APPENDIX A-1

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-10515
Non-Argument Calendar

D.C. Docket No. 6:15-cr-00254-PGB-GJK-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROWY DE JESUS VASQUEZ,
a.k.a. Weezy,

Defendant-Appellant.

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

(October 26, 2018)

Before ROSENBAUM, FAY, and JULIE CARNES Circuit Judges.

PER CURIAM:

Defendant Rowy Vasquez appeals his 360-month sentence after pleading guilty to one count of sex trafficking of a minor. On appeal, Defendant argues that the district court violated Federal Rule of Criminal Procedure 32(h) by failing to provide adequate notice that it would impose a sentence above the advisory guideline range. He also asserts that his sentence violates due process and is procedurally unreasonable because the sentence was based on unproven allegations. After careful review, we affirm.

I. BACKGROUND

A. Facts[1]

In April 2015, Defendant met K.C., a 14-year-old who had recently run away from her parents' home. Over the course of the next several weeks, Defendant caused K.C. to engage in commercial sex acts for his own financial gain and profit. He manipulated K.C. into prostitution by providing her with drugs and alcohol. He and another individual also had sex with K.C. to initiate her into the prostitution business.

To assist communication between K.C. and potential prostitution customers, Defendant provided her with an iPhone. Defendant set the prices for K.C.'s services and advised K.C. to use condoms, not to let customers leave marks on her

[1] This factual background is taken from the facts Defendant admitted to during his plea colloquy and the undisputed facts in the Presentence Investigation Report. *See United States v. Wilson*, 884 F.2d 1355, 1356 (11th Cir. 1989) ("The findings of fact of the sentencing court may be based on evidence heard during trial, facts admitted by a defendant's plea of guilty, undisputed statements in the presentence report, or evidence presented at the sentencing hearing.").

body, and to avoid certain sex acts. Defendant stayed with K.C. at a "trap" house where she met with customers obtained from online advertisements. Defendant also rented hotel rooms for K.C. to meet with customers. K.C. met with approximately 6 to 10 customers per day, resulting in daily earnings of approximately $1,000. Defendant kept all of K.C.'s earnings.

Eventually, K.C. left Defendant and returned home after she was raped and assaulted by a customer. However, she later reunited with Defendant, and he once again instructed her to engage in prostitution activities. Following K.C.'s return, Defendant stood outside her hotel room with a gun for protection while she met with customers.

B. Procedural History

In December 2015, a federal grand jury charged Defendant with one count of sex trafficking of a minor, in violation of 18 U.S.C. § 1591(a), (b)(2) ("Count 1"), and one count of attempted sex trafficking of a second minor, in violation of 18 U.S.C. §§ 1591(a), (b)(2) and 1594 ("Count 2"). Defendant subsequently pled guilty to Count 1 pursuant to a written plea agreement, and in exchange, the Government agreed to dismiss Count 2.[2]

[2] Although the plea agreement contained a sentence appeal waiver, it provided an exception if Defendant received a sentence above the advisory guideline range. Defendant received a sentence above the guideline range in the present case.

In preparation for sentencing, the probation officer prepared the Presentence Investigation Report ("PSR"). The PSR assigned Defendant a base offense level of 30, pursuant to U.S.S.G. § 2G1.3(a)(2). He also received: (1) a two-level enhancement under U.S.S.G. § 2G1.3(b)(2)(B) because Defendant unduly influenced a minor to engage in prohibited sexual conduct; (2) a two-level enhancement under § 2G1.3(b)(3) because the offense involved the use of a computer; and (3) a two-level enhancement under § 2G1.3(b)(4)(A) because the offense involved a commercial sex act. Defendant received a 3-level reduction for acceptance of responsibility, resulting in a total offense level of 33.

The PSR assigned Defendant a criminal history category of IV. The PSR also noted that Defendant had charges pending in the Southern District of New York for bank robbery and possession of a firearm in furtherance of a crime of violence. Based on a total offense level of 33 and a criminal history category of IV, Defendant's range was 188 to 235 months' imprisonment.

Defendant filed objections to the PSR, challenging the two-level enhancement for undue influence. He also objected to many of the PSR's factual statements pertaining to the present offense conduct. In response to Defendant's objections, the probation officer issued a revised PSR that removed the two-level enhancement for undue influence. This resulted in an amended total offense level of 31 and a guideline range of 151 to 188 months' imprisonment.

At the sentencing hearing, the district court asked Defendant if he had any objections to the factual accuracy of the PSR. Defendant stated that with the removal of the enhancement for undue influence, he had no objections to the factual accuracy of the PSR. The court then adopted the statements of fact in the PSR and confirmed the guideline range of 151 to 188 months' imprisonment.

After hearing from Defendant, members of Defendant's family, and the prosecutor, the district court stated the factors it had considered in reaching its sentencing decision. Although the court noted Defendant's supportive family and his youth as mitigating factors, the court identified many other troubling, aggravating factors. First, the court noted that Defendant had a lengthy criminal record, which started when he was a juvenile, and that by the time he was in his early 20s, Defendant had joined a wing of the "notorious" Bloods gang.

As to the offense conduct, the court observed that Defendant had acted as a predator in his dealings with the 14-year-old K.C., and the court went into great detail as to the specific predatory behavior Defendant engaged in, which the court remarked on as being "simply horrific." Specifically, Defendant had forced a troubled 14-year-old girl to engage in nonconsensual sexual activity for money (that Defendant kept) at least 144 times.[3] The court also mentioned that Defendant often stood guard with a gun outside the hotel room where he was forcing K.C. to

[3] On one occasion, a "customer" had raped and assaulted K.C.

prostitute herself, which itself heightened "the propensity for violence in these events." On other occasions, Defendant armed a 15-year-old prostitute with a knife to guard K.C. Defendant struck K.C. whenever she spoke back to him. The court also noted that Defendant had a history of drug sales and drug use, as well as a history of firearm possession.

Finally, citing examples, the court explained that in cases where there had been sexual exploitation of a minor, it had often imposed sentences that were "considerably higher" than the sentence the Government had recommended in the present case, which recommendation was for a bottom of the Guideline-range sentence of 151 months.[4] Concluding with the observation that "sexual exploitation of children is perhaps one of the most horrific crimes that I can personally imagine," and articulating the § 3553(a) factors, the court imposed a 360-month sentence of incarceration.

Defendant objected to the substantive reasonableness of the court's above-guidelines sentence. Defendant has now appealed, but on appeal he no longer argues that the sentence imposed was substantively unreasonable: that is, that the sentence is too long. Instead, he makes two other arguments that were not raised at sentencing: (1) that the district court should have given him advance notice that it

[4] The Government indicated that it recommended this sentence because Defendant had agreed at an early stage of the proceedings to plead guilty, which spared the emotionally-troubled minor girls whom he had prostituted the burden of having to testify at trial.

was upwardly departing from the Guidelines and (2) that the sentence was procedurally unreasonable because, in violation of Defendant's due process rights, the district court based its sentence on unreliable information.

II. DISCUSSION

A. Federal Rule of Criminal Procedure 32(h)

Defendant first argues that the district court essentially imposed an upward departure without providing the required notice under Federal Rule of Criminal Procedure 32(h). Because Defendant raises his lack of notice argument for the first time on appeal, our review is for plain error. *See United States v. Aguillard*, 217 F.3d 1319, 1320 (11th Cir. 2000) ("Where a defendant raises a sentencing argument for the first time on appeal, we review for plain error."). In order for this Court to notice plain error, there must be: "(1) an error (2) that is plain and (3) that has affected the defendant's substantial rights" and "(4) the error seriously affects the fairness, integrity or public reputation of judicial proceedings." *United States v. Madden*, 733 F.3d 1314, 1320 (11th Cir. 2013) (alteration accepted) (quotations omitted).

Rule 32(h) provides that a district court "must give the parties reasonable notice" before it "depart[s] from the applicable sentencing range on a ground not identified for departure either in the presentence report or in a party's prehearing submission." Fed. R. Crim. P. 32(h). Although Rule 32(h) requires that a court

provide notice of its intent to impose a departure, it does not require a court to provide notice of its intent to impose an upward variance based on the 18 U.S.C. § 3553(a) factors.[5] *Irizarry v. United States*, 553 U.S. 708, 714 (2008). To determine whether a sentence imposed outside of the guideline range constitutes a departure or a variance, we consider "whether the district court cited to a specific guideline departure provision and if the court's rationale was based on [the court's] determination that the Guidelines were inadequate." *United States v. Kapordelis*, 569 F.3d 1291, 1316 (11th Cir. 2009).

Here, Defendant cannot show that the district court erred plainly or otherwise by failing to provide notice under Rule 32(h) because the district court imposed a variance, not a departure. Defendant appears to assert that the district court's reference to his extensive criminal history shows that it effectively imposed an upward departure under U.S.S.G. § 4A1.3. Section 4A1.3 of the Sentencing Guidelines provides in relevant part that the court may impose an upward departure if a defendant's criminal history category significantly underrepresents his criminal history. U.S.S.G. § 4A1.3(a).

[5] The § 3553(a) factors include: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need for deterrence; (4) the need to protect the public; (5) the need to provide the defendant with needed education or vocational training or medical care; (6) the kinds of sentences available; (7) the Sentencing Guidelines range; (8) pertinent policy statements of the Sentencing Commission; (9) the need to avoid unwarranted sentencing disparities; and (10) the need to provide restitution to victims. 18 U.S.C. § 3553(a).

Although the court mentioned Defendant's lengthy criminal history, it did not cite to § 4A1.3, or any other specific guideline departure provision for that matter. Moreover, the court stated that the Guidelines were "inadequate" and that it did not intend to follow the Guidelines given its consideration of several § 3553(a) factors, including the seriousness of the offense and the need to promote respect for the law, to provide just punishment for the offense, and to protect the public from Defendant's future crimes. The district court's reasoning and its lack of reference to a specific guideline departure provision indicates that it applied a variance, not a departure. *See Kapordelis*, 569 F.3d at 1316 (concluding that the court imposed a variance rather than a departure, where the court did not cite a specific guideline provision and based the defendant's above-guidelines sentence on the § 3553(a) factors). Significantly, the court noted in the statement of reasons that it was imposing a variance based on several of the § 3553(a) factors.

Because the district court imposed a variance and not a departure, it was not required to provide notice under Rule 32(h). Defendant therefore cannot show error, much less plain error.

B. The District Court's Finding Regarding History of Firearms Possession

As noted above, Defendant does not challenge the substantive reasonableness of his 360-month sentence; stated another way, he does not argue that the sentence was too long. Instead, he argues that the district court's sentence

was procedurally unreasonable because it violated Defendant's due process rights. Specifically, in explaining the reasons why it imposed the particular sentence on Defendant, the district court mentioned, as one of many considerations,[6] that Defendant "[has] a history of firearm possession." Defendant argues that in making this statement, the court must have been improperly relying on unsupported allegations: namely prior arrests that were later *nolle prossed* and Defendant's pending charges in the Southern District of New York. Such reliance, Defendant argues, violates a defendant's due process rights.

Yet, Defendant never made this objection to the district court, which could have clarified its basis for the statement. The Government therefore argues that we should review this argument only for plain error. We agree. We have held that procedural-reasonableness arguments raised for the first time on appeal are reviewed for plain error. *See United States v. Vandergrift*, 754 F.3d 1303, 1307 (11th Cir. 2014). *See also United States v. Candelario*, 240 F.3d 1300, 1306 (11th Cir. 2001) ("If the defendant . . . does not raise the constitutional objection . . . he is entitled only to plain error review.").

To establish a due process violation based on the district court's reliance on false or unreliable information, the defendant must show that the evidence is

[6] The district court's explanation of its reasons occupies 6 pages and 160 lines in the transcript of the sentencing hearing. The isolated reference to Defendant's "history of firearm possession" occupies only one of those lines.

materially false or unreliable, and that it actually served as the basis for the sentence. *United States v. Reme*, 738 F.2d 1156, 1167 (11th Cir. 1984). Thus, we first look at the evidentiary basis for the district court's statement that there is a history of firearm possession.

As to Defendant's pending bank robbery charge in the Southern District of New York, the district court did not reference that as a consideration in its imposition of sentence when the court explained its reasoning for the particular sentence. It is true that at the beginning of the proceeding—prior to hearing from Defendant or the Government as to their recommendations on a sentence—the court had alerted Defendant to some of its concerns in order to allow the latter to address them in his presentation. Specifically, the court was concerned about the fact that Defendant was a drug dealer and a member of a gang; that Defendant may have attempted to influence the testimony of the minor witnesses while he was in jail; that Defendant had initiated one of the victims into the prostitution business by having sex with her himself, at the outset and later; that Defendant "routinely carried a gun" during his supervision of the prostitution activities; that, according to one of the minor victims, Defendant had discharged a gun in the direction of a home occupied by someone who owed him a drug debt; by a pending bank robbery case in which Defendant had been charged and in which a firearm had been discharged; and about a pattern of violence, including testimony from M.K. that

Defendant had struck K.C. and had sometimes struck M.K. and threatened her with force. The court asked defense counsel to address these matters to help the court put them into context.

Defense counsel responded as to the pending bank robbery charge, noting that Defendant had not yet been convicted on that charge, that he was presumed innocent, and that the court should not consider that charge in any way. He further assured the court that, at any rate, he had spoken to the United States Attorney in the New York case and that the latter did not believe that Defendant carried or discharged a firearm during the robbery. After that response, the bank robbery charge was never mentioned again by anyone nor referenced by the district court in its explanation of the reasons for its sentence.

As to the district court's concern that Defendant had perhaps tried to influence the minor witnesses while in jail, the prosecutor and defense counsel offered a benign explanation as to the conduct leading to the court's concern. After that explanation, this particular matter was likewise never mentioned again during the hearing, nor was it referenced by the court as a reason for its sentence. Defense counsel did not specifically respond to the court's other concerns.[7]

[7] In its own presentation, the Government noted that Defendant's "criminal history is serious," starting when Defendant was a juvenile, after which Defendant "graduated to violent crimes at age 18 and 19, when he was convicted in two separate cases of domestic violence." There was no objection by Defendant as to the prosecutor's comments.

Defendant cannot show that the district court erred, much less plainly erred, by concluding that he had a history with firearms because this finding was supported by the undisputed facts in the PSR. *United States v. Wade*, 458 F.3d 1273, 1277 (11th Cir. 2006) ("It is the law of this circuit that a failure to object to allegations of fact in a [PSR] admits those facts for sentencing purposes.").

With respect to those facts, the PSR noted that Defendant directed law enforcement to the gun that had been in his possession, had guns around him "all the time," sometimes waited outside of K.C.'s hotel room with a gun for protection, and had been witnessed shooting at someone based on a drug dispute. Although Defendant initially objected to these factual statements, he withdrew these objections at the sentencing hearing and therefore the district court was entitled to rely on them. *See United States v. Horsfall*, 552 F.3d 1275, 1283–84 (11th Cir. 2008) (explaining that a defendant waives a sentencing objection by affirmatively withdrawing that objection at the sentencing hearing); *Wade*, 458 F.3d at 1277.

In short, there was ample evidentiary support for the district court's conclusion that that Defendant had a history of firearm possession, without any need to consider the pending bank robbery charge. Moreover, the district court never referenced that pending charge as a basis for its sentence.

Nevertheless, even if Defendant could establish error that was plain, he still cannot show that the district court's finding that he had a history with firearms affected his substantial rights. The third prong of the plain error test requires the defendant to show that the error "affected the outcome of the district court proceedings." *United States v. Rodriguez*, 398 F.3d 1291, 1299 (11th Cir. 2005) (quotations omitted). Because the district court's statement regarding Defendant's history with firearms was only one of numerous factors that it considered when imposing Defendant's sentence, Defendant cannot meet his burden. *Cf. Vandergrift*, 754 F.3d at 1312 (explaining that the defendant could not show that his substantial rights were violated because the district court's reliance on an improper factor was only a "minor fragment" of its reasoning).

The district court indicated that in making its sentencing decision, the court had considered the § 3553(a) factors, including the seriousness of the offense, Defendant's extensive criminal history (at the age of 26, he already had a category IV criminal history), and the need to promote respect for the law, to provide just punishment for the offense, and to protect the public from the future crimes of Defendant. Notably, the district court stated that it would have imposed a sentence higher than 360 months' imprisonment if Defendant had not entered an early guilty plea. Clearly what, in large part, drove the sentence was conduct toward these minor girls that the district court concluded to be horrific. Indeed, the court

mentioned that it had repeatedly imposed sentences beyond what was requested by the Government in cases involving the sexual exploitation of a minor. In short, Defendant has not shown that he is entitled to relief.

III. CONCLUSION

For the reasons discussed above, Defendant's sentence is **AFFIRMED**.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N W
Atlanta, Georgia 30303

David J Smith
Clerk of Court

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October 26, 2018

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 17-10515-AA
Case Style: USA v. Rowy Vasquez
District Court Docket No: 6:15-cr-00254-PGB-GJK-1

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call T. L. Searcy, AA at (404) 335-6180.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Djuanna Clark
Phone #: 404-335-6161

OPIN-1 Ntc of Issuance of Opinion

APPENDIX A-2

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v

ROWY DE JESUS VASQUEZ

Case Number: 6:15-cr-254-Orl-40GJK

USM Number: 66506-018

Mark Rosenblum, FPD
Suite 1240
200 W Forsyth St
Jacksonville, FL 32202

JUDGMENT IN A CRIMINAL CASE

The defendant pleaded guilty to Count One of the Indictment. The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number
18 U.S.C. § 1591(a), 18 U.S.C. § 1592(b)(2)	Sex Trafficking of a Minor	June 10, 2015	One

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

Count Two of the Indictment is dismissed in accordance with the plea agreement.

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 shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Date of Imposition of Judgment:

January 13, 2017

PAUL G. BYRON
UNITED STATES DISTRICT JUDGE

January 17, 2017

Rowy De Jesus Vasquez
6:15-cr-254-Orl-40GJK

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **THREE HUNDRED SIXTY (360) MONTHS** as to Count One of the Indictment.

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

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 U.S. Marshal

Rowy De Jesus Vasquez
6:15-cr-254-Orl-40GJK

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of **TWENTY (20) YEARS** as to Count One of the Indictment.

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.

4. You must cooperate in the collection of DNA as directed by the probation officer.

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.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

The defendant shall also comply with the additional conditions on the attached page.

Rowy De Jesus Vasquez
6:15-cr-254-Orl-40GJK

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. After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when the defendant must report to the probation officer, and the defendant must report to the probation officer as instructed.
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:_____

ADDITIONAL CONDITIONS OF SUPERVISED RELEASE

1. The defendant shall be prohibited from incurring new credit charges, opening additional lines of credit, or making an obligation for any major purchases without approval of the probation officer. The defendant shall provide the probation officer access to any requested financial information.

2. The defendant shall participate in a mental health program specializing in sex offender treatment and submit to polygraph testing for treatment and monitoring purposes. The defendant shall follow the probation officer's instructions regarding the implementation of this court directive. Further, the defendant shall contribute to the costs of such treatment and/or polygraphs not to exceed an amount determined reasonable by the probation officer based on ability to pay or availability of third party payment and in conformance with the Probation Office's Sliding Scale for Treatment Services.

3. The defendant shall register with the state sexual offender registration agency(s) in any state where he or she resides, visits, is employed, carries on a vocation, or is a student, as directed by the probation officer. The probation officer will provide state officials with all information required under Florida sexual predator and sexual offender notification and registration statutes (F.S.943.0435) and/or the Sex Offender Registration and Notification Act (Title I of the Adam Walsh Child Protection and Safety Act of 2006, Public Law 109-248), and may direct the defendant to report to these agencies personally for required additional processing, such as photographing, fingerprinting, and DNA collection.

4. The defendant shall have no direct contact with minors (under the age of 18) without the written approval of the probation officer and shall refrain from entering into any area where children frequently congregate, including: schools, daycare centers, theme parks, playgrounds, etc.

5. The defendant is prohibited from possessing, subscribing to, or viewing, any video, magazine, or literature depicting children in the nude and/or in sexually explicit positions.

6. Without prior written approval of the probation officer, you are prohibited from either possessing or using a computer (including a smart phone, a hand-held computer device, a gaming console, or an electronic device) capable of connecting to an online service or an internet service provider. This prohibition includes a computer at a public library, an internet cafe, your place of employment, or an educational facility. Also, you are prohibited from possessing an electronic data storage medium (including a flash drive, a compact disk, and a floppy disk) or using any data encryption technique or program. If approved to possess or use a device, you must permit routine inspection of the device, including the hard drive and any other electronic data storage medium, to confirm adherence to this condition. The United States Probation Office must conduct the inspection in a manner no more intrusive than necessary to ensure compliance with this condition. If this condition might affect a third party, including your employer, you must inform the third party of this restriction, including the computer inspection provision.

7. The defendant shall submit to a search of his or her person, residence, place of business, any storage units under the defendant's control, computer, or vehicle, conducted by the United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall inform any other residents that the premises may be subject to a search pursuant to this condition.

8. The defendant shall cooperate in the collection of DNA, as directed by the probation officer.

Rowy De Jesus Vasquez
6:15-cr-254-Orl-40GJK

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments set forth in the Schedule of Payments.

	Assessment	Fine	Restitution
TOTALS	**$100.00**	**Waived**	**$23,040.00***

The Court finds that the defendant is indigent and the $5,000 special assessment pursuant to 18 U.S.C. § 3014 is not imposed.

*The determination of further restitution is deferred. Pursuant to 18 U.S.C. § 3664(d)(5), a date for the final determination of victim losses is to be set by separate order and will not exceed ninety (90) days.

SCHEDULE OF PAYMENTS

Restitution is payable to the Clerk, United States District Court for the Middle District of Florida for distribution to the victim, K.C.

Payment of this obligation should be made as follows:

While in Bureau of Prisons custody, the defendant shall either pay at least $25.00 quarterly if the defendant has a non-UNICOR job, or to pay at least 50 percent of the defendant's monthly earnings if the defendant has a UNICOR job. Upon release from custody, the defendant is ordered to begin making payments of $150.00 per month, and this payment schedule shall continue until such time as the court is notified by the defendant, the victim, or the government that there has been a material change in the defendant's ability to pay.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be 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, unless otherwise directed by the court, the probation officer, or the United States attorney.

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

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

FORFEITURE

Defendant shall forfeit to the United States those assets previously identified in the Plea Agreement and Order of Forfeiture, that are subject to forfeiture.

The defendant shall pay interest on any fine or restitution of more than $2,500, unless the fine or restitution 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 the Schedule of Payments may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

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

APPENDIX A-3

RELEVANT STATUTORY APPENDIX

The Fifth Amendment to the United States Constitution provides in pertinent part: "No person shall . . . be deprived of life, liberty, or property, without due process of law."

Rule 32 of the Federal Rule of Criminal Procedure provides in relevant part:

(h) Notice of Possible Departure From Sentencing Guidelines.

> Before the court may depart from the applicable sentencing range on a ground not identified for departure either in the presentence report or in a party's prehearing submission, the court must give the parties reasonable notice that it is contemplating such a departure. The notice must specify any ground on which the court is contemplating a departure.

Section 3553(b) of Title 18 provides in relevant part:

> **(b) Application of guidelines in imposing a sentence.—**
>
> **(1) In general.**--Except as provided in paragraph (2), the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described. In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission.

(2) Child crimes and sexual offenses.—

(A) Sentencing.--In sentencing a defendant convicted of an offense under section 1201 involving a minor victim, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless—

(i) the court finds that there exists an aggravating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence greater than that described;