

MANDATE

S.D.N.Y. – N.Y.C.
20-cr-378
Liman, J.

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 4th day of August, two thousand twenty-three.

Present:

Steven J. Menashi,
Myrna Pérez,
Maria Araújo Kahn,
Circuit Judges.

USDC SDNY
DOCUMENT
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DOC #:
DATE FILED: Aug 25 2023

United States of America,

Appellee,

v.

22-673

Herode Chancy, Michael Albarella,

Defendants,

Adedayo Ilori,

Defendant-Appellant.

Elizabeth M. Johnson, counsel for Appellant, moves for permission to withdraw as counsel pursuant to *Anders v. California*, 386 U.S. 738 (1967), and the Government moves to dismiss the appeal as barred by an appeal waiver, or in the alternative, for summary affirmance. Upon due consideration, it is hereby ORDERED that the *Anders* motion is DENIED; the motion to dismiss is GRANTED with respect to Appellant's appeal of his terms of imprisonment and supervised release, forfeiture, and special assessment; and the motion for summary affirmance is GRANTED IN PART with respect to the judgment of conviction and all conditions of supervised release except for the mandatory drug-testing condition, for which it is DENIED IN PART.

Our independent review of the record, *see Penson v. Ohio*, 488 U.S. 75, 80 (1988), reveals that the district court orally pronounced a drug-testing condition of supervised release that: (1) Probation

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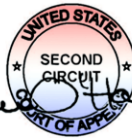
had recommended against imposing because Appellant had no substance-abuse history; and (2) was then marked as suspended in the written judgment, which contradicted the oral pronouncement but adopted Probation's recommendation verbatim. Because the drug testing condition was orally pronounced at sentencing, it is a part of Appellant's sentence. *See United States v. Rosario*, 386 F.3d 166, 168 (2d Cir. 2004). On this record, however, we are left with the firm conviction that the district court mistakenly included the condition as part of its oral pronouncement of the sentence.

Accordingly, the judgment is VACATED in part, and the matter is REMANDED to the district court for the limited purpose of striking the drug-testing condition from the judgment.

Furthermore, because the second part of Appellant's appendix contains sensitive information that should not have been filed unredacted on the public docket, *see* Fed. R. App. P. 25(a)(5); Fed. R. Crim. P. 49.1(a), the Clerk of the Court is respectfully ordered to seal docket entry 27 from public view.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit