

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

(Eleventh Circuit Court of Appeals No. 17-15036)

RICHARD D. WATERSON, II,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether in the exercise of its supervisory jurisdiction over the Courts of the United States, this Court should determine that the sentence imposed on Petitioner Richard D. Waterson, II (480 months in prison, comprised of 360 months imprisonment, plus a consecutive term of 120 months, was procedurally unreasonable because:

(1) The sentence imposed, 480 months in prison, is procedurally unreasonable because the risk of recidivism decreases substantially as the defendant ages, and it far exceeds what a necessary sentence that meets all goals for sentencing, in violation of all notions of fairness, justice, and reasonableness? And

(2) the district court improperly double-counted the Petitioner's prior conduct when it applied two separate five-point sentencing enhancements, all in violation of all notions of fairness, justice, and reasonableness in sentencing, and the goal of sentencing to impose a

sentence that is sufficient but not excessive to meet all of the requirements of an appropriate sentence based not only upon the defendant's background, but also in combination with the nature and severity of the offenses of conviction?

LIST OF PARTIES

Petitioner Richard D. Waterson, II, was the defendant in the United States District Court for the Southern District of Florida; and the appellant in the United States Court of Appeals for the Eleventh Circuit. Respondent, the United States of America, was the prosecution in the district court and the appellee in the court of appeals.

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Reason I

The sentence imposed, 480 months in prison, is procedurally unreasonable because the risk of recidivism decreases substantially as the defendant ages, and it far exceeds what a necessary sentence that meets all goals for sentencing, in violation of the notions of fairness, justice, and reasonableness. 5

Reason II

The sentence imposed, 480 months in prison, is procedurally unreasonable because the district court improperly double-counted the Petitioner's prior conduct when it ordered two separate five-point sentencing enhancements, all in violation of the notions of fairness, justice, and reasonableness in sentencing. 9

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IN THE SUPREME COURT OF THE UNITED STATES

No. _____

PETITION FOR A WRIT OF CERTIORARI

Petitioner Richard D. Waterson, II, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

The opinion of the Eleventh Circuit was not published. A copy of the opinion is provided in the Appendix to this Petition at App. Pages 1-7.

The Judgment of the United States District Court for the Northern District of Florida, convicting Petitioner Waterson and sentencing him to prison for 480 months, was entered on November 1, 2017. A copy is in the Appendix to this Petition at App. Pages 8-15.

STATEMENT OF JURISDICTION

The Eleventh Circuit issued its decision on September 12, 2018. See App. 1-7. This petition is timely filed pursuant to Supreme Court Rule 13.1. The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS OF THE UNITED STATES SENTENCING GUIDELINES

Section 2G2.2(b)(5) of the United States Sentencing Guidelines provides for a five-level increase if “the defendant engaged in a pattern of activity involving the sexual abuse or exploitation of a minor.”

Section 4B1.5(b)(1) of the Sentencing Guidelines provides for a five-level increase if “the defendant engaged in a pattern of activity involving prohibited sexual conduct,” and neither Section 4B1.1 nor subsection (a) of Section 4B1.5 applies.

STATEMENT OF THE CASE

The record shows that on July 5, 2016, a federal grand jury in the Northern District of Florida returned a four-count indictment charging Richard D. Waterson II with (1) attempting to entice a minor to engage in sexual activity, in violation of 18 U.S.C. § 2422(b); (2) receiving child pornography, in violation of 18 U.S.C. §2252A(a)(2); (3) possessing child pornography, in violation of 18 U.S.C. §2252A(a)(5)(B); and (4) committing the offense charged in Count One while being required to register as a sex offender, in violation of 18 U.S.C. § 2260A.

Mr. Waterson pleaded guilty to Counts One, Two, and Four. On the government's motion the district court dismissed Count Three. The district court sentenced Mr. Waterson to prison for 360 months on Counts One and Two, to run concurrently with each other, and to a consecutive term of 120 months imprisonment as to Count Four, for a total of 480 months imprisonment. Mr. Waterson timely appealed his sentence to the Eleventh Circuit Court of Appeals.

STATEMENT OF THE FACTS

In its decision affirming the sentence, the Eleventh Circuit found the sentence to be procedurally sound, substantively reasonable, and proportional under the Eighth Amendment. Citing *United States v. Johnson*, 803 F.3d 610 (11th Cir. 2015), the panel concluded first that the district court placed great emphasis on the need to protect the public, given the deeply disturbing nature of Mr. Waterson's offenses; and second that the district court was entitled to weigh that factor more heavily than other § 3553(a) factors.

The Eleventh Circuit wrote that according to the presentence investigation report Petitioner openly pursued pedophilia and incest as long ago as 2005. In committing the instant offense he took substantial steps toward actually having sex

with what he believed to be a 13-year-old girl, demonstrating his willingness to pursue sex with a child. The Eleventh Circuit further noted in its decision that the district court's concerns about recidivism were supported by the fact that Petitioner committed the present offense while on probation, less than one year after being released from a term of imprisonment related to a Florida conviction for another sexual offense.

According to the Eleventh Circuit decision Waterson's forensic evaluation¹ suggested that he poses an average-to-above-average risk of recidivism; and that the facts allowed the district court to conclude that Waterson posed a substantial risk to public safety. In light of the facts of record the Eleventh Circuit was "not left with the 'firm conviction' that the district court erred in imposing its sentence, particularly given that the sentence imposed is within the Guideline range, and not the maximum of life." This Petition ensues.

-
1. This finding of average-to-above-average risk of recidivism is the same finding that one would expect to see in virtually every forensic evaluation ever prepared in the case of an individual charged with a sexual offense or a child pornography offense. No one has a crystal ball. Any reasonable mental health expert would be likely to err on the side of caution in a case such as this.

REASONS FOR GRANTING THE WRIT

Reason I

The sentence imposed, 480 months in prison, is procedurally unreasonable because the risk of recidivism decreases substantially as the defendant ages, and it far exceeds what a necessary sentence that meets all goals for sentencing, in violation of the notions of fairness, justice, and reasonableness.

As set forth above, the Eleventh Circuit memorably found that the district court imposed a sentence that was “...within the Guideline range, and not the maximum of life” which sounds as though the district court was lenient in imposing sentence. That finding while technically accurate is misleading. The sentence for the first two counts was 360 months based upon a Guideline range of 360 to life, to run concurrently. Three hundred sixty months is thirty years. But there also was a consecutive term of 120 months for the fourth count, resulting in a total sentence of 480 months which is forty years in prison. According to the presentence investigation report, Petitioner Waterson was 47 years old when the PSR was prepared in October 2017. He was 47 when he was sentenced on November 1, 2017.

Should Petitioner Waterson, or any defendant in federal custody, exhibit model behavior throughout his term of incarceration, he (or she) should be credited with the full fifteen percent reduction allowed for good time credit in the United States Bureau of Prisons system. For a term of 480 months, the defendant may expect to serve 85% of that time, 408 months, or 34 years. In the case of Richard Waterson, II, a 47 year old individual sentenced to 480 months, he will serve 34 years in custody, and he may expect to be released when he is 81 years old, should he survive to age 81. Indeed the Bureau of Prisons website confirms this by estimating Mr. Waterson's presumptive release date to be in the year 2051.

Accordingly, a sentence of 480 months in all likelihood will be a life sentence for this Petitioner, rendering moot the language in the decision that he received only 360 months and not life. In a 2013 study conducted by Professor Evelyn Patterson of Vanderbilt Law School, Professor Patterson reached the following conclusions regarding the life expectancy of incarcerated individuals: (1) incarceration shortens life expectancy; (2) each year in prison takes two years off the inmate's life expectancy; (3) there is a linear relationship between incarceration and life expectancy; and (4) the length of time served in custody has a direct correlation to the years of life lost. See the Prison Policy Initiative, and Prisonpolicy.org.

Life expectancy reduced by a lengthy prison term. Also it should be considered that the risk of recidivism diminishes as people age. In December of 2017 the United States Sentencing Commission prepared a 54-page report on the Effect of Age and Recidivism on the Average Federal Offender. Included in that report is a table showing that for older inmates (sixty years of age or older), there is a very small chance of recidivism (less than 6 percent).

The conclusion is ineluctable that the offenses of conviction in the present case are severe and heinous. No one would dispute that a “lengthy sentence” is appropriate in order to meet the requirements for a reasonable sentence that is sufficient to punish the defendant, recognize the severity of the offenses of conviction, keep the defendant separated from society, and reduce the risk of recidivism.

On the other hand, the sentence must not be greater than sufficient or necessary to meet those sentencing functions. The defendant is still a human being. One would expect that he will not simply be warehoused for the next forty years.

Petitioner Waterson should receive the benefit of treatment for his illegal, unnatural, and unhealthy predilections and behaviors. Additionally he should be

expected to learn from his mistakes, make the most of his term of incarceration, to become a better person, and to become rehabilitated during his lengthy prison term. Three hundred sixty months (30 years) is a very long time in any person's life. In all likelihood that would be a sufficient and adequate sentence in this case for this defendant. Four hundred eighty months (40 years) is equivalent to a life sentence, and truly is unreasonable.

This Court in the exercise of its supervisory jurisdiction over the United States Courts, should find that the sentence imposed is excessive, harsh, unnecessarily lengthy, unfair, unjust, unreasonable, and that in this case, a remand for a reduction to a reasonable term of months (or years) of incarceration, not to exceed 300 months (25 years) is warranted.

Reason II

The district court improperly double-counted the Petitioner's prior conduct when it applied two separate five-point sentencing enhancements, all in violation of all notions of fairness, justice, and reasonableness in sentencing, and the goal of sentencing to impose a sentence that is sufficient (adequate) but not excessive to meet all of the requirements of an appropriate sentence based not only upon the defendant's background, but also in combination with the nature and severity of the offenses of conviction.

In reviewing a criminal sentence the appropriate procedure is to first review whether the district court properly applied the sentencing guidelines and then whether the sentence is reasonable in the context of the factors outlined in 18 U.S.C. §3553(a). *United States v. Williams*, 435 F.3d 1350, 1353 (11th Cir. 2006) (citing *United States v. Booker*, 543 U.S. 220, 125 S.Ct. 738 (2005)); see also *Nelson v. United States*, 129 S.Ct. 890, 891-92 (2009). “[N]ot only must the district court[] consult the Guidelines and take them into account when sentencing, [it] must properly calculate the Guidelines range and include an explanation of any deviation from the Guidelines range.” *United States v. Pugh*, 515 F.3d 1179, 1190 (11th Cir. 2008) (internal citation and quotations omitted.)

In the district court the defense objected to the five-level enhancement for Section 4B1.2 which was the same conduct that already had been taken into account to increase the offense level by five levels. Therefore, there were 10

levels of enhancement added for the alleged 2008 conduct. The district court indicated that the Eleventh Circuit had approved the application of both enhancements, citing *United States v. Rothenberg*, 610 F.3d 621 (11th Cir. 2010). Defense counsel acknowledged that the case law was adverse to the defense position, but contended that if double enhancements were applied pursuant to circuit precedent, then a variance below the guideline range was appropriate based upon the facts and circumstances of record.

The sentence of 480 months was reached only because the court applied the double enhancement for Guidelines Section 4B1.5 which added 15 years to the guidelines range. It was and remains the position of Mr. Waterson on appeal and in this Petition, that the application of both five-level enhancements for the same conduct (even if for different considerations), is reversible error. When defense counsel stated that as a result of these enhancements the district court accorded too much weight to the advisory Guideline range, the court stated that if its application of the 4B1.5 enhancement was incorrect, then the sentence imposed would be 300 months, or a total of 25 years as the defense requested and suggested.

Indeed if application of the five level enhancement for Section 4B1.5 were permissible, then the Court should have found a substantial downward variance to

be appropriate. A total sentence of 25 years as requested by the defense and as declared to be the district court's alternative sentence if the enhancement were incorrect, would be a reasonable sentence. The sentence should be vacated and the cause remanded for a procedurally reasonable sentence of no more than 25 years.

CONCLUSION

For either or both of the foregoing reasons, Petitioner Waterson requests that this Court grant certiorari on the issues of whether the sentence was reasonable based upon its length and whether two five-level enhancements should have been applied because they resulted in double-counting prior offenses, and thus a procedurally infirm sentence that is far from reasonable.

Very respectfully submitted,

/s/ Sheryl J. Lowenthal

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Petitioner Waterson
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November 8, 2018

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APPENDIX TO THE PETITION

United States v. Waterson, No. 17-15036

United States Court of Appeals, Eleventh Circuit

Not published

Eleventh Circuit September 12, 2018

App. 1 – 7

Judgment and Conviction, No. 3:16-CR-00057-Rodgers

Docket No. 48, November 1, 2017

Northern District of Florida

App. 8 – 16

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-15036
Non-Argument Calendar

D.C. Docket No. 3:16-cr-00057-MCR-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RICHARD D. WATERSON, II,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Florida

(September 12, 2018)

Before NEWSOM, BRANCH, and FAY, Circuit Judges.

PER CURIAM:

Richard Waterson, II appeals his sentences for attempted enticement of a minor in violation of 18 U.S.C. § 2422(b), receipt of child pornography in violation of 18 U.S.C. §§ 2252A(a)(2) and (b)(1), and committing a felony offense while registered as a sex offender in violation of 18 U.S.C. § 2260A. On appeal, he argues that his sentences are substantively unreasonable because they were greater than necessary considering all the 18 U.S.C. § 3553(a) factors, and moreover were disproportionate in violation of the Eighth Amendment. He argues further that his sentences are procedurally unreasonable because the district court improperly double-counted his prior conduct in order to justify two separate sentencing enhancements.

I

A sentence may be procedurally unreasonable if the district court improperly calculates the guideline range, treats the Guidelines as mandatory rather than advisory, fails to consider the § 3553(a) factors, bases the sentence on clearly erroneous facts, or fails to adequately explain the chosen sentence. *Gall v. United States*, 552 U.S. 38, 51 (2007). The weight given to any particular § 3553(a) factor is within the sound discretion of the district court. *United States v. Williams*, 526 F.3d 1312, 1322 (11th Cir. 2008).

We review claims of impermissible double-counting *de novo*. *United States v. Webb*, 665 F.3d 1380, 1382 (11th Cir. 2012). Impermissible double-counting

occurs only if a part of the Guidelines is applied to increase a defendant's punishment on account of a kind of harm that was already fully accounted for by applying another part of the Guidelines. *Id.* A district court may validly double-count a factor if the Sentencing Commission intended that result and if each relevant guideline provision addresses conceptually separate notions related to sentencing. *Id.* Absent a specific direction to the contrary, we presume that the Sentencing Commission intended that separate sections apply cumulatively, and, consequently, defendants "asserting a double counting claim ha[ve] a tough task." *Id.*

In *United States v. Rothenberg*, we previously upheld the application of both U.S.S.G. § 2G2.2(b)(5) and U.S.S.G. § 4B1.5(b)(1) in enhancing the defendant's sentence, reasoning that the application of two pattern-of-activity enhancements did not constitute double-counting "because they were applied, respectively, to two separate and distinct offenses involving different conduct and different harms." 610 F.3d 621, 624 n.4 (11th Cir. 2010).

The two sentencing enhancements applied in Waterson's case address different harms. Section 2G2.2 of the Sentencing Guidelines provides for a five-level increase if "the defendant engaged in a pattern of activity involving the sexual abuse or exploitation of a minor." U.S.S.G. § 2G2.2(b)(5). Likewise, section 4B1.5 of the Guidelines provides for a five-level increase if "the defendant

engaged in a pattern of activity involving prohibited sexual conduct,” and neither § 4B1.1 nor subsection (a) of § 4B1.5 applies. U.S.S.G. § 4B1.5(b)(1).

In this case, the court did not err in applying both pattern-of-activity enhancements. Waterson does not point to any provision or commentary notes indicating that the Sentencing Commission did not intend for § 2G2.2(b)(5) and § 4B1.5(b)(1) to apply cumulatively. *Webb*, 665 F.3d at 1382. Significantly, this Court has previously upheld the application of both enhancements simultaneously, further supporting the district court’s simultaneous application of the enhancements in this case. *See Rothenberg*, 610 F.3d at 624–25. In *Rothenberg*, both enhancements were based on two separate instances in the defendant’s past where he had engaged in inappropriate behavior concerning a minor. *Id.* at 624 n.4. Likewise, in this case, Waterson had engaged in sexual misconduct involving a minor on at least two occasions prior to committing the instant offense.

Our precedent establishes that the district court did not impermissibly double-count Waterson’s conduct in applying the enhancements under § 4B1.5(b)(1) and § 2G2.2(b)(5).

II

Once we determine that a sentence is procedurally sound, we must examine whether the sentence is substantively reasonable in light of the record and the § 3553(a) factors. *Gall*, 552 U.S. at 51. We review the substantive reasonableness

of a sentence for abuse of discretion. *United States v. Rosales-Bruno*, 789 F.3d 1249, 1255 (11th Cir. 2015). The party who challenges the sentence's substantive reasonableness bears the burden of showing it is unreasonable in light of the record and § 3553(a) factors. *United States v. Tome*, 611 F.3d 1371, 1378 (11th Cir. 2010). "In determining a sentence, a district court must evaluate all of the § 3553(a) factors but can attach 'great weight' to one factor over others." *United States v. Johnson*, 803 F.3d 610, 618 (11th Cir. 2015). We reverse only if left with the firm conviction that the district court committed a clear error of judgment in weighing the § 3553(a) factors by arriving at a sentence that lies outside the range of reasonable sentences dictated by the facts of the case. *United States v. Irey*, 612 F.3d 1160, 1190 (11th Cir. 2010) (*en banc*). We may, but are not required to, apply a presumption of reasonableness to a within-Guidelines sentence. *Gall*, 552 U.S. at 51.

We recognize a "narrow proportionality principle that applies to noncapital sentences." *United States v. McGarity*, 669 F.3d 1218, 1255 (11th Cir. 2012). Successful proportionality challenges under the Eighth Amendment are exceedingly rare because we give great deference to Congress in determining the types and limits of punishments. *Id.* at 1256. Accordingly, the burden is on the defendant to show that his sentence is grossly disproportionate to the crime committed. *Id.* "In general, a sentence within the limits imposed by statute is

neither excessive nor cruel and unusual under the Eighth Amendment.” *United States v. Johnson*, 451 F.3d 1239, 1243 (11th Cir. 2006) (quoting *United States v. Moriarty*, 429 F.3d 1012, 1024 (11th Cir. 2005)).

In this case, Waterson has not met his burden of showing that his sentences are substantively unreasonable. *Tome*, 611 F.3d at 1378. The court placed great emphasis on its need to protect the public, given the deeply disturbing nature of Waterson’s crimes, and was entitled to weigh that factor more heavily than the other § 3553(a) factors. *Johnson*, 803 F.3d at 618. The record supports the district court’s concerns about the danger Waterson poses to the public. The PSI noted that Waterson had openly pursued pedophilia and incest as far back as 2005. Significantly, in committing the instant offense, Waterson took substantial steps toward actually having sex with what he believed to be a 13-year-old girl, demonstrating his willingness to pursue sex with a child. Further, the district court expressed concerns over Waterson’s risk of recidivism. Those concerns are supported by the record. Waterson committed the instant offense while on probation, less than one year after he had been released from a term of imprisonment related to conviction for another sexual offense. Waterson’s forensic evaluation also suggests that he poses an average to above-average risk of recidivism. From these record facts, the district court drew its conclusion that Waterson poses a substantial risk to public safety. In light of these facts, we are

not left with the “firm conviction” that the district court erred in imposing its sentence, particularly given that the sentence imposed is within the Guideline range, and not the maximum of life. *Irey*, 612 F.3d at 1190; *Gall*, 552 U.S. at 51.

Nor has Waterson has shown that his sentence was disproportionate under the Eighth Amendment. Waterson did not raise his Eighth Amendment claim below, so we review only for plain error. *Puckett v. United States*, 556 U.S. 129, 135 (2009). Given that Waterson has not cited to any authority explicitly rendering his sentence unconstitutional under the circumstances of his case, he has not demonstrated that any alleged error was plain. *United States v. Madden*, 733 F.3d 1314, 1322 (11th Cir. 2013). Accordingly, his Eighth Amendment claim fails under plain error review. *Puckett*, 556 U.S. at 135. Moreover, even if reviewed *de novo*, Waterson’s claim fails. *McGarity*, 669 F.3d at 1255. He has failed to cite any cases in which people who committed similar crimes were given dramatically lower sentences, or explain how his own sentences are unreasonable. Moreover, in light of the extremely serious nature of his offense, and the depth and longevity of his sexual deviancy, Waterson has not demonstrated that his sentences, which fall well within the Guidelines range, are excessive or cruel and unusual. *Johnson*, 451 F.3d at 1243.

AFFIRMED.

UNITED STATES DISTRICT COURT

Northern District of Florida

UNITED STATES OF AMERICA

v.

RICHARD D. WATERSON, II

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:16cr57-001/MCR

USM Number: 25154-017

Thomas S. Keith (Appointed - AFD)
Defendant's Attorney**THE DEFENDANT:**☒ pleaded guilty to count(s) One, Two and Four of the Indictment on January 26, 2017☐ 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 & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 2422(b)	Attempted Enticement of a Minor	June 8, 2016	One
18 U.S.C. §§ 2252A(a)(2) and (b)(1)	Receipt of Child Pornography	June 8, 2016	Two
18 U.S.C. § 2260A	Penalties for Registered Sex Offenders	June 8, 2016	Four

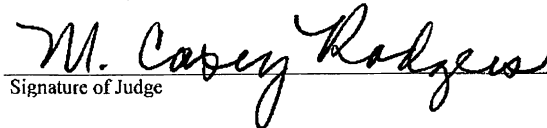
The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____☒ Count(s) Three ☒ 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.

October 30, 2017

Date of Imposition of Judgment



Signature of Judge

M. Casey Rodgers, Chief United States District Judge

Name and Title of Judge

November 1st, 2017

Date

DEFENDANT: RICHARD D. WATERSON, II
CASE NUMBER: 3:16cr57-001/MCR

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: **480 months. This sentence is comprised of 360 months as to Counts One and Two, to run concurrently, one with the other; and 120 months as to Count Four, to run consecutively to Counts One and Two.**

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends that the defendant be designated to FCI Marianna for service of his sentence, or to a BOP facility for confinement near Okaloosa County, Florida, or as close to that area as reasonably possible.

It is the recommendation of the court that while the defendant is incarcerated he shall participate in a Sex Offender Treatment Program or other such similar program offered through the Bureau of Prisons.

☒ 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 2 p.m. 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 _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____

DEPUTY UNITED STATES MARSHAL

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NDFL 245B (Rev. 11/16)

Judgment in a Criminal Case
Sheet 3 — Supervised Release

Judgment—Page 3 of 8

DEFENDANT: RICHARD D. WATERSON, II
CASE NUMBER: 3:16cr57-001/MCR

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

Life as to Counts One and Two, with said terms to run concurrently, one with the other, and no term of supervision is applicable to Count Four.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must 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 you pose a low risk of future substance abuse. *(check if applicable)*
4. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. ☒ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

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

NDFL 245B (Rev. 11/16)

Judgment in a Criminal Case
Sheet 3A — Supervised ReleaseJudgment—Page 4 of 8DEFENDANT: RICHARD D. WATERSON, II
CASE NUMBER: 3:16cr57-001/MCR**STANDARD CONDITIONS OF SUPERVISION**

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: RICHARD D. WATERSON, II
CASE NUMBER: 3:16cr57-001/MCR

SPECIAL CONDITIONS OF SUPERVISION

Computer Conditions:

You must not possess or use a computer without the prior approval of the probation officer. "Computer" includes any electronic device capable of processing or storing data as described at 18 U.S.C. § 1030, and all peripheral devices.

As directed by the probation officer, you must enroll in the probation office's Computer and Internet Monitoring Program (CIMP), and shall abide by the requirements of the CIMP program and the Acceptable Use Contract.

You must not access the Internet or any "on-line computer service" at any location (including employment) without the prior approval of the probation officer. "On-line services" include any Internet service provider, or any other public or private computer network. As directed by the probation officer, you must warn your employer of restrictions to your computer use.

You must consent to the probation officer conducting periodic unannounced examinations of his computer equipment, which may include retrieval and copying of all data from your computer(s) and any peripheral device to ensure compliance with this condition, and/or removal of any such equipment for the purpose of conducting a more thorough inspection. You must also consent to the installation of any hardware or software as directed by the probation officer to monitor your Internet use.

You must not possess or use any data encryption technique or program.

Materials Restrictions:

You must not possess, in any form, materials depicting child pornography, child erotica, or nude or sexual depictions of any child; or any materials described at 18 U.S.C. § 2256(8).

You must refrain from accessing, via the Internet, any pornography, including adult pornography, or other materials depicting sexually explicit conduct as defined at 18 U.S.C. § 2256(2), without the prior approval of the probation officer.

Associations Restrictions:

You must not frequent or loiter within 100 feet of any location where children are likely to gather, or have contact with any child under the age of 18, unless otherwise approved by the probation officer. Children are likely to gather in locations including, but not limited to, playgrounds, theme parks, public swimming pools, schools, arcades, museums or other specific locations as designated by the probation officer.

Your employment must be approved by the Probation Officer, and any change in employment must be pre-approved by the Probation Officer. You must submit the name and address of the proposed employer to the Probation Officer at least 10 days prior to any scheduled change.

DEFENDANT: RICHARD D. WATERSON
CASE NUMBER: 3:16cr57-001/MCR

ADDITIONAL SPECIAL CONDITIONS OF SUPERVISION

Your residence must be approved by the probation officer, and any change in residence must be pre-approved by the Probation Officer. You must submit the address of any proposed residence to the Probation Officer at least 10 days prior to any scheduled change.

Treatment:

You must participate in sex offender-specific treatment, as directed by the probation officer. You must pay part or all of the cost of this treatment, at an amount not to exceed the cost of treatment, as deemed appropriate by the probation officer. The actual co-payment schedule shall be determined by the probation officer. The probation officer shall release the presentence report and all previous mental health evaluations to the treatment provider. As part of the treatment program, you must submit to polygraph or other psychological or physiological testing as recommended by the treatment provider.

You must participate in a program of mental health counseling and/or treatment as deemed appropriate following an evaluation.

Polygraph:

You must submit to periodic polygraph testing at the discretion of the probation office as a means to ensure that you are in compliance with the requirements of your supervision or treatment program.

Registration:

You must register with the state sex offender registration agency as required by state law. You must provide proof of registration to the Probation Officer within three days of release from imprisonment/placement on supervision. In any state that has adopted the requirements of the Sex Offender Registration and Notification Act (42 USC sec. 16901 et seq.), you must also comply with all such requirements as directed by the Probation Officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, are a student, or was convicted of a qualifying offense.

NDFL 245B (Rev. 11/16)

Judgment in a Criminal Case
Sheet 5 — Criminal Monetary PenaltiesJudgment — Page 7 of 8DEFENDANT: RICHARD D. WATERSON, II
CASE NUMBER: 3:16cr57-001/MCR**CRIMINAL MONETARY PENALTIES**

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

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 300.00	\$ 0- waived	\$ 0 – waived	\$ Deferred for 90 days

☒ The determination of restitution is deferred up to 90 days. 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>
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TOTALS	\$ _____	\$ _____
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☐ 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:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

** 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.

NDFL 245B (Rev. 11/16)

Judgment in a Criminal Case
Sheet 6 — Schedule of PaymentsJudgment — Page 8 of 8DEFENDANT: RICHARD D. WATERTON, II
CASE NUMBER: 3:16cr57-001/MCR**SCHEDULE OF PAYMENTS**

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

- A ☒ Lump sum payment of \$ 300.00 Special Monetary Assessment due immediately
- ☐ not later than _____, or
- ☐ in accordance with ☐ 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:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of 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:
Preliminary Order of Forfeiture entered on March 10, 2017 (doc. #35).

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) JVT A assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

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