

No. 20-\_\_\_\_\_

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IN THE  
**SUPREME COURT OF THE UNITED STATES**

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MARK PHILLIP CARTER, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

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**APPENDIX**

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United States Court of Appeals  
For the Eighth Circuit

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No. 19-1153

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United States of America

*Plaintiff - Appellee*

v.

Mark Phillip Carter, II

*Defendant - Appellant*

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Human Trafficking Institute

*Amicus on Behalf of Appellee(s)*

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No. 19-1172

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United States of America

*Plaintiff - Appellee*

v.

Breeanna Lynae Brown, also known as BB

*Defendant - Appellant*

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Human Trafficking Institute

*Amicus on Behalf of Appellee(s)*

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No. 19-1177

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United States of America

*Plaintiff - Appellee*

v.

Sarina Ann Williams

*Defendant - Appellant*

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Human Trafficking Institute

*Amicus on Behalf of Appellee(s)*

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No. 19-1344

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United States of America

*Plaintiff - Appellee*

v.

Ronzell Montez Williams, also known as LV

*Defendant - Appellant*

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Human Trafficking Institute

*Amicus on Behalf of Appellee(s)*

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No. 19-1345

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United States of America

*Plaintiff - Appellee*

v.

Darren O. Coleman, also known as DC

*Defendant - Appellant*

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Human Trafficking Institute

*Amicus on Behalf of Appellee(s)*

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Appeals from United States District Court  
for the Southern District of Iowa - Des Moines

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Submitted: March 12, 2020

Filed: May 29, 2020

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Before ERICKSON, GRASZ, and KOBES, Circuit Judges.

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KOBES, Circuit Judge.

This case involves five defendants: Mark Philip Carter II, Darren O. Coleman, Sarina Ann Williams, Ronzell Montez Williams, and Breeanna Lynae Brown. All were members of a prostitution and sex trafficking conspiracy based in Iowa. Each pleaded guilty to at least one charged offense, and all appeal their sentences. We affirm.

## I.

Carter was charged with several counts related to conspiracy to engage in sex trafficking and prostitution of five victims. He pleaded guilty to sex trafficking children. 18 U.S.C. § 1591(a)(1) & (b)(2). Coleman was charged with several counts relating to conspiracy to engage in sex trafficking and prostitution of two victims. He pleaded guilty to assisting an individual to engage in prostitution, 18 U.S.C. § 2422(a), and to coercing and enticing an individual to engage in prostitution, 18 U.S.C. § 1591(a)(1), (a)(2), & (b)(1).

Prior to sentencing, both Carter and Coleman filed extensive objections to their presentence investigation reports. Carter argued that his PSR contained information about counts dismissed as part of his plea agreement and wrongly increased his offense level for “unduly influenc[ing] a minor to engage in prohibited sexual conduct,” U.S.S.G. § 2G1.3(b)(2)(B), and for “the commission of a sex act or sexual contact,” U.S.S.G. § 2G1.3(b)(4)(A). Coleman claimed that his Guidelines range was improperly enhanced by additional victims when he had not pleaded guilty to conduct involving those victims. The district court<sup>1</sup> overruled these objections and made factual findings before imposing their sentences. Carter and Coleman were sentenced to 175 and 300 months in prison, respectively.

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<sup>1</sup> The Honorable John A. Jarvey, Chief Judge, United States District Court for the Southern District of Iowa.

Sarina pleaded guilty as charged to interstate transportation of an individual to engage in prostitution, 18 U.S.C. § 2421, and conspiracy to engage in sex trafficking by force, fraud, or coercion, 18 U.S.C. § 1594(c). The indictment described the conspiracy as one “to cause ‘Victim 4’ to engage in a commercial sex act, in violation of 18 U.S.C. § 1591(a)(1), (a)(2) & (b)(1).”

Ronzell and Brown also pleaded guilty to charges under § 1594(c), and the indictment described their offenses in the same way as Sarina’s except they conspired to traffic a different victim. Based on the conspiracy charges, the district court set a base offense level of 34 for all three defendants. The district court sentenced Sarina to 135 months in prison, Ronzell to 36 months, and Brown to 50 months. Each was sentenced below their Guidelines range—Ronzell and Brown significantly so.

## II.

Carter and Coleman both argue that the district court erred when applying enhancements to their offense levels. We review the district court’s construction and application of the Guidelines *de novo* and its factual findings for clear error. *United States v. Cordy*, 560 F.3d 808, 817 (8th Cir. 2009).

### A.

Carter argues that the district court erred when it applied an enhancement for exerting “undue influence” over Minor Victim A. *See* U.S.S.G. § 2G1.3(b)(2)(B). Whether a defendant unduly influenced a victim is a factual question subject to clear error review. *See United States v. Hagen*, 641 F.3d 268, 270 (8th Cir. 2011). The key question is “whether a participant’s influence over the minor compromised the voluntariness of the minor’s behavior.” U.S.S.G. § 2G1.3(b)(2)(B) cmt. 3(B).

At sentencing, the evidence showed Carter had physically abused Minor Victim A. In one instance, he told her to get out of his car and then drove away while she

was still getting out, hurting her and causing her to fall. Carter's co-defendant proffered that he saw Carter hit Minor Victim A. Another victim reported seeing pictures of Minor Victim A's face when her "eye was black, literally, like black, it was swollen shut; her nose was bleeding" as a result of an altercation with Carter. Carter also emotionally abused Minor Victim A. He would get angry with her when she wouldn't "go on a date" he had arranged. Based on this evidence and given that Carter was nine years older than Minor Victim A, the district court did not clearly err when it found that Carter unduly influenced her and compromised the voluntariness of her behavior.

## B.

Carter next argues that the district court erred by applying the enhancement for an offense involving "the commission of a sex act or sexual contact." *See* U.S.S.G. § 2G1.3(b)(4)(A). The Guidelines authorize a two-level increase if "the offense involved the commission of a sex act or sexual contact," *id.*, or if the offense was not one under 18 U.S.C. § 1591(b) and "involved a commercial sex act," U.S.S.G. § 2G1.3(b)(4)(B). Carter does not dispute that sex acts occurred. Rather, he makes the purely legal argument that the enhancement should not apply because his offense under § 1591(b)(1) involved *commercial* sex acts, which he views as only enhancing convictions under different statutes. Any other reading, he argues, would reduce the special rule for commercial sex acts to "mere surplusage."

We disagree. Section 2G1.3(b)(4)(A) imposes a two-level increase for any offense to which § 2G1.3 applies that "involved the commission of a sex act or sexual contact." Because Carter's offense falls under § 2G1.3 and involved the commission of a sex act, the enhancement applies. This reading does not render § 2G1.3(b)(4)(B) "mere surplusage." Where (b)(4)(A) applies to offenses that "*involved the commission of* a sex act or sexual contact," (b)(4)(B) applies only to offenses other than those under § 1591(b) but is triggered wherever the offense "*involved* a commercial sex act." Because it does not require "the commission of" a commercial sex act, the

(b)(4)(B) enhancement may be applied, for example, in a case where someone attempts to coerce a minor into committing a commercial sex act, but no sex act ultimately occurs. *See 18 U.S.C. § 2422(b)* (prohibiting, subject to jurisdictional elements, coercion of minors to engage in criminal sexual activities). The district court properly applied the enhancement here.

C.

Both Carter and Coleman challenge their enhancements for promoting commercial sex acts with additional victims (Victims 1 and 2 in Carter’s case, Victims 5 through 9 in Coleman’s). They argue that because they did not plead guilty to any charges involving those additional victims and because they objected to the facts related to those victims in their PSRs, it was inappropriate for the district court to consider those victims at sentencing.

Both U.S.S.G. § 2G1.3(d), which applies to Carter, and § 2G1.1(d), which applies to Coleman, prescribe how to account for additional victims. Under these provisions, where the “relevant conduct of an offense of conviction” includes promoting a commercial sex act with respect to additional individuals, whether or not those individuals are referenced in the count of conviction, each victim is treated as though they were represented by a separate count.” U.S.S.G. §§ 2G1.1 cmt. 5, 2G1.3 cmt. 6. “Relevant conduct” includes “all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant . . . that occurred during the commission of the offense of conviction.” U.S.S.G. § 1B1.3(a)(1)(A).

Coleman’s additional victims are relevant conduct under this definition. Although the charges relating to these victims were dismissed, they still may be considered to enhance Coleman’s sentence. *See United States v. Williams*, 879 F.2d 454, 457 (8th Cir. 1989). The broad language in § 1B1.3 “indicates the Sentencing Commission’s intent to give courts the discretion to consider a broad range of

conduct in making adjustments,” and so we have declined to infer a limitation precluding courts from considering conduct related to dismissed counts. *Id.*

The claim that Coleman’s enhancement lacked supporting factual findings also fails. The district court made the findings necessary to apply the enhancements to Coleman and, to the extent that he argues that his plea agreement forbids the attribution of additional victims, he is mistaken. Coleman’s plea agreement left the Government free to “make whatever comment and evidentiary offer [it] deem[s] appropriate at the time of sentencing,” notwithstanding the dismissal of the counts directly related to these victims.

All of the above would apply equally to Carter, but for one important difference between the Guidelines provisions at issue. Section 2G1.3(d), unlike § 2G1.1(d), specifies that the additional victims used to enhance a sentence under that section must be minors, and Carter’s were not. Carter therefore argues that his sentence should not have been enhanced under § 2G1.3(d). Carter first identified this issue in his reply brief and so we can decline to consider it. *United States v. Head*, 340 F.3d 628, 630 n.4 (8th Cir. 2003). We do so here, because it is clear from the record that the district court would have given Carter the same sentence regardless of his Guidelines recommendation.

### III.

Coleman makes two arguments that we cannot consider on appeal. First, he argues that the district court should not have followed U.S.S.G. § 2G1.1(a)(1) to apply a base offense level of 34 to his conviction for coercing an individual to engage in prostitution. In his view, this provision sets up an excessive disparity not based on empirical data between the base level for offenses under 18 U.S.C. § 1591(b)(1) and those under all other statutes.

We do not consider policy arguments about the Guidelines on appeal. *United States v. Riehl*, 779 F.3d 776, 778 (8th Cir. 2015) (per curiam). District courts are free to vary from the Guidelines based on them, but it is not an abuse of discretion for a district court to decline to do so. *United States v. Sharkey*, 895 F.3d 1077, 1082 (8th Cir. 2018).

Second, Coleman argues that the district court erred when it denied his motion for a downward departure for overrepresented criminal history under U.S.S.G. § 4A1.3(b)(1). We do not have authority to review that decision because the district court recognized it had the power to depart downward and Coleman does not argue it had an unconstitutional motive for failing to do so. *United States v. Woods*, 596 F.3d 445, 449 (8th Cir. 2010).

#### IV.

Finally, both Coleman and Carter argue the district court committed procedural error at sentencing and their sentences were substantively unreasonable. We first assess whether the district court committed significant procedural error. *United States v. Williams*, 624 F.3d 889, 896 (8th Cir. 2010). If we find none, we review the substantive reasonableness of the sentences, applying a deferential abuse of discretion standard. *United States v. Stoner*, 795 F.3d 883, 884 (8th Cir. 2015).

Both Coleman and Carter argue the district court procedurally erred by relying but never ruling on objected to facts in their PSRs. *See United States v. Feemster*, 572 F.3d 455, 461 (8th Cir. 2009) (en banc) (A district court commits procedural error if it sentences “based on clearly erroneous facts.”). Nothing in the record supports this argument. The district court made factual findings at Carter’s sentencing that supported its conclusion that he behaved in a “depraved” way and that society needed protection from him. Carter has failed to identify any moment during his sentencing when the district court relied on still-disputed facts. *See* Carter Sent. Tr. 33. The record is even clearer in Coleman’s case. The district court overruled all

his objections to the PSR and found that it was “factually accurate as to all material matters” and sentenced him based on that finding. Coleman Sent. Tr. 87–88.

Coleman claims that his sentence is substantively unreasonable because the district court failed to account for his history and characteristics and considered his co-defendants’ actions in setting his sentence.<sup>2</sup> A sentence may be substantively unreasonable if a district court fails to consider a relevant factor that deserves significant weight, gives significant weight to an inappropriate factor, or commits a clear error of judgment in weighing the appropriate factors. *Stoner*, 795 F.3d at 884. Again, Coleman’s argument finds no support in the record. In fact, the court considered each § 3553(a) factor, specifically mentioned Coleman’s criminal history, and grappled with the “astounding depravity” of Coleman’s conduct. We also note that Coleman’s sentence is below his Guidelines range. It is “nearly inconceivable” that it could be substantively unreasonable. *United States v. Lazarski*, 560 F.3d 731, 733 (8th Cir. 2009).

## V.

Sarina, Ronzell, and Brown all object to the base offense level of 34 for their convictions for conspiracy to engage in sex trafficking by force, fraud, or coercion, in violation of 18 U.S.C. § 1594(c). We review the proper construction of the Guidelines *de novo*. *Cordy*, 560 F.3d at 817.

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<sup>2</sup> Carter also claims that his sentence is substantively unreasonable, Carter Br. 30, but for support he primarily rehashes his argument that the district court wrongly considered objected-to portions of his PSR. He also claims his sentence was substantively unreasonable because the district court failed to explain its sentence in a way that would facilitate our review. *Id.* at 34–35. This is really a claim of procedural error, *see Feemster*, 572 F.3d at 463, and in any case the district court provided an adequate explanation of its reasons.

Conspiracies punished under § 1594(c) are not covered by a specific offense Guideline, so we begin with the catch-all provision at U.S.S.G. § 2X1.1. Section 2X1.1(a) sets the base offense level for a conspiracy conviction not covered by a specific Guideline as the “base offense level from the guideline for the [underlying] substantive offense.” The indictment lists the underlying substantive offense for all three of these defendants as 18 U.S.C. § 1591(a)(1), (a)(2), & (b)(1). For those offenses, we refer to § 2G1.1, which prescribes a base offense level of 34 “if the offense of conviction is 18 U.S.C. § 1591(b)(1)” and 14 if “otherwise.” Because the underlying substantive offense for all three defendants is § 1591(b)(1) and the applicable Guidelines provision (§ 2X1.1) directs that we treat these defendants as though they were convicted under § 1591(b)(1), we conclude the district court correctly assigned all three of these defendants base offense levels of 34. *See United States v. Sims*, 957 F.3d 362, 363 (3d Cir. 2020) (following the same steps to reach a base offense level of 34).

The defendants suggest otherwise. Noting that § 2G1.1 directs that the base offense level for any convictions other than those under § 1591(b)(1) should be 14, they argue they should have received the lower base offense level for their convictions under § 1594(c). This argument only works if we read § 2G1.1 in isolation, but we cannot do that. Section 2G1.1 is not the applicable Guideline for convictions under § 1594(c). We only get there through § 2X1.1, so we must read § 2G1.1 in light of § 2X1.1. Even if that were not the case, the specific guidance from § 2X1.1 comports with the general rule that “[u]nless otherwise specified, an express direction to apply a particular factor only if the defendant was convicted of a particular statute includes the determination of the offense level where the defendant was convicted of conspiracy . . . in respect to that particular statute.” U.S.S.G. § 1B1.3, cmt. 7. Following both general interpretive principles for the Guidelines and the specific provisions at issue here, the district court assigned the correct base offense levels.

The defendants rely on *United States v. Wei Lin*, 841 F.3d 823 (9th Cir. 2016) to support their reading of § 2G1.1. In *Wei Lin*, the Ninth Circuit held that the base offense level of 34 applied only in cases where defendants were subject to the statutory 15-year mandatory minimum sentence described in § 1591(b)(1). *Id.* at 826. Because conspiracies under § 1594(c) are not subject to those minimums, the *Wei Lin* rule prevents any conspiracy conviction from receiving a base offense level of 34.

We do not believe *Wei Lin* should govern our decision here. *See Sims*, 957 F.3d at 364 (noting that applying *Wei Lin* “lead[s] to absurd results”). The Ninth Circuit arrived at its rule based on what it believed was “most likely what the Sentencing Commission intended.” *Id.* at 827. Because the base offense level of 34 in § 2G1.1(a)(1) was created in response to Congress adding the 15-year mandatory minimum for trafficking victims under 14 years old, the *Wei Lin* court concluded that “the Commission likely intended § 2G1.1(a)(1) to apply only when the defendant received a fifteen-year mandatory minimum sentence.” *Id.* Compelling as this history might be, “[w]hen construing the Guidelines, we look first to the plain language, and where that is unambiguous we need look no further.” *United States v. Bah*, 439 F.3d 423, 427 (8th Cir. 2006). And here, where the applicable Guidelines provision directs us to apply the provisions of § 2G1.1(a)(1) as though these defendants were convicted of violating § 1591(b)(1), we find no ambiguity.<sup>3</sup>

\* \* \*

Finding no error in the defendants’ sentences, we affirm.

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<sup>3</sup> The application of the Guidelines is clearer here than it was in *Wei Lin*. *Wei Lin*’s indictment only charged conspiracy to violate § 1591(a) and the conduct at issue would have qualified him, had he been convicted of the substantive offense, for sentencing under § 1591(b)(1). 841 F.3d at 825. By contrast, each of these three defendants were charged with conspiring to violate § 1591(b)(1) itself. We need look no further than the indictment and U.S.S.G. §§ 2X1.1 & 2G1.1 to properly set the base offense levels for these defendants.

**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

No: 19-1153

United States of America

Appellee

v.

Mark Phillip Carter, II

Appellant

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Human Trafficking Institute

Amicus on Behalf of Appellee(s)

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Appeal from U.S. District Court for the Southern District of Iowa - Des Moines  
(4:18-cr-00053-JAJ-2)

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**ORDER**

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

Judge Kelly did not participate in the consideration or decision of this matter.

July 13, 2020

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

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/s/ Michael E. Gans

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA ) **JUDGMENT IN A CRIMINAL CASE**  
v. )  
Mark Phillip Carter II ) Case Number: 4:18-cr-00053-002  
 ) USM Number: 18594-030  
 )  
 ) Angela Lynnette Campbell  
Defendant's Attorney

**THE DEFENDANT:**

pleaded guilty to count(s) Eight of the Second Superseding Indictment filed on August 28, 2018.

pleaded nolo contendere to count(s) \_\_\_\_\_ which was accepted by the court.

was found guilty on count(s) \_\_\_\_\_ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 1591(a)(1),	Sex Trafficking of Children	07/2017	Eight
1591(b)(2)			

See additional count(s) on page 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) 1, 2, 5, 6, 7, 9, 11, and 12  is  are dismissed on the motion of the United States.

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

January 16, 2019

Date of Imposition of Judgment

Signature of Judge

  
John A. Jarvey, Chief U.S. District Judge

Name of Judge

Title of Judge

17

January 16, 2019

Date  
32

Judgment Page: 2 of 7

DEFENDANT: Mark Phillip Carter II  
CASE NUMBER: 4:18-cr-00053-002

## IMPRISONMENT

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

175 months as to Count Eight of the Second Superseding Indictment filed on August 28, 2018.

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

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

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

at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_

as notified by the United States Marshal.

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

before 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 \_\_\_\_\_

a \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Mark Phillip Carter II  
CASE NUMBER: 4:18-cr-00053-002

Judgment Page: 3 of 7

## SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :  
Five years as to Count Eight of the Second Superseding Indictment filed on August 28, 2018.

## MANDATORY CONDITIONS

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

DEFENDANT: Mark Phillip Carter II  
CASE NUMBER: 4:18-cr-00053-002

Judgment Page: 4 of 7

## 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.

## 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](http://www.uscourts.gov).

Defendant's Signature

Date

DEFENDANT: Mark Phillip Carter II  
CASE NUMBER: 4:18-cr-00053-002

Judgment Page: 5 of 7

## SPECIAL CONDITIONS OF SUPERVISION

You must participate in a sex offender treatment program, to include psychological testing and polygraph examinations, as directed by the U.S. Probation Officer. You must also abide by all supplemental conditions of sex offender treatment, to include abstaining from alcohol. Participation may include inpatient/outpatient treatment, if deemed necessary by the treatment provider. You must contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment. Sex offender assessments and treatment shall be conducted by therapists and polygraph examiners approved by the U.S. Probation Office, who shall release all reports to the U.S. Probation Office. The results of polygraph examinations will not be used for the purpose of revocation of supervised release or probation. If disclosure is required by mandatory reporting laws, polygraph results will be reported to appropriate treatment personnel, law enforcement, and related agencies with the approval of the Court. If polygraph results reveal possible new criminal behavior, this will be reported to the appropriate law enforcement and related agencies after obtaining approval from the Court.

You must comply with all sex offender laws for the state in which you reside and must register with the local sheriff's office within the applicable time frame.

You must refrain from associating with anyone engaged in the exploitation of minors whether known or unknown to local, state, or federal law enforcement.

You must not have any direct contact (personal, electronic, mail, or otherwise) with any child you know or reasonably should know to be under the age of 18, including in employment, without the prior approval of the U.S. Probation Officer. If contact is approved, you must comply with any conditions or limitations on this contact, as set forth by the U.S. Probation Officer. Any unapproved direct contact must be reported to the U.S. Probation Officer within 24 hours. Direct contact does not include incidental contact during ordinary daily activities in public places.

You must not contact the victim(s), nor the victim's family without prior permission from the U.S. Probation Officer.

You must not associate with any prostitute or anyone you should reasonably know to be a prostitute or places where prostitution is a known activity.

You must participate in a cognitive behavioral treatment program, which may include journaling and other curriculum requirements, as directed by the U.S. Probation Officer.

You must submit to a mental health evaluation. If treatment is recommended, you must participate in an approved treatment program and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment and/or compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

You will submit to a search of your person, property, residence, adjacent structures, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), and other electronic communications or data storage devices or media, conducted by a U.S. Probation Officer. Failure to submit to a search may be grounds for revocation. You must warn any other residents or occupants that the premises and/or vehicle may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your release and/or that the area(s) or item(s) to be searched contain evidence of this violation or contain contraband. Any search must be conducted at a reasonable time and in a reasonable manner. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

You must participate in a program of testing and/or treatment for substance abuse, as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Office. At the direction of the probation office, you must receive a substance abuse evaluation and participate in inpatient and/or outpatient treatment, as recommended. Participation may also include compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment. You must not use alcohol and/or other intoxicants during the course of supervision.

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## CRIMINAL MONETARY PENALTIES

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

Pursuant to 18 U.S.C. § 3573, upon the motion of the government, the Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ 100.00	\$ 0.00	\$ 0.00	\$0.00

The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
<b>TOTALS</b>	\$0.00	\$0.00	

Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the  fine  restitution.

the interest requirement for the  fine  restitution is modified as follows:

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

\*\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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## SCHEDULE OF PAYMENTS

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

A  Lump sum payment of \$ 100.00 due immediately, balance due  
 not later than \_\_\_\_\_, or  
 in accordance  C,  D,  E, or  F below; or

B  Payment to begin immediately (may be combined with  C,  D, or  F below); or

C  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or

D  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E  Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F  Special instructions regarding the payment of criminal monetary penalties:

All criminal monetary payments are to be made to the Clerk's Office, U.S. District Court, P.O. Box 9344, Des Moines, IA. 50306-9344.

While on supervised release, you shall cooperate with the Probation Officer in developing a monthly payment plan consistent with a schedule of allowable expenses provided by the Probation Office.

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 the court.

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

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:  
a Hi-Point C9 9mm pistol (SN: P1585403), as outlined in the Preliminary Order of Forfeiture entered on December 14, 2018.

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, and (8) costs, including cost of prosecution and court costs.

1 registry, and he's in Criminal History Category I.

2 We simply argue, Your Honor, that 120 months is sufficient  
3 to punish him for the conduct that he is responsible for and  
4 that he's admitted to having participated in.

5 THE COURT: We'll get to that. Let's just get the  
6 guidelines resolved first.

7 MS. CAMPBELL: Okay. Thank you.

8 THE COURT: I make the findings requested by the  
9 Government in Attachment A to the sentencing memorandum, and I  
10 do find that Attachment B is the correct scoring of the  
11 sentencing guidelines here.

12 Jada is certainly a vulnerable victim because of her age,  
13 because of the age difference, because of the way they were  
14 treated by the defendant, the threats and all that. She's  
15 certainly a vulnerable victim, and there was that undue  
16 influence and coercion here.

17 He has a total offense level of 34 and a criminal history  
18 category of I. That would suggest a range of imprisonment  
19 between 151 and 188 months.

20 I'd hear first from you, Ms. Campbell, and then from  
21 Mr. Carter, and then from Ms. Bruner before imposing sentence.

22 MS. CAMPBELL: Thank you, Your Honor.

23 I think we've set forth a lot of our arguments in our  
24 sentencing memorandum, the arguments about we believe that,  
25 again, 120 months is sufficient but not greater than necessary

1                   THE COURT: In fashioning an appropriate sentence, I  
2 have considered each of the factors found in Title 18, United  
3 States Code, Section 3553(a). That means I have considered the  
4 nature and circumstances of this offense, as well as the history  
5 and characteristics of Mr. Carter.

6                   I have considered the seriousness of the offense. This is  
7 exceedingly serious behavior. It was repeated, it was abusive,  
8 it was lucrative, it was degrading, it was depraved, and it  
9 damaged young women irrevocably.

10                  I have considered the question of just punishment and note  
11 an otherwise insignificant criminal history. He jumped into  
12 criminality at a very high level.

13                  It's true the letters in support of Mr. Carter show a  
14 different person. It tells me you want to be on his good side.

15                  I considered the need for adequate deterrence to criminal  
16 conduct. That's an important fact here. The need to protect  
17 the public from further crimes from the defendant is real.

18                  I've considered the sentencing options that are available  
19 to the Court, and I looked to the sentencing guidelines as an  
20 important, though not in any way controlling, factor to be  
21 considered.

22                  If it wasn't so serious, it would be amusing how difficult  
23 the sentencing guidelines are here. To parse that guideline  
24 about a commercial sex act or a sex act is -- all the time we  
25 spent on that is nearly a waste of time because we're talking

1 about the behavior here, not some parsing of a sentencing  
2 guideline.

3 We do this too often where we get so deep into the  
4 sentencing guidelines that we forget about what the behavior is,  
5 and for that reason the sentence that the Court imposes here is  
6 not driven by the sentencing guidelines, it's driven by the  
7 behavior. It's all driven by the need to avoid unwarranted  
8 sentencing disparity among defendants with similar records who  
9 have been found guilty of similar conduct.

10 Ms. Williams received a 135-month sentence. She's not  
11 nearly as culpable as Mr. Carter. She has a worse criminal  
12 history, but her criminal history was also relatively  
13 insignificant in that it was made up of prostitution and minor  
14 drug charges.

15 I considered the need for restitution. The Government  
16 isn't seeking it.

17 After considering all those factors, I conclude that the  
18 following sentence is sufficient but not greater than necessary  
19 to address the essential sentencing considerations. It is the  
20 judgment of the Court that Mark Phillip Carter, II is sentenced  
21 to the custody of the Bureau of Prisons for 175 months on Count  
22 8 of the indictment.

23 Upon release from prison, you'll be placed on supervised  
24 release for five years. Within 72 hours of release from the  
25 Bureau of Prisons, you shall report in person to the probation

1 office in the district where you are released.

2       While on supervised release, you shall not commit another  
3 federal, state, or local crime; you shall not possess a firearm  
4 or other destructive device; you shall not illegally possess a  
5 controlled substance.

6       You shall comply with all the standard conditions of  
7 supervision as adopted by the Sentencing Commission plus the  
8 special conditions found in your presentence report at  
9 paragraphs 265 to 274.

10       I find that you do not have the ability to pay a fine. You  
11 are ordered to pay the \$100 special assessment to the victims'  
12 assistance fund. It's due and payable immediately without  
13 interest to the Clerk of Court.

14       You have a motion to make with respect to the remaining  
15 counts?

16       MS. BRUNER: Yes, Your Honor. The Government moves  
17 to dismiss the remaining counts, which are 1, 2, 5, 6, 7, 9, 11,  
18 and 12.

19       THE COURT: They're dismissed.

20       You have the right to take an immediate appeal from this  
21 judgment. Any appeal has to be filed within 14 days from  
22 today.

23       Anything else, Ms. Campbell?

24       MS. CAMPBELL: No, Your Honor.

25       THE COURT: Ms. Bruner?