

NOT RECOMMENDED FOR PUBLICATION

No. 20-4053

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
DARELL ANTHONY ANDERSON,
Defendant-Appellant.

)))))))))

FILED
Apr 20, 2021
DEBORAH S. HUNT, Clerk

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF
OHIO

ORDER

Before: DAUGHTREY, McKEAGUE, and THAPAR, Circuit Judges.

Darell Anthony Anderson, a federal prisoner, appeals his judgment of conviction and sentence. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In the midst of a jury trial, Anderson pleaded guilty to possession with intent to distribute heroin, fentanyl, methamphetamine, cocaine, cocaine base, and marijuana, in violation of 21 U.S.C. § 841(a)(1), and possession of a firearm in furtherance of a drug-trafficking crime, in violation of 18 U.S.C. § 924(c), with the benefit of a written Federal Rule of Criminal Procedure 11(c)(1)(C) plea agreement. He subsequently filed a motion to withdraw his guilty plea, which the district court denied. The district court sentenced Anderson, in accordance with the plea agreement, to serve a total of 240 months in prison—180 months for the drug conviction and 60 months for the firearm conviction, to run consecutively—followed by five years of supervised release and imposed a \$5,000 fine. Anderson filed a timely appeal.

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Anderson's counsel has moved to withdraw and has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). After reviewing the record, counsel has concluded that there are no meritorious grounds for appeal. As required under *Anders*, counsel addresses "anything in the record that might arguably support the appeal." *Id.* at 744. Counsel discusses the validity of Anderson's appeal waiver, the validity of his guilty plea, the denial of his motion to withdraw his guilty plea, and the reasonableness of his sentence. Anderson was notified of his right to respond to counsel's *Anders* brief and has filed a response. In his response, Anderson argues that he was denied effective assistance of trial counsel and that the prosecutor engaged in misconduct.

Counsel has filed an acceptable *Anders* brief. Counsel indicates that he has carefully reviewed the entire record and has raised the only issues deemed arguable. He properly concludes that neither those issues nor any other issue present on the record would support an appeal. *See Anders*, 386 U.S. at 744.

I.

A.

"We 'review[] the question of whether a defendant waived his right to appeal his sentence in a valid plea agreement *de novo*.'" *United States v. Piroso*, 787 F.3d 358, 370 (6th Cir. 2015) (quoting *United States v. Smith*, 344 F.3d 479, 483 (6th Cir. 2003)). A waiver provision in a plea agreement is binding as long as it was made knowingly and voluntarily. *United States v. Toth*, 668 F.3d 374, 378 (6th Cir. 2012).

Anderson's plea agreement contained an appeal-waiver provision. Under that provision, Anderson waived "the right to appeal the conviction and sentence imposed, except if the sentence imposed exceeds the statutory maximum." The appeal-waiver provision did not prohibit Anderson from pursuing any ineffective-assistance-of-counsel or prosecutorial-misconduct claims. Anderson acknowledged that he had read the plea agreement, understood it, voluntarily agreed to its terms, had not been forced, threatened, or promised anything outside of the agreement in exchange for his guilty plea, had discussed his case and his decision to plead guilty with counsel, and was satisfied with counsel's advice and representation. Above his signature, Anderson

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certified that he had reviewed the plea agreement with counsel and was satisfied with counsel's assistance.

During the change-of-plea hearing, the government outlined the terms of the plea agreement on the record, including the appeal-waiver provision. The district court reviewed the appeal-waiver provision and ensured that Anderson understood it. Anderson also confirmed that his plea was voluntary and not the result of any coercion, force, threats, or promises outside of the plea agreement. Nothing in the record suggests that Anderson's assent to the appeal-waiver provision was unknowing or involuntary. Although Anderson retained the right to appeal his convictions and sentences if his sentences exceeded the statutory maximums, that circumstance is not present here. Anderson was sentenced to serve 180 months in prison for the drug conviction and 60 months in prison for the firearm conviction—below the statutory maximum sentences of life in prison for those offenses. *See* 21 U.S.C. § 841(b)(1)(A); 18 U.S.C. § 924(c)(1)(A). Moreover, a thorough review of the record reveals no basis for pursuing any ineffective-assistance-of-counsel or prosecutorial-misconduct claims at this time. Thus, the appeal-waiver provision in the plea agreement is enforceable and, assuming that the guilty plea itself is valid, Anderson may not appeal his convictions and sentences.

B.

A guilty plea is valid if it is entered knowingly, voluntarily, and intelligently. *Brady v. United States*, 397 U.S. 742, 748 (1970); *Boykin v. Alabama*, 395 U.S. 238, 242–44 (1969). The validity of a guilty plea is assessed by reviewing the totality of the circumstances surrounding the plea. *Brady*, 397 U.S. at 749. To be valid, a guilty plea must reflect “sufficient awareness of the relevant circumstances and likely consequences” of the plea. *Id.* at 748 (footnote omitted).

During the change-of-plea hearing, the district court, in accordance with Rule 11, advised Anderson that he did not have to enter a guilty plea and could continue with his jury trial that was in progress. *See* Fed. R. Crim. P. 11(b)(1)(B), (C). The district court informed Anderson that he had the right to assistance of counsel through every stage of the case and other trial rights but that he would be waiving those rights by pleading guilty. *See* Fed. R. Crim. P. 11(b)(1)(D)–(F).

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Anderson expressed his understanding. The government informed Anderson of the charges to which he was pleading guilty. The district court advised Anderson of the mandatory minimum and maximum penalties that he faced, including imprisonment, fine, and supervised release, and that a guilty plea also subjected him to other consequences, such as the loss of various civil rights. The district court also advised Anderson that he would be required to pay a \$100 special assessment for each conviction and reminded him that he had agreed to forfeit a particular firearm in his plea agreement. *See* Fed. R. Crim. P. 11(b)(1)(G)-(J), (L). Anderson stated that he understood the charged crimes and possible penalties.

The district court informed Anderson that an advisory sentencing guidelines range would be calculated and that the court would consider that range before imposing sentence. *See* Fed. R. Crim. P. 11(b)(1)(M). Anderson expressed his understanding. The district court ensured that Anderson understood the appeal-waiver provision contained in his plea agreement. *See* Fed. R. Crim. P. 11(b)(1)(N).

Anderson confirmed that he had discussed his case and his decision to plead guilty with his attorney and was satisfied with counsel's advice and representation. He stated that he was not under the influence of any prescription medication. Anderson also stated that his guilty plea was voluntary and not the result of any coercion, force, threats, or promises outside of the plea agreement. *See* Fed. R. Crim. P. 11(b)(2). The district court set forth the factual basis, as stated in the statement of facts attached to Anderson's plea agreement, and asked Anderson if his acknowledgement of those facts was true and accurate. Anderson responded affirmatively. *See* Fed. R. Crim. P. 11(b)(3).

Anderson was "sworn" but the district court did not advise him that any false statement made while under oath could subject him to prosecution for perjury or making a false statement. *See* Fed. R. Crim. P. 11(b)(1)(A). But Anderson does not allege that he has been threatened with prosecution for perjury or making a false statement. Anderson did not raise any objections concerning the plea proceedings before the district court, and there is no indication that his substantial rights were affected by the district court's failure to address any issues. *See United*

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States v. Dominguez Benitez, 542 U.S. 74, 76 (2004). Thus, under the totality of the circumstances, the record reflects a valid guilty plea. See *Brady*, 397 U.S. at 748–49; *Boykin*, 395 U.S. at 242–44.

C.

A valid, unconditional guilty plea waives all “constitutional violations occurring prior to a plea of guilty once the defendant enters his plea” unless expressly preserved in a plea agreement or at a plea hearing. *United States v. Lalonde*, 509 F.3d 750, 757 (6th Cir. 2007); see also *Tollett v. Henderson*, 411 U.S. 258, 267 (1973). Anderson entered an unconditional guilty plea without reserving the right to appeal any pre-plea issues. Therefore, Anderson waived his right to challenge any unpreserved pre-plea issues. See *United States v. Abdulmutallab*, 739 F.3d 891, 904 (6th Cir. 2014).

D.

“We review for abuse of discretion the district court’s denial of a motion to withdraw a guilty plea.” *United States v. Catchings*, 708 F.3d 710, 717 (6th Cir. 2013). “A district court abuses its discretion where it relies on clearly erroneous findings of fact, or when it improperly applies the law or uses an erroneous legal standard.” *Id.* (quoting *United States v. Haygood*, 549 F.3d 1049, 1052 (6th Cir. 2008)).

When a district court has accepted a guilty plea, the plea may not be withdrawn before sentencing unless the defendant demonstrates “a fair and just reason for requesting the withdrawal.” Fed. R. Crim. P. 11(d)(2)(B). The purpose of permitting a defendant to withdraw a guilty plea is “to allow a hastily entered plea made with unsure heart and confused mind to be undone, not to allow a defendant to make a tactical decision to enter a plea, wait several weeks, and then obtain a withdrawal if he believes he made a bad choice in pleading guilty.” *United States v. Walden*, 625 F.3d 961, 965 (6th Cir. 2010) (quoting *United States v. Ellis*, 470 F.3d 275, 280–81 (6th Cir. 2006)). We have identified seven factors to consider when evaluating a motion to withdraw a guilty plea:

- (1) the amount of time that elapsed between the plea and the motion to withdraw it;
- (2) the presence (or absence) of a valid reason for the failure to move for withdrawal

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earlier in the proceedings; (3) whether the defendant has asserted or maintained his innocence; (4) the circumstances underlying the entry of the guilty plea; (5) the defendant's nature and background; (6) the degree to which the defendant has had prior experience with the criminal justice system; and (7) potential prejudice to the government if the motion to withdraw is granted.

United States v. Goddard, 638 F.3d 490, 494 (6th Cir. 2011) (quoting *United States v. Bashara*, 27 F.3d 1174, 1181 (6th Cir. 1994)). "These factors represent 'a general, non-exclusive list and no one factor is controlling.'" *Id.* (quoting *United States v. Bazzi*, 94 F.3d 1025, 1027 (6th Cir. 1996)).

Anderson pleaded guilty on February 28, 2020, during his jury trial, and the district court accepted his plea and found him guilty that same day. Almost three months later, on May 22, 2020, Anderson filed a pro se motion to withdraw his guilty plea, which he later supplemented. Although he was represented by counsel, the district court addressed Anderson's pro se motion to withdraw his guilty plea at the sentencing hearing and denied it.

Anderson did not offer a fair and just reason to withdraw his guilty plea. First, Anderson's motion to withdraw, filed almost three months after his guilty plea was entered, was not promptly filed. *See United States v. Benton*, 639 F.3d 723, 727 (6th Cir. 2011) (noting that "[t]his Court has declined to allow plea withdrawal when intervening time periods were as brief as one month"). Second, Anderson did not assert his innocence in his motion to withdraw and supplement; instead, he asserted ineffective-assistance-of-counsel claims. Moreover, at the change-of-plea hearing, he admitted his guilt of the drug and firearm offenses and confirmed the factual basis supporting his guilty plea.

Third, the change-of-plea transcript reveals that Anderson's guilty plea was voluntary and free of any coercion, force, threats, or promises outside of the plea agreement. Fourth, the record reveals that Anderson has a twelfth-grade education, earned his GED, and was 43 years old. Fifth, the record reflects that Anderson had prior experience with the criminal justice system as evidenced by his extensive criminal history, including a criminal offense for which he was serving supervised release when the instant offenses were committed. Sixth, granting the motion to withdraw potentially would have prejudiced the government given that a jury trial was in progress

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when Anderson entered his guilty plea. Under these circumstances, the district court did not abuse its discretion when it denied Anderson's motion to withdraw his guilty plea.

II.

A.

In his response to counsel's *Anders* brief, Anderson asserts that he was denied effective assistance of trial counsel because counsel did not: (1) disclose allegedly exculpatory evidence to the prosecution that he had on his Samsung cell phone showing security camera footage of his wife and Officer Bookman having "relations" the day before his residence was searched; (2) challenge his arrest; (3) challenge the search of his property; (4) "challenge the illegal search and seizure of an [A]pple [I]-phone" that allegedly disclosed a confiscated Samsung cell phone containing exculpatory evidence; (5) "review and disclose [his] home [surveillance] system," which allegedly was exculpatory; (6) challenge "discrepancies in the drug weights and the listed items seized"; (7) "challenge the facts of the criminal complaint contradicting the search and [seizure] warrant"; (8) "challenge the delayed indictment" and move to dismiss it under 18 U.S.C. § 3162(a)(1) and did not contest the forfeiture of his property; (9) "challenge the arraignment of the indictment"; (10) "file a motion to dismiss under [18 U.S.C.] § 3162, for failing to bring [him] to trial within the 70 day time period established by [statute]"; (11) challenge the indictments "for failing to disclose" the identity of the co-conspirator and for being duplicitous and multiplicitous; and (12) "raise on appeal that [his] plea agreement was violated" because the sentence imposed exceeds the stipulated sentence and that his guilty plea to the firearm offense was perjurious because a government witness testified that the firearm "was sold to and purchased by" his wife.

We decline to consider at this time all but Anderson's twelfth claim of ineffective assistance of trial counsel. Ineffective-assistance-of-counsel claims generally are disfavored on direct appeal and are brought more appropriately in a 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence. *Massaro v. United States*, 538 U.S. 500, 504–05 (2003); *United States v. Walden*, 625 F.3d 961, 967 (6th Cir. 2010). This is so because the record usually is not developed adequately and is not complete enough at the time of the direct appeal to permit review of an

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ineffective-assistance-of-counsel claim. *Massaro*, 538 U.S. at 504–05; *Walden*, 625 F.3d at 967. Because the existing record does not demonstrate any apparent errors and is not developed sufficiently as to the issues raised, except for his twelfth claim, Anderson’s ineffective-assistance-of-trial-counsel claims are premature. See *United States v. Wells*, 623 F.3d 332, 348 (6th Cir. 2010).

Anderson’s twelfth ineffective-assistance-of-trial-counsel claim faults counsel for failing to argue on appeal that his plea agreement was violated because the sentence imposed was greater than the parties’ stipulated sentence of 240 months in prison. He argues that he was sentenced to serve 240 months for the offenses of conviction in this case and a consecutive 60-month sentence for violating his supervised release in a separate case, resulting in a total sentence of 300 months. He also argues that he committed perjury by pleading guilty to the firearm offense because he did not buy the firearm that is the subject of that offense and pleaded guilty under duress. This claim is belied by the record.

First, the parties stipulated to a 240-month sentence for the offenses of conviction in this case. The parties also agreed that “any sentence imposed in supervised release violation case number 2:12-CR-13(1) shall be served concurrent to the sentence imposed” in this case. The district court imposed the agreed-upon 240-month sentence in this case, and in the supervised-release-violation case, the district court imposed a 30-month sentence to run concurrently with the sentence imposed in this case. Anderson did not receive a total sentence of 300 months for this case and the supervised-release-violation case.

Second, the record supports Anderson’s valid guilty plea to the firearm-possession offense. In the factual basis supporting Anderson’s plea, he admitted that he “possessed multiple loaded firearms, which were recovered in close proximity to drugs, drug paraphernalia, and currency.” At the change-of-plea hearing, Anderson confirmed that the factual basis as set forth in the plea agreement was true and accurate. Notably, it could be illegal for Anderson to possess a firearm even if he did not purchase it.

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Third, at the change-of-plea hearing, Anderson stated that his guilty plea was voluntary and not the result of any coercion, force, threats, or promises outside of the plea agreement. There is nothing in the record to suggest otherwise. Anderson's twelfth ineffective-assistance-of-trial-counsel claim, therefore, does not present an appealable issue.

B.

Anderson asserts that the prosecutor engaged in misconduct by: (1) introducing false testimony, presenting inadmissible evidence obtained from an illegal search, and failing "to disclose [his] home [surveillance] system" that allegedly contained evidence that would exonerate him and show police misconduct; (2) filing "duplicious and [multiplicitous] indictments"; and (3) prosecuting this case when it lacked jurisdiction to do so. None of these arguments raises appealable issues.

First, any error in the admission of testimony or evidence at trial and any alleged defects in the indictment were waived when Anderson entered a valid, unconditional guilty plea in the midst of trial, reserving the right to raise only ineffective-assistance-of-counsel and prosecutorial-misconduct claims on appeal. *See Tollett*, 411 U.S. at 267; *Lalonde*, 509 F.3d at 757. Notably, Anderson did file a pre-plea motion to dismiss count four of the indictment as multiplicitous, which the district court denied, but he waived the right to challenge that issue by pleading guilty. Moreover, Anderson does not contend that the alleged undisclosed and exculpatory evidence from his own home security system was in the sole possession of the prosecution. When potentially exculpatory evidence is not in the sole possession of the prosecution and is available to the defense through other sources, there is no violation of *Brady v. Maryland*, 373 U.S. 83, 87 (1963). *Matthews v. Ishee*, 486 F.3d 883, 891 (6th Cir. 2007).

Second, Anderson asserts no basis to support his claim that the prosecution lacked jurisdiction to prosecute this case. The district court had jurisdiction over Anderson's criminal prosecution because his indictment charged him with federal crimes in violation of federal laws. *See* 18 U.S.C. § 3231. Anderson has asserted no reason why the prosecution could not proceed

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with the case against him and the district court could not exercise jurisdiction over his criminal prosecution. Anderson's prosecutorial-misconduct claims lack merit.

Because Anderson waived the right to appeal his convictions and sentences, we need not consider the remaining argument raised by counsel. Nevertheless, we have thoroughly reviewed the record in this case and discovered no error warranting reversal of the district court's judgment.

Our independent review of the record confirms counsel's conclusion that there are no issues of arguable merit present in Anderson's appeal. Accordingly, we **GRANT** counsel's motion to withdraw and **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", is written over a horizontal line.

Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT

Southern District of Ohio

UNITED STATES OF AMERICA

v.

Darell Anderson

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:18cr265

USM Number: 69951-061

Steven S. Nolder

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) Counts 3 and 4 of the Second Superseding Indictment☐ 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 & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. §§ 841(a)(1), (b)(1)(A), (b)(1)(B) and (b)(1)(C)	Possession with Intent to Distribute Heroin, Fentanyl, Methamphetamine, Cocaine, Cocaine Base, and Marijuana	9/20/2018	3

The defendant is sentenced as provided in pages 2 through 8 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 and 5 ☐ 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.

9/8/2020

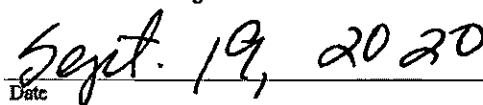
Date of Imposition of Judgment



Signature of Judge

Michael H. Watson, United States District Judge

Name and Title of Judge



Date

AO 245B (Rev. 09/19) Judgment in a Criminal Case
Sheet 1A

Judgment—Page 2 of 8

DEFENDANT: Darell Anderson
CASE NUMBER: 2:18cr265

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 924(c)	Possession of a Firearm in Furtherance of a Drug Trafficking Crime	9/20/2018	4

DEFENDANT: Darell Anderson
CASE NUMBER: 2:18cr265

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
180 months as to Count 3; 60 months as to Count 4 to run consecutively.

- ☒ The court makes the following recommendations to the Bureau of Prisons:
The defendant shall participate in the Bureau of Prison's 500 Hour Residential Substance Abuse Treatment Program; the defendant shall be placed in FCI Milan; the defendant shall participate in a mental health evaluation and/or mental health counseling at the direction of the BOP; the defendant shall participate in vocational training
- ☒ 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: Darell Anderson
CASE NUMBER: 2:18cr265

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

5 years as to both counts to 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 the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

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

DEFENDANT: Darell Anderson
CASE NUMBER: 2:18cr265

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.

Defendant's Signature _____

Date _____

DEFENDANT: Darell Anderson
CASE NUMBER: 2:18cr265

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall participate in mental health counseling, as directed by the U.S. Probation Office, until such time as the defendant is released from the program by the probation office. The defendant will make a co-payment for treatment services not to exceed \$25 per month, which is determined by the defendant's ability to pay.

The defendant shall participate in a vocational program as directed by the probation officer. Such program may include on the job training, job readiness training, and skills development training.

DEFENDANT: Darell Anderson
CASE NUMBER: 2:18cr265**CRIMINAL MONETARY PENALTIES**

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 200.00	\$	\$ 5,000.00	\$	\$

☐ 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>
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TOTALS	\$	<u>0.00</u>	\$	<u>0.00</u>
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☐ 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:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** 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.

DEFENDANT: Darell Anderson
CASE NUMBER: 2:18cr265

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 \$ 5,200.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance with ☐ 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 60 (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:
[x] If the defendant, while incarcerated, is working in a non-UNICOR or grade 5 UNICOR job, the defendant shall pay \$25.00 per quarter toward defendant's monetary obligation. If working in a grade 1-4 UNICOR job, defendant shall pay 50% of defendant's monthly pay toward defendant's monetary obligation. Any change in this schedule shall be made only by order of this Court.

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

Case Number
Defendant and Co-Defendant Names
(including defendant number)

Total Amount

Joint and Several
Amount

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:
As described in the plea agreement.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

**8/13/01: POLICY CHANGE RESTRICTING PUBLIC DISCLOSURE
OF THE STATEMENT OF REASONS PAGE IN THE JUDGMENT**

**DISTRIBUTION OF
THE JUDGMENT AND COMMITMENT
WITH THE STATEMENT OF REASONS PAGE
AND THE DENIAL OF FEDERAL BENEFITS
PAGE IS LIMITED TO:**

**DEFENSE COUNSEL
UNITED STATES ATTORNEY
U.S.A.'s FINANCIAL LITIGATION UNIT
UNITED STATES PROBATION
UNITED STATES PRETRIAL
UNITED STATES SENTENCING COMMISSION
(IF A TERM OF IMPRISONMENT, THEN ALSO THE
FEDERAL BUREAU OF PRISONS)**

**THE CLERK OF COURTS WILL MAINTAIN THE OFFICIAL VERSION
OF
THE STATEMENT OF REASONS PAGE
AND
THE DENIAL OF FEDERAL BENEFITS PAGE
SEALED IN A SECURE LOCATION SEPARATELY FROM
THE PUBLIC CASE FILE**

**Additional material
from this filing is
available in the
Clerk's Office.**