IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,		
	:	
Plaintiff,		
	:	
vs.		Case No. 3:09cr181(1)
	:	
ELMO BAILEY,		JUDGE WALTER H. RICE
	:	
Defendant.		

DECISION AND ENTRY ADOPTING UNOPPOSED REPORT AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE (DOC. #122); SUSTAINING PETITIONER'S MOTION TO VACATE SENTENCE UNDER 28 U.S.C. § 2255, VACATING CONVICTION AND 60-MONTH SENTENCE ON COUNT FOUR AND REDUCING EIGHTEEN YEAR AGGREGATE SENTENCE IMPOSED ON JANUARY 6, 2011 (DOC. #61), REFLECTED IN A JUDGMENT ENTRY FILED JANUARY 6, 2011 (DOC. #64) TO ONE OF TIME SERVED, WITH FIVE YEAR PERIOD OF SUPERVISED RELEASE TO FOLLOW; CONVICTION AND SENTENCE OF 156 MONTHS IMPOSED UPON CONVICTION OF HOBBS ACT CONSPIRACY, COUNT TWO OF INDICTMENT, IS NOT VACATED AND REMAINS IN FULL FORCE AND EFFECT, DEFENDANT ORDERED TO BE RELEASED IMMEDIATELY; THREE MONTH SENTENCE IMPOSED ON CONTEMPT CONVICTION VACATED; DEFENDANT TO REPORT TO THE UNITED STATES PROBATION OFFICE IN THE SOUTHERN DISTRICT OF OHIO AT DAYTON WITHIN THREE CALENDAR DAYS OF RELEASE TO BEGIN SERVING FIVE YEAR PERIOD OF SUPERVISED RELEASE; TERMINATION ENTRY

Pursuant to the reasoning and citations of authority set forth in the Report and Recommendations of the United States Magistrate Judge, filed August 12, 2020 (Doc. #122), a Report and Recommendations to which the government does not object, this Court adopts said Report and Recommendations in their entirety and, in so doing, grants the Defendant's Motion to

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Vacate Sentence, pursuant to § 28 U.S.C. 2255, to the extent that said motion is granted by vacating the conviction and sentence on Count Four of the Indictment, the 18 U.S.C. § 924(c) firearms charge predicated upon the Hobbs Act conspiracy. Pursuant to the 2019 Supreme Court Decision in *United States v. Davis*, 139 S.Ct. 2319 and its progeny, this Court recognizes that the Hobbs Act conspiracy conviction can no longer serve as a predicate offense for the § 924(c) firearms conviction. Accordingly, the 60-month sentence imposed on the § 924(c) firearms charge, Count Four of the Indictment, is vacated. The Defendant's conviction on the Hobbs Act conspiracy, Count Two of the Indictment, is unaffected by this decision.

Upon the agreement of counsel, the sentence on Count Two, the Hobbs Act conspiracy, is reduced from 156 months, imposed on January 6, 2011 (Doc. #61), journalized in a Judgment Entry of the same date (Doc. #64), to one of time served. Defendant is to serve the originally imposed five-year period of supervised release upon the conditions ordered at sentencing.

Upon the agreement of counsel and the Court, the three-month contempt sentence imposed by the Court on April 21, 2011 (Doc. #74), journalized by Judgment Entry of April 25, 2011 (Doc. #76), is vacated.

Defendant is to be immediately released.

Defendant is to report to the United States Probation Department at Dayton, Ohio, not later than three business days after release, to begin serving his five-year period of supervised release.

The captioned cause is ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

September 3, 2020

WALTER H. RICE
UNITED STATES DISTRICT JUDGE

Copies to:

Brent Tabacchi
Kevin Schad
US Marshal