

IN THE
SUPREME COURT OF THE UNITED STATES

Derrick Ivan Jim v. United States of America

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

APPENDIX A

UNITED STATES COURT OF APPEALS February 25, 2020

TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DERRICK IVAN JIM,

Defendant-Appellant.

No. 18-2144
(D.C. No. 1:10-CR-02653-JB-1)
(D.N.M.)

ORDER AND JUDGMENT*

Before **BACHARACH, SEYMOUR, and McHUGH**, Circuit Judges.

The United States District Court for the District of New Mexico sentenced Derrick Ivan Jim to life imprisonment for his conviction on two counts of aggravated sexual abuse in violation of 18 U.S.C. §§ 1153, 2241(a)(1), and 2246(2)(A). Mr. Jim now appeals, arguing the life sentence is substantively unreasonable.¹

* This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

¹ In *United States v. Antelope*, 430 U.S. 641, 645 (1977), the Court held “that federal legislation with respect to Indian Tribes, although relating to Indians as such, is not based upon impermissible racial classifications.” Mr. Jim believes *Antelope* was wrongly decided and preserves for Supreme Court review his argument that the racial

I.

In 2012, a federal jury convicted Derrick Ivan Jim of aggravated sexual abuse occurring in the Navajo Nation. The district court sentenced him to 360 months' imprisonment based on a guideline range of 360 months to life. The district court recognized that the victim was seriously injured by the viciousness of Mr. Jim's rape, but the court believed that the victim's injuries were accounted for in the underlying guideline for aggravated sexual abuse. Mr. Jim appealed his conviction and the government cross appealed the sentence, contending the district court should have applied a two-level enhancement pursuant to U.S.S.G. § 2A3.1(b)(4)(B) for causing the victim serious bodily injury. We affirmed the conviction but reversed the sentence, explaining that it is not double-counting to include a sentence enhancement for both "the egregiousness of [a defendant's] *conduct* in committing a sex offense and for the *injuries* inflicted during that offense because those enhancements address different and distinct matters." *United States v. Jim*, 786 F.3d 802, 816 (10th Cir. 2015) (emphasis in original).

At the resentencing hearing, the district court recognized that the victim had sustained serious bodily injury within the meaning of the two-level enhancement. Applying the enhancement resulted in a new offense level of 43.²

classification created by the Major Crimes Act, 18 U.S.C. § 1153, renders the statute unconstitutional.

² The two-level enhancement for causing the victim serious bodily injury increased Mr. Jim's offense level from 42 to 44. However, the highest offense level contemplated by the sentencing guidelines is 43.

Combined with a criminal history of II, the new guideline became a life sentence rather than the previous range of 360 months to life. The district court declined Mr. Jim's request for a downward departure of four offense levels, declined a downward variance from the applicable guideline range, and accordingly imposed a within-guidelines sentence of life imprisonment. Mr. Jim now appeals the district court's sentence, arguing that his life sentence is substantively unreasonable. "[S]ubstantive reasonableness review broadly looks to whether the district court abused its discretion in weighing permissible [18 U.S.C.] § 3553(a) factors in light of the 'totality of the circumstances.'" *United States v. Sayad*, 589 F.3d 1110, 1118 (10th Cir. 2009) (quoting *Gall v. United States*, 552 U.S. 38, 51 (2007)). Under the applicable abuse of discretion standard, "a district court's sentence is substantively unreasonable only if it is arbitrary, capricious, whimsical, or manifestly unreasonable." *Id.* at 1116 (internal quotation marks and citation omitted).

II.

A. Substantive Reasonableness of Resentencing

Mr. Jim first contends his life sentence is substantively unreasonable given that the district court previously determined that a 360-month sentence would serve the purposes of sentencing, and that no new facts were presented at resentencing. But this overlooks the fact that the district court incorrectly determined the guideline range when it initially sentenced Mr. Jim. On

resentencing, the new guideline was a singular recommendation of life in prison. “If the sentence imposed is within the properly calculated Guidelines range, we may apply a presumption of reasonableness to the sentence on our appellate review.” *United States v. Regan*, 627 F.3d 1348, 1352 (10th Cir. 2010) (citation omitted); *see also Rita v. United States*, 551 U.S. 338, 347 (2007) (“[A] court of appeals may apply a presumption of reasonableness to a district court sentence that reflects a proper application of the Sentencing Guidelines.”). The district court’s proper calculation of Mr. Jim’s guideline range is not in dispute here, so we apply a presumption of reasonableness to his within-guidelines sentence. Mr. Jim can rebut this presumption “by demonstrating its unreasonableness in light of the § 3553(a) factors.” *United States v. Martinez-Barragan*, 545 F.3d 894, 905 (10th Cir. 2008) (citation omitted).

Mr. Jim’s first argument fails to consider the increase by two offense levels at resentencing for the victim’s serious bodily injury. Once this court found procedural error in Mr. Jim’s initial sentencing, the slate was wiped clean and the district court was required at resentencing to reconsider all § 3553(a) factors in light of Mr. Jim’s newly corrected offense level of 43. *See United States v. Smith*, 930 F.2d 1450, 1456 (10th Cir. 1991) (remanding for resentencing and “direct[ing] the sentencing court to begin anew . . . [as] fully *de novo* resentencing is entirely appropriate”) (internal quotation marks omitted). Analysis of a proper sentence must start from the correctly calculated guideline

range. *See Gall*, 552 U.S. at 49 (“[A] district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range . . . to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark.”) (citation omitted); 18 U.S.C. § 3742(g).

“The sentencing judge should set forth enough to satisfy the appellate court that he has considered the parties’ arguments and has a reasoned basis for exercising his own legal decisionmaking authority.” *Rita*, 551 U.S. at 356 (citation omitted). The district court here did just that, both at Mr. Jim’s resentencing hearing and in the court’s subsequent 34-page Opinion and Order. Given the district court’s thorough reconsideration of all circumstances relevant to Mr. Jim’s sentence,³ we cannot conclude that his sentence is substantively unreasonable merely because it increased from 360 months to life imprisonment when the district court resented Mr. Jim according to the newly determined guideline recommendation of life in prison.

³ Mr. Jim also contends that his sentence is substantively unreasonable because (1) the district court inaccurately stated that Mr. Jim had not taken steps to address his alcohol problem; and (2) the court unfairly weighed Mr. Jim’s insistence on going to trial against him at sentencing. The record shows that the district court considered Mr. Jim’s history of alcohol problems at both sentencing hearings and determined not to impose an upward or downward variance. Based upon Mr. Jim’s intoxication at the time of the rape, the court could have reasonably determined that Mr. Jim had not taken adequate steps to address his alcohol problem. In addition, we are not convinced that the court punished Mr. Jim for choosing to go to trial. Instead the record demonstrates that the court properly considered both Mr. Jim’s decision to lie under oath and his refusal to accept responsibility for the crime. *See United States v. Portillo-Valenzuela*, 20 F.3d 393, 395 (10th Cir. 1994) (“[D]enying the reduction for acceptance of responsibility is not a penalty for exercising any rights. The reduction is simply a reward for those who take full responsibility.”).

B. Substantive Reasonableness of Sentencing Under the Guidelines

Next, Mr. Jim contends the district court abused its discretion in weighing the § 3553(a) factors and overemphasized the sentencing guidelines in its resentencing. In particular, Mr. Jim first posits that the district court used the guidelines as a proxy for the need to avoid unwarranted disparities among defendants convicted of the same crime and that such emphasis on the guidelines is inappropriate given the rarity of aggravated sexual abuse cases that proceed to trial. He also contends that life sentences are reserved for rape cases more heinous than his case. We address each of these arguments in turn.

i. Use of the Guidelines as a Proxy Given the Rarity of Aggravated Sexual Abuse Cases Going to Trial

When setting the guideline ranges, the Sentencing Commission “clearly considered” the avoidance of disparities in sentencing. *Gall*, 552 U.S. at 54. Moreover, one factor that district courts must consider when imposing a sentence is “the need to avoid unwarranted sentence disparities among defendants.” 18 U.S.C. § 3553(a)(6). Mr. Jim asserts that because aggravated sexual abuse cases rarely go to trial, the guidelines should not serve as a proxy for the unwarranted disparities consideration. But Mr. Jim’s position is undermined by the well-established role of the guidelines in sentencing and the district court’s detailed consideration at resentencing of all relevant factors, including both upward and downward pressures on Mr. Jim’s sentence. The court also considered and

distinguished the cases Mr. Jim cites in support of a downward variance from the guidelines.

Section 3553(a) sets forth the relevant factors district courts must consider in imposing a sentence.⁴ The district court here carefully analyzed each of these factors both at the resentencing hearing and in its Opinion and Order. In fact, the district court identified and considered fourteen factors placing downward pressure on Mr. Jim’s sentence, but concluded that neither a downward departure nor a downward variance from the guidelines was warranted. In light of the district court’s detailed explanation of its decision, we are not persuaded the court used the guidelines merely as a proxy in imposing Mr. Jim’s sentence.

ii. Life Sentences in Aggravated Sexual Abuse Cases

Mr. Jim also argues his sentence is substantively unreasonable because life sentences are reserved for more heinous rape cases. In support of his position, Mr. Jim cites three cases in which the defendants received a lesser sentence than he did for aggravated sexual abuse: *United States v. Martin*, 528 F.3d 746 (10th Cir. 2008); *United States v. Estep*, 138 F. App’x 113 (10th Cir. 2005)

⁴ Factors to be considered in imposing a sentence include: “(1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for a sentence to reflect the basic aims of sentencing, namely (a) just punishment (retribution), (b) deterrence, (c) incapacitation, and (d) rehabilitation; (3) the kinds of sentences available; (4) the Sentencing Commission Guidelines; (5) Sentencing Commission policy statements; (6) the need to avoid unwarranted sentencing disparities; and (7) the need for restitution.” *United States v. Cookson*, 922 F.3d 1079, 1092 (10th Cir. 2019) (internal quotation marks and citation omitted); *See* 18 U.S.C. § 3553(a) (requiring the district court to “impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in [§ 3553(a)(2)]”).

(unpublished); and *United States v. Chee*, No. 98-2038, 1999 WL 261017 (10th Cir. May 3, 1999). But these cases are all distinguishable based on the offense level and criminal history category from which the sentences were calculated, and on the fact that the defendants all received sentences within the applicable guidelines range. *See Martin*, 528 F.3d at 749, 754; *Estep*, 138 F. App'x at 117; *Chee*, 1999 WL 261017 at *6. Moreover, substantive reasonableness of the sentence was not an issue on appeal in any of the three cases.

Mr. Jim also asserts that life sentences for aggravated sexual abuse cases and “sentences significantly above 360-months that are likely to result in the defendant dying in prison” generally apply “where victims are minors, and often where the sexual abuse involved multiple victims or was ongoing for a year or more.” Aplt. Br. at. 33. However, sentencing was an issue on appeal in only one of the six cases Mr. Jim cites in support of this argument, *United States v. Mix*, 457 F.3d 906, 909 (9th Cir. 2006).⁵

⁵ The defendants in the other five cases appealed only their convictions, and two of the five opinions noted that the sentence the defendant received was within the guideline range for the defendant’s offense level and criminal history category. *United States v. Yazzen*, 187 F. App'x 800, 801 (10th Cir. 2006) (unpublished) (noting the guideline range for an offense level 43 and criminal history category of II—Mr. Jim’s same level and category—is mandatory life imprisonment); *United States v. Charley*, 189 F.3d 1251, 1259 (10th Cir. 1999) (noting that the district court applied the guidelines in sentencing the defendant to life imprisonment); *United States v. Begay*, 550 F. App'x 604, 606 (10th Cir. 2013) (unpublished) (noting the defendant received a 50-year sentence where victim was a minor and paraplegic); *United States v. Chaco*, 520 F. App'x 694, 695 (10th Cir. 2013) (unpublished) (noting the defendant received a 516-month sentence where victim was a minor); *United States v. Yazzie*, 743 F.3d 1278, 1286

Mix is also distinguishable. There, the Ninth Circuit upheld as reasonable an above-guidelines sentence imposed by the district court. *Mix*, 457 F.3d at 909. The district court in *Mix* imposed life sentences as to seven counts (five counts of aggravated sexual abuse and two counts of kidnapping) to run concurrently with two consecutive 120-month sentences for two counts of assault with a dangerous weapon. *Id.* at 909–10. In addition, the court imposed an upward variance from the guideline range based upon “the heinous, brutal, continued nature” of the crime. *Id.* at 910 (quoting the district court opinion). Affirming the life sentence, the Ninth Circuit concluded that the district court “imposed a sentence outside of the Guidelines based upon consideration of § 3553(a) factors that the district court believed had not been adequately taken account of by the Guidelines calculation.” *Id.* at 911–12.

Here, the district court did not vary from the guideline calculation by imposing a life sentence. The court carefully considered the sentencing guidelines, § 3553(a) factors, and circumstances putting both upward and downward pressure on Mr. Jim’s sentence. We therefore conclude that the district court did not abuse its discretion in imposing a life sentence.

(9th Cir. 2014) (noting the district court imposed a 420-month sentence where victim was a minor).

III.

Mr. Jim also appeals the district court's imposition of a special condition of supervision that the court had previously specifically excluded during its oral pronouncement of the sentence. Notably, at Mr. Jim's second sentencing hearing, the district court agreed to remove a special condition of Mr. Jim's sentence related to his contact with children under the age of eighteen. The government concedes it was error to thereafter impose this condition, agreeing that the oral pronouncement controls. *See United States v. Villano*, 816 F.2d 1448, 1450–51 (10th Cir. 1987) (en banc). Accordingly, we remand to the district court to amend the judgment to remove the condition.

For the foregoing reasons, we AFFIRM the sentence imposed by the district court but REMAND for further proceedings regarding the special conditions of Mr. Jim's supervised release.

Entered for the Court

Stephanie K. Seymour
Circuit Judge

IN THE
SUPREME COURT OF THE UNITED STATES

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APPENDIX B

UNITED STATES DISTRICT COURT

District of New Mexico

UNITED STATES OF AMERICA

Judgment in a Criminal Case

V.

DERRICK IVAN JIM

Case Number: **1:10CR02653-001JB**

USM Number: **58246-051**

Defendant's Attorney: **John Samore**

THE DEFENDANT:

- ☐ pleaded guilty to count(s) .
- ☐ pleaded nolo contendere to count(s) which was accepted by the court.
- ☒ was found guilty on count(s) **1 and 2 of Indictment** after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<i>Title and Section</i>	<i>Nature of Offense</i>	<i>Offense Ended</i>	<i>Count</i>
18 U.S.C. Sec. 2241(a)(1) and 2246(2)(A)	Aggravated Sexual Abuse, Crime in Indian Country, 18 U.S.C. Sec. 1153	08/23/2010	1 - 2

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) .
- ☐ Count(s) dismissed on the motion of the United States.

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

March 21, 2017

Date of Imposition of Judgment

/s/ James O. Browning

Signature of Judge

Honorable James O. Browning

United States District Judge

Name and Title of Judge

September 24, 2018

Date

DNM 74

DEFENDANT: **DERRICK IVAN JIM**
CASE NUMBER: **1:10CR02653-001JB**

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: **of life**.

A term of Life is imposed as to each of Counts 1 and 2 of Indictment; said terms will run concurrently.

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

The Court recommends the defendant participate in the Bureau of Prisons 500 hour drug and alcohol treatment program.

- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
- ☐ at on .
- ☐ as notified by the United States Marshal.
- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☐ before 2 p.m. on .
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to
_____ at _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: **DERRICK IVAN JIM**
CASE NUMBER: **1:10CR02653-001JB**

SUPERVISED RELEASE

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

A term of 5 years of supervised release is imposed as to each of Counts 1 and 2; said terms shall run concurrently.

MANDATORY CONDITIONS

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

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

STANDARD CONDITIONS OF SUPERVISION

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

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.
14. You must undergo a sex offense-specific assessment to determine the level of risk for sexual dangerousness, recidivism, and amenability to treatment and formulate treatment recommendations if treatment is necessary. You may be required to pay all, or a portion of the cost of the assessment.
15. You will waive your right of confidentiality and allow the treatment provider to release treatment records to the probation officer and sign all necessary releases to enable the probation officer to monitor your progress. The probation officer shall disclose the presentence report and/or any previous sex offender or mental health evaluations to the treatment provider.
16. You must submit to a search of person, property, residence, vehicles, documents, businesses, computers [as defined in 18 U.S.C. 1030(e)(1)], and other electronic communications or data storage devices or media effects, at any time, by a probation officer with reasonable suspicion concerning a violation of a condition of probation or supervised release, or unlawful conduct by the person, in the lawful discharge of the officer's supervision functions. You must inform any other occupants that the premises may be subject to searches pursuant to this condition. Failure to submit to a search may be grounds for revocation of supervision.
17. You will not have any direct or indirect contact or communication with the victim or his or her family, or go near or enter the premises where the victim or his or her family resides, is employed, attends school or treatment, except under circumstances approved in advance and in writing by the probation officer.

DEFENDANT: **DERRICK IVAN JIM**
CASE NUMBER: **1:10CR02653-001JB**

SPECIAL CONDITIONS OF SUPERVISION

You must not use or possess alcohol.

You must not knowingly purchase, possess, distribute, administer, or otherwise use any psychoactive substances (e.g., synthetic cannabinoids, synthetic cathinones, etc.) that impair your physical or mental functioning, whether or not intended for human consumption.

You must not possess, sell, offer for sale, transport, cause to be transported, cause to affect interstate commerce, import, or export any drug paraphernalia, as defined in 21 U.S.C. 863(d).

You must participate in a mental health treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program. You may be required to pay all, or a portion, of the costs of the program.

You must reside in a residential reentry center for a term of 6 months. You must follow the rules and regulations of the center.

You must not communicate, or otherwise interact, with the victim(s), either directly or through someone else without prior approval of the probation officer.

You must undergo a sex offense-specific assessment to determine the level of risk for sexual dangerousness, recidivism, and amenability to treatment and formulate treatment recommendations if treatment is necessary. You may be required to pay all, or a portion of the cost of the assessment.

If recommended in the sex offense-specific assessment, you must begin attending and participating in sex offender treatment consistent with the recommendations of the evaluation. You must follow the rules and regulations of that program. The probation officer, in conjunction with the treatment provider, will supervise your participation in the program (location, modality, duration, intensity, etc.). Furthermore, you must submit to clinical polygraph examinations, as directed by the probation officer and/or treatment provider. You may be required to pay a portion or all of the cost of the assessments and treatment.

You must not have direct contact with children under the age of 18 years without written approval of the treatment provider in conjunction with the probation officer. If you do have any direct contact with any child you know or reasonably should know to be under the age of 18 years, not including your own children, without the permission of the probation officer in conjunction with the treatment provider, you must report this contact to the probation officer within 24 hours. Direct contact includes written communication, in-person communication, or physical contact. Direct contact does not include incidental contact during ordinary daily activities in public places.

You must participate in an outpatient substance abuse treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program

(provider, location, modality, duration, intensity, etc.). You may be required to pay all, or a portion, of the costs of the program.

You must submit to substance abuse testing to determine if you have used a prohibited substance. Testing may include urine testing, the wearing of a sweat patch, a remote alcohol testing system, an alcohol monitoring technology program, and/or any form of prohibited substance screening or testing. You must not attempt to obstruct or tamper with the testing methods. You may be required to pay all, or a portion, of the costs of the testing.

You must submit to a search of your person, property, residence, vehicle, papers, computers (as defined in 18 U.S.C. 1030(e)(1)), other electronic communications or data storage devices or media, or office under your control. The probation officer may conduct a search under this condition only when reasonable suspicion exists, in a reasonable manner and at a reasonable time, for the purpose of detecting alcohol, drugs and any other illegal contraband . You must inform any residents or occupants that the premises may be subject to a search.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: **DERRICK IVAN JIM**
CASE NUMBER: **1:10CR02653-001JB**

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments.

☐ The Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

Totals:	Assessment	JVTA Assessment*	Fine	Restitution
	\$200.00	\$0	\$0	\$0

- ☐ The determination of the restitution is deferred until . *An Amended Judgment in a Criminal Case* will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

SCHEDULE OF PAYMENTS

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

A ☒ In full immediately; or

B ☐ \$ due immediately, balance due (see special instructions regarding payment of criminal monetary penalties).

Special instructions regarding the payment of criminal monetary penalties: Criminal monetary penalties are to be made payable by cashier's check, bank or postal money order to the U.S. District Court Clerk, 333 Lomas Blvd. NW, Albuquerque, New Mexico 87102 unless otherwise noted by the court. Payments must include defendant's name, current address, case number and type of payment.

The Court finds the Mandatory Restitution Act of 1996 is applicable in this case; however, no claim for restitution has been made by the victim(s) in this case. Therefore, none will be ordered.

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

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

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties; and (9) costs, including cost of prosecution and court costs.

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22