FEDERAL PUBLIC DEFENDER

NORTHERN DISTRICT OF FLORIDA

FEBRUARY 2017 NEWSLETTER

TABLE OF CONTENTS

INTRODUCTION

We used to send out a newsletter every quarter, but have not done one for years. We hope you find this one helpful. Our goal is to publish a newsletter, if not on a regular basis, periodically as issues and topics present themselves.

Randy Murrell

LATEST ON *JOHNSON V. UNITED STATES*

The Supreme Court's decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015), in which the Court invalidated the residual clause of the Armed Career Criminal Act (ACCA), continues to play out. The issue that has the potential to affect the greatest number of cases is that of whether the holding applies to the residual clause of the Sentencing Guidelines. The answer will come in the case of *Beckles v. United States*, a case that was argued before the Supreme Court on November 28, 2016, by Janice Bergmann of the Federal Public Defender's Office for the Southern District of Florida. The case raises both the question of whether *Johnson* applies to the Guidelines

FEBRUARY 2017 NEWSLETTER

and, if so, whether it applies retroactively. (Note that the Sentencing Commission amended the Guidelines in August 1, 2016, and deleted the residual clause, so *Beckles* will only affect those individuals who were sentenced prior to the enactment of the amendment.) Though initially many in the defense community were optimistic about the outcome, SCOTUSblog didn't see it that way following the argument, concluding that "it seemed doubtful that Beckles will prevail."

Beckles is only about the Guidelines residual clause. Regardless of what happens, the battle will continue over what is and what is not a predicate offense for purposes of both the force and enumerated offenses clauses of the Armed Career Criminal Act (ACCA) and the Sentencing Guidelines. On the force-clause front, another *Johnson* case, *Curtis Johnson v. United States*, 559 U.S. 133 (2010), and two other cases *Descamps v. United States*, 133 S. Ct. 2276 (2013), and *Mathis v. United States*, 136 S. Ct. 2243 (2016), typically play the key role.

SIDEBAR

The Guidelines use the term "crime of violence," while the ACCA uses "violent felony." Both mean much the same thing. Within the respective provisions, the ACCA and the Guidelines had, at least until Johnson, three clauses: the force clause (sometimes referred to as the elements clause), the enumerated offenses clause, and the residual clause. Now they have two. The ACCA force clause, 18 U.S.C. §924(e)(e)(2)(B)(i), defines a violent felony as a felony that "has as an element the use, attempted use, or threatened use of physical force against the person of another." The Guideline provision, USSG § 4B1.1(a)(1), reads the same. The ACCA enumerated offenses clause, 18 U.S.C. §924(e)(e)(2)(B)(ii), includes any felony that "is burglary, arson, or extortion, [or] involves [the] use of explosives." The Guidelines pre-August 1 provision, USSG § 4B1.2(a)(2) read the same, but included a list of eleven additional offenses in the Commentary. Now, with slight modification, that list replaces what was in the body of the rule. The listed offenses are: "murder, voluntary manslaughter, kidnaping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use of an unlawful possession of a firearm described in 26 U.S.C. § 5845(a) or explosive material as defined in 18 U.S.C. § 841(c)."

There are, when out-of-state convictions are considered, a long list of state offenses that are the subject of debate. The arguments about prior Florida prior convictions are based on the force clauses. Though there are arguments out there about a number of Florida offenses, including resisting arrest with violence and aggravated battery, there are just three Florida statues that are typically seen *and* likely to be disqualified: aggravated assault (§784.021), robbery (§812.13), and offenses based on Florida's battery statute (§ 784.03(1)) - offenses such as battery on a law enforcement officer (§784.07), felony battery

(§784.03), the other felony battery (§784.01), aggravated battery based on the victim being pregnant (§784.045(1)(b), and battery by a person being detained (§784.02).

Existing precedent holds that Florida's aggravated assault statute qualifies as a violent felony under the Armed Career Criminal Act and a crime of violence for purposes of the Sentencing Guidelines. *See United States v. Golden*, __ F.3d __, 2017 WL 343523 (11th Cir. Jan. 24, 2017). In *Golden*, which was a Sentencing Guidelines case decided on the basis of the force clause, the majority opinion recognized the ongoing debate, and didn't say much more than the Court was bound by an earlier decision, *Turner v. Warden Coleman FCI*, 709 F.3d 1328 (11th Cir. 2013). Judge Jill Pryor, in her concurring opinion, set out the reasoning that undermines the precedent. It is that a Florida prosecutor "may secure a conviction . . . by offering proof of less than intentional conduct, including recklessness." As Judge Pryor recognized, that is less than is required by the force clause of either the ACCA or the Guidelines. Both require that the threat or force be intentional. The tone of the majority opinion in *Golden* and the unanswered logic of Judge Pryor surely means the decision is the first step toward *en banc* review and, if the stars are correctly aligned, the ultimate conclusion that the statute is not a predicate in either instance.

And while that would be the end of the inquiry for the ACCA, remember that the Guidelines' August 1, 2016, list of enumerated offenses includes aggravated assault as one of its enumerated offenses. There, the question is different. It is whether Florida's aggravated assault, in that it includes reckless conduct, is the equivalent of generic aggravated assault. There are differing views. *See e.g., United States v. Mungia-Portillo*, 484 F.3d 813, 817 (5th Cir. 2007) (finding that Tennessee aggravated assault statute, which included reckless conduct was generic); *United States v. Barcenas-Yanez*, 826 F.3d 752, 756-757 (4th Cir. 2016) (holding that the Texas aggravated assault statute, because it encompassed reckless conduct, was not). [*Note, too, that, under the pre-August 1 version, it would count under the residual clause, at least if the Clause survives Beckles.]*

SIDEBAR

The Guidelines definition of "crime of violence" that was in effect prior to the August 1, 2016, amendment listed aggravated assault as an enumerated offense, but did so, not in the body of the guideline (USSG §4B1.2), but in the Commentary. Then, too, prior to the amendment, the provision included a residual clause. Why then didn't the Eleventh Circuit, which has held that Johnson doesn't apply to the Guidelines, decide the case on the basis of either provision? In Judge Pryor's concurring opinion in Golden, she included a footnote to the effect that the

Government asked the Court to decide the case without reference to the residual clause. Though unstated, presumably the Court chose not to rely on the enumerated clause in the commentary because it, in the view of many, is tied to the residual clause and absent the clause cannot stand on its own. See, e.g., United States v. Bell, 840 F.3d 963, 967 (8th Cir. 2016).

Florida's battery on a law enforcement officer and similar offenses are not, categorically, predicate offenses. *See United States v. Green*, 842 F.3d 1299, 1322 (11th Cir. 2016). It's because one can commit the offense by mere touching, which does not amount to the requisite level of force, "force capable of causing physical pain or injury to another person." *Curtis Johnson*, 559 U.S. at 141. The question is whether the offense is "divisible" as that term is described in *Descamps.* If it is, courts are to use the modified categorical approach and examine *Shepard* documents to determine if the defendant was convicted of something more forceful than touching. Those documents typically include the information, the judgment, and plea colloquies. In post-conviction cases, the Eleventh Circuit Court of Appeals looks at any unobjected-to description of the offense in the PSR. (There is an argument that the PSR description cannot be relied upon. *See, e.g. United States v. Wynn*, 579 F.3d 567, 576 (6th Cir. 2009) ("[W]e conclude that it would be improper for the district court to rely on the factual recitations in the PSR to determine that Wynn's § 2907.03 conviction was for a 'crime of violence.'")). If the *Shepard* documents don't reveal whether there was more than touching, it's the end of the inquiry and the offense cannot be counted as a predicate. Conversely, if they do show it to involve, say striking, it counts.

In *Green*, as the Court did in an earlier decision, *United States v. Vail-Bailon*, 838 F.3d 1091 (11th Cir. 2016), the Court held that the Florida battery statutes were divisible. The Court, though, has vacated the *Vail-Bailon* decision, and will reconsider it *en banc.* The oral argument was held February 7.

As explained in *Descamps* and *Mathis*, the key to deciding whether a statute is divisible is in determining what must be proven by the prosecutor, i.e. what are the elements? Florida's battery statute, which is the basis for battery of a law enforcement officer and other related battery offenses, is divisible to the extent that there are really two separate offenses: (1) touching or striking the victim and (2) intentionally causing bodily harm. Where *Green* and *Vail-Bailon* have it wrong is in the conclusion that there are three offenses: (1) touching, (2) striking, or (3) intentionally causing bodily harm. Anyone who has ever tried a Florida battery case knows that the prosecutor need only prove that the defendant touched *or* struck the victim and that the jury need not decide whether it was one or the other. The standard jury instructions bear this out.

That means that if in the case of someone who was convicted of one of the felony-level battery offenses, the information charged him with committing a battery by intentionally causing bodily harm, the Government would probably have a predicate offense though we do have an argument to the contary. However, if the information charged the defendant with committing a battery by touching or striking, it would not have a predicate offense because (a) the touching and striking portion of the statute is indivisible and the modified categorical approach is unavailable, and (b) touching isn't the equivalent of violent force. Absent a trial and a surely unheard of special verdict form, the Government would still not have a predicate offense even if they charged touching, striking, or intentionally causing bodily harm. That is because courts presume the least criminalized conduct, *see Moncrieffe v. Holder*, 133 S. Ct. 1678, 1680 (2013), *i.e.* touching or striking, which, again, is indivisible. Presumably, it is only a matter of time before the Court of Appeals acknowledges this.

The Eleventh Circuit has also, at least for now, concluded that Florida's robbery statute is a predicate offense. *See United States v. Fritts*, 841 F.3d 937 (11th Cir. 2016). Courts around the country, though, have held that many state robbery statutes lack the level of force necessary to qualify as a predicate. *See, e.g.*, *United States v. Eason*, 829 F.3d 633 (8th Cir. 2016); *United States v. Castro-Vazquez*, 802 F.3d 28 (1st Cir. 2015). Here's the argument. All Florida's statute requires is sufficient force to overcome a victim's resistance. *Sanders v. State*, 769 So.2d 506, 507 (5th DCA 2000). While admittedly, that is "more force than necessary to remove the property from the person," it does not require violent force. *Id*. at 507. Pursuant to *Sanders*, the amount of force will depend on the type and degree of resistance by the victim. If the victim's resistance is slight, the force necessary to overcome it is likewise slight, which is not, necessarily, "force capable of causing physical pain or injury to another person." And because the statute is *in*divisible, neither the wording of the information or the actual facts can qualify the offense as a predicate.

Of the three, robbery is probably the toughest sell. Still, all three are live possibilities. You will have to acknowledge the existing precedent and the District Court's obligation to follow it, and you will, for now, lose in the District Court. If, though, your client is to benefit from future court decisions, you need to raise the issue. Call us if we can help.

YOU MIGHT TRY THIS

Even with the success of the challenges to the predicate offenses under the Guidelines, the ACCA's "serious drug offense" (18 U.S.C. § 924(e)(2)) and the Guidelines' "controlled substance

offense" (USSG §4B1.2(b)), continue to serve as predicates. Richie Summa and Joe Debelder, both of our Tallahassee office, have mounted challenges.

Richie had for some time argued that Florida convictions of the drug offenses listed in Chapter 893 of the Florida statutes cannot count as a predicate for either the Guidelines or the ACCA because Chapter 893 because does not require the state to prove the defendant knew of the illicit nature of the substance. The argument is that courts should be asking whether Florida's drug offenses are generic. The Eleventh Circuit rejected it in *United States v. Smith*, 775 F.3d 1262 (11th Cir. 2014). While we still raise the issue, Richie has come up with a response for the Sentencing Guidelines. It is that, assuming the validity of *Smith*, the Sentencing Commission exceeded its statutory authority by including in its definition of "controlled substance offense" an offense like Florida's with its unique *mens rea*. Specifically, 28 U.S.C. § 994(h) directs the Sentencing Commission to establish a guideline provision that provides for longer sentences for those convicted of, in addition to crimes of violence, offenses "described in" the Controlled Substance Act (21 U.S.C. § 841). As those offenses all require the Government to prove the defendant knew of the illicit nature of the substance, the argument is that the Sentencing Commission exceeded its Congressional grant of authority by including crimes that require a lesser degree of culpability. Megan Saillant of our Gainesville office will be presenting the argument to the Eleventh Circuit on March 30.

Joe has challenged Florida's drug trafficking statute, Fla. Stat. § 893.135(k)(1). The statute targets the individual who "knowingly sells, purchases, manufactures, delivers, or brings into [the] state" certain quantities of controlled substances. The Eleventh Circuit has already held that the statute, in that it prohibits the purchase of drugs, is broader than the Guideline definition of "controlled substance offense," which prohibits a variety of controlled substance activity other than purchasing. *See United States v. Shannon*, 631 F.3d 1187 (11th Cir. 2011). The theory applies, as well, to the ACCA, which also omits any mention of purchasing.

Shannon is an obstacle for the Government, but courts have treated the statute as divisible, allowing the Government to use the modified categorical approach to show, using *Shepard* documents, that the offense involves something other than "purchase." Joe has argued that, to the contrary, the statute is indivisible. He cites *Hampton v. State*, 135 So.3d 440 (5th DCA 2014), where the court concluded that options of selling, purchasing, manufacturing, etc., are only different means of committing the same offense. Given that, the argument is that the statute is indivisible, the modified categorical approach is inapplicable, and, because the statute is broader than the definitions in either the Guidelines or the ACCA, it cannot be a

predicate offense. Joe has raised the argument in a case now pending before Judge Hinkle.

Both Richie and Joe, and their pleadings, are available. Just give them a call.

PANAMA CITY FEDERAL COURTHOUSE TO CLOSE

The District Court judges for the Northern District of Florida have decided not to renew the existing lease for the Federal Courthouse in Panama City. The lease expires at the end of 2018. Unless an alternative is found before then, Panama City cases will all be heard in either Pensacola or Tallahassee, and all parties will have to make the four-to-five-hour round-trip.

As explained in an article in the Panama City News Herald, Chief Judge Casey Rodgers has described the existing facility as "completely unacceptable." Then, too, Judge Smoak retired in January of 2015, so there is no longer a sitting District Court Judge. Whoever fills the position will be in Pensacola.

With Magistrate Judge Larry Bodiford's retirement this past December, there is not a sitting Magistrate Judge, either. Magistrate Judges Gary Jones, Charles Stampelos, and Elizabeth Timothy are covering different aspects of the job either by video or traveling to Panama City. The hope is that the Court will begin the process of selecting a new part-time Magistrate to fill the vacant position.

Bay County lawyers and the County's Chamber of Commerce are trying to develop a solution. Both the ideas of leasing space in the County Courthouse and construction of an entirely new facility have been discussed. One of the local TV stations has reported that Jackson County officials are also interested in having the Courthouse relocated there.

Judge Rodgers reports that the Judges are doing "everything possible to retain a court presence in Panama City." She explained that the first step is that of seeking approval from the Eleventh Circuit Court of Appeals. She is currently awaiting the Court's response.

CAPITAL HABEAS UNIT

In January, 2015, we opened our Capital Habeas Unit (the CHU) with the hiring of one lawyer and an investigator. The Unit, staffed with lawyers, research and writing specialists, investigators,

and other staff now numbers 12. Billy Nolas is the chief of the Unit.

The CHU represents 28 clients who have been sentenced to death by a Florida state judge and who have been through, at least once, a Florida direct appeal and post-conviction proceedings. Many if not most of the clients are far into, if not beyond, the initial federal post-conviction process, with some denied federal review all together, having missed the one-year § 2255 filing deadline. In some instances the CHU represents the client as co-counsel, sharing duties with the Capital Collateral Regional Counsel, registry counsel, or other volunteer counsel. Nearly all the cases are in the Northern District of Florida, though there a few from Florida's Middle District. The CHU has also taken on the responsibility of providing training for Florida lawyers handling capital post-conviction cases and monitoring death-penalty cases throughout the state in hopes of avoiding missed filing deadlines. They have joined in, as well, a number of amicus filings.

The CHU came into existence because of concern about the quality of representation being provided to those on death row. In *Lugo v. Sec'y, Fla. Dep't of Corr.*, 750 F.3d 1198 (11th Cir. 2015), Chief Judge Carnes observed that since 1996, 34 Florida death-row prisoners had missed the federal filing deadline and suggested the establishment of a federal capital habeas unit.

Chief Judge Rodgers, in a letter she sent the Chief Judge of the Fifth Circuit of Appeals this past December and shared with us, wrote that "the CHU has significantly improved the overall quality of federal capital habeas representation in the Northern District of Florida," and that "presentations to the court are more professional, more clearly articulated, and reflect a greater understanding of federal habeas law than in the past."

AMENDMENTS TO U.S. SENTENCING GUIDELINES

On November 1, 2016, six amendments to the Sentencing Guidelines went into effect. A full reader-friendly version of the amendments is available on the Commission's website at: http://www.ussc.gov/guidelines/amendments/reader-friendly-version-amendments-effective-november-1-2016

Amendment 799: Compassionate Release

Amendment 799 modifies the commentary which follows USSG § 1B1.13. The guideline itself allows a court, upon the motion of the Director of the Bureau of Prisons, to reduce a defendant's sentence after considering certain

factors and determining "extraordinary and compelling reasons warrant the reduction." USSG § 1B1.13(1)(A). The new commentary expands on, and clarifies, what should be considered qualifying factors. These include the defendant's medical condition, age, family circumstances, and a category covering "other reasons."

Amendment 800: Animal Fighting

Amendment 800 updates USSG § 2E3.1, addressing offenses related to gambling and animal fighting, to account for recent legislative changes. The amendment increases the base offense level for offenses involving "an animal fighting venture," from 10 to 16. The amendment also assigns offense level 10 to defendants convicted of "causing an individual under 16 to attend an animal fighting venture," in violation of 7 U.S.C. § 2156(a)(2)(B). USSG § 2E3.1(a)(3). The commentary regarding upward departures was also amended. The new language clarifies that there are circumstances where animal fighting is managed in an exceptionally cruel way – i.e., prolonging an animal's suffering in death – and this may warrant an upward departure. The size and scale of an operation are also now grounds for an upward departure.

Amendment 801: Sexual Exploitation of a Minor

Amendment 801 pertains to USSG §§ 2G2.1, 2G2.2, and 2G3.1, and attempts to resolve circuit splits over the application of certain enhancements. When the victim of the exploitation is an infant or toddler, the amendment clarifies that the victim's age is specifically accounted for in the offense guideline, therefore, the general vulnerable victim adjustment in USSG § 3A1.1 does not also apply.

The amendment also explains how the two and five level distribution enhancements in USSG §2G2.2 should be applied. The two level enhancement for using peer-to-peer file-sharing programs is only to be applied when a defendant "knowingly" engages in distribution. Notably, this is in direct contradiction with the Eleventh Circuit's opinion in *United States v. Creel*, 783 F.3d 1357, 1360 (11th Cir. 2015). A similar clarification was made regarding the five level enhancement for distribution in exchange for non-pecuniary gain. The new language instructs that a defendant should receive a five level enhancement when he or she knowingly exchanges child pornography in exchange for something of "valuable consideration from the other person." The amendment makes comparable changes to the obscenity guideline. USSG § 2G3.1.

Amendment 802: Immigration

Perhaps the most significant amendment that went into effect in November of 2016 was Amendment 802, which dealt with immigration

offenses and amended USSG §§ 2L1.1 and 2L1.2. The first part of the amendment increases the enhancement for the smuggling of an unaccompanied minor, while simultaneously increasing the definition of a minor from 16 to 18 years old. It also narrows the class of defendants who will receive an enhancement for smuggling an unaccompanied minor, by broadening the definition of adults who accompany the minor to include a "parent, adult relative, or legal guardian." USSG § 2L1.1(b)(4).

The more substantial changes are to the illegal re-entry guideline, found at USSG § 2L1.2. First, the Commission increased the enhancement, from two to four levels, for defendants with prior illegal reentry convictions. USSG § 2L1.2(b)(2). Next, the amendment eliminated the use of the categorical approach when considering prior convictions and their impact according to USSG § 2L1.2(b)(2). According to the amended guideline, prior convictions are given weight based on the actual sentences that were imposed. Application note 5 of the guideline allows the court to depart if it appears the offense level determined through subsections (b)(2) and (3) "substantially understates or overstates the seriousness of the conduct underlying the prior offense." According to the note, this can occur when, among other things, the prior offense is too old to count (according to USSG § 4A1.2(e)), or the time actually served was substantially lower than the time the defendant was actually sentenced to. Finally, the amendment clarifies that the term "crime of violence," as referred to in subsections (b)(2)(E) and (b)(3)(E), is the same as the definition adopted for the career offender guideline in August of 2016.

Amendment 803: Probation & Supervised Release

Amendment 803 updates the guidelines pertaining to conditions of probation and supervised release found at USSG §§ 5B1.3 and 5D1.3. The amendment seeks to clarify and rearrange the conditions previously in place in order to ensure the conditions are easier to understand and enforce.

The last amendment, Amendment 804, is a miscellaneous amendment addressing newly enacted legislation and application issues. The full text of this amendment can be accessed on the Commission's website, cited above.

NEW CRIMINAL JUSTICE ACT PLAN ON THE WAY

All 94 federal judicial districts have a local Criminal Justice Act Plan, though surely all are based on the same model plan. Our current version has been in effect since 2001. Last year the Administrative Office of the United States

Courts published a new model plan. It was the work of lawyers across the country, including our Panel Representative, Gil Schaffnit. It is, if nothing else, more detailed than the old one. Our existing plan has 12 pages. The new model plan has 35.

At the request of Chief Judge Rodgers, United States District Court Clerk Jessica Lyublanovitz, Randy Murrell, Gil Schaffnit, and Magistrate Judge Gary Jones reviewed the new model plan and have sent a proposed version of it to the District Court Judges for final approval. Once finalized, it will go on to the Eleventh Circuit for final approval.

The new proposal retains the provisions of the existing plan, but includes some changes. The new proposal:

- provides panel members with notice and a chance to respond to a decision to reduce a voucher
- establishes a mentoring plan to advance the diversity of the panel
- provides panel members subject to removal with notice and a hearing
- suggests that in some instances the better course will be to appoint a new panel member to handle the appeal
- adds a new section about appointment of counsel in capital cases.
- limits terms of those on the panel oversight committee to three years, with the possibility of one three-year extension
- codifies the requirement that panel members be members of The Florida Bar
- staggers the three-year reappointment schedule for panel members
- continues to require "8 continuing legal education hours relevant to federal criminal practice" for panel members, but eliminates the 6 hour exception for our monthly luncheons
- requires that applicants to the panel must "maintain a primary, satellite, or shared office in the district"

JUDGE HINKLE TAKES SENIOR STATUS

This past November, United States District Judge Robert Hinkle took senior status. He told Jim Rosica of *Florida Politics* that he intends to keep a full docket, which now includes Tallahassee and Panama City cases. He said he decided to take senior status "so that our district can get an additional judge." Judge Hinkle was appointed in 1996 by President Bill Clinton.

His decision leaves only two active District Court Judges, Casey Rodgers and Mark Walker. Judge Smoak's seat has been vacant for two years. Senior Judges Lacy Collier and Roger Vinson continue to accept cases.

FEBRUARY 2017 NEWSLETTER

IN MEMORIAM

Senior Judge Maurice Paul died this past December. He was 84.

Judge Paul earned a bachelor's degree from the University of Florida in 1954 and subsequently served as a pilot in the Air Force. After earning his law degree from the University of Florida in 1960, he practiced in Orlando. In 1973, he became a circuit judge in Florida's Ninth Circuit. President Ronald Reagan appointed him to the Northern District bench in 1982. He took senior status in July of 1997, but continued to preside over cases up until his death.

Panel Representative Gil Schaffnit, who first appeared before Judge Paul in 1982, writes:

"Throughout his thirty-five years on the federal bench, Judge Paul displayed a keen intellect and an amazing work ethic. He expected counsel to be prepared and professional when practicing in his Courtroom. At the same time, he displayed humility and generosity towards members of his Court family and the jurors that served in his cases. His death truly marks the end of an era in the history of the Northern District of Florida."

PANEL TRAINING

This month's training luncheon features the video "Winning the Evidentiary Battles at Bond, Sentencing, and Revocations Hearings." The presentation, prepared by the Training Division of the Defender Services Office," addresses those hearings where the rules of evidence aren't in play. Here's the schedule:

Panama City: February 21st
Pensacola: February 22nd
Gainesville: February 22nd
Tallahassee: February 23rd

FEBRUARY 2017 NEWSLETTER

PANEL ASSIGNMENTS FROM 2016

Last year the District Court assigned 128 cases to CJA panel members. Here is the breakdown:

Gainesville	Qty.	Tallahassee	Qty.	Panama City	Qty.	Pensacola	Qty.
Bernstein, Stephen	1	Atkar, Mutaquee	5	Cassidy, Thom	4	Dees, Robert	0
Daly, Dan	2	Busbey, Bill	5	Dingus, Jonathan	3	Duignan, Maureen	0
Edwards, Tom	2	Collins, David	3	Downing, Jean	2	Hammons, Joe	6
Harper, Robert III	1	Davis, Cliff	1	Dykes, Maria	2	Hendrix, Michelle	2
Hatfield, Anderson	2	Findley, Thomas	0	Higgins, Tanya	4	Jenkins, Jim	0
Johnson, Huntley	0	Greenberg, Richard	6	Seaton, Rachel	3	Johnson, Ron	5
Johnson, Stephen	1	Milles, Eric	6	Stephenson, Dustin	4	Klotz, Chris	4
Schaffnit, Gilbert	4	Morris, Alex	3			Kyle, Patricia	1
Vipperman, Lloyd	3	Printy, Gary	5			Rabby, Chris	3
Wilson, David	1	Sanders, Barbara	2			Reynolds, Shelley	1
Zissimopulos, Nick	1	Smith, Richard	3			Sheehan, Donald	6
		Throne, Barbara	5			Sutherland, Steve	4
		Ufferman, Michael	1			Terrezza, John	7
		Villeneuve, Paul	0			Wilson, Sharon	4
						Witmyer, Don	0

CLEMENCY FROM OUR DISTRICT

In April of 2014, then Deputy Attorney General James Cole announced the Department of Justice's clemency initiative. In response, Clemency Project 2014 came into being. It was composed of the American Bar Association, the National Association of Criminal Defense Lawyers, the Federal Defenders, the American Civil Liberties Union, and Families Against Mandatory Minimums. The organization worked to recruit and train volunteer lawyers to assist prisoners in seeking clemency.

More than 6,000 petitions for clemency of those convicted of drug offenses were filed with the Office of the Pardon Attorney by the August 31, 2016 deadline. President Obama granted clemency to 1,715 individuals. More than 3,000 petitions filed after the deadline remain pending. Sixty-four individuals sentenced in the Northern District of Florida received clemency. Here is the entire list:

Client	Sentencing Date	Sentence	Terms of Grant (*)	Attorney at Sentencing
Aaron Glasscock	February 17, 2000	360 months' imprisonment	Release April 18, 2017	Anderson Hatfield
Alex Randell	July 23, 1999	Life imprisonment	360 months' imprisonment*	James Banks
Andrew Lee Holzendorf	November 14, 1996	Life imprisonment	Release July 28, 2016*	Bill Clark
Angel Garcia-Bercovich	April 7, 2008	360 months' imprisonment	Release December 19, 2018*	Jon Uman
Benjy Neil Allums	June 28, 2005	240 months' imprisonment	Release February 03, 2017	Patrick Jackson
Bennit Hayes	February 6, 2003	Life imprisonment	Release October 01, 2016*	David Sellers
Bradford S. Potts	May 19, 2004	360 months' imprisonment	Release March 04, 2017*	George Murphy
Brandon Terrell Stevenson	October 30, 2009	Life imprisonment	210 months' imprisonment*	Geoffrey Mason
Carlos Stuckey	February 10, 2009	Life imprisonment	Release October 27, 2018*	Randy Murrell (FPD)
Chad Christopher Pyne	August 19, 2004	200 months' imprisonment	Release December 19, 2018*	John Broling
Charles Bynum	May 27, 2003	Life imprisonment	Release August 03, 2018*	Jonathan Dingus
Christopher Bass	September 10, 2004	Life imprisonment	360 months' imprisonment	Armando Garcia
Christopher Demetrius Elliott	May 14, 2007	180 months' imprisonment	Release May 19, 2017	Frank Louderback
Christopher Gulley	June 12, 1996	Life imprisonment	Release September 02, 2016*	Greg Cummings
Christopher M. Dees	September 1, 2004	Life imprisonment	262 months' imprisonment*	Stephen Sutherland
Christopher Stanton	July 25, 2006	360 months' imprisonment	Release August 03, 2018*	Barry McCleary
David Anthony Trotter	October 15, 1993	Life imprisonment	Release September 02, 2016*	Spiro Kypreos
Delanjun L. Rogers	September 7, 2005	262 months' imprisonment	Release April 18, 2017	Jonathan Dingus
Demetrius Carl Phillips	June 13, 2006	Life imprisonment	Release November 04, 2018*	Kafani Nkrumah (FPD)

* *Extra conditions apply upon release*

FEBRUARY 2017 NEWSLETTER

Client	Sentencing Date	Sentence	Terms of Grant (*)	Attorney at Sentencing
Dexter Lanoyd Dickens	December 17, 2004	Life imprisonment	Release July 28, 2016*	Russ Ramey
Dwight M. Spencer	January 13, 1998	Life imprisonment	Release May 17, 2017	Donald Sheehan
Fermon Keith Brown, Jr.	January 28, 2000	Life imprisonment	Release November 04, 2018*	Robert Dennis (FPD)
Frank Lavelle Sharpe	January 14, 1999	Life imprisonment	360 months' imprisonment	Cliff Davis
Gregory Augusta Ransom, II	February 6, 2008	240 months' imprisonment	Release August 30, 2018*	Chris Patterson
Gregory J. Hall	June 21, 2007	Life imprisonment	180 months' imprisonment	George Blow
Hassan Hills	December 19, 2001	Life imprisonment	360 months' imprisonment*	Kirk Owens
James Oliver Fambro	April 5, 2006	300 months' imprisonment	Release December 01, 2016*	Kafani Nkrumah (FPD)
James Tranmer	August 3, 1994	420 months' imprisonment	Release May 19, 2017	Roderick Vereen (FPD)
Jaycee Williams, Jr.	December 13, 2006	240 months' imprisonment	Release April 18, 2017	Waylon Graham
John Robinson Turner	June 23, 1993	420 months' imprisonment	Release May 19, 2017	Spiro Kypreos
Johnnie C. Reed	February 7, 1997	Life imprisonment	360 months' imprisonment	Michael Rollo
Joshua Chuntay Booker	January 14, 2009	Life imprisonment	Release November 04, 2018*	Tanya Higgins
Kenneth Earl Kelley	December 23, 2003	240 months' imprisonment	Release January 19, 2019*	Christopher Rabby
Lafayette Maurice Washington	May 18, 2006	240 months' imprisonment	Release April 18, 2017	Barbara Sanders
Larry Lewis	October 20, 1999	360 months' imprisonment	Release May 05, 2017*	Patrick Jackson
Lesly Alexis	July 29, 2003	384 months' imprisonment	262 months' imprisonment	Alexander Kapetanakis
Lester Martin Works	February 6, 2008	1. Life imprisonment	Release November 04, 2017*	Charles Lammers (FPD)
Luciano Murga	January 25, 2005	240 months' imprisonment	Release December 01, 2016*	Patrick Jackson
Martin Brandon Moore	May 30, 2007	Life imprisonment	180 months' imprisonment*	Edmund Quintana
Maurice Davon Cawthon	December 17, 2004	240 months' imprisonment	Release December 19, 2018*	Christopher Rabby
Michael Dewayne Tensley	September 27, 2006	Life imprisonment	Release October 27, 2018*	Spiro Kypreos
Michael Shavon Pate	March 25, 2003	Life imprisonment	Release January 17, 2019*	Stephen Sutherland
Raphael Marice Tinsley	June 13, 2007	Life imprisonment	240 months' imprisonment	Jonathan Dingus
Ricky Gene Minor	August 22, 2001	Life imprisonment	262 months' imprisonment	Tom Keith (FPD)
Robert Jeffrey Harris	December 12, 2006	Life imprisonment	210 months' imprisonment	Calvin Lamar
Robert Pettway	August 31, 2004	Life imprisonment	Release October 01, 2016*	Gary Printy
Robert W. Mims	May 21, 2002	Life imprisonment	240 months' imprisonment*	Kirk Owens
Ronnie Lorenzo Hardy	September 19, 2000	Life plus 60 months' imprisonment	270 months' imprisonment*	Elizabeth Timothy (FPD)
Rudolph McKinnon, Jr.	October 26, 2005	300 months' imprisonment	Release December 01, 2016*	Tom Keith (FPD)
Samuel Stevens Farmer	June 15, 2001	Life imprisonment	Release April 18, 2017	Dennis Boothe
Sterling Kenneth Westberry	September 15, 1998	Life imprisonment	Release March 22, 2017	David White
Terrance Ramon Merritt	March 15, 2007	Life imprisonment	262 months' imprisonment*	Elizabeth Amond
Terry Glasscock	September 17, 1999	425 months' imprisonment	295 months' imprisonment	Patrick Renn

* *Extra conditions apply upon release*

FEBRUARY 2017 NEWSLETTER

Client	Sentencing Date	Sentence	Terms of Grant (*)	Attorney at Sentencing
Tiara Buskey	November 8, 2005	240 months' imprisonment	Release May 19, 2017	Kenneth Ridlehoover
Tony Jones	May 16, 1997	Life imprisonment	Release June 03, 2018*	Robert Rand
Trenton A. Copeland	March 23, 2012	Life imprisonment	168 months' imprisonment	Page Pate
Walter Bradberry	June 28, 2007	240 months' imprisonment	Release January 19, 2019*	Pete Vallas
Wayne Parker, aka Wayne Ryals	November 23, 1999	420 months' imprisonment	Release July 28, 2016*	Christopher Rabby
William C. Robertson, (Sr.)	November 8, 2001	240 months' imprisonment	Release December 01, 2016*	John Dubose
William Everett Robinson	May 10, 1999	Life plus 60 months' imprisonment	180 months' imprisonment*	David White
William Henry Dudley	April 27, 2006	240 months' imprisonment	Release November 22, 2018*	Donald Sheehan
Willie Brazile	September 10, 1996	Life imprisonment	240 months' imprisonment	Ted Stokes
Willie Chevell Cameron	June 14, 2006	Life imprisonment	Release July 28, 2016*	Spiro Kypreos

* *Extra conditions apply upon release*