

APPENDIX

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 4 2020

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DEANDRE LORNELL BROWN,

Defendant-Appellant.

No. 17-10515

18-10082

D.C. No.

2:09-cr-00533-JAM-1

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
John A. Mendez, District Judge, Presiding

Argued and Submitted January 8, 2020
San Francisco, California

Before: W. FLETCHER and FRIEDLAND, Circuit Judges, and HILLMAN,**
District Judge.

Defendant-Appellant Deandre Lornell Brown appeals from the district court's imposition of a 360-month sentence, two computer-related special conditions of supervised release, and restitution awards to two victims following

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Timothy Hillman, United States District Judge for the District of Massachusetts, sitting by designation.

his convictions for conspiracy to commit sex trafficking of children or by force, fraud, and coercion; sex trafficking of children or by force, fraud, and coercion; and participating in a sex trafficking venture. For the following reasons, we affirm.

First, Brown argues that his 360-month sentence is procedurally and substantively unreasonable. He contends that the district court impermissibly treated Judge Damrell's original sentence and the guideline range as presumptively reasonable.¹ The record belies this characterization. Although Judge Mendez reached the same conclusions as Judge Damrell in many respects, he did so based on his own review of the evidence and the § 3553(a) factors, not any reliance on Judge Damrell's opinion as dispositive. Similarly, although Judge Mendez rendered a sentence within the guideline range, he did not treat that range as dispositive. To the contrary, Judge Mendez considered "each and every" § 3553(a) factor in depth before concluding that a 360-month sentence was appropriate.

Brown also asserts that the district court failed to adequately explain its reasons for imposing a 360-month sentence. The record belies this contention as well. As noted above, Judge Mendez considered the § 3553(a) factors in depth before rendering a sentence. In particular, he acknowledged the mitigating

¹ The parties dispute whether we should review these aspects of the sentencing for abuse of discretion or plain error. We need not decide which one controls because Brown's challenges fail under either standard.

evidence introduced by Brown, including his troubled childhood, his limited criminal history, and the need to avoid unwarranted sentence disparities. Judge Mendez determined, however, that while this evidence “might, under certain circumstances, warrant a variance,” the “horrific” nature and circumstances of the offense compelled a sentence of 360 months here. Given this discussion, we find that the district court adequately explained its reasons for imposing a 360-month sentence.

Next, Brown argues that the district court plainly erred² in imposing two computer-related special conditions of supervised release. Special Condition 6 prohibits Brown from possessing or using “a computer or any device that has access to any ‘on-line computer service’ unless approved by the probation officer.” Special Condition 8 provides for a probation officer to monitor Brown’s computer use. Brown contends that the district court erred both procedurally and substantively. We decline to reverse, but we do adopt a narrowing construction of Special Condition 8.

We find no plain error in the imposition of Special Condition 6.

Procedurally, Brown cites our requirement that, when conditions of supervised release implicate a “particularly significant liberty interest,” district courts must

² Brown did not object to imposition of these conditions during his resentencing hearing. We thus review for plain error. *See Puckett v. United States*, 556 U.S. 129, 135 (2009).

make specific on-the-record findings supporting the conditions. *See United States v. Wolf Child*, 699 F.3d 1082, 1090 (9th Cir. 2012). Because we have not held that a complete ban on internet use implicates such an interest, any error was not “clear or obvious” procedural error. *See United States v. Gonzalez Becerra*, 784 F.3d 514, 518 (9th Cir. 2015) (quoting *United States v. De La Fuente*, 353 F.3d 766, 769 (9th Cir. 2003)). Substantively, Brown argues that these supervised release conditions are not reasonably related to his crime of conviction. Here, too, any error was not plain. We have approved similar bans where use of the internet was integral to the crime of conviction and “the offenses at issue involved child pornography or sexual abuse of minors.” *See United States v. LaCoste*, 821 F.3d 1187, 1191 (9th Cir. 2016); *see also United States v. Goddard*, 537 F.3d 1087, 1091 (9th Cir. 2008); *United States v. Antelope*, 395 F.3d 1128, 1142 (9th Cir. 2005).

As to Special Condition 8, the Government has asked us to construe the condition to apply only to monitoring of Brown’s use of the internet. The Government argues that, in context, including in light of the wording of Special Condition 6, it is clear this is what the district court meant. We accept this construction and thus hold that Special Condition 8 cannot be applied as to Brown’s non-internet-related computer activities. A remand is unnecessary given

that the condition is susceptible to this limiting interpretation. *See United States v. Quinzon*, 643 F.3d 1266, 1272-75 (9th Cir. 2011).

Finally, Brown argues that the district erred in awarding restitution to A.A. and Q.M. We find no error. Although A.A. and Q.M. did not specifically request mental health counseling, each victim submitted a detailed impact statement explaining the psychological harm she had experienced as a result of Brown's crimes.³ Given this evidence, the district court appropriately determined that Q.M. and A.A. were entitled to restitution for "the costs of necessary medical and related professional services . . . relating to . . . psychiatric, and psychological care," 18 U.S.C. § 3663A, and the amounts awarded were quite modest.

AFFIRMED.

³ We reject Brown's argument that the district court plainly erred in considering Q.M.'s impact statement, which was submitted in connection with the original sentencing hearing and not updated for the resentencing hearing, when it awarded restitution.

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF CALIFORNIA

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3 UNITED STATES OF AMERICA,) Docket No. 09-CR-533
4) Sacramento, California
Plaintiff,) November 28, 2017
5) 9:31 A.M.
v.)
6 DEANDRE LORNELL BROWN,) Re: Resentencing
7 Defendant.)

8 TRANSCRIPT OF PROCEEDINGS
9 BEFORE THE HONORABLE JOHN A. MENDEZ
10 UNITED STATES DISTRICT JUDGE

11 APPEARANCES:

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1 SACRAMENTO, CALIFORNIA, TUESDAY, NOVEMBER 28, 2017

2 --o0o--

3 (In open court.)

4 THE CLERK: Calling criminal matter 09-00533 *United*
5 *States v. Deandre Lorne11 Brown.*

6 MR. BECKWITH: Good morning, your Honor; Michael
7 Beckwith on behalf of the United States.

8 THE COURT: Good morning.

9 MR. BALAZS: Good morning, your Honor; John Balazs on
10 behalf of Deandre Brown, who's present in court in custody.

11 THE COURT: All right. This time and place being set
12 for resentencing. Quick history of this case. Mr. Brown went
13 to trial before Judge Damrell before Judge Damrell retired.
14 The case was assigned to this court after Judge Damrell retired
15 on September 21st, 2010.

16 Mr. Brown was found guilty following a jury trial.
17 The jury returned guilty verdicts on five counts. Count 1 was
18 a violation of 18 U.S.C. Section 371, conspiracy to commit sex
19 trafficking of children or by force, fraud and coercion.
20 Counts 2 and 4 charge separate violations of 18 U.S.C. Section
21 1591(a)(1), sex trafficking of children by force, fraud and
22 coercion. Counts 3 and 5 charge separate violations of 18
23 U.S.C. 1591(a)(2), participation in a sex trafficking venture.

24 Probation prepared a presentence report for Judge
25 Damrell, and I've had a chance to review the original

1 presentence report, which is dated January 28th, 2011.

2 Mr. Brown was sentenced on February 28th, 2011, by
3 Judge Damrell. Judge Damrell's sentence was 60 months on Count
4 1, 360 months on Counts 2, 3, 4 and 5 all to run concurrently
5 for a total term of 360 months.

6 The sentence was appealed. Ninth Circuit remanded it
7 to this court for resentencing. It affirmed the conviction and
8 returned it to this court for resentencing.

9 Probation has kindly prepared a status update since
10 sentencing. I've also reviewed -- I had a chance to review the
11 original sentencing memoranda that were filed back in 2011 and
12 then also the most recent memorandum filed by Mr. Balazs on
13 November 14th, 2017, on behalf of Mr. Brown. That contained a
14 number of documents, letters that I've reviewed and the
15 government submitted a memorandum along with three volumes of
16 documents, which I've had a chance to review, primarily the
17 entire record in this case and as well the government filed a
18 sentencing -- resentencing memorandum on November 14, 2017.

19 Mr. Balazs, you pointed out in your memorandum that
20 there were some error in terms of your client's prior criminal
21 history in the original presentence report. They had his age
22 wrong on the criminal history. That was in paragraphs 66, 67
23 and 68. Those should be corrected. Paragraph 66 should
24 reflect that he was 20 years old at the time of that
25 conviction. Paragraph 67 should reflect that he was 22 years

1 old at the time of that conviction. And paragraph 68 should
2 reflect that he was 24 years old at the time of that
3 conviction.

4 I didn't see any other corrections or objections to
5 the original presentence report. Did you have any?

6 MR. BALAZS: No, your Honor.

7 THE COURT: Okay. And Mr. Beckwith, did you have any
8 other corrections of the original presentence?

9 MR. BECKWITH: No, your Honor.

10 THE COURT: Mr. Brown, did you get a chance to go over
11 the original presentence report with your attorney?

12 MR. BROWN: Yes, sir.

13 THE COURT: Have you had enough time to review it with
14 him?

15 MR. BROWN: Yes, sir.

16 THE COURT: Okay. And the probation prepared a short
17 memorandum as well, a status update. Did you get a chance to
18 go over that with your attorney?

19 MR. BROWN: Yes, sir.

20 THE COURT: All right. And you had enough time to
21 discuss it with him?

22 MR. BROWN: Yes, sir.

23 THE COURT: Okay. There being no other objections to
24 the presentence report, I'm not going to take up the objections
25 that Judge Damrell already ruled upon. I think the government

1 raised two objections in terms of the guideline calculation
2 that Judge Damrell overruled; and there being no other
3 objections, I'm going to adopt the guideline calculation in the
4 original presentence report, make the same finding that Judge
5 Damrell did, which is in this case after adjustments the
6 offense level is 42, criminal history category is a Roman
7 numeral III. So the guideline range starting point for
8 sentencing is 360 months to life. Okay. Any legal cause why
9 we should not proceed with resentencing at this time?

10 MR. BECKWITH: No, your Honor.

11 MR. BALAZS: No, your Honor.

12 THE COURT: Okay. Mr. Beckwith, I received a note.
13 My understanding is that one of the victims wishes to address
14 the Court. I believe she submitted a statement in writing,
15 which I've reviewed. I wasn't sure if that was for the
16 original sentencing or if that was --

17 MR. BECKWITH: No, your Honor --

18 THE COURT: -- for this sentencing.

19 MR. BECKWITH: -- that's for this sentencing.

20 THE COURT: Okay. So I have reviewed that statement
21 as well, but I understand that she wants to address the Court
22 as well.

23 MR. BECKWITH: Yes, your Honor, at a time convenient
24 to you.

25 THE COURT: Let's do it now.

1 MR. BECKWITH: All right. Your Honor, this is Ashlyn
2 A, for the record.

3 THE COURT: Okay. Take your time. If you need water
4 or anything, just let me know. And pull that microphone closer
5 to you so we can hear you, okay?

6 MS. ARCHER: So there has been a lot of hard and
7 traumatic moments in my life that have occurred, you know,
8 growing up, but none have affected me as much as this.

9 When I first met Deandre, I was 16 years old. I was
10 walking back home to a place that let me stay there even though
11 I had run away from CPS due to being a ward of the Court. It
12 was nearby the Arden Mall off Ethan Street. I hustled for
13 money back then when a car pulled over to ask me where the
14 freeway was.

15 Yes, my life was a little messed up after Deandre,
16 Brittney and Quianna. My life took a whole -- a huge nosedive.
17 Not only had I been haunted multiple times by Brittney in her
18 escapades trying to kidnap other underage girls and me being
19 subpoenaed to her court cases in the Bay Area, she has also the
20 audacity to be Deandre's visitor the moment he had gotten back
21 to Sacramento.

22 The troubles -- these troubles my fear is that they
23 might accomplish towards more underage victims of future crimes
24 together. Due to all of this, I've been extremely scared for
25 not only my own life but also the lives and protection for

1 other girls and future victims out there in this world.

2 Deandre and Brittney have come across -- Deandre and
3 Brittney will and came across, either by force or persuasion,
4 bring other innocent and troubled teenage girls they do come
5 across and come in contact with.

6 The shame and guilt that has come afterwards I have
7 blamed myself for have been ridiculous, consistently feeling
8 unworthy and embarrassed about that I was unworthy of sexual
9 things. It took me two years to look someone in the eyes. My
10 self-confidence levels were at an all-time low. Fighting to
11 convince myself consistently that I was worthy of any
12 attention, feeling guilty and confessing to other lovers about
13 the incident with Deandre in hopes that they would still accept
14 me for who I was, who I was for this moment instead of my
15 horrid past.

16 Rejection turned down for opening heart and truth out
17 multiple times to people who gossiped and talked down upon me
18 behind my back, people like ex-boyfriends and whoever they
19 would tell others about my story and past that wasn't meant for
20 them to share or tell. Eventually people I didn't know or
21 meet before I introduced myself had already heard or knew about
22 my story and my pain, probably already judging me before
23 actually knowing me.

24 It was one of the hardest things to accept, not being
25 able to trust anyone, never truly having a childhood, having my

1 body stolen, robbed, beaten and taken away from me and then
2 sold into sex.

3 After this incident with Deandre, Brittney and
4 Quianna, it took me years to get over it emotionally as well as
5 physically but most of all and most importantly mentally.
6 Every day is a mental and emotional battle with myself.

7 I used to block that part of my life out by
8 memories -- block that part out of my life, of my memories, but
9 lately within the last few years it has been hard.

10 Like I previously stated earlier, this case has been
11 brought up to the surface multiple times, making me relive my
12 memories, remembering my pain and suffering. I had to endure
13 it all over again.

14 And again, it's emotionally draining. This feeling I
15 feel inside whenever I'm reminded of Deandre Brittney and
16 Quianna is absolutely one of the most absolutely worst feelings
17 that I've ever had to live with.

18 I feel so much pain as if someone is stabbing me in my
19 gut and twisting it over and over. My anxiety and my nerves
20 explode with anger every time. Not only did I have to deal
21 with all of that, but I've also had to face reality and
22 multiple foster families and group homes, some rejection from
23 my mother signing her rights away and being -- from being my
24 legal guardian. With all of this tragedy occurring all at
25 once, it was a lot for me to take in and accept. Instead I

1 bottled everything up. I became numb, numb to all the emotions
2 and becoming a very angry person who is very negative as well
3 as very arrogant to others around me.

4 I feel as if nobody would ever love me because I
5 thought who loved and cared for me shunned me away. To me it
6 felt as if they had did this and as soon as they learned my
7 secrets as if that's what I would forever be.

8 I'm lucky enough to find somebody who actually accepts
9 me for my past, someone who loves me and who I am in present
10 form and who wants to have a future with me. I'm very blessed
11 to have him in my life. He has been so patient and kind and
12 never stopped showing his love and affection to me no matter
13 what troubles and flaws that I've shown him.

14 If and when, you know, we do have a child together, I
15 could not imagine this to happen to my child. No child should
16 have to endure the things that I have. This is one of the
17 reasons why I want to take the extra step as to why I have been
18 adamantly preparing myself to make sure that I don't forget to
19 say something, so that I can cover all of my bases, so that I
20 don't go on living my life in regret of forgetting something.

21 This is something we cannot just take lightly. I need
22 to make sure that I can tell you my story so that I can go to
23 sleep at night knowing that -- I can go to sleep at night
24 knowing that I at least tried and not having to live
25 consistently in regret wondering "what if." Nobody should have

1 to go through this type of trauma.

2 Deandre punched me in the face in the same eye
3 multiple times. When I was found, my eye was swollen shut, yet
4 they still had no remorse and continued to sell me in the
5 streets even though I could barely see and looked like a
6 monster. I had no clue as to where I was. It was a very scary
7 time. And like I said before, I still struggle with these
8 memories to these days.

9 For example, when a person comes to me from their
10 abusive relationships, when my friend share to me their sex
11 life, when I watch or listen to certain movies or songs,
12 whenever I see the fair pop up every year. Deandre had hit me
13 for the dumbest things, always in the same place, always in the
14 same eye. Just like that -- just like I had mentioned earlier.

15 And then here's some examples or reasons as to why he
16 felt the need to punch me: Wrapping the computer cord the
17 wrong way, Quianna trying to leave, drinking a soda because he
18 said that I backwashed in it. Some would say that these
19 excuses would be pretty -- would be petty reasons to raise a
20 hand and closed-fist punch somebody over, but to a monster like
21 Deandre, in his eyes such an act to do these things, that
22 person needed to be punished until you were the one to look
23 like a deformed monster.

24 I overcame a lot since all of this. Every time I
25 think it's over, it's not. I thought this would finally -- I

1 thought that this was finally over a long time ago, but
2 apparently it isn't. I'm afraid it won't ever be.

3 I'm a fighter. I will continue to fight for myself as
4 well as other girls if I have to do so. I will not stop
5 fighting for my beliefs and in what I believe in. What I
6 believe is that Deandre and Brittney are a horrible and
7 disgusting duo that needs to be behind bars to rot away while
8 they reflect on the pain they had brought to girls like myself;
9 to not get out early; to have their freedom taken away like my
10 childhood and my innocence was taken away from me. And who
11 knows how many other girls they've affected as well.

12 Even though Deandre was in prison, I believe he had an
13 impact on Brittney. Like I mentioned in the beginning, she has
14 tried and has done this to other girls. I know this because I
15 was subpoenaed to her court case in the Bay Area, a crime very
16 closely scary and similar to mine. I cannot stress enough my
17 concern as to why she's out with freedom, "Charles Mansoning"
18 Deandre's wishes.

19 In conclusion, I wrote this long essay speech letter
20 thing to voice my opinions as to how it affected me in my past
21 as well as how it affects me as a person I have formed to be
22 today. So please open your hearts to my feelings. Please
23 remember that nobody, absolutely nobody should have to go
24 through this pain. Think of your daughters, your sisters,
25 cousins, best friends, and even yourself, if possible, and how

1 you wouldn't want them to have to experience what I had to
2 suffer with.

3 Children should be able to express sex on their own
4 romantic and passionate yet awkwardness, you know, the old
5 fashioned ways, but nobody deserves to have the experience --
6 that experience taken away from them; abused physically,
7 emotionally or mentally, then forces you to unwillingly sell
8 your body. Nobody deserves to be forced to make yourself
9 emotionally empty inside. I won't -- I know nobody wants that
10 for their daughters or their sisters, cousins, best friends or
11 even wives. And just like I know you will make the right
12 decision if anybody is unsure, please remember what I have said
13 and think about if your loved one was in my shoes and how that
14 would make you feel.

15 Thank you for giving me this opportunity to express
16 myself and my opinions.

17 THE COURT: Thank you for being here and for that
18 statement. I know it's difficult coming into court. I
19 appreciate the fact that you're here and that you came forward.
20 Thank you very much.

21 MS. ARCHER: No problem.

22 THE COURT: All right. Mr. Beckwith, I have reviewed
23 your brief. I just want to confirm one other issue with
24 respect to the sentencing. As I understand it, there was a
25 specific finding by the jury in this case that mandates a

1 mandatory minimum of 15 years, so we start at 15 years, right?

2 MR. BECKWITH: That's correct, your Honor.

3 THE COURT: Okay. Okay. With that, as I said, I've
4 reviewed your brief, I know the government's position but this
5 is your opportunity to add anything that you'd like at this
6 time.

7 MR. BECKWITH: Your Honor, if the Court has any
8 questions, I will address them. I do want to spend some time
9 on this. The government believes this is a very important
10 case. We strongly recommend that the Court defer to Judge
11 Damrell's reasoned opinion. He was the trial judge. He heard
12 the evidence. He knows the case better than anyone. We would
13 ask that you impose a sentence of 360 months.

14 Outside of the briefs, the defense has raised
15 comparison to two other cases. I do want to take just a moment
16 to talk about how those are not even remotely related to this.

17 THE COURT: Okay.

18 MR. BECKWITH: First and foremost, those two cases
19 that the defense mentioned were pleas. Also, they were pleas
20 to a different crime. Those defendants both pled guilty to
21 1591 with a (b)(2) enhancement, which meant it was 10 to life
22 offense, not the 15 to life that we're dealing with now. It
23 also means that there was no force involved.

24 Here one of the main issues in this case was the
25 violence, the sexual violence, the physical violence, the abuse

1 and, as Judge Damrell said, some of the worst abuse that he's
2 seen towards victims in his career.

3 So neither of these cases are remotely related to this
4 and in one case Judge Damrell found that was related that was
5 similar to the conduct in this case was the case of Will Moss.
6 That defendant received a 480-month sentence. 10 of those
7 years were for the gun. There was a gun here, though it was
8 not charged.

9 The Court recognized that that was a case that also
10 involved extreme levels of violence. The defendant refused to
11 accept responsibility for his actions and decided to go to
12 trial.

13 Moss is the case that is most similar. And if you
14 take the gun away, like the defendant in this case, Moss also
15 received a 30-year sentence.

16 The only other thing I would point out, your Honor, is
17 that in his briefing the defendant today still has not accepted
18 responsibility for his actions.

19 Exhibit C to the defense sentencing memorandum is a
20 statement by the defendant himself and on the second page he
21 talks about his decision to go to trial and he says that he
22 wanted to go to trial to show this Court on the record that I
23 was lied -- that I was lied on. I was not the man the
24 government said I was. To this very day I stand firm and do
25 not believe I am that person.

1 Your Honor, we alleged the defendant took children,
2 abused them and forced them to have sex, in a trade that he
3 applied between California and Nevada. He claims today that
4 he's not that man. He is not remorseful. He has not shown any
5 acceptance of responsibility, and that is no reason to depart
6 below a guideline sentence in this case.

7 If the Court has any other questions, I would -- I'm
8 happy to answer them. I'm willing to address any issue you
9 have.

10 THE COURT: Okay. You provided me with a lot of
11 material, so I don't any questions.

12 Mr. Balazs, anything further you want to add to your
13 brief?

14 MR. BALAZS: Yes, your Honor. I'd like to highlight a
15 few things and respond to the prosecutor's comments.

16 These are horrific cases. They're tragedies. There's
17 no winners no matter what happens today.

18 I don't think it's correct, as the prosecutor is
19 saying, that you should just defer to the judgment of Judge
20 Damrell. You are the sitting U.S. District Court Judge hearing
21 this case. You've reviewed the record. You're entitled to
22 make your own independent judgment.

23 I also think that Judge Damrell, a little different
24 than what -- the way the government described it in its brief,
25 struggled a bit as to what the appropriate sentence was. While

1 he did say the sentence -- imposed a sentence of 360 months and
2 said it was appropriate, he acknowledged that the probation
3 office did a very thorough report, thoughtful report and
4 recommended 25-year sentence and talked about -- struggled
5 about what the appropriate sentence should be in this case.

6 When you look at -- we're all here so much, we talk
7 about such high numbers all the time in federal court, but even
8 the 15-year sentence that the defense is asking for is a very
9 serious sentence, and I think that it would appropriately
10 reflect all the purposes of sentencing. There's no doubt that
11 this is a serious offense and it was a very eloquent statement
12 by Ashlyn today, and I respect that.

13 I do think that Mr. Brown is remorseful. He was
14 remorseful at the time of his initial sentencing. Judge
15 Damrell actually said that on the record. He may -- I didn't,
16 as you can tell, draft the statement for him. I let him
17 describe things in his own words. He felt that his attorney
18 had some shortcomings at the trial, but I think that over time
19 he has, even more so now than before, recognized the gravity of
20 the offense and is taking steps to ensure that it -- he will
21 not reoffend when he gets out.

22 The other -- but it's also important for the Court to
23 consider all the 3553(a) factors, not just the ones the
24 government highlights; the history and characteristics of the
25 offender, Mr. Brown, as documented in the presentence report,

1 in her interview of his mother had a fairly horrific childhood
2 himself; was raised by a single mother, grew up in a very rough
3 neighborhood where he witnessed and observed violence, drug
4 abuse and prostitution. He saw his mother physically abused,
5 which created a lot of anger in him, and he was abused himself
6 as a child. And that's documented in the presentence report.

7 The prison conduct shows some both good and bad. I
8 don't deny that he had some violations, had to defend himself
9 in prison, but he also is -- attained his GED, which required
10 278 hours of classes. He's taken continuing adult education
11 classes. He's discussed with me his desire to continue his
12 education both inside and outside of prison.

13 And it is significant that the last violation occurred
14 in September 2015. He was not transferred here for sentencing
15 until May 2017. So he has 20 months of prison without any
16 violations, and I think it shows signs of improvement.

17 When you look at the other thing with respect to his
18 history and characteristics, he does not have a felony offense.
19 He just has three misdemeanors. And I think his criminal
20 history is probably less severe than a number of other
21 defendants in these types of cases.

22 In terms of the disparity between other sentences, the
23 presentence report documents that a number of other cases have
24 received sentences between 105 and 235 months. I think they
25 were all pleas, but I don't think that, in and of itself, is a

1 significant difference.

2 Mr. Moss's case, Will Moss, who received 30 years for
3 the sex trafficking counts and 10 years for a firearm count
4 was, as Judge Damrell said, if you can believe it, was
5 unbelievable cruelty and much worse than this. Mr. Beckwith
6 and I were both the appellate attorneys in that case, so we do
7 have some familiarity with it.

8 The guideline range only covered two victims, but
9 there were seven uncharged victims. And Judge Garcia -- and I
10 looked at the government's brief, in the sentencing
11 transcript -- found that there was, you know, continuous
12 brutality to all the victims over a longer period of time than
13 in this case.

14 In one case, in fact, Will Moss burned a woman with a
15 hot iron. And even Judge Damrell found that the cruelty there
16 was worse than this case.

17 In terms of the two other cases I mentioned in my
18 presentence report, other defendants had appeared before this
19 Court and the Court sentenced to -- yes, they both had plea
20 agreements, but I don't think that, in and of itself, justifies
21 a -- as significant of a sentence that the government is
22 requesting.

23 It's true that in those two cases they pled to
24 1591(b)(2), but both of them in the indictments were 1591 --
25 1591(a)(1), the exact same charges in this case. The

1 government, as they often do, and appropriately, negotiated a
2 deal to a lesser charge and the Court had a -- as a result, a
3 kind of abbreviated version of the facts. You don't hear
4 everything as we would do at trial. But, you know, I don't
5 think it's fair to say that there was no violence involved in
6 those cases. In Justin Jackson's case I read Mr. Zindell's
7 sentencing memo and he quoted the victim's mother as saying
8 that the defendant was a ruthless pimp who used violence in the
9 case. And it was true that in the plea agreement itself, he
10 didn't plead to a force count, but I think, unfortunately, in
11 these types of cases, and in part based on the study that I've
12 provided to the Court, it's -- violence is common in these
13 types of cases.

14 And I would just like to add that, you know, I believe
15 in rehabilitation. I don't believe that Mr. Brown or
16 defendants are necessarily, regardless of what they've done in
17 the past, are -- should necessarily be locked up and the key
18 thrown away. I think that he has made progress. He has
19 obtained his GED. He's staying away from trouble in prison in
20 the last 20 months. He's a trustee at the jail on the fourth
21 floor when I go to see him. And I think that under all the
22 circumstances, the government's request for a 300-month
23 sentence is too high and our request is going to be for a
24 15-year sentence.

25 THE COURT: All right.

1 MR. BECKWITH: Your Honor, to be clear, our request is
2 for a 360.

3 THE COURT: 360.

4 MR. BALAZS: Oh, I'm sorry. 360.

5 THE COURT: Before I hear from Mr. Brown, on
6 restitution, restitution was ordered last time, but it was only
7 for one -- one of the victims, right?

8 MR. BROWN: Right.

9 THE COURT: And it was \$5,200?

10 MR. BROWN: Yes, sir, I believe so.

11 THE COURT: Mr. Beckwith; is that correct?

12 MR. BECKWITH: You're Honor --

13 THE CLERK: I'm looking at the original presentence
14 report on page 33.

15 MR. BECKWITH: Thank you.

16 THE COURT: But I'm wondering why is it only the one
17 victim?

18 MR. BECKWITH: It may be that --

19 THE COURT: Yeah, he ordered --

20 MR. BECKWITH: No, no. That's correct, your Honor.

21 THE COURT: That's what he ordered. I'm looking at
22 the transcript.

23 MR. BECKWITH: Yeah. No, no, you're right.

24 THE COURT: It seems unusual.

25 MR. BECKWITH: It is unusual and obviously the victim

1 in that instance was QM. I was speaking with AA this morning
2 and I -- about this issue more generally, and I don't have an
3 answer for that either. That is -- I think it's an oversight.

4 THE COURT: So you want me to postpone ordering any
5 restitution or --

6 MR. BECKWITH: Well, we can -- certainly with regard
7 to restitution we could sentence today and take 90 days to --

8 THE COURT: Right.

9 MR. BECKWITH: Yes.

10 THE COURT: Okay.

11 MR. BECKWITH: -- let me look into that.

12 THE COURT: All right. Mr. Brown, this is your
13 opportunity to address the Court. I did review your letter.
14 Anything further that you want to add before I impose sentence?

15 MR. BROWN: A few things, sir.

16 THE COURT: Go ahead.

17 MR. BROWN: First, I want to thank my family for
18 supporting me in being here.

19 I asked several times to ask my trial attorney to, you
20 know, with all due respect to everyone and the Court to please
21 ask Mr. Beckwith and Mr. Riordan can I have a deal. None was
22 given at all. And I continued to ask for a deal because I
23 didn't -- you know, I wanted to basically, you know, get right
24 to my family, try to help raise my kids and do what I need to
25 do. Several times I did reach out, try to have somebody reach

1 out to the victims, you know, for forgiveness, apology of the
2 things that I did do, you know in regards of this case.

3 I'm not happy with the things and the nature of the
4 crime. I showed remorse, I did say several things; but with
5 all due respect to the Court, I was just wondering why it's
6 been so hard for me to figure out why I couldn't receive, you
7 know, any -- any deal, you know, beforehand. I just -- I take
8 full responsibility for my actions, sir, you know, and I'm here
9 to say that and that's what I was trying to do, and that's why
10 I was trying to take a deal in the first place, sir, to get on
11 with my life to better myself, to do what I needed to do to,
12 you know, better my family, you know, and be -- be there for my
13 children, you know, so they wouldn't have to go through things
14 also in life, you know.

15 So I stand here a changed man. I know that I have
16 changed. Reasons being, I have bettered myself. My actions
17 shows that I wanted to better myself. So with all due respect,
18 sir, I'm asking that you deal with me today. I know that the
19 severity of the crime and everything else was -- it's nasty and
20 I didn't -- I'm not here to fight my charge, sir. I'm just
21 here to get sentenced. As I wrote in the letter, I know you
22 got -- you received my letter, excuse me -- it's been hard, but
23 I'm glad because it changed me. So with all of that, I'll let
24 you sentence, your Honor.

25 THE COURT: All right. Anything further?

1 MR. BECKWITH: Your Honor --

2 THE COURT: Go ahead.

3 MR. BECKWITH: -- three briefs points.

4 THE COURT: Go ahead.

5 MR. BECKWITH: Your Honor, first, "nasty" is not what
6 this was. As Judge Damrell found, it was inhuman, it was
7 brutal, some of the worst conduct that he's ever seen.

8 I want to clarify two or three points that the defense
9 made. One, with regard to Mr. Brown showing any remorse for
10 his victims, the Court specifically said, and I'll quote, "What
11 I was searching for was an understanding on Brown's part of
12 what happened to these girls, an understanding and empathy
13 towards the victims in this case." And part of Judge Damrell's
14 sentence it was, in fact, as you've read the transcript, was
15 based on the fact that Brown was concerned more about himself
16 and he was sorry he was caught and he committed a crime but not
17 about the victims. That was part of Judge Damrell's sentence.
18 And certainly obviously, your Honor, we recognize that you are
19 free to do whatever you feel is appropriate here, but with
20 regard to the idea that Judge Damrell struggled with the
21 sentence, he looked clearly at an option to vary and rejected
22 that. So if the Court has questions about that, I'm willing to
23 go into that.

24 And then finally, with regard to the Will Moss case
25 the Court said again, and I quote, "Will Moss received 360

1 months for this specific conduct as a result of the jury
2 verdict." He found it was the most comparable case, a sentence
3 of 360 months. We would ask you to impose that.

4 If the Court has any other questions, I'll do my best
5 to answer those.

6 THE COURT: All right. Mr. Balazs, anything further?

7 MR. BALAZS: Yes. With respect to the first two
8 points of Mr. Brown using the word "nasty" to describe the
9 offense and in his view not expressing empathy, I think to some
10 degree it's a matter of semantics. The word "nasty" or
11 "horrific," the word I used the way I used and the -- it's
12 difficult. He's becoming a more and more educated man, but I
13 don't think he has the words, necessarily, to describe all his
14 feelings.

15 And again, with respect to Mr. Will Moss's case
16 finally, there were nine victims in that case. It went for a
17 much longer period of time than the two in this case and the
18 violence was -- was actually worse in that case, and I will
19 submit it.

20 THE COURT: All right. The matter having been
21 submitted to the Court, the Court's prepared to resentence
22 Mr. Brown taking in consideration first the starting point is
23 the guidelines. Of course the guideline range is 360 months to
24 life.

25 In addition to the guidelines, the Court has and is

1 required to take into consideration all the factors under 18
2 U.S.C. Section 3553(a). I've looked at those, each and every
3 one. I've also taken into consideration the transcript from
4 the sentencing hearing and Judge Damrell's thoughts, in terms
5 of the original sentence that he imposed, and I think that's
6 critical information as well.

7 It's difficult serving as a judge on a resentencing
8 when I did not have the opportunity to observe or participate
9 in the trial. Judge Damrell obviously did. He was the trial
10 judge. And at trial, as a trial judge, there is a lot of
11 information that is presented that goes into a judge's decision
12 in reaching an appropriate sentence. The sentence has to be
13 adequate but not greater than necessary to meet these 3553(a)
14 factors.

15 The defense has argued that the Court should vary from
16 the guideline range down to 240 months, a 10-year reduction,
17 primarily arguing two main points. One is the nature and
18 circumstances of Mr. Brown's childhood and what he's done.

19 MR. BALAZS: I'm sorry, your Honor, but just to be
20 clear, our sentencing memo asked for a sentence of 180 months.
21 I think the defendant's initial sentencing memo back before
22 Judge Damrell asked for 240 months.

23 THE COURT: I'm sorry. You are asking for 15 years.
24 Okay. I'm sorry.

25 MR. BALAZS: I didn't want to interrupt you, but --

1 THE COURT: Yeah, no. Okay. Thank you for that
2 correction.

3 So the reduction is actually a 50 percent reduction
4 below the low end of the guidelines.

5 The brief focuses primarily on the very difficult
6 childhood that Mr. Brown experienced himself asking that the
7 Court take that into consideration in considering the nature
8 and circumstances of the individual and also the need to avoid
9 unwarranted sentence disparities.

10 There's been discussions both here today at the
11 hearing and in the briefs about a number of other cases. Those
12 were also discussed by Judge Damrell at the original sentencing
13 hearing. Those are factors that might, under certain
14 circumstances, warrant a variance in this case, but there are
15 also a number of other factors that the Court has to take into
16 consideration in reaching its decision on the appropriate
17 sentence, including the nature and circumstance of the offense
18 itself.

19 You can't split hairs here. This is beyond a horrific
20 crime. It's not a matter of semantics, as Judge Damrell
21 pointed out. And I'm of the same ilk in this sense and that is
22 that you destroyed the lives of at least two individuals,
23 possibly three; and but for the grace of God there weren't more
24 victims in this case.

25 As Judge Damrell pointed out, and I quote from the

1 original sentencing talking about the victims, he said,
2 "They're human beings. They're little girls. There's a chance
3 to save them and try to destroy them and you made the choice of
4 trying to destroy them as human beings, degrading them to the
5 point that they're animals servicing their clients; they are
6 things, objects. That's the kind of attitude that leads toward
7 the brutality that you committed and the brutality that seems
8 to plague our society." I think the sentence of 360 months is
9 the appropriate sentence in this case under all the
10 circumstances so that the nature and circumstances of this
11 offense I think balances out the mitigating factor raised by
12 the defendant concerning his own history and characteristics.

13 The sentence also needs to reflect the seriousness of
14 the offense. There is little or very few crimes that are more
15 serious than this type of crime. It needs to provide just
16 punishment, it needs to afford adequate deterrence, and it
17 needs to protect the public from further crimes of the
18 defendant.

19 While the criminal history is not substantial, I
20 acknowledge that, the nature and circumstances of this offense
21 are so serious that I have significant concerns about the need
22 to protect the public and other individuals, young women, and
23 in this case minors, protect those individuals from any further
24 crimes of Mr. Brown.

25 It is of concern to me that one of the women involved

1 in this incident immediately got back in touch with Mr. Brown
2 and apparently is in touch with him. I'm not sure if she still
3 is. That does not, I think, in any way reflect well on
4 Mr. Brown. I thought the victim who spoke here today used a
5 phrase that kind of sticks with me, the "Mansonning," a Charles
6 Manson-type of impact on a woman. That is of concern to me
7 and, again, balances out, I think, the other factors that the
8 Court needs to consider.

9 The unwarranted sentence disparities was an issue
10 taken up by Judge Damrell. I've looked at that. I don't
11 believe that a guideline sentence in this case would create an
12 unwarranted sentence disparity. While there may have been more
13 victims in Mr. Moss -- Mr. Moss's case, I don't think it's the
14 number of victims that carries these types of cases. The
15 nature and the type of violence that was inflicted is of the
16 greatest concern to the Court.

17 I look at the pictures that were submitted as part of
18 this record. I hope Mr. Brown has looked at these pictures.
19 They turn your stomach as to what you did to these women. It
20 shocks the conscience when I see photos like this still to this
21 day, that you believed it was appropriate to continue to
22 physically abuse someone in that manner to, as Judge Damrell
23 said, "treat them as a dog."

24 So taking all those factors into consideration, it's
25 clear to me that a guideline sentence is appropriate. You're

1 benefiting from the fact that I'm going to go along with a
2 low-end guideline sentence. I know at the original sentencing
3 the government asked for 480 months. They're not asking for
4 that this time around. And again, I'm respecting Judge
5 Damrell's views as well.

6 It's clear from the transcript and from the facts of
7 this case that a within-guidelines sentence is an appropriate
8 sentence and a 360-month sentence is the appropriate sentence
9 in this case.

10 So for all those reasons, and pursuant to the
11 Sentencing Reform Act of 1984, it is the judgment of the Court
12 that the defendant, Deandre Lornell Brown, is committed to the
13 custody of the Bureau of Prisons to imprisoned to a term of 60
14 months as to Count 1 and 360 months as to each of Counts 2, 3,
15 4 and 5, all sentences to be served concurrently for a total
16 term of 360 months.

17 Defendant is ordered to pay a special assessment of
18 \$500, payment to begin immediately. The Court finds the
19 defendant does not have the ability to pay a fine; imposition
20 of a fine is waived.

21 In terms of restitution to the victims in this case,
22 the Court will set that for a hearing 60 days out. Let's set
23 it for a hearing now.

24 THE CLERK: January 30th.

25 THE COURT: January 30th, 2018, at 9:15 in this court.

1 If you reach agreement on restitution, you can file a
2 stipulation; otherwise, we'll have a hearing as to the
3 appropriate restitution to be ordered in this case.

4 MR. BALAZS: May I ask that my client's appearance be
5 waived for that?

6 THE COURT: You may waive your client's appearance for
7 that hearing, and we'll determine what restitution should be
8 paid and to whom.

9 Upon release from prison, the defendant is ordered to
10 be placed on supervised release for a term of 36 months as to
11 Count 1 and 16 months as to each of Counts 2, 3, 4 and 5, all
12 to be served concurrently for a total term of 60 months. I did
13 order the special assessment of \$500? Yes. Okay.

14 Within 72 hours of release from the custody of the
15 Bureau of Prisons, the defendant shall report in person to the
16 probation office in the district to which the defendant is
17 released.

18 While on supervised release, defendant shall not
19 commit another federal, state, or local crime, shall not
20 possess a firearm, as defined in 18 U.S.C. Section 921 and
21 shall not illegally possess any controlled substances.

22 The defendant is ordered to submit to the collection
23 of DNA. He's ordered to comply with the standard conditions
24 recommended by the United States Sentencing Commission and
25 adopted by this Court. All those standard conditions

1 originally imposed, they're reimposed by the Court in this
2 case. There's 13 standard conditions. They were attached to
3 the original sentencing memorandum and will be included in the
4 Court's sentencing order.

5 Defendant's ordered to register and comply with the
6 requirements in the federal and state sex offender registration
7 agency in the state and in the jurisdiction of conviction, the
8 Eastern District of California, and in any jurisdiction where
9 the defendant resides, is employed or is a student.

10 Defendant's also ordered to refrain from any unlawful
11 use of a controlled substance. He's ordered to submit to one
12 drug test within 15 days of release from prison and at least
13 two periodic drug tests thereafter, not exceed four drug tests
14 per month.

15 I'll readopt all the special conditions that were
16 originally imposed. There are 11 special conditions. They
17 were originally found on pages 34 through 36 of the original
18 presentence report. All 11 special conditions will be included
19 in this Court's sentencing order.

20 The Court will recommend that the defendant be
21 incarcerated at an institution in California but, again, that's
22 only a recommendation, and it's up to the Bureau of Prisons and
23 their security classification and space availability policies
24 as to where Mr. Brown will be imprisoned.

25 Mr. Brown, you have a right to appeal. If you desire

1 to appeal, you must file your notice of appeal in writing with
2 the Court within I believe it's 15 days now, isn't it,
3 Mr. Balazs?

4 MR. BALAZS: 14.

5 THE COURT: 14? Okay. Within 14 days of today's
6 date. If you cannot afford an attorney for your appeal, the
7 Court will appoint one for you.

8 I want to make sure, Mr. Beckwith, you raised the
9 issue in terms of the appropriate sentencing guidelines to use
10 in a resentencing. Is there any issue that we need to discuss
11 with respect to the appropriate sentencing guidelines? I
12 believe we used in this case the sentencing guidelines from
13 2011 when the original sentencing took place.

14 MR. BECKWITH: Yes, your Honor. Under the -- under
15 the code section cited by the government, we are supposed to
16 use the guidelines in place at the time of the original
17 sentencing.

18 THE COURT: Okay.

19 MR. BECKWITH: The code section is 18 U.S.C. Section
20 4742(g)(1).

21 THE COURT: And Mr. Balazs, any issue with that?

22 MR. BALAZS: No, your Honor.

23 THE COURT: Okay. Mr. Beckwith, anything further?

24 MR. BECKWITH: No, your Honor. Thank you.

25 THE COURT: Mr. Balazs, anything further?

1 MR. BALAZS: No, your Honor. Thank you.

2 THE COURT: All right. Thank you. The defendant is
3 remanded to the custody of the marshals for transport to the
4 Bureau of Prisons.

5 (Concluded at 10:23 A.M.)

6

7 C E R T I F I C A T E

8

9 I certify that the foregoing is a true and correct
10 transcript of the record of proceedings in the above-entitled
11 matter.

12

13 /s/ JENNIFER L. COULTHARD

January 8, 2018

14

DATE

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16 JENNIFER L. COULTHARD, RMR, CRR
17 Official Court Reporter

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