear error, construing all evidence in light of the prevailing party, and it reviews the district court’s application of law to those facts *de novo*.

United States v. Morales, 893 F.3d 1360, 1367 (11th Cir. 2018). The Court’s review “is not moored to the evidence presented at the suppression hearing”; it is “free to look at the whole record.” Id.

SUMMARY OF THE ARGUMENT

Detective Rodriguez swore out an affidavit stating his belief that probable cause existed to believe that fruits of a crime – the murder of Eliud Montoya – would be found in Pablo Rangel’s residence located at 275 Milton Rahn Road. That residence – as described in the affidavit and search warrant – was a tan mobile home. That that particular home was Rangel’s was apparent from the search warrant affidavit: A federal agent testified as much.

But based on Detective Rodriguez’ description of the 26.65 acre property as containing “multiple trailers” and “8-10 vehicles,” law enforcement officers searched the other homes and cars on that parcel before turning to the residence that they all knew belonged to Pablo Rangel. One of the homes searched belonged to the appellant, Hipolito Martinez. That residence, the gray mobile home, had a separate street number displayed on the front door and a separate mailbox at which Martinez received mail.

Detective Rodriguez' affidavit failed to establish probable cause to search these other homes and cars. Rangel was the sole suspect in the murder investigation. The affidavit never mentioned Martinez. The affidavit led to a warrant that allowed a general rummaging of the several dwellings, spaced relatively far apart, on the 26.65 acre parcel of land. Officers knew where Rangel lived, yet they searched every other home on the land before turning to Rangel's residence. The good faith exception to the exclusionary rule does not apply to this search. (Contrary to the district court's finding, Martinez does not bear the burden in this regard.) The affidavit totally lacked probable cause to permit a search of Martinez' home and truck, and the warrant based on that affidavit lacked any particularity in describing the places to be searched.

ARGUMENT AND CITATION OF AUTHORITY

A law enforcement officer cannot obtain a warrant to search your neighbor's house and use that warrant to search yours, too. But that is what law enforcement did in this case. The Fourth Amendment protects "[t]he right of the people to be secure in their . . . houses . . . against unreasonable searches and seizures," and to protect that right,

it requires warrants to issue only on a showing of probable cause, “particularly describing the place to be searched” U.S. Const. amend. IV.

Did the district court err by denying Martinez’ motion to suppress where the search warrant permitted a search of 275 Milton Rahn Road but Martinez lived at 135 Milton Rahn Road in a separate trailer with “135” displayed on front and a separate mailbox also displaying “135 Milton Rahn Road” and officers could not have executed a search warrant directed at 275 Milton Rahn Road on 135 Milton Rahn Road in good faith?

The district court erred when it denied Martinez’ motion to suppress since 1) the search warrant affidavit did not establish probable cause to believe that fruits of the crime would be found in Martinez’ trailer, 2) the warrant (which included a description of other residences located on the tract of land owned by Rangel) failed to describe the place to be searched with particularity, and 3) the good faith exception to the exclusionary rule does not apply to these facts – a burden that the law places on the government, not Martinez.

a. The search warrant application and affidavit did not establish probable cause to search 135 Milton Rahn Road.

When issuing a search warrant, a magistrate’s task is to “make a practical, common-sense decision whether, given all the circumstances

set forth in the affidavit before him . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place.”

Illinois v. Gates, 412 U.S. 213, 238 (1983).

Here, the search warrant affidavit and application expressed Detective Rodriguez’ belief that **fruits of the crime due exist *inside the residence located at 275 Milton Rahn Road***. [Doc 22-1 at 8] This belief sprang from interviews with Eliud Montoya’s family members and a co-worker that Montoya filed an EEOC claim against Pablo Rangel, alleging that he treated his employees poorly, provided them with fake identification papers, and kept their part of their wages. [Id.] Montoya had collected affidavits to this effect, and apparently his mother and wife immediately pointed to Rangel when officers discovered Montoya’s lifeless body. [Id. at 1] This information may have provided probable cause to search Pablo Rangel’s home, which the search warrant affidavit described as “the residence located at 275 Milton Rahn Road,” a “tan in color,” “a newer structure identified as a modular home,” and a “tan in color residence with wooden porch on the back.” [Doc 22-1 at 6]

The search warrant *never* mentioned Hipolito Martinez, alleged that he had any relationship with or to Rangel, or asserted the swearing officer's belief that information related to Montoya's murder would be found in Martinez' gray mobile home 135 Milton Rahn Road. The R&R, which the district court adopted without explanation, believed that "the affidavit set forth information suggesting that it was Rangel's nephew, not Rangel himself, who was the likely triggerman, and that "[t]here was a greater probability that the murder weapon, or ammunition associated with it, would be found in the 'trailer' where Refugio Ramirez [the nephew] resided than in Rangel's own home." [Doc 45-Pgs 15-16] This, believed the R&R, supported a probable cause finding allowing a search all the "other dwellings (or vehicles) located inside the Rangel compound." [Doc 45-Pg 15]

The R&R's oft-repeated notion that the affidavit identified more than one suspect is misplaced. [Doc 45-Pgs 8 (describing Pablo Rangel as "one of the chief suspects" and mentioning "another key suspect"), Doc 45-Pg 9 (stating that Pablo Rangel "was not the only suspect believed to reside at the Rangel compound, for Refugio Ramirez reportedly lived in one of the 'trailers'"), Doc 45-Pg 14 (stating that

detective had “fear of alerting the suspects”)] The affidavit does not name Ramirez as a suspect, although it states that he was a suspect in a 2014 case involving a concealed weapon.² [Doc 22-1 at 8]

Supporting the fact that Pablo Rangel was the only suspect, Detective Rodriguez’ affidavit concludes with his belief that he has demonstrated “enough probable cause to show *Pablo* is involved in the Murder of Eliud Montoya. . . .” [Id][emphasis added] Beyond a brief mention that someone “didn’t think Pablo could kill Eliud but he has family who could kill him” and that Refugio Ramirez possessed a firearm in 2014, the affidavit made no effort to link up Rangel’s family members to Montoya’s murder.

In addition to the affidavit’s language, Detective Rodriguez’

² According to the affidavit, that weapon was a .22. [Doc 22-1, Aff. at 3] In the Montoya murder, officers did not know exactly what they were looking for, gun-wise, other than they suspected a small-caliber weapon. [Doc 49-Pg 28] These, as Detective Rodriguez admitted, are incredibly common. [Doc 49-Pgs 71-72] And information from 2014 could, in 2017, fairly be considered stale. “Warrant applications based upon stale information fail to create a probable cause that similar or other improper conduct is continuing.” United States v. Harris, 20 F.3d 445, 450 (11th Cir. 1994)(directing courts to consider the age of the information and nature of the crime (discrete act vs. ongoing conspiracy), among other things).

testimony at the evidentiary hearing supports the notion that Pablo Rangel was the sole suspect:

Q. . . . Pablo was the person you believed was associated with the murder of Eliud Montoya?

A. Yes, ma'am.

Q. And he is the reason why you got this search warrant in the first place?

A. Yes, ma'am.

[Doc 49-Pgs 82-83] Even in response to the government's questions, Rodriguez spoke in terms of a single suspect: Pablo Rangel. [Doc 85-Pgs 18-19, 22-23] Among other things, Rodriguez agreed that the warrant described "the property owned by *your murder suspect, Pablo Rangel*." [Doc 49-Pg 19][emphasis added] That Rangel – the sole suspect – had a nephew does not provide probable cause to justify a search of every single dwelling on a 26.65 acre tract of land.

The R&R also relied on the "exceedingly deferential standard" a court employs in the review of an issuing magistrate's probable cause determination. [Doc 45-Pgs 17-19] But this "[d]eference to the magistrate . . . is not boundless." United States v. Leon, 468 U.S. 897, 914 (1984). Courts must "insist that the magistrate purport to 'perform

[her] neutral and detached function and not serve merely as a rubber stamp for the police.” Id. A magistrate acting as “an adjunct law enforcement officer’ cannot provide valid authorization for an otherwise unconstitutional search.” Id. Additionally, “reviewing courts will not defer to a warrant based on an affidavit that does not ‘provide the magistrate with a substantial basis for determining the existence of probable cause.” Id. at 915. A magistrate’s determination must be backed by sufficient information, and not “be a mere ratification of the bare conclusions of others.” Id. A district judge in this circuit Court made the following observation:

A search warrant should not issue where the affidavit does not provide for a finding of probable cause and, even if the warrant application is more than a “bare bones” affidavit, a reviewing court may properly conclude that, notwithstanding the deference that magistrates deserve, the warrant was invalid because the magistrate's probable cause determination reflected an improper analysis of the totality of the circumstances or because the form of the warrant was improper in some respect.

Nathan v. Lawton, 1989 WL 11706 at *5 (S.D.Ga. 1989).

Again, Rodriguez’ report shows that he met with the magistrate at 11:23 a.m., and the warrant itself was issued at 11:23 a.m. Although Rodriguez said that his report was simply wrong, he acknowledged that

any meeting with the magistrate lasted only a few minutes. [Doc 49-Pg 75] At that meeting, which occurred at the Effingham County Sheriff's Department, Rodriguez said that "the search warrant was based on information provided by *her* [i.e., the issuing magistrate's] deputies, the Effingham County deputies." [Doc 49-Pg 26][emphasis added] The other officers who assisted in the execution of the warrant – approximately 20 – were "all stationed at the Effingham County Sheriff's Department." [Doc 49-Pgs 33, 73]

The search warrant reflected a rubber stamp, for the totality of the circumstances could not have supported probable cause to search every single residence on the 26.65 acre tract of land. "A police officer's expectation, based on prior experience and the specific circumstances of the alleged crime, that evidence is likely to be found in a suspect's residence satisfies probable cause." United States v. Joseph, 709 F.3d 1082, 1100 (11th Cir. 2013). "Probable cause to search a residence requires some nexus between the premises and the alleged crime." Id. Pablo Rangel – in both the affidavit and in the answers of Rodriguez at the evidentiary hearing – was the *only* suspect in the murder.

Rodriguez' affidavit told the magistrate that he had probable cause to search Pablo Rangel's residence. [Doc 22-1, Aff. at 3] The affidavit did not draw any conclusions, or make any assertions, about whether evidence would be found in other dwellings on the larger parcel; there was no nexus between those premises and any alleged crime.

And what about the cars? The affidavit noted that **THERE ARE CURRENTLY 8-10 VEHICLES ON THE PROPERTY**, but the warrant never specifically authorized the search of those vehicles. [Doc 22-1 at 2, 6] But along the way, Detective Rodriguez decided to search several cars, including "a small black Chevrolet Pickup truck" belonging to Martinez "that was near where the suspects were detained." [Doc 39-1 at 8] Detective Rodriguez' affidavit implicated Pablo Rangel and sought permission to look for "fruits of the crime," which the detective represented would be found "inside the *residence* located at 275 Milton Rahn Road."

The affidavit never asserted any belief that any evidence would be found in a small black Chevrolet pickup truck. This case does not trigger the automobile exception to the warrant requirement, either.

That exception applies “(1) if the vehicle is readily mobile; and (2) the police have probable cause for the search.” United States v. Lindsey, 482 F.3d 1285, 1293 (11th Cir. 2007). While “readily mobile” encompasses a vehicle that is operational, Martinez was detained when officers searched his truck, and they lacked probable cause to believe that he was involved in any way in Montoya’s murder.

The affidavit did not establish probable cause to search Martinez’ gray mobile home at 135 Milton Rahn Road or his pick-up truck. The officers’ search of those premises and his vehicle violated the Fourth Amendment. Another Fourth Amendment violation occurred in this case, too: The warrant lacked particularity, a problem not cured by the manner in which officers executed it.

b. The search warrant lacked particularity in describing the place to be searched, and the execution of the warrant did not cure this lack of particularity.

The property description in the search warrant mirrored the one in Detective Rodriguez’ affidavit, describing the premises to be searched as follows:

**275 MILTON RAHN ROAD, RINCON GEORGIA, 31326. THE
RESIDENCE AND PROPERTY CAN BE REACHED BY TRAVELING ON**

RAHN STATION ROAD FROM HIGHWAY 21 FOR 2 MILES MAKING A LEFT ONTO MILTON RAHN ROAD AND TRAVELING 1.2 MILES AND THE RESIDENCE (TAN IN COLOR) WILL BE LOCATED ON THE LEFT FOLLOWING BY THE MOBILE HOME (GRAY IN COLOR). SEE EXHIBIT A AND B.

PROPERTY IS OWNED BY PABLO RANGEL. PROPERTY IS LISTED WITH HAVING 26.65 ACRES. LAND HAS MULTIPLE DWELLINGS THAT CAN NOT BE ACCESSED WITHOUT DRIVING ON A PRIVATE DRIVE THAT DEAD ENDS ON THIS LAND. RESIDENCE HAS NEW STRUCTURE IDENTIFIED AS A MODULAR HOME, AS WELL AS MULTIPLE TRAILERS AS FOLLOWS. GRAY IN COLOR MOBILE HOME WITH WHITE TRIM LOCATED AT THE FAR END OF THE DRIVEWAY. LIGHT COLORED PULL BEHIND CAMPER LOCATED IN THE REAR OF THE GRAY MOBILE HOME. TAN IN COLOR RESIDENCE WITH WOODEN PORCH ON THE BACK LOCATED BEFORE REACHING THE GRAY MOBILE HOME. THERE ARE CURRENTLY 8-10 VEHICLES ON THE PROPERTY.

[Doc 22-1 at 2, 6] Indeed, Detective Rodriguez “[f]irmly believe[d] the fruits of the crime due exist inside the residence located at 275 Milton Rahn Road,” and the *only* time Detective Rodriguez used the word “residence” in the search warrant affidavit was when he described Pablo Rangel’s home. [Doc 22-1 at 8] It was such a specific description that HSI Agent Miranda testified, “I mean I knew where Pablo Rangel lived *because of the search warrant. . . .*” [Doc 49-Pg 142][emphasis added] It was in the nicer, tan trailer with the Wolf Tree truck nearby. [Id.]

The reference to the other residences merely described what was on the 26.65 acre tract owned by Pablo Rangel, yet law enforcement searched every single residence on that tract. This would be like getting a search warrant for a particular dwelling at a mobile home park, a condominium development, or an apartment complex; reading that there were other dwelling units on the premises; and searching every single one of those units.

The Supreme Court has addressed this type of situation in Maryland v. Garrison, 480 U.S. 79 (1987). There, officers obtained and executed a search warrant to search Lawrence McWebb and “the premises known as 2036 Park Avenue third floor apartment.” Id. at 80. When they applied for the warrant and conducted the search, they reasonably believed that there was only one apartment – that is, the single third floor apartment.³ Id. But the third floor actually had two apartments: one occupied by McWebb and one occupied by Garrison. Id. Before officers became aware that they were in Garrison’s separate

³ The officers used a key to unlock the door at the top of the stairs on the third floor and walked into a vestibule; the doors to both McWebb and Garrison’s apartments were open. Id. at 81.

apartment, they found contraband. Id. When they realized that they were in a separate apartment, they stopped the search. Id. at 81. “With the benefit of hindsight,” the officers and the Court knew that “the description of that place was broader than appropriate because it was based on the mistaken belief that there was only one apartment on the third floor of the building at 2036 Park Avenue. “ Id. at 85.

The Court found that the execution of the warrant did not violate Garrison’s constitutional rights since “the officers’ conduct was consistent with a reasonable effort to ascertain and identify the place intended to be search within the meaning of the Fourth Amendment.” Id. at 88-89. Relevant to Martinez’ case, the Court distinguished this situation:

Plainly, if the officers had known, or even if they should have known, that there were two separate dwelling units on the third floor of 2036 Park Avenue, they would have been obligated to exclude respondent's apartment from the scope of the requested warrant.

Id. at 85.

In this case, the officers plainly knew or should have known that there were separate dwelling units located at Pablo Rangel’s 26.65 acre tract in Rincon, Georgia. There were eight to ten cars on the tract.

There were separate mailboxes. There was a separate house number on the gray mobile home. The gray mobile home had a deadbolt on the door, and a cheery red rug in front. Google Maps provides different directions to and different driving distances for the property. Common sense dictates that a person, like Pablo Rangel, lives in a single home; it would be nonsensical for him to reside at both 275 and 135 Milton Rahn Road, and true to this premise, he did not. He lived at the only dwelling described as a “residence” in the application and affidavit: the tan modular home with the wooden porch.

“The manifest purpose of [the Fourth Amendment’s] particularity requirement was to prevent general searches,” and by limiting authorization to search only area for which there is probable cause to search, the particularity requirement “ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit.” Garrison, 480 U.S. at 85. There was no probable cause to search 135 Milton Rahn Road, and as in the hypothetical situation in Garrison, they “plainly” were obligated to exclude 135 Milton Rahn Road from the scope of the requested warrant. See Hartsfield v.

Lemacks, 50 F.3d 950 (11th Cir. 1995)(finding that officer who did not lead other officers to the correct address was not entitled to qualified immunity; to show officer's failure to make reasonable efforts to avoid error, court cited fact that numbers on the houses were clearly marked, that the raid took place during daylight hours, that the houses were located on different parts of the street and separated by at least one other residence, and that the appearance of the houses was distinguishable).

The district court believed that Garrison did not apply since police "recognized that there were multiple dwellings on Rangel's property, they so informed the magistrate of that fact, and they then acted pursuant to a warrant that particularly described and granted permission to search each dwelling." [Doc 45-Pg 11, n. 5] Along these lines, the court posited that "[a]ny reasonable officer (or judge) would have interpreted that warrant as allowing a search of each of the specifically-described structures, including the mobile home where Martinez resided." [Doc 45-Pg 10] As for the former, Rodriguez testified that he told the issuing magistrate that he intended to search every single residence on the property, but his report indicates that he met

with the issuing magistrate at 11:23 a.m., the same time that the magistrate signed the warrant at 11:23 a.m. (He later elaborated that the meeting was only a few minutes long.) [Doc 49-Pgs 32, 73-76]

As for the latter, the only premises that Detective Rodriguez asserted that he made a probable cause showing for was Pablo Rangel's residence. [Doc 22-1 at 8] It is *not* clear, as the district court surmised, that Rodriguez "painstakingly described each of the multiple structures believed to be located at 275 Milton Rahn Road for a very good reason – he was seeking to search them all." [Doc 45-Pgs 10-11] Instead, the description of the surrounding property is designed to assure officers that they are in the right place in the midst of rural Effingham County. For instance, an affidavit that concluded that it had probable cause to search the residence of (let's say) John Smith, described the residence as a tan in color home, and then described the houses next to Smith's house in his subdivision would not authorize officers to search Smith's neighbors' homes just because it was in the description of property surrounding Smith's. As the magistrate judge noted at the evidentiary hearing, that was "the very thing that prompted the drafting of the Fourth Amendment." [Doc 49-Pg 157]

Finally, the district court dismissed the fact that Martinez' home – the gray trailer – had an entirely separate address (135 Milton Rahn Road) and its own mailbox, what is now known to bear the legend "135 Milton Rahn Road." Martinez received mail from that mailbox at that address. [Doc 27-1] The R&R posited that Rodriguez was unaware of the separate address either at the time of application or execution. [Doc 45-Pg 13] But this is because Rodriguez testified that he (improbably) believed that the back door of the gray trailer was actually the front door:

Q. . . . So you went into the backdoor of this gray trailer; is that correct?

A. At the time I perceived that to be the actual front of the residence.

Q. But you knew that there was a dirt road that went in front of the residence.

A. Again, I followed to where the defendants were standing in front of, and that was the nearest access to it. . .

Q. But you knew there was a dirt road in the front that ran in front of the gray trailer?

A. No ma'am. I just – I followed – like I said, I went to where the suspects were apprehended and I went into that door.

That is the door that I went into.

[Doc 49-Pgs 91-92] But Rodriguez previously testified that the dirt road ran in front of the gray trailer. [Doc 49-Pgs 83-84, 92] His affidavit acknowledged that the “gray in color mobile home” was “located at the far end of the driveway.” [Doc 221- at 6] HSI Agent Miranda also recalled a dirt road winding its way in front of the various residences. [Doc 49-Pg 142]

The execution of the search warrant was unreasonable, too, for Rodriguez went first to Pablo Rangel’s home, talked to Rangel’s wife, and never confirmed his belief that that was, in fact, Rangel’s home. [Doc 49-Pg 81] HSI Agent Miranda himself “knew where Pablo Rangel lived *because of the search warrant*”: the tan mobile home, which was the “nicer house” and “[t]he bigger dwelling as you drive into the property.” [Doc 49-Pgs 142-143][emphasis added] Nonetheless, Rodriguez instead went to the outdoor area where Rangel had been detained and then proceeded to search every other residence on the property. [Doc 49-Pgs 89, 97-99]

Citing United States v. Burke, 784 F.2d 1090, 1093 (11th Cir. 1986), the government contended before the district court that the

presence of Detective Rodriguez, who “knew precisely which premises were to be searched,” resolved “any arguable ambiguity” in the search warrant affidavit. [Doc 30-Pg 8] In Burke, Agent Benesh accompanied a confidential informant to the defendant’s apartment complex, where the CI pointed out the defendant’s building and specific apartment, including “840” on the defendant’s door. Id. at 1091. While the warrant recited that the defendant lived at 38 Throop Street, apartment 840, she actually lived at 48 Troup Street, apartment 840. Id. “In evaluating the effect of a wrong address on the sufficiency of a warrant,” the Court noted that “Agent Benesh knew precisely which premises were to be searched,” and “he pointed out the correct apartment to the executing officer,” which ensured “that there was no possibility the wrong premises would be searched.” Id. at 1092-93. Those circumstances met the Fourth Amendment’s particularity requirement because the warrant “described the premises to be searched with sufficient particularity to direct the officers to the correct apartment, to confine the officers’ examination to that apartment, and to place the occupants on sufficient notice of the officers’ authority to search the premises.” Id. at 1093.

Burke is inapposite to this case. Contrary to the government's argument, Detective Rodriguez had no idea what 275 Milton Rahn Road looked like, although he knew that Pablo Rangel lived in the tan mobile home. Detective Rodriguez' November 13, 2017, report – generated after Martinez filed his suppression motion – proved as much. [Doc 39-1] Detective Rodriguez obtained his information from Effingham County tax records and officers. [Id. at 4] The report established that Detective Rodriguez had never seen 275 Milton Rahn Road, meaning that he had absolutely no idea who resided in the other trailers. But the report demonstrated that Detective Rodriguez believed that Pablo Rangel did, in fact, reside in the tan home.

First, Detective Rodriguez reported, “I was armed with the warrant so I was to travel to the large house where the suspect is suspected to possibly be living.” [Id. at 4] Rodriguez “pulled into the front of the residence”; officers “searched for Pablo however he was not inside”; and the detective then learned that “Pablo and two other males were currently detained” at the back of the property. [Id. at 5] At this point, with Rangel detained, Rodriguez apparently never asked Rangel to identify his residence, but elected to begin searching *other* residences

on the property. [Id.] Only *after* Detective Rodriguez searched Martinez' trailer, a "small homemade shack" in which Juan Rangel lived, *and* a dwelling described as "Camper #3" did the detective "walk[] back to the main house," speak with Pablo Rangel's wife, and determine that "she lives in this house with her husband Pablo and their kids." [Id. at 7] Rodriguez' actions are disingenuous, for HSI Agent Miranda always knew that Rangel lived in the tan residence, thanks to the search warrant. [Doc 49-Pg 142]

"The manifest purpose of this particularity requirement was to prevent general searches." Garrison, 480 U.S. at 84. Here, the warrant lacked particularity in describing the premises to be searched. This problem was not solved by the way officers executed the warrant: The officers' conduct was not "consistent with a reasonable effort to ascertain and identify the place intended to be searched within the meaning of the Fourth Amendment." Garrison, 480 U.S. at 88-89. When they came upon a mobile home with a deadbolt and a separate house number (135 Milton Rahn Road), they did not act reasonably to limit the scope of the search by excluding a residence to which Pablo Rangel

had no access. Compare United States v. Schwinn, 376 Fed. Appx. 974, 983 (11th Cir. 2010)(finding no Fourth Amendment violation where warrant authorized search of “Unit 302,” which was a collection of separate bedrooms with common washing and cooking facilities, and officers did not search a locked bedroom because Schwinn informed them that it belonged to his roommate and he had no access). Thus, officers did not reasonably execute the warrant.

The lack of particularity in the warrant – uncured by the execution of that warrant – required granting Martinez’ suppression motion.

3. The good faith exception to the exclusionary rule does not apply.

There was no probable cause to search 135 Milton Rahn Road, and the warrant lacked particularity in describing the places to be searched, a defect not cured by how officers executed the warrant. These Fourth Amendment violations necessitate suppression of the evidence obtained in the search of 135 Milton Rahn Road. While the district court believed that the good faith exception to the exclusionary rule applied, see generally United States v. Leon, 468 U.S. 897 (1984),

precedent forecloses this argument. See Groh v. Ramirez, 540 U.S. 551, 564 (2004)(opining that no reasonable officer could believe that a warrant that plainly failed to comply with particularity requirement was valid, and that no reasonable officer could claim not to know the “basic rule” that a warrantless search of a home is invalid); Garrison, 480 U.S. at 85 (observing that officers “plainly” should have excluded second apartment if they had known, or should have known, that it was a separate dwelling); United States v. Ellis, 971 F.2d 701, 704 (11th Cir. 1992)(refusing to apply good faith exception where officers employed procedures that risked a general search and failed to take “every step that could reasonably be expected of them” to search only the correct premises); cf. Hartsfield, 50 F.3d at 955 (noting in civil context that “[g]iven the guidance of the Garrison court’s description of reasonable police efforts, all reasonable police officers should have known that [t]he officer’s acts – searching the wrong residence when he had done nothing to make sure he was searching the house described in the warrant – violated the law”).

As an initial matter, the district court improperly placed the burden on Martinez to prove that good faith exception to the

exclusionary rule did not apply. To wit, the R&R found that Martinez “asserts that the good faith doctrine does not apply . . . but he never explains clearly which of these four exceptions to that doctrine he is relying upon.” [Doc 45-Pg 20] The R&R points to other perceived faults with Martinez’ good faith “showing.” [Doc 45-Pgs 20-21]

Contrary to these findings, the government – *not* Martinez – bears the burden of demonstrating that the Leon good faith exception to the exclusionary rule applies. See United States v. Robinson, 336 F.3d 1293, 1297 (11th Cir. 2003).

Even beyond the improper burden shifting, the district court made incorrect findings. First, the R&R stated that Rodriguez “had been assured by local deputies that 275 Milton Rahn Road served as the address for all of the dwellings on Rangel’s property.” [Doc 45-Pg 22] While Rodriguez said he had been told that “[i]n the property there was actually campers and trailers,” he did not know about the address:

THE COURT: Did you know whether or not any of these other dwellings or any of the dwellings had listed addresses separate from number 275?

THE WITNESS: No, sir.

[Doc 49-Pg 27] The R&R also concluded that once Rodriguez

“accumulated this evidence [he] conferred with both his superiors and an assistant district attorney, who agreed that the probable cause threshold was met.” [Doc 45-Pgs 22-23] The testimony does not support this assertion. Here is Rodriguez’ actual testimony about his superiors’ role:

. . . On this particular occasion, this was *proofread* by a sergeant as well as a captain in the criminal investigations division.

[Doc 49-Pgs 12-13][emphasis added] As far as the ADA’s role, Rodriguez’ testimony is incredibly confusing:

Q. In this particular case was this presented to a prosecuting attorney?

A. As far as the search warrant goes, no. As far as the information reference to the search warrant to obtain a search warrant, that was with Assistant District Attorney Frank Pennington from the Chatham County DA’s office.

THE COURT: So the answer is you did – the warrant was reviewed by –

THE WITNESS: It was – I verbally annotated what the context of the search warrant was to see if I had enough probable cause to obtain a search warrant.

[Doc 49-Pg 14] Rodriguez’ testimony reflected that the ADA never reviewed the search warrant, but received some unspecified

“information reference to the search warrant to obtain a search warrant” and a “verbal annotat[ion] [of] what the context of the search warrant was.” There is no indication that the ADA knew that officers intended a search of *everyone’s* residence on an affidavit that explicitly sought to establish probable cause only to search a single residence: the one belonging to Pablo Rangel.

The only other witness at the suppression hearing, HSI Agent Miranda, testified that he did not read the search warrant and that officers merely relied on what Rodriguez told them at the operational briefing. [Doc 49-Pg 139] Agent Miranda nonetheless knew where Pablo Rangel lived because of the search warrant. [Doc 49-Pg 142]

As the district court noted, Leon identified situations where the “excursionary rule continues to apply in circumstances where the officer has ‘no reasonable grounds for believing that that warrant was properly issued.’” [Doc 45-Pg 20, citing Leon, 468 U.S. at 922-23] These include a warrant “based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable” and a warrant “so facially deficient . . . in failing to particularize the place to be searched . . . that the executing officers

cannot reasonably presume it to be valid.” Leon, 468 U.S. at 923. Even if the warrant gave probable cause to search Pablo Rangel’s tan mobile home based upon his being the only suspect identified in the murder of Eliud Montoya, it utterly lacked indicia of probable cause to search *three other homes* and *eight to ten vehicles* on the 26.65 acre parcel. Detective Rodriguez’ affidavit stated that probable cause existed to search Pablo Rangel’s residence; the only time the affidavit and warrant used “residence” was to describe Rangel’s tan mobile home. A federal law enforcement officer knew that Rangel lived in that home by virtue of the search warrant. The inclusion of these other homes – the “multiple trailers” – merely described what was on the parcel.

The exclusionary rule applies, so the motion to suppress should have been granted.

CONCLUSION

There are reasons why the prosecuting AUSA and federal magistrate judge would never have (respectively) brought and issued this search warrant: It was fatally defective. “‘At the very core’ of the Fourth Amendment ‘stands the right of a man to retreat into his own home and there be free from unreasonable government intrusion.’”

Kyllo v. United States, 533 U.S. 27, 31 (2001). Indeed, it is a “‘basic principle of Fourth Amendment law’ that searches and seizures inside a home without a warrant are presumptively unreaasonble.” Payton v. New York, 445 U.S. 573, 586 (1980). Officers lacked probable cause to search 135 Milton Rahn Road, and as reflected in the terms of the affidavit and warrant, they knew that the gray mobile home was separate dwelling *not* occupied by Pablo Rangel. Nonetheless, they searched it. Detective Rodriguez made no recitations as to why automobiles parked on the 26.65 acres of land should be search. Again, officers searched those cars. Given the Fourth Amendment violations inherent in those actions, the district court erred when it denied Martinez’ motion to suppress, and this Court should reverse that judgment.

Respectfully submitted this 17th day of August, 2018.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-column limitations of Fed. R. App. P. 32 (a)(7)(B) because this brief contains 9,511 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word Perfect X6 in Century Schoolbook 14 point font.

This 17th day of August, 2018.

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CERTIFICATE OF SERVICE

Today I served a copy of this Brief of the Appellant on the government by filing it on the Court's CM/ECF portal, which generates a notice of electronic filing that is delivered to all counsel of record, along with an link to retrieve a file-stamped copy of the document that I filed.

This 17th day of August, 2018.

/s/ Amy Lee Copeland

Amy Lee Copeland
Georgia Bar No. 186730
Attorney for Appellant

Rouse + Copeland LLC
602 Montgomery Street
Savannah, Georgia 31401
912-544-0910
ALC@roco.pro

SAMPLE CERTIFICATE OF COMPLIANCE

General Information

A certificate of compliance (“CoC”) is required whenever a word limit or line limit is used, except for the word limit for supplemental authorities in FRAP 28(j). In computing the limits, the items listed in FRAP 32(f) may be excluded. You may rely on the word or line count of the word-processing system used to prepare the document.

Briefs

- CoC is **required** for briefs filed in reliance on a word or line limit
- CoC is **not required** for briefs filed in reliance on page limits

CoC is required for a brief submitted under:

- FRAP 28.1(e)(2), 29(b)(4), or 32(a)(7)(B); or
- FRAP 29(a)(5) (if length is computed using a word or line limit).

Motions, Responses, Replies, Petitions, and Answers

- CoC is **required** if paper is produced using a computer (word limits apply)
- CoC is **not required** if paper is handwritten or typewritten (page limits apply)

CoC is required for a paper produced using a computer under:

- FRAP 5(c)(1) (a petition for permission to appeal, cross-petition, and any answer),
- FRAP 21(d)(1) (a petition for a writ of mandamus or prohibition, or other extraordinary writ, and any answer),
- FRAP 27(d)(2)(A) (a motion or response to a motion),
- FRAP 27(d)(2)(C) (a reply to a motion),
- FRAP 35(b)(2)(A) (a petition for an en banc hearing or rehearing), or
- FRAP 40(b)(1) (a petition for panel rehearing).

Application for a Certificate of Appealability

- CoC is required if a CoC would otherwise be required under FRAP 32(a)(7)(B).
See 11th Cir. R. 22-2.

A sample certificate of compliance is on the next page.

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT,
TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS**

Check the appropriate box in section 1, and check the box in section 2.

1. Type-Volume

☐ This document complies with the word limit of FRAP [insert Rule citation]
because, excluding the parts of the document exempted by FRAP 32(f) and
[insert applicable Rule citation, if any], this document contains
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[insert applicable Rule citation, if any], this brief uses a monospaced
typeface and contains [state the number of] lines of text.

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☐ This document complies with the typeface requirements of FRAP 32(a)(5) and the
type-style requirements of FRAP 32(a)(6).

(s) _____

Attorney for _____

Dated: _____

APPENDIX CHECKLIST

CRIMINAL CASES

Required Contents. In an appeal in a criminal case, the appellant must file an Appendix containing:

- ☐ 1. Index
- ☐ 2. District Court docket sheet

Items 3-13 to be arranged chronologically by date of entry into the record:

- ☐ 3. Indictment, information, or petition as amended
- ☐ 4. Parts of any pretrial order relevant to issues on appeal
- ☐ 5. Judgment or interlocutory order appealed from
- ☐ 6. Other order(s) sought to be reviewed
- ☐ 7. Supporting opinion, findings of fact and conclusions of law filed or delivered orally by the court
- ☐ 8. Jury instruction (if correctness in issue)
- ☐ 9. Magistrate's report and recommendation, when appealing a court order adopting same in whole or in part
- ☐ 10. Relevant parts of any document whose interpretation is central to the issues on appeal
- ☐ 11. If any issue concerns the guilty plea, the transcript of the guilty plea colloquy and any written plea agreement
- ☐ 12. If any issue concerns the sentence, the transcript of the sentencing proceeding, and the presentence investigation report and addenda, under seal in a separate envelope
- ☐ 13. Any other pleadings, affidavits, transcripts, filings, documents, or exhibits that appellant believes will be helpful to this Court in deciding the appeal
- ☐ 14. Certificate of Service, if required by FRAP 25(d)

Form:

- ☐ Durable White Covers (front & back)
- ☐ Indexing Tabs (Tab numbers corresponding to district court document numbers)
- ☐ No more than 250 single-sided sheets of paper in each volume

Number Required:

- ☐ Prisoner Pro Se: None
- ☐ Pro Se IFP: 1 paper copy
- ☐ Other: 2 paper copies
- ☐ Filers using the ECF system must also file electronically

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-15127-C

UNITED STATES OF AMERICA,

Appellee,

vs.

WILLIAM RANDALL COLLINS,

Defendant-Appellant.

Direct appeal from a conviction and sentence entered
in the United States District Court for the
Southern District of Georgia

APPENDIX

Amy Lee Copeland
Rouse + Copeland LLC
Post Office Box 23358
Savannah, Georgia 31403
(912) 544-0910

Attorney for Appellant

INDEX

District Court Docket Sheet. Dkt

Indictment. 1

Plea Agreement. 36

Judgment 44

Sentencing Transcript. 63

Rule 11 Transcript. 65

PSI and Addendum. SEALED

DKT

District Court Docket Sheet

U.S. District Court
Southern District of Georgia (Statesboro)
CRIMINAL DOCKET FOR CASE #: 6:16-cr-00014-LGW-GRS-1

Case title: USA v. Collins

Date Filed: 09/08/2016

Assigned to: Judge Lisa G. Wood

Referred to: Magistrate Judge G. R. Smith

Appeals court case number: 17-15127-C

11th Circuit

Defendant (1)**William Randall Collins**represented by **Amy Lee Copeland**

Amy Lee Copeland, LLC

P.O. Box 23358

Savannah, GA 31403

912-544-0910

Fax: 912-349-6097

Email: ALC@roco.pro

*LEAD ATTORNEY**ATTORNEY TO BE NOTICED**Designation: CJA Appointment***Walter Scott Brannen**

The Brannen Law Office, P.C.

209 Savannah Avenue

P.O. Box 905

Statesboro, GA 30459

912-489-8621

Fax: 912-259-1621

Email: scott@brannenlawpc.com

*TERMINATED: 12/06/2017**LEAD ATTORNEY**ATTORNEY TO BE NOTICED**Designation: CJA Appointment***Pending Counts**

18 USC 922(g)(1)-Possession of a Firearm
by a Convicted Felon
(1)

Disposition

BOP 57 months as to each Count 1 &
Count 2 concurrently / 3 years supervised
release as to each Count 1 & Count 2
concurrently / standard and mandatory

18 USC 922(g)(1)-Possession of a Firearm
by a Convicted Felon
(2)

conditions / collection of DNA / substance
abuse testing / submit to searches /
\$200.00 special assessment

BOP 57 months as to each Count 1 &
Count 2 concurrently / 3 years supervised
release as to each Count 1 & Count 2
concurrently / standard and mandatory
conditions / collection of DNA / substance
abuse testing / submit to searches /
\$200.00 special assessment

Highest Offense Level (Opening)

Felony

Terminated Counts

None

Disposition

Highest Offense Level (Terminated)

None

Complaints

None

Disposition

Plaintiff

USA

represented by **Jennifer Gayle Solari**
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Case: 17-15127 Date Filed: 01/19/2018 Page: 6 of 91

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Email: brian.rafferty@usdoj.gov

*TERMINATED: 12/07/2017**Designation: Retained*

Date Filed	#	Docket Text
09/08/2016	<u>1</u>	INDICTMENT as to William Randall Collins (1) count(s) 1-2. (jrb) (Additional attachment(s) added on 9/12/2016: # <u>1</u> Signature Page) (jrb). (Entered: 09/12/2016)
09/08/2016	<u>2</u>	PENALTY CERTIFICATION by Government as to William Randall Collins. (jrb) (Entered: 09/12/2016)
09/12/2016		NOTICE OF HEARING as to William Randall Collins. Initial Appearance only set for 9/13/2016 09:30 AM in Brunswick - Courtroom No. 1 - before Magistrate Judge R. Stan Baker. (pmh) (Entered: 09/12/2016)
09/12/2016	<u>6</u>	CJA 23 Financial Affidavit as to William Randall Collins. (pmh) (Entered: 09/12/2016)
09/13/2016	<u>7</u>	Minute Entry for proceedings held before Magistrate Judge R. Stan Baker: Initial Appearance as to William Randall Collins held on 9/13/2016. Financial affidavit provided - Court will appoint counsel to represent Defendant. Consular Notification waiver executed. Government requests detention - Defendant detained pending detention hearing. (Tape #FTR-CR1.) (pmh) (Entered: 09/13/2016)
09/13/2016	<u>8</u>	Consular Notification Waiver Executed as to William Randall Collins. (pmh) (Entered: 09/13/2016)
09/14/2016	<u>9</u>	ORDER continuing detention hearing to be set at a date to be determined. Defendant William Randall Collins shall be temporarily detained in the custody of the United States Marshal or any authorized officer pending the detention hearing. Signed by Magistrate Judge R. Stan Baker on 9/14/16. (slt) (Entered: 09/14/2016)

09/23/2016		Case: 17-15127 Date Filed: 01/19/2018 Page: 7 of 91 Attorney update in case as to William Randall Collins. Attorney Walter Scott Brannen for William Randall Collins added. (sff) (Entered: 09/23/2016)
09/23/2016	10	NOTICE OF HEARING as to William Randall Collins. Arraignment set for 9/26/2016 01:00 PM in Statesboro - 1st Floor Courtroom before Magistrate Judge G. R. Smith. Initial Appearance set for 9/26/2016 01:00 PM in Statesboro - 1st Floor Courtroom before Magistrate Judge G. R. Smith. (sff) (Entered: 09/23/2016)
09/23/2016		*****Reset Hearings as to William Randall Collins: Arraignment set for 9/26/2016 01:00 PM in Statesboro - 1st Floor Courtroom before Magistrate Judge G. R. Smith. Detention Hearing set for 9/26/2016 01:00 PM in Statesboro - 1st Floor Courtroom before Magistrate Judge G. R. Smith. (sff) (Entered: 09/23/2016)
09/23/2016	12	CJA 20 as to William Randall Collins: Appointment of Attorney Walter Scott Brannen. Signed by Magistrate Judge G. R. Smith on 9/23/16. (jrb) (Entered: 09/26/2016)
09/26/2016	11	NOTICE OF ATTORNEY APPEARANCE: Walter Scott Brannen appearing for William Randall Collins <i>Entry of Appearance</i> (Brannen, Walter) (Entered: 09/26/2016)
09/26/2016	13	NOTICE TO DEFENSE COUNSEL: Important Defense Representation Packet attached CLICK HERE TO READ including POST Conviction obligations, CJA Voucher Document mailed to Attor ney. (jrb) (Entered: 09/26/2016)
09/26/2016	14	Minute Entry for proceedings held before Magistrate Judge G. R. Smith:Arraignment as to William Randall Collins (1) Count 1-2 held on 9/26/2016, Detention Hearing as to William Randall Collins held on 9/26/2016; DFT CONSENTS TO DETENTION AT THIS TIME. (Court Reporter FTR.) (sff) (sff). (Entered: 09/26/2016)
09/27/2016	15	SCHEDULING ORDER as to William Randall Collins Motions due by 10/7/2016.. Signed by Magistrate Judge G. R. Smith on 9/26/16. (trb) (Entered: 09/27/2016)
10/06/2016	16	First MOTION for Witness List <i>Demand for List of Witnesses</i> by Walter Scott Brannen as to William Randall Collins. Responses due by 10/24/2016. (Brannen, Walter) (Entered: 10/06/2016)
10/06/2016	17	DISCOVERY STATEMENT filed by Defendant William Randall Collins. (Brannen, Walter) (Entered: 10/06/2016)
10/06/2016	18	First MOTION for Discovery <i>Demand for Defendant's Prior Criminal History</i> by Walter Scott Brannen as to William Randall Collins. Responses due by 10/24/2016. (Brannen, Walter) (Entered: 10/06/2016)
10/06/2016	19	First MOTION to Inspect <i>Demand to Inspect Copy Photograph or Test Evidence</i> by Walter Scott Brannen as to William Randall Collins. Responses due by 10/24/2016. (Brannen, Walter) (Entered: 10/06/2016)
10/06/2016	20	First MOTION for Discovery <i>Demand for Discovery of Physical or Mental Exam</i> by Walter Scott Brannen as to William Randall Collins. Responses due by 10/24/2016. (Brannen, Walter) (Entered: 10/06/2016)
10/06/2016	21	First MOTION for Discovery <i>Demand for Statements of Witnesses</i> by Walter Scott Brannen as to William Randall Collins. Responses due by 10/24/2016. (Brannen, Walter) (Entered: 10/06/2016)

10/06/2016	22	Case: 17-15127 Date Filed: 01/19/2018 Page: 8 of 91 First MOTION for Release of Brady Materials <i>Motion for information necessary to receive a Fair Trial</i> by Walter Scott Brannen as to William Randall Collins. Responses due by 10/24/2016. (Brannen, Walter) (Entered: 10/06/2016)
10/06/2016	23	First MOTION to Reveal Consideration, Promises and/or deal by Walter Scott Brannen as to William Randall Collins. Responses due by 10/24/2016. (Brannen, Walter) (Entered: 10/06/2016)
10/06/2016	24	First MOTION to Preserve Evidence by Walter Scott Brannen as to William Randall Collins. Responses due by 10/24/2016. (Brannen, Walter) (Entered: 10/06/2016)
10/06/2016	25	First MOTION for Discovery <i>Motion Reserving Right to File Additional Motions</i> by Walter Scott Brannen as to William Randall Collins. Responses due by 10/24/2016. (Brannen, Walter) (Entered: 10/06/2016)
10/06/2016	26	NOTICE of Intent to Use Evidence by William Randall Collins <i>Demand For Disclosure of Any Testimony That the Government Intends to Offer as Evidence</i> (Brannen, Walter) (Entered: 10/06/2016)
10/11/2016		MOTIONS as to William Randall Collins REFERRED to Magistrate Judge: 23 First MOTION to Reveal Consideration, Promises and/or deal , 22 First MOTION for Release of Brady Materials <i>Motion for information necessary to receive a Fair Trial</i> , 19 First MOTION to Inspect <i>Demand to Inspect Copy Photograph or Test Evidence</i> , 18 First MOTION for Discovery <i>Demand for Defendant's Prior Criminal History</i> , 21 First MOTION for Discovery <i>Demand for Statements of Witnesses</i> , 25 First MOTION for Discovery <i>Motion Reserving Right to File Additional Motions</i> , 20 First MOTION for Discovery <i>Demand for Discovery of Physical or Mental Exam</i> , 24 First MOTION to Preserve Evidence , 16 First MOTION for Witness List <i>Demand for List of Witnesses</i> (jrb) (Entered: 10/11/2016)
10/14/2016	27	RESPONSE by USA as to William Randall Collins <i>to Defense Pretrial Motions (docs. 16-26)</i> (Solari, Jennifer) Modified on 10/26/2016 (slt). (Entered: 10/14/2016)
10/17/2016	28	NOTICE TO COUNSEL: Important Motions Hearing form attached. E-FILE FORM NO LATER THAN 10-24-16. (sff) (Entered: 10/17/2016)
10/20/2016	29	Entered In Error. (Brannen, Walter) Modified on 10/21/2016 (trb). (Entered: 10/20/2016)
10/21/2016	30	Notice to Counsel Response (Brannen, Walter) (Entered: 10/21/2016)
10/26/2016		Terminate Expired Deadlines and Hearings as to William Randall Collins. (slt) (Entered: 10/26/2016)
11/04/2016	31	ORDER finding as moot 16 Motion for Witness List (1); finding as moot 18 Motion for Discovery (1); finding as moot 19 Motion to Inspect (1); finding as moot 20 Motion for Discovery (1); finding as moot 21 Motion for Discovery (1); finding as moot 22 Motion for Release of Brady Materials (1); finding as moot 23 Motion to Reveal (1); finding as moot 25 Motion for Discovery as to William Randall Collins (1). Signed by Magistrate Judge G. R. Smith on 11/4/2016. (loh) (Entered: 11/04/2016)
11/04/2016	32	NOTICE of Signed Plea Agreement by USA (Solari, Jennifer) (Entered: 11/04/2016)

11/07/2016	33	Case: 17-15127 Date Filed: 01/19/2018 Page: 9 of 91 NOTICE OF HEARING as to William Randall Collins. Change of Plea Hearing set for 11/17/2016 02:30 PM in Statesboro - 1st Floor Courtroom before Chief Judge Lisa G. Wood. (WS) (Entered: 11/07/2016)
11/17/2016	34	Minute Entry for proceedings held before Chief Judge Lisa G. Wood: Change of Plea Hearing as to William Randall Collins held on 11/17/2016 (Court Reporter Debbie Gilbert.) (KM) (Entered: 11/17/2016)
11/17/2016	35	CHANGE OF PLEA entered by William Randall Collins (1) Guilty Count 1-2. (trb) (Entered: 11/18/2016)
11/17/2016	36	PLEA AGREEMENT as to William Randall Collins. (trb) (Entered: 11/18/2016)
11/17/2016		Plea Agreement Accepted as to William Randall Collins. (trb) (Entered: 11/18/2016)
01/17/2017	37	MOTION for Leave of Absence as to USA for dates of : 1/30/17 through 2/3/17. Responses due by 1/31/2017. (Solari, Jennifer) (Entered: 01/17/2017)
01/18/2017		MOTIONS as to William Randall Collins REFERRED to Magistrate Judge: 37 MOTION for Leave of Absence as to USA for dates of : 1/30/17 through 2/3/17. (trb) (Entered: 01/18/2017)
04/05/2017	38	MOTION for Leave of Absence Requested by W. Scott Brannen, Esquire for dates of: April 21-24, 2017, May 17-19, 2017, and June 21-23, 2017, as to William Randall Collins. Responses due by 4/19/2017. (Attachment: # 1 Envelope). REFERRED to Judge G. R. Smith. (csr) (Entered: 04/05/2017)
04/10/2017	39	TEXT ORDER finding as moot 37 Motion for Leave of Absence as to William Randall Collins (1) (sff) (Entered: 04/10/2017)
04/10/2017	40	TEXT ORDER granting 38 Motion for Leave of Absence as to William Randall Collins (1). The attorney must make arrangements for other counsel to appear in the event the case is scheduled for hearing or trial during such leave. (sff) (Entered: 04/10/2017)
06/21/2017	41	NOTICE OF HEARING as to William Randall Collins. Sentencing set for 7/28/2017 01:30 PM in Statesboro - 1st Floor Courtroom before Judge Lisa G. Wood. (WS) (Entered: 06/21/2017)
07/28/2017	43	Minute Entry for proceedings held before Judge Lisa G. Wood: Sentencing held on 8/3/2017 for William Randall Collins (1), Count(s) 1-2, BOP 57 months as to each Count 1 & Count 2 concurrently / 3 years supervised release as to each Count 1 & Count 2 concurrently / standard and mandatory conditions / collection of DNA / substance abuse testing / submit to searches / \$200.00 special assessment. (Court Reporter Debi Gilbert.) (slt) Modified on 8/4/2017 (slt). (en). Modified on 10/4/2017 (slt). (Entered: 08/04/2017)
08/02/2017	42	Notice of Post-Conviction Consultation Certification (Attachments: # 1 POST CONVICTION CONSULTATION CERTIFICATION)(Brannen, Walter) (Entered: 08/02/2017)
08/03/2017	44	JUDGMENT as to William Randall Collins (1) - Count(s) 1-2: BOP 57 months as to each Count 1 & Count 2 concurrently / 3 years supervised release as to each Count 1 & Count 2 concurrently / standard and mandatory conditions / collection of DNA /

		Case: 17-15127 Date Filed: 01/19/2018 Page: 10 of 91 substance abuse testing / submit to searches / \$200.00 special assessment. Signed by Judge Lisa G. Wood on 8/3/17. (slt) (Entered: 08/04/2017)
10/10/2017	45	CJA 20 as to William Randall Collins: Authorization to Pay Walter Scott Brannen. Amount: \$2,565.60, Voucher # 113J.0121511. Signed by Judge Lisa G. Wood on 10/10/17. (jrb) (Entered: 10/10/2017)
11/03/2017	46	Letter from William Collins regarding his appeal. (jrb) (Entered: 11/03/2017)
11/03/2017	47	ORDER directing Counsel to file with the Court the Defendant's timely-filed appeal or otherwise explain why Collins' appeal has not yet been filed within seven days from the service of this order as to William Randall Collins. Signed by Magistrate Judge G. R. Smith on 11/3/17. (jrb) (Entered: 11/06/2017)
11/06/2017		Set/Reset Deadlines as to William Randall Collins: Compliance due by 11/13/2017. (jrb) (Entered: 11/06/2017)
11/17/2017	48	NOTICE OF APPEAL by William Randall Collins (Brannen, Walter) (Entered: 11/17/2017)
11/17/2017	49	Sentencing Document Filed and Sealed as to William Randall Collins (BDS) (Entered: 11/17/2017)
11/17/2017	50	Transmission of Notice of Appeal and Docket Sheet as to William Randall Collins to US Court of Appeals. Related Documents: 44 Judgment, 48 Notice of Appeal - Final Judgment. Other Appeals: No, Judge Appealed: Judge Lisa G. Wood Court, Reporter: Debra Gilbert, Fee Paid: No, Pending COA/IFP: No. (jrb) (Entered: 11/17/2017)
11/28/2017	51	USCA Case Number as to William Randall Collins 17-15127-C for 48 Notice of Appeal - Final Judgment filed by William Randall Collins. (jrb) (Entered: 11/30/2017)
11/28/2017	53	Appeal Remark: CJA Appointment of Walter Scott Brannen re 48 Notice of Appeal - Final Judgment. (jrb) (Entered: 11/30/2017)
11/30/2017	52	NOTICE OF HEARING as to William Randall Collins. Show Cause Hearing set for 12/5/2017 02:00 PM in Savannah - Mag Jud Courtroom before Magistrate Judge G. R. Smith. (sff) (Entered: 11/30/2017)
11/30/2017	54	ORDER TO SHOW CAUSE to explain why counsel failed to comply with this Court's November 3, 2017 Order as to William Randall Collins. Show Cause Hearing set for 12/5/2017 02:00 PM in Savannah. Signed by Magistrate Judge G. R. Smith on 11/30/17. (jrb) (Entered: 11/30/2017)
11/30/2017	55	MOTION to Appoint Counsel by William Randall Collins. Responses due by 12/14/2017. (jrb) (Entered: 11/30/2017)
12/01/2017		MOTIONS as to William Randall Collins REFERRED to Magistrate Judge: 55 MOTION to Appoint Counsel. (jrb) (Entered: 12/01/2017)
12/04/2017		Terminate Deadlines and Hearings as to William Randall Collins: Re 47 order. (jrb) (Entered: 12/04/2017)
12/05/2017	56	Minute Entry for proceedings held before Magistrate Judge G. R. Smith:Show Cause Hearing as to William Randall Collins held on 12/5/2017; NEW COUNSEL ON

		Case: 17-15127 Date Filed: 01/19/2018 Page: 11 of 91 APPEAL WILL BE APPOINTED; COURT WILL ALLOW NEW COUNSEL TO FILE AN OUT-OF-TIME APPEAL; GOV'T DOES NOT OPPOSE. (Court Reporter FTR.) (sff) (Entered: 12/05/2017)
12/06/2017	57	ORDER granting 55 Motion to Appoint Counsel as to William Randall Collins. The Court relieves counsel of his representation in this case. Signed by Magistrate Judge G. R. Smith on 12/6/17. (wwp) (Entered: 12/06/2017)
12/07/2017		Attorney update in case as to William Randall Collins. Attorney Amy Lee Copeland for William Randall Collins added. Attorney James D. Durham, AUSA and Edward J. Tarver terminated. (sff) (Entered: 12/07/2017)
12/07/2017	58	CJA 20 - TEXT ORDER for Appointment of Attorney as to William Randall Collins: Appointment of Attorney Amy Lee Copeland FOR APPEAL PURPOSES ONLY. Signed by Magistrate Judge G. R. Smith on 12/07/17. (sff) (Entered: 12/07/2017)
12/13/2017	59	TRANSCRIPT REQUEST by William Randall Collins for proceedings held on 11/17/16, 7/28/17, 12/5/17 before Judge Wood, Judge Smith, (Copeland, Amy) Modified on 12/15/2017 (jrb). (Entered: 12/13/2017)
12/13/2017	62	Appeal Remark re 48 Notice of Appeal - Final Judgment : USCA appointment of Amy Lee Copeland. (jrb) (Entered: 12/19/2017)
12/14/2017	60	Court Reporter Acknowledgment re 48 Notice of Appeal - Final Judgment - Transcript Request. (ca) (Entered: 12/14/2017)
12/14/2017	61	Mail Returned as Undeliverable. Mail sent to William Randall Collins. (jrb) (Entered: 12/15/2017)
12/22/2017	66	ORDER as to William Randall Collins re: request and authorization of transcript. Signed by Judge Lisa G. Wood on 12/14/17. (slt) (Entered: 01/02/2018)
12/31/2017	63	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings as to William Randall Collins held on 07/28/2017, before Judge Lisa Godbey Wood. Court Reporter/Transcriber Debbie Gilbert, Telephone number (912) 262-2608. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. (Transcript Redaction Policy Issued or Click here to view Transcript Redaction Policy) Redaction Request due 1/22/2018. Redacted Transcript Deadline set for 1/31/2018. Release of Transcript Restriction set for 4/2/2018. (Gilbert, Debra) (Entered: 12/31/2017)
12/31/2017	64	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings as to William Randall Collins held on 12/05/2017, before Judge G. R. Smith. Court Reporter/Transcriber Debbie Gilbert, Telephone number (912) 262-2608. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. (Transcript Redaction Policy Issued or Click here to view Transcript Redaction Policy) Redaction Request due 1/22/2018. Redacted Transcript Deadline set for 1/31/2018. Release of Transcript Restriction set for 4/2/2018. (Gilbert, Debra) (Entered: 12/31/2017)

12/31/2017

[65](#)

Case: 17-15127 Date Filed: 01/19/2018 Page: 12 of 91

NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings as to William Randall Collins held on 11/17/2016, before Judge Lisa Godbey Wood. Court Reporter/Transcriber Debbie Gilbert, Telephone number (912) 262-2608. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. (Transcript Redaction Policy Issued or Click here to view [redact.pl](#)>Transcript Redaction Policy) Redaction Request due 1/22/2018. Redacted Transcript Deadline set for 1/31/2018. Release of Transcript Restriction set for 4/2/2018. (Gilbert, Debra) (Entered: 12/31/2017)

PACER Service Center**Transaction Receipt**

01/18/2018 10:46:43

PACER Login:	al3636:3551635:0	Client Code:	collins
Description:	Docket Report	Search Criteria:	6:16-cr-00014-LGW-GRS
Billable Pages:	7	Cost:	0.70

1

Indictment

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION**

FILED
U.S. DISTRICT COURT
SAVANNAH DIV.

2016 SEP -8 PM 4:26

CLERK 
SO. DIST. OF GA.

CR

CR 616 - 14

UNITED STATES OF AMERICA

v.

WILLIAM RANDALL COLLINS,

Defendant

Possession of a Firearm by a
Convicted Felon
18 U.S.C. § 922(g)(1)
Forfeiture Allegation

THE GRAND JURY CHARGES:

COUNT 1

**POSSESSION OF A FIREARM BY A CONVICTED FELON
18 U.S.C. § 922(g)(1)**

That in or about October 2015, in Toombs County, within the Southern
District of Georgia, the defendant,

WILLIAM RANDALL COLLINS,

who before that time had been convicted of one or more offenses punishable by
imprisonment for more than one year, did knowingly and intentionally possess in
and affecting interstate commerce a firearm, to wit, a DPMS, model A15, .223 caliber
rifle, which firearm had been shipped and transported in interstate commerce before
October 2015, in violation of Title 18, United States Code Section 922(g)(1).

COUNT 2
POSSESSION OF A FIREARM BY A CONVICTED FELON
18 U.S.C. § 922(g)(1)

That in or about December 2015, in Toombs County, within the Southern District of Georgia, the defendant,

WILLIAM RANDALL COLLINS,

who before that time had been convicted of one or more offenses punishable by imprisonment for more than one year, did knowingly and intentionally possess in and affecting interstate commerce a firearm, to wit, a Ruger, model AR556, .223 caliber rifle, which firearm had been shipped and transported in interstate commerce before December 2015, in violation of Title 18, United States Code Section 922(g)(1).

FORFEITURE ALLEGATION

The allegations contained in Counts 1 and 2 of this Indictment are hereby realleged and incorporated by reference for purposes of alleging forfeitures pursuant to Title 18, United States Code, Section 924(d) and Title 28, United States Code, Section 2461(c).

Upon conviction of one or more of the offenses in violation of Title 18, United States Code, Section 922(g)(1) set forth in this Indictment, the defendant,

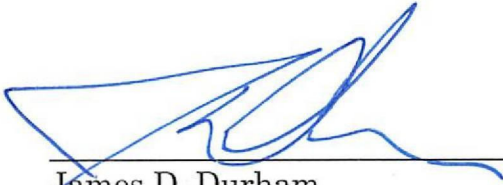
WILLIAM RANDALL COLLINS,

shall forfeit to the United States pursuant to Title 18, United States Code, Section 924(d) and Title 28, United States Code, Section 2461(c), any firearms and ammunition involved or used in the commission of the offense, including but not limited to:


one DPMS, model A15, .223 caliber rifle, S/N DNWC055777 and
one Ruger, Model AR556, .223 caliber rifle, S/N 850-66968.

A True Bill


Edward J. Tarver
United States Attorney



James D. Durham
First Assistant United States Attorney



Brian T. Rafferty
Assistant United States Attorney



Jennifer G. Solari*
Assistant United States Attorney

*lead counsel

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Plea Agreement

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

UNITED STATES OF AMERICA)
)
v.) CR 616-14
)
WILLIAM RANDALL COLLINS)

PLEA AGREEMENT

Defendant William Randall Collins, represented by his counsel Walter Scott Brannen, and the United States of America, represented by Assistant United States Attorney Jennifer G. Solari, have reached a plea agreement in this case. The terms and conditions of that agreement are as follows.

1. **Guilty Plea**

Defendant agrees to enter a plea of guilty to Counts One and Two of the Indictment, which charge violations of 18 U.S.C. § 922(g)(1).

2. **Elements and Factual Basis**

The elements necessary to prove the offense charged in Counts One and Two are (1) that Defendant knowingly possessed a firearm or ammunition in or affecting interstate or foreign commerce; and (2) that, before possessing the firearm or ammunition, Defendant had been convicted of a felony, that is, a crime punishable by imprisonment for more than one year.

Defendant agrees that he is, in fact, guilty of these offenses. He agrees to the accuracy of the following facts, which satisfy each of the offenses' required elements:

With regard to Count One, the defendant agrees that in or about October 2015, in Toombs County, within the Southern District of Georgia, the defendant,

WILLIAM RANDALL COLLINS,

who before that time had been convicted of one or more offenses punishable by imprisonment for more than one year, did knowingly and intentionally possess in and affecting interstate commerce a firearm, to wit, a DPMS, model A15, .223 caliber rifle, which firearm had been shipped and transported in interstate commerce before October 2015, in violation of Title 18, United States Code Section 922(g)(1).

With regard to Count Two, the defendant agrees that in or about December 2015, in Toombs County, within the Southern District of Georgia, the defendant,

WILLIAM RANDALL COLLINS,

who before that time had been convicted of one or more offenses punishable by imprisonment for more than one year, did knowingly and intentionally possess in and affecting interstate commerce a firearm, to wit, a Ruger, model AR556, .223 caliber rifle, which firearm had been shipped and transported in interstate commerce before December 2015, in violation of Title 18, United States Code Section 922(g)(1).

3. Possible Sentence

Defendant's guilty plea will subject him to the following maximum possible penalties for each count of conviction: 10 years' imprisonment, 3 years' supervised

release, a \$250,000 fine, such restitution as may be ordered by the Court, and forfeiture of all forfeitable assets.

4. No Promised Sentence

No one has promised Defendant that the Court will impose any particular sentence or a sentence within any particular range. The Court is not bound by any estimate of sentence given or recommendations made by Defendant's counsel, the government, the U.S. Probation Office, or anyone else. The Court may impose a sentence up to the statutory maximum. Defendant will not be allowed to withdraw his plea of guilty if he receives a more severe sentence than he expects.

5. Court's Use of Guidelines

The Court is obligated to use the United States Sentencing Guidelines to calculate the applicable guideline range for Defendant's offense and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a), in determining his sentence. The Sentencing Guidelines are advisory; the Court is not required to impose a sentence within the range those Guidelines suggest. The Sentencing Guidelines are based on all of Defendant's relevant conduct, pursuant to U.S.S.G. § 1B1.3, not just the facts underlying the particular Count to which Defendant is pleading guilty.

6. Agreements Regarding Sentencing Guidelines

a. Use of Information

The government is free to provide full and accurate information to the Court and U.S. Probation Office for use in calculating the applicable Sentencing Guidelines range.

b. Acceptance of Responsibility

The government will not object to a recommendation by the U.S. Probation Office that Defendant receive a two-level reduction in offense level for acceptance of responsibility pursuant to Section 3E1.1(a) of the Sentencing Guidelines. If the U.S. Probation Office makes that recommendation, and Defendant's offense level is 16 or greater prior to any reduction for acceptance of responsibility, the government will move for an additional one-level reduction in offense level pursuant to Section 3E1.1(b) based on Defendant's timely notification of his intention to enter a guilty plea.

7. Superseding Indictment

The government agrees not to seek a superseding indictment based upon evidence of violations of 18 U.S.C. §§ 922(a)(6) or 924(a)(1)(A) (False Statement During the Purchase of a Firearm), which evidence was obtained during the grand jury investigation of the instant case. The government and the defendant agree, however, that the information obtained during the grand jury investigation of the instant case is to be considered by the U.S. Probation Office and the Court in

determining the appropriate guideline range pursuant to the U.S. Sentencing Guidelines, and may be considered relevant conduct where appropriate.

8. Financial Obligations and Agreements

a. Restitution

The amount of restitution ordered by the Court shall include restitution for the full loss caused by Defendant's total criminal conduct. Restitution is not limited to the specific counts to which Defendant is pleading guilty. Any restitution judgment is intended to and will survive Defendant, notwithstanding the abatement of any underlying criminal conviction.

b. Special Assessment

Defendant agrees to pay a special assessment in the amount of \$200.00, payable to the Clerk of the United States District Court, which shall be due immediately at the time of sentencing.

c. Enforcement

Any payment schedule imposed by the Court is without prejudice to the United States to take all actions and remedies available to it to collect the full amount of the monetary penalties imposed by the judgment of the Court in this case. Defendant understands and agrees that the monetary penalties imposed by the judgment of the Court in this case will be placed on the Treasury Offset Program so that any federal payment that Defendant receives may be offset and applied to the judgment debt without regard to or affecting any payment schedule imposed by the Court.

9. Forfeiture

The defendant agrees to forfeit his interest in any firearms and ammunition involved or used in the knowing commission of the offense to which he has agreed to plead guilty, specifically, one DPMS, model A15, .223 caliber rifle and one Ruger, model AR556, .223 caliber rifle (collectively, "the Subject Property").

Defendant agrees to take all steps requested by the United States to facilitate transfer of title of the Subject Property to the United States, including but not limited to the signing of a consent order or decree, a stipulation of facts regarding the transfer and basis for the forfeiture, and any other documents necessary to effectuate such transfer. Defendant further agrees not to file any claim, answer, or petition for remission or restitution in any administrative or judicial proceeding pertaining to the Subject Property. If any such a document has already been filed, Defendant hereby withdraws that filing.

Defendant waives and abandons all right, title, and interest in the Subject Property. In addition, Defendant waives and abandons his interest in any other property that may have been seized in connection with this case.

Defendant agrees to hold the United States and its agents and employees harmless from any claims made in connection with the seizure, forfeiture, or disposal of property connected to this case. Defendant further agrees to waive the requirements of the Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. Defendant

acknowledges that he understands that the forfeiture of assets is part of the sentence that may be imposed in this case and waives any failure by the Court to advise him of this pursuant to Rule 11(b)(1)(J), at the time his guilty plea is accepted.

Defendant agrees to waive any and all constitutional, statutory, and equitable challenges on any grounds to the seizure, forfeiture, and disposal of any property seized in this case. Defendant specifically agrees to waive any claims, defenses or challenges arising under the Double Jeopardy Clause of the Fifth Amendment and the Excessive Fines Clause of the Eighth Amendment.

10. Waivers

a. Waiver of Appeal

Defendant entirely waives his right to a direct appeal of his conviction and sentence on any ground. The only exceptions are that the Defendant may file a direct appeal of his sentence if (1) the court enters a sentence above the statutory maximum, (2) the court enters a sentence above the advisory Sentencing Guidelines range found to apply by the court at sentencing; or (3) the Government appeals the sentence. Absent those exceptions, Defendant explicitly and irrevocably instructs his attorney not to file an appeal.

b. Waiver of Collateral Attack

Defendant entirely waives his right to collaterally attack his conviction and sentence on any ground and by any method, including but not limited to a 28 U.S.C.

§ 2255 motion. The only exception is that Defendant may collaterally attack his conviction and sentence based on a claim of ineffective assistance of counsel.

c. FOIA and Privacy Act Waiver

Defendant waives all rights, whether asserted directly or through a representative, to request or receive from any department or agency of the United States any record pertaining to the investigation or prosecution of this case under the authority of the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a, and all subsequent amendments thereto.

d. Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410 Waiver

Rule 11(f) of the Federal Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence ordinarily limit the admissibility of statements made by a defendant during the course of plea discussions or plea proceedings. Defendant knowingly and voluntarily waives the protections of these rules. If Defendant fails to plead guilty, or his plea of guilty is later withdrawn, all of Defendant's statements in connection with this plea, and any leads derived therefrom, shall be admissible for any and all purposes.

11. Defendant's Rights

Defendant has the right to be represented by counsel, and if necessary have the court appoint counsel, at trial and at every other critical stage of the proceeding. Defendant possesses a number of rights which he will waive by pleading guilty, including: the right to plead not guilty, or having already so pleaded, to persist in that plea; the right to a jury trial; and the right at trial to confront and cross-

examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

12. Satisfaction with Counsel

Defendant has had the benefit of legal counsel in negotiating this agreement. Defendant believes that his attorney has represented him faithfully, skillfully, and diligently, and he is completely satisfied with the legal advice given and the work performed by his attorney.

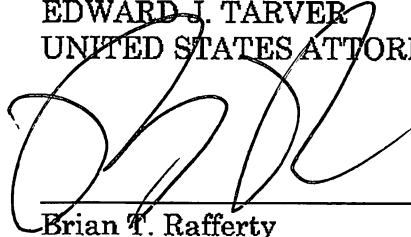
13. Breach of Plea Agreement

If Defendant breaches the plea agreement, withdraws his guilty plea, or attempts to withdraw his guilty plea, the government is released from any agreement herein regarding the calculation of the advisory Sentencing Guidelines or the appropriate sentence. In addition, the government may (1) declare the plea agreement null and void, (2) reinstate any counts that may have been dismissed pursuant to the plea agreement, and/or (3) file new charges against Defendant that might otherwise be barred by this plea agreement. Defendant waives any statute-of-limitations or speedy trial defense to prosecutions reinstated or commenced under this paragraph.

14. Entire Agreement

This agreement contains the entire agreement between the government and Defendant.

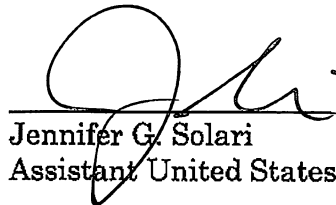
EDWARD J. TARVER
UNITED STATES ATTORNEY



Brian T. Rafferty
Chief, Criminal Division

Date

11/4/16
Date



Jennifer G. Solari
Assistant United States Attorney

I have read and carefully reviewed this agreement with my attorney. I understand each provision of this agreement, and I voluntarily agree to it. I hereby stipulate that the factual basis set out therein is true and accurate in every respect.

11-4-16
Date

William D. Collins
William Randall Collins, Defendant

I have fully explained to Defendant all of his rights, and I have carefully reviewed each and every part of this agreement with him. I believe that he fully and completely understands it, and that his decision to enter into this agreement is an informed, intelligent, and voluntary one.

11-4-16
Date

Walter Scott Brannen
Walter Scott Brannen, Defendant's
Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

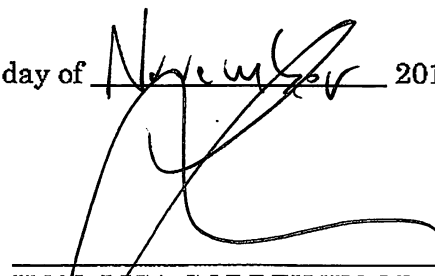
UNITED STATES OF AMERICA)
)
v.) CR 616-14
)
WILLIAM RANDALL COLLINS)

ORDER

The aforesaid Plea Agreement, having been considered by the Court in conjunction with the interrogation by the Court of the defendant and the defendant's attorney at a hearing on the defendant's motion to change his plea and the Court finding that the plea of guilty is made freely, voluntarily and knowingly, it is thereupon,

ORDERED that the plea of guilty by defendant be, and it is, hereby accepted and the foregoing Plea Agreement be, and it is, hereby ratified and confirmed.

This 17 day of November 2016.



HON. LISA GODBEY WOOD
CHIEF JUDGE, UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

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Judgment

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISIONFILED
U.S. DISTRICT COURT
BRUNSWICK DIV.

2017 AUG -31 P 1:56

UNITED STATES OF AMERICA

v.

William Randall Collins

JUDGMENT IN A CRIMINAL CASE

CLERK

SO. DIST. OF GA.

Case Number: 6:16CR00014-1USM Number: 21756-021

Walter Scott Brannen

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to Counts 1 and 2.☐ pleaded nolo contendere to Count(s) _____ which was accepted by the court.☐ was found guilty on Count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 922(g)(1), and 18 U.S.C. § 924(a)(2)	Possession of a firearm by a convicted felon	December 2015	1 and 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(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

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

July 28, 2017

Date of Imposition of Judgment

Signature of Judge

LISA GODBEY WOOD
UNITED STATES DISTRICT JUDGE

Name and Title of Judge

Date

August 3, 2017

DEFENDANT: William Randall Collins
CASE NUMBER: 6:16CR00014 - 1

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 57 months. This term consists of terms of 57 months as to each of Counts 1 and 2, to be served concurrently.

- ☒ The court makes the following recommendations to the Bureau of Prisons:
It is recommended that the defendant be evaluated by Bureau of Prisons officials to establish his participation in an appropriate program of substance abuse treatment and counseling during his term of incarceration. Furthermore, it is strongly recommended that the defendant be designated to a Bureau of Prisons facility away from Jesup, Georgia.
- ☒ 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: William Randall Collins
CASE NUMBER: 6:16CR00014-1

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: 3 years. This term consists of terms of 3 years as to each count, to be served concurrently.

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 1 drug test within 15 days of release from imprisonment and at least 2 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 cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
5. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
6. ☐ 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 other conditions on the attached page.

DEFENDANT: William Randall Collins
CASE NUMBER: 6:16CR00014-1

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 a 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 permission from 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 that 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 provide me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: William Randall Collins
CASE NUMBER: 6:16CR00014-I

SPECIAL CONDITIONS OF SUPERVISION

1. You must submit to substance abuse testing to determine if you have used a prohibited substance. You must not attempt to obstruct or tamper with the testing methods.
2. You must submit your person, property, house, residence, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. The probation officer may conduct a search under this condition only when reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

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

DEFENDANT: William Randall Collins
CASE NUMBER: 6:16CR00014-1

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 payment of \$ 200 due immediately.
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

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

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

- ☐ Joint and Several
Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☒ The defendant shall forfeit the defendant's interest in the following property to the United States:
Pursuant to the plea agreement, the defendant shall forfeit his interest in the DPMS brand rifle, Model A15, bearing Serial Number DNWC055777; and Ruger brand rifle, Model AR556, bearing Serial Number 850-66968, as well as any ammunition seized.
Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVT A Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

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Sentencing Transcript

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

UNITED STATES OF AMERICA)
)
 vs.)
) CASE NO.
 WILLIAM RANDALL COLLINS,) 6:16-CR-00014-LGW-GRS-1
)
 Defendant.)

SENTENCING HEARING
BEFORE THE HONORABLE LISA GODBEY WOOD
July 28, 2017; 1:36 p.m.
Statesboro, Georgia

APPEARANCES:

For the Government: JENNIFER GAYLE SOLARI, Esq.
U. S. Attorney's Office
P. O. Box 8970
Savannah, Georgia 31412
(912) 201-2561
jennifer.solari@usdoj.gov

For the Defendant: WALTER SCOTT BRANNEN, Esq.
The Brannen Law Office, PC
209 Savannah Avenue
P. O. Box 905
Statesboro, Georgia 30459
(912) 489-8621
scott@brannenlawpc.com

Reported by: Debbie Gilbert, CCR
Official Court Reporter
801 Gloucester Street
Post Office Box 1894
Brunswick, GA 31521-1894
(912) 262-2608 or (912) 266-6006
debra_gilbert@gas.uscourts.gov
- - -

P R O C E E D I N G S

(Call to order at 1:36 p.m.)

THE COURT: Let's call the next case.

THE CLERK: United States of America versus William Randall Collins, Jenna Solari for the Government, Scott Brannen for the Defense.

MS. SOLARI: Good afternoon, Your Honor. The Government is ready.

MR. BRANNEN: Good afternoon, Your Honor. The Defense is ready.

THE COURT: Mr. Brannen, approach with your client, Mr. William Randall Collins.

MR. BRANNEN: Your Honor, we may require the ear assistance.

THE COURT: Let's go ahead and do that just in case. Ms. Slater, if you will pass out those earbuds.

MR. BRANNEN: I know we did that previously as well.

THE COURT: Mr. Collins, are those working?

THE DEFENDANT: Yes, ma'am.

THE COURT: Mr. Collins, you appeared before me on November 17th, '16 accompanied by your attorney, Mr. Brannen, for your Rule 11 proceeding, and pursuant to a plea agreement, you pled guilty and were adjudged guilty of Counts 1 and 2 of the indictment, each of those counts charging you with possession of a firearm by a convicted felon in violation of 18

1 USC Sections 922(g) (1) and 924(a) (2) .

2 Now at the end of that Rule 11 proceeding and my
3 acceptance of your plea of guilty, I directed the probation
4 office to prepare a presentence report and to disclose that
5 report to the Defense and to the Government.

6 Now, Mr. Collins, have you had the opportunity to
7 read and review that report and its addendum and discuss it with
8 Mr. Brannen?

9 THE DEFENDANT: Yes, ma'am, I have.

10 THE COURT: And are there any objections remaining as
11 to either the probation officer's factual findings or to the
12 conclusions regarding the guidelines that apply?

13 THE DEFENDANT: No.

14 MR. BRANNEN: No, Your Honor. I believe the
15 Government had one clarification that was rather minor with
16 regard to one item, but we have no objection at this time.

17 THE COURT: Ms. Solari, if you want to make that
18 clarification.

19 MS. SOLARI: Yes, ma'am, Your Honor. There is an
20 addendum to the Defendant's response to the position of the
21 parties with respect to the sentencing factors that is attached
22 to the sentencing report. Therein, the Defendant has listed a
23 series of firearm. In interviewing, once again, Mr. Collins'
24 family members, they brought to my attention that Item Number 5,
25 Chiappa Little Badger with Serial Number 14 Alpha 0855, actually

1 belonged to Zachary Collins, the Defendant's son, and therefore
2 we believe that the Defendant should not be attributed with that
3 firearm.

4 Also, with regard to Item Number 3, that Chiappa
5 1873-22, that firearm belonged to Mrs. Collins, which she
6 reminded me this morning; however, the Defendant has not been
7 held attributable for that firearm in the presentence report, so
8 I believe that the total number of firearms attributed to the
9 Defendant for purposes of the presentence report should be 55
10 rather than 56.

11 In addition, Your Honor -- and certainly I'd like
12 Officer Brown to address this -- because we were able to work
13 out with the Defendant and counsel these objections, the
14 Government will not object if Probation recommends and if The
15 Court decides to give Mr. Collins credit for acceptance of
16 responsibility. I think he has accepted responsibility by
17 withdrawing that objection, and again, I defer to The Court and
18 Probation for further comment on that, but the Government will
19 not object.

20 THE COURT: Let me unpack that then. Let me see if
21 I'm tracking what is being said then. Mr. Brannen, is the
22 Defense in agreement that the number of firearms attributed to
23 Mr. Collins should be 55?

24 MR. BRANNEN: Yes, Your Honor.

25 THE COURT: And, Mr. Collins, is that the position

1 you want to accept?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And Ms. Solari, that is the Government's
4 position as well?

5 MS. SOLARI: Yes, it is, Your Honor.

6 THE COURT: With that, then, it is the Government's
7 position that he should then receive acceptance of
8 responsibility credit; is that correct, Ms. Solari?

9 MS. SOLARI: I would have no objections to The Court
10 so finding.

11 THE COURT: On behalf of Probation, anything to add
12 in that regard?

13 PROBATION OFFICER BROWN: No, Your Honor, we concur
14 with that.

15 THE COURT: Is it the Government's position that he's
16 entitled to a three-point or a two-point reduction?

17 MS. SOLARI: I would not object to a three-point
18 reduction, Your Honor. We did receive timely notice of the
19 Defendant's intent to enter a guilty plea.

20 While we prepared witnesses for trial today, I think
21 it's a fair bargain that the Defendant will accept
22 responsibility and spare the witnesses, who were his family
23 members, from having to testify. The Government has a strong
24 interest in doing that, and so I would recommend the three-point
25 reduction.

1 THE COURT: All right. And Mr. Brannen, I assume,
2 that would be your request as well?

3 MR. BRANNEN: Yes, Your Honor, we concur with that
4 and ask The Court to allow the three points.

5 THE COURT: Aside from that issue, are there any
6 other objections to the presentence report?

7 MR. BRANNEN: Not from the Defense, Your Honor.
8 There were previously some clarifications. Those have been
9 corrected, and we have no objection at this time.

10 THE COURT: And from the Government, any objections?

11 MS. SOLARI: No, Your Honor.

12 THE COURT: As to those factual statements contained
13 in the report that were not objected to, I will adopt those as
14 my findings of fact, and as to those guidelines conclusions in
15 the report that were not objected to, I'll adopt those as my
16 conclusions.

17 Initially, an issue was raised by the Defense with
18 regard to the number of guns that Mr. Collins should be
19 attributed to, and there was some argument between the
20 Government and the Defendant regarding the number of firearms.

21 Here today, both sides and Mr. Collins himself have
22 announced that they've come to an agreement that 55 firearms is
23 the appropriate number of firearms that should be reflected as
24 the correct number, and The Court will accept that.

25 Also today the Government has expressed that, in

1 light of that agreement by the Defendant, they are urging The
2 Court to give Mr. Collins a three-level offense credit for
3 acceptance of responsibility toward his total offense level, and
4 in light of that, The Court is willing to accept that. Does
5 that handle all of the objections, Mr. Brannen?

6 MR. BRANNEN: Yes, Your Honor, it does. Thank you.

7 THE COURT: And Ms. Solari?

8 MS. SOLARI: Yes, Your Honor.

9 THE COURT: With that, then, the applicable advisory
10 guidelines for Mr. Collins are a total offense level of 23,
11 criminal history category of 1.

12 The guideline range is then 46 to 57 months of
13 imprisonment, one to three years supervised release, 20,000- to
14 200,000-dollar fine. Restitution does not apply. There is a
15 \$200.00 special assessment.

16 With regard to the statutory penalty for each of
17 Counts 1 and 2, there is no minimum in prison and there's a
18 maximum of ten years imprisonment.

19 Mr. Brannen, before I turn to the Government and then
20 ultimately to Mr. Collins himself, are any witnesses you'd like
21 to call or any evidence you'd like to bring forth or argument
22 you'd like to make?

23 THE DEFENDANT: No. Yeah, no, you can say it for me.

24 MR. BRANNEN: No witnesses or evidence, Your Honor.
25 At this time just some comments.

1 THE DEFENDANT: We didn't know -- We didn't know
2 until today we were having this, remember?

3 MR. BRANNEN: No, Your Honor.

4 THE COURT: No argument?

5 MR. BRANNEN: Yes, Your Honor.

6 THE COURT: Proceed.

7 MR. BRANNEN: Mr. Collins has just recently I believe
8 last week turned 55 -- I'm sorry, 55 years of age. And as he
9 stands next to me here in The Court now, he is a very different
10 person than he was as I met him initially as his incarceration
11 had begun and he was charged with these offenses, and I will
12 state that primarily because he has added a lot of weight. He
13 looks healthier. He speaks very clear, very meticulously and
14 intelligently and has just seen general improvement, and I bring
15 that up because I believe Mr. Collins would let The Court know
16 that he was going through some difficult periods that stem from
17 some substances that are oftentimes prescribed and he can't
18 control those, being like pain pills.

19 That's no excuse, but we mention that in mitigation
20 for his situation and involvement in these firearms. Noticeable
21 change in him as well, as The Court is aware, there were
22 notations and some clarifications risen. Mr. Collins has been
23 very astute throughout this process and has taken responsibility
24 and tried to be just as forthcoming as he can.

25 In argument, we would lastly offer that there were

1 family members that he loves dearly that were in the peripheral
2 of these -- this possession, and he and I have discussed
3 constructive possession and other aspects of the legal term
4 "possess" as it applies in this case, and he understands that
5 and generally had not been in trouble until his problems arose
6 primarily from the pill addiction going back to 1993. Some 24
7 years ago is when he had some string of troubles, and I know
8 he's not being looked at with his criminal history, but he was
9 doing very well, and we would just like to bring out the
10 contrast of his family life and situation as it was going well,
11 and then things severely went south, and I think that's what Mr.
12 Collins would like The Court to know, and in considering his
13 sentence, we would ask for these things to be considered as
14 mitigating factors and The Court may consider a variance
15 downward some ten months from the guidelines to a 36-month --

16 THE COURT: To a period of what?

17 MR. BRANNEN: 36-month period. He has had an active
18 addiction to pills. He's been in custody, and he's clean now,
19 but that's something that he will continue to need to be strong
20 with, and we would ask The Court to make a recommendation that
21 whatever resources there are for that type of addiction that it
22 be addressed in his placement.

23 And I would offer one final notation about Mr.
24 Collins. He understands that this is a very serious situation
25 it's placed him in and he's been in custody, but at no time were

1 there -- that I'm aware of, any violent behaviors, illegal
2 behaviors outside of the mere fact that he was a convicted
3 felon, no active criminal activity otherwise, and if it could in
4 any way show some lightness in his circumstance, as severe as it
5 is, he does have that going for him.

6 I know The Court and we a lot of the time see
7 violence associated with firearms. That's not Mr. Collins and
8 has never been Mr. Collins, and that would be my final point to
9 note with regards to discussions with Mr. Collins. Thank you.

10 THE COURT: Thank you, Mr. Brannen. Ms. Solari --
11 you two may have a seat. Ms. Solari on behalf of the
12 Government.

13 MS. SOLARI: Yes, ma'am, Your Honor. Your Honor,
14 with respect to defense counsel, because I believe he's been an
15 excellent advocate for his client in this case, I would
16 respectfully disagree with his sentencing recommendation and
17 instead suggest to The Court that a sentence at the high end of
18 the guidelines as found by The Court, 57 months, is appropriate.

19 The Defendant's lengthy criminal history is not
20 represented at all in his criminal history score of zero simply
21 because these very serious and repetitive convictions had aged
22 out, so the Defendant's history of forgery, deception and theft
23 spans in the Defendant's lifetime Appling County, Wayne County,
24 Charlton County, Chatham County, Bacon County and Jeff Davis
25 County, and those are his convictions, and his arrests include,

1 among other counties, Toombs County and again Appling, Laurens
2 County, Coffee County, Charlton County, so the Defendant has
3 been all over the map again with convictions, many, many,
4 convictions, I think 16 in his first criminal case related to
5 fraud, deception and theft.

6 THE COURT: I had looked at the breathtaking span
7 from a calendar point, and I think this is his fourth decade of
8 life having a felony conviction.

9 MS. SOLARI: Yes, ma'am, so for that reason, I do
10 believe his criminal history is underrepresented. I'm not
11 asking for an upward variance, but I do think that a sentence at
12 the very least at the top of the guidelines is warranted. The
13 theft and deception and forgery type offenses extended actually
14 into his case.

15 As The Court probably noticed in the presentence
16 report, this case came to light because it appeared the
17 Defendant was procuring guns on credit from a store where the
18 shopkeepers knew him well and then pawning those items and then
19 would appear to be stealing or otherwise secreting the receipts,
20 so that he was essentially getting guns for free and then making
21 money by selling them.

22 I think what is certainly worse than that, though,
23 Your Honor, is the Defendant dragged his wife and his children
24 into this. Knowing full well that, because of his multiple
25 felony convictions, he could not be in actual possession of a

1 firearm, he certainly has in this case learned the meaning of
2 "constructive possession." He was all too aware he couldn't
3 actually possess firearms because he would drag his wife or his
4 son or his daughter to the gun shop to fill out the paperwork,
5 to the pawn shop to fill out the paperwork, but, of course, the
6 Defendant himself is always the one that ended up with the gun
7 or with the money from the pawn shop.

8 His family did that for him not enthusiastically, not
9 even willingly. There was coercion through verbal abuse,
10 through threats that he would have the utilities turned off,
11 that they would be thrown out the home, so this is how the
12 Defendant elected to interact with those who he claims he loves
13 so dearly, so again, Your Honor, I think the sentence of 57
14 months is well warranted.

15 I also will say I think the Government was somewhat
16 generous in recommending the third point reduction, but, again,
17 I will say very honestly I did not want the Defendant's family
18 members to have to come in here and testify, and so that was a
19 bargain that was struck and I will stick by it, and, again,
20 that's why I am not necessarily asking for an upward variance in
21 this case.

22 Finally, Your Honor, if I may, I don't typically have
23 any say or any desire to have a say in where the Defendant is
24 housed within the Bureau of Prisons, but the Defendant's wife
25 and his daughter, his adult daughter, in particular, have asked

1 me on multiple occasions if the Defendant could be housed
2 somewhere away from Jesup. They live in Jesup. The Defendant's
3 daughter, Christian, works very close to the confinement
4 facility. The Defendant's wife feels that she's being somewhat
5 harassed by the Defendant's friends and other contacts in the
6 county and the surrounding area. She is, for her own reasons,
7 over the 20-some years of their marriage, terrified of the
8 Defendant. His daughter is not. She's actually quite bold and
9 can stand on her own two feet.

10 Nonetheless, they have both asked that I respectfully
11 request that The Court consider recommending to the Bureau of
12 Prisons a confinement facility other than Jesup, which is
13 essentially in their own back yard.

14 THE COURT: Thank you, Ms. Solari.

15 MS. SOLARI: Thank you, Your Honor.

16 THE COURT: Mr. Brannen and Mr. Collins, reapproach.
17 Mr. Collins, it's your opportunity to address me last. Is there
18 anything you would like to say?

19 THE DEFENDANT: Yes, ma'am. First of all, I'm not
20 going to make any excuses, ma'am. My kids are the most
21 important thing to me. I don't know why Rhonda is saying all
22 this. I worshipped the ground she walked on. If I start
23 slinging mud and tell you this and that, it's just going to
24 muddy the water and I don't want to do that because of my kids.

25 Yes, I've done a lot in my past, and I apologize,

1 but, you know, I lost -- I don't know what I lost, but I've
2 gained 63 pounds since I've been at the county jail, and, trust
3 me, it wasn't off their food. I was starved almost, but I
4 didn't realize I had a problem because the doctor's writing the
5 prescription, so he knows what he's doing, but I did have a
6 problem, and I don't never want to ever see a pill again. I
7 take a thyroid pill, whatever that is. That's only medicine I'm
8 taking at Bulloch County jail and the blood pressure now. Just
9 a second. What.

10 (Discussion between Mr. Brannen and the Defendant.)

11 First of all, Your Honor, I didn't know this was
12 happening today, so it all kind of fell on my lap this morning.
13 I was pulled out of the jail this morning about 9:30, and I
14 didn't have a clue what I was coming for, and Mr. Brannen went
15 around and talked to me and they had me here so early. That's
16 it. I'm shooting from the hip. I apologize to The Court and I
17 apologize to my family.

18 THE COURT: Well, let me just stop you there. I
19 don't know why this is from your hip. It was noticed back on
20 6/21.

21 THE DEFENDANT: I received notice from nobody.

22 THE COURT: And I think your Rule 11 proceeding was,
23 as we covered, several months ago, so I think you knew you would
24 be sentenced.

25 THE DEFENDANT: No, ma'am.

1 THE COURT: And the formal notice went out on the
2 21st, so I don't know whether you're somehow complaining about
3 that.

4 THE DEFENDANT: No, no, I just wanted The Court to
5 know --

6 THE COURT: I just wanted --

7 THE DEFENDANT: -- I sat down and I was going to
8 write this thing to say to you, and when all this happened this
9 morning, I'm like "Uh-oh, I didn't have time to write nothing,
10 so I'm just telling you from the heart the way everything is.

11 I don't know why Rhonda is sitting over there telling
12 them she's terrified of me. I've never, ever -- and you're
13 welcome to talk to her. I've never put my hands on her like
14 that. I've never open-fist slapped her or nothing. I think
15 there's a lot of more to it, and they are just slinging mud. If
16 I engage in it, it still puts my kids in the middle of it.

17 I've been on the phone since and I talked to
18 Christian. I quit talking to Christian probably about six
19 months ago because every time we did, we started -- ended up
20 something about Momma and I stopped it. Talk to Zach every week
21 and make sure he's all right, and I haven't talked to him in the
22 last couple of weeks because it's been hectic around the jail,
23 but I talk to him every week to make sure he's all right, ask
24 him always about his sister and including his momma, and I don't
25 know to down -- yes, I want the divorce, and I'm sure she does,

1 too. She should have done it, though, not... but -- oh,
2 and part of an addiction, I didn't know I had an addiction to
3 pills. I did not. I mean, before I got locked up, I was in
4 Atlanta and I run out of my medicine and, of course, my doctor
5 mailed the prescription, but for three days, I was so sick
6 and -- but I turned myself in to Glynn County and that's when I
7 guess you say it all broke loose. I stayed in intensive care
8 three days and didn't even remember that. And I don't even
9 remember coming to see you the first time, ma'am, but I remember
10 after that, but I've had no violence in me, and I would never
11 ever hurt my kids. Your Honor, for 20-something years, I was
12 the best daddy Christian or Zach could ever ask for. This last
13 year I might have been a sorry one, but that was -- that was the
14 only -- and I'll make it up to them, too.

15 THE COURT: Which years was it that you were the best
16 father?

17 THE DEFENDANT: Ma'am?

18 THE COURT: Which years was it that you were the best
19 father?

20 THE DEFENDANT: All the way through their lives, from
21 the day they were born. Christian never worked. Her and Zach
22 never worked. I took care of them. I made sure she went to any
23 college she wanted to go. Zach, everything I could give them,
24 not just material things. Ballgame, I'd drive from Atlanta to
25 watch that ballgame. If it was her to go to Atlanta or Zach to

1 go here or there, we went. Vacation from Florida to Bahamas,
2 anywhere they wanted to go. I made sure my kids got the best.

3 Now, this last year -- well, I guess two years ago, I
4 haven't been there the last year, but the year before that, I
5 wasn't and I'm forced saying that, and I hate it for my kids and
6 I'll make it up to them one day, and I don't know why Rhonda is
7 keeping on this, but if I bring her in here or do anything, I'm
8 going to hurt my kids, and I don't want her brought -- they
9 shouldn't have never been brought in it to start with. Rhonda
10 could have done all this, and so I apologize to The Court for
11 that, but I'm not going to hurt my kids no more.

12 All I can do is ask for mercy from The Court and say
13 I'm sorry, but I won't never be back before you again.

14 THE COURT: Well, I've listened to all that was said
15 today by Mr. Collins himself and by the attorneys for each side
16 and, of course, I've studied the file and read the presentence
17 report and thought about all the 3553 factors as they apply to
18 Mr. Collins.

19 And Mr. Collins, I was looking back at your booking
20 photo and you look like a skeleton.

21 THE DEFENDANT: Dead man walking.

22 THE COURT: Now you look like a normal person as you
23 appear before me today, but one thing you know more than I do,
24 you have, as I said, you've been in trouble in your twenties and
25 in your thirties and in your forties and now in your fifties.

1 You look surprised. Let me cover it with you.

2 In 1990 you were convicted of 16 counts of forgery at
3 the age of 27. Again, in 1990 you were convicted of theft by
4 deception at the age of 28. In 1991, you were convicted of two
5 counts of burglary at the age of 28. In 1993, you were
6 convicted of theft by deception, three counts, and theft by
7 conversion at the age of 30. In 1993, you were convicted of
8 first-degree forgery, two counts, at the age of 31. In 2007,
9 you were convicted of deposit account fraud, that is, bad
10 checks, three counts --

11 THE DEFENDANT: Right.

12 THE COURT: -- at the age of 48. And then there were
13 seven or eight indictments but they did not result in
14 convictions.

15 All of those, including the many felony convictions
16 that occurred, you got no criminal history points. You're a
17 Criminal History Category 1, even though you have all of those
18 convictions because of the age of them, and my point to you
19 about all of this, one of them is: You are 55 years old.

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: You are too old to be doing this.

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And you possessed 55 guns.

24 "Constructive," some of them but illegal --

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: -- possession of 55 guns. It's
2 remarkable when someone has half that many. And I want you to
3 keep that in mind. That's what you had become. Apparently you
4 look like you were on your way to being the kind of person
5 you're supposed to be, but you need to realize what it was
6 you've done. I have no idea what it is that is going on with
7 your wife and your daughter.

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: I don't know about that, but I do know
10 about your crime and about your criminal history, and I do know
11 that you're awfully fortunate to receive no criminal history
12 points for any of that.

13 In fact, oftentimes I'll see someone with maybe one
14 felony conviction and the possession of one gun who's facing ten
15 years. If you were ever to appear before me again, federally,
16 just federally, with one gun, you would be facing really until
17 you were an old, old man.

18 THE DEFENDANT: You won't never see me again.

19 THE COURT: I've heard that before. I have heard
20 that before, but, nevertheless, it's my duty to look at all of
21 the facts, the good and the bad, and all the sentencing factors,
22 and after doing so, it is the judgment of The Court that the
23 Defendant, Mr. William Collins, is hereby committed to the
24 custody of the Bureau of Prisons to be in prison for a term of
25 57 months. That is 57 months as to each count, 1 and 2, to be

1 served concurrently.

2 I would be doing you a disservice if I didn't tell
3 you this. Entering here today, I was contemplating varying
4 upward from the original guideline sentence because of the
5 breathtaking amount of guns and your underrepresented criminal
6 history.

7 But because you did allow the Government to not go to
8 the burden and really your family of not going to the burden of
9 coming in here and putting up all the proof of these 55 guns,
10 because you admitted, stood up and admitted it, I'm not going to
11 depart upward, although your criminal history is certainly
12 underrepresented in this case.

13 I'm nevertheless convinced that 57 months, although
14 it is paltry compared to what most people who commit this
15 offense receive, I'm nevertheless, under the circumstances,
16 satisfied that it is sufficient and not too much based on the
17 nature of the offender and the nature of the offense.

18 I do recommend to the Bureau of Prisons that he be
19 evaluated for possible participation in an appropriate program
20 of substance abuse treatment and counseling during his term of
21 incarceration.

22 I have no idea what accounts for the miraculous
23 turnaround in physical appearance, but in my experience
24 oftentimes there's a drug in the background, and so for that
25 reason, I do encourage them to see if you might qualify for any

1 kind of substance abuse treatment while you're incarcerated.

2 You don't have the ability to pay a fine, so I'm not
3 going to order that one be imposed. The special assessment of
4 \$100.00 per count is due immediately for a total of \$200.00.

5 Pursuant to the plea agreement you must forfeit your
6 interest in the two firearms and all the ammunition referenced
7 in Section 9 of the plea agreement.

8 Now, Mr. Collins, upon release from imprisonment,
9 you'll be placed on supervised release for a term of three
10 years, and that term consists of three years as to each count to
11 be served concurrently, and while on supervised release, you'll
12 comply with the standard conditions of supervision and the
13 mandatory ones.

14 Those will include but not be limited to urine
15 testing, a prohibition against the possession of any firearm.
16 Remember, as a convicted felon, you are never to possess,
17 constructive, jointly, individually or otherwise, never possess
18 a firearm for the rest of your life.

19 During your supervised release, you'll cooperate in
20 the collection of a DNA sample as directed by Probation. I have
21 specifically considered whether any special conditions are in
22 order in this case and have determined after weighing the
23 liberty deprivations that they entail, in consideration of the
24 sentencing commission's policy statements, I do order that
25 certain special conditions apply, namely, a program of testing

1 for drug and alcohol abuse during supervised release. Don't
2 tamper with the testing. He'll be required to submit to
3 searches of his person, property, house, residence, based on
4 reasonable suspicion of contraband or evidence of a violation of
5 supervised release conducted at a reasonable time in a
6 reasonable manner.

7 And the probation office is hereby directed to
8 provide Mr. Collins with a written set of instructions that
9 governs his supervised release.

10 I did accept the plea agreement and pursuant to that
11 plea agreement, with limited exceptions, he's waived his right
12 to appeal the sentence and his right to attack the sentence in
13 any postconviction proceeding, and, Mr. Brannen, you have your
14 notice of postconviction obligations to consult with Mr.
15 Collins. You need to sign it, have him sign it, file it on the
16 record.

17 Finally, I strongly recommend to the Bureau of
18 Prisons that he be housed away from Jesup, Georgia, and nowhere
19 near that facility.

20 Well, sentence has now been pronounced. Other than
21 any objections which could have heretofore been made, do you now
22 have any objections to my findings of fact, my conclusions of
23 law or to the manner in which sentence was pronounced, Mr.
24 Brannen?

25 MR. BRANNEN: No, Your Honor.

1 THE COURT: And Ms. Solari?

2 MS. SOLARI: No, Your Honor.

3 THE COURT: Mr. Collins, I will remand you back to
4 the custody of US Marshal. One thing also I want you to hear
5 from me. I will hear about it if there are any communications
6 that are threatening in any way sent to any members of your
7 family.

8 THE DEFENDANT: Ma'am, I never have done that.

9 THE COURT: And I believe that you don't have that
10 intent so make sure you follow up.

11 THE DEFENDANT: I agree. I agree. I got some
12 pictures I want to bring -- I want to send Mr. Brannen to send
13 you.

14 THE COURT: All right, thank you, Mr. Brannen and Ms.
15 Solari.

16 Call the next case.

17 THE CLERK: United States of America versus Ashley
18 Stanford, Marcela Mateo for the Government, Matthew Hube for the
19 Defense.

20 THE COURT: I'm sorry, Agent, what just transpired?

21 AGENT TURNER: He's alleging that I'm the cause of
22 his problems.

23 THE COURT: Did he in any way threaten you?

24 AGENT TURNER: He's just claiming some picture of
25 something he said that he's going to bring out and I welcome him

1 to do so because he's created his own problems, and even though
2 he got acceptance of responsibility, he has no way, shape or
3 form accepted responsibility of the problems he's caused his
4 family or himself.

5 THE COURT: I'll look at any pictures I receive
6 through Mr. Brannen, and we may need to schedule a followup
7 hearing in light of what just transpired. Remand you to the US
8 Marshal.

9 AGENT TURNER: Thank you, Your Honor.

10
11 CERTIFICATION

12
13 I certify that the foregoing is a true and correct
14 transcript of the stenographic record of the above-mentioned
15 matter.

16
17
18 _____ 12/29/2017
19 Debra Gilbert, Court Reporter Date
20
21
22
23
24
25

65

Rule 11 Transcript

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

UNITED STATES OF AMERICA)
)
 vs.)
) CASE NO.
 WILLIAM RANDALL COLLINS,) 6:16-CR-00014-LGW-GRS-1
)
 Defendant.)

RULE 11 PROCEEDING
BEFORE THE HONORABLE LISA GODBEY WOOD
November 17, 2016; 2:30 p.m.
Statesboro, Georgia

APPEARANCES:

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- - -

P R O C E E D I N G S

(Call to order at 2:30 p.m.)

THE COURT: Call the next case.

THE CLERK: United States of America versus William Randall Collins, Jenna Solari for the Government, Walter Scott Brannen for the Defendant.

MS. SOLARI: Government is ready, Your Honor.

MR. BRANNEN: Ready for the Defense, Your Honor.

THE COURT: Mr. Brannen, you and your client, Mr. Collins, come to the podium. Are you William Randall Collins?

THE DEFENDANT: Yes, Your Honor.

THE COURT: The United States Attorney and your own attorney say you want to change your plea from not guilty to guilty to these two counts --

THE DEFENDANT: Yes, ma'am.

THE COURT: -- that are pending against you; is that correct? You have the opposite condition of the person before you, and that's you're very loud and you need to back up just a little bit.

THE DEFENDANT: I'm having a hard time hearing. I'm about deaf.

THE COURT: We have some earpieces that will --

THE DEFENDANT: I'm fine. As long as I can read your lips, I'm fine.

THE COURT: No, this is very important that you hear

1 every word that I say so let's have that. Can you tell us if
2 it's operational? Mr. Collins, can you hear me?

3 THE DEFENDANT: It's not working.

4 THE COURT: Let's see if we have one that works.
5 Let's try this device. Can you hear me? Can you hear what I'm
6 saying? Can you hear out of that one?

7 THE DEFENDANT: I can hear now.

8 THE COURT: Mr. Collins, you shared with me that you
9 have some hearing challenges. We just gave you some ear devices
10 that enhances and you've communicated to me that you can hear me
11 just fine now.

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: I want you to stop me if at any point you
14 don't hear any of the words I say and let me know. Otherwise,
15 everyone will assume that you understand what I'm saying.

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: We're here because it's come to my
18 attention that you want to plead guilty to Counts 1 and 2 that
19 are presently pending against you in this federal felony
20 criminal indictment; is that correct?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: The purpose of this hearing is going to
23 be for me to make sure you have an understanding of the case as
24 it's presently pending against you. I want to make sure that
25 you understand all the rights that you waive or give up if I

1 decide to accept your plea.

2 I also want to make sure that there is, in fact, a
3 factual basis for a plea of guilty to those two counts and that
4 this is really what you want to do in consultation with your
5 attorney. There will be other things that we take up as we go
6 along, but just know right from the beginning this is an
7 important day in your life, not something to take lightly;
8 understand?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Also know in just a moment, I'm going to
11 have you put under oath, sworn to tell the truth. If you don't
12 tell the truth while you're under oath, the Government could
13 prosecute you for perjury; understand?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Mr. Collins, is anybody making you,
16 pushing you, leaning on you to come here and change your plea.

17 THE DEFENDANT: No, ma'am.

18 THE COURT: This is what you want to do?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Swear in Mr. Collins.

21 WILLIAM RANDALL COLLINS,
22 having been first duly sworn, was examined and testified as
23 follows:

24 THE CLERK: Please state your full name and spell
25 your last name for the record.

1 THE DEFENDANT: William R. Collins, C-o-l-l-i-n-s.

2 THE COURT: Mr. Collins, what are the last four
3 digits in your social security number?

4 THE DEFENDANT: 2710.

5 THE COURT: How old are you?

6 THE DEFENDANT: 54.

7 THE COURT: Are you married?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Do you have any children?

10 THE DEFENDANT: Two.

11 THE COURT: How old are they?

12 THE DEFENDANT: Christian is 23. Zach is 19.

13 THE COURT: Where were you born?

14 THE DEFENDANT: Appling County.

15 THE COURT: And at the time of this arrest, where
16 were you living?

17 THE DEFENDANT: Appling County.

18 THE COURT: How far did you go in school?

19 THE DEFENDANT: Twelfth grade and two years at
20 Brewton-Parker.

21 THE COURT: What did you study in college?

22 THE DEFENDANT: Business.

23 THE COURT: Tell me about your work history.

24 THE DEFENDANT: I've been in construction. I've been
25 superintendent for several large companies, general

1 superintendent.

2 THE COURT: Have you ever been diagnosed with any
3 mental or physical disability?

4 THE DEFENDANT: No, ma'am.

5 THE COURT: Do you take any medications?

6 THE DEFENDANT: No, ma'am. Well, I'm taking thyroid
7 right now.

8 THE COURT: And in the last 48 hours, have you had
9 any drugs or alcohol?

10 THE DEFENDANT: No, ma'am.

11 THE COURT: Mr. Collins, as you appear before me
12 right now, you're presumed innocent. What that means is the
13 Government is your accuser, and as such, you don't have to prove
14 that you're innocent. Rather they have to prove that you're
15 guilty and they've got to do that by bringing forth proof of
16 guilt beyond a reasonable doubt; understand?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Also know that this indictment that's
19 been filed against you, that document that sets forth the
20 charges, that's not evidence. That's simply what the US
21 Attorney and the grand jury accuse you of having done, but it's
22 not evidence; understand?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Mr. Brannen, are you appointed or
25 retained in this case?

1 MR. BRANNEN: Appointed, Your Honor.

2 THE COURT: Mr. Collins, that means you've explained
3 you didn't have the kind of money to go pay a lawyer to defend
4 you throughout this case, and so Mr. Brannen was appointed to
5 represent you at no charge to you; is that correct?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: I do want you to understand you have the
8 right to his services at no charge to you throughout this and
9 every other phase of your case; understand?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Also know you don't have to plead guilty.
12 If you want to persist in a plea of not guilty, you're entitled
13 to do that, and if you were to persist in a plea of not guilty,
14 you would be entitled to a public and speedy trial by jury.

15 During that jury trial, a number of rights would
16 belong to you. That presumption of innocence that we were
17 discussing, that would apply throughout the trial. Your right
18 to Mr. Brannen's services at no charge would apply throughout
19 the trial. You would have the right to see, hear, confront and
20 cross-examine any witness that the Government might call in the
21 case. You would have the right to see all their evidence.

22 For your own part, you would have the right to put up
23 evidence if you wanted. You would have the right to call
24 witnesses and utilize subpoenas from the court to make them
25 come. You would have the right to testify, to take the stand

1 and subject yourself to cross-examination. You would have the
2 right not to testify. If you wanted, you could go to trial and
3 remain silent and nobody could call any negative attention to
4 that in front of the jury; understand?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Do you understand that if I decide to
7 accept your plea, you will have waived, that is, given up all
8 the rights that are associated with a jury trial and, in fact,
9 there will be no trial of any kind. Essentially, what will
10 remain of your case is the sentencing phase.

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Do you have any question about the waiver
13 of those rights?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: Now, have you and Mr. Brannen discussed
16 the facts and the law as they pertain to your case?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Have you and he reviewed this indictment
19 together?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: And have you and he reviewed this plea
22 agreement you're proposing?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Has he discussed with you at least in
25 general terms the sentencing guidelines?

1 THE DEFENDANT: Yes, ma'am, in general, yes, ma'am.

2 THE COURT: Are you satisfied with his
3 representation?

4 THE DEFENDANT: 100 percent. He's been very nice.

5 THE COURT: Do you have any complaints about him
6 whatsoever?

7 THE DEFENDANT: No, ma'am.

8 THE COURT: Although I understand that you and Mr.
9 Brannen have reviewed the indictment together, it's my
10 opportunity to cover it with you as a part of this proceeding.

11 As I mentioned, you are named in a two-count federal
12 felony criminal indictment. You're pleading guilty, I
13 understand, to both counts. Count 1 alleges a violation of 18
14 USC Section 922(g)(1); that is, possession of a firearm by a
15 convicted felon. It alleges that in October of 2015 in Toombs
16 County, which is in the Southern District of Georgia, you, who
17 before that time, had been convicted of an offense punishable by
18 imprisonment for more than a year, that is, a felony, knowingly
19 and intentionally possessed in and affecting interstate commerce
20 a firearm, namely a DPMS Model A15 rifle, which had been shipped
21 and transported in interstate commerce before that October of
22 2015 date.

23 Count 2 alleges possession of a firearm by a
24 convicted felon pursuant to 18 USC Section 922(g)(1). This
25 count alleges that in December of 2015 in Toombs County, you,

1 who having been convicted beforehand of a felony, possessed in
2 and affecting interstate commerce a Ruger Model AR556 rifle,
3 which had been shipped and transported in interstate commerce
4 before that December 2015 date.

5 The indictment also contains a forfeiture allegation
6 in which the Government seeks forfeiture of those two weapons
7 mentioned in the indictment.

8 Now, my question to you is simply: Do you understand
9 that's what's set forth against you in this indictment?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Now in order to convict you of those two
12 counts, the Government would have to prove as to each what are
13 called the essential elements of those offenses.

14 The offenses, although they are separate, they
15 mention the same crime, and so the elements are the same for
16 both Counts 1 and 2, and they are two-fold. The Government
17 would have to prove beyond a reasonable doubt first that you
18 knowingly possessed a firearm in or affecting interstate or
19 foreign commerce and, second, that before possessing that
20 firearm, you had been convicted of a felony, an offense
21 punishable by imprisonment for more than a year.

22 Do you understand those are the essential elements of
23 each of those two offenses?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: And do you understand that by pleading

1 guilty you admit that they are satisfied?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Now the maximum possible penalty that I
4 could ever impose for a violation of that particular offense,
5 922(g)(1), is as to each count imprisonment for not more than
6 two years, a fine of up to \$250,000.00, not more than three
7 years supervised release and a \$100.00 special assessment as
8 well as the forfeiture of the guns.

9 Do you understand that as to each count that is the
10 maximum possible penalty I could impose?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: A couple of followup concepts regarding
13 punishment. That phrase "supervised release" means after any
14 period of federal incarceration, when you get out of prison,
15 you've got to follow the rules that The Court will set forth.
16 Those will include but not be limited a requirement that you get
17 a job, that you not violate any laws, that you be subject to
18 certain drug screens and certain searches, and if you were to
19 fail to live up to the terms of your supervised release, you
20 could wind up back in prison; understand?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: I also want you to be familiar at least
23 in general terms with application of the federal advisory
24 sentencing guidelines. As I say, those are advisory. They are
25 not mandatory, but it's still my duty to calculate what that

1 advisory guideline range is going to be in your case and to
2 consider that range along with possible departures under the
3 guidelines themselves and also consider all of the sentencing
4 factors that are set forth in our federal sentencing statute, 18
5 USC Section 3553.

6 Once I consider all those things, it's going to
7 result in me imposing a punishment on you that's either within
8 that advisory guideline range, perhaps below it, perhaps above
9 it.

10 Now some of the major factors that go into figuring
11 all that out are your criminal history, your conduct, what it
12 was you did in these offenses and whether you came here and told
13 the truth and accepted responsibility for your actions.

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Those are some of the major factors that
16 go into it. There's others. Do you understand all of that?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Do you have any questions about it?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: Has anybody promised you an exact
21 sentence?

22 THE DEFENDANT: No, ma'am.

23 THE COURT: That's good because at this point all
24 they could do is give you their best guess or their guess
25 estimate, and it wouldn't be binding on me as your sentencing

1 judge.

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Well, in representing you, Mr. Brannen
4 has apparently negotiated with the US Attorney's Office trying
5 to reach a plea agreement in your case. Did he have your
6 permission to do that?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Let's take that agreement up. Ms.
9 Solari, if you will stand and summarize its provisions.

10 MR. BELK: Yes, ma'am, Your Honor. In summary, the
11 plea agreement provides the Defendant will plead guilty to
12 Counts 1 and 2 of the indictment. The Government will not
13 object to a recommendation by Probation that the Defendant
14 receive a two-level reduction in offense level for acceptance
15 pursuant to Section 3E1.1 of the guidelines and will move for an
16 additional one-level reduction based on the Defendant's timely
17 notice of his intention to enter a guilty plea.

18 Defendant agrees to pay restitution for any loss
19 caused by his total criminal conduct not limited to the specific
20 counts to which he's pleading guilty.

21 The Government agrees not to seek a superseding
22 indictment based upon evidence of additional violations obtained
23 during the grand jury investigation of this case, although the
24 parties do agree that said evidence is to be considered by
25 Probation and The Court in determining the appropriate guideline

1 range and may be considered relevant conduct where appropriate.

2 The Defendant has agreed to forfeit his interest in
3 any firearms and ammunitions involved or used in the commission
4 of the offense, which property is set forth more fully in the
5 plea agreement. The plea agreement contains a direct appeal as
6 well as collateral attack waiver, which I know The Court will
7 explore in further detail with the Defendant.

8 Further, Your Honor, Defendant waived all rights to
9 request information about the investigation or the prosecution
10 of his case under the Freedom of Information Act and the Privacy
11 Act, and finally the Defendant waives protection of Rule 11(f)
12 of the Federal Rules of Criminal Procedure and Rule 410 of the
13 Federal Rules of Evidence. Therefore, if the Defendant fails to
14 plead guilty or if The Court later allows the Defendant to
15 withdraw his guilty, the Defendant agrees that any statements
16 he's made in connection with the plea and any leads derived
17 therefrom shall be admissible for any and all purposes.

18 Your Honor, my signature appears on Page 10 of the
19 plea agreement as well as of that AUSA Brian Rafferty, my
20 criminal chief. If I may approach the lectern and as to you
21 first, Mr. Brannen, is that your signature on Page 11?

22 MR. BRANNEN: Yes, it is.

23 MS. SOLARI: Mr. Collins, is that your signature
24 on --

25 THE DEFENDANT: Yes, ma'am.

1 MS. SOLARI: Pass forward the plea agreement, Your
2 Honor.

3 THE COURT: Thank you, Ms. Solari. Is that evidence
4 that you referenced that pursuant to this plea agreement would
5 not form the basis of a superseding indictment but could be used
6 as relevant conduct in consideration of the sentencing in this
7 case, is that evidence in the nature of additional guns or --

8 MS. SOLARI: Yes, Your Honor.

9 THE COURT: Thank you.

10 Mr. Brannen, is that summary consistent with the
11 agreement you negotiated?

12 MR. BRANNEN: Yes, it is, Your Honor.

13 THE COURT: And Mr. Collins, is that summary
14 consistent with the agreement you signed?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: And did you read it before you signed it?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And did Mr. Brannen answer all your
19 questions?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Other than the provisions that are
22 contained in that plea agreement, has anybody made you any
23 promises regarding the outcome of your case?

24 THE DEFENDANT: No, ma'am.

25 THE COURT: I do want to pick back up on something

1 that Ms. Solari mentioned, and that is, as a part of this plea
2 agreement that you're proposing, there is a waiver of certain
3 appellate rights. It states to the maximum extent allowed by
4 federal law, you waive your right to appeal the conviction and
5 sentence.

6 Now there are three exceptions to that waiver. That
7 is, if but only if one of these three things were to occur would
8 you get a direct appeal right back: Number 1, if I sentence you
9 above the statutory maximum, you could appeal that directly;
10 Number 2, if I were to sentence you above the advisory guideline
11 range as found by me, you could appeal that directly; or Number
12 3, if the Government were to file a direct appeal, then you,
13 too, could file one, but otherwise, by virtue of this plea
14 agreement, you waive all other direct appellate rights; do you
15 understand?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: There is also contained in this plea
18 agreement a waiver of collateral attack rights. It states,
19 "Defendant entirely waives his right to collaterally attack his
20 conviction and sentence on any ground and by any method
21 including but not limited to a 28 USC Section 2255 motion."

22 Now, there is a one exception to that waiver. That
23 is, you retain the right to collaterally attack based on a claim
24 of ineffective assistance of counsel, but otherwise, by virtue
25 of the plea agreement, you waive all other collateral attack

1 rights; you understand?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Do you have any questions about that
4 waiver?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Well, Mr. Brannen, as an officer of The
7 Court, are you aware of any impropriety on the part of the
8 Government in handling Mr. Collins' case?

9 MR. BRANNEN: No, Your Honor.

10 THE COURT: Ms. Solari, are you aware of any
11 impropriety on anyone's part in handling this case?

12 MS. SOLARI: No, ma'am, Your Honor.

13 THE COURT: Mr. Collins, do you still want to plead
14 guilty to Counts 1 and 2?

15 THE DEFENDANT: Yes, ma'am, I do.

16 THE COURT: Do you want to plead guilty to those two
17 counts because you are, in fact, guilty of those two counts?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: You understand the rights and privileges
20 that you waive or give up if I accept your plea?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Let the record reflect that Mr. William
23 Randall Collins is 54. He's married and has two kids. He was
24 born in Appling County and that's where he was living at the
25 time of this arrest. He completed high school and went on to

1 obtain two years of college education. He's worked in the
2 construction field, including as a superintendent for large
3 companies. He's not laboring under any disabilities. He does
4 take thyroid medication. He's not under the influence of any
5 drugs or alcohol. I've watched him as he's participated in the
6 hearing this afternoon. It's obvious that he's in full
7 possession of his faculties. He's participated knowingly and
8 intelligently. He's had the services of an excellent defense
9 lawyer who has gone over all the requisite pleadings and
10 concepts with him.

11 I find that Mr. Collins' offer to plead guilty to
12 Count 1 and Count 2 is knowing. I also find that's voluntary;
13 is that correct, Mr. Collins?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Therefore, I will approve of the plea
16 agreement. Let me call on Ms. Solari to set forth a factual
17 basis and you two may have a seat while she does so.

18 MS. SOLARI: Thank you. The Government calls Special
19 Agent Justin Souza.

20 SPECIAL AGENT JUSTIN SOUZA,
21 having been first duly sworn, was examined and testified as
22 follows:

23 THE CLERK: Thank you. You may be seated. Please
24 state your full name, spell your last name for the record, state
25 your occupation and your business address.

1 THE WITNESS: Yes, ma'am, Justin Daniel Souza,
2 S-o-u-z-a. I am a special agent with the Bureau of Alcohol,
3 Tobacco and Firearms, commonly referred to as ATF, and I am
4 stationed in Savannah, Georgia.

5 DIRECT EXAMINATION

6 BY MS. SOLARI:

7 Q. Special Agent, are familiar with the investigation of
8 the Defendant, William Randall Collins?

9 A. I am.

10 Q. Can you please describe to The Court the factual
11 bases underlying Counts 1 and 2 of the indictment?

12 A. Yes, ma'am. In March of 2016, Hazlehurst Police
13 Department notified ATF regarding what they believed to be a
14 straw purchase of a firearm. The suspected straw purchaser was
15 a Rhonda Collins, the wife to the Defendant, Mr. William
16 Collins.

17 Through the investigation, a subsequent search
18 warrant was conducted on the Collins residence in Baxley,
19 Georgia, and during that search warrant, numerous firearms and
20 ammunition were located. ATF attempted to interview Mr.
21 Collins, at which time he denied possessing any of the firearms
22 or ammunition. He did, however, admit to providing an AR
23 variant style rifle to his cousin, Kevin Collins.

24 ATF then interviewed Mr. Kevin Collins, his cousin,
25 who is a Toombs County sheriff's deputy. The Defendant gave

1 Deputy Collins that rifle, a DPMS A15 AR variant style rifle,
2 in October of 2015.

3 Deputy Collins and the Defendant were at a firearms
4 range, a shooting range, in Toombs County on that date. The
5 Defendant was there, provided the rifle to Deputy Collins,
6 stating that he had numerous of those rifles and he did not
7 need that one in particular.

8 Deputy Collins advised ATF that the Defendant was
9 also seen with other firearms at the shooting range. He also
10 noted that the Defendant was also shooting firearms to include
11 AR style rifles.

12 In addition to the first AR variant rifle provided to
13 Deputy Collins in October, a second AR style rifle was provided
14 to Deputy Collins by this Defendant. This occasion occurred in
15 December of 2015 at Deputy Collins' home and that rifle in
16 particular was a Ruger AR style rifle 556.

17 Q. That's the firearm described in Count 2 of the
18 indictment?

19 A. Yes, ma'am.

20 Q. And you said it happened at Deputy Collins' home; is
21 that also in Toombs County?

22 A. I believe so.

23 Q. Thanks, Special Agent. Did ATF take custody of both
24 of those firearms?

25 A. Yes. Once Deputy Collins was aware that the

1 Defendant was a convicted felon, he turned those weapons over.

2 Q. And did an ATF agent research both of those rifles to
3 determine where they were manufactured?

4 A. Yes. Both of those rifles were manufactured outside
5 the state of Georgia.

6 Q. And I think, because The Court may be curious, as
7 would anyone, did Deputy Collins have an explanation why he
8 would accept firearms from a convicted felon?

9 A. Deputy Collins was not aware of the Defendant being
10 previously convicted of a felony. He described knowing that
11 Collins had some legal trouble but did not know the extent,
12 that he was a previously convicted felon.

13 Q. And had Deputy Collins and the Defendant, William
14 Randall Collins, actually met only in adulthood, several years
15 prior to now?

16 A. Yes. They had recently reconnected at a family
17 funeral. Prior to that, they did not realize they were related
18 and struck a friendship up from that date.

19 Q. Let's discuss some of the Defendant's criminal
20 history. Does he have a number of prior felony convictions?

21 A. Yes, ma'am.

22 Q. So prior to October of 2015, had the Defendant
23 obtained felony convictions for offenses such as theft by
24 deception, burglary, forgery, bad checks and theft by
25 conversion?

1 A. Yes, ma'am.

2 Q. Thank you, Special Agent. Oh, I'm sorry, one more
3 question. The two AR15 style rifles that were provided by the
4 Defendant to Deputy Collins, were those provided along with 30-
5 round magazines?

6 A. Yes, ma'am.

7 MS. SOLARI: Thank you, Special Agent. That's the
8 Government's factual basis, Your Honor.

9 THE COURT: Ms. Solari, there is no reason to believe
10 that, based on his criminal history, he'll have amassed three
11 previous convictions for a violent felony or serious drug
12 offense?

13 MS. SOLARI: I don't believe so, Your Honor. I think
14 they are primarily theft-style convictions, although I do see
15 one burglary, which may serve as a predicate. That's the only
16 one I had noticed in the Defendant's criminal history.

17 THE COURT: All right, thank you. Mr. Brannen, any
18 questions for the special agent?

19 MR. BRANNEN: No questions, Your Honor.

20 THE COURT: You may step down.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: Mr. Brannen and Mr. Collins, reapproach.
23 Mr. Collins, do you dispute any of the testimony given by the
24 special agent in your case as it relates to you?

25 THE DEFENDANT: No, ma'am.

1 THE COURT: Do you admit the truth of his testimony?

2 MR. BRANNEN: Your Honor, if I may just clarify, Mr.
3 Collins indicated to me just a moment ago and has before that he
4 was of the impression that the Deputy Collins, his cousin, did
5 know about --

6 THE DEFENDANT: Everybody knew about my past, Your
7 Honor. I mean, there is no use hiding about it. His daddy and
8 my daddy were brothers.

9 THE COURT: Aside from Deputy Collins' knowledge
10 about your previous conviction, do you dispute any other part of
11 the special agent's testimony in your case this afternoon?

12 THE DEFENDANT: No, ma'am, it's pretty much -- I did
13 take the gun to a gun range. I did take the gun to his house
14 and then we went on to the mountains.

15 THE COURT: Is there any other part of Special Agent
16 Souza's testimony this afternoon that you dispute other than
17 about your cousin?

18 THE DEFENDANT: No, ma'am. I mean, I -- I done it.

19 THE COURT: Okay. Then based on the record made at
20 this proceeding, I'm satisfied there is a factual basis for a
21 plea of guilty to Counts 1 and 2. Let it be entered.

22 THE CLERK: Plea of guilty is entered, Your Honor.

23 THE COURT: The plea of guilty is accepted and I now
24 adjudge you guilty of Counts 1 and 2. The probation officer
25 will prepare a presentence investigation report and he will

1 disclose that to the Defense and to the Government and will
2 thereafter schedule your sentencing hearing.

3 Mr. Collins, I will remand you back to the custody of
4 the US Marshal and, counsel, we will be in recess.

5 (Proceeding concluded at 2:57 p.m.)
6
7

8 CERTIFICATION
9

10 I certify that the foregoing is a true and correct
11 transcript of the stenographic record of the above-mentioned
12 matter.
13
14

15 _____ 12/29/2017
16 Debra Gilbert, Court Reporter Date
17
18
19
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22
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24
25

SEALED

PSI and Addendum
(paper copy only)

CERTIFICATE OF SERVICE

The undersigned certifies that she served a copy of the foregoing Appendix on counsel on this date in accordance with the directives from the Court Notice of Electronic Filing (“NEF”) that was generated as a result of electronic filing. As required by 11th Cir. R. 30-1, counsel also certifies that she served a paper copy of the Appendix on the United States Attorney’s Office for the Southern District of Georgia via hand-delivery.

The undersigned certifies that she served a paper copy of the foregoing Appendix (with the sealed portion omitted) on the appellant, William Randall Collins, via United States Mail with sufficient postage attached addressed as follows:

William Randall Collins
Register No. 21756-021
FCI Ashland
Federal Correctional Institution
P.O. Box 6001
Ashland, KY 41105

Respectfully submitted this 19th day of January, 2018.

/s/ Amy Lee Copeland
Amy Lee Copeland
Georgia Bar No. 186730
Attorney for Appellant

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[SAMPLE CERT. RIGHTS LETTER]

Dear Client:

On (date), the Eleventh Circuit issued its opinion affirming your sentence. In plainer words, you lost your appeal.

As required by the Eleventh Circuit Plan under the Criminal Justice Act, this letter (in addition to transmitting the order) advises you of the following.

You have the right to file a petition for rehearing or petition for rehearing en banc in the Eleventh Circuit, or to petition the Supreme Court of the United States for a writ of certiorari. I must file a petition for rehearing, a petition for rehearing en banc, or a petition for a writ of certiorari on your behalf if 1) you request me to do so in writing and 2) in my considered judgment sufficient grounds exist for the filing for such a petition.

While you have not yet requested me to file any further petition for you, I want to advise you that I do not believe that sufficient grounds exist for requesting any further relief on your appeal. First, as for a petition for rehearing, I am unable to identify any point of law or fact that the Eleventh Circuit overlooked in rendering its decision. Second, I do not believe that grounds for rehearing en banc exist in light of the standards of Federal Rule of Appellate Procedure 35(a) and Eleventh Circuit Rule 35-3. Under those rules, a petition for rehearing en banc is an extraordinary procedure intended to bring to the attention of the entire Eleventh Circuit a precedent-setting error of exceptional importance or to secure or maintain uniformity of the Court's decisions. Your case does not fall within either of these considerations. Third, and similarly, I do not believe that sufficient grounds for filing a petition for writ of certiorari exist in your case in light of the standards for filing a petition under the Rules of the Supreme Court and applicable case law.

Having concluded that there are not sufficient grounds to seek further review, I hereby inform you that any such review will not be sought by me. If you want this additional review, you must either seek it *pro se* or

hire counsel.

If you wish to file a petition for writ of certiorari on your own behalf, the right exists under the Criminal Justice Act to do so without prepayment of fees and costs or giving security therefore and without filing the affidavit of financial inability to pay such costs required by 28 U.S.C. §1915(a).

Please be careful with deadlines. A petition for rehearing or rehearing en banc must be filed with the Eleventh Circuit Court of Appeals in 21 days from the date of the court's order. A petition for writ of certiorari would be due in the Supreme Court within 90 days from the date of the court's order.

Very truly yours,

July 2019

**OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543**

**GUIDE FOR PROSPECTIVE INDIGENT PETITIONERS FOR WRITS OF
CERTIORARI**

I. Introduction

These instructions and forms are designed to assist petitioners who are proceeding *in forma pauperis* and without the assistance of counsel. A copy of the Rules of the Supreme Court, which establish the procedures that must be followed, is also enclosed. Be sure to read the following Rules carefully:

Rules 10-14 (Petitioning for certiorari)
Rule 29 (Filing and service on opposing party or counsel)
Rule 30 (Computation and extension of time)
Rules 33.2 and 34 (Preparing pleadings on 8½ x 11 inch paper)
Rule 39 (Proceedings *in forma pauperis*)

II. Nature of Supreme Court Review

It is important to note that review in this Court by means of a writ of certiorari is not a matter of right, but of judicial discretion. The primary concern of the Supreme Court is not to correct errors in lower court decisions, but to decide cases presenting issues of importance beyond the particular facts and parties involved. The Court grants and hears argument in only about 1% of the cases that are filed each Term. The vast majority of petitions are simply denied by the Court without comment or explanation. The denial of a petition for a writ of certiorari signifies only that the Court has chosen not to accept the case for review and does not express the Court's view of the merits of the case.

Every petitioner for a writ of certiorari is advised to read carefully the *Considerations Governing Review on Certiorari* set forth in Rule 10. Important considerations for accepting a case for review include the existence of a conflict between the decision of which review is sought and a decision of another appellate court on the same issue. An important function of the Supreme Court is to resolve disagreements among lower courts about specific legal questions. Another consideration is the importance to the public of the issue.

III. The Time for Filing

You must file your petition for a writ of certiorari within 90 days from the date of the entry of the final judgment in the United States court of appeals or highest state appellate court or 90 days from the denial of a timely filed petition for rehearing. The issuance of a mandate or remittitur after judgment has been entered has no bearing on the computation of time and does not extend the time for filing. See Rules 13.1 and

13.3. Filing in the Supreme Court means the actual receipt of paper documents by the Clerk; or their deposit in the United States mail, with first-class postage prepaid, on or before the final date allowed for filing; or their delivery to a third-party commercial carrier, on or before the final date allowed for filing, for delivery to the Clerk within 3 calendar days. See Rule 29.2.

IV. What To File

Unless you are an inmate confined in an institution and not represented by counsel, file:

—An original and ten copies of a motion for leave to proceed *in forma pauperis* and an original and 10 copies of an affidavit or declaration in support thereof. See Rule 39.

—An original and 10 copies of a petition for a writ of certiorari with an appendix consisting of a copy of the judgment or decree you are asking this Court to review including any order on rehearing, and copies of any opinions or orders by any courts or administrative agencies that have previously considered your case. See Rule 14.1(i).

—One affidavit or declaration showing that all opposing parties or their counsel have been served with a copy of the papers filed in this Court. See Rule 29.

If you are an inmate confined in an institution and not represented by counsel, you need file only the original of the motion for leave to proceed *in forma pauperis*, affidavit or declaration when needed in support of the motion for leave to proceed *in forma pauperis*, the petition for a writ of certiorari, and proof of service.

If the court below appointed counsel in the current proceeding, no affidavit or declaration is required, but the motion should cite the provision of law under which counsel was appointed, or a copy of the order of appointment should be appended to the motion. See Rule 39.1.

The attached forms may be used for the original motion, affidavit or declaration, and petition, and should be stapled together in that order. The proof of service should be included as a detached sheet, and the form provided may be used.

The Court's practice is to scan and make available on its website most filings submitted by litigants representing themselves. The Court scans petitions, motions to proceed *in forma pauperis*, proofs of service, and the portion of an appendix that includes relevant lower court opinions and rulings. While the Court does not scan other portions of an appendix from a *pro se* litigant, the entire appendix is fully a part of the Court's record and is available to the Justices.

On the same page, list all cases in other courts that are directly related to the case in this Court. A case is directly related if it arises from the same trial court case as the case in this Court (including the proceedings directly on review in this case), or if it challenges the same criminal conviction or sentence as is challenged in this Court,

whether on direct appeal or through state or federal collateral proceedings. Below is an example of the format that should be used for the list:

V. Page Limitation

The petition for a writ of certiorari may not exceed 40 pages excluding the pages that precede Page 1 of the form. The documents required to be contained in the appendix to the petition do not count toward the page limit. See Rule 33.2(b).

VI. Redaction of Personal Information

Pursuant to Rule 34.6, certain types of personal information should not be included in filings. For example, social security numbers and taxpayer identification numbers should be redacted so that only the last four digits of the number are included, and the names of minor children should be redacted so that only initials are included. In general, Rule 34.6 adopts the redaction practices that are applicable to cases in the lower federal courts. See, e.g., Federal Rule of Civil Procedure 5.2.

VII. Method of Filing

All documents to be filed in this Court must be addressed to the Clerk, Supreme Court of the United States, Washington, D. C. 20543 and must be served on opposing parties or their counsel in accordance with Rule 29.

INSTRUCTIONS FOR COMPLETING FORMS

I. Motion for Leave to Proceed *In Forma Pauperis* - Rule 39

A. On the form provided for the motion for leave to proceed *in forma pauperis*, leave the case number blank. The number will be assigned by the Clerk when the case is docketed.

B. On the line in the case caption for “petitioner”, type your name. As a *pro se* petitioner, you may represent only yourself. On the line for “respondent”, type the name of the opposing party in the lower court. If there are multiple respondents, enter the first respondent, as the name appeared on the lower court decision, followed by “et al.” to indicate that there are other respondents. The additional parties must be listed in the LIST OF PARTIES section of the petition.

C. If the lower courts in your case granted you leave to proceed *in forma pauperis*, check the appropriate space and indicate the court or courts that allowed you to proceed *in forma pauperis*. If none of the lower courts granted you leave to proceed *in forma pauperis*, check the block that so indicates.

D. Sign the motion on the signature line.

II. Affidavit or Declaration in Support of Motion for Leave to Proceed *In Forma Pauperis*

On the form provided, answer fully each of the questions. If the answer to a question is “0,” “none,” or “not applicable (N/A),” enter that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper, identified with your name and the question number. Unless each question is fully answered, the Clerk will not accept the petition. The form must either be notarized or be in the form of a declaration. See 28 U. S. C. § 1746.

III. Cover Page - Rule 34

When you complete the form for the cover page:

A. Leave case number blank. The number will be assigned by the Clerk when the case is docketed.

B. Complete the case caption as you did on the motion for leave to proceed *in forma pauperis*.

C. List the court from which the action is brought on the line following the words “on petition for a writ of certiorari to.” If your case is from a state court, enter the name of the court that last addressed the merits of the case. For example, if the highest state court denied discretionary review, and the state court of appeals affirmed the decision of the trial court, the state court of appeals should be listed. If your case is federal, the United States court of appeals that decided your case will always be listed here.

D. Enter your name, address, and telephone number in the appropriate spaces.

IV. Question(s) Presented

On the page provided, enter the question or questions that you wish the Court to review. The questions must be concise. Questions presented in cases accepted for review are usually no longer than two or three sentences. The purpose of the question presented is to assist the Court in selecting cases. State the issue you wish the Court to decide clearly and without unnecessary detail.

V. List of Parties and Related Cases

On the page provided, check either the box indicating that the names of all parties appear in the caption of the case on the cover page or the box indicating that there are additional parties. If there are additional parties, list them. Rule 12.6 states that all parties to the proceeding whose judgment is sought to be reviewed shall be deemed parties in this Court, and that all parties other than petitioner shall be respondents. The court whose judgment you seek to have this Court review is **not** a party.

On the same page, list all cases in other courts that are directly related to the case in this Court. A case is “directly related” if it arises from the same trial court case as the case in this Court (including the proceedings directly on review in this case), or if it challenges the same criminal conviction or sentence as is challenged in this Court, whether on direct appeal or through state or federal collateral proceedings. Below is an example of the format that should be used for this list:

- *Smith v. Jones*, No. 18-cv-200, U. S. District Court for the Western District of Pennsylvania. Judgment entered Oct. 1, 2018.
- *Smith v. Jones*, No. 18-1200, U. S. Court of Appeals for the Third Circuit. Judgment entered Apr. 15, 2019.

VI. Table of Contents

On the page provided, list the page numbers on which the required portions of the petition appear. Number the pages consecutively, beginning with the “Opinions Below” page as page 1.

VII. Index of Appendices

List the description of each document that is included in the appendix beside the appropriate appendix letter. Mark the bottom of the first page of each appendix with the appropriate designation, *e.g.*, “Appendix A.” See Rule 14.1 pertaining to the items to be included in the appendix.

A. Federal Courts

If you are asking the Court to review a decision of a federal court, the decision of the United States court of appeals should be designated Appendix A. Appendix A should be followed by the decision of the United States District Court and the findings and recommendations of the United States magistrate judge, if there were any. If the United States court of appeals denied a timely filed petition for rehearing, a copy of that order should be appended next. If you are seeking review of a decision in a habeas corpus case, and the decision of either the United States District Court or the United States Court of Appeals makes reference to a state court decision in which you were a party, a copy of the state court decision must be included in the appendix.

B. State Courts

If you are asking the Court to review a decision of a state court, the decision of which review is sought should be designated Appendix A. Appendix A should be followed by the decision of the lower court or agency that was reviewed in the decision designated Appendix A. If the highest court of the state in which a decision could be had denied discretionary review, a copy of that order should follow. If an order denying a timely filed petition for rehearing starts the running of the time for filing a petition for a writ of certiorari pursuant to Rule 13.3, a copy of the order should be appended next.

As an example, if the state trial court ruled against you, the intermediate court of appeals affirmed the decision of the trial court, the state supreme court denied discretionary review and then denied a timely petition for rehearing, the appendices should appear in the following order:

Appendix A Decision of State Court of Appeals

Appendix B Decision of State Trial Court

Appendix C Decision of State Supreme Court Denying Review

Appendix D Order of State Supreme Court Denying Rehearing

VIII. Table of Authorities

On the page provided, list the cases, statutes, treatises, and articles that you reference in your petition, and the page number of your petition where each authority appears.

IX. Opinions Below

In the space provided, indicate whether the opinions of the lower courts in your case have been published, and if so, the citation for the opinion below. For example, opinions of the United States courts of appeals are published in the Federal Reporter. If the opinion in your case appears at page 100 of volume 30 of the Federal Reporter, Third Series, indicate that the opinion is reported at 30 F. 3d 100. If the opinion has been designated for publication but has not yet been published, check the appropriate space. Also indicate where in the appendix each decision, reported or unreported, appears.

X. Jurisdiction

The purpose of the jurisdiction section of the petition is to establish the statutory source for the Court's jurisdiction and the dates that determine whether the petition is timely filed. The form sets out the pertinent statutes for federal and state cases. You need provide only the dates of the lower court decisions that establish the timeliness of the petition for a writ of certiorari. If an extension of time within which to file the petition for a writ of certiorari was granted, you must provide the requested information pertaining to the extension. If you seek to have the Court review a decision of a state court, you must provide the date the highest state court decided your case, either by ruling on the merits or denying discretionary review.

XI. Constitutional and Statutory Provisions Involved

Set out verbatim the constitutional provisions, treaties, statutes, ordinances and regulations involved in the case. If the provisions involved are lengthy, provide their citation and indicate where in the Appendix to the petition the text of the provisions appears.

XII. Statement of the Case

Provide a **concise** statement of the case containing the facts material to the consideration of the question(s) presented; you should summarize the relevant facts of the case and the proceedings that took place in the lower courts. You may need to attach additional pages, but the statement should be concise and limited to the relevant facts of the case.

XIII. Reasons for Granting the Petition

The purpose of this section of the petition is to explain to the Court why it should grant certiorari. It is important to read Rule 10 and address what compelling reasons exist for the exercise of the Court's discretionary jurisdiction. Try to show not only why the decision of the lower court may be erroneous, but the national importance of having the Supreme Court decide the question involved. It is important to show whether the decision of the court that decided your case is in conflict with the decisions of another appellate court; the importance of the case not only to you but to others similarly situated; and the ways the decision of the lower court in your case was erroneous. You will need to attach additional pages, but the reasons should be as concise as possible, consistent with the purpose of this section of the petition.

XIV. Conclusion

Enter your name and the date that you submit the petition.

XV. Proof of Service

You must serve a copy of your petition on counsel for respondent(s) as required by Rule 29. If you serve the petition by first-class mail or by third-party commercial carrier, you may use the enclosed proof of service form. If the United States or any department, office, agency, officer, or employee thereof is a party, you must serve the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N.W., Washington, D. C. 20530-0001. The lower courts that ruled on your case are not parties and need not be served with a copy of the petition. The proof of service may be in the form of a declaration pursuant to 28 U. S. C. § 1746.

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

_____ — PETITIONER
(Your Name)

VS.

_____ — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

☐ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

☐ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: _____
_____, or

☐ a copy of the order of appointment is appended.

(Signature)

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, _____, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$_____	\$_____	\$_____	\$_____
Self-employment	\$_____	\$_____	\$_____	\$_____
Income from real property (such as rental income)	\$_____	\$_____	\$_____	\$_____
Interest and dividends	\$_____	\$_____	\$_____	\$_____
Gifts	\$_____	\$_____	\$_____	\$_____
Alimony	\$_____	\$_____	\$_____	\$_____
Child Support	\$_____	\$_____	\$_____	\$_____
Retirement (such as social security, pensions, annuities, insurance)	\$_____	\$_____	\$_____	\$_____
Disability (such as social security, insurance payments)	\$_____	\$_____	\$_____	\$_____
Unemployment payments	\$_____	\$_____	\$_____	\$_____
Public-assistance (such as welfare)	\$_____	\$_____	\$_____	\$_____
Other (specify): _____	\$_____	\$_____	\$_____	\$_____
Total monthly income:	\$_____	\$_____	\$_____	\$_____

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____

4. How much cash do you and your spouse have? \$ _____
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value _____

☐ Other real estate
Value _____

☐ Motor Vehicle #1
Year, make & model _____
Value _____

☐ Motor Vehicle #2
Year, make & model _____
Value _____

☐ Other assets
Description _____
Value _____

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ _____	\$ _____
Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ _____	\$ _____
Home maintenance (repairs and upkeep)	\$ _____	\$ _____
Food	\$ _____	\$ _____
Clothing	\$ _____	\$ _____
Laundry and dry-cleaning	\$ _____	\$ _____
Medical and dental expenses	\$ _____	\$ _____

	You	Your spouse
Transportation (not including motor vehicle payments)	\$_____	\$_____
Recreation, entertainment, newspapers, magazines, etc.	\$_____	\$_____
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$_____	\$_____
Life	\$_____	\$_____
Health	\$_____	\$_____
Motor Vehicle	\$_____	\$_____
Other: _____	\$_____	\$_____
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$_____	\$_____
Installment payments		
Motor Vehicle	\$_____	\$_____
Credit card(s)	\$_____	\$_____
Department store(s)	\$_____	\$_____
Other: _____	\$_____	\$_____
Alimony, maintenance, and support paid to others	\$_____	\$_____
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$_____	\$_____
Other (specify): _____	\$_____	\$_____
Total monthly expenses:	\$_____	\$_____

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☐ No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☐ No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☐ No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: _____, 20____

(Signature)

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

_____ — PETITIONER
(Your Name)

vs.

_____ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

(Your Name)

(Address)

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

LIST OF PARTIES

- [] All parties appear in the caption of the case on the cover page.
- [] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

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STATUTES AND RULES

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[] No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[] For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATEMENT OF THE CASE

REASONS FOR GRANTING THE PETITION

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: _____

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

_____ — PETITIONER
(Your Name)

VS.

_____ — RESPONDENT(S)

PROOF OF SERVICE

I, _____, do swear or declare that on this date, _____, 20____, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20____

(Signature)

**Motion to Vacate, Set Aside, or Correct a Sentence
By a Person in Federal Custody**

(Motion Under 28 U.S.C. § 2255)

Instructions

1. To use this form, you must be a person who is serving a sentence under a judgment against you in a federal court. You are asking for relief from the conviction or the sentence. This form is your motion for relief.
2. You must file the form in the United States district court that entered the judgment that you are challenging. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file the motion in the federal court that entered that judgment.
3. Make sure the form is typed or neatly written.
4. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
5. Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit any legal arguments, you must submit them in a separate memorandum. Be aware that any such memorandum may be subject to page limits set forth in the local rules of the court where you file this motion.
6. If you cannot pay for the costs of this motion (such as costs for an attorney or transcripts), you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out the last page of this form. Also, you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you.
7. In this motion, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different judge or division (either in the same district or in a different district), you must file a separate motion.
8. When you have completed the form, send the original and _____ copies to the Clerk of the United States District Court at this address:

Clerk, United States District Court for
Clerk, United States District Court for **Address**
Address
City, State Zip Code

If you want a file-stamped copy of the petition, you must enclose an additional copy of the petition and ask the court to file-stamp it and return it to you.

9. **CAUTION: You must include in this motion all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this motion, you may be barred from presenting additional grounds at a later date.**
10. **CAPITAL CASES: If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.**

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court	District _____
Name <i>(under which you were convicted)</i> : _____	Docket or Case No.: _____
Place of Confinement: _____	Prisoner No.: _____
UNITED STATES OF AMERICA <div style="text-align: center;">V.</div>	Movant <i>(include name under which convicted)</i> _____

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

(b) Criminal docket or case number (if you know): _____

2. (a) Date of the judgment of conviction (if you know): _____

(b) Date of sentencing: _____

3. Length of sentence: _____

4. Nature of crime (all counts):

5. (a) What was your plea? (Check one)

(1) Not guilty ☐

(2) Guilty ☐

(3) Nolo contendere (no contest) ☐

6. (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☐

8. Did you appeal from the judgment of conviction? Yes ☐ No ☐

9. If you did appeal, answer the following:

(a) Name of court: _____

(b) Docket or case number (if you know): _____

(c) Result: _____

(d) Date of result (if you know): _____

(e) Citation to the case (if you know): _____

(f) Grounds raised: _____

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☐

If "Yes," answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

(5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐

No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket of case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐

No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: _____

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

- (2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☐

(5) If your answer to Question (c)(4) is “Yes,” did you raise the issue in the appeal?

Yes ☐

No ☐

(6) If your answer to Question (c)(4) is “Yes,” state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court’s decision: _____

Result (attach a copy of the court’s opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is “No,” explain why you did not appeal or raise this issue: _____

GROUND TWO: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is “Yes,” state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court’s decision: _____

Result (attach a copy of the court’s opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is “Yes,” did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is “Yes,” state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court’s decision: _____

Result (attach a copy of the court’s opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is “No,” explain why you did not appeal or raise this issue: _____

GROUND THREE: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is “Yes,” state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court’s decision: _____

Result (attach a copy of the court’s opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is “Yes,” did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is “Yes,” state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court’s decision: _____

Result (attach a copy of the court’s opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is “No,” explain why you did not appeal or raise this issue: _____

GROUND FOUR: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is “Yes,” state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing:

(b) At the arraignment and plea:

(c) At the trial:

(d) At sentencing:

(e) On appeal:

(f) In any post-conviction proceeding:

(g) On appeal from any ruling against you in a post-conviction proceeding:

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☐

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

[illegible]

* The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: _____

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on _____.
(month, date, year)

Executed (signed) on _____ (date)

Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

