

No. __ - _____

IN THE SUPREME COURT OF THE UNITED STATES

ZACKARY IKAIKA BRYTON THOMPSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

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Northern District of Texas

APPENDIX A

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-11444
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

September 5, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ZACKARY IKAIKA BRYTON THOMPSON,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:18-CR-111-1

Before JOLLY, JONES, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Zackary Ikaika Bryton Thompson appeals the within-guidelines 262-month sentence imposed following his guilty plea to one count of sexual exploitation of children by production of child pornography, in violation of 18 U.S.C. § 2251(a) and (e). He argues that his sentence was procedurally unreasonable, because the district court failed to address mitigating factors and did not sufficiently state reasons for the sentence, and substantively

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

unreasonable, because it was greater than necessary to achieve the sentencing goals of 18 U.S.C. § 3553(a). Further, he contends that § 2251(a) is unconstitutional because the Commerce Clause did not grant Congress the power to enact the statute.

Thompson has not demonstrated that the district court abused its discretion by imposing a procedurally or substantively unreasonable sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007). In these circumstances, the district court did not procedurally err by failing to explicitly address Thompson's arguments for mitigation. *See United States v. Becerril-Pena*, 714 F.3d 347, 351-52 (5th Cir. 2013); *United States v. Sanchez*, 667 F.3d 555, 568 (5th Cir. 2012). Moreover, the district court adequately stated reasons because a within-guidelines sentence requires "little explanation." *United States v. Mares*, 402 F.3d 511, 519 (5th Cir. 2005). As to substantive reasonableness, Thompson has not overcome the presumption of reasonableness that applies to within-guidelines sentences by showing that the sentence failed to account for the mitigating factors or represented a clear error of judgment in balancing the sentencing factors. *See United States v. Rashad*, 687 F.3d 637, 644 (5th Cir. 2012). Finally, Thompson waived his claim that § 2251(a) is unconstitutional by entering an unconditional guilty plea. *See United States v. Sealed Appellant*, 526 F.3d 241, 242-43 (5th Cir. 2008).

Accordingly, the judgment of the district court is AFFIRMED.

APPENDIX B

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED

OCT 26 2018
CLERK, U.S. DISTRICT COURT By _____ Deputy

UNITED STATES OF AMERICA

§

v.

§

Case Number: 4:18-CR-111-A(01)

ZACHARY IKAIKA BRYTON THOMPSON

§

JUDGMENT IN A CRIMINAL CASE

The government was represented by Assistant United States Attorney Shawn Smith. The defendant, ZACHARY IKAIKA BRYTON THOMPSON, was represented by Federal Public Defender through Assistant Federal Public Defender Taylor Wills Edwards Brown.

The defendant pleaded guilty on June 21, 2018 to the one count Indictment filed on May 16, 2018. Accordingly, the court ORDERS that the defendant be, and is hereby, adjudged guilty of such count involving the following offense:

<u>Title & Section / Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
18 U.S.C. §§ 2251(a) and (e) Sexual Exploitation of Children	12/12/2017	1

As pronounced and imposed on October 26, 2018, the defendant is sentenced as provided in this judgment.

The court ORDERS that the defendant immediately pay to the United States, through the Clerk of this Court, a special assessment of \$100.00.

The court further concluded that the defendant is indigent and waived the \$5,000 assessment required pursuant to 18 U.S.C. § 3014.

The court further ORDERS that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence address, or mailing address, as set forth below, until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court, through the clerk of this court, and the Attorney General, through the United States Attorney for this district, of any material change in the defendant's economic circumstances.

IMPRISONMENT

The court further ORDERS that the defendant be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 262 months. This sentence shall run concurrently with any sentence imposed in Case No. CR20394 in the 271st District Court of Wise County, Texas. This sentence shall run consecutively to any sentence imposed in Case No. CR20396 in the 271st District Court of Wise County.

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

SUPERVISED RELEASE

The court further ORDERS that, upon release from imprisonment, the defendant shall be on supervised release for a term of ten (10) years and that while on supervised release, the defendant shall comply with the standard conditions ordered by this Court and shall comply with the following additional conditions:

1. The defendant shall not commit another federal, state, or local crime.
2. The defendant shall not unlawfully possess a controlled substance.
3. The defendant shall cooperate in the collection of DNA as directed by the U.S. Probation Officer, as authorized by the Justice for All Act of 2004.
4. The defendant shall refrain from any unlawful use of a controlled substance, submitting to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer pursuant to the mandatory drug testing provision of the 1994 crime bill.
5. The defendant shall have no contact with minors under the age of 18, including by correspondence, telephone, internet, electronic communication, or communication through third parties. The defendant shall not have access to or loiter near school grounds, parks, arcades, playgrounds, amusement parks or other places where children may frequently congregate, except as may be allowed upon advance approval by the probation officer.
6. The defendant shall have no contact with the victim(s), including correspondence, telephone contact, or communication through third parties except under circumstances approved in advance by the probation officer and not enter onto the premises, travel past, or loiter near the victims' residences, places of employment, or other places frequented by the victims. And those victims include but are not limited to the five-year old daughter of Valerie Campbell, who is referred to as MV1 in the Presentence Report, and it also includes Valerie Campbell herself.
7. The defendant shall not possess, have access to, or utilize a computer or Internet connection device, including, but not limited to Xbox, PlayStation, Nintendo, or similar device, without permission of the probation officer.
8. The defendant shall register as a sex offender with state and local law enforcement as directed by the probation officer in each jurisdiction where the defendant resides, is employed, and is a student, providing all information required in accordance with state registration guidelines, with initial registration being completed within three business days after release from confinement. The defendant shall provide written verification of registration to the probation officer within three business days following registration and renew registration as required by his probation officer. The defendant shall, no later than three business days after each change of name, residence, employment, or student status, appear in person in at least one jurisdiction and inform that jurisdiction of all changes in the information required in the sex-offender registry.

9. The defendant shall neither possess nor have under his control any pornographic matter or any matter that sexually depicts minors under the age of 18 including, but not limited to, matter obtained through access to any computer and any matter linked to computer access or use.
10. The defendant shall participate in sex-offender treatment services as directed by the probation officer until successfully discharged, which services may include psychological testing to monitor the defendant's compliance, treatment progress, and risk to the community, contributing to the costs of services rendered at the rate of at least \$25 per month.
11. The defendant shall also comply with the Standard Conditions of Supervision as hereinafter set forth.

Standard Conditions of Supervision

1. The defendant shall report in person to the probation office in the district to which the defendant is released within seventy-two (72) hours of release from the custody of the Bureau of Prisons.
2. The defendant shall not possess a firearm, destructive device, or other dangerous weapon.
3. The defendant shall provide to the U.S. Probation Officer any requested financial information.
4. The defendant shall not leave the judicial district where the defendant is being supervised without the permission of the Court or U.S. Probation Officer.
5. The defendant shall report to the U.S. Probation Officer as directed by the court or U.S. Probation Officer and shall submit a truthful and complete written report within the first five (5) days of each month.
6. The defendant shall answer truthfully all inquiries by the U.S. Probation Officer and follow the instructions of the U.S. Probation Officer.
7. The defendant shall support his dependents and meet other family responsibilities.
8. The defendant shall work regularly at a lawful occupation unless excused by the U.S. Probation Officer for schooling, training, or other acceptable reasons.
9. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment.
10. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.

11. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
12. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the U.S. Probation Officer.
13. The defendant shall permit a probation officer to visit him at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the U.S. Probation Officer.
14. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.
15. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
16. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

The court hereby directs the probation officer to provide defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, as contemplated and required by 18 U.S.C. § 3583(f).

FINE

The court did not order a fine because the defendant does not have the financial resource or future earning capacity to pay a fine.

STATEMENT OF REASONS

The "Statement of Reasons" and personal information about the defendant are set forth on the attachment to this judgment.

Signed this the 26th day of October, 2018.

JOHN McBRYDE
UNITED STATES DISTRICT JUDGE

RETURN

I have executed the imprisonment part of this Judgment as follows:

Defendant delivered on _____, 2018 to _____
at _____, with a certified copy of this Judgment.

United States Marshal for the
Northern District of Texas

By _____
Deputy United States Marshal