No. 11-2328

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

MARIO REEVES,
Defendant-Appellant.

On Appeal from the United States District Court
For the Northern District of Illinois
The Honorable Judge Joan Gottschall
Case No. 07-CR-614-2

BRIEF OF DEFENDANT-APPELLANT MARIO REEVES

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DISCLOSURE STATEMENT

I, the undersigned counsel for the Defendant-Appellant, Mario Reeves, furnish the following list in compliance with FED. R. APP. P. 26.1 and CIR. R. 26.1:

1. The full name of every party or amicus the attorney represents in the case: MARIO REEVES.

2. Said party is not a corporation.

3. The names of all law firms whose partners or associates are expected to appear for the party before this Court: Sarah O. Schrup (attorney of record), Kimberly Mitchell (senior law student), Katherine Moskop (senior law student), and Simon Springett (senior law student) of the Bluhm Legal Clinic at the Northwestern University School of Law. The names of all law firms whose partners or associates have appeared for the party in the district court and are not expected to appear:

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DISCLOSURE STATEMENT (CONTINUED)

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes[X] No[]**

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STATEMENT OF JURISDICTION

The United States District Court for the Northern District of Illinois, Eastern Division, had jurisdiction over Appellant Mario Reeves's federal criminal prosecution pursuant to 18 U.S.C. § 3231 (2006), which states that "the district courts of the United States shall have original jurisdiction . . . of all offenses against the laws of the United States." This jurisdiction was based on an eight-count indictment charging Reeves under 21 U.S.C. § 846 and 18 U.S.C. § 2 with conspiracy to possess and distribute heroin, two heroin distribution counts in violation of 21 U.S.C. § 841(a)(1), and five counts of using a telephone to commit a felony in violation of 21 U.S.C. § 843(b). (R.143, Indictment.)[1]

The government filed a superseding indictment on November 6, 2008, and Reeves was eventually tried before a jury. (R.336, Superseding Indictment) After a four-day trial, the jury returned a verdict of guilty on all eight counts on February 5, 2010. (Trial Tr. 1147-48.) Reeves filed a motion for a new trial, which the district court denied. (R.598, Def.'s Mot. for New Trial; App. A32, Minute Entry Den. Mot. for New Trial.)

The district court entered final judgment on the verdict on May 20, 2011, and sentenced Reeves to twenty-five years in prison for the conspiracy and distribution counts, followed by ten years of supervised release conditional upon Reeves paying a special assessment in the amount of $800, and eight years to be served concurrently

[1] References to the consecutively paginated Trial Transcript shall be denoted as (Trial Tr. ___). References to Sentencing Transcripts shall be denoted as ([date] Sentencing Tr. __). All other references to the Record shall be denoted with the appropriate docket number as (R.__). References to the material in the Appendix shall be denoted as (App. __).

for the phone counts. (App. A35-38.) Reeves filed a timely notice of appeal on May 23, 2011. (R.754, Def.'s Notice of Appeal.) This Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291, which grants jurisdiction over "all final decisions of the district courts of the United States" to its courts of appeal and 18 U.S.C. § 3742, which provides for review of the sentence imposed.

STATEMENT OF THE ISSUE

I. Whether the district court improperly applied sentencing enhancements under 21 U.S.C. §§ 841 and 851 after erroneously concluding that prior state trial counsel's performance was constitutionally adequate where counsel failed to advise the defendant that a felony guilty plea rendered him automatically eligible for severe recidivist sentencing consequences, including a possible life sentence.

STATEMENT OF THE CASE

This case arises out of an investigation into the "Poison Line," a heroin distribution organization that operated in southeast Chicago. (R.336, Superseding Indictment at 2.) On October 11, 2007, police arrested Mario Reeves. (R.68, Minute Entry.) The government indicted him under 21 U.S.C. §§ 841(a)(1), 843(b), and 846 and 18 U.S.C. § 2 for conspiracy, possession with intent to distribute heroin, and use of a telephone in furtherance of the Poison Line conspiracy. (R.336, Superseding Indictment at 2-22.)

On November 30, 2007, the government served notice of its intent to use Reeves's prior state convictions for possession and distribution of cocaine to enhance his sentence under 21 U.S.C. § 851(a). (R.139, Govt.'s Notice of § 851 Enhancement at 1-2.) Reeves opposed the government's notice, arguing that the government could not rely on his prior state convictions for the purposes of § 851 because the convictions were constitutionally infirm. (R.545, Def.'s Resp. to § 851 Enhancement at 2.) Specifically, he argued that before he entered the guilty pleas his state trial counsel did not inform him that the government could use these convictions to enhance future sentences. (R.545, Def.'s Resp. to § 851 Enhancement at 2.)

On January 25, 2010, and with the § 851 matter unresolved, Reeves went to trial. (Trial Tr. 1.) Six days later, the jury convicted Reeves on all counts. (Trial Tr. 1147-48.) Reeves subsequently moved for acquittal or, alternatively, a new trial, which the court denied. (R.598, Def.'s Motion for New Trial; R.703, Order.)

During sentencing, Reeves again objected to the government's use of his prior state convictions to enhance his sentence. (5/2/11 Sentencing Tr. 121-22.)

On May 2, 2011, the district court found that Reeves's prior convictions were not constitutionally infirm and allowed the § 851 enhancement. (5/2/11 Sentencing Tr. 125-27.) On May 20, 2011, the district court sentenced Reeves to twenty-five years in prison followed by ten years of supervised release and an eight hundred dollar special assessment. (5/20/11 Sentencing Tr. 277-79.) Reeves filed a timely notice of appeal on May 23, 2011. (R.754, Notice of Appeal at 1.)

STATEMENT OF FACTS

Introduction

On May 20, 2011, Mario Reeves, at the age of twenty-five, was sentenced to twenty-five years in federal prison. (5/20/11 Sentencing Tr. 277.) Reeves had faced prison time only once before, in 2004, when he pled guilty in state court to two charges stemming from possession and sale of a gram or two of cocaine. (R.682, Def.'s Objections to PSR at 10.) He was sentenced to three years' imprisonment on one count and one year on the other, which were to be served concurrently. (R.681, Def.'s Supplemental Resp. to § 851 Enhancement at 2.)

Reeves was arrested on the current charges in 2007, along with roughly a dozen others; the charges alleged a conspiracy to distribute heroin. (R.336, Superseding Indictment at 1-2.) The government sought enhanced penalties under 18 U.S.C. §§ 841 and 851, so Reeves faced a mandatory minimum of twenty years' imprisonment, even if he pled guilty. (R.139, Govt.'s Notice of § 851 Enhancement at 1-2.) He opted to go to trial, along with a co-defendant, and the jury found him guilty. (Trial Tr. 1147.) At sentencing, he was subject to the twenty-year mandatory minimum and the possibility of a life sentence. (5/20/11 Sentencing Tr. 215.) At a minimum, Reeves's sentence would be at least seventeen years longer than his only prior prison term.

Reeves's childhood, involvement with drugs, and guilty plea in Illinois

Any understanding of Reeves's involvement with drugs—and the criminal justice system— is incomplete without considering his formative years. Simply put,

Reeves had a rough childhood. By the time he turned five, his mother was addicted to drugs and unable to care for him. (R.682, Def.'s Objection to PSR at 18.) His father has been incarcerated practically all of Reeves's life, and thus was not around to help. (5/20/11 Sentencing Tr. 221.) Reeves was forced to live with his aunt, who had her own drug problems. (R.682, Def.'s Objection to PSR at 18.) She also physically abused Reeves. (R.682, Def.'s Objection to PSR at 18.) Reeves often visited soup kitchens just to get basic nourishment, taking his younger siblings along with him. (R.682, Def.'s Objection to PSR at 18.) At age ten, Reeves reunited with his mother, now homeless, and together they moved into a shelter. (R.682, Def.'s Objection to PSR at 18.)

Reeves's neighborhood was dominated by the Gangster Disciples street gang. (R.682, Def.'s Objection to PSR at 18.) Reeves began to associate with the gang as a teenager. (R.682, Def.'s Objection to PSR at 18.) Reeves dropped out of high school at age seventeen, and was arrested several times thereafter for a variety of violations, though it was not until several years later, and prior to the instant case, that he received his first and only felony convictions. (5/20/11 Sentencing Tr. 215; R.682, Def.'s Objection to PSR at 16.)

Reeves was arrested in Illinois for possessing less than two grams of cocaine and selling less than one gram. (R.397, Govt.'s Am. § 851 Information at 1.) Facing between three and seven years in prison, Reeves pled guilty on September 14, 2004 to both counts, and received a three-year sentence.[2] (R.681, Def.'s Supplemental Resp. to § 851 Enhancement at 1-2.) Given 249 days' credit for time served up to

[2] Reeves was convicted under 720 ILCS 570/401(d) and 402(c).

sentencing, he ended up serving about twelve more months in prison, or about twenty months in all. (R.682, Def.'s Objection to PSR at 16.) Although Reeves was informed of the immediate sentence that would result from his plea, neither the judge nor defense counsel informed Reeves about the serious enhanced sentencing consequences likely to follow if he recidivated. (R.681, Def.'s Supplemental Resp. to § 851 Enhancement at 3.)

Reeves's arrest and the government's notice under 21 U.S.C. § 851

Finding himself in federal court for the first time, facing drug-conspiracy and related charges, Reeves learned that the government intended to seek a sentencing enhancement under 21 U.S.C. § 841 if he was convicted. Whether to pursue this enhancement, which provided for the doubling of any applicable mandatory minimums if the defendant had qualifying predicate offenses, was within the government's sole discretion. (R.139, Govt.'s Notice of § 851 Enhancement at 1.) For Reeves that meant a twenty-year mandatory minimum, some twelve times longer than he had previously spent in prison. (R.139, Govt.'s Notice of § 851 Enhancement at 2.) The government did not seek enhancements for any other co-defendant, yet refused to abandon the enhancement for Reeves, even when he offered to plead guilty. (R.681, Def.'s Supplemental Resp. to § 851 Enhancement at 2.)

Defense counsel filed a pre-trial motion opposing the enhancement, arguing that state trial counsel's failure to notify Reeves about the consequences of pleading guilty to his earlier state charges constituted ineffective assistance of counsel.

Specifically, defense counsel asserted that Reeves received ineffective assistance of counsel and was denied due process when neither his lawyer nor the judge advised him of the risk of enhanced penalties if he recidivated. (R.681, Def.'s Supplemental Resp. to § 851 Enhancement at 3-4.) The district court acknowledged that defendants should be advised that if they plead guilty and are apprehended again they will face significant sentencing enhancements because of the prior conviction. (5/2/11 Sentencing Tr. 125.) Ultimately, however, the district court found that this failure to advise did not rise to a constitutional violation and thus applied the § 851 enhancement; Reeves's ten-year mandatory minimum was thus doubled to twenty years. (5/20/11 Sentencing Tr. 205.)

Trial and sentencing

In light of this twenty-year minimum, Reeves elected to go to trial, confronting charges of conspiracy to possess with intent to distribute at least one kilogram of a controlled substance, drug possession, and use of a telecommunication device to facilitate the conspiracy. (R.1, Complaint at 1; 5/2/11 Sentencing Tr. 124.) The primary evidence against him, in addition to wiretaps, was testimony from two co-conspirators, Aukey Williams and Tavaris Williams, who testified for the government in return for favorable treatment at sentencing.

The evidence at trial showed that from May 2006 to September 2007 a heroin distribution organization known as the "Poison Line" operated in the areas around 7900 South Cottage Grove and the intersection of 65th St. and Cottage Grove on the southeast side of Chicago. (Trial Tr. 375-80.) Aukey was the leader of the Poison

Line. The government alleged that Reeves helped manage a smaller "night" shift while Aukey ran the "day" line. Aukey pled guilty and agreed to testify as the government's lead witness in exchange for a heavily reduced sentence. (Trial Tr. 370-71.)

According to Aukey, both he and Reeves shared in the overall profits from the sales of heroin. (Trial Tr. 382.) At least eleven other individuals (who were also indicted, but most of whom reached plea agreements) fulfilled a variety of roles within the operation. (R.336, Superseding Indictment at 1.) Wiretaps of Poison Line workers' telephones (including the operation's primary "work phone"), videotaped surveillance, covert seizures, and controlled purchases of Poison Line heroin by undercover agents were also used at trial to convict Reeves. (R.1, Compl. at 6.)

At sentencing, the district court made several findings, also based primarily on Aukey's testimony. The resulting enhancements, including a total drug quantity finding of ten to thirty kilograms of heroin over the lifetime of the conspiracy, (5/2/11 Sentencing Tr. 184), placed Reeves's base offense level at 43, (5/20/11 Sentencing Tr. 215). The district court considered the § 3553 factors, and then sentenced Reeves to twenty-five years' imprisonment for the conspiracy and drug possession counts, followed by ten years of supervised release. (5/20/11 Sentencing Tr. 277-79.)[3] The district court stated that the twenty-year mandatory minimum was "responsible for a lot of [his] sentence." (5/20/11 Sentencing Tr. 275.)

[3] He was also sentenced to a concurrent eight-year term for the five counts of use of a telephone to facilitate the conspiracy. (R.760, Judgment at 3.)

SUMMARY OF THE ARGUMENT

Mario Reeves's twenty-year, mandatory minimum sentence stemmed from predicate convictions that rested on counsel's constitutionally deficient performance. Because 21 U.S.C. § 851(c)(2) precludes previous convictions that are constitutionally infirm from serving as predicate offenses, the trial court erroneously allowed the government's 21 U.S.C. § 851 enhancement, which automatically doubled Reeves's sentence. As the Supreme Court's recent decision in *Padilla v. Kentucky* shows, the Sixth Amendment's right to effective assistance of counsel encompasses state counsel's deficiency in failing to advise a defendant of certain serious consequences arising from his plea. Although *Padilla* dealt with deportation, the Court's reasoning equally applies to Reeves's case, where his prior guilty plea automatically made him eligible for severely elevated recidivist sentencing enhancements.

Because Reeves's case falls within the ambit of Sixth Amendment protection, the district court should have considered the two-prong test from *Strickland v. Washington* to determine whether Reeves received ineffective assistance of counsel. Had it done so, the district court would have found that state trial counsel's deficient performance easily satisfied the first prong *of Strickland's* two-part test. Prevailing norms of practice in the legal community require counsel to ascertain the consequences that matter most to the defendant in fashioning a plea, which cannot happen if the defendant is not fully educated about them. A defendant cannot plea bargain effectively and, thus, enter a knowing and voluntary plea, without adequate

warnings about future sentencing consequences that may ensue from the plea agreement. In fact, the American Bar Association standards explicitly dictate that a defendant should be informed of enhanced recidivist sentences. Reeves's prior state counsel failed to fully warn him of the consequences of his plea. This Court should remand to the district court for an evidentiary hearing to determine whether Reeves satisfies Strickland's second prong—the prejudice inquiry—and, if so, for resentencing without the § 851 enhancement.

ARGUMENT

I. Reeves's prior state trial counsel's performance was constitutionally deficient when he failed to advise Reeves that by pleading guilty he would be eligible for severely enhanced recidivist sentencing consequences.

The district court erred when it categorically rejected, as a matter of law, Reeves's argument that his prior state convictions were constitutionally infirm because trial counsel failed to advise him that pleading guilty would make him eligible for a far more serious sentence for any future drug crimes. In 2004 Reeves pled guilty in Illinois state court to charges stemming from possession and sale of roughly one gram of cocaine; he was sentenced to three years in prison. In this case, Reeves was sentenced to twenty-five years in prison because the government used its discretion to apply sentencing enhancements under 21 U.S.C. § 851 (2006). Reeves was entitled to, and did, challenge the constitutionality of these convictions. *See* 21 U.S.C. § 851(c)(2), (e) (allowing a defendant to challenge the constitutionality of a prior conviction noticed by the government, as long as that conviction is less than five years old); (R. 397, Govt.'s Am. § 851 Information at 1) (indicating that the underlying convictions occurred within five years of notice). The district court rejected Reeves's objection to the enhancement and to his sentence. (5/2/11 Sentencing Tr. 127.) This Court reviews *de novo* claims that counsel's performance was unconstitutionally deficient. *United States v. Holman*, 314 F.3d 837, 839 (7th Cir. 2002).

The Supreme Court has recognized that defendants are entitled to effective counsel at the plea bargaining stage, and that effectiveness requires counsel to

warn the defendant of certain consequences that could result from a guilty plea. *Padilla v. Kentucky*, 130 S. Ct. 1473, 1482-83 (2010) (establishing counsel's duty to warn of plea consequences beyond those prescribed by the statute of conviction); *Hill v. Lockhart*, 474 U.S. 52, 59 (1985) (applying *Strickland*'s two-part standard to counsel's advice regarding whether to plead guilty); *Strickland v. Washington*, 466 U.S. 668 (1984) (holding that counsel is ineffective if counsel's performance falls below an objective standard of reasonableness and if such performance was prejudicial).

Applying these principles to Reeves's case shows that state trial counsel's performance fell below an objectively reasonable standard under *Strickland's* first prong when he failed to advise Reeves that by pleading guilty to his first felony he would forever be eligible for severely enhanced recidivist-based sentences. A remand is required to determine whether Reeves suffered prejudice, the second part of the *Strickland* ineffective-assistance test. If Reeves establishes prejudice, though, then his prior convictions were constitutionally invalid and the district court should not have used them in applying a twenty-year mandatory minimum to Reeves's sentence under an § 851(a) enhancement. 21 U.S.C. § 851(a).

A. Reeves's failure-to-warn claim falls squarely within the Sixth Amendment.

The Supreme Court has long held that a defendant is constitutionally entitled to competent advice from counsel during the plea process. *Padilla*, 130 S. Ct. at 1486 ("[T]he negotiation of a plea bargain is a critical phase of litigation for purposes of the Sixth Amendment right to effective assistance of counsel." (citing

Hill, 474 U.S. at 57)); *see also United States v. Mitchell*, 58 F.3d 1221, 1226 (7th Cir. 1995). In analyzing ineffective assistance of counsel claims in the plea process, federal trial and appellate courts have traditionally invoked standards developed for Fifth Amendment due process claims or for Rule 11 purposes, which also encompasses that right. *See, e.g.*, *Santos v. Kolb*, 880 F.2d 941, 944 (7th Cir. 1989) (stating that same test is used to assess counsel's performance in advising a defendant as used by trial court to assess voluntary and intelligent nature of plea); *Haase v. United States*, 800 F.2d 123, 127 (7th Cir. 1986). Under that test, the question is whether the error relates to a direct or a collateral consequence of the plea because only direct consequences implicate constitutional concerns. *Warren v. Richland Cnty. Circuit Court*, 223 F.3d 454, 457 (7th Cir. 2000). Direct consequences have been defined as those that are the "definite, immediate and automatic consequences" of the guilty plea and collateral consequences have encompassed virtually everything else. *United States v. Suter*, 755 F.2d 523, 525 (7th Cir. 1985). When this Due Process rubric is applied to the Sixth Amendment ineffective-assistance question, courts ask whether defense counsel's "shortcomings" made the defendant's plea involuntary or unintelligent, *Santos*, 880 F.2d at 944, and, like the Due Process inquiry, have traditionally found ineffectiveness only when counsel's failure implicates a "direct" consequence, *see, e.g.*, *United States v. George*, 869 F.2d 333, 337 (7th Cir. 1989); *Suter*, 755 F.2d at 525.

Notably, until *Padilla* many courts had simply dismissed as collateral ineffective-assistance claims based on a failure to advise of deportation

consequences. *See, e.g.*, *Santos*, 880 F.2d at 944-45 (reasoning that, because deportation is a "collateral" consequence, counsel need not inform defendant of that risk prior to pleading guilty); *United States v. Jordan*, 870 F.2d 1310, 1316-17 (7th Cir. 1989) (concluding that whether a possibility of federal prosecution emanating from a state conviction was a direct or collateral consequence would be dispositive of the voluntariness of the plea); *see also United States v. Gonzalez*, 202 F.3d 20, 27-28 (1st Cir. 2000); *United States v. Banda*, 1 F.3d 354, 355-56 (5th Cir. 1993); *Varela v. Kaiser*, 976 F.2d 1357, 1357 (10th Cir. 1992); *United States v. Del Rosario*, 902 F.2d 55, 56 (D.C. Cir. 1990); *United States v. DeFreitas*, 865 F.2d 80, 82 (4th Cir. 1989); *United States v. Campbell*, 778 F.2d 764, 767 (11th Cir. 1985); *United States v. Santelises*, 476 F.2d 787, 790 (2d Cir. 1973). Prior to *Padilla*, courts had similarly dismissed ineffective-assistance claims based on the failure to advise regarding other collateral consequences. *See, e.g.*, *Pickard v. Thompson*, 170 F. App'x 86, 87 (11th Cir. 2006) (eligibility for parole); *George v. Black*, 732 F.2d 108, 111 (8th Cir. 1994) (civil commitment for sex offenders); *United States v. Salmon*, 944 F.2d 1106, 1130 (3d Cir. 1991) (future sentencing enhancements); *Torrey v. Estelle*, 842 F.2d 234, 236-37 (9th Cir. 1988) (possibility of full prison sentence if removed from alternative program for young offenders).

The Supreme Court's decision in *Padilla* altered this landscape. *Padilla*, 130 S. Ct. at 1478. In *Padilla*, the noncitizen defendant pled guilty to a federal drug transportation offense; counsel had erroneously advised him that the plea would not jeopardize his immigration status. In ruling on *Padilla's* post-conviction motion

arguing that he had received ineffective assistance of counsel, the lower court held that because deportation is a collateral consequence, the Sixth Amendment simply did not apply to *Padilla's* claim. *Commonwealth v. Padilla*, 253 S.W.3d 482, 485 (Ky. 2008). Yet on review, the Supreme Court deliberately distanced itself from the lower courts' long-established direct-collateral dichotomy in addressing the Sixth Amendment's applicability to counsel's advice, or lack of advice, regarding immigration consequences of a guilty plea. *Padilla*, 130 S. Ct. at 1481-82 (noting that the Court has never applied the direct-collateral distinction in the context of ineffective assistance of counsel claims and finding that the distinction is "ill-suited" to addressing whether counsel gave competent advice about a guilty plea concerning deportation).

Instead, the Court instituted a rubric based on several fact-specific considerations that impact a defendant's decision-making during the plea process: (1) the relative severity, or importance, of the consequence resulting from the plea; (2) the interrelatedness of the consequence with the criminal process; and (3) whether the consequence is nearly an automatic result for many offenders. *Id.* at 1480-81. The Court recognized that providing proper information based on these factors enables counsel to more effectively seek an outcome acceptable to her client. *See id.* at 1486. More importantly, the Court concluded that counsel is obligated to provide such information. *Id.* at 1484 ("It is quintessentially the duty of counsel to provide her client with available advice about an issue like deportation . . . .").

Just as "advice regarding deportation is not categorically removed from the ambit of the Sixth Amendment right to counsel" under *Padilla*, *id.* at 1482, applying the same principles to Reeves's case shows that advice regarding recidivist sentencing consequences can, at least in some cases, fall within these Sixth Amendment protections. Similarly, in light of *Padilla*, other courts have also recognized that formerly "collateral" consequences actually do implicate the defendant's right to effective assistance of counsel. *See, e.g.*, *Bauder v. Dep't of Corr. State of Fla.*, 619 F.3d 1272, 1275 (11th Cir. 2010) (risk of civil commitment); *Commonwealth v. Abraham*, 996 A.2d 1090, 1094-95 (Pa. Super. Ct. 2010), *appeal granted in part*, 9 A.3d 1133 (Pa. 2010) (loss of pension); *Taylor v. State*, 698 S.E.2d 384, 389 (Ga. Ct. App. 2010) (sex offender requirements).

Turning to the first factor, *Padilla* established that certain consequences are of paramount importance to a defendant evaluating a plea bargain. *See* 130 S. Ct. at 1480-81. The Supreme Court recognized that deportation was one such "severe penalty" and, for many defendants, the "most important part" of the penalty. *Id.* at 1480-81 (internal quotation marks omitted). Both the severity and importance requirements are amply satisfied in Reeves's case. Reeves's first convictions for drug possession and distribution earned him a three-year term of imprisonment. His next conviction—the one in this case—netted a twenty-year mandatory minimum sentence. Offenders reasonably know that committing a subsequent crime will bring a more punitive sentence. *See United States v. Lewis*, 902 F.2d 576, 577 (7th Cir. 1990) (noting that just as aliens know that criminal activity carries

the risk of deportation, citizen defendants know that the criminal justice system punishes repeat offenders more severely than first-time offenders). But a federal sentence seventeen years longer than a prior three-year state sentence is an especially harsh escalation and severe sanction, one that is not reasonably within the contemplation of a defendant who is pleading guilty for the first time. U.S. Dep't of Justice, Bureau of Justice Statistics, *Felony Sentences in the United States, 1995*, at 9 (Bulletin NCJ-165149, July 1997) (showing federal penalties are generally higher than state penalties, and that federal sentences for drug possession, drug trafficking, and weapons offenses are, on average, more than three times the length of state sentences); Sara Sun Beale, *Too Many and Yet Too Few: New Principles to Define the Proper Limits for Federal Criminal Jurisdiction*, 46 Hastings L.J. 979, 981-82 (1995); John S. Baker, Jr., *Jurisdictional and Separation of Powers Strategies to Limit the Expansion of Federal Crimes*, 54 Am. U. L. Rev. 545, 575 (2005); *see also United States v. Palmer*, 3 F.3d 300, 305 n.3 (9th Cir. 1993) (one partner in a marijuana growing operation was prosecuted in state court and served no jail time while the other partner was prosecuted in federal court and sentenced to a mandatory minimum term of 10 years). Most notably, federal laws dealing with drug trafficking and weapons offenses require imposition of harsh mandatory *minimum* sentences, which can be as long as or longer than the *maximum* sentences permitted under state laws. Steven D. Clymer, *Unequal Justice: The Federalization of Criminal Law*, 70 S. Cal. L. Rev. 643, 674 (1997). Thus defendants swept into federal court on drug charges are blindsided by the

dramatic increase in sentences, as compared to their experience with state court proceedings, especially when a defendant's first felony convictions are in state court and his very next one ends up in federal court.

Had counsel given Reeves competent advice before pleading guilty, his decision-making calculus would have been dramatically different. Reeves's then-existing calculus merely weighed the shorter sentence/guaranteed conviction resulting from the plea against the potentially longer sentence/possible acquittal resulting from trial. Specifically, Reeves pled guilty to the state charges in exchange for a three-year prison sentence. Had he gone to trial, and lost, his sentence may have more than doubled; he could have been sentenced from anywhere between three and seven years. *See* 720 Ill. Comp. Stat. 570/401(d) (2002) (classifying distribution of less than one gram of cocaine as Class 2 felony); 730 Ill. Comp. Stat. 5/5-8-1 (2002) (specifying sentencing range for Class 2 felony). Based on what he knew, the possibility of up to four extra years was undoubtedly significant relative to the three-year sentence he accepted. But the three-year plea would have been considerably less attractive had Reeves been warned that it automatically carried a lifetime of extremely severe recidivist sentencing enhancements including, in his case, a potential, mandatory life sentence for his very next conviction. *See* 21 U.S.C. § 841(b)(1)(A) (requiring a mandatory minimum life sentence for two prior felony convictions); (R.397, Govt.'s Am. § 851 Information at 1). Had Reeves known of such severe recidivist sentencing consequences, they would have become the most important factor in the plea calculus and he would

have been much less likely to accept the plea as it was offered. (*See* R.681, Def.'s Supplemental Resp. to 851 Enhancement at 3.)

Turning to *Padilla*'s second factor, the Court also considered a consequence's interrelatedness with the criminal process as important to determining whether *Strickland* applies to counsel's failure to advise. *Padilla* concerned deportation, a particular type of proceeding that, while not itself criminal, historically had a close affiliation with criminal proceedings. 130 S. Ct. at 1481. The Court found that deportation is "intimately related to the criminal process," and that "[o]ur law has enmeshed criminal convictions and the penalty of deportation for nearly a century." *Id.*

The second factor is also fulfilled in Reeves's case. Sentencing provisions, particularly recidivist sentencing schemes, are more than "intimately related to the criminal process," they are part and parcel of the criminal process. Recidivist drug sentencing provisions such as those found in 21 U.S.C. § 851 are predicated solely on a defendant's criminal history and are used to link a prior drug offense with a current offense for the sole purpose of significantly increasing criminal punishment. Further, drug crimes are the most frequently prosecuted offenses in the federal system, U.S. Sentencing Comm'n, *The Changing Face of Federal Criminal Sentencing* 8 (2009) (explaining that drug offenses "have always been the most prevalent offense type" sentenced under the federal guidelines and stating that the number of drug offenders sentenced each year increased by 80% between 1991 and 2007, currently making up 33.4% of the federal caseload), so they should be all too

familiar to any criminal defense lawyer. Given the overwhelming focus of federal prosecutions on drug crimes, the world of recidivist sentencing enhancements are well-known to counsel, easy to explain to defendants, and thus inseparable from the criminal process.

Finally, under the third factor, the *Padilla* court was also concerned with those consequences of conviction that follow nearly automatically and found that for many noncitizen offenders, deportation was indeed such a consequence. 130 S. Ct. at 1481. While sentencing judges once had "conclusive authority to decide whether a particular conviction should be disregarded as a basis for deportation," *id.* at 1479, Congress eliminated this judicial discretion to "ameliorate unjust results" in 1990, *id.* at 1480. Congress also later severely curtailed, but did not eliminate, the Attorney General's ability to avoid deportation. *Id.* Thus, deportation became "practically inevitable" as the Department of Homeland Security sought deportation whenever a defendant was eligible for it. *Id.* Because courts no longer had authority over this aspect of a noncitizen offender's sentence, the *Padilla* Court concluded "the importance of legal advice for noncitizens accused of crimes has never been more important." *Id.*

Reeves also meets the third *Padilla* factor, for three reasons. First, as noted above, a defendant convicted of a narcotics felony is permanently eligible for a severely enhanced sentence should she recidivate. Second, and relatedly, the drug-offender population is particularly vulnerable to recidivism, thus rendering their status often inevitable, if not automatic. One fifteen-state study showed that two-

thirds of drug offenders released from prison were rearrested within three years, and that 47% of drug offenders were re-convicted within three years of release. Patrick A. Langan & David J. Levin, Bureau of Justice Statistics, *Recidivism of Prisoners Released in 1994* (2002); *see also, e.g.*, *State v. Dickey*, 928 So. 2d 1193, 1202 (Fla. 2006) (Pariente, C.J., dissenting) ("[R]ecidivism is a fact of life in the criminal justice system. Consequently, criminal defendants are justifiably concerned about the effect of today's guilty plea on a sentence for a crime committed in the future. For some defendants this factor may be a crucial consideration in the decision to plead guilty . . . .").

Finally, just as the *Padilla* court emphasized the absence of judicial discretion and near inevitability of deportations, 130 S. Ct. at 1480, recidivist enhancements fall solely and squarely in prosecutors' arsenals and they are weapons that many prosecutors employ with alarming frequency, both to secure convictions and to secure informants. U.S. Sentencing Comm'n, *Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System* 113 (2011) (finding that prosecutors in multiple districts reported filing § 851 notices in any case where an offender insisted on going to trial, or withdrawing notices in return for a guilty plea and "substantial assistance"); *see also* (5/2/11 Sentencing Tr. 124).[4]

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[4] [PROSECUTOR:] "So the fact of the matter is that anyone in Mr. Reeves' position, namely, someone whose guideline range is what his is, who is subject to an 851, an 851 will be filed on that person in any narcotics case that this office files. So he's not treated any differently than anyone else." [DEFENSE:] "Unless they cooperate. And in Mr. Reeves' case, Mr. Reeves offered to plead guilty to this case if the Government would drop the 851. And the Government refused to do that."

Statutory sentence enhancements such as 21 U.S.C. § 851 require district courts to raise a defendant's mandatory minimum sentence at the prosecutor's request. In repeat felony drug offender cases such as Reeves's, the court has no relief to offer. Had the government chosen to highlight *both* of the convictions arising from Reeves's prior cocaine possession, he would have faced an automatic, mandatory life sentence and the district court could not have stopped it. 21 U.S.C. § 841.

On average, federal prosecutors exercise this broad discretion to impose § 851 recidivist enhancements in 20-30% of cases in which they are available. U.S. Sentencing Comm'n, *Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System* 257 (2011). But in some jurisdictions, prosecutors seek the enhanced penalty for more than 75% of eligible defendants, and in at least eleven more, it is applied in a majority of cases. *Id.* at 255. These severe, mandatory recidivist sentencing enhancements, whose application depends solely on prosecutors' discretion, highlights the importance of legal advice to a defendant's decision-making process when evaluating the full consequences of a guilty plea.

B. Reeves's state trial counsel's performance fell below the objective standard of reasonableness defined by the prevailing expectations of the legal community.

Not only does the Sixth Amendment apply in Reeves's case, but he satisfies the first prong of the governing two-part *Strickland* test. *Padilla*, 130 S. Ct. at 1482. Under that test, courts ask whether counsel's representation fell below an objective standard of reasonableness. *Strickland*, 466 U.S. at 687-88, 694. In the plea context, counsel's job is threefold: first, to ensure that the defendant has all the information needed to make a knowing, voluntary, and intelligent choice among the

courses of action open to him, *Hill v. Lockhart*, 474 U.S. at 56; second, to make sure the bargaining process occurs on an even playing field where both the prosecutor and the defendant have equal information about the effects of the plea, *Padilla*, 130 S. Ct. at 1486; and third, to assess the defendant's priorities and advise his decision-making calculus in light of this full knowledge so the parties can reach the best mutual result, *id.* When counsel advises his client of the full consequences of the offense for which he is accepting responsibility, he ensures that he is able to not only determine the defendant's priorities in the plea bargain, but also that he is able to negotiate an agreement that meets those goals. *Id.* at 1486 ("Counsel who possess the most rudimentary understanding of the deportation consequences of a particular criminal offense may be able to plea bargain creatively with the prosecutor in order to craft a conviction and sentence that reduce the likelihood of deportation, as by avoiding a conviction for an offense that automatically triggers the removal consequence."). In short, a defendant with full knowledge is a defendant empowered during the serious business of plea negotiation.

The question under the *Strickland* test is whether counsel's failure to provide information hindered the defendant's ability to effectively bargain and ultimately to enter a knowing and voluntary plea. The required standard of objective reasonableness in representation is necessarily linked to the prevailing practice and expectations of the legal community. *Strickland*, 466 U.S. at 688. Prevailing norms of practice as reflected in American Bar Association (ABA) standards, while not inexorable commands, are valuable measures of what is reasonable. *Id.*; *Padilla*,

130 S. Ct. at 1482. As relevant here, the ABA standards require defense counsel to advise a defendant on consequences that might ensue from a plea agreement. *ABA Standards for Criminal Justice: Responsibilities of Defense Counsel* § 14-3.2(f) (3d. ed. 1999). Specifically, client interviews should explore what "consequences are likely to be important to a client given the client's particular personal circumstances and the charges the client faces." *ABA Standards for Criminal Justice: Pleas of Guilty Standards*, § 14-3.2 cmt. 126-7. Significantly, the ABA standards explicitly direct courts to ensure that the defendant be informed, before entering the plea, of the additional consequences applicable to the offense, including "enhanced punishment if the defendant is convicted of another crime in the future, and, if the defendant is not a United States citizen, a change in the defendant's immigration status." *ABA Standards for Criminal Justice: Pleas of Guilty Standards,* §14-1.4(c) (3d ed. 1999); *Notification of Collateral Sanctions Before Plea of Guilty* § 19-2.3(a) (3d. ed. 2004). "Failure of the court or counsel to inform the defendant of applicable collateral sanctions" may be a basis for withdrawing the plea of guilty "where the failure renders the plea constitutionally invalid." *Notification of Collateral Sanctions Before Plea of Guilty* § 19-2.3(b). Under these standards, Reeves's counsel rendered deficient performance when he failed to warn Reeves of penalties that were clear, severe, automatic, and enmeshed with the criminal charges. *Padilla*, 130 S. Ct. at 1484.

C. This Court should remand Reeves's case to the district court to determine whether Reeves was prejudiced by his state trial counsel's substandard performance.

The remaining issue, whether Reeves was prejudiced under *Strickland's* second prong, is a matter that the trial court must consider in the first instance. *Id.* at 1483-84. Under current Supreme Court precedent, a defendant meets the prejudice prong by showing that there was a "reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."[5] *Hill*, 474 U.S. at 59. Because the district court never considered this question, Reeves's case should be remanded to the trial court for an evidentiary hearing on the issue of whether prejudice resulted from counsel's failure to advise on the recidivist consequences arising from his plea.

[5] The Court, however, may augment *Hill's* definition of prejudice in a pair of cases pending this Term. *Lafler v. Cooper*, No. 10-209 (U.S. Jan. 7, 2011); *Missouri v. Frye*, No. 10-444 (U.S. Jan. 7, 2011). In these cases, counsel have argued that Hill's definition is too narrow to cover other clear Sixth Amendment violations where counsel's deficient performance adversely affected the defense. *See, e.g., Cooper v. Lafler*, 376 F. App'x. 563, 575 (6th Cir. 2010).

CONCLUSION

For the foregoing reasons, the appellant, Mario Reeves, respectfully requests that this Court remand for an evidentiary hearing to determine whether Reeves satisfies Strickland's second prejudice prong, so that he might be resentenced without the § 851 enhancement.

Dated: November 30, 2011

Respectfully submitted,

Mario Reeves
Defendant-Appellant

By: /s/ SARAH O'ROURKE SCHRUP
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Counsel for Defendant-Appellant
MARIO REEVES

No. 11-2328

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MARIO REEVES,

Defendant-Appellant.

CERTIFICATE OF SERVICE

I, the undersigned, counsel for the Defendant-Appellant, Mario Reeves, hereby certify that I electronically filed this brief and appendix with the clerk of the Seventh Circuit Court of Appeals on November 30, 2011, which will send the filing to the person listed below. I also served two copies of this brief by placing them in an envelope with sufficient postage affixed and directed to the person named below at the address indicated, and depositing that envelope in the United States mail box located at 375 East Chicago Ave., Chicago, Illinois on December 2, 2011.

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Dated: November 30, 2011

No. 11-2328

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MARIO REEVES,

Defendant-Appellant.

CERTIFICATE OF COMPLIANCE WIH FED. R. APP. P. 32(A)(7)

I, the undersigned, counsel for the Defendant-Appellant, Mario Reeves, hereby certify that this brief conforms to the rules contained in Fed. R. App. P. 32(a)(7) for a brief produced with a proportionally spaced font. This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 12-point Century Schoolbook font.

The length of this brief is 6,362 words.

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Dated: November 30, 2011

No. 11-2328

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MARIO REEVES,

Defendant-Appellant.

CERTIFICATE OF COMPLIANCE WITH CIRCUIT RULE 30(D)

I, the undersigned, counsel for the Defendant-Appellant, Mario Reeves, hereby state that all of the materials required by Circuit Rules 30(a) and 30(b) are included in the Appendix to this brief.

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Dated: November 30, 2011

No. 11-2328

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MARIO REEVES,

Defendant-Appellant.

On Appeal from the United States District Court
For the Northern District of Illinois
The Honorable Judge Joan Gottschall
Case No. 07-CR-614

ATTACHED REQUIRED 30(A) APPENDIX OF DEFENDANT-APPELLANT MARIO REEVES

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RULE 30(A) SHORT APPENDIX TABLE OF CONTENTS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 07 CR 614-2
vs.	)	
	)	Judge Joan B. Gottschall
MARIO REEVES	)	

GOVERNMENT'S AMENDED INFORMATION STATING PREVIOUS DRUG CONVICTION TO BE RELIED UPON IN SEEKING INCREASED PUNISHMENT

The UNITED STATES OF AMERICA, by its attorney, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, hereby files this amended Information Stating Previous Conviction to Be Relied Upon in Seeking Increased Punishment pursuant to 21 U.S.C. § 851(a):

In the event the defendant is convicted of any of the offenses under Title 21, United States Code, Sections 841(a)(1) or 846 charged in Counts One, Three, or Five, of the Superseding Indictment in this case, the United States shall seek increased punishment pursuant to Title 21, United States Code, Section 841(b) based on one of the following convictions for a felony drug offense which became final prior to the commission of the offenses charged in the Superseding Indictment:

(i) On or about September 14, 2004, in the Circuit Court of Cook County, Illinois, defendant MARIO REEVES was convicted of possession of a controlled substance, in violation of 720 ILCS 570/402(c), and sentenced to one year in prison.

(ii) On or about September 14, 2004, in the Circuit Court of Cook County, Illinois, defendant MARIO REEVES was convicted of manufacturing/delivering cocaine, in violation of 720 ILCS 570/401(D), and sentenced to three years in prison.

WHEREFORE, the government gives notice that defendant has at least one prior conviction for a felony drug offense, and thus:

(i) the sentence upon his conviction for the offense under Title 21, United States Code, Section 846 charged in Count One of the Superseding Indictment in this case shall include a term of imprisonment of not less than 20 years and not more than life, a fine not to exceed $8,000,000, and a term of supervised release of not less than 10 years up to and including any number of years, pursuant to Title 21, United States Code, Section 841(b)(1)(A); and,

(ii) the sentence upon his conviction for either of the offenses under Title 21, United States Code, Section 841(a)(1) charged in Counts Three and Five, of the Superseding Indictment in this case shall include a term of imprisonment of not more than 30 years, a fine not to exceed $2,000,000, and a term of supervised release of not less than 6 years up to and including any number of years, pursuant to Title 21, United States Code, Section 841(b)(1)(C).

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

By: /s Michael T. Donovan
MICHAEL T. DONOVAN
Assistant United States Attorney
219 S. Dearborn
Suite 500
Chicago, Illinois 60604
(312) 886 - 2035

Dated: March 13, 2009

CERTIFICATE OF SERVICE

The undersigned Assistant United States Attorney hereby certifies that in accordance with FED. R. CRIM. P. 49, FED. R. CIV. P. 5, LR5.5, and the General Order on Electronic Case Filing (ECF), the following:

GOVERNMENT'S AMENDED INFORMATION STATING PREVIOUS DRUG CONVICTION TO BE RELIED UPON IN SEEKING INCREASED PUNISHMENT

was served pursuant to the district court's ECF system as to ECF filers, on March 13, 2009.

/s Michael T. Donovan
Michael T. Donovan
Assistant United States Attorney
219 S. Dearborn St., Suite 500
Chicago, Illinois 60604

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff,	)	
v.	)	No. 07 CR 614 Judge Joan Gottschall
MARIO REEVES, Defendant.	)	

SUPPLEMENTAL RESPONSE TO 21 U.S.C. 851(A) INFORMATION STATING PREVIOUS DRUG CONVICTION TO BE RELIED UPON IN SEEKING INCREASED PUNISHMENT

Now comes the defendant, MARIO REEVES, by and through his attorneys KENT R. CARLSON & ASSOCIATES P.C. and hereby submits the following supplemental response to the 21 U.S.C. 851(a) information stating a previous drug conviction to be relied upon in seeking increased punishment.

1. That in an information stating a previous drug conviction to be relied upon in seeking increased punishment the government states that on September 14, 2004 in the Circuit Court of Cook County, Illinois, MARIO REEVES was convicted of possession of a controlled substance in violation of 720 ILCS 570/402©.

2. That in an information stating a previous drug conviction to be relied upon in seeking increased punishment the government states that on September 14, 2004 in the Circuit Court of Cook County, Illinois, MARIO REEVES was convicted of manufacturing/delivering cocaine in violation of 720 ILCS 570/401(d).

3. That MARIO REEVES asserts that the aforementioned Information is insufficient as a matter of law.

4. That MARIO REEVES denies that the aforementioned convictions are appropriate convictions upon which an enhanced sentence may be based.

5. That the convictions were entered on the same day as part of a consolidated plea agreement.

6. That the conviction of possession of a controlled substance involved the possession of less than two grams of powder cocaine.

7. That the conviction of delivery of a controlled substance involved the distribution of less than one gram of powder cocaine to an undercover officer.

8. That the sentences imposed in those cases were one (1) and three (3) years respectively, far less than the mandatory minimum twenty (20) years for which these offenses are the predicates.

9. That of all the defendants in this case who were eligible for 851 enhancements the government filed Informations Stating Previous Drug Convictions only against Vince Gathings and MARIO REEVES. They did so long prior to MARIO REEVES' indication that he would proceed to trial. For as long as counsel can remember, the government regularly agrees not to file or to dismiss 851 informations in plea negotiations in exchange for a plea of guilty. MARIO REEVES offered to plead guilty if the government would dismiss the 851 information. The government in plea negotiations refused to dismiss the 851 information against MARIO REEVES although they did so with respect to Vince Gathings.

That the government's filing and refusal to dismiss the 851 information was arbitrary and capricious and not in accordance with their long standing policy.

10. That MARIO REEVES denies that the aforementioned convictions, qualify as "a prior conviction for a felony drug offense". MARIO REEVES further denies that he committed the instant offense after the aforementioned offense became final.

The government has the burden of proving all issues of fact beyond a reasonable doubt, pursuant to 21 U.S.C. 851©(1).

11. That in addition, with respect to any conviction relied upon by the government to seek an increased punishment, MARIO REEVES, asserts that any such conviction was obtained in violation of the Constitution of the United States.

First: That at the time MARIO REEVES entered his pleas of guilty to the any of his prior convictions, including the prior convictions that the government set forth in its 21 U.S.C. 851 information, he was not advised by either, the Judge, his attorney or the Assistant State's Attorney that his convictions therein could or would be used against him to enhance any sentence he may receive in the future. If MARIO REEVES had been advised and known that his pleas of guilty could be used to qualify him for a statutorily enhanced sentence, pursuant to any statute, but specifically 21 U.S.C. 841(b) and 851, he would have never entered pleas of guilty. It is respectfully submitted that his prior pleas of guilty, specifically the prior convictions that were entered for the offenses of conviction in the cases that the government set forth in its 21 U.S.C. 851 information were not made knowingly, intelligently and voluntarily and therefore were obtained in violation of the Constitution of the United States and should not be relied upon to enhance his sentence to double the mandatory minimum sentence, pursuant to 21 U.S.C. 841(b) and 851 and should be vacated.

Second: The failure of MARIO REEVES' lawyers to advise MARIO REEVES that his pleas of guilty could be used to enhance any future sentence to double the mandatory minimum sentence and then further be used to in calculating and increasing his criminal history score and category to further enhance his sentence constitutes the ineffective assistance of counsel and therefore the convictions should not be relied upon to double the mandatory minimum sentence, pursuant to 21 U.S.C. 841(b) and 851 and should be vacated.

The United States Supreme Court in *Padilla –v- Kentucky*, 130 S.Ct. ___ (March 31, 2010) held that an attorney in a criminal case has a duty to advise a defendant whether his plea of guilty carries a risk of deportation. That the failure of counsel to do so and in many cases the failure to do so correctly, amounts to the ineffective assistance of counsel.

It is respectfully submitted that advice or lack thereof as to the potential for substantial mandatory sentence enhancements as a result of a guilty plea is no different than advice as to deportability as a result of a guilty plea. Therefore counsel's failure to advise MARIO REEVES that his pleas of guilty could be used to enhance any future sentence to double the mandatory minimum sentence and then further be used in calculating and increasing his criminal history score and category to further enhance his sentence constitutes the ineffective assistance of counsel and therefore the convictions should not be relied upon to double the mandatory minimum sentence, pursuant to 21 U.S.C. 841(b) and 851 and should be vacated.

Third: That the use of any of MARIO REEVES' prior convictions, including the prior convictions that was entered for the offenses of convictions in the cases the

government set forth in the 21 U.S.C. 841(b) and 851 information, for which he has already served his time, to enhance his sentence, to double the mandatory minimum sentence, pursuant to 21 U.S.C. 841(b) and 851, and then use the same convictions in calculating his criminal history score and category to further enhance his sentence, constitutes impermissible and unconstitutional triple or at least double counting in violation of Sixth Amendment. *Cunningham –v- California,* 127 S. Ct. 856 (2007)

It also violates Due Process, Double Jeopardy and Cruel and Unusual Punishment clauses of the Constitution of the United States. In addition, it is just plain fundamentally unfair.

For all the above reasons, MARIO REEVES prays this Honorable Court enter an order finding that MARIO REEVES has not been convicted as alleged in the information filed by the government and further or in the alternative enter an order finding that any convictions alleged in the information are invalid, and that the mandatory minimum sentence of twenty (20) years mandated by 21 U.S.C. 841(b) (1)(A) and the thirty (30) year maximum mandated by 21 U.S.C, 841(b)(1)(c) are inapplicable.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned, hereby certifies that the following document:

DEFENDANT'S SUPPLEMENTAL RESPONSE TO 21 U.S.C. 851(A) INFORMATION STATING PREVIOUS DRUG CONVICTION TO BE RELIED UPON IN SEEKING INCREASED PUNISHMENT

Was served on July 21, 2010, in accordance with Fed. R. Crim. P. 49, Local Rule 5.5 and the General Order on Electric Case Filing (ECF), pursuant to the District Court's system as to ECF filers.

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of Aukey Williams at trial.

MR. CARLSON: Right.

THE COURT: And I can certainly read that. It's not long.

MR. CARLSON: It is not, Judge, and I would ask the Court to do that.

THE COURT: And I will make sure this is read before I decide whatever I have to decide, and it may be that if we break until two I'll have 15 minutes to read it at lunchtime. But I want to make really clear at this point anything you want to do to refresh my recollection I'm not going to stop you. I will tell you once my recollection is completely, totally refreshed.

MR. DONOVAN: Okay.

MR. CARLSON: I was going to suggest before we even get to the guideline issue, I had filed the supplemental response to the 851 information which triggers the mandatory minimums.

THE COURT: Right.

MR. CARLSON: Maybe we should address that before we get to the guidelines. If your Honor wants to do that later, that's fine, too.

THE COURT: I think we need to do that with the guidelines, but is there anything but legal argument?

MR. CARLSON: No, Judge.

THE COURT: Let's do all the facts, we'll get the legal arguments, and then we'll get the guideline issues resolved. That's what I'd like to do. Let's try to get done with all the evidence, and then we can proceed to do whatever else we have to do from there.

I mean, I think, truthfully, if you want to go through this before lunch on the 851 enhancement, we can do that quickly.

MR. DONOVAN: Yes, we can do that, your Honor.

THE COURT: Why don't we do that. So the first argument is -- let me make sure that --

MR. CARLSON: Judge, I may be able to make this a little bit easier for your Honor. With respect to the convictions, although we're not disputing that they are felony convictions in the Circuit Court of Cook County, our arguments were that because of the small amount involved in those cases, and the relatively minor sentences involved in those, relying on those to bring Mr. Reeves' sentence to 20 years is a violation of due process and the Eighth Amendment.

More importantly, Judge, the convictions themselves, when they were entered, he was never advised by his counsel in those cases, nor the trial judge, of the collateral consequences of those guilty pleas, that they could be used to enhance his sentence were he convicted again.

And I cite the Padilla case which, although it deals with deportation, really deals with collateral consequences of conviction, and it would be our argument and I will acknowledge that no court has yet gone this far, that all collateral consequences of conviction should be something that a defendant should have explained to him before he enters a guilty plea.

And that certainly wasn't done here, Judge, and although no court has yet gone so far in the context of a prior conviction, the University of Arizona College of Law published a -- what is called a discussion paper, 11-17, in which they cite the Uniform Collateral Consequences Act, Paragraph 5, in its final draft form, which recommends that the consequences be explained to a defendant, and the consequences that -- one of the consequences they list is the possibility of a harsher sentence if they're convicted of another offense in the future, and that is what they are recommending for guilty pleas.

And I suggest that in light of the fact that the convictions are used to calculate criminal history, then used again to calculate mandatory minimums, I ask the Court to not sentence him to the mandatory minimum for those reasons.

THE COURT: Let me just say this: I think all of these arguments are substantial arguments, I don't think they're insignificant arguments, but let's go through them

one at a time, because frankly, I don't feel that there is sufficient precedent for me to go your way on any of these.

First of all, there's nothing that says that a prior conviction is too trivial to be used as an enhancement. There is no authority. And I think that, as I understand the whole theory about why our law is constructed the way it is, it's that you're trying to get -- you're trying to -- Congress is trying to get people who commit small crimes, and then bigger crimes, and then bigger crimes.

This is not a situation where somebody has manifestly stopped committing crimes and is being punished harshly on the basis of something in the past. I think this is the kind of case that I think the law was intended to include in those 851 enhancements.

I mean, I just don't see that the smallness of the prior convictions, small as they may have been, is an argument against the statutory authority the Government has to bring the 851 enhancement.

3553 I think is probably a stronger basis for this. I understand that we're dealing with a huge mandatory minimum if these are allowed, but I don't feel that -- I really don't feel that I have the authority to go ahead and upend the entire system, which is really what this is doing.

Secondly, I think the next argument, I want to follow these along one by one, was that the Government's use

of the 8351 enhancement was arbitrary and capricious in this case. I agree with you that there are many cases I think as serious as Mr. Reeves where it isn't enhanced, but I also think the way the law is constructed these days, both in the sentencing guidelines and in the statutes that go along with them, a huge amount of discretion is provided to Government, and it is totally prohibited for the judiciary to get involved in the Government's use of the prosecutorial authority to make these decisions.

Now, the Government has decided, I think probably in part because of that tape, in part because of what the Government perceives as Mr. Reeves' involvement in the nature of this case, that this is a particularly aggravated case.

MR. CARLSON: Judge, if I could say one thing with respect to that.

THE COURT: Sure.

MR. CARLSON: Aukey Williams, who you saw in that, just as well as Mr. Reeves, he didn't face an 851 enhancement, although he was eligible for it.

THE COURT: Of course. Very few people do. It's not used very often.

MR. DONOVAN: I would like to respond. Aukey Williams would have faced an 851 --

THE COURT: But he cooperated.

MR. DONOVAN: -- but he cooperated from day one.

So the fact of the matter is that anyone in Mr. Reeves' position, namely, someone whose guideline range is what his is, who is subject to an 851, an 851 will be filed on that person in any narcotics case that this office files. So he's not treated any differently than anyone else.

MR. CARLSON: Unless they cooperate. And in Mr. Reeves' case, Mr. Reeves offered to plead guilty to this case if the Government would drop the 851. And the Government refused to do that.

THE COURT: Because apparently Mr. Reeves didn't cooperate. This is one of the arrows the Government has in its quiver to induce people to cooperate. That's why we always see the biggest, biggest fish cooperating. We do in case after case after case, and the little fish all get caught in the net. The big fish I guess face these 851 enhancements and decide that the pressure of the 20-year mandatory minimum is something that needs to be considered.

I don't know. All I can say is that if there were a whole body of evidence that I could look at that would show that this use of the 851 enhancement was arbitrarily applied -- and I don't really have that. You know, I don't see it very often, but I don't have any evidentiary basis for thinking that there are, let's say there are cooperators, or there are people who plead guilty who face these 851 enhancements who don't get them. The evidence would have to

be overwhelming, and I think, first of all, probably the evidence isn't overwhelming, but even if it were overwhelming, it's a lot you're asking me to do, is to turn this whole system upside down, and I don't have the basis for doing that. I'm not sure I'd do it even if I had the basis for doing it.

The third thing is the Padilla issue. It's been -- let me say for the record: How long have we been dealing with the sentencing guidelines and these enormous enhancements for prior convictions? Probably close to 20 years.

MR. CARLSON: I think it was 1988.

THE COURT: More than 20 years. And I even know a number of state court judges who make it a habit to advise people that if they plead guilty and if they're ever apprehended again their sentence is going to be significantly increased because of the prior conviction. A few people do that, but not most.

Do I think a good lawyer should tell somebody that before they plead guilty? Yes. How could they not tell them? I mean, it just seems to me fundamental that before somebody pleads guilty you tell them what kind of jeopardy they're likely to face in the future.

But I don't think the Supreme Court would go this far. I think Padilla is ringed with statements, it was

Justice Stevens, I think, that this is not going to bring a flood of cases, this is not going to seriously change the law, it's not going to make any huge difference. The Supreme Court I can tell you I do not believe would apply Padilla to this situation. In fact, I think the Supreme Court has been, in situation after situation, not tremendously sympathetic to the problem of prior convictions and their effect on present convictions.

So I want to say that in my, you know, as a personal thing, I think the defendant should have been advised of that. I think every time somebody pleads guilty they ought to be advised of that, but whether it's some kind of a constitutional violation, or a violation of the right to -- even the right to effective assistance of counsel not to do it, I don't think a higher court is ever going to so hold. And I am not going to do it believing that it's not going to be supported by either the Court of Appeals or the Supreme Court.

I want to say also, I mean, just, you know, I believe that a good lawyer would tell that to a defendant, but I think that the defendants know that anyway. It's hard for me to believe that somebody doesn't understand if they commit repeated offenses a judge at some point is not going to take that seriously into consideration.

Now, that it's going to double their mandatory

minimum, do they know that? Probably not. But do they know that they're going to pay a very high price if they come before a court for sentencing with prior related convictions? If that word isn't on the street, I would be really surprised.

So I'm going to deny the motion. As I say, I think the arguments that have been made are creative arguments, I think they're substantial arguments, but I don't think they're arguments that are going to prevail in higher courts, and as a result I don't think they should prevail here. Okay?

So that takes care of the 851. Let's break and start again at 2:00 o'clock.

MR. DEVEREUX: Judge, in regard to Mr. Wright, we just need to sign the writ for him to come back on Wednesday. There is no reason to have him come back tomorrow. He goes back to Stateville on Wednesday. So I can see him today, I can see him Wednesday.

THE COURT: What time are we seeing -- hold on a second. What time are we seeing Mr. Wright on Wednesday?

MR. DONOVAN: If we may, I would like to get my calendar, and I can -- Mr. Devereux and I can sort it out.

THE COURT: Why don't I sign the writ for 9:00 o'clock, and we'll try to squeeze you in as we can squeeze you in. And you can talk to Rhonda exactly how we're going

(Proceedings heard in open court.)

THE CLERK: 2007 CR 614, U.S.A. versus Mario Reeves for sentencing.

THE COURT: The marshals have asked if they can take the leg irons off. Yes. The leg irons --

COURT SECURITY OFFICER: We would prefer they stay on, but if you want them off --

THE COURT: Right, I know that, but you want to do it based on some behavior that happened a very long time ago, and Mr. Reeves has told me he's not going to act out.

Mr. Reeves, you're not going to act out if they take them off?

THE DEFENDANT: No.

THE COURT: Okay.

MR. DONOVAN: Michael Donovan on behalf of the United States, your Honor.

MR. CARLSON: Kent Carlson on behalf of Mario Reeves.

THE PROBATION OFFICER: Aron Pohlmeyer on behalf of U.S. Probation.

THE COURT: Okay. Mr. Reeves is here.

Now, let me -- I already did all the admonitions about everybody receiving the presentence report and Mr. Reeves having an opportunity to discuss it with his counsel. We went through a number of the Guidelines issues, and let me recap where I think we are.

I made a finding as to the drug quantity which was in agreement with the presentence report and with what the government urged, but it's 10 to 30 kilograms.

I made a finding that Mr. Reeves was a leader or organizer, although I think the evidence is clear that he worked under Aukey Williams. So while he was a leader and organizer, and the evidence is that he ran the nighttime Poison Line, I recognize that the evidence as to the leadership role of Mr. Williams establishes that he was above Mr. Reeves in the chain of command.

Third, I determined that the argument that Mr. Reeves' prior state convictions were too trivial was not a meritorious argument, and that the government was entitled under the statute and whatever case law there is to apply the 851 enhancement to this case.

And I also found that the arguments based on the Padilla case and that the use of this enhancement was arbitrary and capricious, I rejected both of those; the arbitrary and capricious standard because I don't think it's my business to look over the government's shoulders in terms of whether it uses that enhancement. I don't think it would be arbitrary and capricious anyway. The government believes it has evidence that justifies the use of that enhancement in the case. And as I said, I don't believe the Padilla case will be applied by the Seventh Circuit and the Supreme Court

to apply in this type of case in this type of situation. So I am rejecting that argument.

Now, I took under advisement the gun enhancement. Everybody has filed briefs on the gun enhancement, and I don't know if you want to argue it, but based on all the briefs you've given me, I'm prepared to rule on it.

MR. CARLSON: Judge, I would rely on what is contained in our sentencing memorandum.

THE COURT: I believe everybody briefed this extensively.

The government's burden on the gun enhancement is very small, and I believe it's been met in this case.

I want to point out that I think the record establishes firmly that Marshawn Wright kept guns, and the guns were used in the course of the conspiracy.

I also think that the evidence -- I mean, there is some phone conversation about gun parts that Mr. Reeves was recorded engaging in, but the testimony of Aukey Williams was very definite that he never saw Mr. Reeves carrying a gun in the course of this conspiracy.

So while I believe the government has satisfied its very small burden to apply the gun enhancement, I think it is also somewhat mitigating that in terms of Mr. Williams' testimony, Mr. Reeves did not carry a gun in furtherance of this conspiracy.

young. I take responsibility for that.

I just ask that -- that 20 years, I got to deal with it. When you do wrong, there's consequences behind everything. I tried to prepare my mama for it, tried to let her know that's how things going to do. It's hard to prepare a mama for that.

I'm just asking for another chance. Life is -- to me it don't make sense. No violence in this case. No one got hurt. No one got killed. It don't make sense.

I'm just asking that you take some leniency on me.

THE COURT: Thank you.

THE DEFENDANT: Thanks.

THE COURT: Let me say a couple --

MR. CARLSON: He was just asking if he could sit down, Judge.

THE COURT: Oh, sure. Sure.

This is a really, really difficult case because there are a lot of factors in Mr. Reeves' background that I think are significant in explaining what has happened, and yet what has happened represents some significant danger to the public.

I said at the beginning, and I want to reiterate, that insofar as the drug trade is destructive of communities, and I don't think there is any question that it's tremendously destructive of communities, Mr. Reeves is Exhibit 1 to the kind of destructiveness it causes because one thing we know --

I wanted to go through a few of these things that I thought were important that I picked out of the presentence report.

At various times, Mr. Reeves' mother was on drugs. His aunt, who was a significant factor in his life, was on drugs. His father was imprisoned, and he's told us he was on drugs. Mr. Reeves apparently raised -- did most of the parenting for his two younger brothers. He ended up eating a lot of his meals at a soup kitchen because the family was impoverished, and the parents weren't able to take care of the kids. He wore his cousin's clothing. I mean, it's not the most terrible thing in the world, but it's a good indication of the situation that Mr. Reeves grew up in. There was physical abuse around him all the time.

He had a positive drug test for opiates when he was arrested. I think it's significant that Mr. Reeves was not simply trading drugs. He was using drugs.

He was a very young man when he was arrested. I think it's significant that -- you know, Mr. Reeves said nobody was hurt in this case, nobody was killed in this case. That may be taking things a little bit far, but Aukey Williams on the stand testified that he never saw Mr. Reeves using guns during the course of this conspiracy, and he was very anxious to tell us other people were using guns. He never saw Mr. Reeves picking up guns at Marshawn Wright's house.

I also want to point out that although I resolved all

these Guideline issues that were raised in favor of the government, the defense argument as to the minor nature of Mr. Reeves' past convictions is a mitigating factor.

He got the full four points for the leadership role because I think the government showed that by a preponderance of the evidence, although I think the evidence is clear that he was not as involved or guilty as Aukey Williams was.

And as I say, I really believe that but for the 851 enhancement, Mr. Reeves, I believe, would have pleaded guilty. I think his hand -- you know, 20 years is-- 20 years to a young man who is in his early 20s is essentially a life sentence anyway, and that he made the choice he made, I think anyone putting themselves in his position can understand the choice he made. Nevertheless, it's responsible for a lot of this sentence.

I'm also want to say before we start that I'm going to accept Mr. Carlson's argument, that I don't believe the enhancement for criminal livelihood should be applied in this case for policy reasons. I believe Mr. Carlson is correct that had Mr. Reeves been sentenced when he should have been sentenced originally, if this case had not dragged on for so long, he would not have been facing that enhancement, so I'm simply not going to apply that in this case for those reasons.

Now --

MR. DONOVAN: Does that -- I'm sorry, your Honor, to

interrupt. Does that alter your Guideline calculation or are you saying you won't give it weight in sentencing?

THE COURT: For 3553 purposes. For 3553 purposes. The only Guideline correction that I'm making is to recency, take the point off for recency. I think the government established it by a preponderance of the evidence. I think for fairness reasons it ought not to be applied in this case.

Now we come to the hard part though, what to do in terms of the sentencing in this case because I think while Mr. Reeves -- as they say, my heart is heavy in sentencing this case because it's all too understandable to me why somebody in Mr. Reeves' position would end up in the situation Mr. Reeves is in, but he has ended up in the situation he is.

And his conduct in this activity shows that the sentence has to be long enough to meet all the punitive purposes of 3553, including the safety of the community, and sending a message to whoever is out there who is going to hear about it, and I don't know that anybody is, that this conduct is taken very seriously.

I do not believe -- I do not share the government's belief that Mr. Reeves is a lost cause. I simply don't believe that. I believe Mr. Reeves is a human life who has a lot to offer his family. It's going to be hard for him to do it when he gets out of jail and during the time he's in jail, but I think like almost all human beings, not all human

beings, but like almost all human beings, Mr. Reeves' life has value, and it has value because it's so understandable how he ended up how he ended up and also how young he was when he ended up where he ended up.

So I've gone back and forth in terms of looking at Aukey Williams' sentence and trying to figure out what is a fair difference between the two given Mr. Williams', I think, more aggravated involvement, but given his significant agreement to cooperate with the government and what that will mean about his ability to be a danger to the community when he's released. Surely, because he's cooperated, he is not going to be able to pick up where he left off. Mr. Reeves, if he chose to do that, probably could. I'm hoping that he won't, but he could.

And where I've come out is -- and taking into consideration the fact that there was the 851 enhancement and a very significant mandatory minimum of 20 years in this case, that a ten-year differential is differential enough, and, accordingly, I'm going to sentence Mr. Reeves to 25 years, which is ten years longer than the sentence of Aukey Williams.

I think that that sentence which incarcerates Mr. Reeves for a very long time -- I think whether it's 20 years or 25 years, it would be a very, very long time -- and given his intelligence and his relationship with his family and his relationship with his children gives him the opportunity to do

some deep thinking and figure out what he wants to make of his life when he comes out of this sentence. And I hope and I believe that he can turn this to some kind of positive purpose as hard as it's going to be for him to do that.

I think the sentence of 25 years is long enough to serve the punitive purposes of 3553, and it recognizes the mitigating factors of Mr. Reeves' background and his extraordinary youth when he was -- became involved in this conspiracy and in the fact that, as far as we know, he was not one of the gun toting members of this conspiracy out there on this street using violence.

Although I think the government has indicated that Mr. Reeves -- I don't want to say Mr. Reeves is not involved in violence. I just think it's important that Aukey Williams told us he did not commit those acts of violence during the course of this conspiracy.

Beyond the sentence of incarceration, I have a number of things that I have to say here.

I want to require as a special condition -- I don't know if the probation office has suggested this or not, but I'd like to see Mr. Reeves get his GED. I think he can get it while he's incarcerated. I think it's clear he has the intelligence to make use of that, and I think it is going to help him do something more productive with his life when he's released.

Let's see, there's a special assessment in this case. Is it $800 because of eight counts that went to trial?

MR. CARLSON: Yes, Judge, I believe it is.

MR. DONOVAN: Yes, it is.

THE COURT: I think in view of the large size of the special assessment, I don't think there's any money here to pay the fine, and I am going to not require the payment of a fine. Also, because of Mr. Reeves' financial condition, I will waive interest on the $800 special assessment.

On release from imprisonment, the defendant shall be placed on supervised release for a term of ten years on Count 1, and six years for each of Counts 3 and 5, and one year for each of Counts 9, 10, 12 through 14, each count to be served concurrently.

While on supervised release, the defendant shall not commit another federal, state or local crime; shall comply with the standard conditions that have been adopted by the Court; and, additionally, the defendant shall refrain from any unlawful use of a controlled substance, submit to drug tests within 15 days of release from imprisonment and random drug tests thereafter not to exceed 104 tests per year. Defendant shot not possess a firearm or destructive device. Defendant shall cooperate in the collection of a DNA sample. Defendant shall pay any financial penalty that is imposed by this judgment, and if it remains unpaid at the commencement of the

term of supervised release, on a monthly payment schedule of 10 percent of net monthly income.

Oh, yes, and the probation officer did recommended the GED which I concur in.

Defendant shall participate in a job skills training program at the discretion of the probation officer within the first 60 days of placement on supervision, and if the defendant is unemployed after the first 60 days of supervision or is unemployed for 60 days after the termination or layoff from employment, he shall perform at least 20 hours of community service work per week at the direction of and discretion of the U.S. probation officer until gainfully employed.

Mr. Carlson, are there any designation requests that you have?

MR. CARLSON: Judge, Mr. Reeves has advised me that his girlfriend and children are in the south, and he would ask for either Memphis or Atlanta.

THE COURT: All right. We will recommend either Memphis or Atlanta. Obviously, the Bureau of Prisons makes these decisions, and it doesn't pay a whole lot of attention to these recommendations, but I will do that.

I need to also advise Mr. Reeves you have a right to appeal. If you wish to appeal, you have to file what's called a notice of appeal within, I think, it's 14 days now.

MR. CARLSON: 14 days.

THE COURT: Mr. Carlson can do that for you, but you must tell him you want him to do it. If you don't file the notice within 14 days, then you lose all your rights to appeal.

Do you want me to put anything on the record as to whether or not Mr. Reeves wishes to appeal or have you not talked about that at this point?

MR. CARLSON: Judge, at this point, I need to talk to Mr. Reeves.

THE COURT: Okay. You need to do that in a hurry though because it's something that has got to be done within the next two weeks.

Is there anything else?

Simply, Mr. Reeves, you know, this is going to be very challenging for you, and I don't think I need to tell you, but if you can be a father to your children even while you're not with them, I think their lives will be the better for it.

Anything further?

MR. DONOVAN: The government dismisses the forfeiture allegation as to this defendant, your Honor.

THE COURT: Motion is granted.

Anything else?

MR. CARLSON: No, your Honor.

THE COURT: Thanks everybody.

MR. CARLSON: Thank you.

(Which were all the proceedings heard.)

CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/Colette Kuemmeth

_____
Colette Kuemmeth
Official Court Reporter

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Joan B. Gottschall	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	07 CR 614	DATE	9/27/2010
CASE TITLE	USA vs. Williams		

DOCKET ENTRY TEXT

Defendant Mario Reeves' Motion for Judgement of Acquittal or in the Alternative for a New Trial [598] and Defendant Marshawn Wright's Post-Trial Motion for Judgment of Acquittal and/or For a New Trial [597] are denied.

■[For further details see text below.] Docketing to mail notices.

STATEMENT

To the extent these motions ask the court to revisit rulings made during the course of trial, the court sees nothing in these motions sufficient to justify revisiting those rulings. To the extent the motions argue that the government's evidence was insufficient to support the jury's verdict, the court disagrees, believing that the evidence was sufficient to permit a reasonable jury to find the defendants guilty beyond a reasonable doubt. The court rejects defendant Wright's additional contention that a new trial should be granted in the interests of justice, due to the cumulative effect of the errors described in the motion.

Courtroom Deputy Initials:	RJ/JK

AO 245B (Rev. 09/08) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

Northern District of Illinois

UNITED STATES OF AMERICA
v.
Mario Reeves aka Rio

JUDGMENT IN A CRIMINAL CASE

Case Number: 07 CR 614-2

USM Number: 22503-424

Kent R. Carlson
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s)

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

☑ was found guilty on count(s) 1,3,5,9,10,12,13 and 14 of Superseding Indictment. after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C.§§846 and 851	Conspiracy to Possess with Intent to Distribute Heroin	9/19/2007	1
21 U.S.C. §§841(a)(1) and 851	Possession with Intent to Distribute a Controlled Substance	9/19/2007	3 & 5

The defendant is sentenced as provided in pages 2 through 9 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) Original Indictment/Forfeiture ☐ 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.

5/20/2011
Date of Imposition of Judgment

Signature of Judge

Joan B. Gottschall — District Judge
Name of Judge — Title of Judge

MAY 26 2011
Date

DEFENDANT: Mario Reeves aka Rio
CASE NUMBER: 07 CR 614-2

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. §§843(b) and 851	Using a Communication Facility in Commission of the Possession with Intent to Distribute a Controlled Substance	9/19/2007	9,10,12,13,14

AO 245B (Rev. 09/08) Judgment in Criminal Case
Sheet 2 — Imprisonment

DEFENDANT: Mario Reeves aka Rio
CASE NUMBER: 07 CR 614-2

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

25 years as to Counts 1, 3 and 5 and 96 months as to Counts 9, 10, 12-14, to be served concurrently.

☑ The court makes the following recommendations to the Bureau of Prisons:

that defendant be designated to a facility in Memphis TN or Atlanta GA.

☑ 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 _____

a _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Mario Reeves aka Rio
CASE NUMBER: 07 CR 614-2

SUPERVISED RELEASE

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

10 years as to Count 1, 6 years for each of Counts 3 and 5, and 1 year for each of Counts 9, 10, 12-14, each count, to be served concurrently.

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

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

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

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*

☐ The defendant shall 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.)*

☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

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

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

STANDARD CONDITIONS OF SUPERVISION

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

DEFENDANT: Mario Reeves aka Rio
CASE NUMBER: 07 CR 614-2

ADDITIONAL SUPERVISED RELEASE TERMS

Drug tests not to exceed 104 tests per year.

Defendant shall pay any financial penalty that is imposed by this judgment, and that remains unpaid at the commencement of the term of supervised release, on a monthly payment schedule of at least 10% of his net monthly income.

The defendant shall obtain GED, in not earned during his incarceration.

The defendant shall participate in an approved job skill training program at the discretion of the probation officer within the first 60 days of placement on supervision.

If the defendant is unemployed after the first sixty days of supervision, or if unemployed for sixty days after termination or lay-off from employment, he shall perform at least twenty hours of community service work per week at the direction of and in the discretion of the United States Probation until gainfully employed.

Judgment — Page 6 of 9

DEFENDANT: Mario Reeves aka Rio
CASE NUMBER: 07 CR 614-2

CRIMINAL MONETARY PENALTIES

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

	Assessment	Fine	Restitution
TOTALS	$ 800.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

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

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
[redacted]			

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

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

* 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: Mario Reeves aka Rio
CASE NUMBER: 07 CR 614-2

ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES

The court determined that the defendant does not have the ability to pay interest and it is ordered that:
The interest requirement is waived for the special assessment of $800.00.

DEFENDANT: Mario Reeves aka Rio
CASE NUMBER: 07 CR 614-2

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 $ 800.00 due immediately, balance due

☐ 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:

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

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