

session in which he requested a codefendant ("Moore") to provide training in explosive devices to the militia.³ During another training session, Looker and his second-in-command ("Richards")⁴ met another codefendant to discuss the manufacture of C-4 plastic explosives and nitroglycerine. Looker ordered the manufacture of the explosives and stated that he had a way to distribute them. He also ordered Richards to obtain the necessary laboratory equipment. Looker and Richards later met with Moore to discuss and order the manufacture of detonators for the explosives.

In 1995, pursuant to Looker's orders, Richards traveled to Pennsylvania to meet with still another codefendant ("Coon"). During this meeting, Richards arranged the transfer of C-4 plastic explosives, TNT, an unregistered sawed-off shotgun, and explosives-related materials. These items were eventually "sold" to the undercover FBI agent pursuant to Looker's orders. Looker appointed Coon as the supply and ordnance officer for the militia, and Coon supplied additional materials and explosive devices, including grenades.

Finally, at a command and staff meeting, Looker led a discussion concerning the identification of "targets" which could be attacked in the event of armed confrontation between the militia and the federal government. One of Looker's county commanders ("Rogers"), who was also a fireman, stated that he had access to blueprints for the FBI's Criminal Justice Identification Section facility near Clarksburg. Rogers provided Looker and Richards with photographs of the blueprints for the FBI facility, and plans were made for the destruction of the facility. The photographs were ultimately sold to the undercover agent for \$50,000 with the understanding that he could provide them to a terrorist organization with greater ability to make an assault on the facility.

As part of Looker's plea agreement, the parties agreed that the cases would be consolidated for sentencing. The district court determined that the Guidelines range for the offenses involving explosives

³ An explosive device was detonated during this training.

⁴ Richards also served as the militia's intelligence and security officer. Unbeknownst to Looker, Richards was acting as a confidential informant for the FBI.

We review the district court's factual determination concerning Looker's role in the offense for clear error and find none. See United States v. Campbell, 935 F.2d 39, 46 (4th Cir. 1991). Looker organized the Mountaineer Militia and served as its commanding general. Even assuming, as Looker alleges, that some of the negotiations were performed by some of his staff officers, the record clearly shows that they were acting under the authority and pursuant to the orders of the commander. Moreover, there was ample evidence presented that Looker was directly involved in the offenses at issue and even received commissions from the sales to the undercover agent.

We reject Looker's assertion that the district court erred by enhancing his base offense level for possession of explosives with the knowledge, intent, or belief that they would be used in another felony offense.⁶ Looker primarily argues that the Government failed to identify the specific felonies in question. However, this court has held that "§ 2K2.1(b)(5) does not require a defendant's knowledge of a specific offense to be committed." United States v. Cutler, 36 F.3d 406, 408 (4th Cir. 1994). Nevertheless, the record here shows that Looker possessed the materials in question believing that they would be used against the FBI facility in Clarksburg. We find that the district court properly concluded that the destruction of a federal building and the resulting potential for injury or death are separate felonies under the Guidelines.

The district court's enhancement of Looker's base offense level by six levels pursuant to USSG § 2K2.1(b)(1)(F) (providing for an enhancement if more than fifty firearms are involved) was based on the sale of the 1000 improvised explosive devices to the undercover agent. Looker alleges that because USSG § 2K2.1(b)(3) provides for an additional enhancement for offenses involving destructive devices, the improvised explosive devices could not be classified as both destructive devices and firearms. We disagree. Application Note 1 of the Guideline expressly states that the definition of the term "firearm" includes destructive devices. See USSG § 2K2.1, comment. (n.1).

We therefore affirm Looker's convictions and sentence. Looker's

⁶ See USSG § 2K2.1(b)(5).

(Added Pub. L. 102-572, title X, §1003(a)(4), Oct. 29, 1992, 106 Stat. 4524.)

EFFECTIVE DATE

Section applicable to any pending case or any cause of action arising on or after 4 years before Oct. 29, 1992, see section 1003(c) of Pub. L. 102-572, set out as a note under section 2331 of this title.

§ 2339A.¹ Providing material support to terrorists

(a) OFFENSE.—Whoever, within the United States, provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation of section 32, 37, 81, 175, 351, 831, 842(m) or (n), 844(f) or (i), 930(c), 956, 1114, 1116, 1203, 1361, 1362, 1363, 1366, 1751, 1992, 2155, 2156, 2280, 2281, 2332, 2332a, 2332b, 2332c, or 2340A of this title or section 46502 of title 49, or in preparation for, or in carrying out, the concealment or an escape from the commission of any such violation, shall be fined under this title, imprisoned not more than 10 years, or both.

(b) DEFINITION.—In this section, the term “material support or resources” means currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

(Added Pub. L. 103-322, title XII, §120005(a), Sept. 13, 1994, 108 Stat. 2022; amended Pub. L. 104-132, title III, §223, Apr. 24, 1996, 110 Stat. 1255; Pub. L. 104-294, title VI, §§601(b)(2), (s)(2), (3), 604(b)(5), Oct. 11, 1996, 110 Stat. 3498, 3502, 3506.)

AMENDMENTS

1996—Pub. L. 104-294, §604(b)(5), amended directory language of Pub. L. 103-322, §120005(a), which enacted this section.

Pub. L. 104-132 amended section generally, reenacting section catchline without change and redesignating provisions which detailed what constitutes offense, formerly contained in subsec. (b), as subsec. (a), inserting references to sections 37, 81, 175, 831, 842, 956, 1362, 1366, 2155, 2156, 2332, 2332a, 2332b, and 2340A of this title, striking out references to sections 36, 2331, and 2339 of this title, redesignating provisions which define “material support or resource”, formerly contained in subsec. (a), as subsec. (b), substituting provisions excepting medicine or religious materials from definition for provisions excepting humanitarian assistance to persons not directly involved in violations, and struck out subsec. (c) which authorized investigations into possible violations, except activities involving First Amendment rights.

Subsec. (a). Pub. L. 104-294, §601(s)(2), (3), inserted “930(c),” before “956,” “1992,” before “2155,” “2332c,” before “or 2340A of this title”, and “or an escape” after “concealment”.

Subsec. (b). Pub. L. 104-294, §601(b)(2), which directed substitution of “2332” for “2331”, “2332a” for “2339”, “37” for “36”, and “or an escape” for “of an escape”, could not be executed because the provisions for which the substitutions were to be made did not appear in text subsequent to the general amendment by Pub. L. 104-132. See above.

¹ So in original. No section 2339 has been enacted.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 604(b)(5) of Pub. L. 104-294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104-294, set out as a note under section 13 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1956, 2332b, 2339B of this title; title 28 section 1605.

§ 2339B. Providing material support or resources to designated foreign terrorist organizations

(a) PROHIBITED ACTIVITIES.—

(1) UNLAWFUL CONDUCT.—Whoever, within the United States or subject to the jurisdiction of the United States, knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 10 years, or both.

(2) FINANCIAL INSTITUTIONS.—Except as authorized by the Secretary, any financial institution that becomes aware that it has possession of, or control over, any funds in which a foreign terrorist organization, or its agent, has an interest, shall—

(A) retain possession of, or maintain control over, such funds; and

(B) report to the Secretary the existence of such funds in accordance with regulations issued by the Secretary.

(b) CIVIL PENALTY.—Any financial institution that knowingly fails to comply with subsection (a)(2) shall be subject to a civil penalty in an amount that is the greater of—

(A) \$50,000 per violation; or

(B) twice the amount of which the financial institution was required under subsection (a)(2) to retain possession or control.

(c) INJUNCTION.—Whenever it appears to the Secretary or the Attorney General that any person is engaged in, or is about to engage in, any act that constitutes, or would constitute, a violation of this section, the Attorney General may initiate civil action in a district court of the United States to enjoin such violation.

(d) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over an offense under this section.

(e) INVESTIGATIONS.—

(1) IN GENERAL.—The Attorney General shall conduct any investigation of a possible violation of this section, or of any license, order, or regulation issued pursuant to this section.

(2) COORDINATION WITH THE DEPARTMENT OF THE TREASURY.—The Attorney General shall work in coordination with the Secretary in investigations relating to—

(A) the compliance or noncompliance by a financial institution with the requirements of subsection (a)(2); and

(B) civil penalty proceedings authorized under subsection (b).

(3) REFERRAL.—Any evidence of a criminal violation of this section arising in the course of an investigation by the Secretary or any other Federal agency shall be referred immediately to the Attorney General for further investigation. The Attorney General shall timely notify the Secretary of any action taken on referrals from the Secretary, and may refer in-

and destructive devices was 151 to 188 months. The court further concluded that the terrorism offenses were not addressed under the Guidelines, and, pursuant to 18 U.S.C. § 3553(b) (1994), determined that the appropriate sentence for these offenses would be twenty-eight months each, to be served consecutively, for a total of fifty-six months. The district court imposed a sentence of 120 months each on the two offenses involving the transportation of destructive devices, to be served concurrent with each other.⁵ The court imposed a sentence of forty months on the offense involving conspiracy to manufacture explosives, to be served consecutively with the 120-month sentences. This resulted in a total sentence of 160 months on the three offenses covered by the Guidelines. Finally, the court ordered that the fifty-six month sentence for the terrorism offenses be served consecutively with the other sentences, for a total sentence of 216 months.

On appeal, Looker alleges that the district court should have ordered that the fifty-six month sentence be served at least partially concurrent with the other sentences so that his maximum exposure would only be 188 months. Because Looker did not object to the sentencing structure at trial, we review his current claim for plain error and find none. See generally United States v. Olano, 507 U.S. 725 (1993). Looker alleges that the "total punishment" referred to in USSG § 5G1.2(d) is 188 months in his case and that since his total sentence of 216 months exceeds this "total punishment" it is clearly erroneous. We disagree. The Guidelines range of 151 to 188 months applies only to the three offenses involving explosives and destructive devices, and the sentence imposed (160 months) falls within that range. The district court properly found that the terrorism offenses required a separate sentencing calculation because those offenses were not addressed in the Guidelines. We find Looker's reliance on United States v. Joetski, 952 F.2d 1090 (9th Cir. 1991), misplaced. The Joetski court remanded the case for resentencing because the trial court failed to expressly state that the sentences were to be served consecutively. There is no such infirmity here. The district court explicitly stated which sentences were concurrent and which were consecutive.

⁵ This was the statutory maximum for these offenses.

28 U.S.C. § 2255. A § 2255 petition is successive when the first petition was dismissed on the merits. Harvey v. Horan, 278 F.3d 370, 379 (4th Cir. 2002).

III. Discussion

In this case, this Court considered and denied on the merits the petitioner's first § 2255 motion. The petitioner's current motion is essentially a subsequent petition under § 2255, which challenges the same sentence that was challenged in his first § 2255 motion. The petitioner did not obtain authorization from the Fourth Circuit to file a successive § 2255 motion in this Court. Because the petitioner did not obtain the appropriate authorization from the Fourth Circuit to file a second or successive § 2255 petition, this Court must dismiss petitioner's motion for lack of jurisdiction.

Even if this Court did not find that the petitioner's motion is a successive § 2255, the motion is without merit. Federal Rule of Civil Procedure 15(c)(1)(B) provides for the relation back of late amendments to a timely filed original petition when "the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out--or attempted to be set out--in the original pleading." To the extent the petitioner is alleging ineffective assistance of counsel, the motion does not raise any issues on which this Court has not already made a ruling. Therefore, this Court finds that the petitioner's motion for amendment is futile. Accordingly, the petitioner's motion relating

tian Identity teaches that white Aryans are God's chosen race and that Jews are the offspring of Satan. Aryans who cooperate with Jews and darker races are considered "race-traitors."

Many right-wing extremist groups also espouse anti-government sentiments. In an attempt to live apart from "inferior people," some right-wing groups advocate creating a separate nation from the five states comprising the northwest region of the United States—Washington, Oregon, Idaho, Montana, and Wyoming.

Examples of right-wing extremist groups operating in the United States are the Aryan Nations, True Knights of the Ku Klux Klan, and the Republic of Texas. You may recall that in April, 1997, three members of the True Knights of the Ku Klux Klan were arrested and have been found guilty in Texas for planning to blow up a natural gas storage facility as a diversionary tactic prior to robbing an armored carrier. This was the FBI's "Sour Gas" investigation.

As another example, you may be familiar with the FBI's "Rapid Lighting" investigation. This investigation involved a series of criminal acts committed by individuals associated with a domestic terrorist organization known as the Phineas Priesthood. The subjects of the investigation were responsible for at least two bombing/bank robbery incidents in Spokane, Washington, in April and July, 1996. Three subjects were arrested in October, 1996, and a fourth in 1997. Since then, all four have been convicted of all eight felony counts for which they were charged and have received lengthy jail sentences.

Militia groups

Militia groups are often multi-racial, but they are predominately white. Their members often view themselves as "sovereign citizens" who are exempt from the laws and regulations of the U.S. government. Many militia members subscribe to the theory that the federal government is in a conspiracy with the United Nations that would result in the creation of a one-nation world government, or "New World Order." This one-world government would use foreign troops in the United States to seize all privately owned weapons and imprison and execute patriotic militia members.

Many militia groups advocate stockpiling weapons and explosives and conducting paramilitary training as part of their preparation for what they believe will be an inevitable armed conflict with the government and the impending U.N. invasion. Some militia groups openly advocate the overthrow of the federal government.

Since 1992, the United States has seen a growth of militia groups. While the majority of militia members are law abiding citizens, there is a small percentage of members within militia groups who advocate and conspire to commit violent criminal acts. Of particular concern to the FBI is the potential for militias to be infiltrated by extremists who seek to exploit militias and their members in order to further their own violent terrorist agendas.

Militia members who engage in criminal acts commit a wide variety of criminal activity, such as bombings, bank robberies, and destruction of government property. They also file spurious lawsuits and liens designed to harass law enforcement, elected officials, and others, as well as to disrupt the courts. Militia members have engaged in fraudulent financial schemes to raise funds.

As an example, I'd like to mention the FBI's investigation of the Mountaineer Militia. This investigation was initiated in August, 1995. The group had obtained the plans to the FBI Criminal Justice Information Services facility in Clarksburg, West Virginia, and they intended to destroy the facility as part of their war on the U.S. government. The FBI began an undercover investigation and arrested seven key members of the group in October, 1996. All seven have since been convicted and sentenced to lengthy jail sentences.

Puerto Rican terrorist groups

Although the last terrorist incident involving Puerto Rican terrorist groups was a bombing in Chicago in December, 1992, these groups continue to be of concern. Between 1982 and 1994, approximately 44 percent of the terrorist incident committed in the United States and its territories are attributed to Puerto Rican terrorist groups. Efforts are continuing to locate fugitives still at large from these incidents.

Puerto Rican terrorist groups believe the liberation of Puerto Rico from the United States justifies the use of violence to obtain that objective. These groups characterize their terrorism activities as "acts of war" against invading forces and, when arrested, they consider themselves to be "prisoners of war" who must be treated as such according to the Geneva Convention. Clandestine behavior and security are of utmost importance in these group's activities.

The EPB-Macheteros has been the most active and violent of the Puerto Rican-based terrorist groups it emerged in 1978. The FALN (Armed Forces for Puerto