

Case No. \_\_\_\_\_

JUL 01 2014

Ex Parte

371st District Court  
BY \_\_\_\_\_ DEPUTY

Robert David Mielnicki

Tarrant County, Texas

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**Brief in Support of Application for Writ of Habeas Corpus**

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To the Hon. Judge:

Robert David Mielnicki submits this brief in support of his application for writ of habeas corpus and shows as follows:

**Introduction**

Mielnicki seeks to vacate his sentence and guilty plea in this case because it was involuntary. He pleaded guilty with an agreed 15 year sentence in this case based on that sentence's running concurrently with any sentence to be imposed on the revocation of his federal supervised release. Subsequent to this plea bargain, Mielnicki's federal supervised release was revoked, and he was sentenced to two 24 months terms to be served consecutive to each other and this case.

**The Federal Case**

In April of 2007, Mielnicki was indicted for robbery of a federal credit union and conspiracy to rob a federal credit union in Ardmore, Oklahoma.<sup>1</sup>

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<sup>1</sup> Ex. 2, p.9.

He entered guilty pleas to these charges<sup>2</sup> and was sentenced to 48 months confinement in the federal Bureau of Prisons on each count to be served concurrently.<sup>3</sup> This was to be followed by a 36 month period of supervised release.<sup>4</sup> The federal system does not have parole; rather, with the exception of some good time credits that cannot exceed 15% of a sentence, inmates serve their entire sentences and are then placed on a period of supervised release, which is a parole-like transition period.<sup>5</sup> Conditions of supervised release include not committing any new federal, state, or local offenses.<sup>6</sup>

Mielnicki was released from the Bureau of Prisons and located to the Tarrant County area. Jurisdiction of his case was transferred from the Eastern District of Oklahoma to the Northern District of Texas.<sup>7</sup> Shortly after getting on supervised release, Mielnicki committed this robbery. Though aware of this offense and the filing of a robbery charge in Tarrant County, the U.S. Probation officer supervising Mielnicki recommended that no action be taken pending resolution of the Tarrant County charge.<sup>8</sup> The district judge agreed with this recommendation.<sup>9</sup>

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<sup>2</sup> Ex. 2, p.13.

<sup>3</sup> Ex. 2, p.12.

<sup>4</sup> Ex. 2, p.14.

<sup>5</sup> See generally 18 U.S.C. § 3583.

<sup>6</sup> *Id.* § 3583(d).

<sup>7</sup> Ex. 1.

<sup>8</sup> Ex. 3, pp.2-3.

<sup>9</sup> Ex. 3, p.3.

### **This Case**

This robbery was filed as Case No. 1230331. The allegation was robbery by threat in violation of Texas Penal Code section 29.02(a)(2). The indictment included a habitual offender notice. Ken Gordon was appointed to represent Mielnicki. A plea bargain was negotiated. It was for waiver of the habitual offender notice (it was replaced with a repeat offender notice) and a 15year sentence to run concurrent with the any sentence to be imposed on the supervised release violation. Mielnicki pleaded guilty, and the court followed the plea bargain sentencing him to 15 years with credit for back time. This occurred on September 19, 2011. Mielnicki had been in custody since February 27, 2011, the date of this robbery.

### **Resolution of the Federal Supervised Release**

Seventeen days later, the government moved to revoke Mielnicki's supervised release based on several violations including the new robbery offense.<sup>10</sup> He was brought into federal custody on a writ of habeas corpus ad prosequendum.<sup>11</sup> After a hearing on October 27, 2011, Mielnicki's supervised release on each original count of conviction was revoked.<sup>12</sup> He was sentenced to 24 months on each count to run consecutive to each other and to any sentence imposed in the state case.<sup>13</sup>

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<sup>10</sup> Ex. 4.

<sup>11</sup> Exs. 5, 6, & 7.

<sup>12</sup> Ex. H, p.1.

<sup>13</sup> Ex. H, p.1.

### **The Plea in No. 1230331 was Involuntary**

Mielnicki's plea in No. 1230331 was conditioned on the 15-year sentence's running concurrently with any sentence to be imposed on revocation of his federal supervised release violation. Because this has not happened and cannot be made to happen, Mielnicki's plea is involuntary.

The Court of Criminal Appeals addressed a comparable situation in *Ex parte Young*.<sup>14</sup> There, Young pleaded guilty conditioned on his sentence running concurrently with a parole revocation in Colorado.<sup>15</sup> But after the plea, Colorado withdrew its warrant and tolled that sentence telling the defendant that the sentences cannot run concurrently.<sup>16</sup> There was no way to force them to run concurrently.<sup>17</sup> Moreover, an offender serving a state court sentence does not begin serving any subsequent federal sentence until the state sentence has been discharged.<sup>18</sup> Because of this, the Court of Criminal Appeals granted relief allowing Young to withdraw his pleas.<sup>19</sup>

### **The Need for Relief Here**

Mielnicki entered this plea based on the time's running concurrent with any time on his federal supervised release violation. That has not happened and cannot happen. He is now serving his 15-year state sentence. He has no

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<sup>14</sup> 684 S.W.2d 704 (Tex. Crim. App. 1985) (en banc).

<sup>15</sup> *Id.* at 704–05.

<sup>16</sup> *Id.* at 705.

<sup>17</sup> *Id.*

<sup>18</sup> *Leal v. Tombone*, 341 F.3d 427, 428–29 (5th Cir. 2003).

<sup>19</sup> *Id.*

scheduled release date. Because his federal sentence has not yet begun to run and is, therefore, not running concurrent with his 15-year sentence in this case, he will serve almost four years longer than intended by the plea. (Assuming Mielnicki receives the maximum good time credit, he will serve 41 of the 48 months. If he does not, he will serve longer—possibly the full 48 months.) Therefore, his plea in this case was involuntary, and Mielnicki asks this court to grant him relief allowing him to withdraw his guilty plea in this case.

Respectfully submitted,



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(Mr.) Leigh W. Davis  
1901 Central Dr.  
Suite 708 LB 57  
Bedford, TX 76021  
817.868.9500  
817.887.2401 (fax)  
State Bar No. 24029505

**Certificate of Service**

I hereby certify that a copy of this document has been sent by U.S. Postal Service First Class Mail to the Tarrant County Criminal District Attorney's office on June 27, 2014.

A handwritten signature in black ink, appearing to read "Leigh W. Davis", is written over a horizontal line. The signature is stylized with loops and a long horizontal stroke.

(Mr.) Leigh W. Davis



WILLIAM B. GUTHRIE  
U.S. COURT CLERK

RECEIVED  
U.S. DISTRICT COURT  
NORTHERN DIST. OF  
FT WORTH DIVISION  
MAR 25 PM 3:2  
CLERK OF COURT  
TELEPHONE  
(918) 684-7920

United States District Court  
Eastern District of Oklahoma  
P.O. Box 607  
Muskogee, Oklahoma 74402

March 22, 2011

Office of the U.S. Court Clerk  
Northern District of Texas  
501 West 10<sup>th</sup> Street, Room 310  
Ft. Worth, TX 76102-3673

RE: Our Case No. 6:07-CR-22-001-JHP, USA v. Robert David Mielnicki, Jr.  
Your Case No. 4:11-CR-51-A

Dear Clerk:

Enclosed please find certified copies of the Transfer of Jurisdiction, Docket Sheet, Indictment, Judgment, Report on Offender Under Supervision and the financial ledger in the above captioned case. Please acknowledge receipt of these documents on the duplicate copy of my letter enclosed and return it to our office in the envelope provided.

Should you need anything further, please advise.

Sincerely,

WILLIAM B. GUTHRIE, Clerk

By: s/ C. Trzcinski  
Deputy Clerk

WBG:ct

Enclosures

Certified a true copy of an instrument  
on file in my office on 6/4/2014  
Clerk, U.S. District Court,  
Northern District of Texas  
By M J Deputy

PROB 22 (TXN Rev. 5/05)		<b>TRANSFER OF JURISDICTION</b>		CASE NUMBER (TRANS. COURT) 6:07CR00022-001
NAME OF PROBATIONER/SUPERVISED RELEASEE  <b>ROBERT DAVID MIELNICKI, JR.</b>		DISTRICT Eastern District of Oklahoma		CASE NUMBER (REC. COURT) <b>4-11CR-51-A</b>
		NAME OF SENTENCING JUDGE U.S. District Judge James H. Payne		DIVISION Muskogee
DATES OF PROBATION/ SUPERVISED RELEASE		FROM 10/22/2010	MAR 21 2011 WILLIAM B. GUTHRIE Clerk U.S. District Court By: <i>[Signature]</i> Deputy Clerk	
OFFENSE Conspiracy to Commit Credit Union Robbery, 18 USC § 371 and Credit Union Robbery, 18 USC § 2113(a)				
<b>PART 1 - ORDER TRANSFERRING JURISDICTION</b>				
UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OKLAHOMA				
IT IS HEREBY ORDERED that pursuant to 18 USC § 3605, the jurisdiction of the probationer or supervised releasee named above be transferred with the records of this Court to the U.S. District Court for the <u>Northern District of Texas</u> upon that Court's order of acceptance of jurisdiction. This Court hereby expressly consents that the period of probation or supervised release may be changed by the District Court to which this transfer is made without further inquiry of this Court.*				
<u>3/7/11</u> Date		<i>[Signature]</i> U.S. District Judge		
*This sentence may be deleted in the discretion of the transferring Court.				
<b>PART 2 - ORDER ACCEPTING JURISDICTION</b>				
U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS				
IT IS HEREBY ORDERED that jurisdiction over the above-named probationer/supervised releasee be accepted and assumed by this Court from and after the entry of this order.				
I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office. ATTEST:				
WILLIAM B. GUTHRIE Clerk U.S. District Court Eastern District of Oklahoma				
By: <i>[Signature]</i> Deputy Clerk				
Dated <u>3/22/11</u>				
<u>3/14/11</u> Effective Date		<i>[Signature]</i> U.S. District Judge		



United States District Court  
Northern District of Texas

Karen Mitchell  
Clerk of Court

Fort Worth Division  
501 West 10th Street Room 310  
Ft. Worth, TX. 76102-3673

3/18/11

Clerk of Court  
Eastern District of Oklahoma  
PO Box 607  
Muskogee, OK 74402

Defendant Name: Robert David Miclnicki, Jr.

Our Case No. 4:11-CR-51-A

Your Case No. 6:07CR00022-001

Dear Clerk Of The Court:

Pursuant to acceptance of the Transfer of Jurisdiction of the above named defendant, please find enclosed Transfer of Jurisdiction form.

Upon receipt of this order, please forward certified copies of the following:

Indictment/Information  
Judgment  
Docket Report  
Defendant's financial ledger showing balances of restitution/fines, and  
a list of payees and their addresses.

If you wish to electronically certify the documents and email all attachments to this court, please send your email to:  
TKNDml\_Fort Worth Intake

Thank you for your prompt attention to this matter.

Sincerely,  
KAREN MITCHELL  
Clerk of Court

By: s/N. Klingelhoef

N. Klingelhoef  
Deputy Clerk

Enclosure

CLOSED, LC-2, SPS, TRANSF

**U.S. District Court  
Eastern District of Oklahoma (Muskogee)  
CRIMINAL DOCKET FOR CASE #: 6:07-cr-00022-JHP-1  
Internal Use Only**

Case title: USA v. Mielnicki et al  
Magistrate judge case number: 6:07-mj-00046-SPS

Date Filed: 04/11/2007  
Date Terminated: 09/17/2007

Assigned to: District Judge James H.  
Payne

**Defendant (1)**

**Robert David Mielnicki, Jr**  
**TERMINATED: 09/17/2007**  
*also known as*  
**Rob Mielnicki**  
**TERMINATED: 09/17/2007**

represented by **Stephen J. Knorr**  
4815 S Harvard  
Ste 523  
Tulsa, OK 74135  
918-742-1280  
Fax: 918-742-1280  
Email: stephenknorr@att.net  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**  
*Designation: CJA Appointment*

**Pending Counts**

18:371 Conspiracy to Committ Credit  
Union Robbery  
(1)

18:2113(a) Credit Union Robbery  
(2)

**Disposition**

Imprisonment for 48 months.  
Supervised Release for 36 months.  
Special Assessment of \$100.00.  
Restitution of \$3,472.00.

Imprisonment for 48 months.  
Supervised Release for 36 months.  
Special Assessment of \$100.00.

**Highest Offense Level (Opening)**

Felony

**Terminated Counts**

None

**Highest Offense Level (Terminated)**

None

**Disposition**

I hereby certify that the annexed instrument  
is a true and correct copy of the original on  
file in my office.  
ATTEST

**WILLIAM B. GUTHRIE**  
Clerk U.S. District Court  
Eastern District of Oklahoma

By Carla J. Smith  
Deputy Clerk

Dated 3/22/11

**Complaints**

**Disposition**

18:2113(a) Credit Union Robbery

**Interested Party**

**Byedice Wiley**

*Surety*

**TERMINATED: 09/17/2007**

**Plaintiff**

**USA**

represented by **Cheryl R. Triplett**  
 US Attorney (EDOK)  
 1200 W Okmulgee  
 Muskogee, OK 74401  
 918-684-5100  
 Fax: 918-684-5130  
 Email: Cheryl.Triplett@usdoj.gov  
**ATTORNEY TO BE NOTICED**

**Douglas A. Horn**  
 US Attorney (OKED)  
 1200 W. Okmulgee  
 Muskogee, OK 74401  
 918-684-5153  
 Fax: 918-684-5150  
 Email: Doug.Horn@usdoj.gov  
**ATTORNEY TO BE NOTICED**

**Paul G. Hess**  
 US Attorney (OKED)  
 1200 W. Okmulgee  
 Muskogee, OK 74401  
 918-684-5100  
 Fax: 918-684-5150  
 Email: paul.hess@usdoj.gov  
**TERMINATED: 03/07/2011**

Date Filed	#	Docket Text
03/23/2007	1	COMPLAINT approved by Magistrate Judge Steven P. Shreder by USA as to Robert David Mielnicki, Jr (1) (neh, Deputy Clerk) [6:07-mj-00046-SPS] (Entered: 03/26/2007)
03/23/2007	2	WARRANT Issued by Magistrate Judge Steven P. Shreder as to Robert David Mielnicki, Jr (neh, Deputy Clerk) Modified on 3/26/2007 to unrestrict entry (neh, Deputy Clerk). [6:07-mj-00046-SPS] (Entered: 03/26/2007)

04/02/2007	3	RULE 5 PAPERS from Other District as to Robert David Mielnicki, Jr (With attachments) (tah, Deputy Clerk) [6:07-mj-00046-SPS] (Entered: 04/03/2007)
04/09/2007	4	MINUTES of Proceedings - held before Magistrate Judge Steven P. Shreder : Initial Appearance held on 4/9/2007 as to Robert David Mielnicki, Jr (Court Reporter: bn) (tah, Deputy Clerk) [6:07-mj-00046-SPS] (Entered: 04/10/2007)
04/09/2007	5	ORAL MOTION for Appointment of Counsel by Robert David Mielnicki, Jr (tah, Deputy Clerk) [6:07-mj-00046-SPS] (Entered: 04/10/2007)
04/09/2007	6	ORDER by Magistrate Judge Steven P. Shreder, #5 Oral Motion for Appointment of Counsel is GRANTED, appointing CJA attorney for Robert David Mielnicki, Jr (Re: 5 ORAL MOTION for Appointment of Counsel) (tah, Deputy Clerk) [6:07-mj-00046-SPS] (Entered: 04/10/2007)
04/09/2007	7	ORAL MOTION for Detention by USA as to Robert David Mielnicki, Jr (tah, Deputy Clerk) [6:07-mj-00046-SPS] (Entered: 04/10/2007)
04/09/2007	8	ORAL MOTION for Preliminary and Detention Hearing by Robert David Mielnicki, Jr (Re: 7 ORAL MOTION for Detention) (tah, Deputy Clerk) [6:07-mj-00046-SPS] (Entered: 04/10/2007)
04/09/2007	9	MINUTE ORDER by Magistrate Judge Steven P. Shreder, GRANTING Defendant's Oral Motion for Preliminary/Detention Hearing #8. Preliminary/Detention Hearing is set for 4/12/2007 at 10:00 AM in Courtroom 4, Room 420, US Courthouse, 5th & Okmulgee, Muskogee, OK before Mag. Judge Steven P. Shreder. (Re: 8 ORAL MOTION for Hearing) (tah, Deputy Clerk) [6:07-mj-00046-SPS] (Entered: 04/10/2007)
04/11/2007	10	DEFENDANT INFORMATION SHEET as to Robert David Mielnicki, Jr (tah, Deputy Clerk) Modified on 4/12/2007 to unrestrict entry (tah, Deputy Clerk). (Entered: 04/12/2007)
04/11/2007	12	INDICTMENT by USA as to Robert David Mielnicki, Jr (1) count(s) 1, 2 and David Lee Wiley (2) count(s) 1, 2 (tah, Deputy Clerk) (Entered: 04/12/2007)
04/11/2007	13	SEALED ORDER by U. S. Magistrate Judge Kimberly E. West directing summons/warrant be issued as to Defendant Robert David Mielnicki, Jr. and Defendant David Lee Wiley. (tah, Deputy Clerk) Modified on 4/12/2007 to unseal entry (tah, Deputy Clerk). (Entered: 04/12/2007)
04/11/2007	14	WARRANT Issued by Magistrate Judge Kimberly E. West as to Robert David Mielnicki, Jr. (tah, Deputy Clerk) Modified on 4/12/2007 to unseal entry (tah, Deputy Clerk). (Entered: 04/12/2007)
04/12/2007	16	MINUTE ORDER by Magistrate Judge Steven P. Shreder, SETTING hearing: Arraignment/Detention Hearing is set for 4/12/2007 at 10:00 AM in Courtroom 4, Room 420, US Courthouse, 5th & Okmulgee, Muskogee, OK before Mag. Judge Steven P. Shreder as to Robert David Mielnicki, Jr. (tah, Deputy Clerk) (Entered: 04/12/2007)

04/12/2007	17	MINUTES of Proceedings - held before Magistrate Judge Steven P. Shreder : Arraignment/Detention Hearing held on 4/12/2007. Government's Oral Motion for Detention #7 granted, ordering defendant be detained as to Robert David Mielnicki, Jr. (Re: 7 Oral Motion for Detention) (Court Reporter: km) (tah, Deputy Clerk) (Entered: 04/12/2007)
04/12/2007	18	ATTORNEY APPEARANCE (CJA) by Stephen J. Knorr on behalf of Robert David Mielnicki, Jr (tah, Deputy Clerk) (Entered: 04/12/2007)
04/12/2007	19	ORDER of Detention Pending Trial by Magistrate Judge Steven P. Shreder as to Robert David Mielnicki, Jr. (tah, Deputy Clerk) (Entered: 04/12/2007)
04/13/2007	21	WARRANT Returned Executed as to Robert David Mielnicki, Jr (cjt, Deputy Clerk) (Entered: 04/13/2007)
04/13/2007	22	SCHEDULING ORDER by Court Clerk: Motions due by 4/25/2007. Responses due by 5/2/2007. Jury Instructions, Voir Dire & Trial Briefs due by 5/25/2007. Jury Trial set for 6/4/2007 at 09:00 AM in Courtroom 1, Room 230, US Courthouse, 5th & Okmulgee, Muskogee, OK before District Judge James H. Payne as to Robert David Mielnicki, Jr (cjt, Deputy Clerk) (Entered: 04/13/2007)
05/09/2007	38	NOTICE Intent to Change Plea as to Robert David Mielnicki, Jr (Knorr, Stephen) (Entered: 05/09/2007)
05/09/2007	39	MINUTE ORDER by Magistrate Judge Steven P. Shreder, SETTING hearing: Change of Plea Hearing is set for 5/14/2007 at 10:00 AM in Courtroom 4, Room 420, US Courthouse, 5th & Okmulgee, Muskogee, OK before Mag. Judge Steven P. Shreder as to Robert David Mielnicki, Jr. (tah, Deputy Clerk) (Entered: 05/09/2007)
05/10/2007	40	MINUTE ORDER by Magistrate Judge Steven P. Shreder, RESETTING hearing: The Change of Plea Hearing set for 5/14/07 at 10:00 AM has been STRICKEN and RESET for 5/24/2007 10:00 AM in Courtroom 4, Room 420, US Courthouse, 5th & Okmulgee, Muskogee, OK before Mag. Judge Steven P. Shreder as to Robert David Mielnicki, Jr. (tah, Deputy Clerk) (Entered: 05/10/2007)
05/24/2007	41	MINUTES of Proceedings - held before Magistrate Judge Steven P. Shreder : Change of Plea Hearing held on 5/24/2007, guilty plea entered as to Robert David Mielnicki, Jr. (Court Reporter: K. McWhorter) (tah, Deputy Clerk) (Entered: 05/24/2007)
05/24/2007	42	CONSENT by Defendant to Proceed before a Magistrate Judge for Change of Plea (in Felony case) approved by Magistrate Judge Steven P. Shreder as to Robert David Mielnicki, Jr. (tah, Deputy Clerk) (Entered: 05/24/2007)
05/24/2007	43	WAIVER of Right to Trial by Jury approved by Magistrate Judge Steven P. Shreder by Robert David Mielnicki, Jr (tah, Deputy Clerk) (Entered: 05/24/2007)
05/24/2007	44	MINUTE ORDER by Judge James H. Payne: In light of the change of plea entered on 5/24/07, the jury trial set 6/4/07 at 9:00 a.m. is STRICKEN as to Robert David Mielnicki, Jr (cjt, Deputy Clerk) (Entered: 05/24/2007)

05/24/2007	● 45	MINUTE ORDER by Judge James H. Payne: In accordance with Fed. R. Crim. P. 32(f)(2), the Court directs the parties to submit all objections to the Presentence Investigation Report within 14 days of receipt of the Presentence Investigation Report. Parties are also directed to file any Sentencing Memoranda that the parties feel would be beneficial to the Court no later than 14 days before sentencing. The first page of any sentencing related filing should include an estimate of the anticipated length of the hearing. Additionally, if the sentencing is continued, any Supplemental Sentencing Memoranda will be due 21 days prior to the new sentencing date as to Robert David Mielnicki, Jr. (cjt, Deputy Clerk) (Entered: 05/24/2007)
06/05/2007	● 46	MOTION for Additional One Point Reduction for Acceptance of Responsibility Pursuant to U.S.S.G.3E1.1(b) by USA as to Robert David Mielnicki, Jr (neh, Deputy Clerk) (Entered: 06/05/2007)
08/13/2007	● 48	MINUTE ORDER by Judge James H. Payne: Sentencing set for 9/10/2007 at 10:00 AM in Courtroom 1, Room 230, US Courthouse, 5th & Okmulgee, Muskogee, OK before District Judge James H. Payne as to Robert David Mielnicki, Jr (cjt, Deputy Clerk) (Entered: 08/13/2007)
09/10/2007	● 51	MINUTES of Proceedings - held before Judge James H. Payne: Sentencing held on 9/10/2007 as to Robert David Mielnicki, Jr (Granting 46 MOTION for One Point Reduction) (Court Reporter: Ken Sidwell) (cjt, Deputy Clerk) (Entered: 09/11/2007)
09/17/2007	● 54	JUDGMENT AND COMMITMENT by Judge James H. Payne: entering judgment as to Robert David Mielnicki, Jr (cjt, Deputy Clerk) (Entered: 09/17/2007)
10/03/2007	● 57	ATTORNEY APPEARANCE by Cheryl R. Triplett on behalf of USA (Triplett, Cheryl) (Entered: 10/03/2007)
10/10/2007	●	CJA 20 Authorization to Pay attorney Stephen J. Knorr as to Robert David Mielnicki, Jr (JHP 10/10/07)(smg, Deputy Clerk) (Entered: 10/29/2007)
12/27/2007	● 59	JUDGMENT Returned Executed as to Robert David Mielnicki, Jr. Defendant delivered to Forrest City Medium facility on 11/13/07.(eje, Deputy Clerk) (Entered: 12/27/2007)
03/07/2011	● 60	REPORT on Offender Under Supervision by District Judge James H. Payne as to Robert David Mielnicki, Jr (cjt, Deputy Clerk) (Entered: 03/07/2011)
03/21/2011	● 61	TRANSFER by District Judge James H. Payne of Jurisdiction of Probationer or Supervised Releasee to Northern District of Texas as to Robert David Mielnicki, Jr (Attachments: # 1 Letter from Clerk, USDC/NDTX) (law, Deputy Clerk) (Entered: 03/21/2011)
03/22/2011	● 62	Letter from Clerk, EDOK to Clerk, NDTX as to Robert David Mielnicki, Jr (cjt, Deputy Clerk) (Entered: 03/22/2011)

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA

**FILED**

APR 11 2007

William B. Guthrie  
Clerk, U.S. District Court

By \_\_\_\_\_  
Deputy Clerk

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

Case No. CR 07 - 022 - JHP

ROBERT DAVID MIELNICKI, JR., a/k/a  
ROB MIELNICKI and  
DAVID LEE WILEY,

*Defendants.*

**INDICTMENT**

The Federal Grand Jury charges:

**COUNT ONE**

**[18 U.S.C. § 371 – CONSPIRACY TO COMMIT CREDIT UNION ROBBERY]**

From on or about February 28, 2007, and continuing thereafter until on or about March 2, 2007, in the Eastern District of Oklahoma, ROBERT DAVID MIELNICKI, JR., a/k/a ROB MIELNICKI and, DAVID LEE WILEY, defendants herein, knowingly and willfully conspired and agreed together, to rob by force, violence and intimidation from the person or presence of another, money, belonging to and in the care, custody, control, management and possession of the MTC Federal Credit Union located in Ardmore, Oklahoma, a credit union whose deposits are insured by the National Credit Union Administration Board, in violation of Title 18, United States Code, Section 2113(a).

I hereby certify that the annexed instrument  
is a true and correct copy of the original on  
file in my office.  
ATTEST

WILLIAM B. GUTHRIE  
Clerk, U.S. District Court  
Eastern District of Oklahoma

By \_\_\_\_\_  
Deputy Clerk

Dated \_\_\_\_\_  
3/25/11

**MANNER AND MEANS OF THE CONSPIRACY**

1. It was part of the conspiracy that the defendants would rob financial institutions or credit unions by use of handwritten notes demanding payment in cash.
2. It was further part of the conspiracy that defendant MIELNICKI would enter the facility and defendant WILEY would wait in the get-away vehicle.

**OVERT ACTS**

In furtherance of the conspiracy and to effect the objects of the conspiracy, the following overt acts, among others, were committed in the Eastern District of Oklahoma and elsewhere:

1. On or about February 28, 2007, the defendants traveled from Azle, Texas to Oklahoma.
2. The defendants would then locate financial institutions (banks or credit unions) located near the interstate for ease of escape.
3. The defendants would "case" the bank or credit union to determine the appropriate institution to rob.
4. The defendants cased MTC Federal Credit Union, located in Ardmore, Oklahoma, a credit union whose deposits are insured by the National Credit Union Administration Board.
5. Defendant WILEY drove the get-away vehicle and waited for defendant MIELNICKI to enter the MTC Federal Credit Union and rob the credit union of proceeds.



6. The defendants would later divide the proceeds of the robbery.
7. The defendants would then return to Azle, Texas

All in violation of Title 18, United States Code, Section 371.

**COUNT TWO**


**[18 U.S.C. § 2113(a) – CREDIT UNION ROBBERY]**

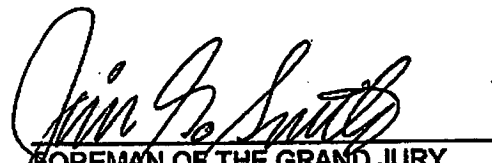
On or about March 2, 2007, in Carter County, Oklahoma, within the Eastern District of Oklahoma, ROBERT DAVID MIELNICKI, JR., a/k/a ROB MIELNICKI and DAVID LEE WILEY, defendants herein, did by force and intimidation, take from the person or presence of another approximately \$6,674, in money belonging to and in the care, custody, control, management, and possession of the MTC Federal Credit Union located in Ardmore, Oklahoma, a federal credit union whose deposits were then insured by the National Credit Union Administration Board.

In violation of Title 18, United States Code, Sections 2113(a).

SHELDON J. SPERLING  
United States Attorney

A TRUE BILL:

  
PAUL G. HESS  
Assistant United States Attorney

  
FOREMAN OF THE GRAND JURY

UNITED STATES DISTRICT COURT

Eastern

District of

Oklahoma

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

ROBERT DAVID MIELNICKI, JR.  
a/k/a ROB MIELNICKI

Case Number: CR-07-00022-001-JHP

USM Number: 35727-177

Stephen Knorr  
Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) One and Two of the Indictment

pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18:371	Conspiracy to Commit Credit Union Robbery	March 2, 2007	1
18:2113(a)	Credit Union Robbery	March 2, 2007	2

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to Title 18, Section 3553(a) of the United States Criminal Code.

The defendant has been found not guilty on count(s) \_\_\_\_\_

Count(s) \_\_\_\_\_  is  are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

September 10, 2007  
Date of Imposition of Judgment

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.

ATTEST

WILLIAM B. GUTHRIE  
Clark, U.S. District Court  
Eastern District of Oklahoma

By Carla Janki  
Deputy Clerk

Dated 3/25/11

James H. Payne  
James H. Payne  
United States District Judge  
Eastern District of Oklahoma

E.O.D. September 17, 2007  
Date

DEFENDANT: ROBERT DAVID MIELNICKI, JR. a/k/a ROB MIELNICKI  
CASE NUMBER: CR-07-00022-001-JHP

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of: 48 months on Count One, and 48 months on Count Two.

The terms of imprisonment on Counts One and Two shall be served concurrently.

- The court makes the following recommendations to the Bureau of Prisons:  
That the Bureau of Prisons evaluate the defendant and determine if the defendant is a suitable candidate for the Intensive Drug Treatment Program. Should the defendant be allowed to participate in the program, it is further recommended that the defendant be afforded the benefits prescribed and set out in 18 U.S.C. § 3621(e) and according to Bureau of Prisons' policy.

That the defendant be placed in the Bureau of Prisons facility at Fort Worth, Texas to facilitate family contact.

- The defendant is remanded to the custody of the United States Marshal.

- The defendant shall surrender to the United States Marshal for this district:

at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_

as notified by the United States Marshal.

- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 12:00 Noon on \_\_\_\_\_

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

a \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_

DEPUTY UNITED STATES MARSHAL

DEFENDANT: ROBERT DAVID MELNICKI, JR. a/k/a ROB MELNICKI  
CASE NUMBER: CR-07-00022-001-JHP

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 36 months on each of Counts One and Two. Said terms of supervised release are to be served concurrently.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.  
The defendant shall not commit another federal, state or local crime.  
The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.  
 The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement; and
- 14) the defendant shall submit to urinalysis testing as directed by the Probation Office.

DEFENDANT: ROBERT DAVID MIELNICKI, JR. a/k/a ROB MIELNICKI  
CASE NUMBER: CR-07-00022-001-JHP

### SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall participate in a program approved by the United States Probation Office for the treatment of narcotic addiction, drug dependency, or alcohol dependency, which will include testing to determine if he has reverted to the use of drugs or alcohol. If it is determined by the Probation Officer that the defendant is in need of a residential drug/alcohol treatment program, he shall participate in such treatment as directed by the Probation Officer and remain in the treatment facility until discharged.

DEFENDANT: ROBERT DAVID MIELNICKI, JR. a/k/a ROB MIELNICKI  
CASE NUMBER: CR-07-00022-001-JHP

**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ 200.00	\$ 0	\$ 3,472.00

The determination of restitution is deferred until \_\_\_\_\_. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Sharon Keith c/o MTC Federal Credit Union 2001 12 <sup>th</sup> Avenue N.W. Ardmore, OK 73401	\$15.00	\$15.00	1
MTC Federal Credit Union Attn: Kimberly Witt P.O. Box 1944 Greenville, SC 29602	\$3,457.00	\$3,457.00	2

<b>TOTALS</b>	\$ <u>3472.00</u>	\$ <u>3472.00</u>
---------------	-------------------	-------------------

Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the  fine  restitution.

the interest requirement for the  fine  restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: ROBERT DAVID MIELNICKI, JR. a/k/a ROB MIELNICKI  
CASE NUMBER: CR-07-00022-001-JHP

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A  Lump sum payment of \$ \_\_\_\_\_ due immediately, balance due
- not later than \_\_\_\_\_, or  
 in accordance  C,  D,  E, or  F below; or
- B  Payment to begin immediately (may be combined with  C,  D, or  F below); or
- C  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E  Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F  Special instructions regarding the payment of criminal monetary penalties:

Said special assessment of \$100 on each of Counts One and Two, for a total of \$200, is due immediately. Said restitution of \$3,472 is due and payable immediately. The restitution amount of \$3,472 represents fifty percent of the identified loss to the victims. The remaining fifty percent of the identified loss shall be paid by the co-defendant in this matter.

Said special assessment and restitution shall be paid through the United States Court Clerk for the Eastern District of Oklahoma, P.O. Box 607, Muskogee, OK 74402.

If the defendant's financial condition does not allow for immediate payment of the restitution, the defendant shall make monthly installments of not less than \$100, beginning sixty days following the defendant's release from custody. Notwithstanding establishment of a payment schedule, nothing shall prohibit the United States from executing or levying upon non-exempt property of the defendant discovered before or after the date of this judgment. In the event the defendant receives any federal or state income tax refund during the period of supervision, the defendant shall pay 100% of the total refund toward said restitution.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Prob 12A  
(4/01)

**FILED**

MAR - 7 2011

**United States District Court  
for the  
Eastern District of Oklahoma  
Report on Offender Under Supervision**

WILLIAM B. GUTHRIE  
Clerk, U.S. District Court

Name of Offender: Robert David Mielnicki, Jr. Case Number: CR-07-022-001-JHP  
Name of Sentencing Judicial Officer: Honorable James H. Payne  
Date of Original Sentence: September 10, 2007  
Original Offense: Conspiracy to Commit Credit Union Robbery and Credit Union Robbery  
Original Sentence: 48 months custody, 36 months TSR, \$3,472 Restitution  
Type of Supervision: TSR Date Supervision Commenced: October 22, 2010

**NON-COMPLIANCE SUMMARY**

The offender has not complied with the following condition(s) of supervision:

<u>Violation Number</u>	<u>Nature of Non-compliance</u>
Mandatory Condition	Restitution of \$3,472, to be paid in payments of not less than \$100 per month, beginning not less than 60 days from the date of this judgement.

The defendant has failed to pay monthly installments of \$100 while under supervision and has paid a total of \$0 restitution while under supervision to date. The restitution has the full balance remaining and he is in arrears \$200.

**U.S. Probation Officer Action:**

The officer supervising the offender recommends no court action be taken at this time. Simultaneously, a transfer of jurisdiction will be initiated in the event that further violations arise.

Reviewed and Approved:

Respectfully submitted:

by: s/William H. Bliss  
Deputy Chief U.S. Probation Officer

by: s/Kyle B Shores  
U.S. Probation Officer Assistant

- The Court concurs that no action be taken at this time
- Submit a request for Modifying the Condition or Term of Supervision
- Submit a request for Warrant or Summons
- Other

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.  
ATTEST

WILLIAM B. GUTHRIE  
Clerk, U.S. District Court  
Eastern District of Oklahoma

By: [Signature]  
Deputy Clerk

Dated: 3/22/11

[Signature]  
Signature of Judicial Officer  
Date: 3/17/11



PROB 22  
(TXN Rev. 5/05)

CASE  
NUMBER (TRANS. COURT)  
6:07CR00022-001

# TRANSFER OF JURISDICTION

4-1108-51-A

CASE NUMBER (REC. COURT)

NAME OF PROBATIONER/SUPERVISED RELEASEE

ROBERT DAVID MIELNICKI, JR.

DISTRICT

Eastern District of Oklahoma

DIVISION

Muskogee

NAME OF SENTENCING JUDGE

U.S. District Judge James H. Payne

DATES OF PROBATION/  
SUPERVISED RELEASE

FROM

10/22/2010

TO

10/21/2013

OFFENSE

Conspiracy to Commit Credit Union Robbery, 18 USC § 371 and Credit Union Robbery, 18 USC § 2113(a)

## PART 1 - ORDER TRANSFERRING JURISDICTION

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OKLAHOMA

IT IS HEREBY ORDERED that pursuant to 18 USC § 3605, the jurisdiction of the probationer or supervised releasee named above be transferred with the records of this Court to the U.S. District Court for the Northern District of Texas upon that Court's order of acceptance of jurisdiction. This Court hereby expressly consents that the period of probation or supervised release may be changed by the District Court to which this transfer is made without further inquiry of this Court.\*

3/7/11  
Date

[Signature]  
U.S. District Judge

\*This sentence may be deleted in the discretion of the transferring Court.

## PART 2 - ORDER ACCEPTING JURISDICTION

U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

IT IS HEREBY ORDERED that jurisdiction over the above-named probationer/supervised releasee be accepted and assumed by this Court from and after the entry of this order.

Certified a true copy of an instrument on file in my office on 3/7/2011

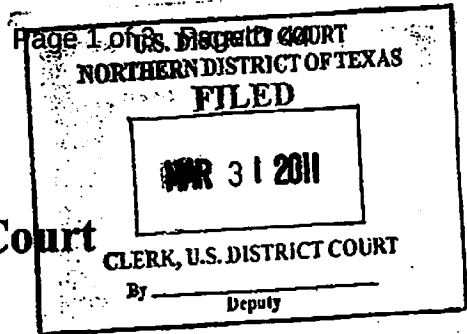
Clerk, U.S. District Court, Northern District of Texas

By [Signature] Deputy

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
**FILED**  
MAR 18 2011  
CLERK, U.S. DISTRICT COURT  
By \_\_\_\_\_ Deputy

3/18/11  
Effective Date

[Signature]  
U.S. District Judge



PROB 12A  
(TXNP 8/2005)

# United States District Court

for

Northern District of Texas

## Report on Offender Under Supervision - No Court Action Recommended

Name of Offender: Robert David Mielnicki, Jr.

Case No: 4:11-CR-051-A(01)

Name of Sentencing Judicial Officer: U.S. District Judge James H. Payne (Jurisdiction transferred to U.S. District Judge John McBryde on March 18, 2011.)

Date of Original Sentence: September 10, 2007

Original Offense: Count 1: Conspiracy to Commit Credit Union Robbery, 18 USC § 371; Count 2: Credit Union Robbery, 18 USC § 2113(a)

Original Sentence: 48 months custody on Counts 1 and 2, to be served concurrently, 3-year term of supervised release on Counts 1 and 2, to be served concurrently.

Type of Supervision: Supervised Release

Date Supervision Commenced: October 22, 2010

Assistant U.S. Attorney: Paul Hess, Esq.

Defense Attorney: Stephen J. Knorr (Court appointed)

### NOTIFICATION TO THE COURT FOR CAUSE AS FOLLOWS:

The probation officer believes that the offender has violated the following condition(s) which require(s) official notification although no court action is being recommended at this time.

I.

Certified a true copy of an instrument on file in my office on 6/4/2014, Clerk, U.S. District Court, Northern District of Texas

**Violation of Mandatory Condition:**

The defendant shall not commit another federal, state or local crime.

M J Deputy

**Nature of Noncompliance:**

On February 17, 2011, Robert David Mielnicki, Jr. violated his conditions of supervised release when he committed a robbery and placed another person in threat, or fear of imminent bodily injury, or death as evidenced by his arrest for Aggravated Robbery, in violation of Texas Penal Code § 29.03.

PROB 12A  
Robert David Mielnicki, Jr.  
Report on Offender Under Supervision - No Court Action Recommended

Page 2

According to Watauga, Texas Police Department Report No. 11318, Mr. Mielnicki entered a Little Caesars Pizza, brandished a firearm, and robbed the business. Shortly after the robbery, the suspect vehicle was stopped and the defendant was located in the passenger seat. The driver of the vehicle gave a statement that he drove the suspect vehicle and that Mr. Mielnicki may have committed the robbery. Watauga Police Department also recovered a mask, clothing, and a plastic BB Gun matching the description of the items used in the robbery from the suspect vehicle. Mr. Mielnicki remains in custody at Tarrant County Jail on a \$250,000 bond.

## II.

### Violation of Standard Condition No. 9:

The defendant shall not associate with any person engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer.

### Nature of Noncompliance:

On February 17, 2011, Mr. Mielnicki violated these conditions of supervised release when he associated with Michael Fowler (White male, November 15, 1981) who has been convicted of a felony. On March 14, 2011, Mr. Mielnicki admitted in writing that he associated with Michael Fowler whom he also knew was a felon.

## III.

### Violation of Mandatory Condition:

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

### Special Instructions Regarding the Payment of Criminal Monetary Penalties:

Said special assessment of \$100 on Counts 1 and 2, for a total of \$200 is due immediately. Said restitution of \$3,472 is due and payable immediately. The restitution amount of \$3,472 represents 50 percent of the identified loss to the victims. The remaining 50 percent of the identified loss shall be paid by the codefendant in this matter.

Said special assessment and restitution shall be paid through the U.S. Court Clerk for the Eastern District of Oklahoma, P.O. Box 607, Muskogee, Oklahoma 74402.

If the defendant's financial condition does not allow for immediate payment of restitution, the defendant shall make monthly installments of not less than \$100, beginning 60 days following the defendant's release from custody. Notwithstanding establishment of a payment schedule, nothing shall

PROB 12A  
Robert David Mielnicki, Jr.  
Report on Offender Under Supervision - No Court Action Recommended

Page 3

prohibit the United States from executing or levying upon non-exempt property of the defendant discovered before or after the date of this judgment. In the event the defendant receives any federal or state income tax refund during the period of supervision, the defendant shall pay 100 percent of the total refund toward said restitution.

**Nature of Noncompliance:**

While in federal custody, Mr. Mielnicki paid \$75 toward the special assessment leaving a balance of \$125. Since beginning his term of supervised release, Mr. Mielnicki has failed to make any other payments toward the mandatory special assessment. Furthermore, Mr. Mielnicki has failed to make any payments toward the \$3,472 in restitution.

It is recommended the court take no action at this time regarding Mr. Mielnicki's new arrest for Aggravated Robbery. The case has been filed with the Tarrant County District Attorney's Office and remains pending. Upon disposition of the state case the court will be notified.

Respectfully submitted,

*Mark A. Briones*  
for

Mark N. Jackson  
Senior U.S. Probation Officer  
Benbrook, Texas  
817-732-7309, Ext. 242

Approved,

*Mark A. Briones*

Mark A. Briones  
Supervising U.S. Probation Officer  
817-732-7309, Ext. 206

Signed on 3-30-11  
Date

**THE COURT:**

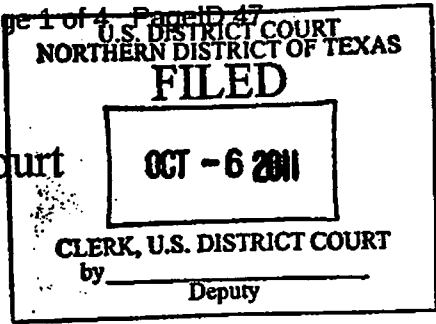
- Agrees with the recommendation of the probation officer.
- Orders the probation officer to submit a request for modifying the conditions or term of supervision.
- Orders the probation officer to submit a request for warrant or summons.
- Other.

*John McBryde*  
JOHN McBRYDE  
U.S. District Judge

3/31/11  
Date

MNJ/bc

PROB 12C  
(TXN 4/2008)



Distribution made on 10-6-11 to: **United States District Court**  
Mag Judge \_\_\_\_\_ Judge \_\_\_\_\_  
ASST \_\_\_\_\_ FPD \_\_\_\_\_  
USAM WANT USPT \_\_\_\_\_  
USPO WANT Attorney \_\_\_\_\_

for  
Northern District of Texas

**Petition for Offender Under Supervision**

Name of Offender: Robert David Mielnicki, Jr. Case No: 4:11-CR-051-A(01)

Name of Sentencing Judicial Officer: U.S. District Judge James H. Payne (Jurisdiction transferred to U.S. District Judge John McBryde on March 18, 2011.)

Date of Original Sentence: September 10, 2007

Original Offense: Count 1: Conspiracy to Commit Credit Union Robbery, 18 USC § 371; Count 2: Credit Union Robbery, 18 USC § 2113(a)

Original Sentence: 48 months custody on Counts 1 and 2, to be served concurrently, 3-year term of supervised release on Counts 1 and 2, to be served concurrently.

Type of Supervision: Supervised Release Date Supervision Commenced: October 22, 2010

Assistant U.S. Attorney: Paul Hess, Esq. Defense Attorney: Stephen J. Knorr (Court appointed)

**PETITIONING THE COURT FOR ACTION FOR CAUSE AS FOLLOWS:**

To issue a violator's warrant.

The probation officer believes that the offender violated the following conditions:

I. Certified a true copy of an instrument on file in my office on 6/4/2014  
Clerk, U.S. District Court,  
Northern District of Texas

**Violation of Mandatory Condition:**

The defendant shall not commit another federal, state or local crime. M J Deputy

**Nature of Noncompliance:**

On February 17, 2011, Robert David Mielnicki, Jr. violated his conditions of supervised release when he committed a robbery and placed another person in threat, or fear of imminent bodily injury, or death as evidenced by his arrest for Aggravated Robbery, in violation of Texas Penal Code § 29.03.

According to Watauga, Texas Police Department Report No. 11318, Mr. Mielnicki entered a Little Caesars Pizza, brandished a firearm, and robbed the business. Shortly after the robbery, the suspect vehicle was stopped and the defendant was located in the passenger seat. The driver of the vehicle gave a statement that he drove the suspect vehicle and that Mr. Mielnicki may have committed the robbery. Watauga Police Department also recovered a mask, clothing, and a plastic BB Gun matching the description of the items used in the robbery from the suspect vehicle. Subsequently, on September 19, 2011, Mr. Mielnicki plead guilty to Robbery by Threats, in violation of Texas Penal Code § 29.02, in Case No. 1230331D in the 371<sup>st</sup> District Court of Tarrant County, Texas. He was sentenced to 15 years custody in the Texas Department of Criminal Justice.

**II.**

**Violation of Standard Condition No. 9:**

The defendant shall not associate with any person engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer.

**Nature of Noncompliance:**

On February 17, 2011, Mr. Mielnicki violated these conditions of supervised release when he associated with Michael Fowler (White male, November 15, 1981) who has been convicted of a felony. On March 14, 2011, Mr. Mielnicki admitted in writing that he associated with Michael Fowler whom he also knew was a felon.

**III.**

**Violation of Mandatory Condition:**

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

**Special Instructions Regarding the Payment of Criminal Monetary Penalties:**

Said special assessment of \$100 on Counts 1 and 2, for a total of \$200 is due immediately. Said restitution of \$3,472 is due and payable immediately. The restitution amount of \$3,472 represents 50 percent of the identified loss to the victims. The remaining 50 percent of the identified loss shall be paid by the codefendant in this matter.

PROB 12C  
Robert David Mielnicki, Jr  
Petition for Offender Under Supervision

Page 3

Said special assessment and restitution shall be paid through the U.S. Court Clerk for the Eastern District of Oklahoma, P.O. Box 607, Muskogee, Oklahoma 74402.

If the defendant's financial condition does not allow for immediate payment of restitution, the defendant shall make monthly installments of not less than \$100, beginning 60 days following the defendant's release from custody. Notwithstanding establishment of a payment schedule, nothing shall prohibit the United States from executing or levying upon non-exempt property of the defendant discovered before or after the date of this judgment. In the event the defendant receives any federal or state income tax refund during the period of supervision, the defendant shall pay 100 percent of the total refund toward said restitution.

**Nature of Noncompliance:**

While in federal custody, Mr. Mielnicki paid \$75 toward the special assessment leaving a balance of \$125. Since beginning his term of supervised release, Mr. Mielnicki has failed to make any other payments toward the mandatory special assessment. Furthermore, Mr. Mielnicki has failed to make any payments toward the \$3,472 in restitution.

Respectfully submitted,

Approved,



Mark N. Jackson  
Senior U.S. Probation Officer  
Benbrook, Texas  
817-732-7309, Ext. 242  
Fax No. 817-732-7340



Mark A. Briones  
Supervising U.S. Probation Officer  
817-732-7309, Ext. 206

PROB 12C  
Robert David Mielnicki, Jr  
Petition for Offender Under Supervision

Page 4

I declare under penalty of perjury that the foregoing is true and correct.



Mark N. Jackson  
Senior U.S. Probation Officer

9/30/11

Signed on

THE COURT:

- No action.
- The issuance of a violator's warrant.
- The issuance of a summons.
- Other.



JOHN McBRYDE  
U.S. District Judge

10/6/11  
Date

MNJ/bc



ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

FILED  
U.S. DISTRICT COURT  
NORTHERN DIST. OF TX.  
FORT WORTH DIVISION

2011 OCT 14 PM 3:50

CLERK OF COURT

UNITED STATES OF AMERICA §  
v. § No. 4:11-CR-051-A  
ROBERT DAVID MIELNICKI, JR. (1) §

MOTION FOR WRIT OF HABEAS CORPUS AD PROSEQUENDUM

The United States moves for an order directing the Clerk of this Court to issue a writ of habeas corpus ad prosequendum for Robert David Mielnicki, Jr., year of birth, 1982, who is presently in custody of the Tarrant County Jail, Tarrant County, Fort Worth, Texas, directing that Robert David Mielnicki, Jr. be brought to the U. S. District Courthouse, Fort Worth, Texas, forthwith to appear before the United States Magistrate Judge for prosecution of the charges pending herein, and directing that after the conclusion of all proceedings in this cause, that Robert David Mielnicki, Jr. be returned under safe and secure conduct to said place of original custody or other appropriate authority.

Certified a true copy of an instrument on file in my office on 10/14/2011

SARAH R. SALDANA U.S. District Court  
UNITED STATES Northern District of Texas

By [Signature] Deputy

[Signature]  
J. MICHAEL WORLEY

Assistant United States Attorney  
Texas Bar No. 22001400  
801 Cherry Street, Suite 1700  
Fort Worth, Texas 76102  
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U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
**FILED**  
**OCT 17 2011**  
CLERK, U.S. DISTRICT COURT  
by \_\_\_\_\_ Deputy

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

UNITED STATES OF AMERICA

§  
§  
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§  
§

v.

No. 4:11-CR-051-A

ROBERT DAVID MIELNICKI, JR. (1)

Certified a true copy of an instrument  
on file in my office on 6/4/2014  
Clerk, U.S. District Court,  
Northern District of Texas  
By [Signature] Deputy

ORDER

On motion of the United States for the issuance of a writ of habeas corpus ad  
prosequendum, directing that Robert David Mielnicki, Jr., year of birth, 1982, who is  
presently in custody of the Tarrant County Jail, Tarrant County, Fort Worth, Texas,  
directing that Robert David Mielnicki, Jr. be brought to the U. S. District Courthouse,  
Fort Worth, Texas for proceedings in the above numbered cause.

The Clerk of this Court is hereby ORDERED to issue a writ of habeas corpus ad  
prosequendum, directed to the United States Marshal for the Northern District of Texas,  
directing said officers to have Robert David Mielnicki, Jr. before the United States  
Magistrate Judge, forthwith, and upon the conclusion of all proceedings in this cause to  
return Robert David Mielnicki, Jr. under safe and secure conduct to said place of original  
custody or other appropriate authority.

SIGNED on

October 17, 2011

[Signature]  
JOHN McBRYDE  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

UNITED STATES OF AMERICA

v.

ROBERT DAVID MIELNICKI, JR. (1)

§  
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§

No. 4:11-CR-051-A

Certified a true copy of an instrument  
on file in my office on 6/4/2011  
Clerk, U.S. District Court,

WRIT OF HABEAS CORPUS AD PROSECUTENDUM

Northern District of Texas  
By [Signature]

Deputy

TO: The United States Marshal for the Northern District of Texas  
Sheriff, Tarrant County Jail, Tarrant County, Fort Worth, Texas

Pursuant to the Order of a United States District Judge for the Northern District of Texas, the Sheriff, Tarrant County Jail, Tarrant County, Fort Worth, Texas, is commanded to surrender Robert David Mielnicki, Jr., year of birth, 1982, to the United States Marshal for the Northern District of Texas, and the United States Marshal is here commanded to bring Robert David Mielnicki, Jr., defendant herein, who is presently in custody of the Tarrant County Jail, Tarrant County, Fort Worth, Texas, before the United States Magistrate Judge, forthwith, to appear for prosecution in the above numbered cause, and after the conclusion of all proceedings in this cause, the United States Marshal is to return Robert David Mielnicki, Jr. under safe and secure conduct to said defendant's original place of custody or other appropriate authority.

SIGNED ON October 17, 2011  
KAREN MITCHELL  
UNITED STATES DISTRICT CLERK

BY: [Signature]  
DEPUTY

**RETURN**

RECEIVED this writ on \_\_\_\_\_, and executed same by  
delivering Robert David Mielnicki, Jr., year of birth, 1982, to the custody of the United  
States Marshal for the Northern District of Texas for appearance before the United States  
Magistrate Judge at Fort Worth, Texas forthwith.

\_\_\_\_\_  
**FINAL RETURN**

Final return and execution of this writ is hereby made by delivering Robert David  
Mielnicki, Jr., year of birth, 1982, from the custody of the United States Marshal for the  
Northern District of Texas to

\_\_\_\_\_ on \_\_\_\_\_.

\_\_\_\_\_

**FILED**

**OCT 27 2011**

CLERK, U.S. DISTRICT COURT

by \_\_\_\_\_  
Deputy

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

UNITED STATES OF AMERICA

§  
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§

VS.

NO. 4:11-CR-051-A

ROBERT DAVID MIELNICKI, JR.

Certified a true copy of an instrument  
on file in my office on 6/4/2014

Clerk, U.S. District Court,  
Northern District of Texas

JUDGMENT OF REVOCATION AND SENTENCE

By [Signature] Deputy

Came on to be heard, as contemplated by Fed. R. Crim. P.

32.1, the motion of United States of America to revoke the term of supervised release imposed on defendant, ROBERT DAVID MIELNICKI, JR. After having considered the evidence, the grounds of the government's motion, and argument of counsel, the court has determined that the term of supervised release imposed on defendant should be revoked and that defendant should be sentenced to a term of imprisonment of twenty-four months as to count one and twenty-four months as to count two, to be served consecutively to each other for a total term of imprisonment of forty-eight months, all to be served consecutively to any sentence imposed in defendant's state court proceedings, and to serve a twelve month term of supervised release as to each count upon discharge from prison, to be served concurrent with each other.

The court finds and concludes that:

(a) Defendant was given, in a timely manner, written notice of his alleged violations of the term of supervised release upon which the motion to revoke is based;

(b) The motion to revoke the term of supervised release was served on defendant in a timely manner prior to the hearing;

(c) There was a disclosure to defendant, and his attorney, of the evidence against defendant; and

(d) The hearing was held within a reasonable time.

Other findings and conclusions of the court were stated by the court into the record at the hearing. The court adopts all such findings and conclusions as part of this judgment.

In reaching the conclusions and making the determinations and rulings announced at the hearing, and as stated in this judgment, the court considered all relevant factors set forth in 18 U.S.C. § 3553(a).

The court ORDERS, ADJUDGES, and DECREES that the term of supervised release, as provided by the judgment signed September 17, 2007, by the Honorable James H. Payne, United States District Judge for the Eastern District of Oklahoma, in Case Number CR-07-00022-001-JHP, imposed on defendant, ROBERT DAVID MIELNICKI, JR., be, and is hereby, revoked; and

The court further ORDERS, ADJUDGES, and DECREES that defendant, ROBERT DAVID MIELNICKI, JR., be, and is hereby, committed to the custody of the United States Bureau of Prisons to serve a term of imprisonment of twenty-four months as to count one and twenty-four months as to count two, to be served consecutively to each other for a total term of imprisonment of forty-eight months, all to be served consecutively to any sentence imposed in defendant's state court proceedings, and to serve a twelve month term of supervised release as to each count upon discharge from prison, to be served concurrent with each other.

The court further ORDERS, ADJUDGES, and DECREES that, while on supervised release, defendant shall comply with the following Standard and Special Conditions of Supervision:

Standard Conditions of Supervision

1. The defendant shall report in person to the probation office in the district to which the defendant is released within seventy-two (72) hours of release from the custody of the Bureau of Prisons.
2. The defendant shall not possess a firearm, ammunition, destructive device, or other dangerous weapon.
3. The defendant shall not commit another federal, state, or local crime.
4. The defendant shall not illegally possess controlled substances.

5. The defendant shall provide to the U.S. Probation Officer any requested financial information.
6. The defendant shall not leave the judicial district without the permission of the Court or U.S. Probation Officer.
7. The defendant shall report to the U.S. Probation Officer as directed by the court or U.S. Probation Officer and shall submit a truthful and complete written report within the first five (5) days of each month.
8. The defendant shall answer truthfully all inquiries by the U.S. Probation Officer and follow the instructions of the U.S. Probation Officer.
9. The defendant shall support his or her dependents and meet other family responsibilities.
10. The defendant shall work regularly at a lawful occupation unless excused by the U.S. Probation Officer for schooling, training, or other acceptable reasons.
11. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment.
12. The defendant shall refrain from excessive use of alcohol and shall 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.
13. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
14. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the U.S. Probation Officer.
15. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall



permit confiscation of any contraband observed in plain view by the U.S. Probation Officer.

16. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.
17. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
18. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Special Conditions of Supervision

1. The defendant shall participate in a program (inpatient and/or outpatient) approved by the U.S. Probation Office for treatment of narcotic, drug or alcohol dependency which will include testing for the detection of substance use or abuse. The defendant shall abstain from the use of alcohol and all other intoxicants during and after completion of treatment. The defendant shall contribute to the costs of services rendered at the rate of at least \$10 per month.
2. If, upon commencement of the terms of supervised release, any part of the defendant's original \$3,472.00 restitution obligation remains unpaid, the defendant shall make payments on such unpaid amount at the rate of at least \$100 per month, the first such payment to be made no later than 60 days after the defendant's release from prison, and another payment to be made on the same day of each month thereafter until the total amount is paid in full. Any unpaid balance of the restitution obligation shall be paid in full 60 days prior to the termination of supervised release.

The court hereby directs the probation officer to provide defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, as contemplated and required by Title 18 United States Code section 3583(f).

The defendant is remanded to the custody of the United States Marshal.

The date of imposition of the sentence provided by this judgment is October 27, 2011.

SIGNED October 27, 2011.



JOHN MCBRYDE  
United States District Judge

Personal information about the defendant is set forth on the attachment to this Judgment of Revocation and Sentence.