

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

UNITED STATES OF AMERICA	:	
	:	
v.	:	
	:	Case No. 5:24-cr-2 (MTT)
ANTONIO JERNARD WHITEHEAD,	:	
	:	
Defendant.	:	
	:	

RECOMMENDATION

Defendant Antonio Jernard Whitehead pleaded guilty to count two of an indictment charging him with possession of fentanyl with intent to distribute and was sentenced on June 5, 2024, to a term of 168 months in prison, consecutive to revocation sentences in two prior federal cases, for a total term of 216 months. Since his conviction he has filed two *pro se* motions requesting a document or statement from the Court showing “that I got two point reduction for being on supervise[d] release so it can be readjusted off my criminal history.” Docs. 39, 40.

Although it is not clear what relief Defendant is seeking, his requests do not appear to be authorized by statute or the Sentencing Guidelines and are unsupported by the record. The record of this case shows that on June 5, 2024, Defendant was sentenced to 168 months imprisonment after pleading guilty to possession with intent to distribute fentanyl, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B)(vi). Due to *ex post facto* considerations pertaining to Career Offender designation created by *United States v. Dupree*, 57 F.4th 1269 (11th Cir. 2023), the 2021 Guidelines Manual, in effect when the

instant offense was committed, was used to calculate the guideline range. The presentence report, which the Court adopted without change, calculated Defendant's guideline range as 151 to 188 months based on a Total Offense Level 31 and a Criminal History Category IV. PSR, Doc. 25, ¶ 115. The defendant's total criminal history score of eight included the application of two "status points" (for committing the offense while under a criminal justice sentence) under §4A1.1(d) of the 2021 Guidelines Manual. PSR, Doc. 25, ¶ 66. The Court then considered Amendment 821 to the Sentencing Guidelines, which relates to the application of criminal history "status points," and determined that the amendment would have removed the defendant's "status points," thereby reducing the total criminal history score to six, the Criminal History Category to III, and the guideline range to 135 to 168 months.

As required by USSG §1B1.11, the Court adopted, in its entirety, the guideline range calculated with the 2021 Guidelines Manual while considering the impact of Amendment 821, which included the criminal history score of eight. As reflected in the Statement of Reasons, the Court varied downward from the guideline range and sentenced the defendant within a guideline range of 135 to 168 months, as if his total criminal history score were six. Doc. 30, p. 4. However, because the Court properly calculated the guideline range while considering subsequent amendments, the defendant's criminal history score of eight cannot be amended.

For the foregoing reasons, it is **RECOMMENDED** that Defendant's Motions requesting a statement that he received a two-point deduction (Docs. 39, 40) be **DENIED**.

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation, or seek an extension of time to file objections, WITHIN FOURTEEN (14) DAYS after being served with a copy thereof. The District Judge shall make a de novo determination of those portions of the Recommendation to which objection is made. All other portions of the Recommendation may be reviewed for clear error.

The parties are further notified that, pursuant to Eleventh Circuit Rule 3-1, “[a] party failing to object to a magistrate judge’s findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court’s order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice.”

SO RECOMMENDED, this 18th day of April, 2025.

s/ Charles H. Weigle
Charles H. Weigle
United States Magistrate Judge