IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

CASE NOS.: 12-2336 & 12-2439

UNITED STATES OF AMERICA

Appellee,

v.

ROBERT O. ROBINSON

Defendant-Appellant.

A DIRECT APPEAL OF A CRIMINAL JUDGMENT FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

APPELLANT'S INITIAL BRIEF

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Mr. Robinson requests oral argument in this matter because it presents a novel issue and concerns his right to due process and his Sixth Amendment right to counsel of choice.

STATEMENT OF JURISDICTION

The Appellant, Robert O. Robinson ("Mr. Robinson"), was charged in the United States District Court for the District of Rhode Island ("district court" or "trial court") with violations of 21 U.S.C. §§ 841 and 846. The district court had jurisdiction pursuant to 18 U.S.C. § 3231.

The district court entered judgment in case number 1:11-cr-00147 on October 31, 2012. (A. 11, 30). On the same day, the district court entered its judgment revoking Mr. Robinson's probation in case number 1:01-cr-00103. (A. 42, 46). Mr. Robinson timely filed his notice of appeal as to both judgments on October 31, 2012. (A. 11, 42).

This Court has jurisdiction pursuant to 28 U.S.C. § 1291. This Court entered case number 12-2349 on its docket on November 9, 2012, and entered case number 12-2336 on November 19, 2012. The cases were consolidated on March 11, 2013.

STATEMENT OF THE ISSUES

Six days before trial, Mr. Robinson informed the district court that he did not want to proceed with his privately retained counsel and wanted to retain a new attorney. The district court denied his motion and ordered that the trial proceedings would not be continued. On the day of trial, Mr. Robinson renewed his request for leave to retain new counsel and was again denied. He then elected to proceed *pro se* and moved for a continuance to prepare for trial. The district court denied the motion. Mr. Robinson represented himself at trial and a jury found him guilty.

I. Did the district court's denial of Mr. Robinson's requests to continue the trial date to either retain new counsel or to prepare to try the case *pro se* violate his right to due process and his Sixth Amendment right to his choice of counsel?

II. Was Mr. Robinson's decision to proceed *pro se* voluntary and intelligent?

STATEMENT OF THE CASE

This is Mr. Robinson's consolidated appeal of the district court's judgments in two consolidated matters: no. 1:11-cr-00147 and no. 1:01-cr-00103.

No. 1:11-cr-00147: Mr. Robinson and four other individuals were indicted in an eleven-count indictment on August 17, 2011. (A. 13-19). Mr. Robinson was charged as follows:

> Count 1: Conspiracy to distribute over 280 grams of cocaine base, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A)(iii), § 846, and 18 U.S.C. § 2;
>
> Counts 2, 9, 10, and 11: Possession with intent to distribute 28 grams or more of cocaine base, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B)(iii), and 18 U.S.C. § 2;
>
> Counts 3-8: Possession with intent to distribute cocaine base, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C), and 18 U.S.C. § 2.

(A. 13-19).

Following a two-day jury trial before the Honorable Mary M. Lisi, Mr. Robinson was found guilty on each count. (A. 10; Tr. II: 186-187). On October 31, 2012, he was sentenced to 240 months incarceration on Counts 1-11 (A. 11, 33-35; Tr. II: 229), 10 years of supervised release on Count 1, 5 years of supervised release on Counts 2-11, and a special assessment of $1,100 (A. 11, 33-35; Tr. II: 230). Mr. Robinson filed a timely notice of appeal on October 31, 2012. (A. 11, 37).

No. 1:01-cr-00103: On October 10, 2001, Mr. Robinson was indicted on two counts of a violation of 21 U.S.C. § 841 (A. 44-45). On December 3, 2001, he entered a change of plea and was adjudicated guilty. (A. 40). On February 22, 2002, Mr. Robinson was sentenced to 84 months imprisonment on each count, running concurrently, with 5 years of supervised release. (A. 40). Mr. Robinson served almost 6 years of his 7 year sentence and was on supervised release when he was indicted in case number 1:11-cr-00147. (Tr. II: 229).

On September 4, 2012, the district court held a preliminary revocation hearing and took judicial notice of the guilty verdict in case number 1:11-cr-00147. (A. 42; Tr. II: 195). On September 11, 2012, Magistrate Judge Lincoln Almond issued a Report and Recommendation, recommending that the court find Mr. Robinson in violation of his supervised release conditions and deferring the matter to Judge Lisi for sentencing. (A. 42).

On October 31, 2012, the same day as the sentencing for case number 1:11-cr-00147, Judge Lisi sentenced Mr. Robinson to 24 months imprisonment, to run consecutively to the 240 month sentence imposed in case number 1:11-cr-00147. (A. 42; Tr. II: 229). Mr. Robinson filed a timely notice of appeal on October 31, 2012. (A. 42, 48).

STATEMENT OF THE FACTS

A. Pretrial Proceedings

Mr. Robinson was arrested on June 13, 2011, and incarcerated until his trial date. (A. 3). Attorney Stephen DiLibero represented Mr. Robinson at the initial appearance. (A. 3). On August 2, 2011, however, Mr. Robinson filed a *pro se* motion to terminate Attorney DiLibero's representation. (A. 3; Doc. 11). On August 3, 2011, Attorney DiLibero filed a motion to withdraw, alleging a breakdown in communications with Mr. Robinson. (A. 4; Doc. 12).

On August 17, 2011, Magistrate Judge Almond held a hearing on Mr. DiLibero's motion to withdraw. Mr. Robinson confirmed that he still wanted new counsel. Mr. Robinson also explained that he was unable to secure new counsel because prospective attorneys were reticent to discuss Mr. Robinson's case while he was still formally represented by Mr. DiLibero. (Tr. I:12). Magistrate Judge Almond indicated his willingness to grant Mr. DiLibero's motion to withdraw, but held the motion in abeyance until successor counsel was retained. (Tr. I:13-14). In addition, Magistrate Judge Almond secured Mr. DiLibero's permission for Mr. Robinson to discuss his case with prospective attorneys. (Tr. I:12). Later that day, a grand jury returned an indictment against Mr. Robinson and four codefendants. (A:4; Doc. 15).

On August 31, 2011, Magistrate Judge Almond formally arraigned Mr. Robinson and held a first appearance on probation's violation petition. (A. 4; Tr. I:21-23). The court asked whether Mr. Robinson had secured new counsel. Mr. Robinson replied that he believed his family had retained Attorney Matthew Smith. However, because Attorney Smith had not entered a notice of appearance, the court proceeded with the arraignment and first appearance with Mr. DiLibero acting as counsel. (Tr. I: 22-24). Magistrate Judge Almond concluded the hearing by informing the parties that if Mr. Smith did not enter an appearance, a hearing would be held the following week to determine the status of Mr. Robinson's representation. (Tr. I:26).

On September 7, 2011, the court held a hearing on the status of Attorney Smith's representation. Mr. Robinson indicated that his family had made partial payment for Mr. Smith's retention, but requested a two week continuance to give his family time to pay the remainder of the retainer. The Government did not object to the request. The court granted the request and continued the matter to September 26, 2011. (Tr. I:30-33).

At the September 26, 2011, hearing, Mr. DiLibero indicated that he had discussed the matter with Attorney Smith. According to Mr. DiLibero, Attorney Smith said he had been paid a partial retainer by Mr. Robinson's family, but would not appear until he had been fully retained, which Mr. Smith anticipated would

occur within a week. (Tr. I:36-39). On October 7, 2011, Attorney Matthew Smith entered an appearance. (A. 5; Doc. 40). On October 11, 2011, the court issued a trial notice, scheduling the matter for impanelment on December 8, 2011. (A. 5; Doc. 41). Following multiple assented requests to continue the trial date to allow plea negotiations to progress, jury selection was ultimately set for June 12, 2012, before Judge Lisi.

B. Proceedings on Jury Impanelment Day

On June 12, 2012, the day of jury impanelment, Mr. Robinson told Judge Lisi that he did not want to proceed to trial with Attorney Smith. (Tr. I:42). Mr. Robinson explained that he and Attorney Smith met the previous weekend and because they were "not agreeing on anything," Mr. Robinson informed Attorney Smith that he no longer desired his services. (Tr. I:42). Mr. Robinson also claimed that communication was a problem, and that Attorney Smith "does things, and he doesn't even let me know." (Tr. I:42).

Judge Lisi responded that were "80 people here today to pick a jury, so we'll be picking a jury." (Tr. I:42). Judge Lisi also explained: "I have met on several occasions with your lawyer…and he has assured me that he has provided you with all the information you need in this case and he has provided you with copies of the discovery." (Tr. I:43). Finally, Judge Lisi suggested that Mr. Robinson's reticence to begin trial was not dissatisfaction with counsel, but was for purposes

of delay: "[n]ow, it's clear to me that you, for whatever reason, want to delay this matter; but it's not going to be delayed…we will proceed today." (Tr. I:43).

Mr. Robinson pressed the issue. He elaborated on his belief that Attorney Smith was not keeping him sufficiently apprised of pre-trial proceedings, and claimed that he did not believe Attorney Smith was working for him. (Tr. I:43).

> THE DEFENDANT: Yes, Your Honor, but my attorney, he didn't even let me know the motions he put in or he did not come up and let me know we know had a pretrial. He came up after the pretrial and let me know all the things that were [sic] taking place.
>
> THE COURT: Well, that's typical, Mr. Robinson. That's typical. That's not unusual.
>
> THE DEFENDANT: I don't feel that he's working for me. I don't feel - -

(Tr. I:43). Judge Lisi interrupted Mr. Robinson and explained that Attorney Smith had "been quite successful" on Mr. Robinson's behalf in filing pre-trial motions and obtaining discovery from the government. (Tr. I: 44).

Mr. Robinson persisted: "Your Honor, what I don't understand is how [sic] you want me to move forward with a lawyer if I can't trust him." (Tr. I:44). Judge Lisi reiterated her opinion that Attorney Smith's pre-trial performance had been satisfactory, and advised Mr. Robinson to change out of prison garb so trial could commence. (Tr.I:45). The court recessed for thirty minutes while Mr. Robinson changed clothes.

When Mr. Robinson returned to the courtroom, he again voiced his desire to replace Attorney Smith: "I mean no disrespect to you or your courtroom, but I feel there's a conflict between me and my lawyer, and I don't wish to proceed with this. I want a new lawyer, and I feel like I'm being forced to do this." (Tr. I:46). Judge Lisi asked Mr. Robinson what specific problems he had with Mr. Smith, and Mr. Robinson responded, "[w]ell, I asked Mr. Smith questions about my case that he has no knowledge of because he didn't go over my evidence." (Tr. I:46).

Judge Lisi continued to press Mr. Robinson for specific details regarding his dissatisfaction with Attorney Smith. Mr. Robinson explained that Attorney Smith refused to file certain pre-trial motions, including a motion to suppress the Government's warrantless surveillance and recording of the transactions at issue through its informant, and a motion to exclude the informant's testimony due to reliability concerns. (Tr. I:47-48). In addition, Mr. Robinson explained that he retained Attorney Smith to "open a case" unrelated to the one at issue at trial, and was upset that Attorney Smith had not done so. (Tr. I:55).

The court asked Attorney Smith to respond to Mr. Robinson's allegations. The court was satisfied with Attorney Smith's explanations regarding his decision not to file the pre-trial motions, and explained that Mr. Robinson's dissatisfaction with Attorney Smith's work on the unrelated case was "neither here nor there." (Tr. I:55). Nonetheless, Mr. Robinson reiterated his wish: "Your Honor, like I

said, I feel that [there is] is a conflict between me and Mr. Smith. I do not want him as my attorney. I mean no disrespect to you or your courtroom, but I feel I'm getting forced into doing this. I don't want him as my attorney." (Tr. I:55).

Judge Lisi reiterated her opinion that Mr. Smith had "worked very well on [Mr. Robinson's] behalf" and that "we are going to proceed today with jury impanelment, and we will proceed next Monday to trial." (Tr. I:55). The court continued: "…to the extent that you have moved for a new trial date or new impanelment date, that motion is denied." (Tr: I: 57). Over Mr. Robinson's repeated objections to Attorney Smith's representation, the court impaneled the jury. (Tr. I:57-59).

C. ***Pro Se* Filings Between Impanelment and Trial**

On June 14, 2012, Mr. Robinson filed a number of *pro se* motions. (Doc. 106-1). Among the motions was a motion to dismiss Attorney Smith. In the motion, Mr. Robinson alleged that Attorney Smith appeared unprepared for trial, was trying to force Mr. Robinson into accepting a plea, was not communicating with Mr. Robinson effectively, and had been retained to "open up a prior case" (unrelated to the criminal proceedings at issue here), but had failed to do so. (Doc. 106-1 at 2). Mr. Robinson also stated he would rather represent himself than proceed with Attorney Smith. (Doc. 106-1 at 2).

Mr. Robinson also filed a "Motion for Law Library," which indicated he was "going *pro se*" at trial and needed "more time to get more knowledge of my case since my lawyer kept my paper work from me of what's really going on in my case. I need to do research on my rights and laws within our system. Thank you." (Doc. 106-1 at 3). Finally, he filed a "Motion to go Pro Se Faretta Hearing." (Doc. 106-1 at 4). Therein, he claimed: "I [would] rather represent myself then put my life in the hands of a man [Attorney Smith] I will never be able to trust with my life!" (Doc. 106-1 at 4). Each of these *pro se* motions was "refused and returned" by the court on June 14 because, *inter alia*, Mr. Robinson was represented by Mr. Smith.

D. <u>Trial Proceedings</u>

Trial commenced six days later, on June 18, 2012. Prior to opening statements, Mr. Robinson presented the contents of a motion he had filed four days earlier, on June 14, 2012, informed Judge Lisi that he had fired Attorney Smith "because I'd rather go *pro se* than have him as my lawyer." (Tr. I:142). Judge Lisi asked if Mr. Robinson was "prepared to go forward today?" (Tr. I: 142). Mr. Robinson responded, "No. I need a continuance your Honor, to have somebody lead me, my assistant. So I need some time to hire an assistant to - - " (Tr. I:142). Judge Lisi interrupted Mr. Robinson: "Oh, no, no, no. You don't get to hire an assistant, Mr. Robinson. We've selected a jury. The jurors are in the building this

morning. We're ready to go." (Tr. I: 142). The court continued: "And if you say you fired [Attorney Smith] on Friday, then what you should have been doing over the weekend was preparing to try the case yourself." (Tr. I:143).

Judge Lisi then explained that Mr. Robinson could either proceed *pro se*, or have Mr. Smith represent him. (Tr. I:144). She asked if Mr. Robinson had any legal training, and he replied that he did not. (Tr. I:144). Judge Lisi also told Mr. Robinson that she believed he was making a "huge mistake to proceed *pro se* since you are not trained in the law." (Tr. I:144). Mr. Robinson responded that he believed he could represent himself better than Attorney Smith because he did not trust him. (Tr. I:144).

Judge Lisi ordered the case to proceed with Mr. Robinson acting *pro se*, with Attorney Smith acting as standby counsel. (Tr. I:144). Mr. Robinson replied that he refused to have Attorney Smith as standby counsel. (Tr. I:145). Judge Lisi insisted that Attorney Smith remain as standby counsel, because "otherwise you're going to be walking into a land mine because you don't know the rules." (Tr. I:145). Mr. Robinson stated, "[i]t's also my right to choose my own attorney or choose an assistant," to which Judge Lisi replied, "[n]ot on the day of trial." (Tr. I:145).

After Mr. Robinson announced his decision to proceed *pro se*, the Government requested a sidebar. (Tr. I: 153). Attorney Smith and counsel for the

Government attended the bench conference. Mr. Robinson did not. The crux of the conversation regarded whether Mr. Robinson would be permitted to make his opening statement at the podium, or would do so from counsel's table. (Tr. I: 153). The court ultimately ruled that both counsel for the Government and Mr. Robinson would make their openings from their respective counsels' tables to make "things look a little less odd…" (Tr. I: 153). Counsel for the Government indicated that such positioning "might be an issue at closing, but we can deal with that down the road. He may not be representing himself by that time." The court responded, "[h]e may change his mind at that point."

After the jury was sworn and the Government offered its opening statement, Mr. Robinson delivered his opening statement: "Today I'm defending myself. I fired my lawyer, Mr. Smith. I've asked the Court for time to prepare myself for this matter." (Tr. I:179). The judge sustained the government's objection, and asked Mr. Robinson if he wished to make further opening statements, and Mr. Robinson declined. (Tr. I:180). During the trial, Mr. Robinson represented himself, making *pro se* objections and conducting *pro se* cross-examinations, with Attorney Smith as standby counsel. He also delivered his closing argument *pro se*. (Tr. II:135).

On June 20, 2012, the jury found Mr. Robinson guilty on all eleven counts of the indictment. (A. 10; Tr. II:207). Mr. Robinson filed a *pro se* motion for new

trial, alleging, *inter alia*, that he should have been afforded an opportunity to find a new lawyer once he fired Attorney Smith, and that he should have been granted a continuance so he could prepare a defense once he elected to proceed *pro se*. (A. 10; Doc. 122). The motion for new trial was denied via a text order on October 31, 2012. (A. 11).

SUMMARY OF THE ARGUMENT

This Court should remand for a new trial. Mr. Robinson had a Sixth Amendment right to counsel of his choice. That right did not grow weaker as Mr. Robinson's trial date approached. Instead, the timing of his request was a factor the district court should have weighed against his Sixth Amendment right. The record reveals that no such weighing process occurred. The district court denied his request because it was untimely, filed for the purpose of delay, and because it believed Mr. Robinson's current counsel would afford Mr. Robinson a fair trial. However, whether Mr. Robinson's counsel was competent to try the case should not have been part of the inquiry, because counsel was privately retained, not court-appointed. In addition, the record does not support the district court's findings that Mr. Robinson's request was a delay tactic. Accordingly, the denial of Mr. Robinson's request to proceed to trial with counsel of his choice was arbitrary and unreasoned.

Mr. Robinson's decision to proceed *pro se* directly flowed from the district court's refusal to allow him to proceed with his choice of counsel. Mr. Robinson wanted counsel, and tried the case himself only because he was not afforded an opportunity to find new counsel. Thus, his decision was not voluntary. It was also not intelligent because the district court's *Faretta* warning was inadequate, and he had virtually no time to prepare his own defense.

ARGUMENT AND CITATIONS OF AUTHORITY

I. THE DISTRICT COURT'S DENIAL OF MR. ROBINSON'S REQUESTS TO CONTINUE THE TRIAL PROCEEDINGS TO EITHER FIND NEW COUNSEL OR PREPARE TO TRY THE CASE *PRO SE* VIOLATED HIS SIXTH AMENDMENT RIGHT TO COUNSEL OF CHOICE AND HIS RIGHT TO DUE PROCESS.

A. Standard of Review

This Court reviews the denial of a request for continuance for abuse of discretion. *United States v. Maldonado*, 708 F.3d 38, 42 (1st Cir. 2013).

B. Argument on the Merits

"In all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defence." U.S. Const. amend. VI. "The right to select counsel of one's choice" is "the root meaning of that constitutional guarantee." *United States v. Gonzalez-Lopez*, 548 U.S. 140, 147-148 (2006); *cf. Powell v. Alabama*, 287 U.S. 45, 53 (1932) ("It is hardly necessary to say that, the right to counsel being conceded, a defendant should be afforded a fair opportunity

to secure counsel of his own choice."). While district courts "must recognize a presumption in favor of petitioner's counsel of choice," this presumption may be overcome in certain circumstances. *Wheat v. United States*, 486 U.S. 153, 164 (1988) (emphasis added).

In assessing whether the presumption in favor a defendant's right to choose his own counsel is outweighed by countervailing principles, one of the factors this Court considers is the impact on "reasonable and orderly court procedure." *Woodard*, 291 F.3d at 106 (quoting *United States v. Poulack*, 556 F.2d 83, 86 (1st Cir. 1977)). Thus, when a defendant seeks new counsel, this Court weighs his "interest in retaining counsel of his choice against the public's interest in the prompt, fair and ethical administration of justice." *Id*. (quoting *United States v. Richardson*, 894 F.2d 492, 496 (1st Cir. 1990)). "Only an unreasoning and arbitrary insistence upon expeditiousness in the face of a justifiable request for delay violates the right to the assistance of counsel." *Id*. (quoting *Morris v. Slappy*, 461 U.S. 1, 11-12 (1983)).

Finally, a violation of the right to counsel of choice is a structural constitutional error, impervious to harmless error review. *Gonzalez-Lopez*, 548 U.S. at 150. Whether or not a defendant was actually prejudiced by the denial of his right to counsel of his choosing is of no import. In *Gonzalez-Lopez*, the

Supreme Court explained that the right to counsel of choice is "the root meaning" of the Sixth's Amendment's constitutional guarantee, and that,

> [i]t is unnecessary to conduct an ineffectiveness or prejudice inquiry to establish a Sixth Amendment violation. Deprivation of the right is "complete" when the defendant is erroneously prevented from being represented by the lawyer he wants, regardless of the quality of the representation he received. To argue otherwise is to confuse the right to counsel of choice—which is the right to a particular lawyer regardless of comparative effectiveness—with the right to effective counsel—which imposes a baseline requirement of competence on whatever lawyer is chosen or appointed.

Gonzalez-Lopez, 548 U.S. at 147-8. In sum, the improvident denial of a defendant's request to proceed with his choice of lawyer requires a new trial.

In this case, Mr. Robinson unequivocally invoked his right to representation of his choice of counsel on June 12, 2012, the day of jury impanelment. To wit, he told the district court he had previously discharged Attorney Smith. (Tr. I:42). To show he was not bluffing, or "gaming the system" to buy more time, he reiterated his discharge of Attorney Smith on the record, asserting, "I want a new lawyer" (Tr. I:46) and "I don't want [Attorney Smith] as my attorney." (Tr. I:55). When rebuffed, he asked, "but don't I have the right to choose my own counsel?"[1]

[1] Pursuant to Rule 1.16 of the Rhode Island Disciplinary Rules of Professional Conduct, Attorney Smith should have moved to withdraw from the case following Mr. Robinson's discharge. *See also United States v. Gaffney*, 469 F.3d 211, 216 (1st Cir. 2006) (citing rule and noting that discharge and withdrawal of attorney are indicia of a defendant attempting to exercise his right to chosen counsel, rather than attempting to delay proceedings).

While the district court ultimately construed Mr. Robinson's request as a motion to continue the trial proceedings (Tr. I: 57), it correctly recognized that the impetus for the motion was Mr. Robinson's desire to choose new counsel. (Tr. I: 56). Regardless of the label affixed to Mr. Robinson's request, a review of the jury impanelment transcript makes abundantly clear that Mr. Robinson was attempting to exercise his Sixth Amendment right to counsel of his choosing. The district court denied his request. Thus, the operative question for this Court is whether the district court's denial of Mr. Robinson's request to proceed with his choice of counsel constituted a violation of his Sixth Amendment rights.

As a matter of law, this inquiry begins with a presumption in Mr. Robinson's favor. *See Wheat*, 486 U.S. at 164 (district courts must recognize a presumption in favor of a defendant's counsel of choice). Of course, the presumption in favor of a defendant's right to his counsel of choice can be overcome by competing interests. *Gonzalez-Lopez*, 548 U.S. at 151-2. For instance, defendants do not have a right to lawyers that are not admitted to a court's bar, or lawyers saddled with conflicts of interest. *Id*. at 152. In addition, the right to choose one's lawyer does not extend to defendants who require court-appointed counsel. *Id*. A court is also free to weigh "the needs of fairness," or the demands of its calendar against a defendant's right to counsel of choice. *Id.* However, while a court's busy calendar is a valid consideration, insistence on

expeditiousness at the expense of a defendant's Sixth Amendment right to proceed with his counsel of choice must be reasoned, and cannot be arbitrary. *Morris v. Slappy*, 461 U.S. 1, 11-12 (1983).

Here, the district court denied Mr. Robinson's request to proceed with counsel of his choosing because: (1) the request was too late and a panel of jurors was waiting to be picked; and (2) it found Mr. Robinson's claim that he did not trust Attorney Smith to best protect his interests mere subterfuge for his real purpose: delay. Neither reason constitutes a valid basis for denying Mr. Robinson's Sixth Amendment right.

First, the district court's decision that Mr. Robinson's request was voiced too late and that the presence of a waiting jury pool outweighed the exercise of his right to counsel of his choice was unreasoned and arbitrary. Mr. Robinson requested a delay of all trial proceedings before the jury was empaneled, on June 12, 2011. The district court denied Mr. Robinson's motion to continue the impanelment and his request to continue the trial. The district court stated, "we are going to proceed today with jury impanelment, and we will proceed next Monday to trial." (Tr. I:55) (emphasis added). The court dispensed with Mr. Robinson's request by stating: "…to the extent that you have moved for a new trial date or new impanelment date, that motion is denied." (Tr: I: 57).

Although Mr. Robinson's request six days before trial may have impacted the district court's calendar, the district court never suggested its calendar was immutable, or that granting his request would be significantly disruptive. In fact, the district court never mentioned how accommodating Mr. Robinson's request would affect its docket. *Compare State v. Garcia*, 75 P.3d 313, 321 (Mont. 2003) (finding the right to choose one's counsel should not have yielded to the "administration of justice" where "the record fails to show that a continuance would have significantly inconvenienced the court") *with People v. Doebke*, 1 Cal.App.3d 931, 940, 81 Cal.Rptr. 391, 396 (1969) (finding denial of right to choice of counsel on basis of court calendaring needs appropriate where "the trial judge, in a lengthy and meticulous review of the trial calendar, ably demonstrated" that a continuance would have disrupted both its civil and criminal trial calendars); *see also United States v. Williams*, 576 F.3d 385, 390 (7th Cir. 2009) (district court's denial of continuance filed four days before trial to give substitute counsel adequate time to prepare was arbitrary because no evidence suggested a delay would have burdened the court, noting that the district court never consulted its calendar to look for an alternative date).

In addition, the district court never asked Mr. Robinson or Attorney Smith how long a continuance was necessary to substitute counsel and prepare for trial, which suggests the district court simply considered <u>any</u> delay unacceptable. *See*,

e.g., *United States v. Sellers*, 645 F.3d 830, 837-38 (7th Cir. 2011) (finding district court's denial of request for right to counsel of choice made five days before trial arbitrary where district court spoke generically of how continuances burden other litigants and the court's calendar, but failed to inquire how long substitute counsel would need to prepare adequately for trial evidences a failure to actually balance the right to choice of counsel against the needs of fairness, and suggests that the district court unreasonably viewed any delay as unacceptable); *see also Williams*, 576 F.3d at 390 ("The failure to inquire how long the defense needs to prepare suggests that the district court unreasonably considered any delay unacceptable: That sort of rigidity can only be characterized as arbitrary.");

More importantly, the district court never asked the Government whether it objected to a continuance, and no record evidence suggests the Government would have been prejudiced beyond the standard inconvenience that accompanies any trial continuance. This makes clear that the district court did not deny Mr. Robinson's request out of a sense of fairness to the Government, but instead made its decision based solely on the inconvenience to the waiting jurors and its calendar. *See Linton v. Perini*, 656 F.2d 207, 209 (6th Cir. 1981) (trial court may interfere with the defendant's right to counsel of his own choice and require the case to proceed if granting the request would prejudice, as opposed to inconvenience, the prosecution); *see also United States v. Bentvena*, 319 F.2d 916,

935-6 (2d Cir. 1963) (no abuse of discretion because "the government had grave interests at stake in seeing that further procrastination be avoided").

In sum, the district court denied Mr. Robinson's constitutional right to proceed to trial with the counsel of his choosing based on the inconvenience it would cause to the court, without asking the defense how long it needed, without seeking the Government's position on the issue, and without consulting its trial calendar to assess how long the proceedings would have been delayed. Thus, it appears the district court never weighed Mr. Robinson's right to counsel of his choosing against the need for the orderly administration of justice. Instead, the court decided that the need to avoid any delay whatsoever trumped Mr. Robinson's constitutional right. As a result, the first basis for the district court's decision to deny Mr. Robinson's request was unreasoned and arbitrary.

So too was the second. The district court believed, with absolutely no factual support, that Mr. Robinson's request was made solely to delay the proceedings: "[n]ow, it's clear to me that you, for whatever reason, want to delay this matter; but it's not going to be delayed." (Tr. I:43). The district court articulated no basis for its belief that Mr. Robinson's request was dilatory, and there was none. He was in prison, and would have remained in prison throughout any continuance period. *See, e.g., Williams*, 576 F.3d at 390 (noting that a defendant's incarceration at time of continuance request is evidence the

defendant's request is not made to delay); *see also Carlson v. Jess*, 526 F.3d 1018, 1026 (7th Cir. 2008) (same).

Further, although the case had been continued previously, there is no evidence of undue delay or dilatory tactics on Mr. Robinson's part. Mr. Robinson hired his first attorney, Attorney DiLibero, in June 2011, and moved to dismiss him in August 2011, before Mr. Robinson was even indicted. The court continued the matter for two months in order to allow Mr. Robinson to hire new counsel, and in October 2011, Attorney Smith filed his appearance. The time period between Mr. Robinson's first and second retained attorneys was thus only two months, did not result in an undue delay of the trial, and reflected diligence on behalf of Mr. Robinson and his family in trying to fund his defense.

After Attorney Smith's appearance, the district court ordered a series of continuances from October 2011 to June 2012. However, every motion to continue was either not at Mr. Robinson's request or was assented to by the Government. Mr. Robinson made his first request for a continuance on the first day the case was scheduled for impanelment, and prior to impanelment. Mr. Robinson's request was thus not yet another in a number of requests to delay the trial. In addition, Attorney Smith was Mr. Robinson's second attorney. *See, e.g.*, *Maldonado*, 708 F.3d at 40-2 (defendant had already received nine continuances and had five previous lawyers). Thus, the court's characterization of Mr.

Robinson's exercise of his right to counsel of his choosing as a delay tactic was arbitrary and unreasonable.

It is important to note that a significant part of the district court's rationale for denying Mr. Robinson's request was its belief that Attorney Smith was competent and ready for trial. In other words, the district court denied Mr. Robinson's request, at least in part, because the court believed Mr. Robinson would have a fair trial with Attorney Smith at the helm. Because Attorney Smith was privately retained counsel, as opposed to court-appointed counsel, this inquiry was irrelevant to Mr. Robinson's request. *Compare Gonzalez-Lopez*, 548 U.S. at 140 (when a defendant has privately retained counsel, "The right to counsel of choice, however, commands not that a trial be fair, but that a particular guarantee of fairness be provided—to wit, that the accused be defended by the counsel he believes to be best.") *with United States v. Allen*, 789 F.2d 90 (1st Cir. 1986) (describing steps court must take when defendant requests change in court-appointed counsel, including need to ascertain reason for defendant's dissatisfaction with current counsel, and in light of those reasons, whether the defendant can mount an adequate defense with current counsel).

Finally, the district court erred when it denied Mr. Robinson's renewed request for a continuance on the eve of trial. Although the court already denied his motion to continue the trial date and although Mr. Robinson attempted to discharge

Attorney Smith at the impanelment proceedings, he renewed his efforts via *pro se* filings on June 14, 2012 (discussed supra at 11-12), and on the first day of trial. After Mr. Robinson indicated his desire to proceed *pro se*, he asked for a continuance, which the district court denied: "And if you say you fired [Attorney Smith] on Friday, then what you should have been doing over the weekend was preparing to try the case yourself." (Tr. I:143).

The denial of Mr. Robinson's request for a continuance after the court recognized his decision to proceed *pro se* violated Mr. Robinson's Sixth Amendment right to counsel, as well as his right to due process. *See, e.g., Carlson v. Jess*, 526 F.3d 1018, 1024-5 (7th Cir. 2008) (holding that a request for a continuance for the purpose of substituting counsel implicates the right to counsel, as well the right to due process). At best, Mr. Robinson had a weekend to prepare for trial, assuming he began feverishly preparing for trial the second he filed his motion to proceed *pro se*.

It is beyond dispute that a weekend, even for an accomplished attorney with access to the Library of Congress, is an insufficient amount of time to prepare for a conspiracy trial. Once it established that Mr. Robinson would be defending himself, the court abused its discretion when it decided not to grant a continuance, especially without even a cursory investigation of the consequences of doing so. *See United States v. Francois*, 715 F.3d 21, 27 (1st Cir. 2013) (after deciding to let

defendant proceed *pro se* "shortly before impanelment," giving him 20 days to prepare for trial); *see also United States v. Farias*, 618 F.3d 1049, 1054 (9th Cir. 2010) (holding that defendant's Sixth Amendment rights were violated when district court informed defendant it would honor his eve of trial request to proceed *pro se* but that it would not grant a continuance to allow him to prepare; a defendant "does not simply have the right to represent himself, but rather has the right to represent himself meaningfully. Meaningful representation requires time to prepare."); *see also Powell v. Alabama*, 287 U.S. 45, 49 (1932) ("It is vain to give the accused a day in court with no opportunity to prepare for it …") (internal quotation marks omitted).

II. THE DISTRICT COURT DEPRIVED MR. ROBINSON OF HIS RIGHT TO COUNSEL BECAUSE HIS REQUEST TO PROCEED *PRO SE* WAS NOT VOLUNTARY AND WAS GRANTED WITHOUT AN ADEQUATE *FARETTA* INQUIRY.

A. Standard of Review

This Court reviews the district court's decision that a defendant may proceed *pro se* for abuse of discretion. *United States v. Woodard*, 291 F.3d 95, 109 (1st Cir. 2002).

B. Argument on the Merits

"Because of the disadvantages to a defendant that inure from *pro se* representation, a defendant must 'knowingly and intelligently' waive his right to

counsel before he may be permitted to proceed *pro se*." *United States v. Kneeland*, 148 F.3d 6, 11 (1st Cir. 1998) (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464–65, (1938)). Unless the waiver is clear and unequivocal, a court should not deprive a defendant of his right to counsel. *United States v. Betancourt-Arretuche*, 933 F.2d 89, 92 (1st Cir. 1991). When a defendant seeks to proceed *pro se*, the trial judge must determine whether the defendant's waiver is "intelligent and competent." *United States v. Proctor*, 166 F.3d 396, 402 (1st Cir. 1999). "In discharging this responsibility, the trial judge must keep in mind the strong presumption against waiver and 'investigate as long and as thoroughly as the circumstances of the case before him demand.'" *Francois*, 715 F.3d at 30 (quoting *Von Moltke v. Gillies*, 332 U.S. 708 (1948)). This inquiry requires the trial court to warn the defendant "of the dangers and disadvantages of self-representation, so that the record will establish that '[the defendant] knows what he is doing and his choice is made with eyes open.'" *Id*. (quoting *Faretta v. California*, 422 U.S. 806, 835 (1975)).

Mr. Robinson's choice to proceed *pro se* was not voluntary. He wanted a lawyer, but not Attorney Smith. He made that clear in his motion to proceed *pro se*: "I [would] rather represent myself then put my life in the hands of a man [Attorney Smith] I will never be able to trust with my life!" (Doc. 106-1 at 4). He also made it clear on the record. The following is the entirety of the district court's inquiry concerning Mr. Robinson's decision to proceed *pro se*:

THE COURT: We're going to proceed. Mr. Smith can either represent you or if you insist on proceeding pro se -- I mean, you have no training in the law, do you?

MR. ROBINSON: No, your Honor.

THE COURT: No. I think you are making a huge mistake to proceed pro se since you are not trained in the law.

MR. ROBINSON: I feel I would represent myself better than Attorney Smith because I don't trust him.

THE COURT: All right. So you're prepared to go forward today representing yourself, and Mr. Smith can be your standby counsel.

MR. ROBINSON: I refuse to have Mr. Smith as my standby counsel.

THE COURT: Well, I'm going to insist that he remain as your standby counsel so that you have someone at the table who can advise you as to the rules of evidence and that sort of thing. Otherwise you're going to be walking into a land mine because you don't know the rules.

MR. ROBINSON: It's also my right to choose my own attorney or choose an assistant.

THE COURT: Not on the day of trial, Mr. Robinson.

MR. ROBINSON: Well, you forced me to go into this trial.

THE COURT: No, I did not, Mr. Robinson.

MR. ROBINSON: Yes, you did.

(Tr. I:144-145).

As explained above, Mr. Robinson had a Sixth Amendment right to proceed with his choice of counsel. The district court's denial of that right was the impetus

for Mr. Robinson's choice to proceed *pro se*. Therefore, his choice was not voluntary. It was the result of a prior infringement on his Sixth Amendment right to counsel of his choosing.

In addition, once Mr. Robinson decided to proceed *pro se* after the denial of his request to proceed with a different lawyer, the district court failed to conduct an adequate *Faretta* inquiry. The colloquy regarding Mr. Robinson's decision to represent himself does not establish he made it "with eyes open." The district court never advised him of the seriousness of the charges and the penalties he faced. *See, e.g., United States v. Manjarrez*, 306 F.3d 1175, 1180 (1st Cir. 2002) (court "exhaustively questioned the defendant to ensure that he understood not only the gravity of the charges facing him and their potential penalties upon conviction, but also his obligation to comply with the rules of the court when presenting his case"). The district court did not describe "various substantive and procedural aspects of the trial, including...the government's burden of proof, opening and closing arguments, questioning of witnesses, the concept of reasonable doubt..." *Woodard*, 291 F.3d at 109.

While the district court did warn Mr. Robinson that he was making a "huge mistake" and that he was "walking into a land mine," she did not warn him of the "dire consequences" of self-representation with any degree of specificity. *Manjarrez*, 306 F.3d at 1180. Nor did she "repeatedly invite him to reconsider his

decision." *Id*. While Mr. Robinson did have prior experience with the criminal justice system, the district court did not attempt to assess whether that prior experience would have any bearing on his ability to represent himself at trial.

The Government will likely argue that this Court's recent *Francois* decision controls. It does not. Before discussing the finer points of distinction between *Francois* and the case *sub judice*, it is critical to highlight two general points that should render *Francois* inapplicable here. First, Francois was represented by appointed counsel. He had no constitutional right to proceed with his counsel of choice, and it was well within the district court's discretion to deny him court-appointed lawyer number three. Thus, Francois' decision to proceed *pro se* was made from a constitutionally sanitized starting point. It was voluntary. Mr. Robinson's was not. His choice was made directly on the heels of an infringement of his right to choice of counsel, and is thus distinguishable at its origin from *Francois*.

In addition, Francois had twenty days to prepare for trial. He filed pre-trial motions and argued a hearing on one of them. *Id*. at 28. Mr. Robinson had a weekend to prepare for trial, and his decision was not made official until the day of trial. The following transcript excerpt provides an illustration of the amount of time that passed between the district court's decision to let Mr. Robinson proceed *pro se*, and the commencement of trial:

> ATTORNEY SMITH: He has indicated that he wishes to proceed pro se. As the Court has indicated, I will sit next to him and assist; but that is his desire, and I don't think either you, me or anybody else is going to change his mind on that, your Honor.
>
> THE COURT: Okay. Mr. Robinson, how long will your opening statement be?
>
> MR. ROBINSON: Excuse me?
>
> THE COURT: How long will your opening statement be?
>
> MR. ROBINSON: To the jury?
>
> THE COURT: Yes.
>
> MR. ROBINSON: About a minute or two.
>
> THE COURT: Okay. Excellent. Are you still insisting on going forward in your prison attire?
>
> MR. ROBINSON: Yes.
>
> THE COURT: Okay. We'll take a short recess so that we can bring the jury in.

(Tr. I: 148-9)[2]. Francois had weeks to mount his own defense. Robinson had minutes. On that basis alone, the two cases are not comparable.

Even if they are, *Francois* is distinguishable. Admittedly, the *Faretta* inquiry in *Francois* was similar to the one issued by the district court in this case. As here, in *Francois*, the district court did not go beyond "dire generalizations"

[2] In the interest of full disclosure, it should be noted that after this exchange, a few pre-trial issues were heard before the jury entered, although no recess was taken. (Tr. I: 149-156).

(warning that self-representation was a "terrible idea" and a "catastrophic mistake") to give a specific example of the consequences of self-representation that might enhance a layman's understanding of the significance of the decision to proceed without counsel. *Francois*, 715 F.3d at 30. This Court noted that phrases like "catastrophic mistake" do not convey in concrete terms the sentencing range the defendant would likely face if he were convicted. *Id*. This Court also noted that the *Faretta* inquiry in *Francois* was deficient because the district court did not explain that the defendant might have defenses that only a lawyer would appreciate, or explain that the court could not give advice or guidance during the trial. *Id*.

Notwithstanding the imperfect *Faretta* colloquy, this Court held that "the record amply supports the lower court's conclusion that [the defendant] was fully aware of the disadvantages he would face as a pro se defendant." *Id*. In support, the *Francois* court cited the pretrial record, which demonstrated that the defendant was actively involved in preparing for his own defense. *Id*. For instance, at the hearings on Francois' *pro se* pre-trial motions, the court engaged the defendant in several lengthy discussions, and during each of these discussions, he was lucid, articulate, and engaged. *Id*. In addition, the record conclusively showed that Francois knew his "worst case" sentencing scenario, and the district court explained the complicated nature of the federal sentencing guidelines. *Id*. Finally,

Francois made arguments on his own behalf demonstrating that he had personally conducted extensive legal research and was fully aware of the nature of the charges against him. *Id*.

The imperfect *Faretta* warning in *Francois* was forgiven because the record established that the defendant knew the consequences of self-representation. The record here does not yield the same confidence. Unlike Francois, Mr. Robinson was not actively involved in his defense. Nor did he advance arguments demonstrating any legal acumen. The record does not demonstrate that he received advice regarding the potential sentence. Although he need not prove harmful error, it is worth noting that his performance at trial was predictably woeful. Other than his representation to the jury that he fired his lawyer and had requested more time to prepare his defense, he delivered no opening statement. His cross examinations were ineffective, and his closing statement was repeatedly interrupted by sustained objections.

In sum, Mr. Robinson's decision to represent himself was involuntary. It flowed directly from the denial of his constitutional right to choose his own counsel. It was also unintelligent. He had no time to prepare, did not receive an adequate *Faretta* warning, and nothing in the record reveals that he appreciated the dangers the *Faretta* warning was designed to convey.

CONCLUSION

This Court should remand for a new trial. Mr. Robinson had a Sixth Amendment right to counsel of his choice. That right did not grow weaker as Mr. Robinson's trial date approached. Instead, the timing of his request was a factor the district court was permitted to weigh against his right. The record reveals that no such weighing process occurred, and that the denial of Mr. Robinson's request to proceed to trial with counsel of his choice was arbitrary and unreasoned.

This error begat Mr. Robinson's decision to proceed *pro se*. He wanted counsel, and tried the case himself only because he was not afforded an opportunity to find new counsel once he realized his dissatisfaction with current counsel. Thus, his decision was not voluntary. It was also not intelligent. He was not warned of the perils of defending himself, and had virtually no time to prepare to do so.

Because the district court's revocation of Mr. Robinson's probation was predicated on his conviction at trial, it should be vacated.

DATED this 15th day of July, 2013.

Respectfully submitted,

/s/Michael M Brownlee
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Counsel for Mr. Robinson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was furnished to the Court and all counsel of record via electronic filing through the CM/ECF system on July 15, 2013.

/s/Michael M. Brownlee
Michael M. Brownlee, Esquire

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because:

   [X] this brief contains 7,947 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), or

   [ ] this brief uses a monospaced typeface and contains _____ lines of text, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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   [X] this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in Times New Roman 14 point, *or*

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Date: July 15, 2013

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ADDENDUM

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

RECEIVED
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U.S. Marshals Service
District of Rhode Island

UNITED STATES DISTRICT COURT

DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA
v.
Robert O. Robinson
a/k/a "Robbie"

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:11CR00147-01ML
USM Number: 05065-070
Matthew B. Smith, Esq.
Defendant's Attorney

JDIS
ENTERED
INITIALS
aw

THE DEFENDANT:

☐ pleaded guilty to count(s) ______

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

☑ was found guilty on count(s) I - XI of the Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. §§ 841(a)(1),(b)(1)(A)(iii) and 18 U.S.C. § 2	Conspiracy to Possess with Intent to Distribute and Distribution of 280 grams or more of a mixture containing Cocaine Base; Aiding &	June 2011	I
21 U.S.C. §§ 841(a)(1),(b)(1)(B)(iii) and 18 U.S.C. § 2	Possession with Intent to Distribute and Distribution of 28 Grams or more of a mixture containing Cocaine Base; Aiding & Abetting	February 16, 2011	II
21 U.S.C. §§ 841(a)(1),(b)(1)(C), and 18 U.S.C. § 2	Possession with Intent to Distribute and Distribution of a mixture containing a detectable amount of Cocaine Base; Aiding & Abetting	February 23, 2011	III

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) ______

☐ Count(s) ______ ☐ is ☐ are dismissed on the motion of the United States.

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

October 31, 2012
Date of Imposition of Judgment

Signature of Judge *Mary M. Lisi*

Mary M. Lisi
Chief Judge
Name and Title of Judge

November 5, 2012
Date

FILED
2013 JAN -8 P 3:3
U.S. DISTRICT COURT
DISTRICT OF RHODE ISLAND

Addendum 1

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

DEFENDANT: Robert O. Robinson
CASE NUMBER: 1:11CR00147-01ML

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. §§ 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2	Possession with Intent to Distribute and Distribution of a mixture containing a detectable amount of Cocaine Base; Aiding & Abetting	March 9, 2011	IV
21 U.S.C. §§ 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2	Possession with Intent to Distribute and Distribution of a mixture containing a detectable amount of Cocaine Base; Aiding & Abetting	March 22, 2011	V
21 U.S.C. §§ 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2	Possession with Intent to Distribute and Distribution of a mixture containing a detectable amount of Cocaine Base; Aiding & Abetting	March 29, 2011	VI
21 U.S.C. §§ 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2	Possession with Intent to Distribute and Distribution of a mixture containing a detectable amount of Cocaine Base; Aiding & Abetting	April 14, 2011	VII
21 U.S.C. §§ 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2	Possession with Intent to Distribute and Distribution of a mixture containing a detectable amount of Cocaine Base; Aiding & Abetting	April 21, 2011	VIII
21 U.S.C. §§ 841(a) (1), (b) (1) (B)(iii), and 18 U.S.C. § 2	Possession with Intent to Distribute and Distribution of 28 Grams or more of a mixture containing Cocaine Base; Aiding & Abetting	May 5, 2011	IX
21 U.S.C. §§ 841(a) (1), (b) (1) (B)(iii), and 18 U.S.C. § 2	Possession with Intent to Distribute and Distribution of 28 Grams or more of a mixture containing Cocaine Base; Aiding & Abetting	May 17, 2011	X
21 U.S.C. §§ 841(a) (1), (b) (1) (B)(iii), and 18 U.S.C. § 2	Possession with Intent to Distribute and Distribution of 28 Grams or more of a mixture containing Cocaine Base; Aiding & Abetting	June 2, 2011	XI

Addendum 2

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

DEFENDANT: **Robert O. Robinson**
CASE NUMBER: **1:11CR00147-01ML**

IMPRISONMENT

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

240 months to Counts I-XI to be served concurrently with each other.

☐ 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 12/26/12 to SCAT

a _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

Addendum 3

AO 245B (Rev. 09/08) Judgment in a Criminal Case
Sheet 3 — Supervised Release

DEFENDANT: Robert O. Robinson
Judgment—Page 4 of 7
CASE NUMBER: 1:11CR00147-01ML

SUPERVISED RELEASE

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

10 years as to Count I; 5 years as to Counts II-XI; all counts to run concurrently with each other.

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

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

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

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

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

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

☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*

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

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

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

STANDARD CONDITIONS OF SUPERVISION

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

FOR OFFICIAL USE ONLY - US PROBATION OFFICE

Upon a finding of a violation of probation or supervised release, I understand that the Court may (1) revoke supervision or (2) extend the term of supervision and/or (3) modify the conditions of supervision.
These conditions have been read to me. I fully understand them and have been provided a copy.

(Signed)

Defendant — Date

US Probation Officer/Designated Witness — Date

Addendum 4

AO 245B (Rev. 09/08) Judgment in a Criminal Case
Sheet 3C — Supervised Release

DEFENDANT: Robert O. Robinson
CASE NUMBER: 1:11CR00147-01ML

SPECIAL CONDITIONS OF SUPERVISION

In addition, the defendant shall comply with the following special condition(s):

1. The defendant is to participate in a program of mental health treatment as directed and approved by the Probation Office. The defendant shall contribute to the costs of such treatment based on ability to pay as determined by the probation officer.

2. The defendant shall participate in a program of substance abuse treatment (inpatient or outpatient basis) as directed and approved by the probation office. The defendant shall contribute to the costs of such treatment based on ability to pay as determined by the probation officer.

3. The defendant shall participate in a program of substance abuse testing (up to 72 drug tests per year) as directed and approved by the probation office. The defendant shall contribute to the costs of such testing based on ability to pay as determined by the probation officer.

AO 245B (Rev. 09/08) Judgment in a Criminal Case
Sheet 5 — Criminal Monetary Penalties

DEFENDANT: Robert O. Robinson
CASE NUMBER: 1:11CR00147-01ML

CRIMINAL MONETARY PENALTIES

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

	Assessment	Fine	Restitution
TOTALS	$ 1,100.00	$ 0.00	$ 0.00

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

☐ The defendant shall 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 non-federal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ If applicable, Restitution amount ordered pursuant to plea agreement $ _____

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

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

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

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

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

Addendum 6

AO 245B (Rev. 09/08) Judgment in a Criminal Case
Sheet 6 — Schedule of Payments

DEFENDANT: Robert O. Robinson
CASE NUMBER: 1:11CR00147-01ML

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 $ 1,100.00 due immediately.

☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

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

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

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

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

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

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

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

Addendum 7

AO 245D (Rev. 09/11) Judgment in a Criminal Case for Revocation
Sheet 1

UNITED STATES DISTRICT COURT

DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA
v.
Robert O. Robinson
a/k/a "Robbie"

JUDGMENT IN A CRIMINAL CASE
(For Revocation of Probation or Supervised Release)

Case Number: 1:01CR00103-01ML

USM Number: 05065-070

Matthew B. Smith, Esq.
Defendant's Attorney

JDIS ENTERED INITIALS atf

THE DEFENDANT:

☐ admitted guilt to violation of condition(s) _____ of the term of supervision.

☑ was found in violation of condition(s) 1 after denial of guilt.

The defendant is adjudicated guilty of these violations:

Violation Number	Nature of Violation	Violation Ended
Standard Condition Violation No. 1	The defendant shall not commit another federal, state or local crime	June 2, 2011

The defendant is sentenced as provided in pages 2 through 2 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has not violated condition(s) _____ and is discharged as to such violation(s) condition.

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.

October 31, 2012
Date of Imposition of Judgment

Last Four Digits of Defendant's Soc. Sec. No.: 9373

Defendant's Year of Birth: 1982

City and State of Defendant's Residence:
Woonsocket, RI

Mary M. Lisi
Signature of Judge

Mary M. Lisi
Chief Judge
Name and Title of Judge

November 5, 2012
Date

AO 245D (Rev. 09/11) Judgment in a Criminal Case for Revocation
Sheet 2 — Imprisonment

Judgment — Page 2 of 2

DEFENDANT: Robert O. Robinson
CASE NUMBER: 1:01CR00103-01ML

IMPRISONMENT

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

24 months incarceration to be served consecutively to the term imposed in CR11-147-01 on 10/31/2012.

☐ 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 12/26/12 to SCH

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL