

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

SHANE MEDORE MAGGI,

Defendant-Appellant.

C.A. 08-30223

D.C. No.: CR 07-125-GF-SEH

BRIEF OF APPELLEE UNITED STATES

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

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INTRODUCTION

Shane Medore Maggi has a history of violent offenses. This appeal involves Maggi's conviction for two counts of assault with a dangerous weapon and two counts of use of a firearm during a crime of violence. Maggi fired a pistol approximately five times at Kelly Hoyt and beat him with the pistol until Hoyt passed out. Maggi also dragged Kelly Hoyt's wife, Kimberly, around by her hair, repeatedly hit her in her face with the pistol, threatened to kill her, and fired the pistol at her. The jury found Maggi guilty of all four counts. The district court sentenced Maggi to 507 months imprisonment.

Maggi's only challenge to his convictions involves the two assault counts, which required proof that Maggi is an "Indian person." The issue is reviewed for plain error, and there was ample evidence for a rational jury to find that Maggi is an "Indian person."

Maggi challenges his 25-year consecutive sentence on the second 18 U.S.C. § 924(c) conviction. He argues that it cannot be imposed because that particular penalty was not set forth in the indictment. There is no requirement that it be set forth in the indictment. Citation of the relevant statute for the crime was all that was required, and it

was sufficient. Maggi offers no basis for bypassing the congressionally mandated penalty for a crime he was convicted of at trial.

Finally, Maggi challenges the reasonableness of his sentence. Given his history, his crimes here, and the advisory guidelines, his sentence was reasonable and adequately explained by the district court.

His convictions and sentence should be affirmed.

STATEMENT OF JURISDICTION

The district court had jurisdiction under 18 U.S.C. § 3231. This Court has jurisdiction under 28 U.S.C. § 1291. Judgment was June 9, 2008; Maggi timely appealed June 15, 2008. (SER 132, 138).

STATEMENT OF THE ISSUES

1. To prove assault with a dangerous weapon as a violation of the Major Crimes Act, 18 U.S.C. § 1153(a), the government bore the burden of proving that Maggi is an Indian. That requires (1) Indian blood, and (2) tribal or government recognition. Maggi has Indian blood. The United States showed tribal and government recognition by, among other things, Maggi's receipt of health care from Indian Health Service, hunting and fishing privileges, and the exercise of tribal criminal jurisdiction over him. The first issue is whether it was plain error for

the district court to conclude that a rational jury could find Maggi an Indian person.

2. Maggi received notice in the indictment of two counts under 18 U.S.C. § 924(c). He also received notice in the indictment of the mandatory minimum sentence for each count. The indictment did not, however, set forth that if Maggi were convicted of both counts, the second count would have a mandatory, consecutive 25-year sentence. The second issue is whether Maggi was entitled to notice in the indictment of the consequences of two section 924(c) convictions, and whether there was any prejudice given that he went to trial.

3. The final issue is the reasonableness of Maggi's sentence given the nature of his conduct in this case, his extensive history of violent offenses, his repeated violations of probation, and his use of illegal drugs.

STATEMENT OF THE CASE

Following a jury trial, Maggi was convicted of two counts of assault with a dangerous weapon, violations of 18 U.S.C. §§ 1153 and 113(a)(3), and two counts of use of a firearm during a crime of violence, violations of 18 U.S.C. §§ 924(c)(1)(A). The district court sentenced

Maggi to 507 months imprisonment. Maggi appeals his conviction and his sentence.

STATEMENT REGARDING ORAL ARGUMENT

Under Federal Rule of Appellate Procedure 34(a), the United States advises the Court of its view that oral argument is unnecessary because the facts and legal arguments are adequately presented in the briefs and record.

STATEMENT OF FACTS

“Indian” Person Status:

Maggi is a descended member of the Blackfeet Tribe of Indians. (SER 7-9, 23; RT 36-38, 52). He has 1/64th Blackfeet Indian blood and 1/32nd Cree Indian blood. (SER 9; RT 38). His mother, Kathy Ann Maggi, is an enrolled member of the Blackfeet Tribe of Indians. (SER 10, 11; RT 39, 40). As a descended member, Maggi receives free medical care at Indian Health Service hospitals, which free care is reserved only to enrolled and descended members of Indian tribes. (SER 11, 23; RT 40, 52). Maggi, as a descended member, also has free hunting and fishing rights on the Blackfeet reservation, and qualifies for certain college grants reserved only to descended members of Indian

tribes. (SER 11; RT 40). Maggi has been prosecuted by the Blackfeet Tribe's prosecutor's office. (SER 29; RT 58). That office has jurisdiction to prosecute enrolled and descended members of federally recognized Indian tribes only. (SER 30; RT 59). Maggi holds himself out to be an Indian person, and he participates in Blackfeet Indian social and religious ceremonies such as pow-wows, sweats, and smudging. (SER 34, 64; RT 63, 93).

Criminal History:

On December 3, 1994, Maggi was arrested for, and subsequently convicted in state court of, two counts of felony aggravated assault. (PSR ¶ 36). Maggi physically attacked Robert Sonju and chased him around the Den Bar in Cut Bank, MT, with a large knife. *Id.* Maggi then stabbed Robbie Dupray in the chest and left elbow. *Id.* Gerald Freeman attempted to intervene, but was stabbed by Maggi several times in the throat, chest, and abdomen. *Id.*

On March 7, 2001, Maggi had his state court suspended sentence revoked for being involved in an assault, failing to report to his probation officer, having a positive urinalysis for THC, illegally

possessing prescription drugs, and possessing drug paraphernalia while on probation. (PSR ¶ 36, p. 8).

On January 17, 2004, Maggi kicked Clifford Bull Calf in the head and ribs, and pointed a gun at Bull Calf. (PSR ¶ 37). Bull Calf's wife got between Maggi and Bull Calf and Maggi grabbed her wrist and hit her in the head. *Id.* Maggi then pointed the gun at Bull Calf's wife. *Id.* Based on that conduct, Maggi was convicted in state court of two counts of assault with a weapon. *Id.*

On February 19, 2005, while on state probation, Maggi was involved in an altercation where he threatened a bouncer at a nightclub, was non-compliant when the police officers who responded asked him to leave the club, and he was eventually tasered by the officers. (PSR ¶ 37). On February 24, 2005, a violation report was filed against Maggi for failing to meet with his state probation officer, resisting arrest, providing a positive urinalysis for methamphetamine and THC, and drinking alcohol at a bar. *Id.* On March 15, 2005, the state court reinstated Maggi's suspended sentence. *Id.*

On March 20, 2006, Maggi was sentenced to three years prison, suspended, for failing to register as a violent offender. (PSR ¶ 38).

Maggi also had his probation revoked on other occasions for consuming alcohol, using prescription drugs that were not prescribed to him, using marijuana and methamphetamine, and possessing a firearm. (See PSR ¶ 37 & 38, p. 9).

Trial:

The two victims, Kelly and Kimberly Hoyt, testified at trial. (SER 32-83; RT 61-112). Kelly Hoyt described how Maggi hit him with a pistol, kicked him while he was on the ground, and shot the pistol at him approximately five times. (SER 36-39; RT 65-68). Kimberly Hoyt testified and explained that she heard the gun shots as Maggi was shooting at her husband, Kelly. (SER 65; RT 94). Kimberly also explained how Maggi threatened to kill her, her husband, and her son. (SER 65-67; RT 94-96). Kimberly then testified that Maggi dragged her around by her hair, hit her in her face with the pistol approximately five times, and shot twice at her with the pistol. (SER 67-68, 70; RT 96-97, 99).

Maggi made a Rule 29, Fed. R. Crim. P., motion for a judgment of acquittal at the close of the government's case. (See SER 93-94; RT

122-123). The district court denied the motion. (SER 98; RT 127).

Maggi never renewed that motion. (*See* SER 100; RT 129).

Sentencing:

A sentencing hearing was held on June 9, 2008. (SER 106; RT 1). The district court “fully considered all of the information that [was] of record and available to the court.” (SER 122; RT 17). Such information included materials submitted by Maggi, testimony of a counselor on Maggi’s behalf, and the statements made by Maggi’s counsel. *Id.* The district court also assessed the 18 U.S.C. § 3553(a) factors. (SER 123-125; RT 18-20). After calculating the advisory guideline range, the district court sentenced Maggi to 87 months imprisonment on count one and 87 months imprisonment on count two, to run concurrently. (SER 125; RT 20). These sentences were within the advisory guideline range. (*See* SER 112-113; RT 7-8). The district court sentenced Maggi to the statutory mandatory minimum 120 months on count three, and the statutory mandatory minimum 300 months on count four, each to run consecutively to the other sentences in the case. (SER 126; RT 21). Maggi’s total sentence, therefore, was 507 months imprisonment. *Id.*

Maggi did not object to the district court's calculation of the guideline range, or to the reasonableness of the sentence. (*See* SER 129; RT 24).

SUMMARY OF ARGUMENT

Maggi's convictions and sentence should be affirmed for three reasons. *First*, the district court did not plainly err in denying Maggi's motion for a judgment of acquittal on the Indian person issue. Maggi is a descended member of the Blackfeet Tribe, has Indian blood, receives free medical care at the IHS hospital on the Blackfeet Reservation, qualifies for college grants reserved only to descended members of an Indian tribe, has free hunting and fishing rights on the reservation, has been prosecuted by the Blackfeet Tribe, and holds himself out to be an Indian person. *Second*, the district court did not err in sentencing Maggi to the statutory mandatory minimum 25 years imprisonment on count four because that count was a "second or subsequent conviction" under 18 U.S.C. § 924(c). *Third*, Maggi's sentence was reasonable given the nature of his conduct in this case, his extensive history of violent offenses, his repeated violations of probation, and his use of illegal drugs.

ARGUMENT

I. The District Court Did Not Plainly Err In Denying Maggi's Motion For A Judgment Of Acquittal Because There Was Overwhelming Evidence That He Is An "Indian" Person.

Standard of review: Although Maggi made a motion for a judgment of acquittal at the close of the government's case, he never renewed that motion. Where a defendant never renews a motion for a judgment of acquittal, this Court reviews sufficiency of the evidence claims for plain error. *See United States v. Gonzalez*, 528 F.3d 1207, 1210-11 (9th Cir. 2008) (internal citation omitted) (explaining that plain error review is imposed only in cases where a motion for judgment of acquittal is never renewed); *United States v. Carpenter*, 95 F.3d 773, 775 (9th Cir. 1996) ("[W]hen a defendant fails to renew his motion for judgment of acquittal at the close of all evidence, we will review a claim of insufficiency of the evidence only for plain error.").

Argument: Maggi argues that the government did not produce sufficient evidence for a jury to find that he is an Indian person, one of the essential elements of some of the crimes charged in the indictment. Maggi Br. at 12. The argument is without merit.

The key case is *United States v. Bruce*, 394 F.3d 1215, 1223-24 (9th Cir. 2005). There are two showings that need to be made to establish someone is an “Indian” person under 18 U.S.C. § 1153(a). First, Indian blood. Maggi has Indian blood. Second, “tribal or government recognition as an Indian.” *Id.* (internal quotation omitted).

To show tribal or government recognition, courts look at the following evidence: 1) tribal enrollment; 2) government recognition formally and informally through receipt of assistance reserved only to Indians; 3) enjoyment of the benefits of tribal affiliation; and 4) social recognition as an Indian through residence on a reservation and participation in Indian social life. *Id.* at 1224.

There was no error, much less plain error, by the district court in denying Maggi’s motion for a judgment of acquittal. The evidence presented at trial showed that Maggi is a descended member of the Blackfeet Tribe of Indians. (SER 7-9, 23; RT 36-38, 52). He has 1/64th Blackfeet Indian blood and 1/32nd Cree Indian blood. (SER 9; RT 38). His mother, Kathy Ann Maggi, is an enrolled member of the Blackfeet Tribe of Indians. (SER 10, 11; RT 39, 40).

As a descended member, Maggi receives free medical care at Indian Health Service hospitals, which free care is reserved only to enrolled and descended members of Indian tribes. (SER 11, 23; RT 40, 52). Maggi, as a descended member, also has free hunting and fishing rights on the Blackfeet reservation, and qualifies for certain college grants reserved only to descended members of Indian tribes. (SER 11; RT 40). Maggi has been prosecuted by the Blackfeet Tribe's prosecutor's office. (SER 29; RT 58). That office has jurisdiction to prosecute enrolled and descended members of federally recognized Indian tribes only. (SER 30; RT 59). Further, Maggi holds himself out to be an Indian person, and he participates in Blackfeet Indian social and religious ceremonies such as pow-wows, sweats, and smudging. (SER 34, 64; RT 63, 93).

Maggi's only real counter-point is that "[t]he Government failed to prove that Maggi was enrolled in the Blackfeet tribe." Maggi Br. 14. But enrollment is only one of the means of proof of tribal recognition. That point was emphasized in *Bruce*: "Tribal enrollment is the common evidentiary means of establishing Indian status, *but it is not the only means nor is it necessarily determinative.*" *Bruce*, 394 F.3d at 1224

(emphasis added; internal quotation omitted). This Court went on:

“[E]nrollment, and, indeed, even eligibility therefor, is not dispositive of Indian status.” *Id.* at 1225.

It is enough that there be “tribal recognition” without enrollment, and there is considerable deference to the tribe’s recognition of members because “one of an Indian tribe’s most basic powers is the authority to determine questions of its own membership.” *Id.* at 1225. The proof of tribal recognition in *Bruce* was similar to the proof here: receipt of Indian health services, tribal prosecution against the individual, living on the reservation, and taking part in tribal rituals. *See id.* at 1226.

The evidence here was more than sufficient for the jury to find that Maggi is an Indian person, and there was certainly no plain error in concluding as much.

II. The District Court Did Not Err In Sentencing Maggi To The Statutory Mandatory Minimum 25 Years Imprisonment On Count Four.

Standard of review: This Court reviews *de novo* a district court’s interpretation and application of a statute. *United States v. Valencia-*

Andrade, 72 F.3d 770, 772 (9th Cir. 1995); *see also United States v. Macias-Valencia*, 510 F.3d 1012, 1013 (9th Cir. 2007).

Argument: Maggi argues that the district court erred by sentencing him to the statutory mandatory minimum 25 years imprisonment on count four because he had no notice of that mandatory minimum sentence. Maggi Br. at 16. Maggi's argument fails for the following reasons.

A person convicted of a "second or subsequent" 18 U.S.C. § 924(c)(1)(A) count is subject to the statutory mandatory minimum 25 years imprisonment. *See* 18 U.S.C. § 924(c)(1)(C)(i). This 25-year sentence is also to run *consecutively* to any other sentence imposed. *See* 18 U.S.C. § 924(c)(1)(D)(ii). In this case, Maggi was convicted of two 924(c)(1)(A) counts. Therefore, he was subject to the statutory mandatory minimum 25-year sentence on count four, to run consecutively to his sentences on the other counts of conviction. *See Deal v. United States*, 508 U.S. 129 (1993) (holding that convictions on two or more § 924(c) counts charged in a single indictment constitute "a second or subsequent conviction" for the purpose of imposing enhanced

mandatory terms); *United States v. Andrews*, 75 F.3d 552, 558 (9th Cir. 1996) (same).

Maggi argues that he should have had notice of that penalty provision in the indictment, and that without notice from the indictment, he cannot receive the penalty. He offers no statute, rule, or constitutional provision that requires such notice.

The penalty provision here is not an “element” of the crime, and therefore it need not be pled in the indictment. *See generally Harris v. United States*, 536 U.S. 545, 566 (2002); *United States v. Dare*, 425 F.3d 634, 640 (9th Cir. 2005). Federal Rule of Criminal Procedure 7 does not require pleading potential penalties in an indictment. Under subsection (c)(1), it only requires “a plain, concise, and definite written statement of the essential facts constituting the offense charged,” as well as “the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated.” Maggi’s indictment satisfied those requirements.

To the extent any notice of penalties was even required, sufficient notice was provided merely by citation of the law in question – 18 U.S.C. § 924(c). *See, e.g., United States v. Soto-Beniquez*, 356 F.3d 1,

27 (1st Cir. 2004) (“Defendants, merely by reading the indictment, were on notice of the possibility of a life sentence. Section 848(b) requires life imprisonment for the ‘principal ... leaders’ of the continuing criminal enterprise if their violation of the drug laws involved more than 300 times the quantity described in 21 U.S.C. § 841(b)(1)(B).”). There is no enhanced notice requirement for the penalties under 18 U.S.C. § 924(c). When Congress desires enhanced notice, it has made that clear. *See, e.g.*, 21 U.S.C. § 851(a) (requiring additional notice of enhanced penalties in drug cases based upon prior convictions).

Maggi’s only argument flows from a very flawed analogy to advising defendants of penalties in plea colloquies. He cites Rule 11, Fed. R. Crim. P., and cases holding that it is reversible error for a defendant not to be informed of a mandatory minimum sentence when the defendant enters a guilty plea. *See* Maggi Br. at 18-22. Maggi, however, went to trial. And it is hard to see how knowledge of the penalties would have affected that decision – he does not even claim that it did – because pleading guilty he would have faced the same mandatory 25 years on count four as by going to trial. Even if he could

show some entitlement to notice of the potential penalty on the face of the indictment – and he cannot – he cannot show any prejudice.

Maggi mentions in passing he might have considered whether to “negotiate a plea,” Maggi Br. 22, but there is, of course, no entitlement to a plea agreement. Maggi faced the stiff penalties of multiple section 924(c) counts for a reason. In the view of the United States, he is a very dangerous person, who yet again had committed violent and very dangerous offenses, and as a matter of just punishment and protection of the community, deserved lengthy incarceration.

Further, even though not required, Maggi was informed of the *maximum* sentence that he faced if convicted of count four – up to life imprisonment. (See SER 2). “The Fifth and Sixth Amendments ensure that the defendant ‘will never get more punishment than he bargained for when he did the crime,’ but they do not promise that he will receive ‘anything less’ than that.” *United States v. Dare*, 425 F.3d 634, 640 (9th Cir. 2005), *quoting Harris v. United States*, 536 U.S. 545, 566 (2002).¹

¹Maggi says that “[t]he Supreme Court suggested in *Apprendi* that indictments must allege enhancements so defendants have adequate notice of them.” Maggi Br. 21. *Apprendi* concerns the right to a trial by jury on the elements of a crime, and the Supreme Court has

Maggi cannot avoid the 25-year, mandatory sentence of 924(c) on count four. There was no requirement that it appear in the indictment. The section for the crime itself was cited in the indictment, as required by Rule 7, and that is sufficient notice.

III. Maggi's Sentence Was Reasonable Given The Nature Of His Conduct In This Case, His Extensive History Of Violent Offenses, His Repeated Violations Of Probation, And His Illegal Drug Use.

Standard of review: Maggi did not object to his sentence at the sentencing hearing. Review should be for plain error. *United States v. Santiago*, 466 F.3d 801, 803 (9th Cir. 2006) (holding that absent specific objection by the defendant, the plain error standard controls). “Plain error is ‘highly prejudicial error affecting substantial rights[,] and is found only in exceptional circumstances.’” (internal citations omitted). *United States v. Kessi*, 868 F.2d 1097, 1102 (9th Cir. 1989). A “plain” error must be “obvious” or “clear.” “Plain error is so clear-cut, so obvious, a competent district judge should be able to avoid it without

in a series of cases defined an “element,” as a constitutional matter, as any fact – other than a prior conviction – that raises the statutory maximum. *Apprendi* is maximums, not minimums. After *Apprendi*, the Supreme Court reinforced that point in *Harris*, which involved 18 U.S.C. § 924(c).

benefit of objection.” *United States v. Smith*, 424 F.3d 992, 1002-03 (9th Cir. 2005) (internal quotation omitted). In showing an effect on “substantial rights,” it is the defendant’s burden to show “a reasonable probability that, but for [the error claimed], the result of the proceeding would have been different.” *United States v. Dominguez Benitez*, 542 U.S. 74, 81-82 (2004) (internal quotation marks omitted).

Argument: Maggi contends that his sentence is unreasonable because, he argues, the district court insufficiently evaluated the relevant factors (under 18 U.S.C. § 3553(a)), when it sentenced him. *See* Maggi Br. at 24. This argument fails for the following reasons.

The district court, after fully considering all of the information of record before it, analyzed each of the § 3553(a) factors. (*See* SER 122-23; RT 18-19). The court took into consideration the nature and circumstances of the offenses of conviction in this case. (SER 123; RT 18). Maggi violently beat, threatened, held hostage, and shot at two, helpless people. The court also “fully considered” Maggi’s history and characteristics, which included several convictions for violent offenses and a string of probation violations for, among other things, assaults

and illegal drug use. (See PSR ¶¶ 36-38). The court then sentenced Maggi.

The district court sentenced Maggi to 87 months imprisonment on counts one and two (the assault convictions) to run concurrently with each other. (SER 133). This sentence was within the guideline range. (See SER 112-113; RT 7-8). Maggi's reasonableness argument applies only to his convictions on counts one and two because his sentences on counts three and four were statutory mandatory minimum sentences which stand alone. In other words, the district court, by statute, had to run Maggi's sentences on counts three and four *consecutively* to his sentences on counts one and two. And, in fact, the district court could not reduce or discount Maggi's sentences on counts one and two in light of or based on the mandatory minimum sentences required for counts three and four. To do so would, in effect, be reducing the statutory mandatory minimum sentences for Maggi to something below the minimums prescribed by Congress. *See United States v. Roberson*, 474 F.3d 432, 436 (7th Cir. 2007) (explaining that allowing a district court to use the presence of a section 924(c)(1) add-on to reduce a defendant's sentence for the underlying crime would be

inconsistent with Congress's determination to fix a minimum sentence for using a firearm in a crime of violence). So, the district court was required to sentence Maggi to at least 120 months imprisonment on count three, and to at least 300 months imprisonment on count four – for a total of 420 months – which it did. And the district court was required, by statute, to run those sentences *consecutive* to Maggi's sentences on counts one and two. Thus, because the district court did not have discretion to sentence Maggi below the statutory minimums on counts three and four, Maggi's reasonableness argument applies only to his 87-month (concurrent) sentences on counts one and two. Because Maggi was sentenced within the guideline range on counts one and two after the district court properly considered the relevant factors, there was no plain error in sentencing Maggi on those counts. His sentence should be affirmed.

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CONCLUSION

This Court should affirm Maggi's conviction and sentence.

DATED this 29th day of December, 2008.

WILLIAM W. MERCER
United States Attorney

/s/E.Vincent Carroll
E. VINCENT CARROLL
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2008, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/E.Vincent Carroll
E. VINCENT CARROLL
Assistant U.S. Attorney

STATEMENT OF RELATED CASES

There are no related cases.

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(c) and Ninth Circuit Rule 32-1, the attached answering brief is proportionately spaced, has a typeface of 14 points or more, and the body of the argument contains 4,090 words.

WILLIAM W. MERCER
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/s/E.Vincent Carroll
E. VINCENT CARROLL
Assistant U.S. Attorney

STATUTORY APPENDIX

18 U.S.C. § 924 (sections applicable to this brief)

§ 924. Penalties

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime--

(i) be sentenced to a term of imprisonment of not less than 5 years;

(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

(iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

(C) In the case of a second or subsequent conviction under this subsection, the person shall--

(i) be sentenced to a term of imprisonment of not less than 25 years; and

(ii) if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life.

(D) Notwithstanding any other provision of law--

(i) a court shall not place on probation any person convicted of a violation of this subsection; and

(ii) no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed.