APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 4th day of June, two thousand twenty-one.

PRESENT: AMALYA L. KEARSE,
GERARD E. LYNCH,
DENNY CHIN,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

v.

DEAN JONES, AKA KORRUPT, MAXWELL SUERO, AKA POLO, TROY WILLIAMS, AKA LIGHT, AKA TIMOTHY WILLIAMS, DEQUAN PARKER, AKA SIN, AKA SINCERE, RICHARD GRAHAM, AKA PORTER, DARNELL FRAZIER, MALIK SAUNDERS, AKA DOG, AKA MALEK SAUNDERS, AKA MALEK SANDERS, AKA MALIK SANDERS, KAHEIM ALLUMS, AKA OS, AKA "O," RALPH HOOPER, AKA RIZZO, AKA RIZ,

Defendants,

YONELL ALLUMS, AKA UNK,
Defendant-Appellant.[1]

Case No.: 18-1794-cr, 20-2289-cr

FOR APPELLEE: JASON SWERGOLD, Assistant United States Attorney (Maurene Comey & Thomas McKay, Assistant United States Attorneys, *on the brief*),

[1] The Clerk of Court is respectfully directed to amend the caption as set forth above.

for Audrey Strauss, United States Attorney for the Southern District of New York, New York, New York.

FOR DEFENDANT-APPELLANT: ANDREW FREIFELD, Law Office of Andrew Freifeld, New York, New York.

Consolidated appeals from the United States District Court for the Southern District of New York (Broderick, J.).

UPON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment and order of the district court are **AFFIRMED.**

Defendant-appellant Yonell Allums appeals from a judgment entered June 13, 2018, following a jury trial, convicting him of narcotics conspiracy, in violation of 21 U.S.C. § 846, and sentencing him principally to 240 months' imprisonment. He also appeals from an opinion and order entered July 7, 2020, denying his second motion for a new trial. We assume the parties' familiarity with the underlying facts, procedural history of the case, and issues on appeal.

Allums was charged with one count of participating in a narcotics conspiracy in violation of 21 U.S.C. § 846 and one count of possession of a firearm in furtherance of the conspiracy, in violation of 18 U.S.C. § 924(c). Following a nearly three-week trial that began on October 24, 2017, the jury returned a verdict of guilty on the conspiracy count and not guilty on the firearms count.

On December 27, 2017, Allums moved for a new trial pursuant to Rule 33 of the Federal Rules of Criminal Procedure, arguing that the introduction of evidence of his prior conviction for conspiracy to distribute cocaine prejudiced his defense. The district court denied his

motion. On May 16, 2018, Allums was sentenced as set forth above, and he appealed.

On July 19, 2019, while his appeal was pending, Allums filed his second motion for a new trial. The district court denied the motion. Allums filed his second appeal, and the two appeals were consolidated.

I. The Judgment and Sentence

A. The 404(b) Evidence

Allums's sole challenge to his conviction is based on the district court's admission, pursuant to Federal Rule of Evidence 404(b), of evidence regarding his prior conviction. We review evidentiary rulings for abuse of discretion, "and we will disturb an evidentiary ruling only where the decision to admit or exclude evidence was manifestly erroneous." United States v. McGinn, 787 F.3d 116, 127 (2d Cir. 2015) (internal quotation marks omitted). Rule 404(b) prohibits the introduction of prior acts "to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Fed. R. Evid. 404(b)(1). Evidence of prior acts, however, may be admissible "for another purpose, such as proving . . . intent, . . . knowledge, . . . absence of mistake, or lack of accident." Id. 404(b)(2). In reviewing the district court's decision to admit Rule 404(b) evidence, we look to "whether (1) it was offered for a proper purpose; (2) it was relevant to a material issue in dispute; (3) its probative value is substantially outweighed by its prejudicial effect; and (4) the trial court gave an appropriate limiting instruction to the jury if so requested by the defendant." *United States v. LaFlam*, 369 F.3d 153, 156 (2d Cir. 2004).

As the district court noted, Allums placed his knowledge and intent at issue at trial. Indeed, at a pre-trial conference, the court asked Allums's counsel whether he intended to argue that Allums was unaware of

the drugs being trafficked through property he owned at 173 Woodworth Avenue in Yonkers (a convenience store, an apartment, and adjacent property). Counsel stated:

> We intend to argue that he didn't know. He has, like you said, a very, very tangential . . . relationship to that property. He certainly doesn't live there. He doesn't have unabated access to it. He doesn't go through there left and right. So, to the extent that any evidence of any narcotics activity was recovered in that apartment, Mr. Allums certainly was not aware of it.

App'x at 126.

In his opening statement, counsel argued that Allums, who either solely or jointly owned the property at all relevant times, was unaware of the drug trafficking activity that his nephew, Kaheim, was conducting out of his upstairs apartment. *See, e.g.*, App'x at 297 ("[Kaheim] lived in that apartment. . . . He took sole responsibility for drugs that were recovered in that case."); App'x at 303 (noting that government witness purchased drugs from Kaheim, not Allums). And in cross-examining Candice Southerland, who testified to Allums handing her envelopes containing drugs, Allums's counsel sought to elicit testimony suggesting that the envelopes came from Kaheim's apartment.

Our case law makes clear that "[w]here, for example, the defendant does not deny that he was present during a narcotics transaction but simply denies wrongdoing, evidence of other arguably similar narcotics involvement may, in appropriate circumstances, be admitted to show knowledge or intent." *United States v. Aminy*, 15 F.3d 258, 260 (2d Cir. 1994). The evidence regarding Allums's prior conviction was admitted to show knowledge and intent. Allums's prior conviction was for substantially the same conduct as his charged conduct, and the prior operation was conducted at the same location. Hence, we

are satisfied that the evidence was highly probative of his knowledge and intent. *See United States v. Cadet*, 664 F.3d 27, 32-33 (2d Cir. 2011).

Further, although Allums contends that his counsel offered to stipulate to knowledge and intent, and that the court should have accepted that offer, the district court reasonably concluded that the offer was too little and too late. First, it came only after Allums had put knowledge and intent at issue. Second, the proposed stipulation was insufficiently clear and specific to fully remove the issue from the case. Counsel stated that he would be "willing to enter into a stipulation that would read, if the jury finds that knowledge and intent, or if the other elements of the case are met, knowledge and intent can be inferred." App'x at 1104-05. But intent can always be "inferred" from actions, and the reference to "other elements" is unclear. "[T]o take [knowledge and intent] out of a case, a defendant must make some statement to the court of sufficient clarity to indicate that the issue will not be disputed" and "accept a jury instruction that would keep that issue out of the case." *United States v. Colon*, 880 F.2d 650, 659 (2d Cir. 1989).

Finally, we are satisfied that the district court's limiting instructions mitigated the risk of unfair prejudice. *See United States v. Snype*, 441 F.3d 119, 129 (2d Cir. 2006) ("[T]he law recognizes a strong presumption that juries follow limiting instructions.").

B. The Sentence

Allums challenges his sentence as being procedurally and substantively unreasonable. "A sentence is procedurally unreasonable if the district court fails to calculate (or improperly calculates) the Sentencing Guidelines range, treats the Sentencing Guidelines as mandatory, fails to consider the § 3553(a) factors, selects a sentence based on clearly erroneous facts, or fails

adequately to explain the chosen sentence." *United States v. Jesurum*, 819 F.3d 667, 670 (2d Cir. 2016) (internal quotation marks and emphasis omitted).

We review a sentencing court's legal application of the Guidelines *de novo*, "while the court's underlying factual findings with respect to sentencing, established by a preponderance of the evidence, are reviewed for clear error." United States v. Cossey, 632 F.3d 82, 86 (2d Cir. 2011) (internal quotation marks omitted). "Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *United States v. Norman*, 776 F.3d 67, 76 (2d Cir. 2015) (internal quotation marks and alteration omitted). "[T]he judge who presided over the trial or over an evidentiary sentencing hearing is in the best position to assess the credibility of the witnesses, and her decisions as to what testimony to credit are entitled to substantial deference." Id. at 78 (citing *Gall v. United States*, 552 U.S. 38, 51-52 (2007)).

The district court found that: (a) Allums was responsible for the distribution of more than 50 kilograms of cocaine; (b) he possessed firearms in furtherance of the narcotics conspiracy; (c) he maintained 173 Woodworth as a premises for distributing drugs; and (d) he was the leader of the conspiracy. The district court concluded that the applicable Guidelines range was 360 months' to life imprisonment, with a mandatory minimum term of 10 years' imprisonment. The district court then imposed a substantially below-Guidelines sentence of 240 months' imprisonment.

Allums challenges the factual support for the district court's determinations with respect to drug quantity and sentencing enhancements. We conclude, however, that there was sufficient evidence to support the court's findings, including the testimony of several witnesses, including Candice Southerland, Steven Christopher, and

Daryl Bracy, as well as documentary evidence showing that Allums maintained the premises where the drug trafficking took place. To the extent Allums challenges the credibility of the witnesses, "[g]iven the district court's superior ability to make credibility assessments based on its first-hand observation of the witnesses at [trial], we defer to those assessments." *United States v. Caracappa*, 614 F.3d 30, 49 (2d Cir. 2010).

Allums's final procedural challenge to his sentence arises from the district court's reference to his perjury at a suppression hearing several years earlier on a separate charge. The district court (Sprizzo, *J.*) granted the suppression motion and the charges were dismissed. In sentencing Allums in the instant case, the district court (Broderick, *J.*) stated that "this very easily could have been [Allums's] third narcotics conviction," had Allums not "avoided criminal prosecution at that time by [his] testimony." App'x at 3215-16. Allums contends that Judge Sprizzo did not in fact rely on his perjured testimony in granting the suppression motion and therefore that Judge Broderick erred in concluding otherwise.

Because Allums did not object to the finding during sentencing, we review for plain error. *See United States v. McCrimon*, 788 F.3d 75, 78 (2d Cir. 2015). We are not persuaded that there was any error, much less plain error. The district court reviewed the transcript of the suppression hearing as well as Judge Sprizzo's decision and concluded that Allums's testimony at the hearing "did at least in part weigh on Judge Sprizzo" and that Allums "perverted the judicial system by lying during [his] testimony." App'x at 3216. The transcript of Judge Sprizzo's bench ruling indeed confirms that he relied, at least in part, on Allums's testimony at the hearing.

Allums also argues that his sentence was substantively unreasonable. "Our review of a sentence for substantive reasonableness is particularly deferential,

and we will set aside only those sentences that are so shockingly high, shockingly low, or otherwise unsupportable as a matter of law that allowing them to stand would damage the administration of justice." *United States v. Muzio*, 966 F.3d 61, 64 (2d Cir. 2020) (internal quotation marks and alteration omitted).

Given Allums's criminal history and the seriousness of his offense, the sentence the court imposed, which departed downward from the sentencing range recommended by the Guidelines by ten years, was well "within the range of permissible decisions." *United States v. Rivernider*, 828 F.3d 91, 111 (2d Cir. 2016).

II. The Second Motion for a New Trial

Allums filed a second motion for a new trial, pursuant to Federal Rule of Criminal Procedure 33, on July 19, 2019 -- over a year after his conviction. Rule 33 provides that a motion for a new trial based on newly discovered evidence may be filed within three years of a guilty verdict, but a motion for a new trial based on any other reason must be filed within 14 days. Fed. R. Crim. P. 33(b). Thus, Allums's second motion for a new trial was untimely unless it was based on newly discovered evidence.

We review a denial of a Rule 33 motion for abuse of discretion and the court's factual findings for clear error. *United States v. Sessa*, 711 F.3d 316, 321 (2d Cir. 2013).

"We have long held that in order to constitute newly discovered evidence, not only must the defendant show that the evidence was discovered after trial, but he must also demonstrate that the evidence could not with due diligence have been discovered before or during trial." *United States v. Forbes*, 790 F.3d 403, 408-09 (2d Cir. 2015) (internal quotation marks omitted). Prosecutorial misconduct that is readily apparent from the trial

transcript does not constitute newly discovered evidence. *See United States v. Dukes*, 727 F.2d 34, 39 (2d Cir. 1984).

During the prosecution's cross-examination of Allums's co-defendant, Darnell Frazier, the prosecution asked Frazier whether he used to sell crack on Riverdale Avenue with Christopher. Frazier denied having done so. The prosecution then sought to introduce evidence of Frazier's prior conviction for selling crack on Riverdale, arguing to the court that the prosecutor "asked him whether he ever sold crack on Riverdale in general, and he said he never sold crack on Riverdale." App'x at 2087. Although the prosecution's statement was factually inaccurate, as the question on cross-examination was about selling crack on Riverdale with Christopher and not about selling crack on Riverdale "in general," no one caught the error. The district court granted the prosecution's request and allowed the prosecution to elicit from Frazier that he had previously been convicted of selling crack on Riverdale.

On February 21, 2019, the district court granted Frazier's motion for a new trial. In that order, the court explained that it understood one of the prosecutor's statements at oral argument on the motion to indicate that the prosecution "first realized it had mischaracterized Frazier's testimony while preparing for summations during trial," and that "[t]he Government . . . did not notify [the district court] of th[e] error at that time." Supp. App'x at 185. Some six months later, Allums filed his second motion for a new trial, arguing that he was also entitled to a new trial based on the circumstances surrounding the cross-examination of Frazier -- specifically, that the prosecution's failure to bring the error to the attention of the district court, despite noticing

the error prior to summation, constituted newly discovered evidence of prosecutorial misconduct.

As did the district court, we conclude that we need not resolve the factual dispute as to whether there was prosecutorial misconduct, or whether the prosecution's statements during the adjudication of Frazier's motion constitute new evidence, because it is clear that Allums was not prejudiced by the error he alleges in any event. Frazier's conviction occurred some thirteen years before he and Allums even met and before the conspiracy began; there was no explicit or implicit implication of Allums. Moreover, the district court made clear that even had it known about the error prior to summation, the court "would have declined to exercise [its] discretion to grant a mistrial." Supp. App'x at 271.

* * *

We have considered Allums's remaining arguments and conclude that they are without merit. Accordingly, we **AFFIRM** the judgment and order of the district court.

FOR THE COURT:
/S/ Catherine O'Hagan Wolfe, Clerk

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

YONELL ALLUMS

JUDGMENT IN A CRIMNAL CASE

Case Number: S6 1:15-cr-00153-VSB-8

USM Number: 27404-054

Defendant's Attorney: Paul Townsend 212-581-1001

Date Filed: 6/13/18

THE DEFENDANT:

☐ pleaded guilty to count(s) ONE

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

☒ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	**Nature of Offense**	**Offense Ended**	**Count**
21 U.SC. § 846	Narcotics Conspiracy	8/23/2016	1
21 U.S.C. § 841(a)(1)			
21 U.S.C. § 841(b)(1)(B)	(lesser included offense)		

The defendant is sentenced as provided in pages 2 through 8 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) two of the superseding indictment (S6)

☒ Count(s) ALL OPEN ☐ 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.

5/16/18
Date of Imposition of Judgment

/s/ Vernon S. Broderick
Signature of Judge

Vernon S. Broderick, U.S.D.J.
Name and Title of Judge

6/12/18
Date

IMPRISONMENT

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

240 MONTHS

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

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By: _____
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:
8 YEARS.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

   ☐ The above drug testing condition is suspended, based on the court's determination that

you, pose a low risk of future substance abuse. *(check if applicable)*

4. ☒ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*

5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*

6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.)* as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*

7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

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

STANDARD CONDITIONS OF SUPERVISION

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

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release

from imprisonment, unless the probation officer instructs you to report to a different probation office or, within a different time frame.

2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If

you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.

10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).

11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to

notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.

13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, *see Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

SPECIAL CONDITIONS OF SUPERVISION

You must provide the probation officer with access to any requested financial information.

You must submit your person, residence, place of business, vehicle, and any property or electronic devices under your control to a search on the basis that the probation officer has reasonable suspicion that contraband or evidence of a violation of the conditions of your probation/supervised release may be found. The search must be conducted at a reasonable time and in a reasonable manner. Failure to submit to a search may be grounds for revocation. You must inform any other residents that the

premises may be subject to search pursuant to this condition.

You must be supervised by your district of residence.

CRIMINAL MONETARY PENALTIES

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

TOTALS	**Assessment**	**JVTA Assessment***	**Fine**	**Restitution**
	$100.00	$	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgement 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.

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

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage

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 order 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.

ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES

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 $ 100.00 due immediately, balance due

☐ not later than _____, or

☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $_____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(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 the period of 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) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 13th day of August, two thousand twenty-one.

UNITED STATES OF AMERICA,

Appellee,

v.

Dean Jones, AKA Korrupt, Maxwell Suero, AKA Polo, Troy Williams, AKA Light, AKA Timothy Williams, Dequan Parker, AKA Sin, AKA Sincere, Richard Graham, AKA Porter, Darnell Frazier, Malik Saunders, AKA Dog, AKA Malek Saunders, AKA Malek Sanders, AKA Malik Sanders, Kaheim Allums, AKA Os, AKA "O," Ralph Hooper, AKA Rizzo, AKA Riz,

Defendants,

Yonell Allums, AKA Unk,

Defendant-Appellant.

ORDER

Docket No: 18-1794(L), 20-2289(Con)

Appellant Yonell Allums, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:
/s/ Catherine O'Hagan Wolfe, Clerk

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

YONELL ALLUIMS and DARNELL FRAZIER,
Defendants.

S6 15 Cr. 153 (VSB)

Date Filed: 11/13/17

VERDICT SHEET

Please indicate each of your verdicts with a check mark ☒.

COUNT ONE

Question 1

How do you find the defendant, YONELL ALLUMS, with respect to **Count One**: conspiracy to distribute and possess with intent to distribute a controlled substance?

Guilty ☒ Not Guilty ☐

1. If you answered Question l "Guilty," please proceed to Question 1a. If you answered Question l "Not Guilty," please proceed to Question 2.

Question la

If you find that the defendant, YONELL ALLUMS, is "Guilty" with respect to **Count One**, answer each of the below questions:

Do you find the defendant, YONELL ALLUMS, was personally responsible for or could reasonably foresee the distribution of or possession with intent to distribute cocaine?

YES ☒ NO ☐

If you checked YES, please indicate below the quantity of cocaine that was reasonably foreseeable to YONELL ALLUMS:

5 kilograms or more	☐
500 grams or more	☒
Less than 500 grams	☐

Do you find the defendant, YONELL ALLUMS was personally responsible for or could reasonably foresee the

distribution of or possession with intent to distribute Cocaine base (in a form commonly known as "crack")?

YES ☒ NO ☐

If you checked YES, please indicate below the quantity of cocaine base ("crack") that was reasonably foreseeable to YONELL ALLUMS:

280 grams or more ☐

28 grams or more ☒

Less than 28 grams ☐

Do you find the defendant, YONELL ALLUMS was personally responsible for or could reasonably foresee the distribution of or possession with intent to distribute heroin?

YES ☐ NO ☒

Do you find the defendant, YONELL ALLUMS was personally responsible for or could reasonably foresee the distribution of or possession with intent to distribute marijuana?

YES ☒ NO ☐

Please proceed to Question 2.

Question 2

How do you find the defendant, DARNELL FRAZIER, with respect to **Count One**: conspiracy to distribute and possess with intent to distribute a controlled substance?

Guilty ☐ Not Guilty ☐

If you answered Question 2 "Guilty," please proceed to Question 2a. If you answered Question 2 "Not Guilty," please proceed to Question 3.

Question 2a

If you find that the defendant, DARNELL FRAZIER, is "Guilty" with respect to **Count One**, answer each of the below questions:

Do you find the defendant, DARNELL FRAZIER, was personally responsible for or could reasonably foresee the distribution of or possession with intent to distribute cocaine?

YES ☐ NO ☐

If you checked YES, please indicate below the quantity of cocaine that was reasonably foreseeable to DARNELL FRAZIER:

5 kilograms or more ☐

500 grams or more ☐

Less than 500 grams ☐

Do you find the defendant, DARNELL FRAZIER was personally responsible for or could reasonably

foresee the distribution of or possession with intent to distribute Cocaine base (in a form commonly known as "crack")?

YES ☐ NO ☐

If you checked YES, please indicate below the quantity of cocaine base ("crack") that was reasonably foreseeable to DARNELL FRAZIER:

280 grams or more ☐

28 grams or more ☐

Less than 28 grams ☐

Do you find the defendant, DARNELL FRAZIER was personally responsible for or could reasonably foresee the distribution of or possession with intent to distribute heroin?

YES ☐ NO ☐

Do you find the defendant, DARNELL FRAZIER was personally responsible for or could reasonably

foresee the distribution of or possession with intent to distribute marijuana?

YES ☐ NO ☐

COUNT TWO

Question 3

Please only answer this question if you found "Guilty" for Question l.

How do you find the defendant, YONELL ALLUMS, with respect to **Count Two**: use or carrying of a firearm during or in relation to, or possession of a firearm in furtherance of, the narcotics conspiracy charged in Count One?

Guilty ☐ Not Guilty ☒

Question 4

Please only answer this question if you found "Guilty" for Question 2.

How do you find the defendant, DARNELL FRAZIER, with respect to **Count Two**: use or carrying of a firearm during or in relation to, or possession of a firearm in furtherance of, the narcotics conspiracy charged in Count One?

Guilty ☐ Not Guilty ☐

Please proceed to Final Instruction.

Final Instruction

Please sign the form and notify the Marshal that you have reached a verdict.

Foreperson /s/ Date 11/13/17

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

YONELL ALLUMS,
a/k/a "Unk,"
KAHEIM ALLUMS,
a/k/a "Os,"
a/k/a "O,"
DARNELL FRAZIER,
a/k/a "Fraz,"
Defendants.

SEALED SUPERSEDING INDICTMENT

S6 15 Cr. 153 (VSB)

Date Filed: 6/27/17

COUNT ONE
(NARCOTICS CONSPIRACY)

The Grand Jury charges:

1. From at least in or about 2011 through at least in or about August 2016, in the Southern District of New York and elsewhere, YONELL ALLUMS, a/k/a "Unk," KAHEIM ALLUMS, a/k/a "Os," a/k/a "O," and DARNELL FRAZIER, a/k/a "Fraz," the defendants, and

others known and unknown, intentionally and knowingly did combine, conspire, confederate, and agree together and with each other to violate the narcotics laws of the United States.

2. It was a part and an object of the conspiracy that YONELL ALLUMS, a/k/a "Unk," KAHEIM ALLUMS, a/k/a "Os," a/k/a "O," and DARNELL FRAZIER, a/k/a "Fraz," the defendants, and others known and unknown, would and did distribute and possess with intent to distribute controlled substances, in violation of Title 21, United States Code, Section 841(a) (1).

3. The controlled substances that the defendants conspired to distribute were (i) five kilograms and more of mixtures and substances containing a detectable amount of cocaine, in violation of Title 21, United States Code, Section 841(b) (1) (A), (ii) 280 grams and more of mixtures and substances containing a detectable amount of cocaine base, in a form commonly known as "crack," in violation of Title 21, United States Code, Section 841(b) (1) (A), (iii) a quantity of mixtures and substances containing a detectable amount of heroin, in violation of Title 21, United States Code, Section 841(b) (1) (C), and (iv) a quantity of mixtures and substances containing a detectable amount of marihuana, in violation of Title 21, United States Code, Section 841(b) (1) (D).

(Title 21, United States Code, Section 846.)

COUNT TWO
(FIREARMS OFFENSE)

The Grand Jury further charges:

4. From at least in or about 2011 through at least in or about August 2016, in the Southern District of New York and elsewhere, YONELL ALLUMS, a/k/a "Unk," KAHEIM ALLUMS, a/k/a "Os," a/k/a "O," and DARNELL FRAZIER, a/k/a "Fraz," the defendants, during and in relation to a drug trafficking crime for

which they may be prosecuted in a court of the United States, namely, the narcotics conspiracy charged in Count One of this Indictment, knowingly did use and carry a firearm, and, in furtherance of such offense, knowingly did possess a firearm, and aided and abetted the same.

(Title 18, United States Code, Sections 924(c) (1) (A) (i) and 2.)

FORFEITURE ALLEGATION AS TO COUNT ONE

5. As a result of committing the controlled substance offense charged in Count One of this Indictment, YONELL ALLUMS, a/k/a "Unk," KAHEIM ALLUMS, a/k/a "Os," a/k/a "O," and DARNELL FRAZIER, a/k/a "Fraz," the defendants, shall forfeit to the United States, pursuant to Title 21, United States Code, Section 853, any and all property constituting or derived from any proceeds the said defendants obtained directly or indirectly as a result of the said violation and any and all property used or intended to be used in any manner or part to commit and to facilitate the commission of the violation charged in Count One of this Indictment, including but not limited to, a sum in United States currency representing the amount of all proceeds obtained as a result of the controlled substance offense charged in Count One of this Indictment.

6. If any of the above-described forfeitable property, as a result of any act or omission of the defendants:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third person;

c. has been placed beyond the jurisdiction of the Court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be subdivided without difficulty; it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of said defendants up to the value of the above forfeitable property.

(Title 21, United States Code, Sections 841(a) (1), 846 and 853.)

/s/	/s/
FOREPERSON	JOON H. KIM
	Acting United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

YONELL ALLUMS, a/k/a "Unk," KAHEIM ALLUMS,

a/k/a "Os," a/k/a "O," and DARNELL FRAZIER,

a/k/a "Fraz,"

Defendants.

SUPERSEDING INDICTMENT

S6 15 Cr. 153 (VSB)

(18 U.S.C. §§ 924(c) (1) (A) and 2; 21 U.S.C. § 846.)

JOON H. KIM

Acting United States Attorney.

A TRUE BILL

Foreperson.

APPENDIX F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

DEAN JONES, et al.,
Defendant.

15 Cr. 153 (VSB)

New York, N.Y.
May 16, 2018
2:30 p.m.

Before:

HON. VERNON S. BRODERICK

District Judge

APPEARANCES

GEOFFREY S. BERMAN
United States Attorney for the Southern
District of New York
BY: MAURENE COMEY
JASON SWERGOLD
Assistant United States Attorneys

PAUL R. TOWNSEND
Attorney for Defendant

(Case called)

(In open court)

MS. COMEY: Good afternoon, your Honor. Maurene Comey and Jason Swergold for the government.

THE COURT: Good afternoon.

MR. TOWNSEND: For Mr. Allums, Paul Townsend from the Law Offices of Jeffrey Lichtman.

THE COURT: Good afternoon. And good afternoon, Mr. Allums.

All right. You may be seated. So this matter is on for sentencing today.

Now, Mr. Allums, before we go any further, if at any point in time you don't understand something I'm saying, you don't understand a question I might ask, or if you would like more time to speak with Mr. Townsend, just let us know, and I will stop the proceedings and I will allow you to do that. OK?

THE DEFENDANT: Yes.

THE COURT: All right. Now, in connection with today's proceedings, I have reviewed the following documents: The presentence investigation report, which was originally prepared on July 11 of 2018 and revised on February 7th and March -- excuse me -- May 16th, 2018, which includes a recommendation. I have the defendant's sentencing letter, which was filed on May 2nd of 2018, which includes various attachments, I think almost 40 attachments, which are letters from Mr. Allums's family and friends. I also have the government's sentencing memorandum, which is dated May 10, which had exhibits attached to it.

I have also reviewed and I provided to the parties the presentence report prepared in connection with S4 97 Cr. 267, which is a prior federal case that Mr. Allums was

prosecuted in, as well as the transcript from Mr. Allums's prior sentence in connection with that case.

I note that each of these submissions have been filed on ECF, except for the old presentence report and the prior sentencing transcript. As I mentioned to the parties in my e-mail, those two documents are filed under seal, and I have resealed those documents. I would obviously ask that the parties treat those documents accordingly.

Now, have the parties received all of the submissions that I have just identified?

MS. COMEY: Yes, your Honor.

THE COURT: All right.

MR. TOWNSEND: Yes, your Honor.

THE COURT: OK. Are there any other submissions that I should have in connection with today's sentencing?

MS. COMEY: No, your Honor.

MR. TOWNSEND: No, your Honor.

THE COURT: OK. Now, Mr. Townsend, have you read the presentence report and discussed it with your client?

MR. TOWNSEND: Yes, your Honor.

THE COURT: Mr. Allums, have you read the presentence report?

THE DEFENDANT: Yes.

THE COURT: And have you had an opportunity to discuss it with Mr. Townsend?

THE DEFENDANT: Yes, your Honor.

THE COURT: And have you had an opportunity to go over any errors with him or anything else that should be taken up with me?

THE DEFENDANT: Yes, your Honor.

THE COURT: OK. Now, Mr. Townsend, in your sentencing submission on behalf of Mr. Allums, you

objected to paragraphs 32, 33, 47, 48, 50 and 52 -- 50, 52 and 55. Excuse me. So, I think that in light of the updated presentence report, I believe each of those paragraphs has shifted two?

MR. TOWNSEND: That's correct.

THE COURT: So, by my calculations, 34, 35, 49, 50, 52, 54 and 57.

MR. TOWNSEND: That's correct.

THE COURT: All right. OK. So before I address each of these paragraphs and your objections, Mr. Townsend, do you have anything to add with regard to your objections to those paragraphs?

MR. TOWNSEND: Not at this time, Judge, no.

THE COURT: All right. Would the government like to be heard with regard to those paragraphs before I rule on those objections?

MS. COMEY: No, your Honor. We will rest on our submission.

THE COURT: OK.

All right. Now, with regard to paragraph -- so I will address each paragraph in turn.

With regard to paragraph 32, I find that the evidence at trial established by a preponderance of the evidence that firearms were possessed by members of the conspiracy, including defendant Allums, in the vicinity of the One Family Deli grocery.

I also find by a preponderance of the evidence that during the timeframe of the conspiracy the organization distributed at least 50 kilograms of cocaine. The following evidence supports these findings: Steven Christopher and Anthony Alexander both testified that members of the organization carried and hid firearms in and around the deli at 173 Woodworth Avenue, Yonkers, New York. In addition, Candace Southerland testified that on one

occasion she brought a firearm to Christopher at the deli. Daryl Bracey confirmed this when explaining that Kaheim Allums reassured Bracey that he did not need to personally carry a gun at the deli because Yonell Allums always kept a gun nearby. Bracey also confirmed that Christopher carried a gun at the store, and on one occasion Bracey actually held that gun for Christopher.

With regard to the narcotics amounts: Christopher testified that Yonell Allums provided him at least 200 grams and up to more than a kilogram of cocaine approximately every week between 2001 and 2013. Southerland's testimony corroborated Christopher's.

MS. COMEY: Just to clarify, I believe you said 2001. Did you mean 2011?

THE COURT: Sorry, 2011 and 2013.

Southerland's testimony corroborated Christopher's, because she told the jury that Allums provided Christopher with packages of cocaine, and she described the frequency of her trips out of New York to deliver drugs on Christopher's behalf to Vermont. So, just the cocaine sold to Christopher was between 200 grams or one kilogram every week, for just a single year would add up to ten kilograms and over 50 kilograms of cocaine in a year.

As evidenced by the testimony of Alexander, Yonell Allums continued to sell cocaine after he and Christopher had a falling out. Christopher testified that he saw Yonell Allums and Kaheim Allums cook cocaine into crack, and Bracey testified that Kaheim Allums sold crack on the deli property through the summer of 2016, and that he was

supplied five to ten kilograms of crack two to three times a week by Kaheim Allums between 2005.

MS. COMEY: Just to clarify, I believe it was grams, not kilograms.

THE COURT: Oh, I'm sorry, did I say kilograms?

MS. COMEY: Yes, your Honor.

MR. TOWNSEND: Yes.

THE COURT: I apologize. I'm not sure why I'm having difficulty reading. Five and ten grams of crack two to three times a week by Kaheim Allums between 2005 and 2016, except when he was in prison or not living in the area or Kaheim Allums wasn't available in the area.

Based upon Bracey's testimony, he would have purchased between 520 grams and 1,040 grams of crack in a year, and that would equate to approximately 2.6 to 5.2 kilograms of crack between 2011 and 2016.

The conspiracy continued beyond -- and obviously to the extent that -- well, I will leave it at that.

The conspiracy continued beyond 2013, as corroborated by the phone records, the recordings of the controlled purchases that were made, and the seizures made from those controlled purchases, as well as the materials seized during the search warrants.

This clearly demonstrates that 50 grams -- excuse me -- that the 50 kilogram figure is a conservative figure and, therefore, I find that the defendant should be held responsible for the distribution of at least 50 kilograms of cocaine.

Paragraph 33: The record at trial established again by the preponderance of the evidence that the defendant owned and/or exercised control over the deli. There was overwhelming evidence that Yonell Allums operated and controlled the One Family Deli. Christopher testified that he saw the defendant at the store almost daily between

2011 and 2013 when Christopher would visit the store. Detective Morello testified that he saw Allums at the store almost every day that he worked between 2011 and 2014. There were also various exhibits admitted into evidence that demonstrated defendant's control over the deli, including the bank account signature card for Yonell Allums listing the store as his employer, the application for business bank account listing Yonell Allums as the sole owner of the store, and tax returns showing Allums as an employee of the deli during certain years of those tax returns. I can't remember, I think there were two years of tax returns.

Paragraph 47: I've already found that the firearms were possessed including by the defendant in connection with the offense based upon the cooperator testimony that I've summarized.

Paragraph 48 -- and I should say I'm referring to the paragraphs from prior to the revision of the most -- the most recent revision of the PSR.

I also find that the evidence at trial established by a preponderance of the evidence that the deli and the adjoining property were used as a base of operations. Evidence that establishes this including the fact that members of the organization would hang out there as well as frequent the store. Kaheim and Yonell Allums cooked cocaine into crack at the location, based upon their cooperator testimony and the evidence of purchases as well as the evidence seized during search warrants. Narcotics paraphernalia was also seized during the execution of search warrants at that location. In addition, Kaheim and Yonell Allums distributed drugs from that location.

Cooperator testimony also established that members of the organization would hide their firearms in and around the property. The testimony also established that Yonell Allums actually handed cocaine on at least two

occasions to Candace Southerland. And I find also by a preponderance of the evidence that -- I understand there was testimony that those packages were not something that necessarily Mr. Allums could see at the time, but I think by the preponderance of the evidence it was established that he had knowledge that those packages in fact contained cocaine.

Paragraph 50: Yonell Allums was a supplier of cocaine and controlled the property. He also gave directions, according to cooperator testimony, to members of the conspiracy, such as not to sell drugs in front of the deli and not to store large quantities of drugs in the store.

I also find that the conspiracy involved five or more participants. Those included Yonell Allums, Kaheim Allums, Bracey, Alexander, Christopher, Southerland, Frazier and others.

In addition, even if I were not to find that there were five participants, I would find that the criminal activity was otherwise extensive, because there were certainly other individuals involved including customers of the organization.

Now, Mr. Townsend, besides the objections that I've just ruled on, are there any other objections that you have to the presentence report?

MR. TOWNSEND: No, your Honor.

THE COURT: OK. Ms. Comey, do you have any objections to the presentence report?

MS. COMEY: None other than the ones set forth in our submission, your Honor, which I believe you have addressed.

THE COURT: OK.

MS. COMEY: So I'm going to adopt the factual findings in the presentence report. The presentence report will be made part of the record in this matter, and

I'm distinguishing between the factual findings I've made and the guideline calculation which was contained in the presentence report, just so the record is clear.

The presentence report will be made part of the record in this matter and placed under seal. If an appeal is taken, counsel on the appeal may have access to the sealed report without further application to myself or one of my colleagues.

Now, Mr. Allums, the law requires that as part of sentencing that I reference a set of rules known as the sentencing guidelines. Now, these are rules that are put out by a commission that are to assist judges like myself when we sentence individuals who are convicted of crimes.

Now, although these guidelines used to be mandatory, they're no longer mandatory, and what that means is -- well, when they were mandatory, I would have to enforce them in almost every circumstance. However, since they are no longer mandatory, I am still required to consider the applicable guidelines as one factor among others when I determine what an appropriate sentence is for you. So, in a sense, the guidelines are a starting place. So, the first order of business is for me to calculate your guideline range under the sentencing guidelines.

Now, you have been convicted after a jury trial of the charge contained in Count One, which charges you with participating in a narcotics conspiracy. In connection with determining your guideline calculation, I'm going to use the 2016 guideline manual.

Do the parties agree that that's the correct manual to use?

MS. COMEY: Yes, your Honor.

THE COURT: Mr. Townsend?

MR. TOWNSEND: Yes.

THE COURT: Now, Mr. Townsend, you argued in your sentencing submission on behalf of Mr. Allums that

the amount of drugs your client, Mr. Allums, should be held responsible for is 500 grams of cocaine and 28 grams of crack, based upon the jury's determination on the verdict sheet.

The government argues that Mr. Allums should be held responsible based upon the testimony and the evidence admitted at trial by a preponderance of the evidence. And, as I've mentioned, I have determined that the evidence at trial established by a preponderance of the evidence that Mr. Allums should be held responsible for the distribution, possession with intent to distribute at least 50 kilograms of cocaine.

Now, what that means -- because that means, Mr. Allums, that -- and that's without considering necessarily the crack that was distributed. But that results in a base offense level of 34. Because you possessed a firearm in connection with the offense, that's increased by two levels. Because you maintained a premises for the purpose of manufacturing or distributing a controlled substance, the offense level again is increased by two levels.

I also find that you were an organizer or leader of the criminal activity that involved five or more participants or is otherwise extensive. Therefore, four levels are added to your offense level, making the adjusted offense level 42.

You have a Criminal History Category of II, and that means the recommended sentencing guidelines is 360 months to life imprisonment. And a minimum of eight

years of supervised release because of the filing of the prior felony information.

Is that correct?

MS. COMEY: Yes, your Honor.

THE COURT: All right. Mr. Townsend, do you agree that it's eight years of supervised release?

MR. TOWNSEND: I will agree to the eight years of supervised release, yes.

THE COURT: OK. The fine range is $50,000 to $5 million.

Mr. Allums also faces a minimum, as I mentioned, of eight years of supervised release.

Now, with regard to departures under the sentencing guidelines, I have considered whether there is an appropriate basis for a departure from the advisory range within the guideline system. And while I recognize I have the authority to depart, I do not find any grounds warranting a departure. Now I will hear from the parties with regard to sentencing. Does the government wish to be heard with regard to the sentencing?

MS. COMEY: Yes, your Honor, thank you.

The most important overarching fact throughout the defendant's entire course of conduct here is his history as a failed cooperator in this district. It colors the entire conduct and is a very important factor to consider here.

In the prior case that the defendant was convicted of in this district, he committed the exact same crime; he conspired with others to distribute kilograms and kilograms of narcotics; he and others possessed firearms; he received deliveries of narcotics to the One Family Deli, which was then known as Brothers and Sisters Deli; and

he transported or worked with others to transport large amounts of drugs out of state.

The defendant was arrested and then he got the opportunity of a lifetime to cooperate with the government, to earn a 5K letter by testifying against other members of the conspiracy, by telling the truth, and then he had the opportunity at a lower sentence because of that cooperation, which was meant to demonstrate that he had turned his life around, that he had accepted full responsibility, that he was walking away from a life of crime, and that he had instead decided to help the government. And then the defendant got a huge benefit from that cooperation; he received a much lower sentence than he otherwise would have; and he received a substantial reduction.

Now, the defendant was in a better position than most defendants who have been convicted in this district -- and even most cooperators -- to take advantage of that opportunity.

I think it's very clear that the defendant has extensive family support; he has extensive community support; he is an intelligent person. He can earn a legitimate wage. He owned a store. He had skills. He had the ability to really start a new life. But then he got greedy. He missed the tons of money that he was able to make in that prior conspiracy, and he wanted it again, but this time he was smarter, he had learned from the prior federal case how to operate a large scale drug operation without getting caught. So, he was able to operate for years by insulating himself, having young men who looked up to him as a mentor in his community, and his own nephew, doing most of the dirty work for him, and he was able to create rules that insulated and protected his drug organization and

allowed him to make money hand over fist at $45,000 per kilo.

The defendant was then able to take advantage of that protection to not only make money for years and years and years under the radar of law enforcement, but also to live this double life that I think is very apparent in the defense submission.

The defendant was able to put himself out as a community leader, a family man, somebody who was a role model for others on the one hand, while on the other hand he was feeding the addiction and the ills of his own community and then other communities where he was sending out his drugs.

Now, that conduct alone, as we note in our sentencing submission, warrants a guideline sentence of 30 years to life. But what even further justifies such a sentence is the defendant's status as a failed cooperator. It suggests a few things. One, it suggests that if the defendant didn't take that opportunity to stop committing crimes, there is no reason to believe that his conviction now will be any different. So, there is a need to protect the community from this defendant, from committing further crimes, and there is also a need to deter this defendant specifically.

But then even more broadly, it's very important to send a message that if a former cooperator goes back to commit the exact same crime again -- and here we have that -- selling kilograms and kilograms of cocaine, using the exact same location, using an extensive network going out of state, and possessing guns at the same time to protect the organization -- if a cooperator does that, the message needs to be sent that the consequence will be very, very severe. Because conduct like that makes a

mockery of this court, and of the justice system, and of the break that this defendant received.

So, for all of those reasons, as well as the other reasons set forth in our submission, we believe that a sentence within the guidelines range is appropriate in this case.

THE COURT: OK.

All right. Mr. Townsend, do you wish to be heard?

MR. TOWNSEND: Yes, your Honor. I'd like to start out by noting that the PSR recommends a guidelines range of 135 to 168 months, specifically with a recommendation of 151 months.

I'm asking your Honor to consider a sentence below what the government is asking, significantly below, for the reasons that I'm about to get into, but I wanted to state from the outset what the PSR recommendation is, because of the massive discrepancy of what the government is claiming is appropriate in this case and what the PSR actually recommends.

As was touched upon briefly by Ms. Comey -- and as you can see by the community behind me -- Mr. Allums has extensive community support. He does. He has received letters of support from family and community members in all walks of life. His vendors, other small business owners, patrons of the store, prominent attorneys, even the mayor of Mt. Vernon himself have all written letters in support of Mr. Allums, characterizing him as a generous, humble, hardworking and honest man. Your Honor has already seen the letters, so I don't need to go into them in any sort of detail, but I would point out that regardless of who the authors of the letters are, one theme that is carried through all of the letters is Mr. Allums' dedication to making his community a better place. He has provided food to needy families; he has an anonymously paid for meals; he is the person friends and

family call on to fix their car, for home maintenance, to ask advice for themselves and their children, to put on community events. Everyone agrees that Yonell Allums is a man that the community is better off with, and they have expressed their desire to have him home with them as quickly as possible.

Now, the government's characterization of Mr. Allums notwithstanding, he has actually established himself as a pillar of that community, and this is despite the fact that his parents separated when he was two, that his mother was responsible for raising and supporting seven kids working as an x-ray technician. Despite Mr. Allums' humble and potentially difficult upbringing, he made himself into the community leader that you see these people behind him supporting him, who has members of clergy with him, politicians. And, as you saw from each and every day of the trial, and every hearing prior to the trial, each and every one of those people believes that Yonkers is a better place with Mr. Allums with them.

Another thing the court should consider when making the determination in sentencing in this case is the other individuals who were ultimately convicted of the (b)(1)(B) level crimes. Both Richard Graham and Dequan Parker received sentences from your Honor of 100 months. Sentencing those two individuals who were convicted of a (b)(1)(B) to 100 months and Mr. Allums 360 months to life, for essentially being convicted of the same crimes is simply not justice. We understand of course the government will claim that the big disparity for this is that Mr. Allums put the government to their burden in this

case and went through a trial, whereas Mr. Parker and Mr. Graham pled guilty.

THE COURT: Well, let me just be clear about that -- about something -- lest there be any confusion.

It was Mr. Allums' right -- constitutional right -- to go to trial and to put the government to its burden, so the only factor in my mind is the fact that he is not getting the three levels for acceptance of responsibility. I just want to be clear that in no way, shape or form is Mr. Allums -- other than again with regard to the guideline calculation -- is Mr. Allums, the fact that he went to trial, is that being held against him.

MR. TOWNSEND: Of course, and I'm not suggesting that it is, and I apologize.

THE COURT: No, no. And I wasn't -- I didn't take your comments as suggesting that, but I just wanted to make sure that the record was clear with regard to my considerations in connection with the sentencing.

MR. TOWNSEND: Understood. Thank you, Judge.

So, as I was saying, Mr. Allums did end up putting the government to its burden, but this is not a situation where Mr. Allums was offered a (b)(1)(B) and scoffed at it. Mr. Allums was essentially forced by the government to put them to their burden, as by the time I entered the case I contacted the U.S. Attorney's office to see if an offer would be made, and I was told that Mr. Allums could plead guilty to the (b)(1)(A) and the 924(c), and that the government would still not withdraw their prior felony information. I had this conversation with Thomas McKay back when he was on the case.

So Mr. Allums literally, quite literally, had no choice but to put the government to their burden in this case, because he was never offered or afforded an opportunity not to. And now to claim that because he did so he should be sentenced to three and a half times what others in this

case received is just wrong, and respectfully your Honor should refrain from doing so.

The government will similarly claim that Steven Christopher's testimony establishes Mr. Allums' role as a drug distributor, the head of the so-called Allums drug trafficking organization and the man in charge, but the testimony of Steven Christopher was unable to convince a jury that that was the case. And we will discuss why that's actually relevant in just a minute.

I understand that Mr. Allums is of course ineligible statutorily from receiving 100 months because as he sits here there is a prior felony information that has been filed in this case. This was filed as a punitive measure against Mr. Allums for not cooperating with the government.

Obviously, the government has discretion about filing this document, and I'm not going to claim that there is anything improper specifically about the filing, but I'd like to point out that judges in the Second Circuit have expressed concern--

THE COURT: Did anyone ever express to you, or that you know of, in other words to the extent that if Mr. Allums doesn't cooperate, we will file a prior felony information?

MR. TOWNSEND: Based on my conversations with my client, he was brought from the housing facility where he was, he met with members of the U.S. Attorney's office, they pressured him to become a cooperator, he refused, and immediately thereafter an 851 was filed.

THE COURT: But that's not the same thing as a threat. In other words -- well, I think I understand the way things proceeded. Go ahead.

MR. TOWNSEND: I can't say with 100 percent certainty that he was told in that meeting if you don't cooperate, we will absolutely file a prior felony information against you, and we will never remove it no

matter what happens, but it seems pretty clear from the way that things moved -- because this was filed back in January of 2017, and our trial wasn't for a year and a half later -- that the timing of this certainly seems to suggest that Mr. Allums' refusal to become a cooperator in this case had something to do with the file.

In United States v. Kupa, which is 976 F.Supp. 2d. 417, Judge Gleeson of the Eastern District of New York specifically noted that the Department of Justice's policy regarding prior felony informations has been unsound and brutally unfair for more than two decades. He states that it's a grave mistake to retain a policy just because the court finds it constitutional. He goes on to note that these informations are being used simply to punish people who refuse to cooperate and plead guilty, which is wrong. He notes that in U.S. v. Wahl we see a very similar situation to what we see in this case. The cite for that is from the Middle District of Florida, 12 Cr. 167, but it is specifically noted by Judge Gleeson in the Kupa case on 445.

In Wahl the defendant was being sentenced for a separate federal drug offense where a prior felony information had the effect of doubling his five year mandatory minimum. In discussing the case, Judge Gleeson wrote that in an era where so many sentences are decades too long, and too often require nonviolent drug trafficking defendants to die in prison, a measly five more years for a drug trafficker on a second conviction may seem from the outside like a minor problem or no problem at all, but in reality it's a huge problem. Judging is removed, prosecutors become sentencers, drug addicts are warehoused instead of treated, prisons swell beyond their capacities, enormous unnecessary costs are incurred, futures and families and communities are ruined.

I would respectfully submit that that should not be the case here. The government is seeking to have you

sentence my client as though he had been convicted of all of the top charges and the 924(c) in this case. They are ready to set aside the jury's determination, repudiate that verdict, lock him up, throw away the key and move on. They are seeking to do this simply because they can. It isn't justice, and it's not right, and the court should dismiss this idea.

Mr. Allums is a 52 year old man facing a ten year mandatory minimum, and your Honor is tasked with determining a sentence which is sufficient but not greater than necessary to comply with the purposes of 3553(a).

To claim that 30 years to life is not greater than necessary to fulfill these mandates is disingenuous. In seeking their proposed sentence, the government claims they have met the lesser preponderance of the evidence burden. But I would ask that your Honor consider what evidence actually supports the government's position.

Two search warrants were executed on the premises in question here, searching for anything from narcotics to guns to expired food products in the store to try and prove that it's a front. None of those items were ever found in the store. A modicum of narcotics were found in the area of the residents used by Kaheim Allums, which he subsequently took responsibility for, so the physical evidence in this case does not corroborate 50 kilograms whatsoever.

Law enforcement witnesses: Task Force Officer Morello testified to seeing Yonell Allums at the store, as your Honor yourself noted, from 2011 to 2014 on a near daily basis, and yet that officer who saw Yonell -- and ostensibly other people at that store at that time -- neglected to testify he ever saw anything resembling a drug transaction, or gun possession, or any illegal activity

at that location. Every day for three years, and nothing about any illegal activity in his testimony.

The only evidence that the government can really cite to support a claim of 50 milligrams is of course the testimony of their star witness Steven Christopher. But just as the jury did not credit his testimony to the point where they declined to return a conviction to the amounts that he was claiming, your Honor should follow the same suit. It doesn't pass the preponderance standard, just as it doesn't pass the reasonable doubt standard.

When all is said and done, Steven Christopher is nothing more than a desperate man, his life of crime finally catching up to him, who will do anything to save himself. We know he can't be trusted, because even after he had signed a cooperation agreement promising not to commit further crimes, he was importing contraband into prison. The testimony of this individual is simply not credible enough to establish the amounts that the government is asking you to credit in and of itself.

Additionally, we're all familiar with U.S. v. Watts, which was cited in the government's submission, the Supreme Court decision that states that when the jury acquits of a charge, that the jury cannot be said to have necessarily rejected any facts. United States v. Pimintel, 367 F.Supp. 2d 143, in the Massachusetts district court, Judge Gertner held the Watts case has been substantially undermined by United States v. Booker, which is 543 U.S. 220, in this regard by determining that it simply makes no sense to conclude both that the Sixth Amendment was violated when sentencing facts are determined by a judge rather than jury -- as stated in Blakely v. Washington, which is 542 U.S. 296 -- and also to decide that the fruits of the jury's efforts can be ignored with impunity during sentencing, as is held by Watts.

In Blakely, Justice Scalia specifically notes the previous decision in Apprendi -- Apprendi v. New Jersey,

530 U.S. 466 -- and assures that the judge's authority to sentence derives wholly from the jury's verdict, and without that restriction the jury would not exercise the control that the framers intended.

Again, Judge Gertner in Pimintel also cites Circumventing Juries Undermining Justice: Lesson from Criminal Trials and Sentencing, 32 Suffolk University Law Review 419. And there she states the jury's rule on legal guilt -- guilt determined by the highest standard of proof we know, beyond a reasonable doubt -- and when a jury acquits a defendant based on that standard, one would have expected no additional criminal punishment to follow. Gertner also cites the Second Circuit case U.S. v. Concepcion, which was also referenced by the government in their own submission, in which Judge Newman wrote in a concurring opinion that a just system of criminal sentencing cannot fail to distinguish between an allegation of conduct resulting in a conviction and an allegation of conduct resulting in an acquittal. In essence, to tout the importance of the jury in deciding facts -- even traditional sentencing facts -- and then to ignore the fruits of its labor makes no sense as a matter of law or logic.

In this case we're dealing with a conviction to a lesser included charge and a full acquittal of the firearms charge, so we can definitively state -- despite the apprehension noted in the Watts case -- that the jury did consider whether Mr. Allums was responsible for the amounts of narcotics posited by Steven Christopher, and the jury rejected that notion. The jury did determine that Mr. Allums could be held responsible for some amount of narcotics but specifically not the amount of narcotics that Steven Christopher testified to.

And the argument regarding the 924(c) acquittal is exactly the same as the (b)(1)(A) analysis. With regards to acquitted conduct, simply put, it eviscerates the central role that juries play in the justice system if we permit a

defendant to be sentenced at the top end of a statutorily permitted range because of acquitted conduct.

If your Honor feels that the conduct which Mr. Allums was actually convicted of warrants that sentence, while we may disagree on other grounds, we at least acknowledge that the sentence would be based on the actions which he was legally bound to have committed by the jury. In this case that is nothing more than a (b)(1)(B) conviction. It's not a (b)(1)(A); it is not a 924(c).

The mandatory minimum here is ten years -- ten years, which is already more than any other defendant has received for a (b)(1)(B) in this case. Ten years reflects the seriousness of this offense. Ten years deters future criminal conduct. Ten years protects the public. Yonell Allums has not been charged with violence; he is 52 years old. The minimum sentence allowed by law because of the punitively filed prior felony information is more than sufficient to accomplish the legislative goals of 3553, and we respectfully request that your Honor sentence Mr. Allums accordingly.

THE COURT: OK.

Just one second, Mr. Swergold.

But am I correct -- I know you cited certain cases, but am I correct that the Second Circuit still allows sentencing judges like myself to consider -- particularly in narcotics cases -- to allow us to consider making determinations by a preponderance of the evidence with regard to narcotics cases even if the jury finds a lower amount on a verdict sheet?

MR. TOWNSEND: You are permitted to, not required to, yes, Judge.

THE COURT: OK. And with regard to the case law, certain of the case law -- Booker, Apprendi and maybe some of the others -- those were -- and now I'm referring

to the majority decisions in those cases -- were addressing really the mandatory minimum issue.

MR. TOWNSEND: Some were addressing the mandatory minimum and some were addressing sentences that went beyond the statutory maximum.

THE COURT: OK. Let me ask with regard to the -- what is Mr. Allums' relationship to Mayor Richard Thomas; do you know?

MR. TOWNSEND: Judge, I believe the mayor is a relative of one or several of his children's mother.

THE COURT: OK. All right. And I should mention this -- although I'm not going to -- I should have mentioned this to the parties earlier in connection with the mayor's letter, I did Google his name, and the mayor unfortunately is himself facing some criminal issues at this stage. But I will accept his letter on Mr. Allums' behalf without regard to anything, because obviously Mr. Thomas is just charged with something, he hasn't been convicted of anything, and that doesn't in any way implicate what he said in the letter. So I will consider the letter on that basis. And I apologize, in the e-mail I sent I should have disclosed that I had looked the mayor up.

All right. Thank you, Mr. Townsend.

Yes, Mr. Swergold?

MR. SWERGOLD: Your Honor, just very very briefly. The government is not going to respond to all of thing arguments, because I think your Honor understands the difference between the (b)(1)(B) defendants who were previously sentenced and Mr. Allums.

I do just want to respond to this idea that the government punished Mr. Allums with a punitively filed PFI, forced him to go to trial. The DOJ has very particular requirements to consider and criteria for when a PFI is filed in a case. It's a process that has to get vetted beyond

the line assistants who are prosecuting the case, and the idea that he was punished with a PFI because he chose not to cooperate is belied by the fact that Steven Christopher -- one of the cooperators in this case -- pled guilt to a PFI.

So, I just think the record should be clear on that. I think that's an incredibly improper attack on the government that is not founded in facts, and Mr. Townsend has no basis to make those accusations.

And at the end of the day, nobody forced Mr. Allums to sell drugs, nobody forced him to possess guns, nobody forced him to turn his shop into a front for his drug organization, nobody forced him to return to a life of crime. He did that all on his own, and he should be judged for it.

THE COURT: OK. All right.

Is there any reason why sentence should not be imposed at this time?

MS. COMEY: Other than the defendant may want to be heard, your Honor.

THE COURT: Yes, of course, and of course I have that in my notes again.

I'm sorry, Mr. Allums. If I could ask you a favor, if you could pull the microphone close to you.

THE DEFENDANT: Good afternoon, your Honor. I apologize first of all for being in your courtroom again. I know I was convicted 20 years ago of a crime; I changed my whole life around.

There is a misperception that I was a drug dealer, it was a storefront. I worked hard from the time I came from prison until the day I got arrested. I never sold no drugs. The only thing I'm guilty of is having a generous heart,

opening up the store for my family and friends, all for us to get along.

I would never put my family, mother, kids, in jeopardy of having drugs sold around the store. My mother has come there every other day wiping off the shelves, cleaning the driveway. My kids are there playing all the time. I mean it got to a point where it did get a little rough around the neighborhood, where I installed cameras inside the store or outside the store, so if anything ever happened, they have access to my cameras, so I would never put myself in a situation like that.

You know, I made mistakes before, but I corrected my mistakes, and from day one when I left that prison I've been living a straight life; I never sold any drugs after that. I've never dealt with anyone selling drugs, and that's why I chose to come to trial -- that was one of the reasons I chose to come to trial. I was offered no plea; my only option was to go to trial.

And I thank my family and friends, support for me here. Like I said, I'm just trying to do the best I can when I was out there. I wasn't struggling for no money. I had over a million dollar lawsuit. So, I wasn't out there to buy no diamond rings and watches, no homes or flashy cars. Everything I had was worked for. I never sold no drugs after that at all. So I don't know what more to say. I mean my selection of having people around the store maybe could have been a little bit better. I mean I could have been better. But like I said, when you own a store, the customers is always right and come first, so I always extended my hand to whoever I can in the right way. I have never turned anybody down for anything if I had it.

I just feel like I was being tried all over again for something I did 20 years ago. I wasn't involved in any of it. 20 years ago I did what I did, and that was it. I changed my life around; have never did nothing after that. It's like deja vu, it's like repeating itself right back, but this time

I'm not involved. I was only just the uncle. I just worked hard, and just had my family and friends around.

I apologize for being in your courtroom again, and I thank my family and friends for being here, and all I was trying to do was just help the community, that's it, help the community the way I could do. I never sold any drugs from the time of my last conviction, never.

THE COURT: OK.

Anything else, Mr. Allums?

THE DEFENDANT: No, your Honor.

THE COURT: All right. Thank you very much.

Is there any reason why sentence should not be imposed at this time?

MS. COMEY: No, your Honor.

THE COURT: All right. Mr. Townsend?

MR. TOWNSEND: No, your Honor.

THE COURT: As I've stated, the defendant's guideline range is 360 months to life imprisonment. The probation department has calculated the guideline range of 135 to 168 months' imprisonment and recommends a sentence of 151 months. The government says that a sentence within the guideline range of 360 months to life is an appropriate sentence.

And, Mr. Townsend, in your submission you have suggested a sentence of 120 months, which is the mandatory minimum sentence that applies in this case.

Under the Supreme Court's decision in Booker and its progeny, the guideline is only one factor that I must consider in deciding the appropriate sentence. I'm also required to consider the other factors set forth in 18 United States Code Section 3553(a), and I have done so. Those factors include but are not limited to the nature and circumstances of the offense and the personal history and

characteristics of the defendant, since each defendant must be considered as an individual.

Judges are also required to consider the need for the sentence imposed to reflect the seriousness of the offense, promote respect for the law, provide just punishment for the offense, afford adequate deterrence to criminal conduct and avoid unwarranted sentencing disparities, among other things.

First I will discuss the circumstances of the offense. Now, Mr. Allums, I recognize what you said here today, but I have to say I sat through the trial, and based upon the testimony at trial, the evidence admitted at trial, I think I have already indicated that certainly with regard to my decision with regard to the drug amounts that you were involved in the conspiracy. And whether you personally handed drugs to someone, well, Candace Southerland actually testified that that in fact did happen. So, you do stand convicted of serious crimes. You participated in a conspiracy to distribute and possess with intent to distribute crack and cocaine in substantial quantities.

As part of the conspiracy you and other members of the conspiracy sold and distributed large quantities of crack and cocaine in Yonkers and Vermont as well as other areas. You were the leader, as I found, of the conspiracy, and operated as a supplier of cocaine and crack, and allowed your family business -- the One Family Deli, located at 173 Woodworth Avenue in Yonkers -- to be used as a base of operations for the conspiracy. Your participation spanned the entire timeframe of the conspiracy from 2011 until August 2016.

Now, narcotics trafficking obviously has detrimental effects on society and it destroys people's lives. In fact, in this case some of the cocaine and crack that you sold was transported to Vermont, where members of the conspiracy used other individuals who were in fact drug

addicts to distribute crack as well as other drugs up in Vermont, often times paying those addicts in drugs, using their homes and getting them to assist in the conspiracy in other ways.

Although there is no evidence that you personally participated in any acts of violence related to the conspiracy, you and other members of the conspiracy, as I've indicated and found, possessed and carried firearms in and around the location of the store.

I will now discuss your personal history and characteristics. You grew up in the Bronx, New York, where you were the youngest of seven children. You essentially grew up in a single parent household, since at the age of two your father and mother separated. Although your parents separated, your father continued to maintain contact with you, however, the financial burden on your family -- as your lawyer has indicated -- fell on your mother, and she worked hard to support you and your siblings. And you reported to the probation department that your mother did everything in her power to provide for your family, and as a result you were always provided with your basic necessities.

Now, based upon the presentence report and the defense submission, it appears that you were raised in a loving and supportive household. There is no question that members of your family who wrote -- and many of them are here in the courtroom today -- that they love and support you. There is also no question that members of your family and your friends stand by you and continue to support you. Many of them report that they view you as a loving, son, father, friend and partner. They describe a man who is always willing to lend a hand, provide credit to those in need, and also someone who provides support to others. And I'm going to take their views concerning your character into consideration, and the support

structure that they will provide for you, in determining what an appropriate sentence is.

Now, it's also clear that your family members, and particularly your fiancee, your mother, and your two younger children, will suffer as a result of your incarceration. However, in light of your previous incarceration on drug and gun charges, you were in a position to understand and appreciate how much family members suffer when a loved one is incarcerated. Despite your own prior experience, you were not dissuaded from participating in the charged conspiracy. Therefore, although I will consider the impact your incarceration will have on your family members, I don't give it significant weight in connection with determining what an appropriate sentence is for you here today.

I also note that instead of being -- this very easily could have been your third narcotics conviction, because -- and as I was made aware and in connection with your various bail applications, as well as at trial -- you were arrested in the late '80s or early '90s for a narcotics charge, and in connection with that you testified in a suppression hearing before Judge Sprizzo here in this District. Now, in rejecting your request for reconsideration of my denial of bail, I found -- and this is having reviewed the transcript of the suppression hearing by Judge Sprizzo, including Judge Sprizzo's decision in connection with that hearing -- I found that the transcript supports the notion that you perverted the judicial system by lying during your testimony. I only mention that because in essence you avoided criminal prosecution at that time by your testimony.

I understand there was argument made that the testimony didn't result in Judge Sprizzo suppressing the evidence. I find that it did at least in part weigh on Judge Sprizzo, your testimony. But rather than at that time counting your blessings and deciding to abstain from

criminal activity, you did not, and so in 1997 you were arrested again for participating in a narcotics conspiracy as a supplier of cocaine. You pled guilty in that case, and again -- as was mentioned here -- pursuant to a cooperation agreement, to a conspiracy that spanned almost seven years, from 1990 until 1997, and you also pled guilty to possessing a firearm in connection with that conspiracy. You were held responsible by Judge Baer to the distribution of over 150 kilograms of cocaine during the course of that conspiracy.

During your sentencing hearing, your attorney at the time initially requested a sentence of time served or a sentence that would be home confinement. Judge Baer at the time expressed his reservations about that and said he wasn't going to sentence you to that. So, your attorney asked for the sentence of 36 months, which the probation department was recommending at that time. And, in addition, at the time of your sentencing, when you were given an opportunity to make a statement, you said in part the following: "I would just like, you know, getting another chance out there on the streets, me and my family, so I could get my business back together. I mean being -- I've been incarcerated. I have been down 15 months already. I mean I know what I did wrong, but I don't think being incarcerated is doing -- is going to help me anyhow. I already know what I did wrong. I know, you know, what's right, and I know, I just feel like I should get another chance out there."

Judge Baer gave you a break. He gave you more than 36; he gave you 60 months. But despite your comments at that sentencing, and despite the time period that you spent in jail and the separation from your family, and the recognition I would imagine you had of the toll it took on your family when you were incarcerated, you decided to get back in the drug business and commit the charged

offense. And again you squandered an opportunity to turn your life around.

So, in light of the history -- your history -- I believe that a significant sentence is appropriate because of the seriousness of the crime and for both specific and general deterrence. I also believe that your sentence needs to be consistent with the sentences I have imposed on your codefendants, while recognizing your role in the conspiracy. I note that your codefendants have received sentences that have ranged from 100 months to 228 months' incarceration.

So, Mr. Allums, if you could please rise for the imposition of sentence.

It is the judgment of this court that you be committed to the Bureau of Prisons for a period of 240 months. That sentence will be followed by eight years of supervised release. I believe that this sentence is sufficient but not greater than necessary to comply with the purposes of sentencing set forth in 18 United States Code, Section 3553(a).

You may be seated, Mr. Allums.

There will be no fine because the probation department does not recommend a fine because of your limited financial resources. However, you must pay a $100 special assessment.

Is the government seeking forfeiture in this action?

MS. COMEY: No, your Honor.

THE COURT: OK. With regard to the supervised release, the standard conditions will apply, as well as the

special conditions listed on page 33 of your presentence report.

In addition, the mandatory conditions listed on pages 31 and 32 of your presentence report will be imposed.

Does either counsel know of any legal reason why this sentence should not be imposed as stated?

MS. COMEY: No, your Honor.

THE COURT: Mr. Townsend?

MR. TOWNSEND: No, your Honor.

THE COURT: OK.

Now, you know, in the end, Mr. Allums, it's obviously a tremendously long sentence, but I felt that 360 months, 30 years, would effectively be the rest of your life, and I felt that that was too severe, and that's how I ended up with the time that I sentenced you to.

You know, with regard to the issue of the enhancements, I would end up at that range even if I were to subtract the gun enhancement, it still would have left you at a range of 292 to 365 months.

Now, that is the sentence of the court.

Mr. Allums, you have the right to appeal your conviction and sentence. The notice of appeal must be filed within 14 days of the judgment of conviction. If you are not able to pay the cost of an appeal, you may apply for leave to appeal in forma pauperis. If you request, the clerk of the court will prepare and file a notice of appeal on your behalf.

Are there any applications? I will dismiss any open counts and any prior indictments.

MS. COMEY: Yes, your Honor, the government would move to dismiss any open counts and prior indictments.

THE COURT: All right, I will do that. Mr. Townsend?

MR. TOWNSEND: No, your Honor.

THE COURT: All right.

OK, Mr. Allums, I wish you luck. I know this is obviously not what you were expecting, but I wish you luck. OK. We will stand adjourned.

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