

**United States District Court
Central District of California**

UNITED STATES OF AMERICA vs.

Docket No.

CR 19-329-GWJS 3Defendant BYUNGSU KIMSocial Security No. N O N Eakas: Neo

(Last 4 digits)

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government, the defendant appeared by VTC on this

MONTH	DAY	YEAR
01	20	2022

COUNSELJeremy I. Lessem, Ret.

(Name of Counsel)

PLEA**GUILTY**, and the court being satisfied that there is a factual basis for the plea.**NOLO
CONTENDERE****NOT
GUILTY****FINDING**

There being a finding/verdict of **GUILTY**, defendant has been convicted as charged of the offense(s) of:
16 U.S.C. § 3372(a)(2)(B),(a)(4),3373(d)(1); 18:2(a),(b) ATTEMPTING TO EXPORT PLANTS TAKEN IN VIOLATION OF STATE LAW; AIDING AND ABETTING AND CAUSING AN ACT TO BE DONE as charged in Count 2 of the Indictment.

**JUDGMENT
AND PROB/
COMM
ORDER**

The Court asked whether there was any reason why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of: **TWENTY-FOUR (24) MONTHS.**

It is ordered that the defendant shall pay to the United States a special assessment of \$100, which is due immediately. Any unpaid balance shall be due during the period of imprisonment, at the rate of not less than \$25 per quarter, and pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program.

Defendant shall pay restitution in the total amount of \$3,985 to victims as set forth in a separate victim list prepared by the probation office which this Court adopts and which reflects the Court's determination of the amount of restitution due to each victim. The victim list, which shall be forwarded to the fiscal section of the clerk's office, shall remain confidential to protect the privacy interests of the victims.

Restitution shall be due during the period of imprisonment, at the rate of not less than \$25 per quarter, and pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program. If any amount of the restitution remains unpaid after release from custody, nominal monthly payments of at least 10% of defendant's gross monthly income but not less than \$50, whichever is greater, shall be made during the period of supervised release and shall begin 90 days after the commencement of supervision. Nominal restitution payments are ordered as the Court finds that the defendant's economic circumstances do not allow for either immediate or future payment of the amount ordered.

Pursuant to 18 U.S.C. § 3612(f)(3)(A), interest on the restitution ordered is waived because the defendant does not have the ability to pay interest. Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

The defendant shall comply with Second Amended General Order No. 20-04.

Pursuant to Guideline § 5E1.2(a), all fines are waived as the Court finds that the defendant has established that he is unable to pay and is not likely to become able to pay any fine.

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant, Byungsu Kim, is hereby committed on Count 2 of the 2-Count Indictment to the custody of the Bureau of Prisons for a term of 24 months.

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Upon release from imprisonment, the defendant shall be placed on supervised release for a term of three years under the following terms and conditions:

1. The defendant shall comply with the rules and regulations of the United States Probation & Pretrial Services Office and Second Amended General Order 20-04, including the conditions of probation and supervised release set forth in Section III of Second Amended General Order 20-04.
2. During the period of community supervision, the defendant shall pay the special assessment and restitution in accordance with this judgment's orders pertaining to such payment.
3. The defendant shall cooperate in the collection of a DNA sample from the defendant.
4. The defendant shall comply with the immigration rules and regulations of the United States, and if deported from this country, either voluntarily or involuntarily, not reenter the United States illegally. The defendant is not required to report to the Probation & Pretrial Services Office while residing outside of the United States; however, within 72 hours of release from any custody or any reentry to the United States during the period of Court-ordered supervision, the defendant shall report for instructions to the United States Probation Office located at: the 300 N. Los Angeles Street, Suite 1300, Los Angeles, CA 90012-3323.
5. The defendant shall apply all monies received from income tax refunds, lottery winnings, inheritance, judgments and any other financial gains to the Court-ordered financial obligation.

The Government's request to dismiss the remaining counts of the underlying Indictment is granted.

The Court advises defendant of his rights to an appeal.

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised Release within this judgment be imposed. The Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.

January 24, 2022

Date



HON. GEORGE H. WU, U. S. District Judge

It is ordered that the Clerk deliver a copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Clerk, U.S. District Court

January 24, 2022

Filed Date

By /s/ Javier Gonzalez

Deputy Clerk

The defendant must comply with the standard conditions that have been adopted by this court (set forth below).

STANDARD CONDITIONS OF PROBATION AND SUPERVISED RELEASE

While the defendant is on probation or supervised release pursuant to this judgment:

1. The defendant must not commit another federal, state, or local crime;
2. The defendant must report to the probation office in the federal judicial district of residence within 72 hours of imposition of a sentence of probation or release from imprisonment, unless otherwise directed by the probation officer;
3. The defendant must report to the probation office as instructed by the court or probation officer;
4. The defendant must not knowingly leave the judicial district without first receiving the permission of the court or probation officer;
5. The defendant must answer truthfully the inquiries of the probation officer, unless legitimately asserting his or her Fifth Amendment right against self-incrimination as to new criminal conduct;
6. The defendant must reside at a location approved by the probation officer and must notify the probation officer at least 10 days before any anticipated change or within 72 hours of an unanticipated change in residence or persons living in defendant's residence;
7. The defendant must permit the probation officer to contact him or her at any time at home or elsewhere and must permit confiscation of any contraband prohibited by law or the terms of supervision and observed in plain view by the probation officer;
8. The defendant must work at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons and must notify the probation officer at least ten days before any change in employment or within 72 hours of an unanticipated change;
9. The defendant must not knowingly associate with any persons engaged in criminal activity and must not knowingly associate with any person convicted of a felony unless granted permission to do so by the probation officer. This condition will not apply to intimate family members, unless the court has completed an individualized review and has determined that the restriction is necessary for protection of the community or rehabilitation;
10. The defendant must refrain from excessive use of alcohol and must not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
11. The defendant must notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
12. For felony cases, the defendant must not possess a firearm, ammunition, destructive device, or any other dangerous weapon;
13. The defendant must not act or enter into any agreement with a law enforcement agency to act as an informant or source without the permission of the court;
14. The defendant must follow the instructions of the probation officer to implement the orders of the court, afford adequate deterrence from criminal conduct, protect the public from further crimes of the defendant; and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

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The defendant must also comply with the following special conditions (set forth below).

STATUTORY PROVISIONS PERTAINING TO PAYMENT AND COLLECTION OF FINANCIAL SANCTIONS

The defendant must pay interest on a fine or restitution of more than \$2,500, unless the court waives interest or unless the fine or restitution is paid in full before the fifteenth (15th) day after the date of the judgment under 18 U.S.C. § 3612(f)(1). Payments may be subject to penalties for default and delinquency under 18 U.S.C. § 3612(g). Interest and penalties pertaining to restitution, however, are not applicable for offenses completed before April 24, 1996.

If all or any portion of a fine or restitution ordered remains unpaid after the termination of supervision, the defendant must pay the balance as directed by the United States Attorney's Office. 18 U.S.C. § 3613.

The defendant must notify the United States Attorney within thirty (30) days of any change in the defendant's mailing address or residence address until all fines, restitution, costs, and special assessments are paid in full. 18 U.S.C. § 3612(b)(1)(F).

The defendant must notify the Court (through the Probation Office) and the United States Attorney of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay a fine or restitution, as required by 18 U.S.C. § 3664(k). The Court may also accept such notification from the government or the victim, and may, on its own motion or that of a party or the victim, adjust the manner of payment of a fine or restitution under 18 U.S.C. § 3664(k). See also 18 U.S.C. § 3572(d)(3) and for probation 18 U.S.C. § 3563(a)(7).

Payments will be applied in the following order:

1. Special assessments under 18 U.S.C. § 3013;
2. Restitution, in this sequence (under 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid):
 - Non-federal victims (individual and corporate),
 - Providers of compensation to non-federal victims,
 - The United States as victim;
3. Fine;
4. Community restitution, under 18 U.S.C. § 3663(c); and
5. Other penalties and costs.

CONDITIONS OF PROBATION AND SUPERVISED RELEASE PERTAINING TO FINANCIAL SANCTIONS

As directed by the Probation Officer, the defendant must provide to the Probation Officer: (1) a signed release authorizing credit report inquiries; (2) federal and state income tax returns or a signed release authorizing their disclosure and (3) an accurate financial statement, with supporting documentation as to all assets, income and expenses of the defendant. In addition, the defendant must not apply for any loan or open any line of credit without prior approval of the Probation Officer.

The defendant must maintain one personal checking account. All of defendant's income, "monetary gains," or other pecuniary proceeds must be deposited into this account, which must be used for payment of all personal expenses. Records of all other bank accounts, including any business accounts, must be disclosed to the Probation Officer upon request.

The defendant must not transfer, sell, give away, or otherwise convey any asset with a fair market value in excess of \$500 without approval of the Probation Officer until all financial obligations imposed by the Court have been satisfied in full.

These conditions are in addition to any other conditions imposed by this judgment.

RETURN

I have executed the within Judgment and Commitment as follows:

Defendant delivered on _____ to _____
 Defendant noted on appeal on _____
 Defendant released on _____
 Mandate issued on _____
 Defendant's appeal determined on _____
 Defendant delivered on _____ to _____
 at _____
 the institution designated by the Bureau of Prisons, with a certified copy of the within Judgment and Commitment.

United States Marshal

 Date By _____
 Deputy Marshal

CERTIFICATE

I hereby attest and certify this date that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

Clerk, U.S. District Court

 Filed Date By _____
 Deputy Clerk

FOR U.S. PROBATION OFFICE USE ONLY

Upon a finding of violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) _____
 Defendant Date

 U. S. Probation Officer/Designated Witness Date

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF DEL NORTE

Plaintiff: The People of the State of California

Counsel: ☐ Bernabe ☐ Bryant ☐ Micks ☐ Padilla ☐ Specchio ☐ Taney
☒ Zocchi ☐
☐ Telephonic

Defendant: BYUNG SU KIM

Counsel Present: **MORRIS** ☐ Not Present
☐ Futrell ☐ Hoopes ☐ Morris ☐ Olson
 Private Counsel:

Judge: ☒ MCELFRISH ☐

Clerk: ☐ Crockett ☐ Hisoire ☐ Lawrence ☐ Robson ☒ Williams

Bailiff: ☒ Present ☐ Not present

Probation Officer: ☒ Not Present

CSR: ☐ Hofstad ☐ King ☐

Cert. Interpreter:

☒ Statement given pursuant to GC Section 68561(g)

Language: ☐ Spanish ☒ Korean

Date: 04/29/2022

Case Number: CRF 18-9581

Charges:

PC 182(a)(1)
PC 182(a)(1)
PC 182(a)(1)

PC 594(a)

FELONY JUDGMENT & SENTENCING

☒ **SENTENCING**

DEFENDANT: ☒ present ☐ not present ☒ in custody ☐ out of custody

☐ Bail Bond ☐ City Fees

☐ Continuance was request by ☐ People ☐ Defense ☐ Probation ☐ Stipulation

☐ C.P.O. ☐ Conduct Order

☐ Judgment and Sentencing ☐

Continued to _____ at _____

☒ The Court has read and considered the Probation Officer's Report and Recommendation.

☒ Defendant waived arraignment for judgment and sentencing.

☐ Time Waived ☐ Continues to be waived for Sentencing

☒ Defendant stated that there was no legal cause why sentence should not now be pronounced.

BY ORDER OF THE COURT:

☒ The negotiated plea is accepted ☒ Remaining counts dismissed

☐ C.P.O. ☐ Conduct Order ☐ Dismissed

☐ Stipulated sentence accepted, therefore the Court made no findings of factors in mitigation or aggravation

☐ Imposition of sentence is suspended ☐ Imposition ☐ Execution of sentence previously suspended is now imposed

☐ Probation is granted as the Court finds defendant is a suitable candidate for a grant of probation. ☐ Terms and conditions attached

☒ Probation is denied as the Court finds defendant not to be a suitable candidate for a grant of probation. ☒ Probation Terminated

☐ The Court made findings as to the factors in mitigation /aggravation.

☐ The Court finds the ☐ Mitigated (L) ☐ Middle (M) ☐ 1/3 Middle ☐ Aggravated (U) term applies

IT IS THE JUDGMENT AND SENTENCE OF THE COURT:

COUNT	CODE/SECTION	VIOLATION	TERM	L/M/U	1/3M	CC/CS
3	PC 182(a)(1)	Conspiracy	2 years	M		
4	PC 594(a)	Vandalism over \$400	2 years	M		CC

total = 2 years

☐ Execution of sentence is suspended

☐ Serve _____ Days in Jail

cc=concurrent/cs=consecutive

☒ Credit for time served 93 Actual days + 92 Conduct Credits = 185 Total Days ☒ Advised of Parole Consequences.

☒ Advised of Appeal Consequences.

☐ 1202.4 PC Fine \$ ☐ 1202.44 ☒ 1202.45 PC Fine \$ 300.00 stayed pending completion of parole/probation.

☐ 1465.8 PC Ct OPS \$40.00 ☐ City Fee \$61.87 ☐ GC 70373 \$30.00 M/F ☐ PC 1202.5 \$10.00 ☒ Fine \$ 10,000.00

☐ Payable at \$ _____ per month starting _____ Due in full by _____

☒ No ability to reimburse for ☒ public defender fees ☐ Probation Officer's report ☒ PC 296 DNA Sample

☒ Defendant remanded to the custody of the DNCJ ☒ to serve the sentence ☒ Pursuant to ☒ PC 1170(h)(5)(A) - Jail Time

☐ PC 1170(h)(B)-Split Sent. ☐ For transport within 10 working days to the reception center at San Quentin.

☐ Defendant is released ☐ to remain on O.R. ☐ Bail Bond \$ _____ ☐ Forfeited and Exonerated ☐ Exonerated

☒ Defendant states he/she ☐ does ☒ does not own firearms. ☐ **PPRF presented to forward to Probation Department.

☒ **PPRF Findings signed and filed in open court. in the United States **Prohibited Persons Relinquishment Form

OTHER ORDERS: Restitution ordered in the amount of \$411,773.54, to be

paid to the California Department of Fish and Game / wildlife for

the preservation fund, ordered joint and several liability between

co-defendants. Defendant is expected to begin making payment

arrangements once released. Court fines are stayed pending

Copies To: ☒ District Attorney ☒ Defense Counsel ☒ Probation ☒ Sheriff ☐ C.C.P.D. ☐ HASP ☐ Victim Witness

☐ Yurok Tribe ☐ ☐ C.W.S. \$ _____ ☐ CWS not a fine: _____ hrs.

☐ Amanda Crockett/Judicial Assign ☒ Judy Reynolds/Interpreter Coord. ☐ Jury Services Clerk ☐ County Counsel ☒ Conv. Folder

☐ Behavioral Health (MHD)

payment of restitution. The \$300.00 fine pursuant to PC1202.45 was not ordered, details read into the record. The Court made the finding that a split sentence would not be appropriate, and the defendant is a flight risk.

Defendant was prohibited to enter the United States without authorization, and stay out of local, state, and federal parks within the United States. Defendant ordered to forfeit any nursery license he may have in the United States, and stay out of any businesses within the United States involving plants.

Count 3 to be served consecutive to any and all other time defendant may be serving.