

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2019

DARIEUS MALIK WILLIAMS

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI


On Petition for Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Petitioner, **DARIEUS MALIK WILLIAMS**, pursuant to Rule 39 and 18 U.S.C. § 3006A(d)(6), asks leave to file the accompanying Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit without prepayment of costs and to proceed in forma pauperis. Petitioner was represented by counsel appointed under the Criminal Justice Act, 18 U.S.C. § 3006A (b) and (c), on appeal to the United States Court of Appeals for the Fifth Circuit.

Date:
May 11, 2020.

Respectfully submitted,
/s/Yolanda Jarmon
YOLANDA E. JARMON


Attorney of Record For Petitioner
2429 Bissonnet # E416
Houston, Texas 77005

Telephone: (713) 635-8338
Fax : (713) 635-8498

QUESTIONS PRESENTED

I. On Appeal **DARIEUS MALIK WILLIAMS** challenged the district court's finding that he unduly influenced a minor to engage in prohibited sexual conduct such that a two-level enhancement under U.S.S.G. § 2G1.3(b)(2)(B) was warranted; and the finding that a two-level aggravating role enhancement under U.S.S.G. § 3B1.1(c).

The Fifth Circuit affirmed the district court's findings.

In light of the foregoing, the question presented is as follows:

Did the Fifth Circuit's cursory review of the district court's record lead to an illegal, unreasonable sentence. Because the application of the plain standard of review is of exceptional importance to the administration of justice in federal criminal cases, this Court should grant certiorari in this case to decide this question and, and upon review, should reverse the judgment of the Fifth Circuit.

PARTIES TO THE PROCEEDINGS

All parties to the proceedings are named in the caption of the case before the Court.

TABLE OF CONTENTS

| | <u>Page</u> |
|--|-------------|
| Questions Presented | i |
| Parties to the Proceedings..... | ii |
| Table of Contents | iii |
| Table of Citations | iv |
| Prayer | 1 |
| Opinions Below | 1 |
| Jurisdiction | 2 |
| Federal Statutes Involved | 4 |
| Statement of the Case | 4 |
| A. Course of Proceedings | 4 |
| B. Statement of the Facts | 4 |
| Basis of Federal Jurisdiction In The United States District Court | 13 |
| Reasons for Granting the Writ | 14 |

This Court should grant certiorari because whether DARIEUS MALIK WILLIAMS (1) did not influence two minors to participate in prostitution under U.S.S.G. § 3G1.3(B)(2)(B); and (2) whether Williams was not an organizer or leader of criminal activity that involved five or more participants or was otherwise extensive pursuant to U.S.S.G. § 3B1.1 (c) involve a fact intensive inquiries and the Fifth Circuit's cursory review of the district court record reached the wrong conclusion on both points. Because the proper application of the sentencing guidelines are of exceptional importance to the administration of justice in federal criminal cases, this Court should grant certiorari in this case to decide this question and, and upon review, should reverse the judgment of the Fifth Circuit.

| | |
|------------------|----|
| Conclusion | 26 |
|------------------|----|

Appendix and Attachments

Appendix A: Original Judgment and Sentence of the District Court, United States v. Darieus Malik Williams, Cr. No.7:17:CR:0001843-001(S.D. Tex. March 23, 2019).

Appendix B: Opinion of the Court of Appeals in United States v. DARIEUS Malik Williams, 793 Fed. Appx.321 (5th Cir. 2020), 2020, U.S. App. LEXIS 4411, 2020 WL 707757(5th Cir. 2020)(affirmed).

TABLE OF CITATIONS

Page

CASES

| | |
|---|--------|
| Gall v. United Stae, 128 S.Ct. 2007) | 25 |
| Williams v. United States, 503 U.S. 193 (1992) | 25 |
| United States v. Anderson, 560 F.3d 275 (5th Cir. 2009) | 2,9,16 |
| United States v.Cabrera , 288 F.3d 163(5th Cir. 1991) | 24 |
| United States v. Dabeit, 231 F.3d 979 (5th Cir. 2000) | 20 |
| United States v. Elwood, 999 F.2d 814 (5th Cir. 1993) | 20 |
| United States v. Glover, 179 F.3d 1300 (11th Cir. 1999)..... | 21 |
| United States v. Graham, 162 F.3d 1180 (5th Cir. 2014) | 20-21 |
| United States v. Kimbrough, 555 U.S.85 (2007) | 25 |
| United States v. Medeles-Arguello, 701 F.App'x 390 (5th Cir. 2017) | 23 |
| United States v. Patterson, 962 F.2d 409 (5th Cir. 1992) | 20 |
| United States v. Pringler, | |

| | |
|---|-----------------------|
| 765 F.3d 445 (5th Cir. 2014) | 16 |
| United States v. Tzep-Mejia, 461 F.3d 522 (5th Cir. 2006) | 25 |
| United States v. Darieus Malik Williams, Cr. No.7:17:CR:0001843- 001(S.D. Tex. March 23, 2019) | 1 |
| United States v. Darieus Malik Williams, 793 Fed. Appx.321 (5th Cir. 2020), 2020, U.S. App. LEXIS 4411, 2020 WL 707757(5th Cir. 2020) (affirmed). | 1-2 |
| United States v. Watts, 519 U.S.148 (1997) (per curiam) | 2 |
| United States v. Zuniga, 720 F. 3d 587 (5th Cir. 2003) | 23 |
| Statutes | |
| 18 U.S.C. § 2..... | 4, 5, 13 |
| 18 U.S.C. § 1591..... | 4, 5, 6, 9, 13 |
| 18 U.S.C. § 1591 (b) (2)..... | 6 |
| 18 U.S.C. § 1594 (c)..... | 4 |
| 28 U.S.C. § 1254(1) | 3 |
| Rules | |
| Supreme Court Rule 13.1 | 3 |
| Supreme Court Rule 13.3 | 3 |
| Other: | |
| U.S.S.G. § 2G1.3(b) (2) (B) | i, 12, 8, 15 |
| U.S.S.G. § 2G1.3(b) (4) (A) | 12, 89 |
| U.S.S.G. § 3B1.1 | passem |
| U.S.S.G. § 3B1.1(a) | 8-9, 21, 23 |
| U.S.S.G. § 3B1.1(b) | 23 |
| U.S.S.G. § 3B1.1(c) | i, iii, 1, 14, 18, 26 |

| | |
|---------------------------------|----------------|
| U.S.S.G. § 3E1.1(a) | 5 |
| U.S.S.G. § 3E1.1(e) | 11 |
| U.S.S.G. § 3G1.3(a)(2) | 6 |
| U.S.S.G. § 3G1.3(b)(2)(B) | 3, 6-7, 14, 26 |
| U.S.S.G. § 3G1.3(b)(3) | 7 |
| U.S.S.G. § 3G1.3(b)(4)(A) | 7 |
| U.S.S.G. § 4A1.1(c) | 7 |
| U.S.S.G. § 4A1.1(c)(1)(A) | 7 |
| U.S.S.G. § 5D1.1(a) | 8 |
| U.S.S.G. § 5D1.1(b) | 8 |

PRAYER

The petitioner, **DARIEUS MALIK WILLIAMS** (Hereinafter "Williams"), respectfully prays that a writ of certiorari be granted to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit issued on **February 11, 2020**.

OPINIONS BELOW

The original judgment United States v. Darieus Malik Williams, Cr. No.7:17:CR:0001843-001(S.D. Tex. March 23, 2019) is attached as (Exhibit A). On February 11, 2020, the United States Court of Appeals for the Fifth Circuit entered its judgment and opinion affirming Williams's convictions. United States v. DARIEUS Malik Williams, 793 Fed. Appx.321 (5th Cir. 2020), 2020, U.S. App. LEXIS 4411, 2020 WL 707757(5th Cir. 2020)(affirmed). (Exhibit B).

On appeal, Williams argued that the district court committed reversible procedural error: (1) by applying an enhancement under U.S.S.G. § 2G1.3(b)(4)(A), which calls for a two-level enhancement if the offense involved the commission of a sex act or sexual contact; (2) by finding that he unduly influenced a minor to engage in prohibited sexual conduct such that a two-level enhancement under U.S.S.G. § 2G1.3(b)(2)(B) was warranted; and (3) by applying a two-level aggravating role enhancement under U.S.S.G. § 3B1.1(c).

The Fifth Circuit affirmed the Williams' conviction and sentence. United States v. Darieus Malik Williams, *supra*, 793 Fed.

Appx.321. It recognized that Williams' impermissible double counting argument with respect to U.S.S.G. § 2G1.3(b)(4)(A), was foreclosed by United States v. Anderson, 560F.3d 275,283 (5th cir.2009, but was raised to preserve for review. United States v. Darieus Malik Williams, supra.

It also held that the record supported the U.S.S.G. § 2G1.3(b)(2)(B) enhancement for unduly influencing the minor victims to engage in prostitution was plausible in light of the record as a whole. United States v. Darieus Malik Williams, supra

The Fifth Circuit also disagreed with Williams' assertion that the presentence report did not provide an adequate basis for inferring that his conduct warranted an aggravating role enhancement under U.S.S.G. § 2G1.3(b)(2)(B). The Fifth Circuit stated that "Williams failed to satisfy his burden of presenting evidence to show that the facts in the presentence report are inaccurate or materially untrue." It found that, in light of the record as a whole, a plausible and permissible view of the evidence that Williams, who admitted that his family was in the prostitution business, coordinated, organized, or managed some aspect of the criminal activity and that he managed, organized, or supervised at least one other culpable participant in the criminal activity. United States v. Williams, 793 F. App'x 321, at 321-22.

No petition for rehearing was filed.

JURISDICTION

On February 11, 2020, the United States Court of Appeals for the Fifth Circuit entered its judgment and opinion affirming the judgment of conviction and sentence in this case. This petition is filed within ninety days after entry of the judgment. See. Sup. Ct. R. 13.1 and 13.3. Jurisdiction of the Court is invoked under Section 1254(1), Title 28, United States Code.

FEDERAL STATUTES INVOLVED

Section U.S.S.G. 3G1.3(b)(2)(B), provides in pertinent part:

2. If (A) the offense involved the knowing misrepresentation of a participant's identity to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in prohibited sexual conduct; or (B) a participant otherwise unduly influenced a minor to engage in prohibited sexual conduct with the minor, increase by 2 levels.

Section U.S.S.G.3B1.1 Aggravating Role provides:

Based on the defendant's role in the offense, increase the offense level as follows:

(a) If the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive, increase by 4 levels.

(b) If the defendant was a manager or supervisor (but not an organizer or leader) and the criminal activity involved five or more participants or was otherwise extensive, increase by 3 levels.

(c) If the defendant was an organizer, leader, manager, or supervisor in any criminal activity other than described in (a) or (b),

increase
by 2 levels.

STATEMENT OF THE CASE

A. Course of Proceedings And Facts

On December 6, 2017, a Three-Count Indictment was filed against Appellant Darieus Malik Williams (Hereinafter "Williams") in this case. In Count One, Williams was charged in a conspiracy to recruit, entice, harm, transport, provide, obtain and maintain by any means, in an affecting interstate and foreign commerce, individuals knowing, and in reckless disregard of the fact that said individuals had not obtained the age of 18 years, and that they would be caused to obtain in a commercial sext act in violation of 18 U.S.C. §§ 1594(c), 1591(a)(1), (b)(2) and (c) and (2) from on or about March 25, 2016, through on or about April 7, 2016.

Count Two, charged that Williams did knowingly recruit, entice, harm, transport, provide, obtain and maintain by any means, in an affecting interstate and foreign commerce, Minor Victim 1, knowing and in reckless disregard of the fact that minor victim 1 had not obtained the age of 18 years, and that minor victim one would be caused to engaged in a commercial sex act in violation of 18 U.S.C. §§ 1591(a)(1), (b)(2) and (c) and (2) from on or about March 25, 2016, through on or about April 7, 2016.

Count Three, charged that Williams did knowingly recruit, entice, harm, transport, provide, obtain and maintain by any means, in an affecting interstate and foreign commerce, Minor Victim 2, knowing and in reckless disregard of the fact that minor victim 2

had not obtained the age of 18 years, and that minor victim one would be caused to engaged in a commercial sex act in violation of 18 U.S.C. §§ 1591(a)(1), (b)(2) and (c) and (2) from on or about March 25, 2016, through on or about April 7, 2016.

B. The Plea

On April 4, 2018, Williams entered a plea of guilty to Count Two of the indictment. In exchange the government agreed to recommend a two-point decrease in sentencing points pursuant to U.S.S.G. 3E1.1 (a) if Williams accepted responsibility for his conduct. The government also agreed to dismiss the remaining counts, Count One, and Count Three of the Indictment. (ROA.139-141). The following facts form the factual basis of the plea agreement:

From on or about March 25, 2016 through on or about April 7, 2016, Williams, in and affecting foreign commerce, did knowingly recruit, entice, harbor, transport, provide, obtain and maintained by any means Minor Victim No. 1, knowing and in reckless disregard to the fact that Minor Victim. No. 1 had not obtained the age of 18 years and that Minor Victim No. 1 would be caused to engage in a commercial sex act.

On April 7, 2016 Edinburg Police Officers responded to a local convenient store where two minor females, ages 14 and 15, had called 911 or reported being left at the location by Abeloto Gomez (Abelardo Gomez).

Through the investigation it was learned that Williams and Gomez drove to Louisiana on March 25, 2016, to pick up both minor

females and transport them to Gomez' residence in Edinburg, Texas on March 27, 2016.

Upon their arrival in Edinburg, Williams, Gomez and Cerena Ortiz used cell phones to take revealing pictures of the minor females posing in a lascivious manner. Upon instruction by Williams online advertisements were then created on backpage.com accounts for both minor females promoting the prostitution of the minors.

The continued investigation revealed that during the following two- week period by Williams' instructions both minor females engaged in multiple commercial sex acts with adult males, in that they have sexual intercourse with clients and were paid for doing so.

Williams committed the offense by recruiting, transporting, providing a 14 year-old female, Minor Victim No 1, for the purpose of engaging in commercial sex acts. Williams' use of telephones and internet to set up the backpage accounts affected interstate and foreign commerce.

C. The Sentence

The 2016 Guidelines were used in this case. A Final Presentence Investigation Report (PSI) was filed on June 25, 2018. The PSI set the Base Offense Level at a level 30 pursuant to U.S.S.G. § 3G1.3(a)(2) and 18 U.S.C. § 1591 (b)(2). Two points were calculated pursuant to U.S.S.G. § 3G1.3(b)(2)(B) for allegedly influencing two minors to participate in prostitution. Two additional points were calculated pursuant to

U.S.S.G. § 3G1.3(b)(3)(B) for allegedly using an interactive computer service to entice, encourage, offer, or solicit a person to engage in prohibited sexual conduct with a minor. Another two points were calculated pursuant to U.S.S.G. § 3G1.3(b)(4)(A) because allegedly the offense involved a sex act or sexual conduct.

Four points were calculated pursuant to U.S.S.G. § 3G1.3(b)(4)(A) because Williams was deemed a leader/organizer of criminal activity that was otherwise extensive. Thus, the Adjusted Offense Level was set at 40. Because of the Multiple Count Adjustments, a two level increase in points was added resulting in an Offense Level of 42. However, two points were deducted from the sentencing points for acceptance of responsibility pursuant to U.S.S.G. 3 E.1.1.(a), resulting in a Total Offense Level of 40.

On July 8, 2015, he was sentence to 38 days in custody on a conviction for evading arrest or detention (misdemeanor) in County Court at Law 15, Bexar County, San Antonio, Texas, Cause. No. 493158. Thus, he was assessed one criminal history point pursuant to U.S.S.G. 4 A.1.1(c) and 4A1.2 (c) (1) (A).

On September 18, 2017, he was sentenced to five years in custody for possession with intent to deliver a controlled substance (felony), in 227th District Court, Bexar County, San Antonio, Texas, Cause NO. 2017CR9932, to run concurrent with Cause NO. 2017CR6374C . Thus, he was assessed three criminal history points. A total of four criminal history points resulted in a Criminal History Category was set at a level III. With a criminal history score at level III and a Total Offense Level of 40, the

guidelines range resulted in 360 months to life imprisonment. The guideline term of supervised release resulted in at least two years, but not more than five years U.S.S.G. § 5D1.1(a)(1) and (b).

At sentencing and in written objections, Williams objected to the two points enhancement assessed in Paragraph 45 of the Original PSI pursuant to U.S.S.G. § 2G1.3(b)(2)(B) for allegedly influencing two minors to participate in prostitution (prohibited sexual conduct). He argued that he did not unduly influence the minor victims to engage in this conduct. Williams pointed out that the PSI in this case notes that the victims, who had previously engaged in this type of act, contacted Mr. Williams and Mr. Gomez for the purpose of running away from home and engaging in this exact conduct. Williams maintained that he did not coerce them to engage in behavior they had previously engaged in and were clearly seeking to continue engaging in. Furthermore, the issues concerning any sort of threat were related to monetary issues, not voluntariness to commit the prohibited act. The victims never stated they were not willing participants in the prohibited acts.

Williams also objected to the two-level increase in paragraph 46 of the of the Original PSI, pursuant to U.S.S.G. 2G1.3(b)(4)(A), for using a computer to or an interactive computer service to entice, encourage, offer, or solicit a person to engage in prohibited sexual conduct with the minor. Mr. Williams conceded that a computer was used to possess, however, he nonetheless should not be enhanced because in this digital age, virtually every offense committed in violation of 18 U.S.C. §

Section 1591 will be committed through the use of a computer. The fact that a computer will be used in the commission of the offense is an inherent part of the offense and is already incorporated into the base offense for the crime.).

Williams also objected to the two-level enhancement assessed in paragraphs 47, of the Original PSI pursuant U.S.S.G. § 2G1.3(b)(4)(A), if the offense involved the commission of a sex act or sexual conduct. This enhancement is impermissible double counting. He argued that, in 2007, the Sentencing Commission clarified that subsection (b)(4)(B) does not apply if the defendant is convicted under 18 U.S.C. §1591 because such a conviction necessarily involves a commercial sex act. The Section 1591 conviction already takes into account this aspect of his conduct, because commission of a sex act or sexual conduct is an element of the offense. However, Mr. Williams acknowledge the prior ruling in United States v. Anderson, F.3d 275, 283 (5th Cir. 2009) (holding that enhancement for commission of sex acts did not constitute double counting of 18 U.S.C. § 1591). Williams maintained that the enhancement was excessive.

Williams also objected to the four-level enhancement assessed in paragraphs 49 of the Original PSI, pursuant to U.S.S.G. § 3B1.1 (a). Williams argued that he was not an organizer or leader of criminal activity that involved five or more participants or was otherwise extensive. The offense conduct involved three participants, Williams, Gomez and Ortiz. Therefore, the enhancement does not apply based on number of participants. The

PSI attempts to argue that the enhancement stating that the more than 10 males who had sexual encounters with the minors are considered participants. "Participant" is defined as a person who is criminally responsible for the commission of the offense, but need not have been convicted. In this case, the 10 men who had sexual encounters were led to believe the minor victims were not minors. They are marketed as being 18, in fact, they had fake IDs indicating they were much older. Therefore, the 10 men simply cannot be considered participants who were criminally responsible for the offense of sex trafficking of minors. Williams argued further that Williams, Gomez, and Ortiz were equally responsible for this offense. Mr. Williams was not the organizer, leader, manager, or supervisor of any of the other participants (Ortiz and Gomez). This is demonstrated by the fact that Ortiz and Gomez kicked Mr. Williams out of the group after 4 days of the 20-day offense. Gomez and Ortiz took over the complete control, management, custody, and marketing of the minor victims and did not allow Mr. Williams to continue in the offense. Williams argued that Gomez was the only one who managed and supervised both Mr. Williams and his Wife Ortiz.

Williams objected to Paragraph 60 of the Original PSI, the multiple count enhancement arguing that it resulted in an excessive guideline range and punishment.

Williams objected to Paragraph 64 of the Original PSI, for acceptance of Responsibility. He requested that he be given the two points for acceptance of responsibility and the additional one-

level reduction for entering into his pleas in not burdening the Government with a trial in accordance with U.S.S.G. § 3 E1.1. Williams accepted full responsibility for his actions.

Williams objected to the criminal history points assessed in Paragraphs 67,68,and 69 of the Original PSI. He argued that there was no showing that he was convicted of a felony as set forth in U.S.S.G. § 2L1.2(b)(3)(D). He maintained that the Government had not met its burden of proving with competent evidence that he was convicted of such offense.

Williams requested time served for the 673 days he had served in jail. He also requested that his sentence run concurrent with any pending state and/ or federal matters. Finally, Williams requested a downward departure because the offense of conviction occurred two years prior, around the same time the conduct for which he was currently serving a twenty year prison sentence for the occurred. Williams also told the court that he had been involved with drugs from the time he was 13 years-old and dropped out of school in the Ninth grade. He also informed the court that he was raised in an environment where this was the norm.

A revised (Final) PSI was filed on June 25, 2018. Two points were deducted from his Offense Level for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1 (e). The request was granted and the Total Offense Level was reduced to a level 40. The government also provided sufficient documentation that he had been convicted of a felony as set forth in U.S.S.G. § 2L1.2(b)(3)(D).

The sentencing court adopted paragraphs 45-76 of the Final

PSI, with the exception of paragraph 51. The court did not adopt paragraphs 63, 65 or 67 of the Final PSI. Instead of a four point increase for his role in the offense, the court assessed a two level increase. Williams also received an additional one point deduction in the offense level for acceptance of responsibility.

With a criminal History Category of III and a Total Offense Level of 37, the guideline range resulted in 262-327 months. Williams was sentenced to a sentence within the guidelines range, 262 month term of imprisonment. He was sentenced to a five-year term of supervised release. (ROA. 133). A special assessment fee of \$100 was imposed for a total of \$100.00. The court ordered that he be given up to a 12-month credit by the bureau of prisons with regard to his prior sentence. The court also ordered that the instance sentence run concurrent with any prior sentence. No fine was imposed.

BASIS OF FEDERAL JURISDICTION IN THE
UNITED STATES DISTRICT COURT

This case was brought as a federal criminal prosecution involving child sex trafficking violation of 18 U.S.C. § § 1591 and 2. The district court therefore had jurisdiction pursuant to 18 U.S.C. § 3231.

REASON FOR GRANTING THE WRIT

This Court should grant certiorari because whether DARIEUS MALIK WILLIAMS (1) did not influence two minors to participate in prostitution under TO U.S.S.G. § 3G1.3(B)(2)(B); and (2) whether Williams was not an organizer or leader of criminal activity that involved five or more participants or was otherwise extensive pursuant to U.S.S.G. § 3B1.1 (c) involve a fact intensive inquiries and the Fifth Circuit's cursory review of the district court record reached the wrong conclusion on both points. Because the proper application of the sentencing guidelines are of exceptional importance to the administration of justice in federal criminal cases, this Court should grant certiorari in this case to decide this question and, and upon review, should reverse the judgment of the Fifth Circuit.

ARGUMENTS

I. ISSUE ONE RESTATED: WHETHER THE DISTRICT COURT ERRED IN APPLYING THE TWO POINT ENHANCEMENT ASSESSED PURSUANT TO U.S.S.G. § 2G1.3(B)(2)(B) FOR ALLEGEDLY INFLUENCING TWO MINORS TO PARTICIPATE IN PROSTITUTION (PROHIBITED SEXUAL CONDUCT).

Williams did not unduly influence the minors to participate in the offense conduct and the minors admitted that in an unrelated incident, they had previous exposure to prostitution in 2015, when another female, London Gogetta, set up Backpage sexual exploitation accounts For Them.

Williams objected to the two point enhancement assessed in Paragraph 45 pursuant to U.S.S.G. § 2G1.3(b)(2)(B) for allegedly influencing two minors to participate in prostitution (prohibited sexual conduct). Section 2G1.3(b)(2)(B), provides in pertinent part:

2. If (A) the offense involved the knowing misrepresentation of a participant's identity to

persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in prohibited sexual conduct; or (B) a participant otherwise unduly influenced a minor to engage in prohibited sexual conduct with the minor, increase by 2 levels.

According to the Final PSI the two-level increase was assessed pursuant to Section 2G1.3(b)(2)(B), because allegedly two female minors, ages 14 and 15, were coerced to participate in prostitution. The PSI claims that these two females were threatened that they would not be transported back home unless they made money for the defendant.

Williams argued that he did not unduly influence the minor victims to engage in this conduct. He pointed out that the PSI in this case notes that the victims, who had previously engaged in this type of act, contacted Mr. Williams and Mr. Gomez for the purpose of running away from home and engaging in this exact conduct. Williams maintained that he did not coerce them to engage in behavior they had previously engaged in and were clearly seeking to continue engaging in. Williams also argued that the issues concerning any sort of threat were related to monetary issues, not voluntariness to commit the prohibited act. The victims never stated they were not willing participants in the prohibited acts.

Williams pointed out that the PSI clearly states that the two females stated that it was Albert Gomez (also referred to as Abelardo Gomez) who took their money and stated that they could not return home unless they worked as prostitutes for Albert Gomez.

On this point, this Court has upheld the application of the undue-influence provision where victims testified to their fear of leaving. See United States v. Anderson, 560 F.3d 275, 283 (5th Cir. 2009); United States v. Pringler, 765 F.3d 445, 456 (5th Cir. 2014). In the instant case, the victims did not testify that Appellant placed them in fear of leaving. As outlined above, the PSI established that it was Albert Gomez who told the girls that they could not return home unless they worked as prostitutes for Abelardo Gomez.

According to the PSI, on March 18, 2016, the two girls were picked up in Alexandria Louisiana, by Cerena Ortiz, who was accompanied by her twin toddlers, in Abelardo Gomez's silver 2015 Chevrolet Silverado. The girls reported upon arrival to Edinburg, Texas, they were coerced to work as prostitutes for Abelardo (Albert) Gomez. (Hereinafter "Gomez"), who had threatened them, instructing that they could not return home unless they did so. The girls actually lived with Gomez and Cerina Ortiz at an apartment in Edinburg, Texas. Williams only visited or lived with Gomez and Ortiz along with the girls. The apartment in Edinberg did not belong to Williams. The apartment was owned by Gomez's brother, but used by Gomez as a residence.

Approximately four days later, Gomez and Ortiz relocated to Mission, Texas and took the girls with them. Williams was not permitted to reside with them in Mission, Texas. Mr. Williams out of the group after 4 days of the 20-day offense. Williams did not

unduly influence the minors because it was Gomez and Ortiz who kept them at their home in the Rio Grand Valley, Texas and in Mission, Texas.

Gomez used his 2015 Chevrolet Silverado pickup to transport the girls and sexual acts were also performed in the truck. Ortiz used her silver 2013 Ford Fusion to transport the female minors to sexual encounters while residing in Mission, Texas, as well as to Jaguars Gold Club where the girls worked as strippers for two nights.

Furthermore, Cerena Ortiz admitted to harboring the minors. Ortiz also admitted to driving the minors to the Jaguar Gold Club to meet men. She admitted to listing the female minors on the website backpage.com. (The backpage.com website listed the phone number of Gomez and Ortiz). One listing advertised the telephone number belonging to one of the female minors. Ortiz further acknowledged knowing the female minors were being visited by male clientele, whom they did not know, referencing their earnings of approximately \$400. Ortiz had illicit photos on her cell phone of the minors in various poses, in some where they are on a bed wearing only undergarments. Ortiz additionally took photographs of the female minors with her cellphone in order to have fraudulent documents made for them in order to falsify their ages in order to seek employment at the Jaguar Gold's Club, a local strip club.

The two girls admitted that they had previous exposure to prostitution in 2015, when another female, London Gogetta, set up

Backpage accounts for them. Therefore, by their own admission these girls had participated in prostitution before. Williams in no wise unduly influenced them.

Based upon the foregoing, Williams sentence must be vacated and remanded for re-sentencing.

II. ISSUE TWO RESTATED: WHETHER THE DISTRICT COURT ERRED IN APPLYING THE ENHANCEMENT ASSESSED PURSUANT TO U.S.S.G. § U.S.S.G. § 3B1.1.

The Fifth Circuit's cursory review of the case overlooks evidence demonstrating Williams was equally culpable as the other participants; therefore no enhancement is warranted under U.S.S.G. § 3B1.1.

Williams also objected to the four-level enhancement assessed in paragraphs 49, pursuant to U.S.S.G. § 3B1.1 (a). The sentencing court assessed a two level increase in sentencing points pursuant to U.S.S.G. § 3B1.1 (c). Williams argued that he was not an organizer or leader of criminal activity that involved five or more participants or was otherwise extensive. Williams argued that the offense conduct involved three participants, Williams, Gomez, and Ortiz. Therefore, the enhancement does not apply based on the number of participants. The PSI states its reasons for the organizer or leader enhancement as follows:

In this case, the defendant was responsible for coordinating the transportation of the two female minors,..., from Alexandria, Louisiana to Edinburg,

Texas. Upon their arrival, the defendant subsequently coerced the female minors into prostitution with the threat that if they did not participate, they would not be transported home. The defendant additionally assisted in the managing of ... and ... online accounts or profiles, negotiating prices and locations of their sexual encounters.

He made arrangements with co-conspirator Abelardo Gomez to utilize his (Abelardo Gomez') residence (the Jade Street apartment in Edinburg, Texas) and his vehicle (the silver 2015 Chevrolet Silverado pickup) as locations for the sexual encounters involving the female minors. The defendant would also take possession of the monetary fees earned by ... and ... from said counters. It should be noted that although the defendant was one of three individuals indicated for the instant offense, the males (more than 10) who had sexual encounters with the minors are also considered participants in this conspiracy.

Williams on the other-hand, argued that the enhancement stating that "the more than 10 males who had sexual encounters with the minors are not considered participants. He argued further that "[p]articipant" is defined as a person who is criminally responsible for the commission of the offense, but need not have been convicted. In this case, the 10 men who had sexual encounters were led to believe the minor victims were not minors. They were marketed as being 18, in fact, they had fake IDs indicating they were much older. Therefore, the 10 men simply cannot be considered participants who were criminally responsible for the offense of sex trafficking of minors.

Williams argued further that Williams, Gomez, and Ortiz were equally responsible for this offense. Section 3B1.1 of the Federal Sentencing Guidelines states in part:

"Based upon the defendant's role in the offense, increase the

offense level as follows:

- (a) if the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive, increase by 4 levels.
- (b) if the defendant was a manager or supervisor (but not an organizer or leader) and the criminal activity involved five or more participants or was otherwise extensive, increase by 3 levels.
- (c) if the defendant was a leader, organizer, manager, or supervisor in any criminal activity other than described in (a) or (b) above, increase by 2 levels.

This Court has held that due process requires sentencing facts to be established by a preponderance of the evidence. See United States v. Watts, 519 U.S. 148, 156, (1997) (per curiam). The Fifth Circuit has pronounced that when making factual findings for sentencing purposes, district courts "may consider any information which bears sufficient indicia of reliability to support its probable accuracy." However, the Fifth Circuit and other Circuits have also pointed out that mere conclusions in the PSR, do not convert facts lacking an evidentiary basis with sufficient indicia of reliability into facts a district court may rely upon at sentencing. See United States v. Elwood, 999 F.2d 814, 817 (5th Cir. 1993) (citing United States v. Patterson, 962 F.2d 409 (5th Cir. 1992), United States v. Dabeit, 231 F.3d 979, 983 (5th Cir. 2000) ("The PSR cannot just include statements in hope of converting such statements into reliable evidence without providing any information for the basis of the statements."); United States v. Graham, 162 F.3d 1180 (D.C. Cir. 1998) (holding that the conclusory statements made by co-conspirators regarding the defendant's role

were insufficient to support a leadership enhancement); and United States v. Glover, 179 F.3d 1300 (11th Cir. 1999).

Here, the PSR provides an inadequate basis for the inference that Williams was a leader or an organizer in the offense. According to the PSI, on March 18, 2016, the two girls were picked up in Alexandria, Louisiana, by Cerena Ortiz, who was accompanied by her twin toddlers, in Abelardo Gomez's silver 2015 Chevrolet Silverado. The Fifth Circuit ignored evidence that the girls reported upon arrival to Edinburg, Texas, they were coerced to work as prostitutes for Abelardo Gomez. (Hereinafter "Gomez"), who had threatened them, instructing that they could not return home unless they did so.

The Fifth Circuit ignored evidence that the PSI also states that Gomez revealed he picked up the two minor females in Louisiana. Task force Officers indicated that Gomez was driving when the girls were picked up in Louisiana and Williams was just the passenger. (One of the minors also revealed that she knew two of Gomez's daughters because they had attended school together in Alexandria.

Moreover, Gomez admitted that he erred in bringing the females to Edinburg, Texas from Alexandria, Louisiana. At the time he picked up the girls, he assumed that at least one was a minor. An analysis of Gomez's cellular telephone revealed a text message conversation between him and the telephone number belonging to one of the minor girls. She provided Gomez with the address of the

location in Alexandria, Louisiana where he would pick up the two minor girls. Said conversation also included Gomez notifying when he arrived in Alexandria. An examination of the web history revealed searches for "escort customer service," "getting started as an escort"-where do I find clients," and "find escort customers." Other conversations on the cellular telephone included descriptions of services, pricing or monetary amounts and locations."

The girls actually lived with Albert Gomez and Cerina Ortiz at an apartment in Edinburg, Texas. Williams only visited or lived with Gomez and Ortiz along with the girls. The apartment in Edinberg did not belong to Williams. The apartment was owned by Gomez's brother, but used by Gomez as a residence. Approximately four days later, Gomez and Ortiz relocated to Mission, Texas and took the girls with them. Williams was kicked out of the group. He was not permitted to reside with them in Mission, Texas.

Gomez used his 2015 Chevrolet Silverado pickup to transport the girls and sexual acts were also performed in the truck. Ortiz used her silver 2013 Ford Fusion to transport the female minors to sexual encounters while residing in Mission, Texas, as well as to Jaguars Gold Club where the girls worked as strippers for two nights.

Furthermore, Cerena Ortiz admitted to harboring the minors. Ortiz also admitted to driving the minors to the Jaguar Gold Club to meet men. She admitted to listing the female minors on the

website backpage.com. The backpage.com website listed the phone numbers of Gomez and Ortiz. One listing advertised the telephone number belonging to one of the female minors. (ROA.185). Ortiz further acknowledged knowing the female minors were being visited by male clientele, whom they did not know, referencing their earnings of approximately \$400.

Ortiz had illicit photos on her cell phone of the minors in various poses, in some where they are on a bed wearing only undergarments. Ortiz additionally took photographs of the female minors in with her cellphone in order to have fraudulent documents made for them in order to falsify their ages in order to seek employment at the Jaguar Gold's Club, a local strip club.

The Fifth Circuit has upheld the application of the enhancement under U.S.S.G. § 3B1.1 where the unrebutted facts contained in the presentence report (PSR), and adopted by the district court, establish that the defendant was a leader of the charged sex-trafficking conspiracy. See United States v. Medeles-Arguello, 701 F. App'x 390, 391 (5th Cir. 2017). In that case, defendant Hortensia Medeles-Arguello directed the management of the lucrative and extensive brothel business at issue, which involved well over five participants. See also United States v. Zuniga, 720 F.3d 587, 591 (5th Cir. 2003) (holding that facts contained in PSR generally bear sufficient indicia of reliability to be relied upon by district court for sentencing purposes)).

Williams' case is different. The commentary to section 3B1.1

sets out an array of factors that the sentencing court "should consider" "in distinguishing a leadership and organizational role (requiring a four-level increase) from one of mere management or supervision (requiring a three-level increase)":

exercise of decision making authority, the nature of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the degree of participation in planning or organizing the offense, the nature and scope of the illegal activity, and the degree of control and authority exercised over others.

United States v. Cabrera, 288 F.3d 163, 174 (5th Cir. 2002).

The facts outlined above clearly demonstrate that Williams was equally as culpable as the other participants. It is also noteworthy to point out that at the time of the alleged offense, Williams was only 18 years old. There is no evidence that he owned any vehicle used to traffic the minors across interstate lines. There is no evidence that he was capable of providing lodging for the minors. Further, he was ousted from the illegal enterprise by Gomez just 4 days after the girls were transported from Alexandria, Louisiana to Mission, Texas.

In light of the factors enumerated in section 3B1.1's commentary, the evidence cited in Williams PSR does not demonstrate, by the preponderance of the evidence, that he was a leader or an organizer in the offense. Here, the government failed to prove by a preponderance of the evidence that Williams was more than equally culpable than any other person.

In Gall v. United States, 128 S.Ct. 586 (2007), the Supreme Court stated that improperly calculating the Guidelines range is a "significant procedural error." If a district makes such an error, this Court 'vacate[s] the resulting sentence without reaching the sentence's ultimate reasonableness.'" United States v. Tzep-Mejia, 461 F.3d 522 (5th Cir. 2006)(citation omitted). Without the erroneous enhancements outlined above, Williams' Total Offense Level resulted would have resulted in a level 33. With a Criminal History Category III and Total Offense Level 33, the guideline range would have resulted in 168-210 months of imprisonment, rather than the 262-327 months assessed in this case. U.S.S.G., Chapter 5 Part A. Given that the district court imposed sentence of 262 months of imprisonment, the Government cannot show that the district court would have imposed the same sentence.

Because the court's error was not harmless, remand is required. See Williams v. United States, 503 U.S. 193, 203 (1992)(when sentencing error occurs, remand required unless government can show same sentence would have been imposed); see also United States v. Kimbrough, 536 F.3d 463 (5th Cir. 2008 (correctly calculated guideline range necessary to sentence a defendant). Based upon the foregoing, Williams's sentence must be vacated and remanded for re-sentencing.

This Court should grant certiorari because whether **DARIEUS MALIK WILLIAMS** (1) did not influence two minors to participate in prostitution under TO U.S.S.G. § 3G1.3(B)(2)(B); and (2) whether

Williams was not an organizer or leader of criminal activity that involved five or more participants or was otherwise extensive pursuant to U.S.S.G. § 3B1.1 (c) involve a fact intensive inquiries and the Fifth Circuit's cursory review of the district court record reached the wrong conclusion on both points. Because the proper application of the sentencing guidelines are of exceptional importance to the administration of justice in federal criminal cases, this Court should grant certiorari in this case to decide this question and, and upon review, should reverse the judgment of the Fifth Circuit.

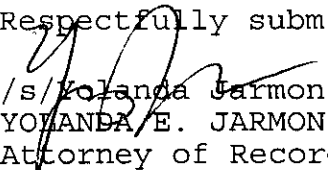
.

CONCLUSION

For the foregoing reasons, petitioner **DARIEUS MALIKA WILLIAMS** respectfully prays that this Court grant certiorari, to review the judgment of the Fifth Circuit in this case.

Date: May 11, 2020.

Respectfully submitted,


/s/ Yolanda Jarmon

YOLANDA E. JARMON

Attorney of Record for Petitioner

2429 Bissonnet # E416

Houston, Texas 77005

Telephone: (713) 635-8338

Fax: (713) 635-8498

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2019

DARIEUS MALIKA WILLIAMS,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI


On Petition for Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

CERTIFICATE OF SERVICE

YOLANDA E. JARMON, is not a member of the Bar of this Court but was appointed under the Criminal Justice Act 18 U.S.C. § 3006 A(b) and (c), on appeal to the United States Court of Appeals for the Fifth Circuit, certifies that, pursuant to Rule 29.5, **On May 11, 2020**, she served the preceding Petition for Writ of Certiorari and the accompanying Motion for Leave to Proceed in Forma Pauperis on counsel for the Respondent by enclosing a copy of these documents in an envelope, first-class postage prepaid, **Certified Mail No. 7019 1640 0000 6387 3838**, return receipt requested, and depositing the envelope in the United States Postal Service located at 3740 Greenbriar, Houston, TX 77098 and further certifies that all parties required to be served have been served and copies addressed to:

The Honorable Noel J. Francisco
Solicitor General of the United States

Room 5614, Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001



s/Yolanda Jarmon
YOLANDA E. JARMON

UNITED STATES DISTRICT COURT
Southern District of Texas
 Holding Session in McAllen

ENTERED

March 28, 2019

David J. Bradley, Clerk

UNITED STATES OF AMERICA
V.
DARIEUS MALIK WILLIAMS

JUDGMENT IN A CRIMINAL CASE

CASE NUMBER: 7:17CR01843-001

USM NUMBER: 35823-479

☐ See Additional Aliases.

Patricia Ann Rigney
 Defendant's Attorney

THE DEFENDANT:

- ☒ pleaded guilty to count(s) 2 on April 4, 2018.
- ☐ pleaded nolo contendere to count(s) _____
 which was accepted by the court.
- ☐ was found guilty on count(s) _____
 after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

| <u>Title & Section</u> | <u>Nature of Offense</u> | <u>Offense Ended</u> | <u>Count</u> |
|---|-----------------------------|----------------------|--------------|
| 18 U.S.C. § 1591(a)(1), 1591(b)(2), 1591(c) and 2 | Sex trafficking of children | | 2 |

☐ See Additional Counts of Conviction.

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) _____
- ☒ Count(s) 1 and 3 ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

February 19, 2019

Date of Imposition of Judgment

Ricardo H. Hinojosa

Signature of Judge

RICARDO H. HINOJOSA**UNITED STATES DISTRICT JUDGE**

Name and Title of Judge

3/23/19

Date

la | 4535433

Exhibit A

DEFENDANT: **DARIEUS MALIK WILLIAMS**
CASE NUMBER: **7:17CR01843-001**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 262 months.

The Court orders that the imprisonment term imposed in the instant offense run concurrently with the imprisonment term that was imposed in Case Number 2017CR6374C, 227th District Court, Bexar County, San Antonio, Texas, and that the defendant receive 12 months credit for time served in Case Number 2017CR6374C.

☐ See Additional Imprisonment Terms.

☒ The court makes the following recommendations to the Bureau of Prisons:

That the defendant be placed in an institution as close as possible to his family, one where he can receive drug and/or alcohol abuse treatment and/or counseling, and where he can participate in an educational program designed to earn a high school diploma or its equivalent as well as participate in a vocational training program.

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

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____

DEPUTY UNITED STATES MARSHAL

DEFENDANT: DARIEUS MALIK WILLIAMS
CASE NUMBER: 7:17CR01843-001

SUPERVISED RELEASE

Upon release from imprisonment you will be on supervised release for a term of: 5 years.

☐ See Additional Supervised Release Terms.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☒ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in 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.

STANDARD CONDITIONS OF SUPERVISION

☐ See Special Conditions of Supervision.

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment, you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

DEFENDANT: **DARIEUS MALIK WILLIAMS**
CASE NUMBER: **7:17CR01843-001**

CRIMINAL MONETARY PENALTIES

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

| | <u>Assessment</u> | <u>Fine</u> | <u>Restitution</u> |
|---------------|-------------------|-------------|--------------------|
| TOTALS | \$100.00 | | |

☐ See Additional Terms for Criminal Monetary Penalties.

☐ 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 payees 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> |
|----------------------|--------------------|----------------------------|-------------------------------|
| | | | |

☐ See Additional Restitution Payees.

| | | | |
|---------------|---------------|---------------|--|
| TOTALS | <u>\$0.00</u> | <u>\$0.00</u> | |
|---------------|---------------|---------------|--|

☐ 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:

☐ Based on the Government's motion, the Court finds that reasonable efforts to collect the special assessment are not likely to be effective. Therefore, the assessment is hereby remitted.

* 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: **DARIEUS MALIK WILLIAMS**
CASE NUMBER: **7:17CR01843-001**

SCHEDULE OF PAYMENTS

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

- A ☒ Lump sum payment of \$100.00 due immediately, balance due
☐ not later than _____, or
☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ installments of _____ over a period of _____, to commence _____ days after the date of this judgment; or
- D ☐ Payment in equal _____ installments of _____ over a period of _____, to commence _____ days after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ days after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:

Payable to: Clerk, U.S. District Court
 Attn: Finance
 P.O. Box 5059
 McAllen, TX 78502

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

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

☐ Joint and Several

Case Number

Defendant and Co-Defendant Names
 (including defendant number)

Total Amount

Joint and Several
Amount

Corresponding Payee,
 if appropriate

- ☐ See Additional Defendants and Co-Defendants Held Joint and Several.
- ☐ 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 Additional Forfeited Property.

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.

United States v. Williams

United States Court of Appeals for the Fifth Circuit

February 11, 2020, Filed

No. 19-40167 Summary Calendar

Reporter

793 Fed. Appx. 321 *; 2020 U.S. App. LEXIS 4411 **; 2020 WL 707757

UNITED STATES OF AMERICA, Plaintiff-Appellee v.
DARIEUS MALIK WILLIAMS, Defendant-Appellant

Judges: Before BENAVIDES, DENNIS, and OLDHAM,
Circuit Judges.

Notice: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Prior History: **[**1]** Appeals from the United States District Court for the Southern District of Texas. USDC No. 7:17-CR-1843-1.

Core Terms

enhancement, two-level, presentence report, criminal activity, sexual conduct, sex act, prostitution, aggravating, trafficking, managed, argues, unduly, sex

Counsel: UNITED STATES OF AMERICA, Plaintiff - Appellee: Anna Elizabeth Kalluri, Assistant U.S. Attorney, Carmen Castillo Mitchell, Assistant U.S. Attorney, U.S. Attorney's Office, Southern District of Texas, Houston, TX.

For **DARIEUS MALIK** WILLIAMS, Defendant - Appellant: Yolanda Evette Jarmon, Esq., Law Office of Yolanda Jarmon, Houston, TX.

Opinion

[*321] PER CURIAM:*

Daricus Malik Williams appeals his within-guidelines 262-month term of imprisonment for child sex trafficking, in violation of 18 U.S.C. §§ 2 and 1591. He argues that the district court committed reversible procedural error by applying an enhancement under U.S.S.G. § 2G1.3(b)(4)(A), which calls for a two-level enhancement if the offense involved the commission of a sex act or sexual contact; by finding that he unduly influenced a minor to engage in prohibited sexual conduct such that a two-level enhancement under U.S.S.G. § 2G1.3(b)(2)(B) was warranted; and by applying a two-level aggravating role enhancement under U.S.S.G. § 3B1.1(c). Because he has preserved these issues for appeal, we review the district court's interpretation and application of the Sentencing Guidelines **[**2]** de novo and its findings of fact for clear error. See United States v. Serfass, 684 F.3d 548, 550 (5th Cir. 2012).

Although Williams argues that the application of § 2G1.3(b)(4)(A) constitutes impermissible double counting because the commission of a sex act or sexual conduct is an element of the offense of child sex trafficking under § 1591(a), he correctly concedes that this court rejected that same argument in United States v. Anderson, 560 F.3d 275, 283 (5th Cir. 2009), and he

* 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**.

Exhibit B

raises the issue to preserve it for further review.

As for his argument that there is no evidence that he unduly influenced the minor victims to engage in prostitution for purposes of § 2G1.3(b)(2)(B), we disagree and conclude that it is plausible in light of the record as a whole that Williams's conduct "compromised the voluntariness" of the victims' behavior. *United States v. Smith*, 895 F.3d 410, 417 (5th Cir. 2018) (quoting § 2G1.3(b)(2)(B), *cmt. (n.3(B))*). We also disagree with Williams's assertion that the presentence report did not provide an adequate basis for inferring that his conduct warranted an aggravating role enhancement under § 3B1.1(c). Williams failed to satisfy his burden of presenting evidence to show that the facts in the presentence report are inaccurate or materially untrue. See *United States v. Cervantes*, 706 F.3d 603, 620-21 (5th Cir. 2013). Moreover, in light of the record as a whole, a plausible and permissible view of [*322] the evidence is that Williams, who admitted that his family was [**3] in the prostitution business, coordinated, organized, or managed some aspect of the criminal activity and that he managed, organized, or supervised at least one other culpable participant in the criminal activity.

Accordingly, the district court's judgment is AFFIRMED.

End of Document