APPENDIX

TABLE OF CONTENTS

Relevant Opinions, Orders, Findings of Fact, and Conclusions of Law

Loyd v. United States,
No. 20-2575 (8th Cir. Oct. 15, 2020) .....App. 1

Loyd v. United States,
Memorandum Opinion and Order Denying Petitioner's
Motion to Vacate,
Dkt. 189, No. 0:15-cr-00142-JRT-SER (D. Minn. July 6, 2020).....App. 2

Other Opinions, Orders, Findings of Fact, and Conclusions of Law

United States v. Loyd,
Change of Plea Hearing Transcript,
Dkt. 130, No. 0:15-cr-00142-JRT-SER (D. Minn. Jan. 25, 2016).....App. 11

Order on Rehearing

Loyd v. United States,
No. 20-2575 (8th Cir. Dec. 21, 2020) .....App. 49

Material Required by Supreme Court Rule 14.1(g)(i)

Rule 14.1(g)(i) Statement.....App. 50

Other Material Necessary to Understand the Petition

Loyd v. United States,
Petitioner's Affidavit,
Dkt. 144, No. 0:15-cr-00142-JRT-SER (D. Minn. Aug. 6, 2019) .....App. 51

Loyd v. United States,
Habeas Corpus Petition,
Dkt. 142, No. 0:15-cr-00142-JRT-SER (D. Minn. Aug. 6, 2019) .....App. 69

Loyd v. United States,
Trial Counsel's Time Records (Exhibit in Support of Habeas Petition),
Dkt. 151, No. 0:15-cr-00142-JRT-SER (D. Minn. Aug. 6, 2019) .....App. 86

Loyd v. United States,
Trial Counsel's Letter Waiving All Pretrial Motions,
Dkt. 47, No. 0:15-cr-00142-JRT-SER (D. Minn. Aug. 17, 2015) .....App. 93

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 20-2575

Phillip Dwayne Loyd

Petitioner - Appellant

v.

United States of America

Respondent - Appellee

Appeal from U.S. District Court for the District of Minnesota
(0:19-cv-02137-JRT)

JUDGMENT

Before LOKEN, COLLOTON, and BENTON, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed.

October 15, 2020

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

/s/ Michael E. Gans

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

PHILLIP DWAYNE LOYD,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Criminal No. 15-142(1) (JRT/SER)

MEMORANDUM OPINION AND ORDER DENYING PETITIONER'S MOTION TO VACATE

Nico Ratkowski, **CONTRERA & METELSKA, P.A.**, 200 University Avenue West, Suite 200, Saint Paul, MN 55103 for petitioner.

Laura M. Provinzino, Assistant United States Attorney, **UNITED STATES ATTORNEY'S OFFICE**, 300 South Fourth Street, Suite 600, Minneapolis, MN 55415 for respondent.

Petitioner Phillip Dwayne Loyd brings a Motion to Vacate, Set Aside, or Correct a Sentence pursuant to 28 U.S.C. § 2255, arguing ineffective assistance of counsel and actual innocence, and requests an evidentiary hearing. Because his allegations are conclusory, contradicted by the record, and fail to establish grounds that warrant relief, the Court will deny Loyd's § 2255 petition and will not grant an evidentiary hearing. The Court will also decline to grant a certificate of appealability, as it is unlikely that another court would decide the issues raised in Loyd's Motion differently or order further proceedings.

BACKGROUND

I. FACTUAL BACKGROUND

On May 4, 2015, Phillip Dwayne Loyd was indicted by a grand jury on five criminal charges. Counts 1–3 were aiding-and-abetting charges in the sex trafficking of a minor and by force, fraud, and coercion of three minor victims. (Indictment, May 4, 2015, Docket No. 1.) Count 4 was for sex trafficking of a minor and sex trafficking by force, fraud, and coercion of a minor victim. (*Id.*) Count 5 was production of child pornography of a minor victim. (*Id.*) Seven months later, Loyd pleaded guilty to Counts 1 and 5. (Plea Agreement at 1, Jan. 25, 2016, Docket No. 79.) The United States then dismissed counts 2, 3, and 4. (*Id.*) In Loyd's guilty plea, this Court told him that to accept his plea there needed to be a sufficient factual basis for his conviction that he would admit to. (Change of Plea Hr'g Tr. at 7, Dec. 9, 2016, Docket No. 130.) Loyd went on to admit he recruited one of the minor victims to prostitution, facilitated the prostitution, and either recklessly disregarded or knew the victim was a minor. (*Id.* at 9-13). Regarding the video, Loyd admitted that it was a sexually explicit production of the minor victim. (*Id.* at 18).

In October 2016, the Court sentenced Loyd to 324 months in prison. (Sentencing Judgment at 2, Oct. 31, 2016, Docket No. 123.) The Eighth Circuit affirmed the sentence. (Opinion at 5, Mar. 29, 2018, Docket No. 132).

On August 6, 2019, Loyd filed a Motion to Vacate his sentence under 28 U.S.C. § 2255.

DISCUSSION

I. SECTION 2255

Section 2255 allows a prisoner held in federal custody to move a sentencing court to "vacate, set aside or correct" a sentence. 28 U.S.C. § 2255(a). "Relief under 28 U.S.C. § 2255 is reserved for transgressions of constitutional rights and for a narrow range of injuries that could not have been raised on direct appeal and, if uncorrected, would result in a complete miscarriage of justice." *Walking Eagle v. United States*, 742 F.3d 1079, 1081–82 (8th Cir. 2014) (quoting *United States v. Apfel*, 97 F.3d 1074, 1076 (8th Cir. 1996)).

II. INEFFECTIVE ASSISTANCE OF COUNSEL

Pursuant to the Sixth Amendment, a defendant has the right to effective assistance of counsel at all critical stages of a criminal proceeding, including plea agreements. *Missouri v. Frye*, 566 U.S. 134, 140 (2012). To prove ineffective assistance of counsel, a petitioner must show both (1) that counsel's performance "fell below an objective standard of reasonableness" and (2) that counsel's deficient performance was prejudicial to the defense. *Strickland v. Washington*, 466 U.S. 668, 688, 692 (1984).

An attorney's performance falls below an objective standard of reasonableness when "acts or omissions were outside the wide range of professionally competent assistance." *Id.* at 690. This determination involves a delicate balance. On one hand, the Court "should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case."

Id. On the other hand, the Court "should recognize that counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* Because "[j]udicial scrutiny of counsel's performance must be highly deferential," petitioner must overcome the strong presumption that counsel exercised reasonable professional judgement. *Id.* at 689.

Where counsel has erred through omission, the first prong of *Strickland's* standard requires reframing. "While the Constitution guarantees criminal defendants a competent attorney, it does not ensure that defense counsel will recognize and raise every conceivable constitutional claim." *Charboneau v. United States*, 702 F.3d 1132, 1137 (8th Cir. 2013) (quoting *Anderson v. United States*, 393 F.3d 749, 754 (8th Cir. 2005)). The question then becomes one of reasonableness: was counsel's decision to omit an argument "an unreasonable one which only an incompetent attorney would adopt"? *Id.* (quoting *Anderson v. United States*, 393 F.3d 749, 754 (8th Cir. 2005)).

Counsel's errors violating professional competence are prejudicial under *Strickland*'s second prong if the defendant shows that, but for the error, there is a reasonable probability that the result of the proceeding would have been different. *Strickland*, 466 U.S. at 694. A reasonable probability is one "sufficient to undermine confidence in the outcome." *Id.* In the context of plea agreements, the prejudice showing requires a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Loyd alleges that his counsel's performance fell below the standard of reasonableness required by the Minnesota Rules of Professional Conduct ("MRPC") and American Bar Association's Criminal Justice Standards ("ABA Standards"). These rules and standards of professional conduct can be used as guidelines in determining reasonableness of representation. *Bobby v. Van Hook*, 558 U.S. 4, 7 (2009). Even so, the ABA Standards and the MRPC cannot fully define the performance required by the Sixth Amendment. *Strickland*, 466 U.S. at 688–89 ("No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant.") In this case, none of the alleged deviations from professional conduct pass the two-prong test for ineffective assistance of counsel.

Loyd alleges that failing to allow him the opportunity to view the video evidence supporting Count 5 caused him to plead guilty although the video may not have constituted what Loyd calls the "highly-technical legal definition of child pornography." However, Loyd, as a layperson, has no specialized knowledge that would better position him to determine whether the evidence met the legal standard. And Loyd does not allege that his counsel failed to view the video evidence before making the recommendation to plead guilty.

Some of the alleged instances of deficient performance—failing to reveal the names of past clients to the Court and not keeping records after the representation

ended—do not relate to the criminal proceeding leading to Loyd's incarceration. The rest of the deficient-performance claims are conclusory or represent a difference in opinion on legal strategy. Petitioner cannot merely point to the allegedly insufficient number of hours worked or the number of motions filed without reference to an objective standard of reasonableness in representation. *Cf. Strickland*, 466 U.S. at 689–90 ("There are countless ways to provide effective assistance in any given case."). Loyd also points to his counsel's priorities in objecting to the Guidelines calculation at sentencing. However, choosing not to oppose the undue-influence adjustment in favor of pursuing a decrease in the offense level for acceptance of responsibility is not an objectively unreasonable strategic decision for defense counsel to make. Similarly, opting to describe the uncertainty regarding the possible sentence to be imposed in terms of probabilities is not objectively unreasonable.

Loyd also argues that his counsel was ineffective by failing to object to the inclusion of a FOIA waiver in his plea agreement. The Court rejects this allegation as conclusory. Discovery waivers—including FOIA waivers—are common in modern plea agreements, although they perhaps should not be. *See* Susan R. Klein et al., *Waiving the Criminal Justice System: An Empirical and Constitutional Analysis*, 52 Am. Crim. L. Rev. 73, 85 (2015). Without more, failing to object to a FOIA waiver cannot alone constitute

ineffective assistance of counsel.[1] Because Loyd fails to meet the *Strickland* test, he is not entitled to relief.

III. ACTUAL INNOCENCE

Notwithstanding ineffective assistance of counsel claims, a petitioner may argue his sentence was imposed illegally by demonstrating actual innocence. *Bousley v. United States*, 523 U.S. 614, 622 (1998). However, "dispositions by guilty plea are accorded a great measure of finality" and "[s]olemn declarations in open court carry a strong presumption of verity." *Blackledge v. Allison*, 431 U.S. 63, 71, 74 (1977). There are no allegations here that weigh heavily enough to rebut the strong presumption of favor of guilty pleas.

There are a number of alleged facts that if not contradicted by the guilty plea, would cast some uncertainty over Loyd's guilt to Counts 1 and 5. For example, Loyd points out the unreliability of A.J. as an informant, facts which decrease the sexually explicit nature of his video of A.J., and issues concerning the actual age of A.J. and what Loyd

---

[1] The Eighth Circuit recently concluded that, despite a FOIA waiver, a prisoner was "not precluded from requesting records from the government" nor is the government "obligated to deny [such a] request." *United States v. Gates*, 915 F.3d 561, 563 (8th Cir. 2019). And nearly three years ago, the D.C. Circuit questioned whether such waivers are enforceable. *See Price v. U.S. Dep't of Justice Att'y Office*, 865 F.3d 676, 681–82 (D.C. Cir. 2017) ("[I]n what way do FOIA wavers actually support 'efficient and effective prosecution?' The government leaves us to guess."). However, these developments do not make failure to object to these still-common components of plea agreements objectively unreasonable.

knew A.J.'s age to be. But, because Loyd unequivocally pled guilty to Counts 1 and 5, including the factual basis for both Counts, much more is required to overturn the strong presumption of the truthfulness of a guilty plea.

Considering Loyd's voluntary and knowing guilty plea, his new allegations are not sufficiently specific or supported to overcome his contradictory sworn testimony at the change-of-plea hearing. *See Blackledge*, 431 U.S. at 74 ("The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.").

IV. EVIDENTIARY HEARING

"Evidentiary hearings on 28 U.S.C. § 2255 motions are preferred, and the general rule is that a hearing is necessary prior to the motion's disposition if a factual dispute exists." *Thomas v. United States*, 737 F.3d 1202, 1206 (8th Cir. 2013). An evidentiary hearing can be denied if the motion, files, and records of the case conclusively show either "(1) the petitioner's allegations, accepted as true, would not entitle the petitioner to relief, or (2) the allegations cannot be accepted as true because they are contradicted by the record, inherently incredible, or conclusions rather than statements of fact." *Id.* at 1206–07. As described above, each of Loyd's allegations are contradicted by the record, inherently incredible, or conclusory. Therefore, the Court will deny Loyd's request for an evidentiary hearing.

V. CERTIFICATE OF APPEALABILITY

A district court may issue a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *accord Tiedeman v. Benson*, 122 F.3d 518, 523 (8th Cir. 1997). To make such a showing, the issues must be debatable among reasonable jurists, a court could resolve the issues differently, or the case must deserve further proceedings. *Fliefer v. Delo*, 16 F.3d 878, 882–83 (8th Cir. 1994). The Court finds it unlikely that the issues are debatable among reasonable jurists, that another court would decide the issues raised in Loyd's motion differently, or that the issues deserve further proceedings. The Court therefore concludes that Loyd has failed to make the required substantial showing of the denial of a constitutional right and will therefore not grant a certificate of appealability.

ORDER

Based on the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that Petitioner's Motion to Vacate [Docket No. 142] is **DENIED**.

DATED: July 6, 2020
at Minneapolis, Minnesota.

John R. Tunheim

JOHN R. TUNHEIM
Chief Judge
United States District Court

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America, Plaintiff,	)	File No. 15CR142(1) (JRT/SER)
vs.	)	Minneapolis, Minnesota
Phillip Dwayne Loyd, Defendant.	)	January 25, 2016 1:25 P.M.

BEFORE THE HONORABLE CHIEF JUDGE JOHN R. TUNHEIM
UNITED STATES DISTRICT COURT
(CHANGE OF PLEA HEARING)

APPEARANCES

For the Plaintiff: United States Attorney's Office
LAURA PROVINZINO, AUSA
ANGEL MUNOZ-KAPHING, AUSA
300 South Fourth Street
Suite 600
Minneapolis, MN 55415

For the Defendant: MICHAEL MCGLENNEN, ESQ.
247 Third Avenue South
Barristers Trust Building
Minneapolis, MN 55415

Court Reporter: KRISTINE MOUSSEAU, CRR-RPR
1005 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Proceedings recorded by mechanical stenography; transcript produced by computer.

1:25 P.M.

(In open court.)

THE COURT: You may be seated. Good afternoon. This is Criminal Case Number 15-142, United States of America versus Phillip Dwayne Loyd. We're here for a proposed change of plea.

Counsel, would you note appearances?

MS. PROVINZINO: Laura Provinzino on behalf of the United States.

THE COURT: Ms. Provinzino, good afternoon.

MS. PROVINZINO: I'm joined by one of our new Assistant U. S. Attorneys, Angela Munoz-Kaphing.

THE COURT: Good afternoon to both of you.

MR. McGLENNEN: Good afternoon, Your Honor. I'm Michael McGlennen on behalf of Mr. Loyd.

Mr. Loyd is standing next to me.

THE COURT: Mr. McGlennen, good afternoon.

Mr. Loyd, how are you doing today?

THE DEFENDANT: How are you doing? I am fine.

THE COURT: Good. Mr. Loyd, I understand you're here to change your plea to a guilty plea in accordance with the terms of a written plea agreement, is that correct?

THE DEFENDANT: Yes.

THE COURT: All right. Let's have you come on over to the lectern, please.

So, Mr. Loyd, before I can accept a guilty plea from you, I have to go through a number of matters here in court with you today. I have to make certain findings, including finding that you're competent to make this decision and that you understand the possible consequences of a guilty plea and conviction.

I also need to be assured that there are facts which are admitted to which would support this conviction or these convictions and that no one has forced you into taking this action today. I will be asking you questions. The lawyers may also ask you questions today. That will make you a witness for the Court, and we will have you placed under oath.

THE CLERK: Please raise your right hand.

(Defendant sworn.)

THE DEFENDANT: Yes.

THE COURT: Do you understand, Mr. Loyd, that you are now under oath in this proceeding? If you do answer any of the questions falsely, you could be prosecuted for perjury?

THE DEFENDANT: Yeah.

THE COURT: If there is any question I ask that is not clear to you, please let me know. I will try to

make the question more clear by restating it. Okay?

THE DEFENDANT: Okay.

THE COURT: If you would like to speak privately with Mr. McGlennen, your lawyer, that's perfectly fine. Just step away from the lectern, and you can talk to him in private. Okay?

THE DEFENDANT: Yes.

THE COURT: All right. I'm going to start with some preliminary questions. Would you state your full name for the record?

THE DEFENDANT: Phillip Dwayne Loyd.

THE COURT: How old are you, Mr. Loyd?

THE DEFENDANT: 44.

THE COURT: Where were you born?

THE DEFENDANT: Minnesota, Minneapolis.

THE COURT: Did you grow up here?

THE DEFENDANT: Yes.

THE COURT: Have you lived anywhere else besides Minnesota?

THE DEFENDANT: No.

THE COURT: Okay. How far did you go in school?

THE DEFENDANT: Tenth.

THE COURT: Tenth grade?

THE DEFENDANT: Yeah.

THE COURT: Do you have any problems reading,

writing or understanding English?

THE DEFENDANT: No.

THE COURT: All right. Where have you last worked?

THE DEFENDANT: PSC, Pallet Service Corporation, in Little Canada.

THE COURT: Doing what type of work?

THE DEFENDANT: Machine operating.

THE COURT: Okay. Do you have any children?

THE DEFENDANT: Two daughters. One is deceased.

THE COURT: Okay. And so there is one daughter who is living?

THE DEFENDANT: Yes.

THE COURT: What's her age?

THE DEFENDANT: 17.

THE COURT: Okay. She live in Minnesota as well?

THE DEFENDANT: Yes.

THE COURT: Okay. Have you ever been treated for any form of mental disability, like depression or anxiety or attention deficit disorder, anything like that?

THE DEFENDANT: No, sir.

THE COURT: Have you ever been treated for addiction to drugs or to alcohol?

THE DEFENDANT: No.

THE COURT: Do you have any physical problems

that are affecting you in any way?

THE DEFENDANT: No.

THE COURT: Do you take medication of any kind?

THE DEFENDANT: No.

THE COURT: In the last 24 hours, have you consumed any alcohol or drugs?

THE DEFENDANT: No.

THE COURT: Have you taken any kind of medication, including aspirin?

THE DEFENDANT: No.

THE COURT: Okay. So your mind is clear today?

THE DEFENDANT: Yes, sir.

THE COURT: And you're ready to proceed?

THE DEFENDANT: Yes, sir.

THE COURT: Now you've had a chance to read the indictment that is the written statement of the charges that have been made against you, is that correct?

THE DEFENDANT: Yes.

THE COURT: Do you have any questions about it?

THE DEFENDANT: No, sir.

THE COURT: Okay. Have you had enough time to meet with Mr. McGlennen to talk about the case and about your response to the charges against you?

THE DEFENDANT: Yes.

THE COURT: Have you been fully satisfied with

the advice and assistance he has provided to you?

THE DEFENDANT: Yes.

THE COURT: All right. Let's turn to the plea agreement. In it, I believe, I read through ahead of time you are pleading guilty to two counts: Count 1, which charges you with sex trafficking of a minor in violation of United States law; and Count 5, which charges you with production of child pornography in violation of United States law, is that correct?

THE DEFENDANT: Yes.

THE COURT: And in return, the prosecutor will ask the Court to dismiss Counts 2, 3 and 4 at the time of sentencing and to not seek any additional charges based on your failure to register as a sex offender or enhanced penalties for committing these offenses as a registered sex offender, is that right?

THE DEFENDANT: Yes. Yes.

THE COURT: All right. Before I can accept the guilty plea to these two counts, I need to be assured that there are facts which you admit to and are true which would support the conviction.

Ms. Provinzino, do you want to go through that?

MS. PROVINZINO: Yes, Your Honor.

Mr. Loyd, do you see a copy of the plea agreement in front of you?

THE DEFENDANT: Yes.

MS. PROVINZINO: We're going to cover the factual basis or paragraph 2 of the plea agreement starting on page 2, and the reason we're doing that is, as the Court indicated, Chief Judge Tunheim cannot accept your guilty plea unless he believes that there would be an adequate factual basis, meaning the government could prove your guilt beyond a reasonable doubt at trial.

Do you understand that?

THE DEFENDANT: Yes.

MS. PROVINZINO: So I'm going to be asking you a series of questions relating to the evidence and how the government would prove the case at trial. If you have any questions while I'm -- of me or of your attorney, would you please stop me and interrupt me?

THE DEFENDANT: Yes.

MS. PROVINZINO: Because if you do answer a question, I will assume you understand it.

THE DEFENDANT: Correct.

MS. PROVINZINO: Is that fair?

THE DEFENDANT: Yes.

MS. PROVINZINO: Okay. So this will be setting forth the factual basis for Counts 1 and 5 of the indictment, and Count 1 is the sex trafficking of a minor count. You understand that, right?

THE DEFENDANT: Yes.

MS. PROVINZINO: And Count 5 is the production of child pornography?

THE DEFENDANT: Yes.

MS. PROVINZINO: Okay. So starting at that second paragraph, the time frame the government would focus on at trial and has evidence for would be from January 23rd through on or about January 27th of last year, is that correct?

THE DEFENDANT: Yes.

MS. PROVINZINO: And that was here in the state and District of Minnesota that you recruited a minor individual known to you but referred here in the plea agreement by the initials A. J., is that correct?

THE DEFENDANT: Yes.

MS. PROVINZINO: And you know who A. J. is, is that right?

THE DEFENDANT: Yes.

MS. PROVINZINO: And you recruited her to commit sexual acts in exchange for money in Minneapolis, Minnesota, is that right?

THE DEFENDANT: Yes.

MS. PROVINZINO: And during that time, there were advertisements posted of A. J. on backpage.com, is that correct?

THE DEFENDANT: Yes.

MS. PROVINZINO: You and your codefendant, Ms. Belcher, participated in that posting of her on backpage, is that correct?

THE DEFENDANT: Yes.

MS. PROVINZINO: And those were to offer her for commercial sex. That was the purpose, is that right?

THE DEFENDANT: Yes.

MS. PROVINZINO: So on or about January 23rd of last year, A. J. in fact did meet with a John, is that correct?

THE DEFENDANT: Yes.

MS. PROVINZINO: And that was what is called an in-call, is that right?

THE DEFENDANT: Yes.

MS. PROVINZINO: And so you were waiting outside the apartment while that John came in, is that correct?

THE DEFENDANT: Yes.

MS. PROVINZINO: Waiting until the commercial sex act was over?

THE DEFENDANT: Yes.

MS. PROVINZINO: And at relevant times, you provided A. J. with things like condoms, is that correct?

THE DEFENDANT: Yes.

MS. PROVINZINO: And she would use those for the

commercial sex acts. You also provided her with alcohol and marijuana, is that correct?

THE DEFENDANT: Yes, but I mean, it was there. I mean, I don't smoke weed. I drink. It was available to her. I will say that.

MS. PROVINZINO: Okay. And as I recall, you then produced a video. Do you remember this? You were holding your cell phone, and you produced a video of the girls, and they were talking about drinking and using weed?

THE DEFENDANT: Yeah.

MS. PROVINZINO: So you participated in that and provided those to them, is that correct?

THE DEFENDANT: Yes.

MS. PROVINZINO: And the purpose of that was to cause A. J. to engage in those commercial sex acts, is that right?

THE DEFENDANT: Yes.

MS. PROVINZINO: So that's one of the ways you would get somebody to engage in prostitution, give them alcohol and marijuana. Would you agree with me on that?

THE DEFENDANT: Yeah -- no, I wouldn't agree with you on that, but I know what you mean.

MS. PROVINZINO: Okay.

THE DEFENDANT: But that's not the way -- I know she said she smoked weed or whatever, but that wasn't how I

got her to do what she did.

MS. PROVINZINO: Okay. So you recruited her, right?

THE DEFENDANT: And we talked and got an understanding, and that was -- after we came to a conclusion about what we were going to do and how we were going to do it.

MS. PROVINZINO: Okay.

THE DEFENDANT: Then we proceeded.

MS. PROVINZINO: Okay. So you're not disputing that the government would have evidence to say in that apartment building you and Ms. Belcher made alcohol and marijuana available to the minor girls, right?

THE DEFENDANT: No.

MS. PROVINZINO: Okay. So we could draw different conclusions about why you did that, is that fair to say?

THE DEFENDANT: True.

MS. PROVINZINO: You had other ways that you could get her to engage in the commercial sex act, aside from the alcohol and marijuana, is that fair to say?

THE DEFENDANT: Yes.

MS. PROVINZINO: So the money that A. J. received then was placed in a cereal box in the kitchen, is that right?

THE DEFENDANT: Yes.

MS. PROVINZINO: That money was for you and for your codefendant, Ms. Belcher?

THE DEFENDANT: Yes.

MS. PROVINZINO: At all times, and we are referring to that January 23rd through January 27th period, you either knew or recklessly disregarded the fact that A. J. wasn't yet 18 years old, is that correct?

THE DEFENDANT: Yes.

MS. PROVINZINO: You never asked to see a driver's license.

THE DEFENDANT: I asked how old she was, and she said -- actually, I did ask for some kind of formal ID, and she said she didn't have an ID so --

MS. PROVINZINO: Okay. And on one of those days, January 26th of last year, you actually picked her up and dropped her off from the high school she attended, is that correct?

THE DEFENDANT: No, I didn't, but that's what it says. So I mean, I mean, I don't know. I don't know if they got cameras --

MR. McGLENNEN: May I have a moment?

THE COURT: Sure.

(Counsel confers with defendant.)

MS. PROVINZINO: Let's clarify that a bit. So we

have, the government would have evidence or would offer evidence through testimony of other witnesses that you actually picked up A. J. from Coon Rapids High School.

You wouldn't be disputing that, is that correct?

THE DEFENDANT: No, I wouldn't.

MS. PROVINZINO: Okay. So the point of all that is that you either knew or really didn't care about the fact that she was under 18, is that a fair statement?

THE DEFENDANT: Yes.

MS. PROVINZINO: Okay. And so also on or about January 24th of last year in the state and District of Minnesota, you used then 17-year-old A. J. to engage in sexually explicit conduct, is that correct?

THE DEFENDANT: Yes.

MS. PROVINZINO: Okay. And the purpose of that was to produce a visual depiction of that conduct or a video, right?

THE DEFENDANT: Yes.

MS. PROVINZINO: You had your cell phone?

THE DEFENDANT: Mm-hmm (Yes).

MS. PROVINZINO: And that video depicted what we call in child pornography related terms the lascivious exhibition of the child's genitals, is that correct?

THE DEFENDANT: Yes.

MS. PROVINZINO: And so the specific video

identified in Count 5, which has a title 20150124, so that would indicate it was taken on January 24th of last year. Is that your understanding?

THE DEFENDANT: Yes.

MS. PROVINZINO: And it was _002338.mp4, so it was a video?

THE DEFENDANT: Yes.

MS. PROVINZINO: That that particular video depicted the 17-year-old victim A. J. on her back with her feet in the air, is that correct?

THE DEFENDANT: Yes.

MS. PROVINZINO: And when you were taking that video, what you captured was her vagina and anus exposed while she was twerking, is that correct?

THE DEFENDANT: Yes.

MS. PROVINZINO: And that was something that you instructed her and Ms. Belcher to do, is that right?

THE DEFENDANT: Yes.

MS. PROVINZINO: So that was produced on your Samsung Galaxy S5 cellular telephone, is that correct?

THE DEFENDANT: Yes.

MS. PROVINZINO: And you're not disputing that the government would be able to show that that Samsung Galaxy cell phone had been manufactured outside the state of Minnesota, is that correct?

THE DEFENDANT: Correct.

MS. PROVINZINO: So for it to have gotten to you last January to create that film, it had to have been mailed, shipped or transported in interstate or foreign commerce, is that right?

THE DEFENDANT: Yes.

MS. PROVINZINO: So the last portion of this just deals with your criminal history, and you do have a previous conviction under Chapter 117 of the United States Code. I know that is something you and your attorney have reviewed, and that's a conviction on January 16th of 2000 in the Eastern District of Missouri, is that correct?

THE DEFENDANT: Yes.

MS. PROVINZINO: And it was a conviction under Title 18 of the United States Code Section 2422(a), is that correct?

THE DEFENDANT: Yes.

MS. PROVINZINO: And it was for inducing an individual to travel in interstate commerce to engage in prostitution, is that right?

THE DEFENDANT: Yes.

MS. PROVINZINO: And at all relevant times to the charges in this indictment, so we're looking to January of last year, you would have been required to register as a sex offender based on that conviction, is that correct?

THE DEFENDANT: Yes.

MS. PROVINZINO: So those are facts the government would intend to prove and would be able to prove beyond a reasonable doubt at trial, Your Honor.

THE COURT: Mr. McGlennen, anything you would like to add?

MR. McGLENNEN: Only some of his hesitancy in talking about the agreement between A. J. and himself, which you will learn if you don't already know, is that some of these minors were already appearing on this, these websites before. Not that it makes any difference to the crime involved, but it does cause him to think back, this is how I saw them, so then I approached them, and that's his hesitancy.

THE COURT: I see.

MR. McGLENNEN: He clearly is, I believe, guilty of this crime, and I advised him to plead guilty accordingly.

THE COURT: What was A. J.'s age at the time, do we know?

MS. PROVINZINO: 17, Your Honor.

THE COURT: Okay.

MS. PROVINZINO: She turned 18 last May.

THE COURT: I see. Okay.

MS. PROVINZINO: So you understood or knew that

A. J. had previously been caused to engage in prostitution activities, is that correct, prior to when you recruited her?

THE DEFENDANT: Yes.

THE COURT: When you asked her for an ID, she said she didn't have one?

THE DEFENDANT: No, but she just proclaimed that she was 18, and I kind of took it for her face, I mean, word of mouth.

THE COURT: Did you think she was 18 at the time or not?

THE DEFENDANT: At the time, yeah, but then I was somewhat in doubt, you know.

THE COURT: Okay. All right. I think for purposes of the record, perhaps we should have a definition of the word "twerking"?

MS. PROVINZINO: You are correct, Your Honor. I had a long discussion with Mr. Shiah about this. Let me see if I can --

MR. McGLENNEN: You can imagine that conversation, Judge.

THE COURT: I imagine, yes.

MS. PROVINZINO: So you took the video, correct?

THE DEFENDANT: Yeah.

MS. PROVINZINO: Okay. And during the time, your

instruction as I remember from listening to your description of what you wanted to do was, you were describing things that she could do with her tricks or with the Johns, is that right?

THE DEFENDANT: Yes.

MS. PROVINZINO: And the idea behind this was, this would be sexually enticing or exciting to the men that she would be meeting with?

THE DEFENDANT: Yes.

MS. PROVINZINO: Okay. And I'll have you describe it. Twerking is something that kind of got some notoriety because of Miley Cyrus, is that right?

THE DEFENDANT: Yes. That, too, and also it's like something like the girls do when they are dancing or entertaining on the stage when they are dancing in a club or whatever.

MS. PROVINZINO: Yes. So in this case, you actually had A. J. on the floor with her hands down, is that correct?

THE DEFENDANT: Yes.

MS. PROVINZINO: So her feet were in the air, and you were directly on top of her and shooting down at her crotch, her vaginal area, is that correct?

THE DEFENDANT: Yes.

MS. PROVINZINO: So describe to the Court what

twerking is.

THE DEFENDANT: It's a form of dancing. I would say more of an exotic dancer's performance, a form of dancing.

THE COURT: A kind of movement that they make. Is that what it refers to?

THE DEFENDANT: Yes.

MR. McGLENNEN: Pelvic thrusts or the like.

THE COURT: I'm sorry?

MR. McGLENNEN: I said pelvic thrusts or the like.

THE DEFENDANT: Yes.

MR. McGLENNEN: I believe that's it.

THE COURT: All right. And the purpose of the video was to use during her commercial sex sessions, or was it to entice other customers, or what was the purpose of the video?

THE DEFENDANT: The purpose was just practicing dance moves, actually. I wasn't to entice --

THE COURT: So it wasn't to use with other potential customers?

THE DEFENDANT: No. But they were just talking about dancing on the stage and moves that you do on the stage, and I just decided to --

THE COURT: I see.

MS. PROVINZINO: As I understood, this was to sort of train A. J. for what she would do with commercial sex tricks. Is that a correct understanding? You had Ms. Belcher showing her there what to do, is that correct?

THE DEFENDANT: Yeah. I understand, but what they were actually doing was just, they were shaking. They were talking about dancing on the stage, not to the clients or nothing.

They were talking about when they dance on the stage, this is what you would do on the stage.

MS. PROVINZINO: Okay. But you had her specifically doing that on the floor and not on a stage?

THE DEFENDANT: Yes. Yes. They were, I guess you would say, trying to figure, I mean, trying to figure out how to get it down to a science as far as twerking on a stage.

MS. PROVINZINO: Okay. To be clear, she had no clothing on. So you could see her vaginal area and her anus when you were taking the video of her, correct?

THE DEFENDANT: Yes.

MS. PROVINZINO: So you're not disputing that that would constitute child pornography?

THE DEFENDANT: No.

THE COURT: All right. The prior conviction in Eastern District of Missouri, did that involve a minor or

not?

MR. McGLENNEN: That's a question, Judge, that we may offer you. If I may answer?

THE COURT: Sure. Go ahead. Absolutely.

MR. McGLENNEN: He pled guilty under the statute here, which does not have as an element the involvement of a child. It's not in the elements of the offense, and it's not stated in the statute, and it might have been as part of a plea bargain. When he came to be sentenced, he was -- they used the guidelines for someone who committed a crime not involving a child.

However, he was asked, and he did state in his plea agreement, that one of the ladies involved in his transporting them was 16, and for that reason, his sentence was enhanced four levels and then reduced two levels by mitigation. He had five levels, and so the question is under the guidelines if you have a prior sex crime involving a minor then it's a 25-year minimum.

The question is: Do you look at the facts behind the charge or not?

THE COURT: Interesting.

MR. McGLENNEN: And that's the question that you will have, and we have no disagreement about the facts and what -- counsel has supplied me, and I have talked to his lawyer down there, and so we would be happy to even supply

your law clerks with that today if they wanted.

I could find no case law that directly touches it anywhere, so it will be a matter of first impression as I see it now. Counsel has a strong argument on her side for a number of reasons, and I'll try to make up some on my side, too. That's where we're going.

We anticipate a sentencing hearing on the law of the matter. I think I'm correct about that.

THE COURT: All right. That's helpful.

MR. McGLENNEN: You're welcome.

THE COURT: Thank you for previewing that.

All right. The Court finds a sufficient factual basis for the two convictions. Paragraph 4 contains the maximum penalties which you have a right to know about, Mr. Loyd, before entering guilty pleas.

As to Count 1, there is a mandatory minimum of ten years, a maximum of life. The supervised release term has to be at least five years. It can be a maximum of life on supervised release, a $250,000 maximum fine and a $100 special assessment.

As to Count 5, the mandatory minimum could be 15 or it could be 25 years, depending on this determination that we have just discussed, and you understand all that, don't you, Mr. Loyd?

THE DEFENDANT: Yes.

THE COURT: Okay. The maximum term in prison is 50 years, a similar supervised release term and fine and a second $100.

Now, in this case are we looking at possible restitution, Ms. Provinzino, or not?

MS. PROVINZINO: There may be. We will reach out to the victims again as we approach that, but I'm not aware of anything specific at this point in time.

THE COURT: All right. Okay.

And, Mr. Loyd, you understand that if you violate any condition of supervised release when you're released from prison, you could go back to prison for that violation, don't you?

THE DEFENDANT: Yes.

THE COURT: Okay. Paragraph 6 contains the guideline calculations. The sentencing guidelines are advisory to the Court, Mr. Loyd. I am required to determine how they apply to you and to take them into account.

It sounds like mandatory minimums might be governing this sentence more than the guidelines, but I will make that determination when we get to sentencing as to how they apply, and so what we have here is simply a recommendation. It could be different once we get to sentencing.

Do you understand?

THE DEFENDANT: Yes.

THE COURT: Okay. For the sex trafficking count, base offense level is 30 because a minor was involved. There is a two-level increase because of the use of the I guess the Internet, I would say, to entice the person to engage in conduct with the minor, and that's an increase of two and then another increase of two because the offense involved the commission of a sex act or sexual conduct.

This enhancement for a repeat offender, the prosecution believes that the offense level rises to 37 rather than the 34, and the defense is reserving the right to challenge that application at sentencing.

Do you understand that, Mr. Loyd?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. And as to Count 5, which is production of child pornography, the base offense level is 32, and again there is a dispute because of the prior offense. The government believes the offense level should be 34, and the defense reserves the right to challenge that and to argue that it's 32.

Now, on the next page, sorry about the complexities here, but because there are two offenses, there has to be what is called grouping that goes on, and the recommendation is that the adjusted offense level

should be 39, three-level downward adjustment for acceptance of responsibility.

It's believed your Criminal History Category is VI, and that we can't tell for sure, but it has to be at least V because of the repeat offense. If it is level 36 with the Criminal History Category VI, the range would be 324 to 405 months of imprisonment. It would be lower if it's Criminal History Category V.

So essentially we're looking at probably a bottom of 300 months, 300 to 365 if it's Category V. If the offense level is lower at 33 depending on your position, then the range would be lower, 235 to 293, and then slightly lower than that if your Criminal History Category is lower.

So if the 300 months applies, then the range would be 300 months and up no matter what, even if the offense level is lower. This is kind of complicated, Mr. Loyd.

Do you have any questions about this?

THE DEFENDANT: No, sir.

THE COURT: Okay. There is a lot of different possibilities there, I recognize, and the ultimate result won't be known until the sentencing hearing. The probation office will do some work in the meantime and will make recommendations to the Court. Those are only

recommendations. You'll have a chance to argue for what you think is the correct sentence. Mr. McGlennen will be making those arguments for you.

You understand that, correct?

THE DEFENDANT: Yes.

THE COURT: Okay. And you understand that we can't make any final determinations on these matters today, correct?

THE DEFENDANT: Yes.

THE COURT: Okay. Do you have anything to add about these possible ranges, Ms. Provinzino?

MS. PROVINZINO: No. I think the Court has identified some of the complexity based on how we address that prior, and I know, Mr. Loyd, you can appreciate that your attorney and I over the past several weeks have gone through multiple drafts and iterations, and I know he has met with you to address those with you and to answer your questions.

Is that a fair characterization of this process?

THE DEFENDANT: Yes.

THE COURT: All right.

MR. McGLENNEN: Mr. Loyd, I've asked you, and we have talked in all of those, I think as the Court has stated here, I told you that I was unsure of the outcome based on past law that would guide us to a firm answer,

that it is a question that is still open.

THE DEFENDANT: Yes.

MR. McGLENNEN: Did you hear me say that?

THE DEFENDANT: Yes.

MR. McGLENNEN: Thank you.

THE COURT: All right. The fine range looks like anywhere between 70,500 up to 200,000, and supervised release likely will be somewhere between five years and life on supervised release.

All right. We've talked about the $200 special assessment and the possibility of restitution.

Do we have any forfeiture issues to address, Ms. Provinzino?

MS. PROVINZINO: I believe the only things would be some of the personal property used to produce the videos, some of the telephones and --

THE COURT: The smart phones?

MS. PROVINZINO: But otherwise there really isn't a lot in terms of any proceeds or other items used.

THE COURT: All right. You understand that a consequence of this conviction will be a requirement to register as a sex offender when you're released from prison. You understand that, don't you?

THE DEFENDANT: Yes.

THE COURT: Okay. That's not something that the

Court imposes. That's imposed by the law for conviction of these types of offenses. Do you understand?

THE DEFENDANT: Yes.

THE COURT: It's likely going to be a condition of your supervised release that you comply with that law, so just so you know that that's where that will come up. Okay?

THE DEFENDANT: Okay. Yes.

THE COURT: All right. And you're also agreeing to have no contact with the victims of this offense. There are four initialed names there and then the codefendant, Ms. Belcher --

THE DEFENDANT: Yes.

THE COURT: -- while you are in custody. Do you understand?

THE DEFENDANT: Yes.

THE COURT: Okay. All right. You're also giving up your right to challenge the conviction or the sentence at a later time using a civil statute. That's listed in paragraph 14. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Okay. Do you have any questions about your plea agreement, Mr. Loyd?

THE DEFENDANT: No, sir.

THE COURT: Other than what's in writing in this

document, has anyone made any other promises to you in an effort to get you to plead guilty?

THE DEFENDANT: No.

THE COURT: Anyone try to force you to plead guilty?

THE DEFENDANT: No.

THE COURT: Are you doing so voluntarily?

THE DEFENDANT: Yes.

THE COURT: You believe you're guilty of this offense?

THE DEFENDANT: Yes.

THE COURT: All right. I need to go through a number of matters involving rights that you are giving up by pleading guilty because I can't accept a guilty plea unless I'm assured you know what rights you're giving up as part of that process.

There are two rights that you're not giving up. One is your right to appeal the sentence if you believe that the Court has imposed a sentence that is unlawful or is unreasonable. Do you understand that right that you have?

THE DEFENDANT: Yes.

THE COURT: And by "appeal" I mean asking another court to review the sentence that is imposed by this Court, which is a statutory right that you have. The other right

is your right to be represented by legal counsel. If you cannot afford a lawyer, the Court would provide a lawyer for you at no charge to you for all of these proceedings, including if you went to trial.

Do you understand that right?

THE DEFENDANT: Yes.

THE COURT: Now, there are other rights that are associated with the right of going to trial that you give up when you enter a guilty plea. You have a right to plead not guilty to all of the offenses charged against you, all five counts, and to continue that plea throughout all proceedings here in court.

You have a right to have your case heard quickly. You can have a trial within 70 days of the date of the indictment if you wish. The Court is obligated to provide you with a speedy trial. You also have a right to see all of the evidence that the prosecutor has and is prepared to use against you during the trial, and you have a right to challenge that evidence if you believe it's inadmissible.

When you enter a guilty plea, you give up forever your right to challenge the evidence, and you are agreeing that it can be used to support your conviction. The trial would be before a jury, which means that a jury would decide whether you're guilty or not guilty of these crimes, not a judge.

Your right to a jury trial includes the fact that we would summon a group of individuals chosen randomly from the people of Minnesota. They would be called in and questioned, and you and Mr. McGlennen would participate in the selection of twelve jurors for this case, and the jury will ultimately make the decision whether the prosecutor has proven the charges against you beyond a reasonable doubt, which is a very high standard to meet.

The prosecutor must bring in evidence. You are presumed to be innocent, and you have no burden to come forward with evidence to try to prove that you're not guilty or to prove that you are innocent. It's the prosecutor's burden to come forward with evidence, and you have a right to be present in court to see and hear the witnesses and to have them cross-examined by your lawyer in your defense.

You have an absolute right not to testify during this trial. The Constitution protects you from being compelled to testify at a criminal proceeding against you, and no one can hold that against you if you choose not to testify. In fact, the prosecutor can't even mention that in front of the jury. That's an absolute right that you have, a right that you may voluntarily waive and testify in your own defense if you wish.

You also have a right to use the Court's subpoena

power to gather evidence from third parties that you feel is necessary, and you can also summon witnesses who you would like to have testify for you. After the trial is over, the jury will deliberate in private after being instructed by the Court on what the law is, and they will make their determinations as to whether the prosecution has proven the case beyond a reasonable doubt.

Before you can be convicted on a charge, all twelve Members of the Jury must agree that the prosecution has met their burden. If you are convicted on any count, you have a right to appeal that decision to the Court of Appeals. If you are found not guilty on any of the counts, then the case is over as to that count because the government cannot appeal a jury's not guilty verdict.

Now by entering a guilty plea today, if the Court accepts that plea, then there is going to be no trial, and you will have given up these rights that are associated with the right to go to trial that I have just described for you.

Do you understand those rights?

THE DEFENDANT: Yes.

THE COURT: Do you have any questions about them?

THE DEFENDANT: No, sir.

THE COURT: All right. Before I ask Mr. Loyd to state on the record how he intends to plead, anything else

that we should specifically address, Ms. Provinzino?

MS. PROVINZINO: No, Your Honor.

THE COURT: How about you, Mr. McGlennen?

MR. McGLENNEN: No, Your Honor. Thank you.

THE COURT: Okay. So, Mr. Loyd, you are charged in Count 1 with the crime of sex trafficking of a minor in violation of United States law. How do you now plead to the charge in Count 1, guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: And as to Count 5, you are charged with the crime of production of child pornography. How do you now plead to that charge, guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: All right. It is the finding of the Court in the case of the United States of America versus Phillip Dwayne Loyd that the defendant, Mr. Loyd, is fully competent. The Court finds he is capable of entering an informed plea to each of these two charges.

Further, the Court finds that Mr. Loyd is fully aware of the nature of the charges that have been brought against him and that he understands the potential consequences of his guilty pleas and convictions. The Court finds the guilty pleas to be knowing and voluntarily and supported by a sufficient factual basis that is based on the admissions made here in court today by the

defendant.

The Court will therefore accept the guilty pleas, and the Court will accept the plea agreement, and Mr. Loyd is now adjudged guilty of the two offenses for which he has just now pled. We will set a date today for sentencing. We will probably set it maybe four months out or so, but I want to advise you about what is going to happen next, Mr. Loyd.

I'm referring you to the United States Probation Office. They will complete a presentence investigation. This is very important. The probation office is gathering material that I need in order to make sentencing decisions in this case. You will be interviewed by the probation officer, and you may have Mr. McGlennen with you when you are interviewed if you wish.

After the investigation has been completed, there will be a written report drafted. You should read that report through carefully with Mr. McGlennen. If you have any objections, he can raise them and should raise them with the probation officer.

Any objection that cannot be resolved as part of that process will be addressed by the Court at sentencing. I will resolve any objections after hearing argument from both sides and taking additional evidence if necessary.

You should remember, Mr. Loyd, that at sentencing

you have a right to speak. I will give you that opportunity before I make any sentencing decisions in the case.

Do you have any questions about the process moving forward?

THE DEFENDANT: No, sir.

THE COURT: All right. Do we have a date about four months out, thereabouts, Heather?

THE CLERK: I would offer Monday, May 16th at 11:00 a.m.

THE COURT: Okay.

MR. McGLENNEN: Sure.

THE COURT: Okay.

MS. PROVINZINO: That works for the government as well.

THE COURT: All right.

MR. McGLENNEN: 11:00, did you say?

THE COURT: We will certainly try to make that date. If something has to be changed, of course we will be in touch with everybody in advance.

MR. McGLENNEN: Appreciate it, Your Honor. Thank you.

THE COURT: All right. We have a signed plea agreement to file?

MS. PROVINZINO: We do, Your Honor. I'll tender

it.

THE COURT: Mr. Loyd, you signed this agreement?

THE DEFENDANT: Yes.

THE COURT: And this is the one that we went through here in court today, correct?

THE DEFENDANT: Yes.

THE COURT: All right. Anything else, Ms. Provinzino?

MS. PROVINZINO: No, Your Honor.

MR. McGLENNEN: I will just say that if she wants to deliver those documents to the Court or to your chambers, your law clerks, that would be just fine.

THE COURT: All right. We will take them today and have a look at them.

MS. PROVINZINO: These are the certified copies from the Eastern District of Missouri, and these were intended to be exhibits at the sentencing hearing anyway so --

THE COURT: All right. We will put them in with the documents for sentencing.

MR. McGLENNEN: I'm might add something to that at a later time.

THE COURT: All right. That's fine.

This matter will be continued until the date set for sentencing.

MS. PROVINZINO: Thank you.

THE CLERK: All rise.

(Court was adjourned.)

* * *

I, Kristine Mousseau, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Certified by: s/ Kristine Mousseau, CRR-RPR
Kristine Mousseau, CRR-RPR

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 20-2575

Phillip Dwayne Loyd

Appellant

v.

United States of America

Appellee

Appeal from U.S. District Court for the District of Minnesota
(0:19-cv-02137-JRT)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

December 21, 2020

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

/s/ Michael E. Gans

SUPREME COURT RULE 14.1(g)(i) STATEMENT

1. Petitioner filed a motion to vacate his sentence resulting from a federal conviction. In the motion, Petitioner alleged facts that contradicted his guilty plea but which were not implausible. The motion was denied without an evidentiary hearing (Question 1) by the court of first instance. The decision was not appealable, and the appellate court denied a request for a Certificate of Appealability. These issues were raised before the court of first instance in Petitioner's Memorandum in Support of Motion to Vacate, Set Aside, or Correct a Sentence (Aug. 06, 2019). *See* 0:15-cr-00142-JRT-SER (Dist. Minn.) The same or similar issues were raised before the appellate court in Petitioner's Application for Certificate of Appealability (July 30, 2020). *See* 20-2575 (8th Cir.).

2. Petitioner was required to show that jurists of reason could disagree with the court's decision in order to receive a Certificate of Appealability (Question 2) from either the court of first instance or in the appellate court. In denying Petitioner's Motion to Vacate, the district court preemptively denied a Certificate of Appealability. Petitioner applied for a Certificate of Appealability with the Eighth Circuit Court of Appeals. The application was rejected.

State of Illinois)
) S.S.
County of Carroll)

Affidavit of Phillip D. Loyd

I, Phillip D. Loyd, having duly sworn, hereby make the following faithful affidavit, and declare that the following is true and accurate to the best of my knowledge:

1. My name is Phillip Loyd (DOB: 06/04/1971). I was born in Minneapolis, Minnesota and I am a United States Citizen. I am currently incarcerated at AUSP Thomson in Thomson, Illinois.

2. On January 25, 2016, I pleaded guilty in the United States District Court for the District of Minnesota to Count 1 and Count 5 of the indictment in case number 15-cr-00142-JRT-SER.

3. The mandatory minimum for Count 1 was 10 years.

Actual Innocence – Count 1: 18 USC § 1591

4. My lawyer encouraged me to plead guilty to Count 1 of the indictment despite the fact that I did not commit the offense. I now assert actual and factual innocence in relation to Count 1.

5. At least two of the elements of Count 1—(1) knowledge or reckless disregard that the person has not attained the age of 18; and (2) the use of force, threats of force, fraud, or coercion)—cannot actually be proven by the prosecution because I did not have actual or constructive knowledge that the person had not attained the age of 18. Likewise, I did not recklessly disregard any fact that may have indicated that A.J. might have been under the age of 18. Similarly, I did not use force, threats of force, fraud, threats of fraud, coercion, or threats of coercion against A.J. at any time or in any manner.

6. I did not recruit A.J. for anything. I was introduced to A.J. through someone else. A.J. met my co-defendant at my co-defendant's residence when I was not at the residence.

7. Prior to meeting A.J., I was told A.J. was at least 18 years old. However, I still told my co-defendant to check A.J.s ID to ensure that she was 18 or older. By the time I got to my co-defendant's house, A.J. was already there. Because of my prior conversation with my co-defendant, I assumed that she had verified A.J.'s identity and age. I did not think to double-check at the time. A.J. also affirmatively stated that she was 18. She appeared credible when making the statement. Sometime on or around January 27, 2019, I realized I had

never verified with my co-defendant that she did, in-fact, check A.J.'s ID to verify that A.J. was 18. When I double-checked with my co-defendant, I learned from my co-defendant that A.J. had stated that she was 18 but said that she lost her ID and would get a new one. I immediately talked to A.J. and said that I couldn't associate with her without a valid ID and told her that she needed to leave.

8. I learned from my co-defendant that, when she met A.J., she had already posted ads of herself on Backpage.com on her own. A.J. showed these ads to my co-defendant. To the best of my knowledge and belief, A.J. was prostituting herself prior to ever interacting with or otherwise becoming known me. Additionally, because someone has to be 18 to post ads on Backpage, it seemed to confirm that she was of age.

9. I did not have a reasonable opportunity to observe the alleged victim (A.J.). At no point did A.J. ever behave in a manner that was inconsistent with her statement that she was 19 years old. She didn't act silly or young, nor did she ever mention school or homework, bring over a backpack full of books, or otherwise indicate that she may have been underage. A.J. smoked cigarettes and marijuana frequently and had started doing so before I ever met her and never asked me to buy her cigarettes, blunt wraps, or any other product that requires one to be 18 or older in order to purchase. Likewise, when A.J. smoked marijuana with my co-defendant, which was often, A.J. appeared to have a high tolerance and always handled herself well. She did not appear to be new to marijuana or cigarettes, which further indicated to me that she was 18 or older.

10. Although the prosecution stated during my plea colloquy that they can prove that I picked up A.J. from Coon Rapids High School on January 26, 2015, this statement is patently false. At no time did I ever pick up A.J. from Coon Rapids High School or any other high school. I even told the prosecutor this during my plea colloquy.

11. I never encouraged A.J. to smoke marijuana; it was something she enjoyed doing and she usually had her own marijuana with her. A.J. knew how to and did roll her own blunts; this is not a task a novice marijuana smoker can accomplish; A.J. was not using a mechanical roller of any sort, nor was she stuffing the marijuana into the blunt; she was rolling by hand. At one point, A.J. ran out of marijuana and my co-defendant, an avid marijuana smoker, called her marijuana dealer in order to purchase more marijuana for herself and for A.J. At no point did I encourage, purchase, furnish, or otherwise provide marijuana to A.J. Moreover, the house at which the marijuana was located was not my house and I was not living there.

12. A.J. liked smoking marijuana. It was never used as a tool to encourage her to do anything, despite the prosecution's allegations to the contrary.

13. I never encouraged or enticed A.J. to drink alcohol. She enjoyed drinking and would help herself to the alcohol that my co-defendant had around her house. I did not live with my co-defendant and the alcohol at her house was not alcohol that I purchased or otherwise furnished to A.J. Even if I had wanted to get rid of the alcohol, I would have had no right to do so because it was my co-defendant's property and residence. Alcohol was never used as a tool to encourage A.J. to do or not do anything.

14. At no point did I engage in any behavior with A.J. that constitutes the use of force, fraud, or coercion. I did not harm A.J. physically at any point nor did I ever threaten her with physical harm. I never abused the law or legal process nor did I ever threaten to abuse the law or legal process to encourage or prevent A.J. from engaging in any behavior. I never threatened serious harm or physical restraint against A.J. I never stated or insinuated, in any way, that there was any scheme, plan, or pattern intended to cause A.J. to believe that failure to perform an act would result in serious harm or physical restraint against any person. I never purposely, knowingly, or recklessly misrepresented any fact to A.J. to encourage or prevent her from engaging in any behavior; to the best of my knowledge, I also never negligently misrepresented any fact to A.J. to encourage or prevent her from engaging in any behavior. I never threatened any harm, physical or nonphysical, including psychological, financial, or reputational harm in any manner or circumstance that would cause A.J., or any reasonable person in her position, to perform or continue performing any activity in order to avoid incurring that harm.

15. To the best of my knowledge, my co-defendant never knew that A.J. was under the age of 18. Likewise, to the best of my knowledge, my co-defendant never used any force, fraud, or coercion towards A.J. or otherwise made threats towards A.J. which constituted the use of force, fraud, or coercion.

16. A.J. appeared older than other women who I factually knew to be at least 18 years of age in both physical appearance and mannerisms. She was composed and did not seem childish. Until I learned that my co-defendant failed to verify her age via state-issued identification, I had no reason to doubt that A.J. was 18 years old.

17. I never persuaded, induced, enticed, or coerced A.J. to engage or not engage in or abstain from any activity, nor did I attempt to do so.

18. To the best of my knowledge, the prosecution never introduced any evidence of A.J.'s age via a certified birth certificate. As such, I'm not even sure if she was actually under the age of 18 or not at the time of the alleged offense.

19. Shortly after meeting A.J., she informed me that she knew my cousin, Tony Collins. I spoke to Tony about A.J. and he did not say anything to me that indicated Tony thought or had any reason to believe that A.J. was under the age of 18. My cousin Tony was in his late 20s at the time and, to the best of my knowledge, he had no interest in or reason to associate with people under the age of 18. I didn't think too much about the connection at the time, but I believe the connection makes it more likely, rather than less likely, that A.J. would have been at least 18 at the time of the alleged offense.

20. Additionally, I have a cousin, Sean Merchant, who met A.J. while she was hanging out at my co-defendant's house. To the best of my knowledge, Sean did not know or suspect that A.J. was under the age of 18.

21. Had I known or had reason to suspect that A.J. was under the age of 18, I would have immediately disassociated with her.

22. To the extent its relevant, I'd also like the Court to know that I never told A.J. to put any money in a cereal box. My co-defendant made that statement and it was attributed to me.

23. I pleaded guilty to Count 1, despite knowing that I did not satisfy the elements of the crime, based on my lawyer's advice to plead guilty. I did not want to plead guilty, but my lawyer told me that the prosecution had me cornered and that if I went to trial the prosecution would supersede the indictment and charge me with additional counts related to failing to register my address because the prosecution apparently thought I was living at my co-defendant's residence, which is not true. Although I told my trial counsel that I was not living there, he indicated to me that going to trial would be an extremely bad idea. While he never used the words "I think you're guilty", he heavily insinuated it across multiple conversations.

24. Because my trial counsel instructed me to plead guilty, I was involuntarily made to admit facts that are not true in order for the prosecution to establish a usable factual basis capable of supporting the charges against me. For example, when the prosecutor asked me during my plea colloquy if it was fair to say that I either knew or didn't care about the fact that A.J. was under the age of 18, I thought I had to say yes for me to get the plea deal that my lawyer was insistent I take, so I said yes. However, as I stated previously, I did not know or recklessly disregard A.J.'s age. From the beginning, I told my co-defendant to verify her age and I was operating under the reasonable assumption that my co-defendant had done so. When I learned otherwise, I immediately took steps to remove and dissociate myself from A.J. I cared immensely whether or not she was 18; I was just mistaken as to the facts. For the same reason, I stated that I wouldn't dispute that the government could prove that I picked up A.J. from Coon Rapids High School even though I never did so.

25. Prior to my plea colloquy, my lawyer told me to say yes to everything the prosecution asked and to admit everything. When the prosecution started asking me if certain 'facts' were true that I knew were not, I said yes because that is what my lawyer had told me to do even if he didn't use that exact wording.

Actual Innocence – Count 5: 18 U.S.C. § 2251

26. My lawyer encouraged me to plead guilty to Count 5 of the indictment despite the fact that I did not commit the offense. I now assert actual and factual innocence in relation to Count 5.

27. At least two of the elements of Count 5—(1) having the intent that a *minor* engage in any sexually explicit conduct; and (2) intending to "produce" any visual depiction of sexually explicit conduct (of a minor or otherwise)—cannot actually be proven by the prosecution because I did not have actual or constructive knowledge that the person had not attained the age of 18, nor did I recklessly disregard any fact that may have indicated that A.J. was under the age of 18. Second, I did not intend to "produce" any visual depiction of sexually explicit conduct; I was merely recording a dancing practice session so that A.J. and my co-defendant could analyze the film and help A.J. improve her dancing technique. Although A.J. did not have bottoms on at the time, her partial nudity was incidental to the video and at no point did I or my co-defendant instruct A.J. to take off her clothing or otherwise insinuate that nudity was encouraged. A.J. was already bottomless because she was comfortable with nudity. Because my lawyer never took me to review the video, despite saying he would, and because I never watched the video after it was recorded, I am unsure if there is even any actual nudity showing anyone's genitals.

28. For the reasons stated previously, I thought A.J. was 18 years old at the time of the video. I did not intend to record a minor in any fashion. Had I known or suspected that A.J. was a minor, I would have instructed her to leave immediately and would have provided cab fare to assist her in leaving. Thus, I did not intend to use a minor to engage in any sexually explicit conduct.

29. In addition to not intending to use a minor in the video, I also did not intend to produce any visual depiction of sexually explicit conduct. The video in question resulted from my co-defendant, a former professional exotic dancer, teaching A.J. how to "twerk."

30. "Twerking" is a style of dance that is popular at parties, in clubs, in dance studios, in workout programs, in music videos, and in exotic dancing venues. Twerking, by itself, is not sexually explicit. It is merely a style of dance which was initially made popular by black pop-culture and rap artists. The dance style of "twerking" is nothing more than a

specific form of expression; I do not believe that twerking is a more "lascivious" form of dance than is the tango, salsa, or any other genre of dance.

31. My co-defendant is highly-skilled in the art of "twerking" as a result of her prior professional dance experience. Prior to the video's inception, my co-defendant and A.J. had discussed twerking technique, as it was quite a popular style of dance at the time, and my co-defendant offered to give A.J. some tips and instruction.

32. The incident in question unfolded as follows: (i) A.J. and my co-defendant were discussing twerking technique. At this time, A.J. was not wearing bottoms; (ii) my co-defendant offered to teach A.J. how to twerk or improve her twerking technique (I'm not sure as to the specifics of the conversation as I was not too involved in it); (iii) someone asked me to record A.J. and my co-defendant's practice session (I believe it was A.J. but am not certain); (iv) I recorded the practice session on a cell phone while standing approximately 3-4 feet away from the dancing parties. My co-defendant started twerking to show A.J. what to do and then had A.J. join in. My sole focus was keeping both persons in view of the camera because my understanding was that A.J. wanted to be able to compare her technique against my co-defendants side-by-side. As the dancers moved, I did also but only to keep them both in the shot. The recording had zero-artistic vision or forethought. I was simply attempting to perform the duties of a cameraman in a manner similar to a film-crew recording football practice; (v) after the video was over, A.J. and my co-defendant reviewed the film and my co-defendant broke it down for A.J., telling her what she could improve on, pointing out flaws, etc. I did not watch the video with them; (vi) after watching the video and breaking down the film, my co-defendant and A.J. had another practice session but this session was not recorded.

33. After A.J. and my co-defendant reviewed the tape, I deleted it from my phone. I never watched it, nor did I care to. I didn't find the twerking to be sexually gratifying or erotic in any way, it was just dancing. I never sent the video to anyone or uploaded the video to any other device. I never showed the video to anyone besides A.J. and my co-defendant. Although I deleted the video, I believe forensic investigators were able to recover it from the deleted files of my phone.

34. I did not delete the video because I thought it was child pornography. I never would have recorded the video or associated with A.J. had I thought she was under 18. Rather, I deleted the video because having any sort of nude dancing on my phone felt unnecessary.

35. Although I was charged with "producing" the video, I did so at the direction of the video's participants. I did not direct, manufacture, issue, publish, or advertise the video in any manner. If anything, my co-defendant was the director/producer because she was telling

A.J. what to do. I was simply an objective and uninterested cameraman performing a task at someone else's direction.

36. Prior to recording the video, I had no idea what positions, poses, or dance moves my co-defendant was going to show A.J. Twerking is a dance genre with a fair amount of creativity involved and I'm no expert. I simply hit record and tried to keep both people in view of the camera. I did not know that my co-defendant was going to have A.J. lie on her back with her legs in the air, nor did I have any way of anticipating that this would occur. This occurred because of the actions of my co-defendant who encouraged A.J. to do this. The mere fact that I was recording does not mean I intended to produce any sexually explicit conduct. In the event the conduct even constitutes sexually explicit conduct, such conduct was unexpected at the time I began recording.

37. Throughout the training session that was the subject of the video, I never felt any feeling of any sexual desire or lust towards either my co-defendant or A.J. Likewise, I do not believe that my co-defendant or A.J. were dancing to incite or express any feelings of lust in me or in each other. Rather, I believe A.J. was trying to improve her twerking technique so that she could impress friends and/or acquaintances in the future by being adept at twerking.

38. To the extent that A.J.'s genitals or pubic area may have been exhibited in the video, I was not attempting to put such areas on display or to present such areas for inspection or consideration. It was merely incidental. Twerking is a form of dance that focuses heavily on technical gyrations of the hips and buttocks, and it was impossible to record such areas without incidentally recording the pubic area when the video subject lies on her back on the floor.

39. At no point was A.J.'s pubic area the focus of the video regardless of whether it made an appearance in the video.

40. The video was recorded in my co-defendant's living room. My co-defendant's living room was not sexually suggestive or generally associated with sexual activity. Rather, it was a safe environment to practice dancing without judgment by outside third-parties. Many people practice dancing in the privacy of their own home, and it is likely that many do so naked. Although the prosecutor insinuated during my plea colloquy that a stage is necessary to practice twerking, I respectfully disagree. Plenty of dancers—such as ballet dancers, hip-hop dancers, and even classical dancers—practice in studios with flat floors. I am unsure what a stage has to do with anything.

41. Considering that I believed A.J. was 18 years old, her partially nude attire was not inappropriate or unnatural in the privacy of my co-defendant's residence. Plenty of people, teenagers and adults alike, walk around naked or partially nude in the privacy of their residence or the residences of those they are close to are otherwise comfortable around. Often, the nudity has nothing to do with any sexual desire.

42. My recollection of the events that were captured in the video are that A.J. did not exhibit any sexual coyness or a willingness to engage in sexual activity. There is a difference between dancing naked and dancing seductively while naked. There is also a difference between dancing to incite lust and dancing to gain technical skill. This difference is highly important and I feel like it was glossed over and ignored by my trial counsel, the prosecutor, and the judge. While I did attempt to explain this difference during my plea colloquy, the entire point of the colloquy was for me to plead guilty so no one followed up on my explanation and the prosecution simply noted that A.J. was dancing on the floor and not the stage before asking me if I disputed that the video would constitute child pornography. I did not dispute that it constituted child pornography because I was told to plead guilty by my lawyer and it appeared that I needed to answer yes in order to do so. I also was not made aware by the prosecution, the judge, or my attorney what the legal definition of child pornography was so I'm not sure if my opinion on that issue should really carry any weight.

43. The video was not intended or designed to elicit any sexual response in the viewer. The partial nudity was incidental to the video and nudity in the privacy of a residence cannot be fairly said to always be designed to elicit a sexual response. Casual nudity can and sometimes does also have the opposite effect as nudity is not always flattering. The video in question was a training tool and was recorded at the request of one of the video's subjects so that the subjects of the video could engage in a critical examination of A.J.'s technique with the goal of improving said technique. Relatedly, I was not aroused when recording the video and I was not recording the video with the goal of eliciting any sexual response in myself or in A.J. or my co-defendant. The video was never intended to be published, advertised, transmitted, or otherwise distributed to any person and it was recorded solely for the non-pleasure-related purpose of improving technical skill. My co-defendant, A.J., and I were all very comfortable with casual nudity and dancing and there are no facts in the record (or otherwise) which indicate that the video was designed to elicit any sexual response in the viewer.

44. The video was not produced for the purpose of transmitting a live visual depiction of any sexually explicit conduct.

45. The video was not produced for the purpose of transmitting a live visual depiction of any minor.

46. The video was not produced for any commercial reason.

47. The video was not produced for any reason relating to sexual desire or gratification.

48. I pleaded guilty to Count 5, despite the fact that I did not believe my behavior satisfied the elements of the crime, based on my lawyer's advice to plead guilty. I did not want to plead guilty, but my lawyer told me that the prosecution had me cornered and that if I went to trial the prosecution would supersede the indictment and charge me with additional counts related to failing to register my address because the prosecution apparently thought I was living at my co-defendant's residence, which is not true. Although I told my trial counsel that I was not living there, he indicated to me that going to trial would be an extremely bad idea. While he never used the words "I think you're guilty", he heavily insinuated it across multiple conversations by using phrases like "they got you".

49. Prior to my plea colloquy, my lawyer told me to say yes to everything the prosecution asked and to admit everything. When the prosecution started asking me if certain 'facts' were true that I knew were not, I said yes because that is what my lawyer had told me to do even if he didn't use that exact wording.

Ineffective Assistance of Counsel

A. Trial

50. At some point after my arrest but before Michael McGlennen was assigned to be the attorney for my case, my sister reached out to Mr. McGlennen for a quote to defend my case in his private capacity. I believe my sister was quoted $30,000 as the price necessary to take the case.

51. I never asked for Mr. McGlennen to be put on my case, but I believe he may have requested to be put on my case after learning that I was arrested by talking to my sister. I'm not exactly sure how attorney assignments work, but it seems like a huge coincidence for Mr. McGlennen to have randomly been assigned to my case shortly after he quoted my sister $30,000 for defense representation.

52. On June 24, 2015, Mr. McGlennen was appointed as my counsel pursuant to 18 U.S.C. § 3006A.

53. Prior to accepting any plea deals, I consulted occasionally with my publicly-appointed counsel. As my case was unfolding, my trial counsel received various witness statements from alleged victims. I reviewed these witness statements and noted inconsistencies and

factual inaccuracies. I instructed my counsel to depose these key witnesses and explore the noted inconsistencies and inaccuracies. My trial counsel told me he thought that was a bad idea because the prosecution would get a copy of each interview. I told him I didn't care if the prosecution got a copy and that I wanted him to interview these people and that I was willing to deal with the risks. To the best of my knowledge, my trial counsel failed to ever interview these key witnesses as I requested.

54. Before I ever signed a plea agreement, I was frustrated that my trial counsel was not following my instructions or trying to help me win my case. Besides giving me and my family misleading information about the consequences of a potential guilty plea, he also appeared uninterested in doing anything besides convincing me to plead guilty. It was hard for me raise this concern with him because I needed him on my side so I didn't want to do anything to make him upset with me. However, I was also in a weird situation because I'd known this attorney for a long time as he had previously represented family members of mine in other unrelated proceedings. I'm not sure if my trial counsel had ever tried a case in federal criminal court or not, but he seemed uncomfortable in representing me. I'm not sure if I was reading too much into things, but his representation of me felt lackluster at best; it felt as if he had something preventing him from actually trying to win my case. I didn't try to request a new attorney because I didn't think I'd be allowed to since I'm not entitled to an attorney of my own choosing unless I pay for one.

55. Before I ever signed a plea agreement, I told my trial counsel that I did not want to waive my Freedom of Information Act (FOIA) rights. However, both of the plea deals I was given stated that I must waive my FOIA rights in order to have the opportunity to plead guilty. Although I did not think I was guilty, my lawyer kept telling me I was and he was telling me that if I went to trial, I might end up with a life sentence. I wanted to be able to see all of the evidence that could be obtained in a FOIA, but my lawyer never filed a FOIA to obtain such information. I am unsure if the prosecution actually disclosed all the evidence it was supposed to during discovery and it is impossible for me to find out without breaking the terms of my plea based on the inclusion of this clause. Because of this clause, my habeas corpus lawyer has also been unable to gather all of the evidence that the prosecution gave to my trial counsel because my trial counsel's records apparently do not contain all of the evidence that was disclosed to my trial counsel.

56. Before I ever signed a plea agreement, my lawyer watched the video that is the subject of Count 5. I'm not sure exactly when this occurred, but he told me that the person in the video was clearly under the age of 18 because she had a ponytail. I didn't and don't understand why he thought only people under 18 wear ponytails. I was also told that the lawyer's paralegal disagreed with the lawyer about whether the person appeared under the age of 18 in the video. My lawyer said he would set up a way for me to see the evidence

against me, but this never happened. As such, I've still never seen the video that I was allegedly responsible for producing and which is the reason for my current prison sentence. My lawyer also failed to provide a copy of this video to my habeas corpus lawyer making it impossible for my habeas corpus lawyer to adequately review the video to see whether it actually constitutes sexually explicit behavior or child pornography.

57. The first plea deal I was given by my lawyer stated that the mandatory minimum for Count 5 would be 15 years. I asked my trial lawyer if my prior conviction under 18 U.S.C. § 2422 would enhance the penalty and my lawyer told me it would not. I asked him if he was sure and he said he was. I signed the plea deal with the belief that the mandatory minimum would be 15 years. However, my lawyer eventually came back to me and told me I needed to sign a new plea deal because my prior conviction constituted an enhanceable crime.

58. I do not recall my trial attorney telling me that failed plea negotiations are not admissible in court if I choose to go to trial. When my habeas corpus attorney asked me if I was told this, I racked my brain and was unable to remember him telling me anything to that effect.

59. After signing the first plea, I felt trapped when I was given the second plea because I did not understand that the initial plea could not be used against me if I refused the second amended plea. I was extremely upset with my lawyer about this but he told me that the government "had me" and that it was in my best interest to plead guilty. He informed me that if I didn't plead guilty, the government would file a superseding indictment with heftier and additional charges including one charge with a mandatory minimum of ten years which required consecutive sentencing. I didn't feel as if I had a choice to say no anymore.

60. The second plea deal did not state whether the mandatory minimum for Count 5 was 15 or 25 years. My lawyer told me there was a 70% chance that the mandatory minimum would be 15 years rather than 25. I did not have enough knowledge to make a knowing, intelligent, and voluntary plea, with regard to Count 5, because based on the uncertainty of the mandatory minimum.

61. I thought that, when my lawyer told me there was a 70% chance the mandatory minimum would be 15 years, rather than 25, this meant that the decision was up to the Judge's discretion. My lawyer never informed me that the statute was a clear yes/no in terms of whether the enhancement would apply. I didn't find this out until after my plea colloquy (before sentencing) because I finally looked up the law in the prison library as my lawyer's stated percentages kept decreasing downwards (he later told me that there was a 50% chance it would be 15 years rather than 25 and I started getting worried).

62. At my plea colloquy, Chief Judge Tunheim opted not to inform me whether the mandatory minimum would be 15 or 25 years for Count 5, stating instead that "It sounds like mandatory minimums might be governing this sentence more than the guidelines, but I will make that determination when we get to sentencing as to how they apply, and so what we have here is simply a recommendation. It could be different once we get to sentencing." Chief Judge Tunheim also stated "There is a lot of different possibilities there, I recognize, and the ultimate result won't be known until the sentencing hearing" before telling me "you understand that we can't make any final determinations on these matters today, correct?"

63. During my plea colloquy, the prosecution asked me to confirm that I provided A.J. with marijuana and alcohol and my attorney failed to object despite me previously telling him that I did not provide A.J. with marijuana or alcohol; I think my attorney didn't believe me and refused to advocate on my behalf because of his disbelief. During the colloquy, I disputed the prosecution's characterization of events. The prosecution also asked me to confirm that I provided intoxicants to A.J. for the purpose of inducing her to engage in prostitution. Again, I disputed this but my lawyer did not object. At sentencing, Chief Judge Tunheim found that this supposed provision of intoxicants constituted undue influence and enhanced my sentence according to the Sentencing Guidelines.

64. To the best of my knowledge, my trial counsel never took the time to even attempt to verify that A.J. was actually under the age of 18 at the time of the alleged events.

65. During my plea colloquy, the prosecution asked me if I knew or recklessly disregarded the fact that A.J. was not 18 years old and I said yes because I did not know the legal definition of reckless disregard and assumed that if my lawyer told me to plead guilty I must have recklessly disregarded her age. But I have no legal education and I relied on my lawyer to give me the relevant information to make an informed decision about whether or not I actually committed the crime in question. Because my lawyer never explained to me what it means to recklessly disregard something, I had no way of knowing if I did in-fact recklessly disregard anything. To support this claim, the prosecution asked me to confirm that I never asked to see a driver's license, but I started to explain that I asked for some formal ID. Unfortunately, I was cut off mid-sentence by the prosecution and unable to explain what has been explained in this affidavit. My lawyer did not ever bring the conversation back to this issue so I was never given a chance to explain the confusion around the verification of A.J.'s age.

66. During my plea colloquy, directly after the prosecutor cut me off in the middle of my explanation about the mistake of age issue related to A.J.'s ID, the prosecutor asked me to confirm that I picked up A.J. from school on January 26, 2019. I immediately disputed this

claim but my lawyer whispered in my ear and privately encouraged me not to dispute the claim.

67. During my plea colloquy, my lawyer stated on the record that "He clearly is, I believe, guilty of this crime, and I advised him to plead guilty accordingly." This was highly prejudicial and inappropriate from any defense counsel. I did not have an attorney; rather, the government had the privilege of having two attorneys.

68. During my plea colloquy, it was evident that my lawyer did not take the time or expend the effort to try and learn anything about twerking. When Chief Judge Tunheim asked for a definition of the word "twerking", my attorney unhelpfully added that it is nothing more than "Pelvic thrusts or the like" rather than focusing on the fact that twerking is a well-known style of dance found across multiple continents and well-engrained in huge segments of modern society. While I tried to mention that twerking is really just a style of dance, I could have used the assistance from my lawyer in phrasing the concept. Instead, he equated it with highly-sexualized movements such as "pelvic thrusts" without any sort of explanation. My attorney's description of twerking was incomplete, misleading, and extremely underinclusive.

69. During my plea colloquy, when the prosecution asked me if the purpose of the video was to use during commercial sex sessions or to entice other customers, I informed the prosecutor that the purpose was just to practice dance moves. While I was unable to go into the same detail during the colloquy that I have in this affidavit, that is because my lawyer had no interest in critically examining the facts and law. Instead, he was chasing a guilty plea.

70. Neither before nor during my plea colloquy did anyone inform me about highly relevant and technical legal definitions of key terms and phrases such as "lascivious exhibition", "child pornography", "reckless disregard", "reasonable chance to observe", "recruits", "sexually explicit conduct", or "producing". Without knowledge the technical meanings of these terms, it was impossible for me to intelligently answer the prosecution's or Judge's questions about whether or not I actually committed the crimes in question.

B. Sentencing

71. I pleaded guilty on January 25, 2016. At the end of my plea colloquy, a sentencing date was set for May 16, 2016. The hearing was eventually delayed until October 24, 2016. The same attorney who handled my trial also handled my sentencing. I did not have a choice in what attorney handled my sentencing.

72. On September 6, 2016, my sentencing attorney submitted a legal memorandum to the Court entitled "Defendant's Position Regarding Sentencing." For some reason, my attorney's opening sentence states "Mr. Loyd, scouring social networks, found, urged and assisted the continuing prostitution of desperate underage young women." This statement, aside from being untrue, is unbelievably prejudicial when it comes from one's own attorney. The entire memo, supposedly submitted on my behalf, written by my sentencing attorney reads as if it were written by a prosecutor and it evidences that I did not have the assistance of counsel. Moreover, the sentencing attorney apparently felt the need to pass moral judgment on my alleged actions by stating that "discouraging them from this lifestyle was the right thing to do." Later on, in the memorandum, defense counsel apparently felt the need to testify and specifically identify by name third-parties with no bearing on the issue at hand before calling me "an underemployed, overly-indulgent alcohol user and drug abuser." It is unclear to me why my attorney felt the need to say any of this, or how he possibly could have thought that such language would aid me at sentencing or would be approved had I been given the chance to review such language.

73. On September 12, 2016, my sentencing attorney submitted a second and out-of-time legal memorandum to the Court entitled "Defendant's Second Position Regarding Sentencing, Objection and Response." In this memo, my attorney admits to the Court that he "accepted the sentencing guidelines range as calculated in the Pre-Sentence Investigation Report... without comparison to our plea agreement and without noticing the difference." With this statement, my attorney admits that he was paying very little, if any, attention to the most important parts of my case. My attorney, in the same document, even admitted that the prosecution had to remind my attorney that the plea agreement did not contemplate a two-level enhancement to Count 1 for undue influence. My counsel's failure to timely object appears to have prejudiced me at sentencing because Chief Judge Tunheim found that this unanticipated enhancement applied. The Judge explained that he was applying this enhancement because of the supposed provision of intoxicants to A.J.; had my counsel objected at my plea colloquy as he should have, it is unlikely that Judge Tunheim would have found this enhancement applied. During the sentencing, Judge Tunheim also ignored the fact that my counsel objected to the enhancement, presumably because my counsel's objection was untimely. When the Judge asked my counsel if there was anything he objected to that Judge Tunheim failed to address, my counsel failed to bring up the objection to the undue influence 2-level sentencing enhancement.

74. I had my sentencing hearing on October 24, 2016; right before the hearing, I remember my lawyer telling me that I should be "expecting to hear 25" regarding the mandatory minimum previously discussed. This surprised me based on my lawyer's prior comments that there was a 70% chance that the mandatory minimum would be 15 years, and then his later comments that there was a 50% chance that the mandatory minimum would be 15

years. All of a sudden, the day of sentencing, it seemed as if my lawyer had known all along that the mandatory minimum would be 25 years and that he had simply refused to tell me to coerce me to plead guilty. Had I known that the mandatory minimum would be 25 years, I would have retained private counsel and fought my case at trial. My family would have helped pay for the lawyer.

75. On October 24, 2016, I was sentenced to 324 months of imprisonment on Counts 1 and 5. The sentences are concurrent. During the sentencing proceedings, Chief Judge Tunheim found that the sentencing enhancement for Count 5 applied, making the mandatory minimum 25 years rather than 15. No one ever gave me a chance to withdraw my plea after learning that the mandatory minimum was 25 years. No one even told me this was a potential option until I spoke to my habeas corpus lawyer, so I didn't know to ask to have my plea withdrawn. I would have asked to withdraw the plea before the sentencing hearing ever took place once my lawyer told me I should be expecting to hear 25 if I had known that withdrawal was an option.

76. At the sentencing hearing, Chief Judge Tunheim indicated that he would have imposed a lesser sentence if the mandatory minimum for Count 5 was 15 years as opposed to 25.

77. At the sentencing hearing, the prosecution allowed an alleged victim to provide a victim impact statement. The alleged victim who testified had no relation to the charges of Counts 1 or 5 of the indictment, yet my attorney failed to object to this person providing a victim impact statement. It seems like the only alleged victim who should have been allowed to give a victim impact statement was A.J.

78. At the sentencing hearing, the prosecution relied on rap lyrics, a form of art, to indicate that I was incapable of change or growth. It also seems like the prosecution was trying to use the lyrics as a confession of sorts. But those lyrics were written in the pursuit of art and my attorney should have objected to their use in both the presentence investigation report and during my sentencing hearing.

79. At the sentencing hearing, the prosecution admitted on the record that it was seeking to punish me for alleged crimes that were dismissed and as punishment for Count 4 of the indictment despite the prosecution's supposed dismissing of the offense. My attorney should have objected immediately but he did not object at all.

80. At the sentencing hearing, the prosecution said that I committed crimes that were never proven to have been committed and which I deny committing. While these alleged crimes were disclosed in the presentence investigation report, the report clearly indicated which crimes were dismissed and which crimes resulted in a judgment of guilt. However, during

the sentencing hearing, the prosecution said that I *did* commit the crimes rather than that I was accused of committing the crimes. My attorney should have objected to this but he did not. This was highly prejudicial and because Chief Judge Tunheim made his sentencing determination during the proceedings, without reviewing the presentence investigation report, he appears to have believed that I was convicted of or actually committed the alleged crimes. I think Chief Judge Tunheim may have been misled by the prosecutor's statements, and my attorney's failure to object, because rather than taking into account mitigating factors related to my difficult upbringing, he said "I feel like a sentence that is within the guideline range but not at the bottom is appropriate in this case given some of the factors noted by Ms. Provinzino." The judge also stated, immediately after, "Certainly there are elements of your childhood that might apply [as mitigating factors] if I were to consider that, but there certainly are aggravating factors that the court has taken into account." Based on Chief Judge Tunheim's statements, I think my attorney's failure to object the prosecution's inflammatory and prejudicial statements led to me being sentenced to an additional 24 months in prison.

81. Had I known the mandatory minimum was 25 years before I pleaded guilty, I would not have pleaded guilty. I would have gone to trial and fought the charge. While the Court and my lawyer did tell me that the mandatory minimum might be 15 years or it might be 25, my lawyer had previously told me that he thought it was 15 years, so I took that into account and severely discounted the chance that it would be 25 years. I also thought that if the mandatory minimum was later found to be 25 years, I would have a chance to withdraw my guilty plea and go to trial.

82. Right after the sentencing hearing, my attorney told my brother "I got daughters too."

83. After the sentencing proceedings were over, my brother, who was at the sentencing hearing, told me that he saw the individual who gave a victim impact statement at my sentencing hearing being told what to write by the prosecutors.

C. Appeal

84. I did not allege ineffective assistance of counsel in my appeal to the Eighth Circuit Court of Appeals because my appellate counsel was the same as my trial and sentencing counsel. I did not get to pick my attorney for this matter. I do not have the legal knowledge or knowhow to draft a pro se appeal so I was hoping that my lawyer could at least reduce my sentence and fix some of the damage he has caused by being so ineffective in the rest of my case. However, my lawyer had no success in the Court of Appeals and my appeal was dismissed without my sentence being reduced.

Conclusion

85. I did not commit the offenses with which I was charged. My guilty plea was involuntary and was made unintelligently. I also felt pressured by my lawyer to accept the guilty plea. I am actually and factually innocent of the crimes with which I was charged (Counts 1-5 of the Indictment) and for the crimes to which I involuntarily pleaded guilty (Counts 1 and 5 of the Indictment). I pray that the Court grant my motion for habeas corpus and withdraw my guilty plea in its entirety so that I may present a full and fair defense.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and the correct to the best of my knowledge and belief.

Phillip Loyd

Phillip D. Loyd

6/29/19

Date

Motion to Vacate, Set Aside, or Correct a Sentence By a Person in Federal Custody

(Motion Under 28 U.S.C. § 2255)

Instructions

1. To use this form, you must be a person who is serving a sentence under a judgment against you in a federal court. You are asking for relief from the conviction or the sentence. This form is your motion for relief.

2. You must file the form in the United States district court that entered the judgment that you are challenging. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file the motion in the federal court that entered that judgment.

3. Make sure the form is typed or neatly written.

4. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.

5. Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a brief or arguments, you must submit them in a separate memorandum.

6. If you cannot pay for the costs of this motion (such as costs for an attorney or transcripts), you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out the last page of this form. Also, you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you.

7. In this motion, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different judge or division (either in the same district or in a different district), you must file a separate motion.

8. When you have completed the form, send the original and two copies to the Clerk of the United States District Court at this address:

   United States District Court, District of Minnesota Clerk's Office
   U.S. Courthouse
   300 South Fourth Street, Suite 202
   Minneapolis, MN 55415
   (612) 664-5000

9. CAUTION: **You must include in this motion all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this motion, you may be barred from presenting additional grounds at a later date.**

10. CAPITAL CASES: **If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.**

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court	District of Minnesota
Name (under which you were convicted): Phillip Dwayne Loyd	Docket or Case No.: 15-cr-00142-001(JRT)
Place of Confinement: AUSP Thomson	Prisoner No.: 09031-041
UNITED STATES OF AMERICA v.	Movant (include name under which you were convicted) Phillip Dwayne Loyd

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

   United States District Court for the District of Minnesota;
   United States District Court, 15 U.S. Courthouse, 300 South Fourth Street, Minneapolis, MN 55415

   (b) Criminal docket or case number (if you know): 15-cr-00142-001(JRT)

2. (a) Date of the judgment of conviction (if you know): 1/25/2016

   (b) Date of sentencing: 10/24/2016

3. Length of sentence: 324 months

4. Nature of crime (all counts):

   Counts 1-4: Aiding and Abetting Sex Trafficking of a Minor and by Force, Fraud, or Coercion - 18 USC 1591(a), (b)(1), (b)(2), and (2)

   Count 5: Production of Child Pornography - 18 USC 2251(a) and (e)

5. (a) What was your plea? (Check one)

   (1) Not guilty ☐ (2) Guilty ☑ (3) Nolo contendere (no contest) ☐

   (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

   I pleaded guilty to Count 1 and Count 5. I did not plead guilty to counts 2-4.

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☑

8. Did you appeal from the judgment of conviction? Yes ☑ No ☐

9. If you did appeal, answer the following:

(a) Name of court: US Court of Appeals for the 8th Circuit

(b) Docket or case number (if you know): 16-4150

(c) Result: Appeal denied

(d) Date of result (if you know): 3/29/2018

(e) Citation to the case (if you know): 886 F.3d 686

(f) Grounds raised:

(1) The statutory construction rule of the last antecedent requires that a prior federal conviction "relate to" one of the types of enumerated state offenses and the series-qualifier canon requires a modifier to apply to all items in a series when such an application would represent a natural construction.
(2) the Court must inquire whether the elements of an individual offense of conviction categorically relate to the listed forms of misconduct for purposes of applying 18 USC 2251(e).
(3) Rule of lenity applies and counsels in favor of Defendant's reading of 18 USC 2251(e).

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☑

If "Yes," answer the following:

(1) Docket or case number (if you know):

(2) Result:

(3) Date of result (if you know):

(4) Citation to the case (if you know):

(5) Grounds raised:

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☑ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: US Court of Appeals for 8th Circuit

(2) Docket or case number (if you know): 16-4150

(3) Date of filing (if you know): 4/11/2018

(4) Nature of the proceeding: Petition for Enbanc Rehearing

(5) Grounds raised:

The "panel's opinion elevates the rule of last antecedent beyond its intended application distorting the intent of Congress and does not give sufficient weight to the series qualifier rule that equally applies nor does it give credence to the venerable rule of lenity, which trumps all other rules of statutory construction in criminal cases - all to the harm of the appellant."

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☑

(7) Result: Petition denied

(8) Date of result (if you know): 5/9/2018

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: N/A

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result:

(8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☑

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

Prior counsel did not appeal to the Supreme Court after the 8th Circuit denied Defendant's en banc rehearing request.

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE:

Actual and Factual Innocence

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Defendant asserts actual innocence as to count 1. Defendant did not know that the alleged victim was under the age of 18. Defendant also did not recklessly disregard that alleged victim was under the age of 18. When asked their age by Defendant, the alleged victim stated that they were 18 years old. The alleged victim did not show Defendant an ID or otherwise give Defendant any indication that the alleged victim was under the age of 18. A witness statement indicates that at least one third-party also believed the alleged victim was at least 18 years old after having spent a great deal of time with the alleged victim.

Similarly, Defendant did not use force, fraud, or coercion against the alleged victim.

Please see attached affidavit for additional supporting facts.

(b) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☑

(2) If you did not raise this issue in your direct appeal, explain why:

I had the same attorney for initial representation and my appeal; that attorney apparently did not think I was innocent and I had no control over the arguments he made on appeal.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☑

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☑

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☑

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

The only potential post-conviction petition Defendant filed was a petition for en banc rehearing before the 8th Circuit. The attorney who handled the en banc petition also handled the initial representation and direct appeal. That attorney apparently did not think Defendant was innocent and did not raise actual innocence as a defense. Defendant did not appeal the denial of his petition because no one helped him file a Writ of Certiorari and he did not know how to file one.

GROUND TWO:

Actual and Factual Innocence

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Defendant asserts actual innocence as to count 5. Defendant did not know that the alleged victim was under the age of 18. Defendant also did not recklessly disregard that alleged victim was under the age of 18. When asked their age by Defendant, the alleged victim stated that they were 18 years old. The alleged victim did not show Defendant an ID or otherwise give Defendant any indication that the alleged victim was under the age of 18. A witness statement indicates that at least one third-party also believed the alleged victim was at least 18 years old after having spent a great deal of time with the alleged victim. As such, Defendant did not intend to record a minor or to otherwise use a minor in any sort of visual depiction of sexually explicit conduct.

Similarly, Defendant did not intend to create a visual depiction of sexually explicit conduct (regardless of age). Likewise, Defendant did not actually create a visual depiction of sexually explicit conduct.

Additionally, Defendant did not actually produce or intend to produce any sexually explicit conduct.

Please see attached affidavit for additional supporting facts.

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☑

(2) If you did not raise this issue in your direct appeal, explain why:

I had the same attorney for initial representation and my appeal; that attorney apparently did not think I was innocent and I had no control over the arguments he made on appeal.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☑

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☑

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☑

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

The only potential post-conviction petition Defendant filed was a petition for en banc rehearing before the 8th Circuit. The attorney who handled the en banc petition also handled the initial representation and direct appeal. That attorney apparently did not think Defendant was innocent and did not raise actual innocence as a defense. Defendant did not appeal the denial of his petition because no one helped him file a Writ of Certiorari and he did not know how to file one.

GROUND THREE:

Ineffective Assistance of Counsel Deprived Defendant of Constitutionally Adequate Representation

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The same attorney handled Defendant's initial representation, appeal, and petition for rehearing. This attorney failed to depose key witnesses during the initial representation despite Defendant's explicit instructions to do so and deprived Defendant of potentially exculpatory evidence. The attorney refused to let Defendant examine all of the evidence against him, including the video that is the underlying basis for Count 5. The attorney gave clearly erroneous and prejudicial advice about statutory mandatory minimums prior to Defendant's initial guilty plea; after the plea needed to be amended to change the statutory minimums, the attorney failed to inform Defendant that plea negotiations are not admissible evidence in trial meaning that Defendant's plea was made unintelligently and involuntarily. Defendant was not told whether mandatory minimum would be 15 or 25 years prior to plea; attorney did not inform Defendant about possibility of withdrawing plea despite knowing prior to sentencing that mandatory minimum was 25 (not 15) years and despite knowing that Defendant wanted to go to trial if mandatory minimum was 25 years. The attorney told Defendant to "just say yes to everything" at Defendant's plea colloquy causing Defendant to admit facts that were not true. The attorney failed to allege actual innocence. Please see attached affidavit for additional supporting facts.

(b) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☑

(2) If you did not raise this issue in your direct appeal, explain why:

I had the same attorney for initial representation and my appeal; that attorney apparently did not think he was ineffective. I had no control over the arguments he made on appeal.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☑

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☑

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☑

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

The only potential post-conviction petition Defendant filed was a petition for en banc rehearing before the 8th Circuit. The attorney who handled the en banc petition also handled the initial representation and direct appeal. That attorney clearly did not think he was ineffective and it would have made no logical sense for him to represent Defendant and simultaneously argue that his representation was ineffective. Defendant did not appeal the denial of his petition because no one helped him file a Writ of Certiorari and he did not know how to file one.

GROUND FOUR:

The sentencing enhancement of 18 USC 2251(e) is unconstitutional as applied to Defendant

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Defendant had a prior conviction under Chapter 117 for a conviction in 2000 for a violation of 18 USC 2422(a). This provision, at the time of initial conviction and at time of Defendant's most recent sentencing hearing, does not implicate minors or individuals under the age of 18 years old. However, 18 USC 2422(b) does deal with minors / people under the age of 18 years old. When Defendant pleaded guilty in 2000, he had no actual notice or way of knowing that a violation of 18 USC 2422(a) would trigger a sentencing enhancement for alleged crimes committed against persons under the age of 18. Additionally, because the conduct criminalized by 18 USC 2422(a) contemplates various crimes that have nothing to do with trafficking or pornography, Defendant did not have constructive knowledge that a conviction for 18 USC 2422(a) would be capable of enhancing a conviction for child pornography. This is especially true in Defendant's case because Defendant asked his trial counsel if his prior conviction would trigger the enhancement of 18 USC 2251(e) but Defendant's initial counsel informed Defendant, prior to Defendant's plea, that there was a 70% chance that the sentencing enhancement of 18 USC 2251(e) would not apply to Defendant. Defendant was not told whether the sentencing enhancement would apply at the time of his plea or plea colloquy. Right before his sentencing hearing, Defendant's prior counsel told Defendant that he should "expect to hear 25."

Please see attached affidavit for additional supporting facts.

(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☑

(2) If you did not raise this issue in your direct appeal, explain why:

Prior counsel did not think 18 USC 2251(e) was unconstitutional as applied. However, prior counsel did attempt to argue that 18 USC 2251(e) did not apply to Defendant.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☑ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: Petition for Rehearing

Name and location of the court where the motion or petition was filed:
US Court of Appeals for 8th Circuit

Docket or case number (if you know): 16-4150

Date of the court's decision: 5/9/2018

Result (attach a copy of the court's opinion or order, if available):

Petition denied.

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☑

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☑

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

Defendant filed was a petition for en banc rehearing before the 8th Circuit. The attorney who handled the en banc petition also handled the initial representation and direct appeal. That attorney did not argue constitutional issues but did provide an unintelligable statutory construction argument focusing on prior state convictions (despite Defendant's prior conviction being in Chapter 117). He didn't appeal because didn't know how to file a Writ of Certiorari.

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

Grounds 1-5 have not previously been presented in any federal court because Defendant's prior counsel handled all stages of proceedings and was responsible for crafted arguments on Defendant's behalf. Defendant had no control over prior counsel's arguments or actions. Defendant asserts that his prior counsel providing ineffective assistance of counsel and severely prejudiced him as a result. For these reasons, Defendant hopes to withdraw his guilty plea and fight the erroneous charges lodged against him.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☑

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing:

(b) At arraignment and plea:

Michael McGlennen, 130 11th Ave. North, Hopkins, MN 55343

(c) At trial:

Michael McGlennen, 130 11th Ave. North, Hopkins, MN 55343

(d) At sentencing:

Michael McGlennen, 130 11th Ave. North, Hopkins, MN 55343

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ❑ No ❑

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ❑ No ❑

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ❑ No ❑

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND ~~FOUR:~~ Five

The indictment is facially and constitutionally defective

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The "True Bill" used to indict Defendant was not signed by any government attorney or the jury foreperson. There is no proof that a grand jury was ever convened or, if one was convened, that they actually decided to indict Defendant. Defendant did not waive his right to be indicted and he was not charged by information, nor did he consent to being charged by information.

Please see attached affidavit for additional supporting facts.

(b) **Direct Appeal of Ground ~~Four~~ Five**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☑

(2) If you did not raise this issue in your direct appeal, explain why:

Prior counsel missed the issue and failed to bring it to the Court's attention.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☑

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

Prior counsel missed the issue and failed to bring it to the Court's attention. Defendant is not versed in the law or constitution and did not know to flag this issue for his attorney because he expected his attorney to be competent and diligent.

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

Grounds 1-5 have not previously been presented in any federal court because Defendant's prior counsel handled all stages of proceedings and was responsible for crafted arguments on Defendant's behalf. Defendant had no control over prior counsel's arguments or actions. Defendant asserts that his prior counsel providing ineffective assistance of counsel and severely prejudiced him as a result. For these reasons, Defendant hopes to withdraw his guilty plea and fight the erroneous charges lodged against him.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☑

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing:

(b) At arraignment and plea:

Michael McGlennen, 130 11th Ave. North, Hopkins, MN 55343

(c) At trial:

Michael McGlennen, 130 11th Ave. North, Hopkins, MN 55343

(d) At sentencing:

Michael McGlennen, 130 11th Ave. North, Hopkins, MN 55343

(e) On appeal:

Michael McGlennen, 130 11th Ave. North, Hopkins, MN 55343

(f) In any post-conviction proceeding:

Michael McGlennen, 130 11th Ave. North, Hopkins, MN 55343

(g) On appeal from any ruling against you in a post-conviction proceeding:

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☑ No ❑

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ❑ No ☑

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ❑ No ❑

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

This motion is timely. The conviction became final 90 days after the Eighth Circuit Court of Appeals denied Defendant's petition for rehearing. Defendant's petition for rehearing was denied on May 9, 2018. August 7, 2018 is the date that occurs 90 days after May 9, 2018. Thus, this motion is timely as it is being submitted on or before August 7, 2019.

---

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

(1) the date on which the judgment of conviction became final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

Vacate Defendant's Sentence & withdraw Defendant's guilty plea.

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on N/A (month, date, year).

Executed (signed) on 6/29/2019 (date).

Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

Attorney Time Report for McGlennen, Michael

Start Date: All Dates

End Date: All Dates

Detail: Complete Detail

Amounts: Fee calculations

0:15-CR-00142

Defendant: Phillip Dwayne Lloyd

Service Type	Date	Description	Rate	Hours	Amount
RecordHours	6/24/2015	review ct. apt /assignment	$127.00	0.20	$25.40
RecordHours	6/24/2015	review Indictment	$127.00	0.40	$50.80
ResearchWritingHours	6/25/2015	review guidelines	$127.00	0.50	$63.50
ResearchWritingHours	6/29/2015	further guidelines review	$127.00	0.70	$88.90
InterviewHours	7/1/2015	Jail visit Anoka	$127.00	0.70	$88.90
TravelHours	7/1/2015	travel to Anoka Cty. jail	$127.00	0.20	$25.40
InterviewHours	7/2/2015	T. con AUSA re disc.	$127.00	0.40	$50.80
InterviewHours	7/3/2015	email from AUSA	$127.00	0.30	$38.10
InterviewHours	7/10/2015	T. con client	$127.00	0.30	$38.10
InvestigativeOtherHours	7/13/2015	jail permission registration	$127.00	1.00	$127.00
RecordHours	7/15/2015	review schedule	$127.00	0.10	$12.70
InterviewHours	7/21/2015	jail visit client	$127.00	1.20	$152.40
TravelHours	7/21/2015	travel to Anoka cty jail	$127.00	1.50	$190.50
InterviewHours	7/29/2015	email co def. counsel	$127.00	0.20	$25.40
InterviewHours	8/3/2015	T. con AUSA re disc.	$127.00	0.30	$38.10
InterviewHours	8/4/2015	T. con client	$127.00	0.20	$25.40
InterviewHours	8/12/2015	T. con client	$127.00	0.20	$25.40
InterviewHours	8/13/2015	long jail visit client	$127.00	2.00	$254.00
TravelHours	8/13/2015	travel to Anoka Cty. jail	$127.00	1.50	$190.50
RecordHours	8/13/2015	review discovery	$127.00	1.00	$127.00
RecordHours	8/17/2015	review police reports	$127.00	1.00	$127.00
ResearchWritingHours	8/17/2015	research history of prior for sex counts	$127.00	1.50	$190.50
InterviewHours	8/17/2015	Ltr. Mag. re motions	$127.00	1.00	$127.00
ResearchWritingHours	8/19/2015	copy and review/examine discovery	$127.00	6.00	$762.00
InterviewHours	8/20/2015	mtg. with AUSA	$127.00	0.20	$25.40
RecordHours	8/20/2015	review additional discovery	$127.00	1.00	$127.00
InterviewHours	8/21/2015	jail visit client	$127.00	1.00	$127.00
TravelHours	8/21/2015	split travel to Anoka jail	$127.00	1.00	$127.00
InterviewHours	8/23/2015	T. con client	$127.00	0.30	$38.10
ResearchWritingHours	8/24/2015	review sentencing law	$127.00	1.50	$190.50
InterviewHours	8/31/2015	jail visit client	$127.00	0.20	$25.40

Report Executed on: Wednesday, July 24, 2019

Attorney Time Report for McGlennen, Michael

Start Date: All Dates

End Date: All Dates

Detail: Complete Detail

Amounts: Fee calculations

Defendant: Phillip Dwayne Lloyd

Service Type	Date	Description	Rate	Hours	Amount
TravelHours	8/31/2015	split jail visit travel time	$127.00	0.30	$38.10
InterviewHours	10/22/2015	email AUSA re plea	$127.00	0.30	$38.10
InterviewHours	10/24/2015	jail visit client	$127.00	0.80	$101.60
TravelHours	10/24/2015	split travel time to Anoka	$127.00	0.50	$63.50
InterviewHours	11/3/2015	T. con client	$127.00	0.20	$25.40
ResearchWritingHours	11/12/2015	research guidelines cases re priors	$127.00	1.00	$127.00
InterviewHours	11/12/2015	email AUSA	$127.00	0.20	$25.40
InvestigativeOtherHours	11/14/2015	letter to client re guidelines research	$127.00	1.00	$127.00
InterviewHours	12/17/2015	jail visit client	$127.00	1.00	$127.00
TravelHours	12/17/2015	split travel time jail visits	$127.00	0.50	$63.50
InterviewHours	1/12/2016	T. con. AUSA re plea	$129.00	0.40	$51.60
ResearchWritingHours	1/15/2016	research re sentencing - prior sex crimes	$129.00	2.00	$258.00
InterviewHours	1/19/2016	email AUSA re plea	$129.00	0.20	$25.80
InterviewHours	1/19/2016	T con court re plea	$129.00	0.20	$25.80
ResearchWritingHours	1/19/2016	research plea agreement - guidelines	$129.00	1.00	$129.00
InterviewHours	1/20/2016	T con AUSA re plea agreement	$129.00	0.20	$25.80
InterviewHours	1/20/2016	jail visit client	$129.00	1.00	$129.00
TravelHours	1/20/2016	travel time Anoka - split - snow and ice	$129.00	1.00	$129.00
ResearchWritingHours	1/20/2016	research guidelines - statutes	$129.00	2.00	$258.00
InterviewHours	1/20/2016	T. con court	$129.00	0.20	$25.80
InterviewHours	1/20/2016	email AuSA	$129.00	0.20	$25.80
ResearchWritingHours	1/21/2016	research guidelines law - split circuits	$129.00	2.00	$258.00
InterviewHours	1/21/2016	emails AUSA re plea	$129.00	0.30	$38.70
InterviewHours	1/21/2016	plea discussions	$129.00	1.00	$129.00
InterviewHours	1/21/2016	T. con court re plea	$129.00	0.10	$12.90
InterviewHours	1/22/2016	jail visit client Anoka	$129.00	1.00	$129.00
TravelHours	1/22/2016	travel time Anoka snow and ice	$129.00	2.00	$258.00
ResearchWritingHours	1/22/2016	plea agreement review	$129.00	1.00	$129.00
InterviewHours	1/22/2016	T. con court re plea	$129.00	0.10	$12.90
ResearchWritingHours	1/22/2016	plea agreement research	$129.00	1.00	$129.00
InterviewHours	1/22/2016	emails AUSA re plea agreement details	$129.00	0.50	$64.50

Attorney Time Report for McGlennen, Michael

Start Date: All Dates

End Date: All Dates

Detail: Complete Detail

Amounts: Fee calculations

Defendant: Phillip Dwayne Lloyd

Service Type	Date	Description	Rate	Hours	Amount
ArraignmentPleaHours	1/25/2016	in court plea	$129.00	1.00	$129.00
ResearchWritingHours	1/25/2016	pre-plea agreement guidelines review	$129.00	1.00	$129.00
InterviewHours	1/25/2016	post plea interview client/probation	$129.00	0.50	$64.50
ResearchWritingHours	3/4/2016	research sentencing prior crimes	$129.00	2.00	$258.00
InterviewHours	3/15/2016	jail visit client	$129.00	1.50	$193.50
TravelHours	3/15/2016	round trip travel time Anoka jail	$129.00	1.50	$193.50
ResearchWritingHours	3/22/2016	sentencing research	$129.00	0.50	$64.50
InterviewHours	4/11/2016	T. con probation	$129.00	0.10	$12.90
InterviewHours	4/20/2016	T. con court re schedule	$129.00	0.20	$25.80
InterviewHours	4/20/2016	T. con court services re schedule	$129.00	0.20	$25.80
ResearchWritingHours	5/5/2016	sentencing review	$129.00	0.50	$64.50
ResearchWritingHours	5/13/2016	draft acceptance paragraph	$129.00	0.70	$90.30
InterviewHours	5/13/2016	email PSI writer	$129.00	0.10	$12.90
ResearchWritingHours	5/23/2016	research re sentencing	$129.00	2.00	$258.00
ResearchWritingHours	5/23/2016	research re client true name	$129.00	0.30	$38.70
InterviewHours	5/24/2016	email PSI writer re true name	$129.00	0.20	$25.80
ResearchWritingHours	5/25/2016	review preliminary PSI	$129.00	1.00	$129.00
InterviewHours	5/25/2016	jail visit client	$129.00	1.00	$129.00
TravelHours	5/25/2016	round trip Anoka jail	$129.00	1.50	$193.50
ResearchWritingHours	6/2/2016	research re affect of prior on sentencing minimums	$129.00	3.00	$387.00
ResearchWritingHours	6/3/2016	sentencing research re stat. minimums	$129.00	2.00	$258.00
InterviewHours	6/3/2016	T.con probation	$129.00	0.20	$25.80
ResearchWritingHours	6/3/2016	draft preliminary position	$129.00	1.00	$129.00
InterviewHours	6/10/2016	emails re sentencing	$129.00	0.20	$25.80
ResearchWritingHours	6/15/2016	position on sentencing research	$129.00	1.00	$129.00
ResearchWritingHours	6/29/2016	case law review re sentencing	$129.00	0.50	$64.50
InterviewHours	6/29/2016	jail visit client	$129.00	1.00	$129.00
TravelHours	6/29/2016	travel time Anoka jail	$129.00	1.50	$193.50
InterviewHours	6/30/2016	emails re plea	$129.00	0.10	$12.90
InterviewHours	7/29/2016	review emails from probation re sentencing	$129.00	0.20	$25.80
ResearchWritingHours	7/30/2016	research re sentencing position	$129.00	2.00	$258.00

Attorney Time Report for McGlennen, Michael

Start Date: All Dates

End Date: All Dates

Detail: Complete Detail

Amounts: Fee calculations

Defendant: Phillip Dwayne Lloyd

Service Type	Date	Description	Rate	Hours	Amount
ResearchWritingHours	7/31/2016	research re sentencing position	$129.00	4.00	$516.00
InterviewHours	8/1/2016	email re sentencing rec's	$129.00	1.50	$193.50
InterviewHours	8/16/2016	email re sent. pos. continuance	$129.00	0.40	$51.60
InterviewHours	8/17/2016	agreement on sentencing date	$129.00	0.20	$25.80
ResearchWritingHours	8/22/2016	research re sent. pos.	$129.00	1.20	$154.80
ResearchWritingHours	8/31/2016	pos. pleading draft	$129.00	5.00	$645.00
InterviewHours	9/1/2016	jail visit client plea prep.	$129.00	1.50	$193.50
TravelHours	9/1/2016	travel to Anoka jail re plea	$129.00	1.50	$193.50
ResearchWritingHours	9/3/2016	position pleading research/draft	$129.00	2.00	$258.00
ResearchWritingHours	9/4/2016	position pleading draft	$129.00	2.00	$258.00
ResearchWritingHours	9/5/2016	position pleading draft re - recent scotus case	$129.00	6.00	$774.00
ResearchWritingHours	9/5/2016	review recent scotus case	$129.00	1.50	$193.50
ResearchWritingHours	9/6/2016	final draft/file pos. pleading	$129.00	4.00	$516.00
ResearchWritingHours	9/7/2016	review gov'ts position pleading	$129.00	2.50	$322.50
ResearchWritingHours	9/11/2016	research second position pleading	$129.00	4.00	$516.00
ResearchWritingHours	9/12/2016	second pos. pleading draft/file	$129.00	6.00	$774.00
InterviewHours	9/17/2016	emails re sent. schedule	$129.00	0.30	$38.70
InterviewHours	9/19/2016	emails T. cons re schedule	$129.00	0.20	$25.80
InvestigativeOtherHours	9/26/2016	ltr. to client re sentencing	$129.00	0.50	$64.50
InterviewHours	10/6/2016	jail visit client Anoka jail	$129.00	2.00	$258.00
TravelHours	10/6/2016	travel time Anoka jail	$129.00	1.00	$129.00
ResearchWritingHours	10/10/2016	obj. re PSI	$129.00	0.40	$51.60
InterviewHours	10/12/2016	T. con. client	$129.00	0.20	$25.80
ResearchWritingHours	10/13/2016	obj re sentencing research/draft	$129.00	2.00	$258.00
SentencingHours	10/24/2016	in court sentencing wait time .5	$129.00	1.20	$154.80
ResearchWritingHours	10/24/2016	sentencing prep for in court argument	$129.00	3.00	$387.00
InterviewHours	10/24/2016	pre sent interview client	$129.00	0.70	$90.30
InvestigativeOtherHours	11/4/2016	Judgment to state counsel	$129.00	0.20	$25.80
InterviewHours	11/4/2016	T. con court reporter	$129.00	0.10	$12.90
ResearchWritingHours	11/4/2016	draft/file notice of appeal	$129.00	1.00	$129.00

Attorney Time Report for McGlennen, Michael

Start Date: All Dates

End Date: All Dates

Detail: Complete Detail

Amounts: Fee calculations

Total	135.40	$17,399.80
Totals For Attorney McGlennen, Michael	**135.40**	**$17,399.80**

Report Executed on: Wednesday, July 24, 2019

Nico Ratkowski

From: Diane_Hogenmiller@ca8.uscourts.gov
Sent: Tuesday, July 23, 2019 10:39 AM
To: Nico Ratkowski
Subject: Re: CJA Payment Information Inquiry

Follow Up Flag: Follow up
Flag Status: Flagged

Mr. Ratkowski,

Per our telephone conversation earlier this morning, Michael McGlennen was paid $7,800.00 in fees for his appointment under the Criminal Justice Act in 16-4150, U.S. v. Phillip Dwayne Loyd.

Diane Hogenmiller
Eighth Circuit Court of Appeals
(314) 244-2414
Diane_Hogenmiller@ca8.uscourts.gov

From: Nico Ratkowski <nico@contrerasmetelska.com>
To: "diane_hogenmiller@ca8.uscourts.gov" <diane_hogenmiller@ca8.uscourts.gov>
Date: 07/23/2019 09:47 AM
Subject:CJA Payment Information Inquiry

Hi Diane,

Thanks for speaking to me earlier. I'm writing to formally request information about how much prior counsel, Michael McGlennen, was paid (through the CJA program) in connection with his representation of Mr. Phillip Loyd in case number 16-4150. I am seeking this information on behalf of Mr. Loyd for use in Mr. Loyd's upcoming habeas corpus proceedings.

Please let me know if you need anything else from me.

Warm regards,

Nico Ratkowski
Contreras & Metelska I Attorney
651.771.0019 (main) I 651.772.4300 (fax)
200 University Ave. W., STE 200, St. Paul, Minnesota 55103 nico@contrerasmetelska.com
https://www.contrerasmetelska.com/

MICHAEL MCGLENNEN
CRIMINAL DEFENSE LAWYER

BARRISTERS TRUST BUILDING
247 THIRD AVENUE SOUTH
MINNEAPOLIS, MN 55415

TELEPHONE: 612 454 4268
HOME OFFICE: 952 938 3696
CELL: 612 719 8830

Email and Facsimile

DOWNTOWN OFFICE
mydowntownoffice@earthlink.net
FACSIMILE: 612 341 0116

HOME OFFICE
myhomeoffice@earthlink.net
FACSIMILE: 952 938 7596

August 17, 2015

By ECF Only

Magistrate Judge Steven E. Rau
Warren E. Burger Federal Building and U.S. Courthouse,
316 North Robert Street,
Saint Paul, Minnesota

Re: United States of America v. Phillip Dwayne Lloyd
Court File No. 15-cr-142 (JRT/SER)

Dear Magistrate Rau:

Having reviewed the discovery timely provided and having discussed the matter with Mr. Lloyd and AUSA, Ms. Laura Provinzino, I have determined to seek neither dispositive nor non-dispositive assistance from the Court. I will not be filing motions on Mr. Lloyd's behalf. Consequently, I respectfully request that Mr. Lloyd and I be excused from attending the motions hearing now set for September 9, 2015, at 9:00 a.m. (Doc. 29).

Sincerely,

/s/ Michael McGlennen
Michael McGlennen