

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JESSICA ARNOLD,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

INDEX TO APPENDICES

- Appendix A Judgment and Opinion of the Fifth Circuit, CA No. 19-10666, dated June 23, 2020. United States v. Arnold, 810 F. App'x 337 (5th Cir. 2020) (unpublished).
- Appendix B Judgment and Sentence of the United States District Court for the Northern District of Texas, entered March 23, 2017.
- Appendix C Judgment of Revocation and Sentence of the United States District Court for the Northern District of Texas, entered July 26, 2019.

APPENDIX A

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

June 23, 2020

Lyle W. Cayce
Clerk

No. 19-10876
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JESSICA ARNOLD,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:16-CR-234-1

Before CLEMENT, ELROD, and OLDHAM, Circuit Judges.

PER CURIAM:*

Jessica Arnold pleaded guilty to using a facility of interstate commerce to aid a racketeering enterprise in violation of 18 U.S.C. § 1952(a)(3)(A) and was sentenced to five years of probation. The probation officer twice reported that Arnold had violated the conditions of her probation by using controlled substances. Each time, Arnold was permitted to remain on probation but was required to participate in additional drug treatment programs and undergo

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

more frequent drug tests. When Arnold violated the conditions of her probation for a third time, again by using controlled substances as she admitted at her revocation hearing, the district court revoked her probation and sentenced her to 24 months in prison, which was above the recommended range of four to ten months, and three years of supervised release. This appeal followed.

Arnold argues for the first time that the district court committed a procedural error by failing to adequately explain the chosen sentence. Because Arnold failed to preserve the issue for appeal, our review is for plain error. *See Puckett v. United States*, 556 U.S. 129, 135 (2009); *United States v. Kippers*, 685 F.3d 491, 497 (5th Cir. 2012). The record demonstrates that the district court considered the Chapter 7 policy statements; the 18 U.S.C. § 3553(a) sentencing factors; the probation officer's reports; and the evidence and arguments presented, including Arnold's request for leniency, ultimately articulating a reasoned basis for imposing a sentence above the recommended range. *See Kippers*, 685 F.3d at 498-99. Accordingly, there is no procedural error with respect to the adequacy of the district court's explanation. *See id.* at 498-99.

Arnold also argues that her sentence is substantively unreasonable because the district court erred in balancing the sentencing factors and considered an inappropriate factor. Because Arnold preserved this issue of substantive reasonableness for appeal, our review is for abuse of discretion in light of the totality of the circumstances. *See Kippers*, 685 F.3d at 499-500. The district court determined that a 24-month sentence was warranted in light of the following sentencing factors: the nature and circumstances of Arnold's probation violations, including their frequency and seriousness; Arnold's history and characteristics, including her drug addiction and mental health

issues; and the need to deter Arnold from engaging in future criminal activity, especially given that the court's prior leniency did not prevent her from violating the conditions of her probation. *See* § 3553(a); *Kippers*, 685 F.3d at 499-500. In light of the significant deference that we afford a district court's consideration of not only the § 3553(a) factors but also the reasons for its sentencing decision, Arnold has not demonstrated that her 24-month sentence is substantively unreasonable under the abuse-of-discretion standard. *See Kippers*, 685 F.3d at 500-01.

The judgment of the district court is AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

ALVIN LANE

Case Number: 4:16-CR-00234-O(03)
U.S. Marshal's No.: 54554-177
Cara Foos Pierce, Assistant U.S. Attorney
John W. Stickels, Attorney for the Defendant

On October 17, 2016 the defendant, ALVIN LANE, entered a plea of guilty as to Count Two of the Information filed on October 11, 2016. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S. C § 1549(c)	Conspiracy to Commit Sex Trafficking of Children	4/16/2016	Two

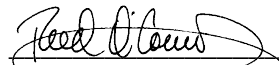
The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 as to Count Two of the Information filed on October 11, 2016.

The \$5,000 fine pursuant to 18 U.S.C. § 3014 has been waived.

The defendant shall notify the United States Attorney for this district within thirty 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.

Sentence imposed March 20, 2017.



REED O'CONNOR
U.S. DISTRICT JUDGE

Signed March 23, 2017.

Judgment in a Criminal Case
Defendant: ALVIN LANE
Case Number: 4:16-CR-00234-O(3)

Page 2 of 4

IMPRISONMENT

The defendant, ALVIN LANE, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **One Hundred Sixty-Six (166) months** as to Count Two of the Information filed on October 11, 2016.

The Court recommends to the BOP that the defendant be housed at an FCI facility within the Northern District of Texas, if possible. Furthermore, the Court requests the BOP to preform a medical evaluation of the defendant, if eligible.

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

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **Four (4) years** as to Count One of the Information filed on October 11, 2016.

While on supervised release, in compliance with the standard conditions of supervision adopted by the United States Sentencing Commission, the defendant shall:

- (1) not leave the judicial district without the permission of the Court or probation officer;
- (2) report to the probation officer as directed by the Court or probation officer and submit a truthful and complete written report within the first five (5) days of each month;
- (3) answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) support the defendant's dependents and meet other family responsibilities;
- (5) work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (6) notify the probation officer within seventy-two (72) hours of any change in residence or employment;
- (7) refrain from excessive use of alcohol and not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- (8) not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (9) not associate with any persons engaged in criminal activity and not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- (10) permit a probation officer to visit the defendant at any time at home or elsewhere and permit confiscation of any contraband observed in plain view by the probation officer;
- (11) notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
- (12) not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court; and,
- (13) notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to

Judgment in a Criminal Case

Page 3 of 4

Defendant: ALVIN LANE

Case Number: 4:16-CR-00234-O(3)

confirm the defendant's compliance with such notification requirement, as directed by the probation officer.

In addition the defendant shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

not possess a firearm, destructive device, or other dangerous weapon;

cooperate in the collection of DNA as directed by the U.S. probation officer;

report in person to the U.S. Probation Office in the district to which the defendant is released from the custody of the Federal Bureau of Prisons within 72 hours of release;

have no contact with the victim(s), including correspondence, telephone contact, or communication through third parties except under circumstances approved in advance by the probation officer and not enter onto the premises, travel past, or loiter near the victims' residences, places of employment, or other places frequented by the victims;

register as a sex offender with state and local law enforcement as directed by the probation officer in each jurisdiction where the defendant resides, is employed, and is a student, providing all information required in accordance with state registration guidelines, with initial registration being completed within three business days after release from confinement. The defendant shall provide written verification of registration to the probation officer within three business days following registration and renew registration as required by his probation officer. The defendant shall, no later than three business days after each change of name, residence, employment, or student status, appear in person in at least one jurisdiction and inform that jurisdiction of all changes in the information required in the sex-offender registry;

participate in sex-offender treatment services as directed by the probation officer until successfully discharged, which services may include psycho-physiological testing to monitor the defendant's compliance, treatment progress, and risk to the community, contributing to the costs of services rendered (copayment) at the rate of at least \$25 per month;

refrain from any unlawful use of a controlled substance, submitting to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer pursuant to the mandatory drug testing provision of the 1994 crime bill; and,

participate in a program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered (copayment) at the rate of at least \$25 per month.

Judgment in a Criminal Case
Defendant: ALVIN LANE
Case Number: 4:16-CR-00234-O(3)

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FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

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 Marshal

APPENDIX C

United States District Court

Northern District of Texas
Fort Worth Division

UNITED STATES OF AMERICA

v.

Case Number 4:16-CR-234-O (1)

JESSICA ARNOLD
Defendant.

USM Number 47388-177

JUDGMENT IN A CRIMINAL CASE

(For **Revocation** of Probation or Supervised Release)
(For Offenses Committed On or After November 1, 1987)

The defendant, JESSICA ARNOLD, was represented by George Lancaster.

THE DEFENDANT:

Pleaded true to violating the conditions stated in Paragraph I and II of the Petition for Offender Under Supervision signed June 18, 2019.

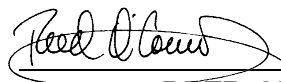
See Petitions for Offender Under Supervision.

Certified copy of the Judgment imposed on March 20, 2017, in the U.S. District Court for the Northern District of Texas, Fort Worth Division, is attached.

As pronounced on July 25, 2019, the defendant is sentenced as provided in pages 2 and 3 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS FURTHER ORDERED that the defendant shall 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 shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

Signed this the 26th day of July, 2019.



REED O'CONNOR
UNITED STATES DISTRICT JUDGE

Defendant: JESSICA ARNOLD
Case Number: 4:16-CR-234-O (1)

Judgment--Page 2 of 3

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **TWENTY-FOUR (24) months** as to Count One.

The Court recommends that the defendant be housed at an FCI facility within the Northern District of Texas area, if possible.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **THREE (3) years**.

While on supervised release, in compliance with the standard conditions of supervision adopted by the United States Sentencing Commission, the defendant shall:

- (1) not leave the judicial district without the permission of the Court or probation officer;
- (2) report to the probation officer as directed by the Court or probation officer and submit a truthful and complete written report within the first five (5) days of each month;
- (3) answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) support the defendant's dependents and meet other family responsibilities;
- (5) work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (6) notify the probation officer within seventy-two (72) hours of any change in residence or employment;
- (7) refrain from excessive use of alcohol and not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- (8) not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (9) not associate with any persons engaged in criminal activity and not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- (10) permit a probation officer to visit the defendant at any time at home or elsewhere and permit confiscation of any contraband observed in plain view by the probation officer;
- (11) notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
- (12) not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court; and
- (13) notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement, as directed by the probation officer.

AO 245 D (Rev.10/96)Sheet 2 - Imprisonment in a Criminal Case for Revocations

Defendant: JESSICA ARNOLD

Judgment--Page 3 of 3

Case Number: 4:16-CR-234-O (1)

In addition, the defendant shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

not possess a firearm, destructive device or other dangerous weapon;

report in person to the probation office in the district to which the defendant is released within seventy-two (72) hours of release from the custody of the Bureau of Prisons;

participate in a program (inpatient and/or outpatient) approved by the U.S. Probation Office for treatment of narcotic, drug, or alcohol dependency, which will include testing for the detection of substance use or abuse. The defendant shall abstain from the use of alcohol and/or all other intoxicants during and after completion of treatment. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$5 per month; and,

adhere to the conditions of supervised release previously ordered in the attached certified Judgment.

RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

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 Marshal

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS

Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

JESSICA ARNOLD

Case Number: 4:16-CR-00234-O(01)

U.S. Marshal's No.: 54555-177

Cara Foos Pierce, Assistant U.S. Attorney

William Reynolds Biggs, Attorney for the Defendant

On October 17, 2016 the defendant, JESSICA ARNOLD, entered a plea of guilty as to Count One of the Information filed on October 11, 2016. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:


<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 1952(a)(3) and (A)	Use of a Facility of Interstate Commerce in Aid of a Racketeering Enterprise	4/16/2016	One

The defendant is sentenced as provided in pages 2 through 3 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 as to Count One of the Information filed on October 11, 2016.

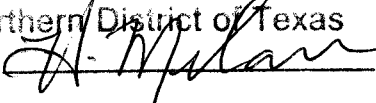
The defendant shall notify the United States Attorney for this district within thirty days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Sentence imposed March 20, 2017.



REED O'CONNOR
U.S. DISTRICT JUDGE

Signed March 23, 2017.

Certified a true copy of an instrument
on file in my office on 7/26/2019
Clerk, U.S. District Court,
Northern District of Texas
By  Deputy

PROBATION

It is the judgment of the Court that the defendant, JESSICA ARNOLD, is hereby sentenced to a term of probation for a term of **Five (5) years** as to Count One of the Information filed on October 11, 2016.

While on probation, in compliance with the standard conditions of probation adopted by the United States Sentencing Commission, the defendant shall:

- (1) not leave the judicial district without the permission of the Court or probation officer;
- (2) report to the probation officer as directed by the Court or probation officer and submit a truthful and complete written report within the first five (5) days of each month;
- (3) answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) support his or her dependents and meet other family responsibilities;
- (5) work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (6) notify the probation officer within seventy-two (72) hours of any change in residence or employment;
- (7) refrain from excessive use of alcohol and not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- (8) not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (9) not associate with any persons engaged in criminal activity and not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- (10) permit a probation officer to visit the defendant at any time at home or elsewhere and permit confiscation of any contraband observed in plain view by the probation officer;
- (11) notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
- (12) not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court; and
- (13) notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement, as directed by the probation officer.

In addition the defendant shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

not possess a firearm, destructive device, or other dangerous weapon;

cooperate in the collection of DNA as directed by the U.S. probation officer;

participate in the Location Monitoring Program for a period of 180 consecutive days. During this time, the defendant is continuously restricted to his/her place of residence except for authorized absences

Defendant: JESSICA ARNOLD

Case Number: 4:16-CR-00234-O(1)

approved in advance by his/her U.S. Probation Officer. The U.S. Probation Officer may approve absences for gainful employment, religious services, medical care, education and training programs, and other activities. Location monitoring may be used to monitor compliance with this special condition and may include remote location monitoring using Global Positioning Satellite (GPS) tracking. The defendant shall contribute to the costs of the monitoring services rendered (copayment) at a rate of at least \$20 per day, not to exceed the total cost per day of the monitoring services;

participate in mental health treatment services as directed by the probation officer until successfully discharged, which services may include prescribed medications by a licensed physician, with the defendant contributing to the costs of services rendered (copayment) at a rate of at least \$25 per month;

refrain from any unlawful use of a controlled substance, submitting to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer pursuant to the mandatory drug testing provision of the 1994 crime bill; and,

participate in a program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered (copayment) at the rate of at least \$25 per month.

RESTITUTION/FINE

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

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 Marshal