APPENDIX TO PETITION
FOR WRIT OF CERTIORARI

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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-13115
Non-Argument Calendar

D.C. Docket No. 1:18-cr-00287-WS-N-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GARNETT JAMES LLOYD, JR.,

Defendant-Appellant.

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

(April 2, 2020)

Before WILSON, LAGOA and MARCUS, Circuit Judges.

PER CURIAM:

Garnett James Lloyd, Jr. appeals following his conviction and sentence for one count of cyberstalking, in violation of 18 U.S.C. § 2261A(2)(B). His conviction

arose out of internet communications he'd begun with someone he believed to be 15 years old, and whom he had threatened with emailing pictures of her to her parents and people at her school to ruin her "good girl" image, unless she sent other requested photos. On appeal, he argues that: (1) the district court erred in requiring him to register as a sex offender pursuant to the Sex Offender Registration and Notification Act ("SORNA"),[1] because his offense was not a sex offense that required registration under SORNA, even though he recognizes that our en banc opinion in United States v. Dodge, 597 F.3d 1347 (11th Cir. 2010), forecloses his argument; (2) the district court imposed a procedurally unreasonable sentence because his offense was one continuous offense and the district court improperly added two points to his offense level for engaging in a pattern of activity involving stalking, threatening, harassing, or assaulting the same victim, under U.S.S.G § 2A6.2(b)(1)(E); and (3) his 60-month sentence is substantively unreasonable because it is double the high end of the guideline sentencing range and the district court failed to weigh certain factors. After thorough review, affirm.

"We review for abuse of discretion the imposition of a special condition of supervised release." United States v. Pilati, 627 F.3d 1360, 1365 (11th Cir. 2010). We review de novo the trial court's interpretation of a statute. Id. We generally review the sentence a district court imposes for "reasonableness," which "merely

[1] 34 U.S.C. § 20901, et seq.

asks whether the trial court abused its discretion." United States v. Pugh, 515 F.3d 1179, 1189 (11th Cir. 2008) (quotation omitted). "A district court abuses its discretion if it applies the incorrect legal standard." Dodge, 597 F.3d at 1350. When a defendant challenges the application of an enhancement under the Sentencing Guidelines, we review a district court's factual findings for clear error and its interpretation of the Sentencing Guidelines de novo. United States v. Perez, 366 F.3d 1178, 1181 (11th Cir. 2004). We will not find clear error unless our review of the record leaves us with the definite and firm conviction that a mistake has been committed. United States v. White, 335 F.3d 1314, 1319 (11th Cir. 2003). The district court must interpret the Guidelines and calculate the sentence correctly; an error in the district court's calculation of the advisory Guidelines range warrants vacating the sentence, unless the error is harmless. See United States v. Scott, 441 F.3d 1322, 1329-30 (11th Cir. 2006). A defendant's argument for a specific sentence will preserve a substantive unreasonableness claim on appeal. Holguin-Hernandez v. United States, 140 S. Ct. 762, 764 (2020).

Under our prior-panel-precedent rule, a panel of this Court is bound by a prior panel's decision until overruled by the Supreme Court or by this Court en banc. United States v. Steele, 147 F.3d 1316, 1317-18 (11th Cir. 1998). There is no exception to this rule based upon an overlooked reason or a perceived defect in the

prior panel's reasoning or analysis of the law in existence at the time. United States v. Kaley, 579 F.3d 1246, 1255, 1259-60 (11th Cir. 2009).

First, we are unpersuaded by Lloyd's claim that the district court erred in requiring him to register as a sex offender under SORNA. Under federal law it is unlawful for whoever with the intent to kill, injure, harass, or intimidate another person, uses the mail, any interactive computer service or electronic communication service or electronic communication system of interstate commerce, or any other facility of interstate or foreign commerce to engage in a course of conduct that causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to a person by placing that person in reasonable fear of death of, or serious bodily injury to that person. 18 U.S.C. § 2261A(2)(B).

The SORNA requires a "sex offender" to register and keep his registration current in each jurisdiction where he lives, works, or studies. 34 U.S.C. § 20913(a). "Sex offender" is defined under the Act as "an individual who was convicted of a sex offense." Id. § 20911(1). Barring two exceptions that are not relevant to this appeal, a "sex offense" is defined as follows:

> (i) a criminal offense that has an element involving a sexual act or sexual contact with another;
>
> (ii) a criminal offense that is a specified offense against a minor;
>
> (iii) a Federal offense (including an offense prosecuted under section 1152 or 1153 of Title 18) under section 1591, or chapter 109A, 110 (other than section 2257, 2257A, or 2258), or 117, of Title 18;

> (iv) a military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. 951 note); or
>
> (v) an attempt or conspiracy to commit an offense described in clauses (i) through (iv).

Id. § 20911(5)(A)(i)-(v) (emphasis added). The term "specified offense against a minor" means an offense against a minor that involves:

> (A) An offense (unless committed by a parent or guardian) involving kidnapping.
>
> (B) An offense (unless committed by a parent or guardian) involving false imprisonment.
>
> (C) Solicitation to engage in sexual conduct.
>
> (D) Use in a sexual performance.
>
> (E) Solicitation to practice prostitution.
>
> (F) Video voyeurism as described in section 1801 of Title 18.
>
> (G) Possession, production, or distribution of child pornography.
>
> (H) Criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct.
>
> (I) Any conduct that by its nature is a sex offense against a minor.

Id. § 20911(7)(A)-(I). The SORNA defines a "criminal offense" as "a State, local, tribal, foreign, or military offense . . . or other criminal offense." Id. § 20911(6).

In Dodge, our en banc Court set out to determine whether the defendant was a sex offender who was required to register as such for his conviction for knowingly

attempting to transfer obscene material to a minor. 597 F.3d at 1349. In order to do so, the Court had to determine whether the defendant's conviction was a "sex offense," and more specifically, whether it was a sex offense that was defined as a "criminal offense that is a specified offense against a minor," pursuant to 34 U.S.C. § 20911(5)(A)(ii). Id. at 1351.

Our Court, sitting en banc in Dodge, began by rejecting the defendant's narrow reading of the SORNA and concluded that "[n]othing in the plain language of the statute suggests that other criminal offense' of [§ 20911(6)] cannot encompass federal offenses not specifically enumerated in [§ 20911(5)(A)(iii)]." Id. at 1352. It added that "Congress did not intend [§ 20911(5)(A)(iii)] to constitute an exclusive list of federal crimes requiring SORNA registration." Id. As for whether the defendant's conviction was a "specified offense against a minor," the Court reasoned that the answer to this question depended on "whether SORNA requires a 'categorical' approach that restricts our analysis to the elements of the crime, or whether SORNA permits examination of 'the particular facts disclosed by the record of conviction.'" Id. at 1353 (quotations omitted). The en banc Court relied on Ninth Circuit reasoning to conclude that the definitions at § 20911(5)(A)(ii) and § 20911(7) do not require the categorical approach, but, instead, "permits examination of the defendant's underlying conduct -- and not just the elements of the conviction statute -- in determining what constitutes a 'specified offense against a minor.'" Id. at 1353-

55. Applying this approach, the en banc Court once again agreed with the Ninth Circuit that § 20911(5)(A)(ii) included a catchall category -- "any conduct that by its nature is a sex offense against a minor" -- and that, because the defendant's conduct paralleled an "undoubtedly registerable offense," his offense fell within the "specified offense against a minor" category. Id. at 1356.

Here, the district court did not abuse its discretion by requiring Lloyd to register as a sex offender pursuant to SORNA. Lloyd's argument hinges on his claim that our en banc decision in Dodge was wrongly decided and that it overlooked certain aspects of the relevant statute and relevant Attorney General guidelines when determining to apply the conduct-based approach to the definitions of § 20911(5)(A)(ii) and § 20911(7). However, a panel of this Court is not at liberty to disregard Dodge; our prior-panel-precedent rule requires us to abide by Dodge until overruled by the Supreme Court or by this Court en banc. There is no exception to this rule based upon an overlooked reason or a perceived defect in the prior decision's reasoning or analysis of the law in existence at the time. Accordingly, we affirm as to this issue.

We also find no merit to Lloyd's claim that the district court imposed an unreasonable sentence. In reviewing sentences for reasonableness, we perform two steps. Pugh, 515 F.3d at 1190. First, we "'ensure that the district court committed no significant procedural error, such as failing to calculate (or improperly

calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence -- including an explanation for any deviation from the Guidelines range.'" Id. (quoting Gall v. United States, 552 U.S. 38, 51 (2007)).[2] The district court need not explicitly say that it considered the § 3553(a) factors, as long as the court's comments show it considered them when imposing sentence. United States v. Dorman, 488 F.3d 936, 944 (11th Cir. 2007).

If we conclude that the district court did not procedurally err, we consider the "substantive reasonableness of the sentence imposed under an abuse-of-discretion standard," based on the "totality of the circumstances." Pugh, 515 F.3d at 1190 (quotation omitted). We may vacate a sentence only if we are left with the definite and firm conviction that the district court committed a clear error of judgment in weighing the § 3553(a) factors to arrive at an unreasonable sentence based on the facts of the case. United States v. Irey, 612 F.3d 1160, 1190 (11th Cir. 2010) (en banc). "[W]e will not second guess the weight (or lack thereof) that the [court] accorded to a given [§ 3553(a)] factor ... as long as the sentence ultimately imposed

[2] The § 3553(a) factors include: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need for the sentence imposed to afford adequate deterrence; (4) the need to protect the public; (5) the need to provide the defendant with educational or vocational training or medical care; (6) the kinds of sentences available; (7) the Sentencing Guidelines range; (8) the pertinent policy statements of the Sentencing Commission; (9) the need to avoid unwanted sentencing disparities; and (10) the need to provide restitution to victims. 18 U.S.C. § 3553(a).

is reasonable in light of all the circumstances presented." United States v. Snipes, 611 F.3d 855, 872 (11th Cir. 2010) (quotation, alteration and emphasis omitted). The district court may base its findings of fact on, among other things, undisputed statements in the PSI or evidence presented at the sentencing hearing. United States v. Smith, 480 F.3d 1277, 1281 (11th Cir. 2007). However, a court may abuse its discretion if it (1) fails to consider relevant factors that are due significant weight, (2) gives an improper or irrelevant factor significant weight, or (3) commits a clear error of judgment by balancing a proper factor unreasonably. Irey, 612 F.3d at 1189.

Where the district court has chosen to vary upward, we must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance. Id. at 1196. The district court can rely on factors already considered in calculating the guideline range when imposing a variance. See United States v. Amedeo, 487 F.3d 823, 833-34 (11th Cir. 2007). We may not presume that a sentence outside the guideline range is unreasonable and must give due deference to the district court that the § 3553(a) factors, on a whole, justify the extent of the variance. United States v. Rosales-Bruno, 789 F.3d 1249, 1254-55 (11th Cir. 2015). The party challenging the sentence bears the burden to show it is unreasonable. United States v. Tome, 611 F.3d 1371, 1378 (11th Cir. 2010).

The guidelines provide that a two-level increase to an offense level calculation for a stalking offense is warranted when the offense involved "a pattern of activity

involving stalking, threatening, harassing, or assaulting the same victim." U.S.S.G. § 2A6.2(b)(1)(E). The commentary to the Guidelines provides that:

> Pattern of activity involving stalking, threatening, harassing, or assaulting the same victim means any combination of two or more separate instances of stalking, threatening, harassing, or assaulting the same victim whether or not such conduct resulted in a conviction. For example, a single instance of stalking accompanied by a separate instance of threatening, harassing, or assault the same victim constitutes a pattern of activity for purposes of this guideline.

U.S.S.G. § 2A6.2, cmt. (n. (1)). Moreover,

> [i]n determining whether subsection (b)(1)(E) applies, the court shall consider, under the totality of the circumstances, any conduct that occurred prior to or during the offense; however, conduct that occurred prior to the offense must be substantially and directly connected to the offense. For example, if a defendant engaged in several acts of stalking the same victim over a period of years (including acts that occurred prior to the offense), then for purposes of determining whether subsection (b)(1)(E) applies, the court shall look to the totality of the circumstances, considering only those prior acts of stalking the victim that have a substantial and direct connection to the offense.

Id. § 2A6.2, cmt. (n. (3)). The guidelines also provide that, if an enhancement under § 2A6.2(b)(1) "does not adequately reflect the extent or seriousness of the conduct involved, an upward departure may be warranted." Id. § 2A6.2, cmt. (n. (5)).

As for procedural unreasonableness, the court did not clearly err in finding that Lloyd had engaged in a pattern of activity involving stalking, threatening, harassing, or assaulting the same victim, and thus, warranted adding two points to his offense level under § 2A6.2(b)(1)(E). As the record reflects, on two separate occasions, Lloyd threatened to ruin his victim's "good girl reputation" by sharing

photos that he had received with her friends and parents, unless he received topless pictures of the victim. Threats like these are sufficient to warrant the application of § 2A6.2(b)(1)(E). But even if the district court erred in applying § 2A6.2(b)(1)(E), any error was harmless. As the court explained, the guideline sentencing range -- even with the application of § 2A6.2(b)(1)(E) -- did not adequately reflect Lloyd's criminal history and Lloyd's offense, which the court concluded was more than mere cyberstalking. Thus, the district court made clear that the above-guideline statutory maximum sentence it imposed was based on the sentencing factors, not the guidelines, that Lloyd had committed a serious offense that did not fully capture his conduct, and that the guidelines did not fully account for his criminal conduct. On this record, even if the district court somehow erred in applying § 2A6.2(b)(1)(E), any error was harmless.

Nor has Lloyd shown that his sentence is substantively unreasonable. In concluding that a 60-month statutory-maximum sentence was fair and reasonable and sufficient but not more than necessary to satisfy the sentencing objectives, the district court specifically weighed the fact that Lloyd had a family and was able to produce income and support himself in a productive way. Nonetheless, the court determined that these factors were outweighed by others in the record. These included Lloyd's prior convictions, which were not accounted for by the guidelines and included a misdemeanor sexual battery charge, a sexual battery charge, and

breaking and entering into a sorority house. They also included the severity of the instant offense -- which the district court determined rose to the level of "a sexual and predatory nature that [was] both dangerous and concerning" -- as well as the impact his offense had on the victims. The district court's weighing of all of these factors was well within its discretion. Accordingly, we affirm.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA, Plaintiff,	*	18-cr-287
	*	August 6, 2019
vs.	*	Mobile, Alabama
	*	9:35 a.m.
GARNETT JAMES LLOYD, JR., Defendant.	*	

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TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE WILLIAM H. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

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Proceedings recorded by OFFICIAL COURT REPORTER, Qualified pursuant to 28 U.S.C. 753(a) & Guide to Judiciary Policies and Procedures Vol. VI, Chapter III, D.2. Transcript produced by computerized stenotype.

Ms. O'Bannon argues that he is not required to register under the laws of the State of Alabama. That may be. What we're asking is that he be required to register under the laws of whatever state -- he's not a citizen of Alabama. He travels internationally. He travels nationwide. If he's not required under certain state laws to register, then he certainly will not be penalized for that under the -- under his terms of supervised release. But we believe that the Court should order that he be required to follow the laws of the state and register as a sex offender.

THE COURT: All right. Anything further, Ms. O'Bannon, you want to present at this time?

MS. O'BANNON: Your Honor, nothing further.

We would just like to note for the record the Government mentioned that Mr. Lloyd has three sexual battery convictions, one being a felony, and that's not true. Your Honor, his record doesn't reflect a felony for sexual battery. There are sexual battery convictions but they are misdemeanors.

THE COURT: All right. Well, the Part B of the presentence investigation speaks for itself. The information is contained in the report. I will address that during the course of my pronouncement of sentence in this case.

Mr. Lloyd, I have considered all of the information available to me, that which is contained in the presentence

report. I have considered the information that's been presented to me by your counsel in the motions that have been filed in this case. I have considered the letters that have been filed on your behalf. I have three that I have considered in this case, including your own.

10:13:41

I consider the information that I've heard in court here today, your own presentation, the presentation of the attorneys in this case, and the presentation by the family.

And let me say that I am grateful to have the family here today. And I appreciate what you've had to say to me today. And I certainly will take that into account as I pronounce sentencing in this case. Thank you so much for being here.

10:13:56

So there is a lot of information that I consider. And I'm required to consider a lot of information because there is a statute that was passed by Congress that governs sentencing in a criminal case in federal court. It is Section 3553(a) of Title 18, and it requires that I consider a number of sentencing factors and sentencing objectives. And they're all outlined in the statute. And I will say that I am quite familiar with that statute, having done that for a period of time, and I have considered each and every one of the sentencing factors and objectives, some of which I will refer to specifically today.

10:14:09

10:14:27

In almost every case in which I sentence somebody, I

10:14:43

start with the nature of the offense. And I don't think it's lost on anybody in this courtroom that what you did was serious. You've admitted as much in your guilty plea. You've admitted as much in your letter that you wrote to me. This is a serious offense.

10:14:59

You know, the title of the crime for which you've been convicted perhaps doesn't capture the complete misconduct that is captured otherwise in the presentation in the presentence report as well as what I've heard today.

10:15:19

Cyberstalking by itself doesn't tell anybody much of anything. It doesn't really mean much. And perhaps that's a flaw in the statute. I don't know. That's up to Congress to make a determination.

So what I have to do is look at the facts behind the offense for which you've been convicted. And when I do that -- and, again, I start with the nature of the offense -- I find something that's quite serious in this case. And, again, I don't think it's lost on anybody. The facts of this case evince misconduct that comes up to a level, in my opinion, of a sexual and predatory nature that is both dangerous and concerning.

10:15:36

10:15:56

And if you follow the facts as they're outlined in the presentence report, this is conduct that just kept escalating over a period of days through the -- through your actions and through your communications to what you believed

10:16:22

was a 15-year-old girl.

The conduct, misconduct was threatening and manipulative. It turned to a darker side and became conduct which was designed to be dominating and also evolved into a 10:16:51 blackmail situation in which the threats were to release provocative pictures and information to individuals which would harm the victim and hopefully compel her to produce photographs or pictures to you of a much more serious sexual nature.

10:17:15 So the facts of this case, as outlined in the presentence report, are serious. They are severe. And they indicate to me misconduct at a level, as I said, that is not captured by the name of the offense. I have to consider that. That's part of what I do. That's what I'm required to 10:17:37 do in following the statute that I referenced.

I also have to consider your personal history and characteristics. And when I do so, I've got kind of a combination of things. I've got an individual who has a family, who has the ability to produce income in what appears 10:17:57 it be a good and productive way to support yourself, to support your family. And then, on the other hand, your personal history and characteristics indicate a much darker side, a side that the darkness of which has been chronicled in your criminal history over a period of time. And I am 10:18:20 required to consider that.

Even though your criminal history presents and produces no criminal history points because of the age of the offense, it still is something that I have to consider and must consider because the nature of your criminal history and activity is, given the circumstances of this case, relevant.

10:18:38

And it's all outlined in the presentence report that has been referenced here. And starting at Paragraph 44, conviction in August of 1996 for misdemeanor sexual battery in Virginia; in September of 1996, a conviction of assault; in January of 1997, a conviction for assault, again, in Virginia; in November of 1998, conviction of sexual battery in Virginia.

10:19:08

And then in March of 2000, conviction for breaking and entering with intent to commit a felony, again, in Virginia. And the facts are outlined in the presentence report which show a breaking and entering or burglary of a sorority house in which the actual breaking was by force. And that's a crime for which you were convicted, received a sentence of 15 years split to four years to serve with eight years of probation. You were released from custody on -- in June of 2007. And it indicates suspension. Supervision was completed at that time.

10:19:29

10:19:55

And then also December of 1999, another burglary conviction in which you were sentenced for some period of time. And then January of 2000, a conviction for profane,

10:20:23

threatening language over the public airway in Virginia again.

The Government has also produced information of uncharged conduct which has been outlined in the presentence report and referred to by the Government, Paragraphs 53 and 54, indicating serious misconduct of a sexual nature, including touching -- sexual touching and including conduct eerily similar to the conduct for which you stand convicted in this court.

And then the incident in Germany which has been described as suspicion of sexual assault which the charges were dismissed upon payment of, as I understand it from the paperwork, 500 euros to the victim in the case.

That's the personal history and characteristics that I have to consider in this case.

Then I have to consider the -- a number of factors, other factors in the case, whether -- the nature of the conduct, whether it was extreme, whether there are aggravating circumstances. And, again, I find that there are aggravating circumstances underlying the conviction in this case which was the attempted sexual exploitation of a minor.

I have to impose a sentence that reflects the seriousness of the offense; it promotes respect for law; and provides just punishment for the offense. I have to impose a sentence that is designed to protect the public from further

of your crimes. And I have to consider other aggravating circumstances such as your history of violence and sexual misconduct some of which, as indicated, has not been charged yet. I don't know whether it will or not.

10:22:18 And then I have to consider the totality of all of that information in developing and composing a sentence that is reasonable; that is fair; that is sufficient but not more than necessary to accomplish the sentencing objectives set forth in the statute.

10:22:36 And by law, I'm also obligated to consider the sentencing guidelines. And I have to make a determination as to whether a sentence within the guidelines will satisfy the sentencing objectives.

I have to tell you, when I think about all that, 10:22:57 what comes to me is actions have consequences. Your actions have consequences not only to you, which you're going to find out about here this morning, but also to other individuals, some of which have testified here in court today and have been quite helpful to me.

10:23:13 Sometimes we don't -- in federal court, we don't have a lot of victims. Most of our crimes are gun charges and drug charges, and it's hard to find a victim in any of those cases. So it's hard to say that in a concrete way that the defendant's crimes -- the defendant's actions have 10:23:34 consequences because we don't see victims.

In this case, we've got a victim and we've got more than one victim. And you see how the ripple effect occurs when these types of crimes are committed. It ripples out not only to the one individual who may have received your phone
10:23:50 call but to the family members and the friends and the teachers and coaches and that kind of thing. And so you start to see how these consequences start affecting people, and it makes a difference. It's something that has to be considered. And I do consider it.

10:24:07 So when I consider the totality of the circumstances in this case, when I take my obligations under Section 3553(a) to impose a sentence that is fair and reasonable, sufficient but not more than necessary, it is the judgment of this Court that a sentence at the statutory maximum in this
10:24:28 case is the sentence that must be imposed. And I have no reservations to impose that sentence because I find that that's the sentence that will satisfy the sentencing objectives, as I have outlined in my presentation today.

Accordingly and pursuant to the Sentencing Reform
10:24:51 Act of 1984, it is the judgment of this Court that you are hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 60 months as to Count One.

Upon release from imprisonment, you shall be placed
10:25:04 on supervised release for a term of three years as to Count

One.

Within 72 hours of release from the custody of the Bureau of Prisons, you are to report in person to the probation office in the district to which you are released.

10:25:17 While on supervised release, you shall not commit any federal, state, or local crimes; you shall be prohibited from possessing a firearm or other dangerous device; and shall not possess a controlled substance. In addition, you shall comply with the standard conditions of supervised

10:25:31 release as recommended by the sentencing commission and on record with this court.

Let me see Liz just a minute.

(Discussion off the record.)

THE COURT: Mr. Lloyd, in the course of your

10:26:15 presentation to me and also in your letter, you indicated that you wanted to receive the tools that would help you to adjust your -- the way you think about yourself and others so that you can move forward with your life.

I'm going to recommend as part of my sentencing

10:26:31 that, if available, you be incarcerated in an institution where you can receive in-depth sexual treatment. And it's voluntary. It will be up to you to decide whether you want to receive that treatment or not. It will -- it's only my recommendation that you be incarcerated at such an

10:26:52 institution.

I also order that you comply with the following special conditions of supervised release as referenced in Part F of the presentence report; that is, that you undergo urine surveillance; drug and/or alcohol treatment; any mental health evaluation and recommended treatment; that you submit to the model search condition; that you receive sex offender treatment; and computer restriction as referenced in Part F; examinations of any internet-capable device; that you cooperate with the U.S. Probation Office computer monitoring program; and, over your counsel's objection, I'm going to order as part of your supervised release that you be subjected to sex offender registration.

And I find, for the reasons also stated by the Government in its presentation, that your conduct in this case constituted an attempted production of child pornography. And it is a specified offense under 34 USC Section 20911(7)(G), to include an attempt to possess child pornography. So I think the sex offender registration provision applies in your case. And the objection to that is overruled and will be imposed as part of the condition -- a condition of supervised release.

The Court finds that you do not have the ability to pay a fine; therefore, no fine is imposed.

For the reasons given, the Court finds that the sentence imposed addresses the seriousness of the offense and

the sentencing objectives of punishment, deterrence, and incapacitation.

It's ordered that you pay a special assessment in the amount of $100 on Count One, which is due immediately.

10:28:42 You can appeal your conviction if you believe that your guilty plea was somehow unlawful or involuntary or if there's some other fundamental defect in the proceedings not waived by your guilty plea. You have the right to apply for leave to appeal in forma pauperis, and the clerk of court

10:28:56 will prepare and file notice of appeal upon your request. With few exceptions, any notice of appeal must be filed within 14 days of the date of judgment.

Is there anything further from the United States at this time?

10:29:07 MS. MURPHY: Your Honor, would the Court consider as another reason for the sex offender registration that the Court considered the factual approach to determining it and considered that the facts that this Court said were sexual and predatory offense against a minor and, therefore, fit in

10:29:27 under the discussion of *Dodge*?

THE COURT: Yeah. I made reference to the position that you took on that matter in my statement. But --

MS. MURPHY: Thank you, Your Honor.

THE COURT: -- that's a little more specific than

10:29:37 what I said. I will certainly adopt that as part of my

reasons for the sex offender registration.

Anything further from the Government?

MS. MURPHY: No, sir.

THE COURT: From probation, anything further?

10:29:46 PROBATION OFFICER: No, sir.

THE COURT: Ms. O'Bannon, any objections or other matters we need to put on the record at this time?

MS. O'BANNON: Your Honor, we would ask the Court to consider recommending that he be kept in a facility near his

10:29:58 hometown of Morganton, North Carolina.

And we do respectfully object to the guidelines calculation and the above-guideline sentence and sex offender registration.

THE COURT: All right. I'll make the recommendation

10:30:13 he be incarcerated as close to his residence as possible. I don't know what facilities are available there, but that will be up to the Bureau of Prisons to make that determination.

And the objection -- other objections are noted.

Anything further?

10:30:27 MS. O'BANNON: No, Your Honor. Thank you.

THE COURT: If there's nothing further, we stand adjourned. That's all. Thank you.

(The Proceedings were concluded at approximately 10:30 a.m. on August 6, 2019.)

C E R T I F I C A T E

I, the undersigned, hereby certify that the foregoing pages contain a true and correct transcript of the aforementioned proceedings as is hereinabove set out, as the same was taken down by me in stenotype and later transcribed utilizing computer-aided transcription.

This is the 28th day of August of 2019.

Cheryl K Powell

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