APPENDIX

A
Unpublished Fifth Circuit Opinion

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
February 1, 2021
Lyle W. Cayce
Clerk

No. 19-10600

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MARCUS DARWYN JONES, ALSO KNOWN AS DAB,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:17-CR-357

Before OWEN, *Chief Judge*, and DENNIS and HAYNES, *Circuit Judges*.

PER CURIAM:*

Marcus Jones pleaded guilty to two counts of racketeering, one of which was predicated on child sex trafficking. On direct appeal, Jones argues that his plea was not knowing and voluntary because he was misled about the collateral consequence of mandatory sex offender registration under the federal Sex Offender Registration and Notification Act (SORNA). *See* 34

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

U.S.C. § 20901 *et seq.*[1] The Government asserts that Jones's plea was knowing and voluntary, that the district court made no error, and further, that Jones likely will not have to register as a sex offender because the district court did not order registration as a mandatory condition of supervised release. It is unnecessary at this stage for us to decide whether Jones or the Government is correct as to whether Jones will have to register as a sex offender at some point in the future. On this record, his claim that his guilty plea was not knowing and voluntary nonetheless fails. Therefore, we AFFIRM his conviction.

I. Factual and Procedural Background

Jones was arrested in May 2017 and charged with two counts of sex trafficking of children in violation of 18 U.S.C. §§ 1591(a) & (b)(2). Jones directed and facilitated the engagement in prostitution of two minors, Jane Doe 1 and Jane Doe 2, by posting advertisements on the internet and purchasing hotel and motel rooms for that purpose. According to his Presentence Report (PSR), he also had sexual intercourse with Jane Doe 1.

Jones was initially represented by appointed counsel, Paul Lund, who engaged in plea negotiations with the Government. While negotiations were ongoing, Lund filed a motion to withdraw, which was granted. Heath Hyde was appointed to represent Jones. Hyde continued plea negotiations and a deal was reached wherein the Government agreed to dismiss the sex trafficking charges and Jones agreed to plead guilty to two counts of use of a facility of interstate commerce in aid of a racketeering enterprise in violation of 18 U.S.C. §§ 1952(a)(2) and (a)(3).[2] The "unlawful activity" underlying

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[1] While failing to comply with SORNA can result in criminal penalties, SORNA itself is not a criminal statute, but rather a "civil regulation" that "establishes a comprehensive national system for the registration of [sex] offenders." *United States v. Young*, 585 F.3d 199, 204 (5th Cir. 2009).

[2] The two racketeering charges had a combined statutory maximum sentence of 25 years imprisonment, 20 years for Count 1 and five years for Count 2. *See* 18 U.S.C.

Count 1 was "promotion of prostitution" in violation of Texas Penal Code § 43.03, and the underlying "crime of violence" was "sex trafficking of children" in violation of 18 U.S.C. § 1591(a). The unlawful activity underlying Count 2 was also "promotion of prostitution" in violation of Texas Penal Code § 43.03.

A written plea agreement and supplemental agreement were signed by Jones on October 26, 2018, neither of which mentioned sex offender registration. Jones also signed a Factual Resume, which included stipulated facts as well as a recitation of the elements of racketeering, 18 U.S.C. § 1952, and the elements of the crime of violence underlying Count 1, sex trafficking of children in violation of 18 U.S.C. § 1591(a). On November 27, 2018, Jones was re-arraigned and pleaded guilty before a magistrate judge to the two-count superseding information. On December 14, the district court adopted the magistrate judge's recommendation to accept the guilty plea.

On January 2, 2019, Jones filed a *pro se* motion to replace Hyde, claiming ineffective assistance of counsel. The motion, which was dated December 3, 2018, faulted counsel on several grounds but nowhere mentioned sex offender registration.[3] At a hearing before a magistrate judge on January 17, 2019, the motion was granted, and Keith Willeford was appointed as new counsel.

However, before the *pro se* motion to replace Hyde was granted, Jones filed a second *pro se* motion to withdraw his guilty plea. This handwritten motion was self-dated January 15, 2019, while Jones was still represented by

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§ 1952(a). By contrast, sex trafficking of children has a statutory maximum of life imprisonment. *See* 18 U.S.C. § 1591(b)(2).

[3] Specifically, Jones claimed that Hyde had given him "false and misleading information" regarding (1) access to discovery; (2) "the facts as to the charge of conduct versus the Government's narrative," potentially referencing the Factual Resume supporting his plea; and (3) the "scope of legal options available . . . related to both a trial or a plea." Concluding his motion, Jones again claimed "deliberate deceiving of himself by counsel Hyde regarding his legal options and the facts."

Hyde, but was docketed by the district court on January 25, 2019, at which point he was represented by Willeford. In this second motion, Jones claimed his guilty plea was not knowing and voluntary for two reasons. First, he claimed lack of adequate knowledge of the "legal facts" at the time of his plea. He alleged that he was "informed by counsel [Hyde] that such a designation [i.e., sex offender designation pursuant to SORNA] would not be issued should he plead guilty," but said that post-plea he now believed that his guilty plea did in fact subject him to sex offender registration. Second, he claimed that "counsel informed [him] of a specific pre-determined sentence" of ten years if he pleaded guilty, whereas he now understood that the court had discretion to sentence him pursuant to the Sentencing Guidelines. Jones also claimed that the Factual Resume supporting his plea contained "multiple false narratives" and that he wanted to withdraw his guilty plea because these had not been "corrected." The Government filed a response opposing the motion on March 8, 2019. On March 24, 2019, Jones's third counsel, Willeford, filed an unopposed motion for a hearing on Jones's *pro se* motion to withdraw his plea.

On April 4, 2019, the district court entered a written order striking Jones's *pro se* motion to withdraw his plea and denying as moot his request for a hearing. Explaining its decision, the district court emphasized that Jones had been explicitly informed by the magistrate judge at the January 17 hearing on his motion to replace counsel that all future motions needed to be filed through appointed counsel and that *pro se* motions would be stricken. The district court noted that, although Jones's *pro se* motion to withdraw his guilty plea pre-dated the January 17 hearing, Jones was nonetheless represented by counsel at the time the motion was filed. Observing that Jones had continued to send *ex parte* letters to the court through March 2019, the court stated that it would not consider *ex parte* communications or *pro se* motions and that "if Defendant would like the court to consider matters previously submitted in his *ex parte* communications or any other matters, *these matters must be presented to and incorporated into a motion that is prepared*

and filed by his appointed counsel, and any pro se filings by him will be stricken without further notice" (italics in original). No subsequent motion to withdraw Jones's guilty plea was filed by Willeford prior to sentencing.

At sentencing on May 13, 2019, Jones was given an opportunity to personally address the court. After he told the court that "information" in the PSR and "some of the evidence" is "not right," the district judge asked him "[h]ave not you already pleaded guilty? Your factual resume sets out what you admitted. Are you telling me that is not true?" Jones responded that the "only reason I agreed to it [sic] because I would get a certain time if I took the plea, which you struck my motion on that attachment [sic]." The court responded, "[y]es, I did. You filed a Motion to Withdraw your plea. You had an attorney, and after I struck that motion, there was no substantive motion filed to withdraw your plea, so yes, I did." Jones then protested that he did not threaten a witness, apparently referring to an obstruction of justice enhancement in his PSR. Jones did not raise the issue of SORNA registration.

The court sentenced Jones to a below-guideline sentence[4] of 204 months on Count 1 and 60 months on Count 2, to run concurrently. At no point in the sentencing hearing did Jones, the Government, the Probation Office, or the district court mention sex offender registration or SORNA, nor was reference to SORNA registration included in the judgment of conviction and sentence.

Jones filed a timely appeal and also sent numerous *pro se* motions, letters, and materials to this court, including a motion to file a "supplemental appeal brief" that included as an attachment copies of email messages between him and his numerous lawyers that are not part of the record on appeal. This motion was denied. The merits brief filed by Jones's appellate

[4] Jones's applicable guidelines range was 360 months to life, which was reduced to 300 months by operation of a statutory maximum.

counsel refers to the emails attached to Jones's denied *pro se* "supplemental appeal brief" motion as the "Jones Doc." and cites to it throughout. However, the "Jones Doc." is not part of the record on appeal and is therefore not properly before us. *See United States v. Flores*, 887 F.2d 543, 546 (5th Cir. 1989) ("We will not ordinarily enlarge the record on appeal to include material not before the district court."); *accord In re GHR Energy Corp. v. Crispin. Co. Ltd.*, 791 F.2d 1200, 1201–02 (5th Cir. 1986) ("[T]his court is barred from considering filings outside the record on appeal, and attachments to briefs do not suffice.").

II. Standard of Review

Jones raises three issue on appeal. First, he argues the district court erred in striking his *pro se* motion to withdraw his guilty plea without evaluating the merits of his claim. A district court's decision to strike a motion is reviewed for abuse of discretion. *See Macklin v. City of New Orleans*, 293 F.3d 237, 240 (5th Cir. 2002) ("We review the district court's administrative handling of a case . . . for abuse of discretion."); *see also Epperson v. Barnhart*, 84 F. App'x 463, 464 (5th Cir. 2004) ("The district court's decision to strike a pleading from the record is reviewed for abuse of discretion.").

Second, Jones argues that the district court erred in denying as moot his motion for a hearing. A district court's decision to deny a request for an evidentiary hearing is reviewed for abuse of discretion. *United States v. Washington*, 480 F.3d 309, 316 (5th Cir. 2007) (citing *United States v. Powell*, 354 F.3d 362, 370 (5th Cir. 2003)).

Third, Jones argues that his guilty plea was not knowing and voluntary. As explained below, because Jones's claim was not preserved, we apply plain error review, which has four components. If (1) there is an "error," (2) that is "clear or obvious," and (3) that error "affected the appellant's substantial rights," then (4) we have discretion to remedy the

error if it "seriously affects the fairness, integrity or public reputation of judicial proceedings." *Puckett v. United States*, 556 U.S. 129, 135 (2009).

III. Discussion

A. Striking of pro se motion to withdraw plea

When a defendant is represented by counsel, he or she does not have the right to file *pro se* motions. "[T]here is no constitutional right to hybrid representation." *Myers v. Johnson*, 76 F.3d 1330, 1335 (5th Cir. 1996); *see also United States v. Ogbonna*, 184 F.3d 447, 449 n.1 (5th Cir. 1999). Accordingly, when a defendant is represented by counsel, a district court may strike *pro se* motions. *See, e.g.*, *United States v. Lopez*, 313 F. App'x 730, 731 (5th Cir. 2009) (unpublished) ("[A]s Lopez acknowledges, he was represented by counsel at the time he filed the motion . . . As such, Lopez's pro se motion to dismiss was an unauthorized motion and the district court properly disregarded it." (internal citation omitted)); *United States v. Alvarado*, 321 F. App'x 399, 400 (5th Cir. 2009) (unpublished) ("Alvarado argues for the first time on appeal that the district court abused its discretion by striking his pro se motion . . . Because Alvarado was represented by counsel in the district court, he was not entitled to file a pro se motion on his own behalf."); *United States v. House*, 144 F. App'x 416, 417 (5th Cir. 2005) (unpublished) ("House was represented by counsel in the district court. Therefore, she could not file a pro se motion, and the district court properly struck her pro se motion without addressing the . . . claim.").

Jones was represented at all times by counsel. This is sufficient for us to find no abuse of discretion on the part of the district court in striking Jones's *pro se* filings.[5] On appeal, Jones argues specifically that it was an

[5] We also note that Jones was apparently verbally warned by the magistrate judge at the January 17 hearing that all motions needed to be filed through counsel and warned again in writing in the district court's April 4 order striking his *pro se* motion to withdraw his plea. Yet, despite both verbal and written warnings, a motion to withdraw his guilty plea was not filed through counsel at any time.

abuse of discretion for the district court to strike his motion without first evaluating the merits of his claim under Rule 11 and our multi-factor test enumerated in *United States v. Carr*, 740 F.2d 339 (5th Cir. 1984), for evaluating motions to withdraw guilty pleas. This argument conflates the standard for evaluating the denial of a motion to withdraw a guilty plea on the merits, *see id.*, with the striking of a motion because it was improperly filed *pro se* while a defendant was represented by counsel. Here, the district court did not abuse its discretion in striking the *pro se* motion because Jones was represented by counsel at the time.

B. Denial of hearing

Jones next argues that he raised "sufficient facts justifying relief" to warrant an evidentiary hearing in his *pro se* motion to withdraw his plea. "Although defendants are not entitled to an evidentiary hearing, a hearing is required 'when the defendant alleges sufficient facts which, if proven, would justify relief.'" *Powell*, 354 F.3d at 370 (5th Cir. 2003) (quoting *United States v. Mergist*, 738 F.2d 645, 648 (5th Cir. 1984)). However, as discussed above, Jones's *pro se* motion was properly struck by the district court because it was not filed through counsel. In *United States v. Sanders*, we held that when a defendant's *pro se* motions challenging the validity of his plea were properly struck by the district court because the defendant was represented by counsel, and the defendant's counsel had not filed such a motion, "there was no properly filed motion preserving the issue of the validity of the plea." 843 F.3d 1050, 1053–54 (5th Cir. 2016). By implication, when the district court strikes a *pro se* motion filed by a defendant who is represented by counsel and counsel has not moved for the relief requested in the *pro se* motion, then there is no issue presented upon which to hold an evidentiary hearing and any

request for a hearing is moot. Therefore, Jones was not entitled to a hearing, and the district court did not err in denying his request as moot.

C. Validity of guilty plea

The third issue is whether Jones's guilty plea was made knowingly and voluntarily. For a guilty plea to be knowing and voluntary, a defendant must have "full understanding of what the plea connotes and of its consequence." *Boykin v. Alabama*, 395 U.S. 238, 244 (1969). "Before deciding whether to plead guilty, a defendant is entitled to the effective assistance of competent counsel." *Padilla v. Kentucky*, 559 U.S. 356, 364 (2010). "A situation in which a defendant is induced by deception, an unfulfillable promise, or misrepresentation to enter a plea of guilty does not meet the standard for voluntariness[.]" *United States v. Amaya*, 111 F.3d 386, 389 (5th Cir. 1997). If a guilty plea "was induced by promises, the essence of those promises must in some way be made known." *Santobello v. New York*, 404 U.S. 257, 261–62 (1971).

Jones argues that his plea was not knowing and voluntary for two reasons: (1) he was misled both by his counsel and by the Government regarding the collateral consequence of mandatory sex offender registration resulting from his guilty plea; and (2) the district court did not warn him about the collateral consequence of sex offender registration. We review for plain error because Jones did not preserve the issue, as his *pro se* motion to withdraw his plea was properly struck and he did not thereafter raise the issue. *See Sanders*, 843 F.3d at 1053–54.

Jones relies heavily on the "Jones Doc." to support his first argument. However, the materials contained in the "Jones Doc." are not part of the record on appeal, and thus are not properly before us. Considering only the record before us, Jones has not shown that his guilty plea was invalid. Jones's claims on appeal are contradicted by both the contents of the plea agreement and by his sworn statements when he pleaded guilty at re-arraignment. The plea agreement does not mention sex offender registration, and at re-

arraignment Jones answered "yes" when asked if he had read the plea agreement and whether it included in writing everything to which he and the Government agreed. At the hearing, Jones also testified that, other than the contents of the plea agreement, no one had made any promise or assurance to induce his plea and that he had signed the plea agreement voluntarily. Such sworn statements made in open court carry a "strong presumption of verity." *Blackledge v. Allison*, 431 U.S. 63, 74 (1977). On this record, at least, Jones has not overcome that strong presumption.

Jones's second argument—that his plea was invalid because the district court did not inform him of sex offender registration consequences—also fails. In arguing for a district court's "duty to warn," Jones seeks an extension of current law. He concedes that, currently, under the law, a district court is not required to inform a defendant of the sex offender registration consequences collateral to a guilty plea. Because Jones concedes that there is no such requirement, he cannot show plain error. *See United States v. Cuff*, 538 F. App'x 411, 413 (5th Cir. 2013) ("Cuff complains next that the district court failed to admonish him that he would be required to register as a sex offender . . . However, the law on that question is unsettled in this circuit, so the district court's omission cannot be plain error.") (internal citations omitted); *see id.* at 413 n.1 (collecting cases regarding collateral consequences).

D. Additional matters

Finally, at the end of his reply brief, Jones requests that we (1) supplement the record on appeal to incorporate the "Jones Doc." or, in the alternative, return the case to the district court to determine whether the exhibits were previously submitted to the district court; (2) stay his appeal and return this case to the district court to consider the "Jones Doc." in the first instance and to supplement the record; or (3) stay his appeal, hold the case in abeyance, and allow him to file a Federal Rule of Civil Procedure 60 motion in the district court to present the "Jones Doc." These requests are

denied. "It is clearly settled that the appellant cannot raise new issues in a reply brief[.]" CHARLES ALAN WRIGHT & ARTHUR R. MILLER, 16A FEDERAL PRACTICE & PROCEDURE § 3974.3 (4th ed. 2020).

IV. Conclusion

For the foregoing reasons, we AFFIRM Jones's conviction, without prejudice to him seeking collateral review. We express no opinion on whether Jones will be required at some point in the future to register as a sex offender under SORNA or any other state or federal law, nor do we express an opinion on the merits of any claim that Jones might raise, if it all, in a 28 U.S.C. § 2255 motion.

B
Unpublished Denial of Panel Rehearing

United States Court of Appeals for the Fifth Circuit

No. 19-10600

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MARCUS DARWYN JONES,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:17-CR-357-1

ON PETITION FOR REHEARING

Before OWEN, *Chief Judge,* and DENNIS, and HAYNES, *Circuit Judges*.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

C
Fifth Circuit Briefing Order

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-10600

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

versus

MARCUS DARWYN JONES, also known as Dab,

Defendant–Appellant.

Appeals from the United States District Court
for the Northern District of Texas

O R D E R:

Counsel appointed to represent Marcus Jones on appeal has filed a motion to withdraw and a brief that relies on *Anders v. California*, 386 U.S. 738 (1967). Jones has filed a response and a supplemental response, and his motion to file a supplemental *Anders* response in GRANTED. His motions for leave to proceed *pro se*, to file a *pro se* supplemental brief, and, in the alternative, to substitute appointed counsel, are DENIED. *See United States v.*

Ogbonna, 184 F.3d 447, 449 n.1 (5th Cir. 1999); *United States v. Wagner*, 158 F.3d 901, 902–03 (5th Cir. 1998).

Counsel's brief is inadequate in the following respect: In his supplemental response, Jones argues that he did not knowingly and voluntarily plead guilty because he was not informed that he would have to register for life as a sex offender with federal and state authorities for. He states that if he had known that, he would not have pleaded guilty. That issue is not waived by a waiver of appeal. *See United States v. Carreon-Ibarra*, 673 F.3d 358, 362 n.3 (5th Cir. 2012).

Jones pleaded guilty to violating two counts of 18 U.S.C. § 1952—use of a facility of interstate commerce in aid of a racketeering enterprise—with the underlying unlawful activity in count one being the promotion of prostitution in violation of Texas Penal Code § 43.03 and the underlying crime of violence being sex trafficking of children under 18 U.S.C. § 1591. The unlawful activity in count two was a business enterprise involving prostitution in violation of Texas Penal Code § 43.03.

Sex trafficking as described in § 1591 is included in the definition of sex offenses covered by the Sex Offender Registration and Notification Act ("SORNA"). *See* 34 U.S.C. § 20911(5)(A)(iii). A criminal offense that is a specified offense against a minor includes solicitation to practice prostitution. *See* § 20911(7)(E). Section 1952, to which Jones pleaded guilty, is not a listed sex offense, but the underlying offenses, child sex trafficking and prostitution, are covered sex offenses under SORNA. *See* § 20911(5)(A)(iii), (7)(E).

Counsel is ORDERED to file, within 30 days, either a supplemental *Anders* brief, addressing whether Jones is correct that he was misinformed about the sex offender registration requirement and whether it affected

the knowing and voluntary nature of his guilty plea, particularly in light of *United States v. Schofield*, 802 F.3d 722 (5th Cir. 2015), and *United States v. Dailey*, 941 F.3d 1183 (9th Cir. 2019), or, in the alternative, a brief on the merits addressing any nonfrivolous issue(s) that counsel deems appropriate. The motion to withdraw is CARRIED with the case. Counsel should move to withdraw this motion if a merits brief is filed.

/s/ Jerry E. Smith
JERRY E. SMITH
United States Circuit Judge

D
District Court Judgment

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

UNITED STATES OF AMERICA

v.

MARCUS DARWYN JONES

JUDGMENT IN A CRIMINAL CASE

Case Number: **3:17-CR-00357-L(1)**
USM Number: **55971-177**
Keith Willeford
Defendant's Attorney

THE DEFENDANT:

☐	pleaded guilty to count(s)	
☒	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	**Counts 1 and 2 of the Superseding Information filed October 31, 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:

Title & Section / Nature of Offense	**Offense Ended**	**Count**
18:1952(a)(2) and (B) (18:1591(a) and (b)(2)) Use of a Facility of Interstate Commerce in Aid of a Racketeering Enterprise	04/17/2017	1
18:1952(a)(3) and (A) Use of a Facility of Interstate Commerce in Aid of a Racketeering Enterprise	04/14/2016	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) One and Two of the original Indictment filed 7/12/2017 ☐ 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.

May 13, 2019
Date of Imposition of Judgment

Sam A. Lindsay
Signature of Judge

Sam A. Lindsay, United States District Judge
Name and Title of Judge

May 15, 2019
Date

DEFENDANT: MARCUS DARWYN JONES
CASE NUMBER: 3:17-CR-00357-L(1)

IMPRISONMENT

Pursuant to the Sentencing Reform Act of 1984, but taking the Guidelines as advisory pursuant to United States v. Booker, and considering the factors set forth in 18 U.S.C. Section 3553(a), the defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **Two hundred four (204) months as to Count 1, and Sixty (60) months as to Count 2. The terms as to these counts shall run concurrently, for a total aggregate sentence of 204 months.**

☒ The court makes the following recommendations to the Bureau of Prisons:
The court recommends that Defendant be allowed to serve his sentence at FCI, Seagoville, if he is eligible.

☒ 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 2 p.m. on
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: MARCUS DARWYN JONES
CASE NUMBER: 3:17-CR-00357-L(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : **Three (3) years as to Counts 1 and 2. The terms as to these counts shall run concurrently.**

MANDATORY CONDITIONS

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

DEFENDANT: MARCUS DARWYN JONES
CASE NUMBER: 3:17-CR-00357-L(1)

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. I understand additional information regarding these conditions is available at www.txnp.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: MARCUS DARWYN JONES
CASE NUMBER: 3:17-CR-00357-L(1)

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall have no contact with any victim of this offense, including by correspondence, telephone, or communication through third parties, except under circumstances approved in advance by the probation officer. The defendant shall not enter onto the premises, travel past, or loiter near any victim's residence, place of employment, or other places frequented by the victim.

The defendant shall participate and comply with the requirements of the Computer and Internet Monitoring Program, contributing to the cost of the monitoring in an amount not to exceed $40 per month. The defendant shall consent to the probation officer's conducting ongoing monitoring of his/her computer/computers. The monitoring may include the installation of hardware and/or software systems that allow evaluation of computer use. The defendant shall not remove, tamper with, reverse engineer, or circumvent the software in any way. The defendant shall only use authorized computer systems that are compatible with the software and/or hardware used by the Computer and Internet Monitoring Program. The defendant shall permit the probation officer to conduct a preliminary computer search prior to the installation of software. At the discretion of the probation officer, the monitoring software may be disabled or removed at any time during the term of supervision.

The defendant shall submit to periodic, unannounced examinations of his/her computer/computers, storage media, and/or other electronic or Internet-capable devices, performed by the probation officer at reasonable times and in a reasonable manner based on reasonable suspicion of contraband evidence of a violation of supervision. This may include the retrieval and copying of any prohibited data and/or the removal of such system for the purpose of conducting a more thorough inspection. The defendant shall provide written authorization for release of information from the defendant's Internet service provider.

The defendant shall provide to the probation officer complete access to all business and personal financial information.

The defendant shall 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 at any time. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least $15 per month.

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CRIMINAL MONETARY PENALTIES

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

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$200.00	$.00	$.00	$.00

☐ The determination of restitution is deferred until An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

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

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. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

☐ 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 payments of $ _____ 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:
It is ordered that the Defendant shall pay to the United States a special assessment of $200.00 for Counts 1 and 2 , which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during 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
See above for Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.

☐ 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:

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