

RECORD NO. _____

IN THE
Supreme Court of the United States

AARON LEE SMILEY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

APPENDIX
Volume I of II

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UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 18-4029

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

AARON LEE SMILEY,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Greenbelt.
Roger W. Titus, Senior District Judge. (8:16-cr-00121-RWT-1)

Submitted: January 31, 2019

Decided: February 6, 2019

Before WILKINSON, KING, and AGEE, Circuit Judges.

Affirmed in part and dismissed in part by unpublished per curiam opinion.

Murray Kamionski, LAW OFFICE OF MURRAY KAMIONSKI, Baltimore, Maryland, for Appellant. Robert K. Hur, United States Attorney, Baltimore, Maryland, Joseph R. Baldwin, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Greenbelt, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Aaron Lee Smiley pled guilty, pursuant to a written Fed. R. Crim. P. 11(c)(1)(C) plea agreement, to producing child pornography in violation of 18 U.S.C. § 2251(a) (2012). In the plea agreement, the parties stipulated to a sentencing range of 17 to 25 years. The district court imposed a 25-year sentence and ordered forfeiture of the residence owned by Smiley and his ex-wife. On appeal, Smiley contends that his plea was involuntary because the Government and his counsel withheld medical treatment until he pled guilty and because he did not know that the district court would order forfeiture of the residence. He also asserts that his trial counsel was ineffective, that the forfeiture of the residence constitutes an excessive fine in violation of the Eighth Amendment, and that his sentence is unreasonable. The Government argues that Smiley's guilty plea was knowing and voluntary and that the remainder of his arguments are barred by the appeal waiver in his plea agreement. We affirm in part and dismiss in part.

We review the validity of an appellate waiver de novo. In making this assessment, we consider the totality of the circumstances, including the experience and conduct of the defendant, his educational background, and his knowledge of the plea agreement and its terms. Generally though, if a district court questions a defendant regarding the waiver of appellate rights during the Rule 11 colloquy and the record indicates that the defendant understood the full significance of the waiver, the waiver is valid.

United States v. McCoy, 895 F.3d 358, 362 (4th Cir.) (citations and internal quotation marks omitted), *cert. denied*, 139 S. Ct. 494 (2018). Smiley does not contest that the district court properly conducted the plea colloquy or that he understood the full significance of the waiver. He argues instead that his plea was involuntary, and we have

held that a valid appeal waiver does not bar a defendant from challenging the validity of his plea on appeal. *Id.* at 364.

Because Smiley did not move to withdraw his guilty plea in the district court, we review his challenge to the validity of his appeal for plain error. *Id.* Smiley alleges that the Government and his counsel coerced him to plead guilty by withholding medical treatment until he did so and that he would not have pled guilty had his lawyer not erroneously told him that the district court would not order forfeiture of the residence. Smiley notes in his own brief, however, that the district court conducted a proper and comprehensive plea colloquy during which Smiley told the court under oath that no one had threatened or coerced him, that he had fully discussed his case and his plea agreement with his counsel, and that he was knowingly and voluntarily pleading guilty. Smiley therefore fails to overcome the strong presumption that his guilty plea is final and binding, and we affirm his conviction.

Smiley's arguments that the forfeiture of the residence violates the Eighth Amendment and that his 25-year sentence is unreasonable fall squarely within the scope of the valid appeal waiver. We therefore dismiss Smiley's appeal of his sentence.

Smiley's final argument is that his trial counsel was ineffective. Claims of ineffective assistance of counsel are not addressed on direct appeal “[u]nless an attorney's ineffectiveness conclusively appears on the face of the record.” *United States v. Faulls*, 821 F.3d 502, 507-08 (4th Cir. 2016). To succeed on an ineffective assistance of counsel claim, “a defendant must show that counsel's performance was deficient” and “that the deficient performance prejudiced the defense.” *Strickland v. Washington*, 466

U.S. 668, 687 (1984). To satisfy the performance prong, “the defendant must show that counsel’s representation fell below an objective standard of reasonableness.” *Id.* at 688. Because the record does not conclusively show that trial counsel was ineffective, Smiley’s claim is not cognizable on direct appeal.

We therefore affirm Smiley’s conviction and dismiss the remainder of his appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED IN PART,
DISMISSED IN PART*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA

v.

17-17-P-276
Criminal Case No. RWT-16-0121

AARON LEE SMILEY

*

REGULAR SENTENCING ORDER

(1) On or before AUGUST 25, 2017 (*not more than 40 days from the date of this order*), the Probation Officer shall serve two copies of the presentence report upon counsel for the Defendant, who shall review the report with and, provide one of the copies to, the Defendant. The Probation Officer shall also serve one copy of the presentence report upon counsel for the Government.

(2) On or before SEPTEMBER 8, 2017 (*not less than 14 days from date in paragraph 1*), counsel shall submit, in writing, to the Probation Officer and opposing counsel, any objections to any material information, sentencing classifications, advisory sentencing guideline ranges, or policy statements contained in or omitted from the report.

(3) After receiving counsel's objections, the Probation Officer shall conduct any necessary further investigation and may require counsel for both parties to meet with the Probation Officer to discuss unresolved factual and legal issues. The Probation Officer shall make any revisions to the presentence report deemed proper, and, in the event that any objections made by counsel remain unresolved, the Probation Officer shall prepare an addendum setting forth those objections and any comment thereon.

(4) On or before SEPTEMBER 19, 2017 (*not less than 11 days from date in paragraph 2*), the Probation Officer shall serve two copies of any revisions and addendum to the presentence report upon counsel for the Defendant, who shall provide one of the copies to the Defendant.

The Probation Officer shall also serve one copy of any revision and addendum to the presentence report upon counsel for the Government. The Probation Officer shall then submit the report (and any revisions and addendum thereto) to the Court.

(5) If counsel for either party intends to call any witnesses at the sentencing hearing, counsel shall submit, in writing, to the Court and opposing counsel, on or before

November 27, 2017 (*not less than 14 days before sentencing*), a statement containing (a) the names of the witnesses, (b) a synopsis of their anticipated testimony, and (c) an estimate of the anticipated length of the hearing.

(6) Sentencing memoranda are not required unless a party intends to request a sentence outside the advisory guidelines range on the basis of a non-guideline factor. If submitted, they shall be filed with the Clerk and a copy delivered to chambers on or before

November 27, 2017 (*not less than 14 days before sentencing*). Opposing or responding memoranda are not required. If submitted, they shall be delivered to chambers on or before

December 4, 2017 (*not less than 7 days before sentencing*). Copies of all memoranda must be sent to the Probation Officer.

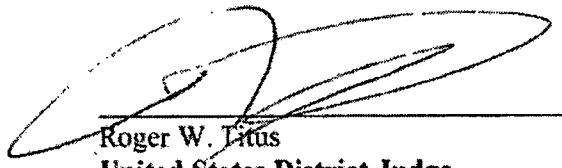
(7) Sentencing shall be on December 11, 2017 at 1:00 p.m.

(8) The presentence report, any revisions, and any proposed findings made by the Probation Officer in the addendum to the report shall constitute the tentative findings of the Court under section 6A1.3 of the sentencing guidelines. In resolving disputed issues of fact, the Court may consider any reliable information presented by the Probation Officer, the Defendant, or the Government, and the Court may issue its own tentative or final findings at any time before or during the sentencing hearing.

(9) Nothing in this Order requires the disclosure of any portions of the presentence report that are not discloseable under Federal Rules of Criminal Procedure 32.

(10) The dates of service set forth in this Order refer to the date of receipt of the paper being served. If the Probation Officer or counsel are making service of a paper by mail, they must mail the paper at least three days before the date set forth in the Order.

July 17, 2017
Date



Roger W. Titus
United States District Judge

J11

United States District Court

District of Maryland

UNITED STATES OF AMERICA

v.

AARON LEE SMILEY

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed on or After November 1, 1987)

Case Number: RWT-8-16-CR-00121-001

Defendant's Attorney: Amy Steffan Fitzgibbons
 Assistant U.S. Attorney: Joseph Ronald Baldwin

FILED _____
 LOGGED _____
 RECEIVED _____
 NOV 22 2017
 C. District of Maryland
 DEPUTY
 Count
 Number(s)
 1sss

THE DEFENDANT:

pleaded guilty to count 1 of the 3rd Superseding Indictment.
 pleaded nolo contendere to count(s) _____, which was accepted by the court.
 was found guilty on count(s) _____ after a plea of not guilty.

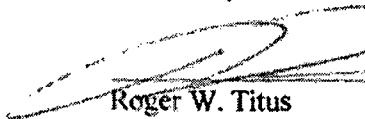
Title & Section	Nature of Offense	Date	Offense Concluded	Count
18 U.S.C. § 2251(a)	Sexual Exploitation Of A Minor For The Purpose Of Producing Child Pornography	02/23/2014		1sss

The defendant is adjudged guilty of the offenses listed above and sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 as modified by U.S. v. Booker, 543 U.S. 220 (2005).

The defendant has been found not guilty on count(s) _____.
 Remaining counts and previous indictments are dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall 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.

December 19, 2017
 Date of Imposition of Judgment


 Roger W. Titus
 United States District Judge

Date
December 21, 2017

Name of Court Reporter: Lisa Bankins

DEFENDANT: Aaron Lee Smiley

CASE NUMBER: RWT-8-16-CR-00121-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 25 years.

- The court makes the following recommendations to the Bureau of Prisons:
 1. That the defendant be designated to the Federal Medical Center in Butner, NC.
 2. That the defendant participate in any sex offender treatment program for which he may be eligible.
 3. That the defendant receive appropriate medical care for the medical conditions described in the medical records attached to the Statement of Reasons.
- 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, at his/her own expense, to the institution designated by the Bureau of Prisons at the date and time specified in a written notice to be sent to the defendant by the United States Marshal. If the defendant does not receive such a written notice, defendant shall surrender to the United States Marshal:
 - before 2pm on _____.

A defendant who fails to report either to the designated institution or to the United States Marshal as directed shall be subject to the penalties of Title 18 U.S.C. §3146. If convicted of an offense while on release, the defendant shall be subject to the penalties set forth in 18 U.S.C. §3147. For violation of a condition of release, the defendant shall be subject to the sanctions set forth in Title 18 U.S.C. §3148. Any bond or property posted may be forfeited and judgment entered against the defendant and the surety in the full amount of the bond.

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

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of Life.

The defendant shall comply with all of the following conditions:

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

A. 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 (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. (check if applicable)
- 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 other conditions on the attached page

B. 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)

DEFENDANT: Aaron Lee Smiley

CASE NUMBER: RWT-8-16-CR-00121-001

- 10) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
- 11) 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).
- 12) 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.
- 13) 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.
- 14) You must follow the instructions of the probation officer related to the conditions of supervision.

C. SUPERVISED RELEASE ADDITIONAL CONDITIONS

You must participate in a substance abuse treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.). You must pay the cost of the program as directed by the probation officer, subject to your ability to pay.

You must submit to substance abuse testing to determine if you have used a prohibited substance. You must pay the costs of the testing as directed by the probation officer, subject to your ability to pay. You must not attempt to obstruct or tamper with the testing methods.

You must not use or possess any controlled substances without a valid prescription. If you do have a valid prescription you must disclose the prescription information to the probation officer and follow the instructions on the prescription.

You must not knowingly purchase possess, distribute, administer or otherwise use any psychoactive substances (e.g., synthetic marijuana, bath salts, etc.) that impair a person's physical or mental functioning whether or not intended for human consumption, except with the prior approval of the probation officer.

You must not go to, or remain at, any place where you know controlled substances are illegally sold, used, distributed, or administered without first obtaining the permission of the probation officer.

You must not use or possess alcohol.

You must participate in a sex offense-specific assessment. You must pay the cost of the assessment as directed by the probation officer.

You must participate in a sex offense-specific treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.). You must pay the cost of the program, subject to your ability to pay as directed by the probation officer.

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

You must not access the internet except for reasons approved in advance by the probation officer.

You must allow the probation officer to install computer monitoring software on any computer (as defined in 18 U.S.C. § 1030(e)(1))

To ensure compliance with the computer monitoring condition, you must allow the probation officer to conduct initial and periodic unannounced searches of any computers (as defined in 18 U.S.C. § 1030(e)(1)) subject to computer monitoring. These searches shall be conducted for the purposes of determining whether the computer contains any prohibited data prior to installation of the monitoring software; to determine whether the monitoring software is functioning effectively after its installation; and to determine whether there have been attempts to circumvent the monitoring software after its installation. You must warn any other people who use these computers that the computers may be subject to searches pursuant to this condition.

DEFENDANT: Aaron Lee Smiley

CASE NUMBER: RWT-8-16-CR-00121-001

You must warn any other people who use these computers or devices capable of accessing the internet that the devices may be subject to searches pursuant to this condition. A probation officer may conduct a search pursuant to this condition only when reasonable suspicion exists that there is a violation of a condition of supervision and that the computer or device contains evidence of this violation. Any search will be conducted at a reasonable time and in a reasonable manner.

You must not view or possess any "visual depiction" (as defined in 18 U.S.C. § 2256), including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of "sexually explicit conduct" as defined in 18 U.S.C. § 2256).

You must not view or possess any "visual depiction" (as defined in 18 U.S.C. § 2256) including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of "sexually explicit conduct" (as defined in 18 U.S.C. § 2256), that would compromise your sex offense-specific treatment.

You must not have direct contact with any child you know or reasonably should know to be under the age of 18, including your own children, without the permission of the probation officer. If you do have any direct contact with any child you know or reasonably should know to be under the age of 18, including your own children, without the permission of the probation officer, you must report this contact to the probation officer within 24 hours. Direct contact includes written communication, in-person communication, or physical contact. Direct contact does not include incidental contact during ordinary daily activities in public places.

You must not go to, or remain at, any place where you know children under the age of 18 are likely to be, including parks, schools, playgrounds, and childcare facilities. You must not go to, or remain at, a place for the primary purpose of observing or contacting children under the age of 18.

You must not communicate, or otherwise interact, with victims in the case, either directly or through someone else, without first obtaining the permission of the probation officer.

You must not possess and/or use computers (as defined in 18 U.S.C. § 1030(e)(1)) or other electronic communications or data storage devices or media.

U.S. Probation Office Use Only

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

Defendant's Signature _____

Date _____

DEFENDANT: Aaron Lee Smiley

CASE NUMBER: RWT-8-16-CR-00121-001

CRIMINAL MONETARY PENALTIES

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

<u>TOTALS</u>	<u>Assessment</u> \$100.00	<u>Fine</u> Waived	<u>Restitution</u> N/A
<input type="checkbox"/> CVB Processing Fee \$30.00			

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
		\$0.00	

TOTALS	\$ _____	\$ _____	\$0.00
---------------	----------	----------	--------

Restitution amount ordered pursuant to plea agreement _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution

the interest requirement for the fine restitution is modified as follows:

* 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: Aaron Lee Smiley

CASE NUMBER: RWT-8-16-CR-00121-001

SCHEDULE OF PAYMENTS

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

Payment of the total fine and other criminal monetary penalties shall be due as follows:

- A Special Assessment of \$100.00 to be paid in full immediately.
- B \$ _____ immediately, balance due (in accordance with C, D, or E); or
- C Not later than _____; or
- D Installments to commence _____ day(s) after the date of this judgment.
- E In _____ (e.g. *equal weekly, monthly, quarterly*) installments of \$ _____ over a period of _____ year(s) to commence when the defendant is placed on supervised release.

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

Unless the court expressly orders otherwise, 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 Bureau of Prisons Inmate Financial Responsibility Program, are to be made to the Clerk of the Court.

- NO RESTITUTION OR OTHER FINANCIAL PENALTY SHALL BE COLLECTED THROUGH THE INMATE FINANCIAL RESPONSIBILITY PROGRAM.

If the entire amount of criminal monetary penalties is not paid prior to the commencement of supervision, the balance shall be paid:

- in equal monthly installments during the term of supervision; or
- on a nominal payment schedule of \$ _____ per month during the term of supervision.

The U.S. probation officer may recommend a modification of the payment schedule depending on the defendant's financial circumstances.

Special instructions regarding the payment of criminal monetary penalties:

- Joint and Several

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

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:
See attached Order of forfeiture.

FILED: April 9, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4029
(8:16-cr-00121-RWT-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

AARON LEE SMILEY

Defendant - Appellant

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wilkinson, Judge King, and Judge Agee.

For the Court

/s/ Patricia S. Connor, Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

Greenbelt, Maryland

AARON SMILEY, June 1, 2017

Defendant. 10:00 a.m.

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE ROGER W. TITUS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: United States Attorney's Office
By: JULIE FINOCCHIARO, ESQUIRE
THOMAS SULLIVAN, ESQUIRE
6500 Cherrywood Lane
Suite 200
Greenbelt, Maryland 20770

For the Defendant: Office of the Federal Public Defender
By: AMY FITZGIBBONS, ESQUIRE
6411 Ivy Lane
Suite 710
Greenbelt, Maryland 20770

Court Reporter Lisa K. Bankins RMR FCRR
United States District Court
6500 Cherrywood Lane
Greenbelt, Maryland 20770

Proceedings recorded by mechanical stenography,
transcript produced by notereading.

1 THE COURT: What is the health issue he's got?
2 MS. FITZGIBBONS: -- why we are here. Well,
3 Your Honor, his blood pressure is really all over the
4 place. He also sustained injuries to his knee and his arm
5 while at CDF and I've had ongoing issues getting him
6 appropriate medical care there and we've been trying to
7 work those issues with the marshal. There's a marshal
8 liaison at CDF. And I had several months back sat down
9 with the medical personnel at CDF along with the marshal.
10 The last time I saw Mr. Smiley, he did not appear as bad
11 as he does this morning. And the way I left it with him
12 the last time I saw him was that we would address the
13 issue with the warden. And my supervisor is willing to go
14 and sit down and do that with me. Unfortunately, I
15 haven't had the opportunity to have that meeting set up.
16 And again, I apologize. I didn't realize his condition
17 when I last saw him --

25 MS. FITZGIBBONS: I did confer with him this

1 morning, Your Honor. I think I just -- I want to ensure
2 that, you know, he's here. His eyes are barely open. I
3 just want to make sure he understands what's going on
4 because if he doesn't --

5 THE COURT: Well, you're in a better position to
6 answer that than I am. And you have spoken with him this
7 morning?

8 MS. FITZGIBBONS: Right. And --

9 THE COURT: Was he able to communicate with you?

10 MS. FITZGIBBONS: A couple of sentences is all
11 we were able to manage this morning.

12 THE COURT: All right.

13 MS. FITZGIBBONS: When I talked to the transport
14 marshal, he said it was taking him a lot of effort and
15 time to get from one place to another.

16 THE COURT: What is the source of his injuries?

17 MS. FITZGIBBONS: He has an injury to his knee
18 which I know causes him a lot of pain and it's making it
19 almost impossible for him to walk. He has another injury
20 to his shoulder. He has a separated shoulder. And then
21 he has the underlying medical issues of high blood
22 pressure and --

23 THE COURT: Is he getting medication for the
24 blood pressure issue?

25 MS. FITZGIBBONS: He is. However, the blood

1 pressure is not being monitored. So they can give him
2 medication, but they also need to be monitoring it, which
3 is something that we asked for. When his blood pressure
4 is very high, obviously, he gets confused and has a hard
5 time focusing. And I'm not sure if that's what's going on
6 this morning or if he's just exhausted and weak because
7 he's in pain from the two injuries that we've been having
8 some difficulty getting consistent pain medication for.

9 THE COURT: All right. Did the government wish
10 to add something?

11 MS. FINOCCHIARO: No, Your Honor.

12 THE COURT: Mr. Smiley, can you hear me? Put
13 the mic to him there. Mr. Smiley, you've heard the
14 conversation I've been having with your lawyer?

15 THE DEFENDANT: What? Pardon?

16 THE COURT: Did you hear the conversation that I
17 was having with your attorney?

18 THE DEFENDANT: Yeah.

19 THE COURT: Are you able to hear me today? Can
20 you hear me?

21 THE DEFENDANT: Yeah.

22 THE COURT: Do you understand what's going on
23 today in this courtroom?

24 THE DEFENDANT: We're having a hearing.

25 THE COURT: You have to speak up, sir. I can't



U.S. DEPARTMENT OF JUSTICE

United States Attorney
District of Maryland
Southern Division

7/17/17 2:06

10
Joseph R. Baldwin
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6500 Cherrywood Lane, Suite 200
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July 12, 2017

Amy Fitzgibbons, Esq.
Office of the Federal Public Defender
6411 Ivy Lane, Suite 710
Greenbelt, Maryland 20770

Re: U.S. v. Aaron Lee Smiley,
Criminal No. RWT-16-0121

Dear Ms. Fitzgibbons:

This letter confirms the plea agreement, together with the sealed supplement, which has been offered to the Defendant by the United States Attorney's Office for the District of Maryland ("this Office"). This plea agreement is entered into and will be submitted to the Court pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C). If the Defendant accepts this offer, please have him execute it in the spaces provided below. If this offer has not been accepted by July 13, 2017 at 5:00 p.m., it will be deemed withdrawn. The terms of the agreement are as follows:

Offense of Conviction

1. The Defendant agrees plead guilty to Count One of the Third Superseding Indictment pending against him, which charges him with Sexual Exploitation of a Minor for the Purpose of Producing Child Pornography, in violation of 18 U.S.C. § 2251(a). The Defendant admits that he is, in fact, guilty of this offense and will so advise the Court.

Elements of the Offense

2. The elements of the offense to which the Defendant has agreed to plead guilty, and which this Office would prove if the case went to trial, are as follows: (1) the Defendant employed, used, persuaded, induced, enticed or coerced the victim to take part in sexually explicit conduct for the purpose of producing a visual depiction of such conduct; (2) the victim was a minor; and (3) the visual depiction was produced or transmitted using materials that had been transported in or affecting interstate or foreign commerce, or such visual depiction had actually been transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce.

Offender Registration and Notification Act (SORNA), and the laws of the state of his residence. Failure to do so may subject him to new charges pursuant to 18 U.S.C. § 2250.

Forfeiture

18. The Defendant understands that the Court will, upon acceptance of his guilty plea, enter an order of forfeiture as part of his sentence, and that the order of forfeiture may include assets directly traceable to his offense, substitute assets and/or a money judgment equal to the value of the property derived from, or otherwise involved in, the offense. Specifically, the Court will order the forfeiture of:

a. Any visual depiction described in Title 18, U.S.C. § 2252A, or any book, magazine, periodical, film, videotape, electronic media, or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped or received in violation of Title 18, United States Code, Chapter 110;

b. Any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from the offenses; and

c. Any property, real or personal, used or intended to be used to commit or to promote the commission of the offenses, including, without limitation: a Dell Optiplex, Model GX520, desktop computer, and a Seagate Barracuda 250 gigabyte hard drive.

d. The Defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment.

19. The Defendant agrees to assist fully in the forfeiture of the foregoing assets. The Defendant agrees to disclose all of his assets and sources of income to the United States, and to take all steps necessary to pass clear title to the forfeited assets to the United States, including but not limited to executing any and all documents necessary to transfer such title, assisting in bringing any assets located outside of the United States within the jurisdiction of the United States, and taking whatever steps are necessary to ensure that assets subject to forfeiture are not sold, disbursed, wasted, hidden or otherwise made unavailable for forfeiture. The Defendant further agrees that he will not assist any third party in asserting a claim to the forfeited assets in an ancillary proceeding and that he will testify truthfully in any such proceeding.

20. The Defendant further agrees to waive all constitutional, legal and equitable challenges (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The Defendant also agrees not to challenge or seek review of any civil or administrative forfeiture of any property subject to forfeiture under this agreement, and will not assist any third party with regard to such challenge or review or with regard to the filing of a petition for remission of forfeiture.

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MARYLAND
3 SOUTHERN DIVISION

4 UNITED STATES OF AMERICA Criminal No. RWT-16-00121

5 v. Greenbelt, Maryland

6 AARON LEE SMILEY, December 19, 2017

7 Defendant. 1:00 p.m.
-----/

8 TRANSCRIPT OF SENTENCING
9 BEFORE THE HONORABLE ROGER W. TITUS
10 UNITED STATES DISTRICT JUDGE

11 APPEARANCES:

12 For the Government: United States Attorney's Office
13 By: JOSEPH BALDWIN, ESQUIRE
14 JULIE FINOCCHIARO, ESQUIRE
15 6500 Cherrywood Lane
16 Suite 200
17 Greenbelt, Maryland 20770

18 For the Defendant: Office of the Federal Public Defender
19 By: AMY FITZGIBBONS, ESQUIRE
20 6411 Ivy Lane
21 Suite 710
22 Greenbelt, Maryland 20770

23 Court Reporter Lisa K. Bankins RMR FCRR
24 United States District Court
25 6500 Cherrywood Lane
 Greenbelt, Maryland 20770

26 Proceedings recorded by mechanical stenography,
27 transcript produced by notereading.

1 THE COURT: All right. Well, I'm going to enter
2 the order. As I indicated, the forfeiture order will be
3 public, but the attachment to it will be under seal.

4 (Bench conference:)

5 (It is the policy of this court that every
6 guilty plea and sentencing proceeding include a bench
7 conference concerning whether the defendant is or is not
8 cooperating.)

9 (In open court:)

10 THE COURT: All right. Let me proceed with the
11 sentence in this matter.

12 THE DEFENDANT: I want to talk.

13 THE COURT: The defendant --

14 THE DEFENDANT: I want to talk. I want to
15 speak.

16 THE COURT: You already had your chance, sir.

17 THE DEFENDANT: I specifically questioned my
18 lawyer about that asset. That is my ex-wife's house. She
19 got it in a divorce. I specifically questioned her about
20 that in this plea agreement. She told me that was not
21 part of the plea agreement. If I had known that was part
22 of the plea agreement, I would not have pled guilty.

23 THE COURT: Well, she has a procedure to protect
24 her interest in the house that I've just identified.

25 THE DEFENDANT: I was coerced. I was forced to

1 plead guilty. Medical treatment was withheld from me. I
2 was told I would not get medical treatment unless I pled
3 guilty. She told me plead guilty, we'll get you medical
4 treatment. She told me that that house would not be taken
5 from my ex-wife. And now everything is changed in here
6 today.

7 THE COURT: Well, I hear what you say, sir. I
8 do not agree with what you just said and we're going to
9 proceed to announce the sentence at this time.

10 The defendant is before me today for sentencing
11 after having entered a plea to Count One of the indictment
12 charging sexual exploitation of a minor for the purpose of
13 producing child pornography. I have reviewed the
14 presentence report, the memoranda submitted by the
15 parties, the statement by the father of one of the
16 victims. I've also reviewed several victim impact
17 statements that have been submitted to me by the
18 government and I have applied the guidelines. And the
19 guidelines in this case, but for the maximum of 30 years
20 would provide for a sentence of life, but because the
21 maximum for the offense to which the defendant pled guilty
22 is 30 years, that is the guideline sentence for a case
23 like this.

24 Applying the guidelines is the first step in the
25 sentencing process. I've done that. It produces a

1 that appeal within 14 days of today's date. Otherwise,
2 your right to challenge either your conviction or your
3 sentence or both --

4 THE DEFENDANT: Actually, I want a jury trial.

5 THE COURT: Sir, I'm -- if you'd be quiet a
6 minute, I'm going to explain your right to appeal.

7 You must initiate that appeal within 14 days.
8 Otherwise, your right to challenge your conviction and
9 sentence by way of direct appeal could be lost. If you're
10 unable to pay the filing fee for the appeal, there are
11 procedures that the clerk of the court or your counsel are
12 going to explain to you to have that filing fee waived.

13 I do want to point out to you that under your
14 plea agreement, there are some contractual waivers with
15 respect to your right to appeal. They are --

16 THE DEFENDANT: First, I was denied medical
17 treatment. I was told I would not get medical treatment
18 unless --

19 THE COURT: Sir, you are going to have to be
20 quiet while I'm explaining these rights to you. And if
21 you're not, I'll have you excluded from the courtroom.

22 In paragraph 23 on pages 8 and 9 of your plea
23 agreement, there are contractual waivers of your right to
24 appeal. Under that provision, you've waived your right to
25 appeal your conviction. You've also waived your right to

1 appeal whatever sentence is imposed in this case,
2 including the determination of the advisory guideline
3 range, your history, the weighing of the sentencing
4 factors and the decision to impose and the calculation of
5 any term of imprisonment, fine or forfeiture, order of
6 restitution or term of condition of supervised release.
7 Nothing would preclude you from challenging a sentence
8 that is otherwise unlawful. But to the extent that your
9 rights to appeal have not been waived by contract, I want
10 you to understand your right to appeal and the need to do
11 so within 14 days. Do you understand your right to
12 appeal, sir?

13 THE DEFENDANT: Yes.

14 THE COURT: All right. Anything further,
15 counsel?

16 THE DEFENDANT: I will be appealing. I want a
17 jury trial. You guys did --

18 MR. BALDWIN: Nothing further from the
19 government, Your Honor.

20 THE COURT: Thank you.

21 (Proceeding concluded.)

22

23

24

25