

IN THE
SUPREME COURT OF THE UNITED STATES

RICKY BALL, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

On Petition for Writ of Certiorari
to the U.S. Court of Appeals, Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Mr. Ball entered a plea of guilty. He signed a plea agreement including a waiver of substantial aspects of his right to appeal. After he filed notice of appeal, the Eighth Circuit Court of Appeals dismissed the appeal based on the government's motion invoking the waiver. The case presents the following questions.

1. Whether Mr. Ball can be held to his waiver under Fed. R. Crim. P. 11(b)(1)(N) when, rather than informing Mr. Ball of the extent to which he was waiving his right to appeal, the magistrate judge simply referred to the relevant plea agreement provision by page and paragraph number, and asked Mr. Ball if he understood it?
2. Whether allowing the enforcement of an appeal waiver to prevent review of oppressive supervised release conditions unrelated to Mr. Ball's offense conduct would result in manifest injustice?

LIST OF PARTIES AND CORPORATE DISCLOSURE STATEMENT

Ricky Ball is the Petitioner in this case and was represented in the Court below by Elizabeth Unger Carlyle.

The United States of America is the Respondent. The government was represented in the court below by the United States Attorney for the Western District of Missouri.

Pursuant to Rule 29.6, Petitioner states that no parties are corporations.

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Petitioner Ricky Ball prays that a writ of certiorari be granted to review the judgment of the Eighth Circuit Court of Appeals entered on January 8, 2019.

OPINIONS BELOW

The order of the Eighth Circuit dismissing the appeal is printed at Appendix (hereinafter “App.”) p. 1a. No opinion accompanied the decision or was reported. The judgment of the district court is reprinted at App. p. 2a.

JURISDICTION

The judgment of the Eighth Circuit Court of Appeals was entered on January 8, 2019, dismissing Mr. Ball’s appeal. *See* App. p. 1a. No petition for rehearing was filed.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Fed. R. Crim. P. 11

(a) Entering a Plea.

(1) **In General.** A defendant may plead not guilty, guilty, or (with the court's consent) nolo contendere.

(2) **Conditional Plea.** With the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right to have an appellate court

review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea.

(3) **Nolo Contendere Plea.** Before accepting a plea of nolo contendere, the court must consider the parties' views and the public interest in the effective administration of justice.

(4) **Failure to Enter a Plea.** If a defendant refuses to enter a plea or if a defendant organization fails to appear, the court must enter a plea of not guilty.

(b) **Considering and Accepting a Guilty or Nolo Contendere Plea.**

(1) **Advising and Questioning the Defendant.** Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:

(A) the government's right, in a prosecution for perjury or false statement, to use against the defendant any statement that the defendant gives under oath;

(B) the right to plead not guilty, or having already so pleaded, to persist in that plea;

(C) the right to a jury trial;

(D) the right to be represented by counsel—and if necessary have the court appoint counsel—at trial and at every other stage of the proceeding;

(E) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses;

(F) the defendant’s waiver of these trial rights if the court accepts a plea of guilty or nolo contendere;

(G) the nature of each charge to which the defendant is pleading;

(H) any maximum possible penalty, including imprisonment, fine, and term of supervised release;

(I) any mandatory minimum penalty;

(J) any applicable forfeiture;

(K) the court’s authority to order restitution;

(L) the court’s obligation to impose a special assessment;

(M) in determining a sentence, the court’s obligation to calculate the applicable sentencing-guideline range and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. §3553(a);

(N) the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence; and

(O) that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

(2) **Ensuring That a Plea Is Voluntary.** Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and determine that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement).

(3) **Determining the Factual Basis for a Plea.** Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea.

(c) Plea Agreement Procedure.

(1) **In General.** An attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, may discuss and reach a plea agreement. The court must not participate in these discussions. If the defendant pleads guilty or nolo contendere to either a charged offense or a lesser or related offense, the plea agreement may specify that an attorney for the government will:

- (A) not bring, or will move to dismiss, other charges;
- (B) recommend, or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request does not bind the court); or
- (C) agree that a specific sentence or sentencing range is the appropriate disposition of the case, or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request binds the court once the court accepts the plea agreement).

(2) Disclosing a Plea Agreement. The parties must disclose the plea agreement in open court when the plea is offered, unless the court for good cause allows the parties to disclose the plea agreement in camera.

(3) Judicial Consideration of a Plea Agreement.

(A) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the court may accept the agreement, reject it, or defer a decision until the court has reviewed the presentence report.

(B) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(B), the court must advise the defendant that the

defendant has no right to withdraw the plea if the court does not follow the recommendation or request.

(4) **Accepting a Plea Agreement.** If the court accepts the plea agreement, it must inform the defendant that to the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the agreed disposition will be included in the judgment.

(5) **Rejecting a Plea Agreement.** If the court rejects a plea agreement containing provisions of the type specified in Rule 11(c)(1)(A) or (C), the court must do the following on the record and in open court (or, for good cause, in camera):

(A) inform the parties that the court rejects the plea agreement;

(B) advise the defendant personally that the court is not required to follow the plea agreement and give the defendant an opportunity to withdraw the plea; and

(C) advise the defendant personally that if the plea is not withdrawn, the court may dispose of the case less favorably toward the defendant than the plea agreement contemplated.

(d) **Withdrawing a Guilty or Nolo Contendere Plea.** A defendant may withdraw a plea of guilty or nolo contendere:

(1) before the court accepts the plea, for any reason or no reason; or

(2) after the court accepts the plea, but before it imposes sentence if:

- (A) the court rejects a plea agreement under 11(c)(5); or
- (B) the defendant can show a fair and just reason for requesting the withdrawal.

(e) **Finality of a Guilty or Nolo Contendere Plea.** After the court imposes sentence, the defendant may not withdraw a plea of guilty or nolo contendere, and the plea may be set aside only on direct appeal or collateral attack.

(f) **Admissibility or Inadmissibility of a Plea, Plea Discussions, and Related Statements.** The admissibility or inadmissibility of a plea, a plea discussion, and any related statement is governed by Federal Rule of Evidence 410.

(g) **Recording the Proceedings.** The proceedings during which the defendant enters a plea must be recorded by a court reporter or by a suitable recording device. If there is a guilty plea or a nolo contendere plea, the record must include the inquiries and advice to the defendant required under Rule 11(b) and (c).

(h) **Harmless Error.** A variance from the requirements of this rule is harmless error if it does not affect substantial rights.

STATEMENT OF THE CASE

Plea proceeding. Mr. Ball was initially charged in a one-count indictment with a violation of 18 U.S.C. § 2423. The indictment alleged that Mr. Ball

transported a female (referred to in the pleadings as Jane Doe) under the age of 18 in interstate commerce for the purpose of engaging in sexual activity in violation of the laws of Missouri. On August 3, 2017, the government filed a superseding information charging him instead with a violation of 18 U.S.C. § 2422(b) in that between December 1, 2014 and March 26, 2015, he used “the internet and the cellular phone network” to attempt to persuade a female born in 1998 to engage in sexual activity forbidden by the laws of Missouri.

On the day the superseding information was filed, Mr. Ball appeared before the U.S. Magistrate Judge and entered a plea of guilty. The plea was based on a plea agreement providing for an agreed sentence of twelve years. Fed. R. Crim. P. 11(c)(1)(C). However, before appearing before the U.S. District Court for acceptance of plea and sentencing, Mr. Ball withdrew his plea of guilty and requested new counsel. The government, in turn, withdrew its offer of a stipulated sentence.

On February 2, 2018, Mr. Ball appeared again before the district judge with new counsel, and again entered a plea of guilty. A new plea agreement did not include an agreed sentence, but did provide that the government would not bring any additional charges against Mr. Ball for transporting a minor across state lines. The agreement also provided that the Jasper County, Missouri prosecutor’s office would dismiss pending charges against Mr. Ball related to the same conduct after sentencing.

The agreement also included a provision limiting Mr. Ball’s right to appeal. Specifically, the agreement provided,

The defendant expressly waives his right to appeal his sentence, directly or collaterally, on any ground except claims of: (1) ineffective assistance of counsel; (2) prosecutorial misconduct; or (3) an illegal sentence. An “illegal sentence” includes a sentence imposed in excess of the statutory maximum, but does not include less serious sentencing errors, such as a misapplication of the Sentencing Guidelines, an abuse of discretion, or the imposition of an unreasonable sentence. However, if the United States exercises its right to appeal the sentence imposed as authorized by 18 U.S.C. § 3742(b), the defendant is released from this waiver and may, as part of the Government’s appeal, cross-appeal his sentence as authorized by 18 U.S.C. § 3742(a) with respect to any issues that have not been stipulated to or agreed upon in this agreement.

During the plea proceeding, the following was the sole mention of the appeal waiver:

Rather than informing Mr. Ball of the extent to which he was waiving his right to appeal, the magistrate judge simply referred to the plea agreement provision by page and paragraph number, and asked Mr. Ball if he understood it:

The plea bargain agreement that you’ve signed also contains what we refer to as an appeal waiver. I’d like to direct your attention again back to your plea bargain agreement, specifically to page 10, Paragraph 15, which is entitled in bold **Wavier [sic] of Appellate and Post-Conviction Rights**. Have you read Paragraph 15 and gone over it with your attorney?

MR. BALL: Yes, Your Honor.

THE COURT: And do you understand, that by signing this Plea Agreement, that you’ve given up those rights to appeal as set forth in Paragraph 15?

MR. BALL: Yes, sir.

Sentencing. Mr. Ball’s sentencing occurred following the preparation of a Presentence Report by the U.S. Probation Officer. The Presentence Report calculated Mr. Ball’s offense level at 38, which included a two-level adjustment for

“vulnerable victim” under U.S.S.G. § 3A1.1(b)(1). At sentencing, Mr. Ball objected to this condition, arguing that Jane Doe was no more “vulnerable” than any other minor, and therefore this status was considered in determining the guideline sentencing range for this offense level. He also objected to another proposed two-level enhancement for abuse of a position of trust under U.S.S.G. § 3B1.3. The district court sustained the objection to the abuse of trust enhancement, but overruled the objection to the vulnerable victim enhancement.

Mr. Ball spoke at sentencing and expressed profound remorse for his actions. He told the judge,

I apologize to [Jane Doe] for anything I’ve ever done wrong. I never meant to hurt her in any way, shape, or form. Before God, I never meant to hurt her in any way, shape, or form. I never meant to hurt her family at all. [Her father] was like a son to me. I honestly believed I was saving her life. . . . I’m truly sorry for everything that I’ve caused.

The district court imposed a sentence of 13 years’ imprisonment, based in part on Mr. Ball’s cooperation with the government and testimony in another case. The district court also sentenced Mr. Ball to lifetime supervised release, without objection. His special supervised release conditions include:

e) The defendant will not associate or have any contact with persons under the age of 18, except in the presence of a responsible adult who is aware of the nature of the defendant’s background and current offense and who has been approved by the Probation Office.

k) The defendant’s place of residence may not be within 1,000 feet of schools, parks, playgrounds, public pools, or other locations frequented by children.

l) The defendant is barred from places where minors (under the age of 18) congregate; such as residences, parks, pools, daycare centers,

playgrounds and school, unless prior written consent is granted by the Probation Office.

n) The defendant shall not possess or use any computer or electronic device with access to any on-line computer service,' without the prior approval of the Probation Office. This includes any public or private computer network.

o) The defendant shall consent to having installed any hardware or software systems on his/her computer(s), to monitor computer use. The defendant shall pay any associated costs as directed by the Probation Office.

p) The defendant shall not maintain or create a user account on any social networking site (i.e. Myspace, Facebook, Adultfriendfinder, 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. The defendant shall not view and/or access any web profile users under the age of 18.

q) The defendant shall consent to third-party disclosure to any employer, or potential employer, concerning the history, characteristics, criminal background or any computer-related restrictions that have been imposed.

r) The defendant shall consent to the United States Probation Office conducting periodic unannounced examinations of your [sic] computer(s) [sic] hardware and software, which may include retrieval and copying of all data from your computer(s). This also includes the removal of such equipment, if necessary, for the purpose of conducting a more thorough inspection.

No objection was made to these conditions. With respect to the conditions of supervised release, the district court made the following findings:

There are a number of conditions that are focused specifically on the nature of this offense, and I'm imposing those conditions for a variety of reasons, but three that come to mind. No. 1, I believe that those conditions are important to protect the community; No. 2, I believe they're important for rehabilitation purposes; and No. 3, some of the conditions, including the polygraph condition, I believe is important in order to ensure that you are being compliant and truthful while you're on supervised release.

Mr. Ball filed notice of appeal, and filed his opening brief. He raised the following grounds of error:

Ground of Error No. One: Over objection, the district court imposed a two-level increase in the sentencing guidelines offense level because Mr. Ball committed his offense against a “vulnerable victim” in that he was aware that she had accused her parents of drug use in the whom. Such a victim is one who, for identifiable reasons, is more vulnerable than most other victims of the same offense. Was the enhancement properly applied to Mr. Ball?

Ground of Error No. Two: The district court imposed significant restrictions on Mr. Ball’s activities and association while on lifetime supervised release. Such restrictions must be narrowly tailored to serve a proper sentencing purpose. Did the district court plainly err in imposing these conditions?

After the brief was filed, the government filed a motion to dismiss Mr. Ball’s appeal, invoking the appeal waiver. Following Mr. Ball’s response, without revealing its analysis, the court of appeals dismissed the appeal. App. p. 1a.

REASONS FOR GRANTING THE WRIT

I. THE PROSPECTIVE WAIVER OF THE RIGHT TO APPEAL SHOULD BE CONSIDERED NARROWLY.

While this Court has not held improper the waiver of the right to appeal before sentencing, it is clear that this is a serious issue for the Court. Recently, in *Garza v. Idaho*, 139 S.Ct. 738 (2019), the state of Idaho argued that where there is a

partial appeal waiver, prejudice should not be presumed where counsel fails to file notice of appeal when requested to do so by the defendant. Rejecting this holding, the Court made clear that an appeal waiver is limited in scope. Similarly, in *Class v. United States*, 138 S.Ct. 798, 807 (2018), this Court made clear that, at least absent a specific waiver, a plea of guilty does not waive the right to challenge the constitutionality of the statute of conviction.

This Court has also recently emphasized the importance of plea agreements as setting out the terms to which the defendant has agreed. In *Puckett v. United States*, 556 U.S. 129, 138 (2009), the Court held that a defendant who has failed to object to the government's breach of a plea agreement may raise the breach on appeal as plain error.

II. MR. BALL'S WAIVER OF HIS RIGHT TO APPEAL WAS NOT KNOWING AND VOLUNTARY.

The appeal waiver in this case was entered before Mr. Ball was sentenced. This means, of course, that when he waived his right to appeal, he had no knowledge of what his sentence would be or what irregularities might become a part of his sentence. While such waivers have not been rejected as involuntary on that ground, it is clear that they should be scrutinized carefully and entered into with as full an understanding as possible of their implications.

For that reason, Fed. R. Crim. P. 11(b)(1)(N) requires the court to “address the defendant personally in open court,” and “inform the defendant of, and determine that the defendant understands. . . the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence. . . .” The

magistrate judge, when conducting the plea hearing, did not comply with this portion of the rule. Under all of the circumstances in this case, this Court should not enforce Mr. Ball's waiver of his right to appeal his sentence.

Rather than informing Mr. Ball of the extent to which he was waiving his right to appeal, the magistrate judge simply referred to the plea agreement provision by page and paragraph number, and asked Mr. Ball if he understood it:

The plea bargain agreement that you've signed also contains what we refer to as an appeal waiver. I'd like to direct your attention again back to your plea bargain agreement, specifically to page 10, Paragraph 15, which is entitled in bold **Wavier [sic] of Appellate and Post-Conviction Rights**. Have you read Paragraph 15 and gone over it with your attorney?

MR. BALL: Yes, Your Honor.

THE COURT: And do you understand, that by signing this Plea Agreement, that you've given up those rights to appeal as set forth in Paragraph 15?

MR. BALL: Yes, sir.

The magistrate judge never explained the *terms* of the waiver provision. Nor did the district judge, at sentencing, explain the extent of the waiver. The judge said only, "Mr. Ball, in the plea agreement that you entered into with the government, you gave up your right to challenge the sentence, except under some very limited circumstances."

The government made no objection to this abbreviated colloquy. The plea agreement here was a 15 page document, full of legalisms and comprising many

different topics. The appeal waiver provision itself, as it pertains to the waiver of the right to appeal the sentence, is somewhat opaque:

The defendant expressly waives his right to appeal his sentence, directly or collaterally, on any ground except claims of: (1) ineffective assistance of counsel; (2) prosecutorial misconduct; or (3) an illegal sentence. An “illegal sentence” includes a sentence imposed in excess of the statutory maximum, but does not include less serious sentencing errors, such as a misapplication of the Sentencing Guidelines, an abuse of discretion, or the imposition of an unreasonable sentence. However, if the United States exercises its right to appeal the sentence imposed as authorized by 18 U.S.C. § 3742(b), the defendant is released from this waiver and may, as part of the Government’s appeal, cross-appeal his sentence as authorized by 18 U.S.C. § 3742(a) with respect to any issues that have not been stipulated to or agreed upon in this agreement.

The requirement of Fed. R. Crim. P. 11(b)(1)(N) that the court specifically inform the defendant regarding appeal waivers contained in the plea agreement was added in 1999. The Committee Notes recognize the importance of this waiver and of the defendant’s understanding:

Subdivision (c)(6). Rule 11(c) has been amended specifically to reflect the increasing practice of including provisions in plea agreements which require the defendant to waive certain appellate rights. The increased use of such provisions is due in part to the increasing number of direct appeals and collateral reviews challenging sentencing decisions. Given the increased use of such provisions, the Committee believed it was important to insure that first, **a complete record exists regarding any waiver provisions**, and second, that the waiver was voluntarily and knowingly made by the defendant.

(Emphasis added)

If the existence of terms in a plea agreement were sufficient to allow an appeal waiver, there would be no need for Rule 11(b)(1)(N). However, the Rule sets

out the scope of an appeal waiver as a specific item as to which the defendant is to be addressed in open court. Because the record before the court here does not reflect that the defendant was informed of the terms of the appeal waiver, the government did not meet its burden to show that the waiver was knowing and voluntary.

Cases from other circuits support Mr. Ball's right to have his waiver set aside. In *United States v. Sura*, 511 F.3d 654, 662 (7th Cir. 2008), the court found an appeal waiver involuntary in similar circumstances. While the district court in that case failed to mention the fact that the plea agreement contained an appeal waiver at all, the effect of the district court's statements is the same as here. There is simply no assurance that Mr. Ball understood the terms of the waiver.

Mr. Ball had no prior experience in the criminal justice system. His educational level is listed in the Presentence Report as "some college" based on statements he made to the probation officer. However, no records were located for any college work, and his high school records reflected that he dropped out during his tenth grade year. Thus, there is no evidence that, apart from the plea colloquy itself, Mr. Ball had any special skill or training that would have helped him to understand the plea agreement. *Cf. United States v. Loutos* 383 F.3d 615, 619 (7th Cir. 2004) (defendant was a practicing attorney who was familiar with contracts).

In determining whether to enforce an appeal waiver, the court considers all circumstances in the record. The record reflects that Mr. Ball entered his plea of guilty twice. He was clearly reluctant to plead guilty. On August 3, 2017, he entered a plea to a superseding indictment with a binding sentence recommendation of

twelve years.¹ After the first change of plea procedure, he withdrew his plea in a pro se motion filed August 7, 2017. The magistrate judge accepted the withdrawal after a brief hearing on August 10, 2017. During that hearing, the court did not address Mr. Ball's contention, in his pro se motion, that he was in a "diminished capacity" at the time of his initial plea. The court also considered and granted Mr. Ball's request for new counsel.

Mr. Ball then appeared with new counsel approximately six months later and again entered a plea of guilty. During the new hearing, Mr. Ball was asked if he was on any medication "which would affect your ability to understand these proceedings." But there was no mention of the prior allegation of "diminished capacity," and the record does not reflect why Mr. Ball again entered a plea of guilty. At sentencing, Mr. Ball's attorney informed the court that at the time of the initial plea Mr. Ball "got cold feet." Counsel went on "He's scared today. He's been scared every time we've met in relation to what the future holds."

In addition to the failure of the magistrate judge to inform Mr. Ball of the terms of his appeal waiver and to determine that he understood them, the circumstances surrounding Mr. Ball's plea cast doubt as to whether it was knowing and voluntary. In light of these serious issues, this Court should grant certiorari and direct the court of appeals to set aside the appeal waiver, and address both grounds in his appellate brief.

¹ Like the later plea proceeding, this colloquy did not explain the appeal waiver.

II. ENFORCEMENT OF MR. BALL'S WAIVER OF HIS RIGHT TO APPEAL HIS SUPERVISED RELEASE CONDITIONS WOULD RESULT IN MANIFEST INJUSTICE.

Appeal waivers, even if knowing and voluntary, should not be enforced if to do so would result in a manifest injustice. The determination of manifest injustice depends on:

The clarity of the error, its gravity, its character (e.g., whether it concerns a fact issue, a sentencing guideline, or a statutory maximum), the impact of the error on the defendant, the impact of correcting the error on the government, and the extent to which the defendant acquiesced in the result.

United States v. Khattak, 273 F.3d 557, 563 (3d Cir. 2001), quoting *United States v. Teeter*, 257 F.3d 14, 25–26 (1st Cir. 2001).

The failure of the court of appeals to address Mr. Ball's second ground for relief, the imposition, for the rest of his life, of highly restrictive conditions of supervision, would work a manifest injustice.

Mr. Ball was convicted of an offense involving a young girl he had known for many years, since he was the family pastor. He clearly admitted guilt of a terrible mistake in judgment with respect to his relationship with this girl, and he will serve a substantial prison sentence as a result. However, nothing in the presentence agreement or anywhere else indicated any sexual misconduct with any other juvenile. Moreover, the victim never made a victim impact statement nor requested restitution.

While Mr. Ball was informed, prior to his plea, that he would be placed on supervised release, he was not given any information about the possible conditions

of such release before he was asked to waive his right to appeal his sentence. The conditions imposed were suggested in the presentence report, but his trial counsel did not object to them, nor to the lack of individualized findings supporting them. However, substantial case law indicates that imposition of these conditions was plain error.

The conditions Mr. Ball challenged on appeal fall into two groups. First, there are four separate conditions restricting and requiring government access to Mr. Ball's electronic devices. These are conditions n), o), p) and r). In addition, there are three conditions restricting Mr. Ball's residence and contact with minors, conditions e), f), and l). The problems with these conditions will be discussed separately.

A. Computer use and monitoring.

Special condition n) forbids Mr. Ball, without the permission of the probation officer, from possessing a "computer or electronic device" with internet access for the rest of his life. Whether any readily available computer or cell phone *without* such access now exists is unclear. Internet access is in many ways necessary to everyday life. Similarly, the use of cell phones to communicate is now basic for most people, and eliminating Mr. Ball's use of such a device would seriously impair his quality of life.

The first problem with this condition is that it is not supported by any individualized findings concerning a need for Mr. Ball not to use electronic devices with internet access. The court here said generally that *all* of the special conditions were needed to protect the public and rehabilitate Mr. Ball, but made no statement

about how restricting his use of computers, cell phones and the internet would do that. In a similar case, remanding for additional findings, the Eighth Circuit said, “The lack of ad hoc findings in this case violates the principle of individualized fact-finding mandated by [*United States v. Bender*, 566 F.3d 748 (8th Cir. 2009)].” *United States v. Kelly*, 625 F.3d 516, 520 (8th Cir. 2010).

Further, as the Third Circuit explained recently in *United States v. Holena*, 906 F.3d 288, 290 (3rd Cir. 2018), restrictions on computer and internet use must be “tailored to the danger [the defendant] poses.” The court found that a total ban on possessing computers was not warranted, despite the fact that Mr. Holena had violated a less restrictive condition while on supervised release.

The court indicated that to determine whether an internet or computer restriction is “more restrictive than necessary, we consider three factors: the restriction’s length, its coverage, and the defendant’s underlying conduct.” *Id.* at 292, citation omitted. Applying these factors to Mr. Ball requires the conclusion that the conditions are more restrictive than necessary. First, the restrictions will last the rest of Mr. Ball’s life, since that is the period of supervision. Second, they broadly limit his ability to perform internet-related actions that are common, such as checking the weather, buying items online, making reservations, or reading the news. They also limit his ability to make telephone calls. While he could have a landline at his home, the removal of most pay telephones in public places him at a serious disadvantage should he need to contact another person by phone when away from home.

Finally, the conditions regarding computer and internet use are totally unrelated to Mr. Ball's conduct. The only arguable electronic contact between Mr. Ball and his victim was exchanges of text messages between their mobile telephones. Mr. Ball did not meet Jane Doe online. He knew her long before he communicated with her by text message. There is nothing in the presentence report that suggests that computer or internet use was in any way involved in Mr. Ball's offense apart from cell phone use. And normal, everyday cell phone use poses no danger to the public.

The Eighth Circuit has held a condition forbidding computer use without permission of the probation officer improper in *United States v. Crume*, 422 F.3d 728 (8th Cir. 2005). Mr. Crume was convicted of possessing child pornography on his computer. He "has a lengthy history of grievous sexual misconduct. . . ." *Id.* at 733.

Despite that fact, the court concluded,

[T]he record is devoid of evidence that he has ever used his computer for anything beyond simply possessing child pornography. We are not convinced that a broad ban from such an important medium of communication, commerce, and information-gathering is necessary given the absence of evidence demonstrating more serious abuses of computers or the Internet.

Id.

Mr. Ball's case is even less relevant to computer use. The offense here involved one victim over a relatively short period of time. The victim was a person with whom Mr. Ball had a personal relationship before the offensive conduct occurred. He did not use any electronic device to target her; he simply

communicated with her, and she with him, via cell phone texting. Unlike Mr. Crume, Mr. Ball did not use his computer to store child pornography. The Presentence Report did not reveal any evidence of sexually related material on his cell phone, either. *See also United States v. West*, 829 F.3d 1013, 1022 (8th Cir. 2016). The presentence report did indicate that Mr. Ball has mental health and substance abuse problems. But there is no suggestion that when he was suffering from those conditions, he used a computer or phone in any way injurious to the public or himself.

While *Crume* was decided on an abuse of discretion standard because trial counsel objected to the condition before sentencing, in *United States v. LaCoste*, 821 F.3d 1187 (9th Cir 2016), the court found plain error in imposing a condition forbidding internet use without the permission of the probation officer. Mr. Lacoste was convicted of conspiracy to commit securities fraud. Although he used the internet to communicate with investors, the role of the internet was described as “tangential,” and he had no history of other internet-related offenses.

As the court in *LaCoste* explained,

Use of the Internet is vital for a wide range of routine activities in today’s world—finding and applying for work, obtaining government services, engaging in commerce, communicating with friends and family, and gathering information on just about anything, to take but a few examples. Cutting off all access to the Internet constrains a defendant’s freedom in ways that make it difficult to participate fully in society and the economy.

Precisely because access to the Internet has become so vital, courts have upheld conditions prohibiting all use of the Internet only in limited circumstances. Thus far, such conditions have been permitted in one of two scenarios: when use of the Internet was “essential” or

“integral” to the offense of conviction, or when the Internet played no role in the offense of conviction but the defendant had a history of using the Internet to commit other offenses.

LaCoste, 821 F.3d at 1191.

Mr. Ball’s conditions of supervised release will continue for the rest of his life. His use of an “electronic device” was as a means of communication with a known recipient only, and was incidental to his offense. Nor did Mr. Ball have a history of internet use to commit other offenses. In fact, he had no criminal history at all except related to the current offense.

Moreover, in determining the propriety of this condition, the court should have considered the fact that the conditions of release will not take effect for almost 13 years, after Mr. Ball completes his prison sentence. As the court observed in *United States v. Perazza-Mercado*, 553 F.3d 65, 72 (1st Cir. 2009), “The importance of the internet in modern life has steadily increased over time, and we have no reason to believe that this trend will end.”

Special conditions o) and r) give the probation officer the unrestricted ability to monitor Mr. Ball’s use of his computer and cell phone and the data stored there. This is overbroad. Special condition i), to which Mr. Ball does not object, gives the probation officer the ability to search anything in Mr. Ball’s residence or place of employment on reasonable suspicion. The district court made no finding that this restriction was insufficient to satisfy the sentencing factors. The search condition is more than sufficient, in the circumstances, to satisfy the sentencing objectives. Further intrusion on Mr. Ball’s privacy is unwarranted.

In *United States v. Lifshitz*, 369 F.3d 173 (2nd Cir. 2004), the court remanded for a determination that a computer monitoring condition of probation did not improperly invade the defendant's privacy. The court noted that the simple fact that Mr. Lifshitz had been convicted of receiving child pornography over the internet did not, by itself, give rise to reasonable suspicion that he would use a computer to commit another offense. In Mr. Ball's case, all of the evidence before the court indicates that his conduct was in no way connected with computer use except to the extent that an internet-enabled cell phone was used to contact the victim.

The *Lifshitz* court recognized that "Individuals generally possess a reasonable expectation of privacy in their home computers. *Id.* at 190. Based on this consideration, the court rejected the condition imposed here, requiring Mr. Ball to consent to the installation of *any* computer monitoring system. The court noted that the probation office had not specified what system it would use, and that "the varieties of products and techniques currently available diverge vastly in their breadth, and in their implications for computer users' privacy." *Id.* at 191. The court remanded for a determination as to what monitoring was contemplated, so that the district court could determine whether it was overbroad.

Citing *Lifshitz*, the court emphasized in *United States v. Sales*, 476 F.3d 732, 737-738 (9th Cir. 2007):

A computer monitoring condition in some form may be reasonable. However, to comply with the Fourth Amendment, it must be narrowly tailored-producing no greater deprivation of liberty than is reasonably necessary. At present, the text gives no indication as to what kinds or

degrees of monitoring are authorized and, as courts have noted, monitoring software and/or hardware takes many forms, with greatly varying degrees of intrusiveness.

Even though Mr. Sales had been convicted of using the internet to produce counterfeit documents, the court found insufficient connection between a wholesale monitoring requirement and that offense to justify the special condition without individualized findings. A similar remand was required in *United States v. Dunn*, 777 F.3d 1171, 1179 (10th Cir. 2015). There, the court found the imposition of such a restriction without individual findings to be plain error.

Finally, special condition p) restricts Mr. Ball from having a “user account on any social networking site (i.e. Myspace, Facebook, Adultfriendfinder, 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.” ADD. D-6. Again, this case did not involve contact using any such site, and did not involve seeking out victims. This condition is not reasonably necessary either to protect the public or to rehabilitate Mr. Ball.

B. Contact and residence

The special conditions include the following restrictions on Mr. Ball’s residence and contacts for the rest of his life: e) A requirement that he not have contact with persons under the age of 18 without the supervision of an adult approved by the probation office who is aware of his conviction; k) A requirement that he not reside within 1,000 feet of schools, parks, playgrounds, public pools or

“other locations frequented by children,” and l) A condition “barring” him from “places where minors (under the age of 18) congregate.”

These conditions are overbroad for a defendant who will be under supervision for the rest of his life. And conditions k) and l) are unclear to the point that Mr. Ball will have difficulty complying with them.

The Eighth Circuit has found that the requirement of a supervisor for contact with persons under age 18 is overbroad and unnecessarily restrictive. *United States v. Bender*, 566 F.3d 748, 754 (8th Cir. 2009). Mr. Bender was sentenced to a supervised release term of only ten years, as opposed to Mr. Ball’s lifetime term. The restriction is even more onerous for him.

In *United States v. Voelker*, 489 F.3d 139 (3rd Cir. 2007), the court struck down a condition similar to condition e) here because the condition provided no information for the probation officer to use in determining whether the supervision was adequate. The same condition was held plain error in the absence of individualized findings in *United States v. Walker*, 450 Fed.Appx. 544 (8th Cir. 2011) (Unpublished).

With respect to the residence condition, Missouri law prohibits Mr. Ball, as a convicted sex offender, from residing within 1,000 feet of a public school, private school, or child care facility. Mo. Rev. Stat. § 566.147. Mr. Ball has no objection to that portion of the special condition, which will apply to him anyway if he lives in Missouri on supervised release. But the reach of the supervised release condition is

much broader. It prohibits Mr. Ball from living within 1,000 feet of a park, playground, pool, or any place where children “congregate.”

Mr. Ball will serve a lengthy prison sentence, with treatment required while on supervised release. His conduct did not involve going to places where children congregate in order to attract them.

Moreover, the “bar” against presence where children “congregate” is vague. It is unclear how Mr. Ball is to determine what is meant. While the condition includes examples, it is not limited to those example. What about retail stores, restaurants and movie theaters patronized or staffed by minors? His right to a normal life will be severely impacted.

Again, there are no individualized findings supporting these conditions. They do not meet the requirements of *United States v. Simons*, 614 F.3d 475, 479 (8th Cir. 2010).

As noted, above, Mr. Ball had no notice that this type of condition might be applied at the time he waived his right to appeal. While the magistrate judge did warn Mr. Ball at the time of his plea that he could be subject to a lifetime term of supervised release, he gave Mr. Ball absolutely no information about what that meant. Specifically, Mr. Ball was never told that there would be written conditions of supervised release. His first notice of these conditions came in the presentence report, which recommended them. While he could have objected to the conditions during the sentencing hearing, by that time, the appeal waiver had already been entered and the trial court had accepted it.

Enforcement of the appeal waiver specifically as to Mr. Ball's claim that his supervised release conditions violate his rights would work a manifest injustice under the standards of *United States v. Khattak*, 273 F.3d 557, 563 (3d Cir. 2001), and *United States v. Teeter*, 257 F.3d 14, 25–26 (1st Cir. 2001).

First, the error is clear. As the authorities above indicate, were this issue to be considered by the court of appeals, relief is likely. Second, the error is grave and the impact on the defendant is severe. These conditions will affect Mr. Ball for the rest of his life. The impact of correcting this error on the government is slight. All that would be required would be the elimination of the improper conditions. No new trial would be necessary. While Mr. Ball did acquiesce in the result, he clearly received no benefit from it, and his acquiescence is therefore outweighed by the seriousness of the error.

This Court should grant certiorari and, if the appeal waiver is held valid, require that the supervised conditions issue be reviewed as manifest injustice.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

/s/ Elizabeth Unger Carlyle

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Kansas City, Missouri 64113
*Counsel of Record

ATTORNEY FOR PETITIONER

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 18-2714

United States of America

Plaintiff - Appellee

v.

Ricky Raymond Ball

Defendant - Appellant

Appeal from U.S. District Court for the Western District of Missouri - Joplin
(3:16-cr-05017-BP-1)

JUDGMENT

Before LOKEN, BENTON and ERICKSON, Circuit Judges.

The motion of appellee for dismissal of this appeal is granted. The appeal is hereby dismissed.

January 08, 2019

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI SOUTHWESTERN DIVISION

UNITED STATES OF AMERICA

v.

RICKY RAYMOND BALL

§ **JUDGMENT IN A CRIMINAL CASE**

§

§

§ Case Number: **3:16-CR-05017-BP(1)**

§ USM Number: **31513-045**

§ **Brian David Risley**

§ Defendant's Attorney

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input checked="" type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	1 of the Superseding Indictment on 2/20/2018
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense

18 U.S.C. 2422(b)-Coercion and Enticement of a Minor

Offense Ended

03/26/2015

Count

1s

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) ☐ 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.

July 31, 2018

Date of Imposition of Judgment

/s/ Beth Phillips

Signature of Judge

BETH PHILLIPS
UNITED STATES DISTRICT JUDGE

Name and Title of Judge

August 1, 2018

Date

DEFENDANT: RICKY RAYMOND BALL
CASE NUMBER: 3:16-CR-05017-BP(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:
156 months as to count 1s.

☒ The court makes the following recommendations to the Bureau of Prisons:
That defendant be placed in the facility located in Englewood, CO so he may be near his family.

☒ 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

DEFENDANT: RICKY RAYMOND BALL
CASE NUMBER: 3:16-CR-05017-BP(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : **Life on Count 1 of the Superseding 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.
☐ 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 make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ 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 additional conditions on the attached page.

DEFENDANT: RICKY RAYMOND BALL
CASE NUMBER: 3:16-CR-05017-BP(1)

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. I understand additional information regarding these conditions is available at the www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: RICKY RAYMOND BALL
CASE NUMBER: 3:16-CR-05017-BP(1)

SPECIAL CONDITIONS OF SUPERVISION

- a) The defendant shall successfully participate in any outpatient or inpatient substance abuse counseling program, which may include urinalysis, sweat patch, or Breathalyzer testing, as approved by the Probation Office and pay any associated costs as directed by the Probation Office.
- b) Successfully participate in any mental health counseling program, as approved by the Probation Office, and pay any associated costs, as directed by the Probation Office.
- c) The defendant shall not consume or possess alcoholic beverages or beer, including 3.2 percent beer, at any time, and shall not be present in any establishment where alcoholic beverages are the primary items for sale.
- d) Satisfy any warrants/pending charges within the first 60 days of supervised release.
- e) The defendant will not associate or have any contact with persons under the age of 18, except in the presence of a responsible adult who is aware of the nature of the defendant's background and current offense and who has been approved by the Probation Office.
- f) The defendant will neither possess nor have under his control any matter that is pornographic/erotic; or that describes sexually explicit conduct, violence toward children or child pornography [as described in 18 U.S.C. 2256(2) and (8)], including photographs, images, books, writings, drawings, videos, and electronic material.
- g) The defendant shall successfully participate in a program of sex offender counseling, as directed by the Probation Office. The defendant shall also pay any associated costs as directed by the Probation Office.
- h) The defendant shall successfully participate in a program of polygraph testing to assist in treatment and/or monitoring, as directed by the Probation Office. The defendant shall also pay any associated costs as directed by the Probation Office.
- i) The defendant shall submit his person and any property, house, residence, office, vehicle, papers, computer, other electronic communication or data storage devices or media and effects to a search, conducted by a U.S. 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 warn any other residents that the premises may be subject to searches pursuant to this condition.
- j) The defendant will not have contact with the victim/s in this case, to include any physical, visual, written, telephonic or electronic contact with such person/s. Additionally, the defendant shall not directly or indirectly cause or encourage anyone else to have such contact with such person/s.
- k) The defendant's place of residence may not be within 1,000 feet of schools, parks, playgrounds, public pools, or other locations frequented by children.
- l) The defendant is barred from places where minors (under the age of 18) congregate; such as residences, parks, pools, daycare centers, playgrounds and school, unless prior written consent is granted by the Probation Office.
- m) The defendant shall comply with all state and federal sex offender registration requirements.

DEFENDANT: RICKY RAYMOND BALL
CASE NUMBER: 3:16-CR-05017-BP(1)

n) The defendant shall not possess or use any computer or electronic device with access to any 'on-line computer service' without the prior approval of the Probation Office. This includes any public or private computer network.

o) The defendant shall consent to having installed any hardware or software systems on his/her computer(s), to monitor computer use. The defendant shall pay any associated costs as directed by the Probation Office.

p) The defendant shall not maintain or create a user account on any social networking site (i.e. Myspace, Facebook, Adultfriendfinder, 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. The defendant shall not view and/or access any web profile users under the age of 18.

q) The defendant shall consent to third-party disclosure to any employer, or potential employer, concerning the history, characteristics, criminal background or any computer-related restrictions that have been imposed.

r) The defendant shall consent to the United States Probation Office conducting periodic unannounced examinations of your computers or other electronic devices which may include retrieval and copying of all data from these devices. This also includes the removal of such devices, if necessary, for the purpose of conducting a more thorough inspection.

ACKNOWLEDGMENT OF CONDITIONS

I have read or have read the conditions of supervision set forth in this judgment and I fully understand them. I have been provided a copy of them.

I understand that upon finding of a violation of probation or supervised release, the Court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

Defendant

Date

United States Probation Officer

Date
7a

DEFENDANT: RICKY RAYMOND BALL
CASE NUMBER: 3:16-CR-05017-BP(1)

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	\$100.00		\$.00	\$.00

- ☐ The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* 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. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

- ☐ 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:
- | | | |
|---|-------------------------------|--|
| <input type="checkbox"/> the interest requirement is waived for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution |
| <input type="checkbox"/> the interest requirement for the | <input type="checkbox"/> fine | <input type="checkbox"/> 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.

DEFENDANT: RICKY RAYMOND BALL
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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 payments of \$ 100.00 due immediately, balance due
☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B** ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C** ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D** ☐ Payment in equal 20 (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:
It is ordered that the Defendant shall pay to the United States a special assessment of \$100.00 for Count 1s, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

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

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

Joint and Several

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

- ☐ Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVT Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.