APPENDIX

APPENDIX

A-1

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-10277
Non-Argument Calendar

D.C. Docket No. 1:17-cr-20205-UU-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DANIEL JOHN PYE,

Defendant-Appellant.

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

(June 21, 2019)

Before WILSON, NEWSOM, and HULL, Circuit Judges.

PER CURIAM:

Daniel Pye appeals his convictions and sentences for traveling in foreign commerce for the purpose of engaging in illicit sexual conduct. On appeal, Pye first argues that the district court abused its discretion when it denied his motion for a new trial based on newly discovered evidence and violations of *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972). Specifically, he argues that the government failed to disclose before trial certain conversations between one of the government's agents and certain witnesses. Those conversations, he contends, demonstrate that the witnesses, who were Haitian, had a motive to alter their testimony in exchange for immigration benefits. He argues that these conversations also demonstrated that the government's agent and the witnesses perjured themselves at trial when they denied the existence of promises for such benefits. Second, Pye contends that his sentence was procedurally unreasonable because the district court improperly applied grouping rules and a vulnerable-victim enhancement to his offense-level calculation. Third, Pye asserts that his 480-month sentence was substantively unreasonable because the district court indicated at sentencing that 420 months' imprisonment may be sufficient. Finally, Pye argues that the district court erred by imposing a $15,000 assessment pursuant to 18 U.S.C. § 3014, which did not exist at the time Pye committed the offense conduct.

I

Pye first contends that the district court erred when it denied his motion for a new trial based on *Giglio* and *Brady* violations arising out of newly discovered evidence. We review the district court's denial of his motion for an abuse of discretion. *United States v. Vallejo*, 297 F.3d 1154, 1163 (11th Cir. 2002).

To obtain a new trial based on newly discovered evidence, the defendant must show that (1) the new evidence was discovered after the trial, (2) the failure to discover it was not due to a lack of due diligence, (3) the evidence is not merely cumulative or impeaching, (4) the evidence was material, and (5) the evidence was such that a new trial would probably produce a new result. *United States v. Jernigan*, 341 F.3d 1273, 1287 (11th Cir. 2003) (quoting *United States v. Ramos*, 179 F.3d 1333, 1336 n.1 (11th Cir. 1999)).

To succeed on a motion for a new trial based on a *Brady* violation, the defendant must show that "(1) the prosecution suppressed evidence; (2) the evidence was favorable to him; and (3) the evidence was material to the establishment of his guilt or innocence." *United States v. Jeri*, 869 F.3d 1247, 1260 (11th Cir.), *cert. denied*, 138 S. Ct. 529 (2017) (quoting *United States v. Beale*, 921 F.2d 1412, 1426 (11th Cir. 1991)). Evidence that is favorable to the defendant may include impeachment evidence. *United States v. Flanders*, 752 F.3d 1317, 1333 (11th Cir. 2014). Further, evidence is material "only if there is a

reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Jeri*, 869 F.3d at 1260 (citation omitted). In other words, the defendant must establish that the favorable evidence could reasonably undermine confidence in the verdict. *Id.* And to prevail on a *Giglio* claim, "the defendant must demonstrate that the prosecutor knowingly used perjured testimony, or failed to correct what he subsequently learned was false testimony, and that the falsehood was material." *Vallejo*, 297 F.3d at 1163–64 (citation and quotation marks omitted).

The district court did not abuse its discretion when it denied Pye's motion for a new trial based on newly discovered evidence because the government's post-trial disclosures, indicating that the government's Haitian witnesses were granted Deferred Action status to remain in the United States for an additional six months, was not evidence that would have affected the jury's verdict. Specifically, the trial record and the testimony from the hearing on the motion for new trial demonstrated that none of the witnesses believed they were promised immigration benefits in exchange for their testimony and the post-trial disclosures indicated that the witnesses did not know about the Deferred Action steps taken on their behalf until after the trial. Pye has not established that there is new material evidence that would probably lead to a different result at trial or help establish his innocence. *See Jernigan*, 341 F.3d at 1287; *Jeri*, 869 F.3d at 1260.

II

Next, Pye argues that his sentence is procedurally unreasonable because the district court misapplied the grouping rules and the vulnerable-victim enhancement in the Sentencing Guidelines. We review the reasonableness of a sentence under a deferential abuse-of-discretion standard. *Gall v. United States*, 552 U.S. 38, 41 (2007). To determine the reasonableness of a sentence, the first question we must address is whether the district court committed any procedural error, such as failing to calculate, or improperly calculating, the appropriate Sentencing Guideline range or selecting a sentence based on erroneous facts. *Id.* at 51.

A party waives an objection when, regardless of the objections included in the presentence investigation report ("PSI") addendum, he does not articulate his arguments when afforded the opportunity by the district court. *United States v. Jones*, 899 F.2d 1097, 1102–03 (11th Cir. 1990), *overruled in part on other grounds*, *United States v. Morrill*, 984 F.2d 1136 (11th Cir. 1993) (*en banc*). Where the defendant fails to make objections before the district court, we will review them only for plain error. *United States v. Shelton*, 400 F.3d 1325, 1328 (11th Cir. 2005). Under plain-error review, there must be an error, the error must be plain, the error must have affected substantial rights of the defendant, and it must seriously affect "the fairness, integrity or public reputation of judicial proceedings." *Molina-Martinez v. United States*, 136 S. Ct. 1338, 1343 (2016).

The sentencing court's application of the Sentencing Guidelines is reviewed *de novo*, including whether the court correctly grouped the offenses of conviction. *United States v. Doxie*, 813 F.3d 1340, 1343 n.2 (11th Cir. 2016). This *de novo* review also includes whether the district court correctly applied a vulnerable-victim enhancement. *United States v. Kapordelis*, 569 F.3d 1291, 1315 (11th Cir. 2009). The district court's factual findings are reviewed for clear error. *Id.* at 1313. A finding of fact is clearly erroneous when, after reviewing all of the evidence before it, we are "left with the definite and firm conviction that a mistake has been committed." *United States v. Philidor*, 717 F.3d 883, 885 (11th Cir. 2013) (quotation marks omitted). The district court may base its factual findings on "evidence heard during trial, facts admitted by a defendant's plea of guilty, undisputed statements in the presentence report, or evidence presented at the sentencing hearing." *United States v. Ellisor*, 522 F.3d 1255, 1273 n.25 (11th Cir. 2008) (quoting *United States v. Polar*, 369 F.3d 1248, 1255 (11th Cir. 2004)).

"[O]nce the court of appeals has decided that the district court misapplied the Guidelines, a remand is appropriate unless the reviewing court concludes, on the record as a whole, that the error was harmless, *i.e.*, that the error did not affect the district court's selection of the sentence imposed." *Williams v. United States*, 503 U.S. 193, 203 (1992). For example, we have found that, even if the district court erred in calculating a defendant's Guideline range, such error would be

harmless because the career-offender Guidelines raised his offense level such that the application of the enhancement in question was irrelevant. *See United States v. Rubio*, 317 F.3d 1240, 1244–45 (11th Cir. 2003).

Section § 2G1.3 of the Guidelines provides, as relevant here, that the base offense level for a defendant convicted of traveling to engage in a commercial sex act or prohibited sexual conduct with a minor is 24. U.S.S.G. § 2G1.3(a)(4). The section also provides for specific-offense-characteristic enhancements such as: (1) a 2-level enhancement if the minor was in the custody, care, or supervisory control of the defendant, § 2G1.3(b)(1)(B); (2) a 2-level enhancement if the minor was unduly influenced to engage in prohibited sexual conduct, § 2G1.3(b)(2)(B); (3) a 2-level enhancement if the offense involved the commission of a sex act or sexual contact, § 2G1.3(b)(4)(A); and (4) an 8-level enhancement if the offense involved a minor who was not yet 12 years old, § 2G1.3(b)(5).

For the purposes of the care-and-custody enhancement, the Guidelines note that it is "intended to have broad application and includes offenses involving a victim less than 18 years of age entrusted to the defendant, whether temporarily or permanently." U.S.S.G. § 2G1.3 cmt. n.2(A). In determining whether the enhancement for undue influence applies, the district court should consider whether the defendant's "influence over the minor compromised the voluntariness of the minor's behavior," which may occur even without prohibited sexual

conduct. U.S.S.G. § 2G1.3 cmt. n.3(B). Moreover, in a case where the defendant is at least 10 years older than the minor, there is a rebuttable presumption that such undue influence existed. *Id.*

Separately, when a defendant is convicted on multiple counts, the Guidelines instruct that the district court should "group 'closely related' counts of conviction according to the rules in § 3D1.2 before determining each group's offense level and the combined offense level for all the counts." *Doxie*, 813 F.3d at 1343 (citing U.S.S.G. § 3D1.1). Pursuant to U.S.S.G. § 3D1.2, "counts are to be grouped together for purposes of calculating the appropriate guideline range whenever they involve substantially the same harm." *Id.* at 1344 (quotation marks omitted). The combined offense level is determined by taking the offense level for the grouping with the highest offense level and applying a three-level enhancement if there are two and a half to three groupings, or a four-level enhancement if there are three and a half to five groupings. U.S.S.G. § 3D1.4.

Section § 2G1.3, which covers prohibited sexual conduct with a minor, provides that the multiple-count provision in § 3D1.4 applies if the offense of conviction involved more than one minor. U.S.S.G. § 2G1.3(d)(1). In other words, multiple counts involving more than one minor are not to be grouped together by conviction under § 3D1.2, and if the conduct of an offense of conviction includes travel or transportation to engage in prohibited sexual conduct

with respect to more than one minor, whether or not specifically cited in the count of conviction, each minor shall be treated as if contained in a separate count of conviction. *Id.* cmt. n.6.

Separately—again—a two-level enhancement applies under § 3A1.1(b)(1) if the defendant knew or should have known that the victim was vulnerable. U.S.S.G. § 3A1.1(b)(1). A vulnerable victim is one who is "unusually vulnerable due to age, physical or mental condition, or who is otherwise particularly susceptible to the criminal conduct." *Id.* cmt. n.2. However, Application Note 2 provides that this enhancement should not apply if "the factor that makes the person a vulnerable victim is incorporated in the offense guideline." *Id.* Specifically, "if the offense guideline provides an enhancement for the age of the victim, this [enhancement] would not be applied unless the victim was unusually vulnerable for reasons unrelated to age." *Id.*

Offense level 43—which is Pye's reduced total offense level—is the highest level in the Sentencing Table in § 5A. For the top offense level of 43, the Guideline range for any criminal history category is a term of life imprisonment. U.S.S.G. § 5A. Application Note 2 provides that a total offense level more than 43 should be treated as an offense level of 43. *Id.* cmt. n.2. Where the statutory-maximum sentence of an offense is less than the minimum of the applicable Guideline range, the Guideline sentence shall be the statutory maximum. U.S.S.G.

§ 5G1.1(a). Moreover, the Guidelines provide that, where a defendant is convicted of multiple counts, and the statutory maximum of one count is less than the total punishment, the sentences for the other counts should run consecutively to the extent necessary to produce a sentence equal to the total punishment. U.S.S.G. § 5G1.2(d). A conviction under 18 U.S.C. § 2423(b) carries a statutory maximum term of imprisonment of 30 years. 18 U.S.C. § 2423(b).

Here, the district court improperly applied the grouping rules, but the error was harmless. It should have used the multiple-count adjustment in § 3D1.4 to determine a combined adjusted offense level from five victim-based groups, not three date-of-conviction groups. U.S.S.G. § 2G1.3(d)(1). A properly calculated offense level, however, would not have reduced Pye's final Guidelines range. Under either calculation method, Pye's total offense level is 43: Correctly creating five victim-groups under § 3D1.4, then applying § 3D1.1 to add four points to the highest offense level of those five groups, and then applying a five-point enhancement under § 4B1.5(b)(1) because Pye engaged in a "pattern of activity involving prohibited sexual conduct" yields a total offense level of 49 points. This is one point less than the PSI's calculation of 50 points. The error is harmless, though, because whenever a total offense level is above 43, it is reduced to 43 and the Guidelines provide a range of life imprisonment or the defendant's statutory maximum sentence. *See Williams*, 503 U.S. at 203.

What's more, the same sentencing enhancements apply under either the improper conviction-grouped calculation or the proper victim-based calculation. Pye did not make any factual objections to his presentence investigation report before the district court, and he therefore waived any objections to the facts regarding the age of the five victims or his conduct with them. *See Jones*, 899 F.2d at 1102–03. The district court did not plainly err in relying on the undisputed facts when imposing the enhancements. *Id.* Pye is subject to the two-level enhancement for a minor in his custody or care, § 2G1.3(b)(1)(B); the two-level enhancement for undue influence over a minor to engage in prohibited sexual conduct, § 2G1.3(b)(2)(B); the two-level enhancement because his offense involved the commission of a sex act, § 2G1.3(b)(4)(A); and the eight-level enhancement because his § 2G1.3(a)(4) baseline conduct—engaging in prohibited sexual conduct with a minor—involved a minor under twelve years of age, § 2G1.3(b)(5)(B).

Finally, we need not determine whether the vulnerable-victim enhancement was applied in error because removing the enhancement does not bring Pye's offense level below 43. *See* U.S.S.G. § 3A1.1 cmt. n.2. Any error in applying the enhancement would have no effect on Pye's substantial rights. *See Molina-Martinez*, 136 S. Ct. at 1343.

Pye's sentence was procedurally reasonable despite the district court's errors in calculating his Guideline range as to grouping and applying an enhancement for vulnerable victims because even the properly calculated offense level would not have changed his offense level such that a lower Guideline range would result.

III

Third, Pye argues that his sentence was substantively unreasonable. If the sentence is procedurally sound—here, because the error is harmless—then we consider the sentence's substantive reasonableness and take into consideration the extent of any variance from the Guideline range. *Gall*, 552 U.S. at 51. The district court is afforded the discretion to weigh the 18 U.S.C. § 3553(a) factors. *United States v. Saac*, 632 F.3d 1203, 1214–15 (11th Cir. 2011). The district court does not need to state that it has considered each factor enumerated in § 3553(a), as an acknowledgement that it has considered the § 3553(a) factors will suffice. *United States v. Turner*, 474 F.3d 1265, 1281 (11th Cir. 2007). The § 3553(a) factors provide the district court with discretion to select a sentence that serves the purpose of, among other things, reflecting the seriousness of the offense, promoting respect for the law, providing just punishment, affording adequate deterrence, and protecting the public from further crimes of the defendant. 18 U.S.C. § 3553(a)(2). The district court is permitted to "attach great weight to one factor over others." *United States v. Cubero*, 754 F.3d 888, 892 (11th Cir. 2014) (quotation marks

omitted). A district court abuses its discretion when, in imposing a sentence, it fails to consider relevant factors, gives significant weight to an improper or irrelevant factor, or commits a clear error of judgment when it considers the proper factors. *United States v. Irey*, 612 F.3d 1160, 1189 (11th Cir. 2010) (*en banc*). The party seeking to prove the sentence unreasonable bears the burden of proof. *Id.* at 1191 n.16. Where a sentence is consistent with the Guidelines' application of the § 3553(a) factors, it is probable that the sentence is reasonable. *Id.* at 1185. We will vacate a sentence only if we are left "with the definite and firm conviction that the district court committed a clear error of judgment in weighing the § 3553(a) factors by arriving at a sentence that lies outside the range of reasonable sentences dictated by the facts of the case." *Id.* at 1190 (quotation marks omitted).

The district court did not abuse its discretion by imposing a substantively unreasonable sentence. At the sentencing hearing, the judge stated that "there's a whole bunch of sentences that could be imposed" that are less than Pye's Guidelines sentence of 1,080 months' imprisonment "that would afford adequate deterrence." And, in varying downward Pye's sentence to 480 months, the judge noted that Pye was not "irredeemable" or "one dimensional." Combined with the district court's reasoned consideration of the § 3553(a) factors, Pye's sentence does not constitute a "clear error of judgment." *See Irey*, 621 F.3d at 1190.

IV

Finally, Pye contends that the district court plainly erred by imposing a $15,000 assessment pursuant to 18 U.S.C. § 3014. *See Shelton*, 400 F.3d at 1328 (holding that where the defendant fails to make an objection before the district court, we review for plain error).

The Constitution prohibits the enactment of any *ex post facto* law. *Peugh v. United States*, 569 U.S. 530, 538 (2013); *see also* U.S. Const. art. 1, § 9, cl. 3. A law that changes the punishment of a crime or inflicts a greater punishment than the law provided when the crime was committed is an *ex post facto* law. *Peugh*, 569 U.S. at 538. This protection "ensures that individuals have a fair warning of applicable laws and guards against vindictive legislative action." *Id.* at 544.

Under 18 U.S.C. § 3014, a non-indigent defendant convicted of violating 18 U.S.C. § 2423(b) must pay a special assessment of $5,000 for each count of conviction. *See* 18 U.S.C. § 3014(a). The section follows the date of enactment of the Justice for Victims of Trafficking Act of 2015, which was enacted on May 29, 2015. *Id.*; *see also* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22, tit. I, § 101(a), tit. IX, § 905 (2015).

The district court plainly erred by violating the *Ex Post Facto* Clause when it imposed a $5,000 per count special assessment pursuant to 18 U.S.C. § 3014, which was enacted three years after Pye's criminal conduct had ended. The error

affected Pye's substantial rights by increasing his punishment, and we therefore vacate the $15,000 special assessment.

AFFIRMED IN PART, VACATED IN PART.

A-2

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-10277-HH

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DANIEL JOHN PYE,

Defendant - Appellant.

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

BEFORE: WILSON, NEWSOM, and HULL, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by Daniel John Pye is DENIED.

ENTERED FOR THE COURT:

UNITED STATES CIRCUIT JUDGE

ORD-41

A-3

United States District Court

Southern District of Florida

MIAMI DIVISION

UNITED STATES OF AMERICA

v.

DANIEL JOHN PYE

JUDGMENT IN A CRIMINAL CASE

Case Number - 1:17-20205-CR-UNGARO-

USM Number: 14632-010
Counsel For Defendant: Joel DeFabio, Esq.
Counsel For The United States: Benjamin Widlanski, AUSA
Court Reporter: Gizella Baan Proulx

The defendant was found guilty and adjudicated guilty on Count(s) One, Two and Four of the Indictment.

TITLE/SECTION NUMBER	NATURE OF OFFENSE	OFFENSE ENDED	COUNT
Title 18 USC 2423(b)	Traveling in foreign commerce with intent to engage in illicit sexual conduct with a person under the age of 18	10/27/08	One
Title 18 USC 2423(b)	Traveling in foreign commerce with intent to engage in illicit sexual conduct with a person under the age of 18	10/5/09	Two
Title 18 USC 2423(b)	Traveling in foreign commerce with intent to engage in illicit sexual conduct with a person under the age of 18	11/8/11	Four

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.
The defendant has been found not guilty on count(s) All remaining count(s).

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 any material changes in economic circumstances.

Date of Imposition of Sentence:
1/10/2018

URSULA UNGARO
United States District Judge

January 12, 2018

DEFENDANT: DANIEL JOHN PYE
CASE NUMBER: 1:17-20205-CR-UNGARO-

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **ONE HUNDRED AND SIXTY (160) MONTHS as each of Counts One, Two and Four ALL to be served CONSECUTIVELY to each other for a total term of 480 MONTHS.**.

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

RETURN

I have executed this judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By:_____
Deputy U.S. Marshal

DEFENDANT: DANIEL JOHN PYE
CASE NUMBER: 1:17-20205-CR-UNGARO-

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **TWENTY-FIVE (25) YEARS as to EACH of Counts One, Two and Four ALL to be served CONCURRENTLY.**.

The defendant must 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.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall 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 defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

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

If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

If this judgment imposes a fine or a restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

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

STANDARD CONDITIONS OF SUPERVISION

1. the defendant shall not leave the judicial district without the permission of the court or probation officer;
2. the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;
3. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. the defendant shall support his or her dependents and meet other family responsibilities;
5. the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. the defendant shall notify the probation officer **at least ten (10) days prior** to any change in residence or employment;
7. the defendant shall refrain from the excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. 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 probation officer;
10. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
11. the defendant shall notify the probation officer within **seventy-two (72) hours** of being arrested or questioned by a law enforcement officer;
12. 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; and
13. 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.

DEFENDANT: DANIEL JOHN PYE
CASE NUMBER: 1:17-20205-CR-UNGARO-

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall also comply with the following additional conditions of supervised release:

Adam Walsh Act Search Condition - The defendant shall submit to the U.S. Probation Officer conducting periodic unannounced searches of the defendant's person, property, house, residence, vehicles, papers, computer(s), other electronic communication or data storage devices or media, include retrieval and copying of all data from the computer(s) and any internal or external peripherals and effects at any time, with or without warrant by any law enforcement or probation officer with reasonable suspicion concerning unlawful conduct or a violation of a condition of probation or supervised release. The search may include the retrieval and copying of all data from the computer(s) and any internal or external peripherals to ensure compliance with other supervision conditions and/or removal of such equipment for the purpose of conducting a more thorough inspection; and to have installed on the defendant's computer(s), at the defendant's expense, any hardware or software systems to monitor the defendant's computer use.

Financial Disclosure Requirement - The defendant shall provide complete access to financial information, including disclosure of all business and personal finances, to the U.S. Probation Officer.

Mental Health Treatment - The defendant shall participate in an approved inpatient/outpatient mental health treatment program. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

No Contact with Minors - The defendant shall have no personal, mail, telephone, or computer contact with children/minors under the age of _18___ or with the victim.

No Contact with Minors in Employment - The defendant shall not be employed in a job requiring contact with children under the age of 18____ or with the victim.

No Involvement in Youth Organizations - The defendant shall not be involved in any children's or youth organization.

No New Debt Restriction - The defendant shall not apply for, solicit or incur any further debt, included but not limited to loans, lines of credit or credit card charges, either as a principal or cosigner, as an individual or through any corporate entity, without first obtaining permission from the United States Probation Officer.

Restricted from Possession of Sexual Materials - The defendant shall not buy, sell, exchange, possess, trade, or produce visual depictions of minors or adults engaged in sexually explicit conduct. The defendant shall not correspond or communicate in person, by mail, telephone, or computer, with individuals or companies offering to buy, sell, trade, exchange, or produce visual depictions of minors or adults engaged in sexually explicit conduct.

Sex Offender Treatment - The defendant shall participate in a sex offender treatment program to include psychological testing and polygraph examination. Participation may include inpatient/outpatient treatment, if deemed necessary by the treatment provider. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

Sex Offender Registration - The defendant shall 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 which he or she resides, works, is a student, or was convicted of a qualifying offense.

DEFENDANT: DANIEL JOHN PYE
CASE NUMBER: 1:17-20205-CR-UNGARO-

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on the Schedule of Payments sheet.

Total Assessment	Total Fine	Total Restitution
$15,300.00*	**$**	**DOCKET CLERK PLEASE SCHEDULE A HEARING ON MARCH 2, 2018 AT 2:00 PM**

*Special assessment of $100.00 as to each of Counts One, Two and Four, plus an additional $5,000.00 special assessment as to each of Counts One, Two and Four.

Restitution with Imprisonment -
It is further ordered that the defendant shall pay restitution in the amount of $. During the period of incarceration, payment shall be made as follows: (1) if the defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendant must pay a minimum of $25.00 per quarter toward the financial obligations imposed in this order.
Upon release of incarceration, the defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change in the defendant's ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

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

DEFENDANT: DANIEL JOHN PYE
CASE NUMBER: 1:17-20205-CR-UNGARO-

SCHEDULE OF PAYMENTS

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

A. Lump sum payment of **$** due immediately, balance due

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.

The assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 8N09
MIAMI, FLORIDA 33128-7716

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

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.

A-4

United States District Court

Southern District of Florida

MIAMI DIVISION

AMENDED

UNITED STATES OF AMERICA

v.

DANIEL JOHN PYE

JUDGMENT IN A CRIMINAL CASE

Case Number - 1:17-20205-CR-UNGARO-

USM Number: 14632-010
Counsel For Defendant: Joel DeFabio, Esq.
Counsel For The United States: Benjamin Widlanski, AUSA
Court Reporter: Gizella Baan Proulx

The defendant was found guilty and adjudicated guilty on Count(s) One, Two and Four of the Indictment.

TITLE/SECTION NUMBER	NATURE OF OFFENSE	OFFENSE ENDED	COUNT
Title 18 USC 2423(b)	Traveling in foreign commerce with intent to engage in illicit sexual conduct with a person under the age of 18	10/27/08	One
Title 18 USC 2423(b)	Traveling in foreign commerce with intent to engage in illicit sexual conduct with a person under the age of 18	10/5/09	Two
Title 18 USC 2423(b)	Traveling in foreign commerce with intent to engage in illicit sexual conduct with a person under the age of 18	11/8/11	Four

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.
The defendant has been found not guilty on count(s) All remaining count(s).

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 any material changes in economic circumstances.

Date of Imposition of Sentence:
1/10/2018

URSULA UNGARO
United States District Judge

June 25, 2019

DEFENDANT: DANIEL JOHN PYE
CASE NUMBER: 1:17-20205-CR-UNGARO-

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **ONE HUNDRED AND SIXTY (160) MONTHS as each of Counts One, Two and Four ALL to be served CONSECUTIVELY to each other for a total term of 480 MONTHS.**.

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

RETURN

I have executed this judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By:_____
Deputy U.S. Marshal

DEFENDANT: DANIEL JOHN PYE
CASE NUMBER: 1:17-20205-CR-UNGARO-

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **TWENTY-FIVE (25) YEARS as to EACH of Counts One, Two and Four ALL to be served CONCURRENTLY.**.

The defendant must 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.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall 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 defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

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

If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

If this judgment imposes a fine or a restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

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

STANDARD CONDITIONS OF SUPERVISION

1. the defendant shall not leave the judicial district without the permission of the court or probation officer;
2. the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;
3. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. the defendant shall support his or her dependents and meet other family responsibilities;
5. the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. the defendant shall notify the probation officer **at least ten (10) days prior** to any change in residence or employment;
7. the defendant shall refrain from the excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. 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 probation officer;
10. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
11. the defendant shall notify the probation officer within **seventy-two (72) hours** of being arrested or questioned by a law enforcement officer;
12. 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; and
13. 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.

DEFENDANT: DANIEL JOHN PYE
CASE NUMBER: 1:17-20205-CR-UNGARO-

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall also comply with the following additional conditions of supervised release:

Adam Walsh Act Search Condition - The defendant shall submit to the U.S. Probation Officer conducting periodic unannounced searches of the defendant's person, property, house, residence, vehicles, papers, computer(s), other electronic communication or data storage devices or media, include retrieval and copying of all data from the computer(s) and any internal or external peripherals and effects at any time, with or without warrant by any law enforcement or probation officer with reasonable suspicion concerning unlawful conduct or a violation of a condition of probation or supervised release. The search may include the retrieval and copying of all data from the computer(s) and any internal or external peripherals to ensure compliance with other supervision conditions and/or removal of such equipment for the purpose of conducting a more thorough inspection; and to have installed on the defendant's computer(s), at the defendant's expense, any hardware or software systems to monitor the defendant's computer use.

Financial Disclosure Requirement - The defendant shall provide complete access to financial information, including disclosure of all business and personal finances, to the U.S. Probation Officer.

Mental Health Treatment - The defendant shall participate in an approved inpatient/outpatient mental health treatment program. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

No Contact with Minors - The defendant shall have no personal, mail, telephone, or computer contact with children/minors under the age of _18___ or with the victim.

No Contact with Minors in Employment - The defendant shall not be employed in a job requiring contact with children under the age of 18____ or with the victim.

No Involvement in Youth Organizations - The defendant shall not be involved in any children's or youth organization.

No New Debt Restriction - The defendant shall not apply for, solicit or incur any further debt, included but not limited to loans, lines of credit or credit card charges, either as a principal or cosigner, as an individual or through any corporate entity, without first obtaining permission from the United States Probation Officer.

Restricted from Possession of Sexual Materials - The defendant shall not buy, sell, exchange, possess, trade, or produce visual depictions of minors or adults engaged in sexually explicit conduct. The defendant shall not correspond or communicate in person, by mail, telephone, or computer, with individuals or companies offering to buy, sell, trade, exchange, or produce visual depictions of minors or adults engaged in sexually explicit conduct.

Sex Offender Treatment - The defendant shall participate in a sex offender treatment program to include psychological testing and polygraph examination. Participation may include inpatient/outpatient treatment, if deemed necessary by the treatment provider. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

Sex Offender Registration - The defendant shall 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 which he or she resides, works, is a student, or was convicted of a qualifying offense.

DEFENDANT: DANIEL JOHN PYE
CASE NUMBER: 1:17-20205-CR-UNGARO-

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on the Schedule of Payments sheet.

Total Assessment	Total Fine	Total Restitution
$300.00	$	$

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

DEFENDANT: DANIEL JOHN PYE
CASE NUMBER: 1:17-20205-CR-UNGARO-

SCHEDULE OF PAYMENTS

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

A. Lump sum payment of $ due immediately, balance due

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.

The assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 8N09
MIAMI, FLORIDA 33128-7716

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

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.

A-5

DECLARATION OF SPECIAL AGENT EMILY A. SHOUPE OF U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, HOMELAND SECURITY INVESTIGATIONS

Pursuant to 28 U.S.C. Section 1746, I, Emily A. Shoupe, hereby declare as follows:

1. I am a Special Agent with U.S. Immigration and Customs Enforcement, Homeland Security Investigations (HSI), presently assigned to the Cyber unit of the Special Agent in Charge Office, Miami, Florida. I have been a Special Agent with HSI since 2009.

2. I am the case agent assigned to the investigation and eventual prosecution of Daniel John Pye for violations of Title 18, United States Code, Section 2423(b), that is, travel in foreign commerce with the purpose of engaging in illicit sexual conduct with a minor.

3. Prior to the jury verdict in this matter, including during pre-trial meetings and interviews with the victims and witnesses associated with this case, neither I nor, to my knowledge, any other member of the United States government, informed any of the Haitian-national victims or witnesses that they might qualify for immigration status or residency, permanent or otherwise, in the United States.

4. As a result of my investigation, I believed that the victims and witnesses were in danger in Jacmel, Haiti. This belief was based on statements made to me by the victims and witnesses about threats they had received. I explored various avenues to keep them safe, including relocating them to other areas within Haiti or securing immigration status for them in the United States prior to trial. Ultimately, HSI did not pursue any of these options and, to my knowledge, no member of the United States government – including myself – informed any of the Haitian victims and witnesses that such options had been contemplated.

5. Approximately two weeks before trial, I traveled to Port-au-Prince, Haiti, to meet with the Haitian victims and witnesses and accompany them to the United States. On October 18, 2017, at the Port-au-Prince, Marriott, I and another agent met with the victims and witnesses in a hotel room to discuss travel logistics. I told them the following: what time to be ready in the hotel lobby, the flight time, transportation from the hotel to the airport, that the hotel restaurant would not be open so they would need to purchase food at nearby restaurants, that they would receive their first per diem check in two days so the per diem cash money that I was giving them would have to last until then, and what nearby restaurants the concierge recommended were reasonably priced, and other logistical items. At the end, I asked if there were any questions, intending questions about these logistics. At that time, several individuals began speaking in Creole, and one witness who speaks some English, stated that the victims and witnesses were concerned about their safety if they testified at trial. I was caught off guard with this unexpected question.

6. I informed them that, after trial, they would all be returning to Haiti, but that their safety is important and HSI would look into different ways to keep them safe, but that this was not a topic that could be discussed during trial preparation or during trial. At that time, I did not know what options would be available to them or how much time any process would take. Based on my prior experience in other trials of this nature, I believed that I should not discuss anything about immigration. Additionally, in the event that HSI would not be able to ensure their safety, I did not want them to stop cooperating. I did not inform them that they might be able to remain in the United States.

7. During all conversations with the Haitian victims and witnesses that I was present for, none of the Haitian victims or witnesses were ever told that remaining in the United States after trial was an option. To the contrary, both I

and other members of the United States government repeatedly informed the victims and witnesses that, at the conclusion of trial, regardless of what the outcome was, they would be returning to Haiti.

8. On November 3, 2017, after the close of the evidentiary portion of trial but before closing arguments, I began to prepare Deferred Action[1] application forms for the victims and witnesses. I did this because I believed that Deferred Action might be an appropriate measure to protect the victims and witnesses if they renewed their fears about returning to Haiti, and I was aware that the Deferred Action process can be a lengthy administrative procedure. I was aware that the Department of Justice intended on providing flights for the victims and witnesses to return to Haiti shortly after the conclusion of trial, and I did not want the absence of paperwork to impact the process to grant or decline Deferred Action, if in fact Deferred Action was to become an option. I did not inform anyone, including the victims and witnesses, that I had begun the paperwork. The only portion of the paperwork I worked on at this time was the biographical information of the victims and witnesses, which information I already had from my investigation.

9. On the morning of November 8, 2017, the day after the verdict in this trial, I and other HSI agents were discussing another case at the hotel when the victims and witnesses approached me and, through the witness who speaks some English, asked what would happen to them and said that they were scared. I asked what they meant and they referred to one of the victim's house being burned down and men looking for other victims and witnesses. They did not request to stay in the United States. At that point, I thanked them for waiting

---

[1] I understand Deferred Action is a temporary pause on immigration removal proceedings for an individual without legal status in the United States.

until after trial to raise these concerns and then, I referred the matter to my supervisory special agent.

10. Later on November 8, 2017, I and other HSI agents took the victims and witnesses to a store so that they could go shopping if they wished. During the shopping, one of the victims wanted to buy a phone and I asked the salesperson whether or not the phone would work in Haiti. The salesperson stated that it would not work in Haiti, and the victim did not purchase the phone because she was told it would not be operational in Haiti. Shortly thereafter, one of the witnesses also inquired about which phones would work in Haiti.

11. Later that day, on November 8, 2017, the victims and witnesses were interviewed regarding their fears by other HSI personnel. I did not participate in those interviews.

12. On November 11, 2017, senior management of HSI determined that the victims and witnesses were eligible for Deferred Action for six months. As the case agent, I was instructed to fill out the Deferred Action application forms, and I completed the paperwork that I had begun on November 3, 2017. I used information provided to me from other members of HSI who had spoken with the victims and witnesses to complete those documents, and the documents were then submitted to my senior management for final approval.

13. On November 13, 2017, once the Deferred Action was approved, I informed the victims and witnesses that they would be granted Deferred Action for six months. Prior to that notification, neither I, nor, to my knowledge, any other member of the United States government ever informed them that they would be permitted to stay in the United States for any period of time after the conclusion of the trial. Thus, the first time that anyone told the victims and witnesses that they would remain in the United States was on November 13, 2017, approximately six days after the conclusion of trial.

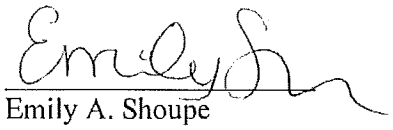
14. At no time did the victims and witnesses say they wished to remain in the United States. They simply stated that they were concerned about their safety.

15. The victims and witnesses have not been granted permanent status, but have received Deferred Action for six months. I have been told that at the conclusion of the six months, the Deferred Action will not be renewed. At that time, HSI will begin administrative removal proceedings for any victims and witnesses who have not voluntary departed the United Stated or initiated an immigration action before Citizenship and Immigration Services (CIS) or an immigration judge.

16. This affidavit does not contain all the facts or circumstances known to me about this investigation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 5, 2017, in Miami, Florida.



Emily A. Shoupe
Special Agent
U.S. Immigration and Customs Enforcement
Homeland Security Investigations
Miami, Florida