

Appendix A

United States v. Wilks

United States Court of Appeals for the Fifth Circuit

April 9, 2018, Filed

No. 17-10551 Summary Calendar

Reporter

718 Fed. Appx. 300 *; 2018 U.S. App. LEXIS 8911 **

UNITED STATES OF AMERICA, Plaintiff - Appellee v.
JAMES WILKS, Defendant - Appellant

Notice: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Prior History: **[**1]** Appeal from the United States District Court for the Northern District of Texas. USDC No. 4:08-CR-106-1.

United States v. Wilks, 2008 U.S. Dist. LEXIS 92322 (N.D. Tex., Nov. 12, 2008)

Disposition: AFFIRMED.

Counsel: For UNITED STATES OF AMERICA, Plaintiff - Appellee: Amber Michelle Grand, Attorney, James Wesley Hendrix, Assistant U.S. Attorney, U.S. Attorney's Office, Northern District of Texas, Dallas, TX.

For JAMES WILKS, Defendant - Appellant: Brandon Elliott Beck, Federal Public Defender's Office, Northern District of Texas, Lubbock, TX.

Judges: Before BARKSDALE, OWEN, and WILLETT, Circuit Judges.

Opinion

[*300] PER CURIAM:*

James Wilks challenges his above-Guidelines sentence of 18-months' imprisonment, imposed following revocation of his supervised release: he claims the sentence is "plainly unreasonable". Because he preserved the issue in district court, his challenge is reviewed under the above-referenced

"plainly unreasonable" standard. *United States v. Warren*, 720 F.3d 321, 326 (5th Cir. 2013); *United States v. Miller*, 634 F.3d 841, 843 (5th Cir. 2011).

Wilks contends the court refused to consider his personal history and characteristics. That assertion, however, is belied by the record: Wilks admitted violating six of the conditions of his supervised release. His claims essentially amount to a disagreement with the court's assessment of, *inter alia*, the 18 U.S.C. § 3553(a) sentencing factors, which we will not reweigh. *Gall v. United States*, 552 U.S. 38, 51, 128 S. Ct. 586, 169 L. Ed. 2d 445 (2007). In short, Wilks **[**2]** fails to show his sentence is plainly unreasonable. *Miller*, 634 F.3d at 843; *United States v. Whitelaw*, 580 F.3d 256, 261-65 (5th Cir. 2009); *e.g.*, *United States v. Kippers*, 685 F.3d 491, 500-01 (5th Cir. 2012).

AFFIRMED.

End of Document

* Pursuant to *5th Cir. R. 47.5*, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in *5th Cir. R. 47.5.4*.

Appendix B

United States District Court

NORTHERN DISTRICT OF TEXAS

Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

JAMES WILKS

Case number: 4:08-CR-106-Y (01)

U.S. marshal's no.: 38055-177

Alex C. Lewis, assistant U.S. attorney

Jim Warren Lane, attorney for the defendant

Marlo P. Cadeddu, attorney for the defendant

On October 29, 2008, the defendant, James Wilks, entered a plea of guilty to count one of the one-count indictment filed on July 16, 2008. Accordingly, the defendant is adjudged guilty of such count, which involves the following offense:


TITLE & SECTION	NATURE OF OFFENSE	OFFENSE CONCLUDED	COUNT
18 U.S.C. § 2252(a)(2)	Receipt of Child Pornography, a Class C felony	October 25, 2006	One

The defendant is sentenced as provided in pages two through three of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100 for count one of the one-count indictment.

The defendant shall notify the United States attorney for this district within thirty 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.

Sentence imposed March 9, 2009



TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Signed March 9, 2009

IMPRISONMENT

The defendant, James Wilks, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 60 months on count one of the one-count indictment.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 2 p.m. on April 13, 2009, as notified by the United States marshal or as notified by the probation office.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of 10 years on count one of the one-count indictment.

While on supervised release, in compliance with the standard conditions of supervision adopted by the United States Sentencing Commission, the defendant shall:

- (1) not leave the judicial district without the permission of the Court or probation officer;
- (2) report to the probation officer as directed by the Court or probation officer and submit a truthful and complete written report within the first five (5) days of each month;
- (3) answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) support the defendant's dependents and meet other family responsibilities;
- (5) work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (6) notify the probation officer within seventy-two (72) hours of any change in residence or employment;
- (7) refrain from excessive use of alcohol and 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;
- (8) not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (9) not associate with any persons engaged in criminal activity and not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- (10) permit a probation officer to visit the defendant at any time at home or elsewhere and permit confiscation of any contraband observed in plain view by the probation officer;
- (11) notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
- (12) 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; and
- (13) notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement, as directed by the probation officer.

In addition the defendant shall:

- not commit another federal, state, or local crime;
- not possess illegal controlled substances;
- not possess a firearm, destructive device, or other dangerous weapon;
- cooperate in the collection of DNA as directed by the probation officer;

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;

refrain from any unlawful use of a controlled substance, submitting to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer;

participate in a program (inpatient and/or outpatient) approved by the probation office for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use; abstain from the use of alcohol and all other intoxicants during and after completion of treatment; contribute to the costs of services rendered (copayment) at the rate of at least \$25 per month;

participate in mental health treatment services, as directed by the probation officer until successfully discharged, which services may include prescribed medications by a licensed physician, and contributing to the costs of services rendered (co-payment) at the rate of at least \$25 per month;

participate in sex-offender treatment services as directed by the probation officer until successfully discharged, which services may include psycho-physiological testing to monitor the defendant's compliance, treatment progress, and risk to the community, contributing to the costs of services rendered (copayment) at the rate of at least \$25 per month;

have no contact with minors under the age of 18, other than his own children, including by correspondence, telephone, internet, electronic communications, or communication through third parties; not have access to or loiter near school grounds, parks, arcades, playgrounds, amusement parks or other places where children may frequently congregate, except as may be allowed upon advance approval probation officer;

neither possess nor have under his/her control any pornographic matter of any kind or any matter that sexually depicts minors under the age of 18 including, but not limited to, matter obtained through access to any computer and any matter linked to computer access or use;

participate and comply with the requirements of the Computer and Internet Monitoring Program, contributing to the cost of the monitoring in an amount not to exceed \$40 per month; consent to the probation officer's conducting ongoing monitoring of his computer(s); the monitoring may include the installation of hardware and/or software systems that allow evaluation of computer use; not remove, tamper with, reverse engineer, or circumvent the software in any way; only use authorized computer systems that are compatible with the software and/or hardware used by the Computer and Internet Monitoring Program; permit the probation officer to conduct a preliminary computer search prior to the installation of software; the monitoring software may be disabled or removed at any time during the term of supervision at the discretion of the probation officer;

submit to periodic unannounced examination of his/her computer(s), storage media, and/or other electronic or Internet-capable devices performed by the probation officer at a reasonable time and in a reasonable manner based on reasonable suspicion of contraband evidence of a violation of supervision; this may include the retrieval and copying of any prohibited data and/or the removal of such systems for the purpose of conducting a more thorough inspection; provide written authorization for release of information from the defendant's Internet service provider;

not use any computer other than the one the defendant is authorized to use, without prior approval from the probation officer;

not use any software program or device designed to hide, alter, or delete records and/or logs of the defendant's computer use, Internet activities, or files stored on the defendant's computer;

not use any computer or computer-related equipment owned by his/her employer except for the strict benefit of his employer in the performance of his/her job-related duties;

not maintain or create a user account on any social networking site (i.e. MySpace.com, Facebook.com, Adultfriendfinder.com, etc.) that allows access to persons under the age of 18, or allows for the exchange of sexually explicit material, chat conversations, or instant messaging.; not view and/or access any web profile of users under the age of 18;

not use or possess any gaming consoles (including, but not limited to Xbox, PlayStation, Nintendo), or devices, without prior permission from the probation officer;

not use or possess a web cam or any other hardware that allows for the exchange of video or photographs online;

not access any service or use any software that allows for direct peer-to-peer contact that may include chat rooms, file sharing, or other similar activity, without permission from the probation officer;

not use or own any device that allows Internet access other than authorized by the U.S. Probation Office; this includes, but is not limited to, PDA's, electronic games, and cellular/digital telephones;

not engage in or utilize any service that allows peer-to-peer file sharing or file transfer protocol activity;

not access any Internet Service Provider account or other online service using someone else's account, name, designation, or an alias; and

register as a sex-offender with state and local law enforcement as directed by the probation officer in each jurisdiction where the defendant resides, is employed, and is a student, providing all information required in accordance with state registration guidelines, with initial registration being completed within three business days after release from confinement; provide written verification of registration to the probation officer within three business days following registration and renew registration as required by his probation officer; no later than three business days after each change of name, residence, employment, or student status, appear in person in at least one jurisdiction and inform that jurisdiction of all changes in the information required in the sex-offender registry.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

United States marshal

BY _____