

APPENDIX "A"

APRIL 13, 2021 ELEVENTH CIRCUIT ORDER
DENYING REHEARING

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-14700-JJ

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

WILLIAM BRINSON BALL,

Defendant - Appellant.

Appeal from the United States District Court
for the Middle District of Florida

BEFORE: WILSON, ROSENBAUM and BLACK, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by William Brinson Ball is DENIED.

ORD-41

APPENDIX "B"

**NOVEMBER 17, 2020 OPINION OF ELEVENTH CIRCUIT
AFFIRMING CONVICTION**

UNITED STATES OF AMERICA, Plaintiff-Appellee, versus WILLIAM BRINSON BALL,
Defendant-Appellant.

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

835 Fed. Appx. 493; 2020 U.S. App. LEXIS 35963

No. 18-14700 Non-Argument Calendar

November 17, 2020, Decided

Notice:

**PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING
THE CITATION TO UNPUBLISHED OPINIONS.**

Editorial Information: Prior History

{2020 U.S. App. LEXIS 1}Appeal from the United States District Court for the Middle District of Florida.
D.C. Docket No. 8:18-cr-00069-EAK-AAS-1. United States v. Ball, 2020 U.S. App. LEXIS 3054 (11th Cir.
Fla., Jan. 30, 2020)

Disposition:

AFFIRMED.

Counsel

For UNITED STATES OF AMERICA, Plaintiff - Appellee: Jennifer
Waugh Corinis, Michelle Thresher Taylor, U.S. Attorney Service - Middle District of Florida,
U.S. Attorney's Office, TAMPA, FL.

For WILLIAM BRINSON BALL, Defendant - Appellant: Baylor
Sherwood Johnson, John L. Urban, Urban Thier & Federer, PA, ORLANDO, FL; William
Brinson Ball, FCI Coleman Low - Inmate Legal Mail, COLEMAN, FL; Frank Louderback, Law
Office of Franklyn Louderback, SAINT PETERSBURG, FL.

Judges: Before WILSON, ROSENBAUM and BLACK, Circuit Judges.

CASE SUMMARY Defendant's guilty plea conviction for attempted child enticement in violation of 18
U.S.C.S. § 2422(b) was affirmed since, under plain error review, applying the statute extraterritorially
was not unconstitutional, and his conduct violated the statute.

OVERVIEW: HOLDINGS: [1]-Defendant's conviction for attempted child enticement was affirmed since
his claim that the extraterritorial application of 18 U.S.C.S. § 2422(b) was unconstitutional was subject to
plain error review, even assuming his guilt was based on conduct that occurred outside the United
States, the district court did not plainly err in accepting his guilty plea because neither the United States
Supreme Court nor the United States Court of Appeals for the Eleventh Circuit had addressed whether §
2422(b) extended to conduct occurring outside the United States, and the statute itself did not
specifically resolve that issue, and his constitutional challenge was foreclosed to the extent it is based on
his contention that § 2422(b) did not reach sexual conduct that would have occurred in international
waters and would not have violated Florida law.

OUTCOME: Conviction affirmed.

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{835 Fed. Appx. 493} PER CURIAM:

William Brinson Ball appeals his conviction for attempted child enticement in violation of 18 U.S.C. § 2422(b) after pleading guilty to this offense. Ball argues applying the statute extraterritorially is unconstitutional and that his conduct did not violate the statute. After review, we affirm.

{835 Fed. Appx. 494} I. DISCUSSION

A. Waiver

Section 2422(b) makes it unlawful to use "any facility or means of interstate or foreign commerce" to induce, entice, or coerce a minor "to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense," or to {2020 U.S. App. LEXIS 2} attempt to do so. 18 U.S.C. § 2422(b). The indictment charged Ball with attempting to entice a minor to engage in sexual activity that would have violated Florida law. The factual basis set forth in his plea agreement detailed how Ball, who then resided in Dubai, communicated over the Internet with a special agent posing as the father of a seven-year-old child to organize a sexual encounter with the child, paid \$5,000 for the encounter, and flew from Dubai to Orlando, Florida, and then drove to Tampa, Florida for the encounter.

Ball argues applying the statute to extraterritorial conduct is unconstitutional. He contends his conduct did not violate the statute because "the enticing action occurred outside the United States" and involved proposed sexual conduct that would have occurred in international waters without violating any Florida law. The government responds Ball has waived any challenge to his § 2422(b) conviction because his argument that his criminal conduct was entirely extraterritorial contradicts the admissions he made in his guilty plea. In his reply, Ball asserts he is not challenging the facts supporting his guilty plea, but rather the legal conclusion, drawn from those facts, that his conduct {2020 U.S. App. LEXIS 3} violated the statute.

Ordinarily, the entry of a valid guilty plea waives any objection to all non-jurisdictional errors. *United States v. Yunis*, 723 F.2d 795, 796 (11th Cir. 1984). However, a constitutional challenge to the statute of conviction survives a guilty plea where the defendant's claim is consistent with the defendant's "knowing, voluntary, and intelligent admission that he did what the indictment alleged." *Class v. United States*, 138 S. Ct. 798, 804-05, 200 L. Ed. 2d 37 (2018) (holding a defendant who pleaded guilty did not waive Second Amendment and due process challenges to statute of conviction because claims did not "contradict the terms of the indictment or the written plea agreement"). In pleading guilty, Ball acknowledged an essential element of his offense was that "[h]ad the proposed sexual activity occurred with a minor, one or more of the individuals engaging in the sexual activity could have been charged with a criminal offense under the laws of the state of Florida, as charged in the Indictment." Ball's constitutional challenge is therefore foreclosed to the extent it is based on his contention that § 2422(b) does not reach sexual conduct that would have occurred in international waters and would not have violated Florida law. See *id.*

Nevertheless, Ball has not completely waived his constitutional claim. Although {2020 U.S. App. LEXIS 4} Ball admitted "he had traveled to Tampa, Florida, to meet with and engage in sexual activities with a seven-year-old child" and had arrived at a predetermined meeting location in Florida with a child's stuffed animal and various sexual paraphernalia, the plea agreement also described conduct that presumably occurred from Dubai. To the extent Ball argues § 2422(b) does not reach this conduct, this argument is not {835 Fed. Appx. 495} inconsistent with his guilty plea and therefore not waived. See *id.*

B. Constitutional Claim

Even assuming Ball's guilt was based on conduct that occurred outside the United States, however, the district court did not plainly err in accepting his guilty plea. Because neither the Supreme Court nor this Court has addressed whether § 2422(b) extends to conduct occurring outside the United States, and the statute itself does not specifically resolve this issue, we cannot say the district court plainly erred even if it applied the statute extraterritorially. See *United States v. Lejarde-Rada*, 319 F.3d 1288, 1291 (11th Cir. 2003) ("It is the law of this circuit that, at least where the explicit language of a statute or rule does not specifically resolve an issue, there can be no plain error where there is no precedent from the Supreme Court or this Court directly resolving {2020 U.S. App. LEXIS 5} it."); see also *United States v. Belfast*, 611 F.3d 783, 816 (11th Cir. 2010) (rejecting constitutional challenge to extraterritorial application of a criminal statute, and concluding "district court could not have plainly erred," where no binding authority addressed extraterritoriality).

II. CONCLUSION

For the reasons above, Ball has failed to show plain error. Accordingly, we affirm.

AFFIRMED.

Footnotes

1

Because Ball raises his constitutional challenge to § 2422(b) for the first time on appeal, our review of this issue is limited to plain error. See *United States v. Belfast*, 611 F.3d 783, 815 (11th Cir. 2010) (providing a constitutional claim raised for the first time on appeal is reviewed for plain error). We reject Ball's attempt to characterize the issue as one of subject matter jurisdiction. See *Morrison v. Nat'l Australia Bank Ltd.*, 561 U.S. 247, 254, 130 S. Ct. 2869, 177 L. Ed. 2d 535 (2010) (holding extraterritorial application of a statute is a merits question, not a question of subject matter jurisdiction).

APPENDIX "C"

SUPREME COURT ORDER EXTENDING TIME
OF FILING CERTIORARI

ORDER
SUPREME COURT OF THE UNITED STATES
2020 U.S. LEXIS 1643; 88 U.S.L.W. 3309
No. 589.
March 19, 2020, Decided

Editorial Information: Subsequent History

Later proceeding at In re Order, 2020 U.S. LEXIS 2196 (U.S., Apr. 15, 2020)

Judges: {2020 U.S. LEXIS 1}Roberts, Thomas, Ginsburg, Breyer, Alito, Sotomayor, Kagan, Gorsuch, Kavanaugh.

Opinion

In light of the ongoing public health concerns relating to **COVID-19**, the following shall apply to cases prior to a ruling on a petition for a writ of **certiorari**: IT IS ORDERED that the deadline to file any petition for a writ of **certiorari** due on or after the date of this order is extended to **150 days** from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing. See Rules 13.1 and 13.3. IT IS FURTHER ORDERED that motions for extensions of time pursuant to Rule 30.4 will ordinarily be granted by the Clerk as a matter of course if the grounds for the application are difficulties relating to **COVID-19** and if the length of the extension requested is reasonable under the circumstances. Such motions should indicate whether the opposing party has an objection. IT IS FURTHER ORDERED that, notwithstanding Rules 15.5 and 15.6, the Clerk will entertain motions to delay distribution of a petition for writ of **certiorari** where the grounds for the motion are that the petitioner needs additional time to file a reply due to difficulties relating to **COVID-19**. Such motions will ordinarily be granted{2020 U.S. LEXIS 2} by the Clerk as a matter of course if the length of the extension requested is reasonable under the circumstances and if the motion is actually received by the Clerk at least two days prior to the relevant distribution date. Such motions should indicate whether the opposing party has an objection. IT IS FURTHER ORDERED that these modifications to the Court's Rules and practices do not apply to cases in which **certiorari** has been granted or a direct appeal or original action has been set for argument. These modifications will remain in effect until further order of the Court.

ORDER LIST: 594 U.S.
SUPREME COURT OF THE UNITED STATES
2021 U.S. LEXIS 3591

[NO NUMBER IN ORIGINAL]
July 19, 2021, Decided

Judges: {2021 U.S. LEXIS 1}Roberts, Thomas, Ginsburg, Breyer, Alito, Sotomayor, Kagan, Gorsuch, Kavanaugh.

Opinion

IT IS ORDERED that the Court's orders of March 19, 2020 and April 15, 2020 relating to COVID-19 are rescinded, subject to the clarifications set forth below.

IT IS FURTHER ORDERED that, in any case in which the relevant lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing was issued prior to July 19, 2021, the deadline to file a petition for a writ of certiorari remains extended to 150 days from the date of that judgment or order. In any case in which the relevant lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing was issued on or after July 19, 2021, the deadline to file a petition for a writ of certiorari is as provided by Rule 13.

IT IS FURTHER ORDERED that the requirement of Rule 33.1 that 40 copies of documents be submitted in booklet format will go back into effect as to covered documents filed on or after September 1, 2021. For submissions pursuant to Rule 33.2, the requirement of Rule 39 that an original and 10 copies be submitted, where applicable, will also go back into effect as to covered documents filed on or after {2021 U.S. LEXIS 2} September 1, 2021. The authorization to file a single copy of certain documents on 8½ x 11 inch paper, as set forth in the Court's April 15, 2020 order, will remain in effect only as to documents filed before September 1, 2021.

IT IS FURTHER ORDERED that the following types of documents should not be filed in paper form if they are submitted through the Court's electronic filing system: (1) motions for an extension of time under Rule 30.4; (2) waivers of the right to respond to a petition under Rule 15.5; and (3) blanket consents to the filing of amicus briefs under Rules 37.2(a) and 37.3(a). Notwithstanding Rule 34.6 and paragraph 9 of the Guidelines for the Submission of Documents to the Supreme Court's Electronic Filing System, these enumerated filings should be filed electronically in cases governed by Rule 34.6, although other types of documents in those cases should be filed in paper form only.

APPENDIX "D"
DISTRICT COURT
JUDGMENT AND COMMITMENT

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

WILLIAM BRINSON BALL

Case Number: 8:18-cr-69-T-17AAS
USM Number: 70048-018

Franklyn Louderback, ret.

JUDGMENT IN A CRIMINAL CASE

The defendant pleaded guilty to Counts One and Two of the Indictment. The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count (Numbers)
18 U.S.C. § 2422(b)	Attempting to Induce a Minor to Engage in Sexual Acts	February 14, 2018	One
18 U.S.C. §§ 2225a(1) and 2225c(1)	Transporting and Shipping Using Any Means and Facility of Interstate and Foreign Commerce, and Visual Description, When the Production of the Visual Description Involved the Use of a Minor Engaging in Sexually Explicit Conduct	January 18, 2018	Two

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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 shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

Date of Imposition of Judgment:

October 25, 2018

ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

October 25, 2018

William Brinson Ball
8:18-cr-69-T-17AAS

IMPRISONMENT

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 and SIXTY-TWO (262) MONTHS**. This term consists of a term of **TWO HUNDRED and SIXTY-TWO (262) MONTHS** as to Count One and **TWO HUNDRED and FORTY (240) MONTHS** as to Count Two of the indictment, all such terms to run concurrently. The defendant shall receive credit for time served as calculated by the Bureau of Prisons.

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

- 1st choice of Incarceration – FCI Marianna, Florida for intensive sex offender program
2. If possible, send support for minor son
3. Medical exam for high blood pressure and medication, etc.
4. INTENSIVE sexual offender treatment. See PSR and court exhibits.
5. Defendant has multiple language skills and extensive musical education which would be advantageous at facility and vocational pursuits.
6. Pursue education in all languages available.
7. 500 hour RODP substance abuse program for alcohol.

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

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 U.S. Marshal

AO 245B (Rev. 02/18) Judgment in a Criminal Case

William Brinson Ball
8:18-cr-69-T-17AAS

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of **LIFE** as to each of Counts One and Two of the Indictment, all such terms 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.
4. You must cooperate in the collection of DNA as directed by the probation officer.
5. 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.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

The defendant shall also comply with the additional conditions on the attached page.

William Brinson Ball
8:18-cr-69-T-17AAS

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. After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when the defendant must report to the probation officer, and the defendant must report to the probation office as instructed.
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: _____

AO 245B (Rev. 02/18) Judgment in a Criminal Case