

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JOYDETH ROBINSON,

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

APPENDIX
PETITION FOR A WRIT OF CERTIORARI

Kevin Joel Page
Assistant Federal Public Defender

Federal Public Defender's Office
Northern District of Texas
525 S. Griffin Street, Suite 629
Dallas, TX 75202
(214) 767-2746
Joel_page@fd.org

INDEX TO APPENDICES

Appendix A Judgment and Opinion of Fifth Circuit

United States v. Joydeth Robinson, No. 20-10616

Appendix B Judgment and Sentence of the United States District Court for the
Northern District of Texas

United States v. Joydeth Robinson, 4:19-CR-00269-A

APPENDIX A

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

March 18, 2021

Lyle W. Cayce
Clerk

No. 20-10616
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOYDETH ROBINSON,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CR-269-1

Before CLEMENT, HIGGINSON, and ENGELHARDT, *Circuit Judges*.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

March 18, 2021

Lyle W. Cayce
Clerk

No. 20-10616
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOYDETH ROBINSON,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CR-269-1

Before CLEMENT, HIGGINSON, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Joydeth Robinson pleaded guilty, pursuant to a plea agreement, to one count of sexual exploitation of children. Her offense of conviction involved the production of an image of one of her minor daughters posed in a lewd and lascivious manner. As part of the plea agreement, the Government dismissed

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 20-10616

an additional count of sexual exploitation of children involving her other minor daughter.

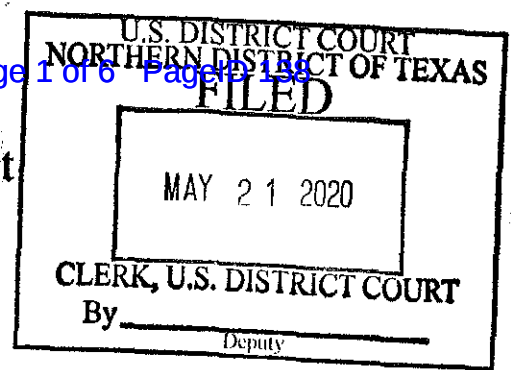
On appeal, Robinson challenges the portion of the presentence report (PSR) that included a “pseudo count” and multiple count enhancement under U.S.S.G. §§ 2G2.1(d)(1) and 3D1.4 for the conduct related to the dismissed count. She did not object in the district court, so we review for plain error. *United States v. Randall*, 924 F.3d 790, 795-96 (5th Cir. 2019).

We pretermite whether Robinson has shown an error that was clear or obvious under *Randall* because she has failed to demonstrate that any error affected her substantial rights. *See United States v. King*, 979 F.3d 1075, 1081-82 (5th Cir. 2020). With the multiple count enhancement and a three-level reduction for acceptance of responsibility, the PSR calculated Robinson’s total offense level as 44, which was reduced to 43 by U.S.S.G. Ch. 5, Pt. A, cmt. n.2. Absent the multiple count enhancement, Robinson’s total offense level is 42. But in both cases, the advisory guidelines sentence remains unchanged at 360 months of imprisonment because the statutory maximum term of imprisonment applies. *See* U.S.S.G. §5G1.1(a); *King*, 979 F.3d at 1081-82. Thus, the guidelines range is unaffected by the error, and Robinson has otherwise failed to show any effect on her substantial rights or a miscarriage of justice. *See King*, 979 F.3d at 1083.

The judgment is AFFIRMED.

APPENDIX B

United States District Court
Northern District of Texas
Fort Worth Division



UNITED STATES OF AMERICA §

v. §

JOYDETH ROBINSON §

Case Number: 4:19-CR-269-A(01)

JUDGMENT IN A CRIMINAL CASE

The government was represented by Assistant United States Attorney Aisha Saleem. The defendant, JOYDETH ROBINSON, was represented by Federal Public Defender through Assistant Federal Public Defender Michael A. Lehmann.

The defendant pleaded guilty on November 1, 2019 to count two of the two count Indictment filed on September 18, 2019. Accordingly, the court ORDERS that the defendant be, and is hereby, adjudged guilty of such count involving the following offense:

<u>Title & Section / Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
18 U.S.C. §§ 2251(a) and (e) Sexual Exploitation of Children	June 22, 2019	2

On motion of the United States, the court ORDERS as to this defendant that count one of the indictment, be, and is hereby, dismissed.

As pronounced and imposed on May 21, 2020, the defendant is sentenced as provided in this judgment.

The court ORDERS that the defendant immediately pay to the United States, through the Clerk of this Court, a special assessment of \$100.00.

The court further concluded that the defendant is indigent and waived the \$5,000 assessment required pursuant to 18 U.S.C. § 3014.

Having determined and found that defendant is a non-indigent person who has been convicted of an offense listed in 18 U.S.C. § 2259A, the court further ORDERS that defendant immediately pay as an added penalty \$100 as contemplated by 18 U.S.C. § 2259A.

The court further ORDERS that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence address, or mailing address, as set forth below, 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, through the clerk of this court, and the Attorney General, through the United States Attorney for this district, of any material change in the defendant's economic circumstances.

IMPRISONMENT

The court further ORDERS that the defendant be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 360 months.

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

SUPERVISED RELEASE

The court further ORDERS that, upon release from imprisonment, the defendant shall be on supervised release for a term of Life. The court imposed a term of supervised release because it will provide an added measure of deterrence and protection based on the facts and circumstances of this case.

Pursuant to 18 U.S.C. §3583(d), as a condition of supervised release, upon the completion of the sentence of imprisonment the defendant shall be surrendered by the Federal Bureau of Prisons to a duly-authorized immigration official for deportation in accordance with the established procedures provided by the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq. As a further condition of supervised release, if ordered deported the defendant shall remain outside the United States.

In the event the defendant is not deported immediately upon release from imprisonment, or should the defendant ever be within the United States during any portion of the term of supervised release, the defendant shall comply with the following conditions of supervised release:

1. The defendant shall not unlawfully possess a controlled substance.
2. The defendant shall not commit another federal, state, or local crime.
3. The defendant shall cooperate in the collection of DNA as directed by the U.S. Probation Officer, as authorized by the Justice for All Act of 2004.
4. The defendant shall 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.
5. If, upon commencement of supervised release, any part of the \$100 assessment pursuant to 18 U.S.C. § 2259A, ordered by this judgment remains unpaid, the defendant shall make payments on such unpaid amount at the rate of at least \$25 per month, the first such payment to be made no later than 60 days after the defendant's release from confinement and another payment to be made on the same day of each month thereafter until the assessment is paid in full.

6. The defendant shall 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.
7. The defendant shall have no contact with minors under the age of 18, including by correspondence, telephone, internet, electronic communication, or communication through third parties. The defendant shall not have access to or loiter near school grounds, parks, arcades, playgrounds, amusement parks or other places where children may frequently congregate, except as may be allowed upon advance approval by the probation officer.
8. The defendant shall not use any software program or device designed to hide, alter, or delete records and logs of the defendant's computer use, Internet activities, or files stored on the defendant's computer.
9. The defendant shall submit to periodic, unannounced examinations of 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.
10. Without prior approval of the probation officer, the defendant shall not maintain or create a user account on any social networking site (i.e., MySpace.com, Facebook.com, Adultfriendfinder.com, etc.) that allows access to persons under the age of 18, or allows for the exchange of sexually-explicit material, chat conversations, or instant messaging. The defendant shall neither view nor access any web profile of users under the age of 18.
11. The defendant shall not access any service or use any software that allows for direct peer to peer contact, that may include chat rooms, file sharing or file transfer protocol activity, or other similar activity, without permission from the probation officer.
12. The defendant shall provide to the probation officer complete access to all business and personal financial information.
13. The defendant shall 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 at a rate of at least \$25 per month.
14. The defendant shall neither possess nor have under her control any pornographic matter or any matter that sexually depicts minors under the age of 18 including, but not limited to, matter obtained through access to any computer and any matter linked to computer access or use.

15. The defendant shall 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 at the rate of at least \$25 per month.
16. The defendant shall 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.
17. The defendant shall also comply with the Standard Conditions of Supervision as hereinafter set forth.

Standard Conditions of Supervision

1. The defendant shall 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.
2. The defendant shall not possess a firearm, destructive device, or other dangerous weapon.
3. The defendant shall provide to the U.S. Probation Officer any requested financial information.
4. The defendant shall not leave the judicial district where the defendant is being supervised without the permission of the Court or U.S. Probation Officer.
5. The defendant shall report to the U.S. Probation Officer as directed by the court or U.S. Probation Officer and shall submit a truthful and complete written report within the first five (5) days of each month.
6. The defendant shall answer truthfully all inquiries by the U.S. Probation Officer and follow the instructions of the U.S. Probation Officer.
7. The defendant shall support her dependents and meet other family responsibilities.
8. The defendant shall work regularly at a lawful occupation unless excused by the U.S. Probation Officer for schooling, training, or other acceptable reasons.
9. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment.

10. The defendant shall refrain from excessive use of alcohol and shall 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.
11. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
12. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the U.S. Probation Officer.
13. The defendant shall permit a probation officer to visit her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the U.S. Probation Officer.
14. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.
15. The defendant shall 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.
16. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

The court hereby directs the probation officer to provide defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, as contemplated and required by 18 U.S.C. § 3583(f).

FINE

The court did not order a fine because the defendant does not have the financial resource or future earning capacity to pay a fine.

STATEMENT OF REASONS

The "Statement of Reasons" and personal information about the defendant are set forth on the attachment to this judgment.

Signed this the 21st day of May, 2020.


JOHN McBRYDE
UNITED STATES DISTRICT JUDGE

RETURN

I have executed the imprisonment part of this Judgment as follows:

Defendant delivered on _____, 2020 to _____
at _____, with a certified copy of this Judgment.

United States Marshal for the
Northern District of Texas

By _____
Deputy United States Marshal