NO. _____

In The
Supreme Court of the United States

BRANDON MARQUIS JENNINGS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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Dated: November 5, 2021

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QUESTION PRESENTED

WHETHER THE APPELLATE REVIEW FOR REASONABLENESS OF A LIFE SENTENCE LACKS SUFFICIENT SCRUTINY. THE CIRCUIT COURT'S APPLICATION OF PRESUMED REASONABLENESS FOR LIFE SENTENCE VIOLATES EIGHTH AMENDMENT.

PARTIES TO THE PROCEEDING

All parties to the proceeding appear in the caption of the case on the cover page.

STATEMENT OF RELATED CASES

There are no related cases.

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

OPINION OF THE COURT BELOW STATEMENT OF THE BASIS

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment below:

The opinion of the United States Court of Appeals for the Fourth Circuit for which review is sought is United States v. Jennings, No. 20-4432. A copy of the slip opinion is included as Appendix A.

STATEMENT OF THE BASIS FOR JURISDICTION

The judgment sought to be reviewed in this case is the decision of the United States Court of Appeals for the Fourth Circuit in Case No. 20-4432, decided by unpublished opinion, dated July 1, 2021. *See* Appendix A.

The district court had jurisdiction of these cases pursuant to 18 U.S.C. § 3231, which grants original jurisdiction to the district courts of all offenses against the laws of the United States.

The United States Supreme Court has jurisdiction to review these decisions upon a Writ of Certiorari pursuant to 28 U.S.C. § 1254(1), which confers jurisdiction by writ of certiorari granted upon the petition of a party to a criminal case after rendition of a judgment in a court of appeals. This petition is filed pursuant to Rule 10(a) of the Rules of the Supreme Court of the United States and addresses a decision of the United States Court of Appeals for the Fourth Circuit which so far departed from the accepted and usual course of judicial proceedings, and which sanctioned such a departure by the district court, as to call for an exercise of the supervisory power of the United States Supreme Court.

CONSTITUTIONAL PROVISIONS INVOLVED

The Eighth Amendment to the United States Constitution provides:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

STATEMENT OF THE CASE

On April 3, 2019, the grand jury returned a thirteen-count indictment charging Brandon Marquis Jennings with the following: two counts of sex trafficking by force, fraud, or coercion in violation of 18 U.S.C. § 1591(a)(1) and (a)(2); two counts of sex trafficking of minor in violation of 18 U.S.C. § 1591(a)(1) and (b)(2); one count of manufacturing and producing child pornography in violation of 18 U.S.C. § 2251(a) and (e); one of count of transporting a minor interstate with intent to engage in criminal sexual activity in violation of 18 U.S.C. § 2423(a); three counts of interstate transportation for prostitution by coercion and enticement in violation of 18 U.S.C. § 2422(a); three counts of interstate transportation for prostitution in violation of 18 U.S.C. § 2421(a); one count of using the Internet to promote an unlawful prostitution business enterprise in violation of 18 U.S.C. § 1952(a)(3) and 2. (JA 54-59).

The instant charges resulted from a response by Raleigh Police Department to a domestic violence complaint on December 9, 2016. (JA 936, ¶ 12). Following the complaint, the department learned that the victim, T.C., was working as a prostitute for Mr. Jennings at the time. (JA 936, ¶ 13). As a result of T.C.'s statements, the department launched an investigation into Mr. Jennings' Facebook, email, and illicit advertisement accounts. (JA 936, ¶ 14). Several other victims were identified and provided statements to authorities recounting their experiences with Mr. Jennings. (JA 936, ¶¶ 15-30). All of the victims agreed to prostitute for Mr. Jennings for some period of time. Many traveled to prostitute in different states at the direction of Mr. Jennings. (JA 936, ¶¶ 18, 23-26, 28, 30). Additionally, several victims stated their relationship

with Mr. Jennings began as a romantic one, before turning violent at some point thereafter. (JA 936, ¶¶ 16, 19-20, 22-25, 27-29). Mr. Jennings was ultimately arrested on unrelated charges. (JA 936, ¶ 12).

On February 25, 2019, a hearing was held to determine whether Mr. Jennings was competent to stand trial. (JA 3). A Forensic Evaluation prepared January 9, 2019 by Heather H. Ross, Ph.D. explained that Mr. Jennings was uncooperative during interviews but expressed an understanding of the criminal justice process. Dr. Ross opined that Mr. Jennings "is able to understand the nature and consequences of the proceeding against him and to assist properly in his defense. (JA 31). Based on the evidence presented at the hearing, the court ordered Mr. Jennings competent to stand trial. (JA 30-31).

Mr. Jennings appeared before the Honorable Judge Flannigan for arraignment and pre-trial conference on April 3, 2019. (JA 32). When addressed by the court, Mr. Jennings denied that he had been proven to be Mr. Jennings and stated that he was in fact Mr. Mustafa Beezy Bey. (JA 36). Mr. Jennings refused to answer the court's initial inquires, and the court removed him from the courtroom to the jail cell. (JA 36-40). After a readings of all charges and the maximum possible punishments for each, Mr. Jennings' counsel stated that he pled not guilty to all counts. (JA 40-49).

Jury trial began on June 10, 2019. (JA 63). At the outset, the court addressed an additional charge that the government filed immediately following arraignment, namely Count 11 in the above-referenced indictment. (JA 65-66). While Mr. Jennings refused to properly address the court, defense counsel noted that Mr. Jennings would

be entering a plea of not guilty for the additional count as well. (JA 68). The Government expressed concern with Mr. Jennings appearing before a jury in his defiant state, defense counsel echoed those concerns, and the court ultimately decided to excuse Mr. Jennings from the courtroom to prevent any undue prejudice to his case. (JA 69-70).

After successfully removing Mr. Jennings, the court considered the Government's motions *in limine*, specifically regarding the prostitution-related claims and prior drug use by the victims. (JA 72). The court heard arguments of both parties and ultimately decided to allow testimony of drug use at the time of the offense and during any proceedings related to the offense "to the extent that drug use . . . affects the witnesses' ability to testify about those events." (JA 75).

After the jury was selected, empaneled, and sworn, the court heard opening statements from both parties. (JA 177-185). The second day of the trial began with the Government calling Detective Robert Pereira from the Raleigh Police Department as its first witness. (JA 193). Detective Pereira testified that he was lead investigator for a human trafficking incident involving Mr. Jennings that began in December 2016. (JA 194). Detective Pereira stated that during his investigation of Mr. Jennings he interviewed several alleged victims, including T.C., C.A., J.B./R.W., J.C., T.H., and J.E., reviewed several postings attributed to Mr. Jennings on an adult advertisement site called Backpage, searched Mr. Jennings' Facebook records and messages, and obtained hotel records, 9-1-1 call audio, jail call transcripts, and cellular data from T.C.'s phone. (JA 195-229). On cross-examination, defense counsel highlighted that the

alleged victims were prostitutes who admitted to creating their own additional ads on Backpage and other adult sites. (JA 230-235). The Government then called Issa Martin, a custodian of records and paralegal for Backpage.com, who testified as to the nature, purpose, and layout of Backpage's "adult" section. (JA 236-238)

The Government went on to call several other witnesses, including four of the alleged victims in this case. C.A. testified that she began a romantic relationship with Mr. Jennings in 2015. (JA 257). She explained that, initially, Mr. Jennings did not force or ask her to start prostituting, rather she started as a way to make money to move into a new apartment. (JA 258). C.A. went on to explain that at some point thereafter Mr. Jennings began reviewing her advertisements and collecting the majority of any money made. (JA 257-260). As their relationship continued, C.A., occasionally known as C.W., stated that Mr. Jennings was at times violent toward her, but stayed in the relationship because she loved him. (JA 290-292, 303). Several other alleged victims gave similar testimony, recounting how their relationships with Mr. Jennings typically began as romantic encounters before offers of prostitution would come up.

In conclusion, the Government called several law enforcement officials who were involved in investigating this matter or had other criminal encounters with Mr. Jennings. (JA 661, 668, 674). The Government then rested its case. (JA 702).

Defense counsel moved to dismiss all counts against Mr. Jennings pursuant to Rule 29 on the basis of insufficient evidence. (JA 703-704). After briefly hearing from the Government, the court overruled the motion, concluding that defense counsel's

arguments were "along the lines of the weight of the evidence" and questioned credibility rather than insufficiency. (JA 706-708). Defense counsel then rested its case, and the parties gave their closing arguments. (JA 754-814). After instruction and deliberation, the jury returned a verdict of guilty on all Counts. (JA 864-867, 872-975). Defense counsel renewed its Rule 29 motion to dismiss, which the court summarily dismissed. (JA 871).

A presentence report ("PSR") was prepared which recommended a base offense level of 36. (JA 953, ¶ 115). A four-point increase was applied pursuant to the number of offense units assigned based on the application of U.S.S.G. § 3D1.4. (JA 953, ¶ 117). An enhancement was also applied due to the defendant's categorization as a "repeat and dangerous sex offender against minors," pursuant to U.S.S.G. § 4B1.5(b)(1). (JA 953, ¶ 119). The total offense level was reduced from 45 to 43 pursuant to Chapter 5, Part A. (JA 953, ¶ 121). The PSR cited several prior assault charges in calculating a criminal history score of 7 and criminal history category of IV. (JA 944-946, ¶¶ 40-48). The resulting advisory guideline imprisonment range was a life sentence. (JA 954, ¶ 123). The report also advised that the court may consider an upward departure under U.S.S.G. § 5K2.21 to account for two additional victims not considered in the instant offenses. (JA 957, ¶ 139).

Mr. Jennings filed several objections to various factual aspects of the information contained in the PSR, including the determination that he was not diagnosed with any mental health disorders that would affect his competency to stand trial. (JA 959-961, ¶¶ 1-5). Mr. Jennings also filed two legal objections, arguing that

the testimony of alleged victims J.C, C.M., and A.W. should not have been included in the report since they did not testify at trial. (JA 961, ¶¶ 6-7).

Mr. Jennings appeared before the district court for sentencing on August 18, 2020. (JA 876). The court first attempted to review the presentence report (PSR). While Mr. Jennings stated that he had not read the PSR, defense counsel assured the court that they had met with Mr. Jennings on two occasions to review the document with him. (JA 877-879). After addressing Mr. Jennings' background and criminal history, the court informed him of the maximum possible punishment for each count. (JA 881-884). While there were no oral arguments heard regarding Mr. Jennings' objections to the PSR, the court considered and overruled all of the previously-filed written objections. (JA 885, 888-892). The Government argued in favor of a life sentence, as advised by the sentencing guidelines, based on the severity of the acts committed. (JA 892-901). In response, defense counsel highlighted the progress Mr. Jennings had made in appreciating the seriousness of his actions and argued in favor of a sentence less than life. (JA 902-905). The court then afforded Mr. Jennings the opportunity to address the court directly, in which he expressed his discontent with the American justice system and asked for a chance to redeem himself. (JA 905-909). Lastly, the court allowed statements from several of the victims involved. (JA 909-913).

The district court ultimately sentenced Mr. Jennings to life imprisonment on Counts 1 through 4 and on Count 6, together with a sentence of 360 months on Count 5, 240 months on Counts 7, 8, and 9, 120 months on Counts 10, 11 and 12, and 60 months on Count 13, all to run concurrently. (JA 914-915). In reaching this sentence,

the court stated that it had "reflected on the defendant's background and history and the horrendous nature of the instant offenses." (JA 915). Mr. Jennings gave a timely notice of appeal to the United States Court of Appeals for the Fourth Circuit on August 19, 2020. (JA 920).

Jennings raised three issues in his brief to the appellate court including the substantive reasonableness of his life sentence. The appellate court stated in its unpublished opinion, it would apply "a presumption of reasonableness to a sentence within or below a properly calculated guidelines range."[1] The opinion also states that the "presumption can only be rebutted by showing that the sentence is unreasonable when measured against the 18 U.S.C. § 3553(a) factors."

1 Quoting United States v. Vinson, 852 F.3d 333, 357 (4th Cir. 2017)

FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTION PRESENTED

At the sentencing hearing, the district court erred by its reliance upon the Guideline sentence of life for counts one through four.

The appellate court presumed reasonableness standard for review of a sentence which falls within the Guideline is when that sentence is a life sentence is cruel and unusual and violated the Eighth Amendment. Since Congress abolished parole in the federal system, all life sentences imposed in Federal Court are without parole. As such, the imposition of a life sentence should be regarded with the strictest review possible by our appellate courts.

ARGUMENTS AMPLIFYING REASONS FOR WRIT

I. THE APPELLATE COURT'S PRESUMPTION OF REASONABLENESS TO THE IMPOSITION OF A LIFE SENTENCE JUST BECAUSE IT FALLS WITHIN THE ADVISORY GUIDELINE RANGE DISREGARDS THIS COURT'S DECISION IN MILLER v. ALABAMA, 567 U.S. 460, 132 S. Ct. 2455 (2012).

In this case, the appellate court determined because the district court imposed a sentence from within the advisory Guideline, it would presume such sentence to be a reasonable sentence, even though it was a life sentence. Under a logical extension of this Court's reasoning in Miller v. Alabama, life sentences without parole constitutes the most serious punishment available for a non-homicide offense. When the sentence being imposed is life without parole as recommended within the advisory Guidelines range, the appellate court should not be allowed to rest on a "presumption of reasonableness" on review.

The Petitioner believes the appellate court's continued use of presumed reasonable for life sentences runs afoul of this Court's reasoning that "regardless of its ultimate reasonableness, a sentence that lacks reliability because of unjust procedures may well undermine public perception of the proceedings." Rosales-Mireles v. United States, 138 S. Ct. 1897, 1910 (2018).

In Graham v. Florida, this Court held that the Eighth Amendment prohibits life without parole for offenders who were under 18 and committed non-homicide offenses. 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010). Graham's focus on non-homicide offenses offers the Court some guidance in the deference the appellate court should review a life without parole versus a term of years. Even though Graham's primary

focus was for offenders who were under age 18, this Court took great care to explain why a life sentence for non-homicide offenses should be carefully scrutinized.

The various appellate courts have placed insurmountable obstacles on challenges to sentences imposed by the federal court. Regardless of the length of the sentence, including life sentences recommended by the advisory Guideline, the appellate review standard of a presumption of reasonableness often results in no meaningful appeal.

In the Sixth Circuit, a sentence which falls within a defendant's Guidelines range, it "is presumed reasonable." United States v. Christman, 607 F.3d 1110, 1118 (6th Cir. 2010). The same standard applies in the Fifth Circuit. *See* United States v. Cooks, 589 F.3d 173, 186 (5th Cir. 2009).

Likewise, in the Seventh Circuit, a "below-guidelines sentence, like a within-guidelines one, is presumed reasonable against a defendant's challenge that it is too high." United States v. Poetz, 582 F.3d 835, 837 (7th Cir. 2009). Yet the Seventh Circuit has also reasoned the decisions in Rita and Gall hold sentencing "judges actually err if they presume that a guideline sentence will be reasonable." United States v. Vasquez-Abarca, 946 F.3d 990, 994 (7th Cir. 2020).

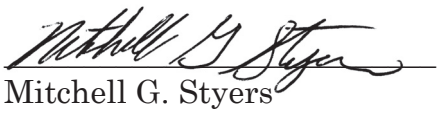
In the Tenth Circuit, if a defendant does not "contemporaneously object to the district court's explanation of its sentencing decision, he has forfeited any challenge to the procedural reasonableness of his sentence…" limiting its review to a plain-error standard. United States v. Henson, 9 F.4th 1258, 1289 (10th Cir. 2021).

In contrast, the Eleventh Circuit does not "automatically presume that a sentence within the guidelines range is reasonable." United States v. Castaneda, 997 F.3d 1318, 1332 (11th Cir. 2021) *quoting* United States v. Hunt, 526 F.3d 739, 746 (11th Cir. 2008).

CONCLUSION

For the foregoing reasons, Petitioner respectfully asks this Court to grant a Writ of Certiorari, vacate the unpublished opinion of the United States Court of Appeals for the Fourth Circuit, which denied relief to the Petitioner.

Respectfully submitted,



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APPENDIX

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Appendix A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-4432

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BRANDON MARQUIS JENNINGS, a/k/a Smilez, a/k/a Smilez Finesse, a/k/a Beezy, Mustafa Bey,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Louise W. Flanagan, District Judge. (5:18-cr-00318-FL-1)

Submitted: June 24, 2021 Decided: July 1, 2021

Before WILKINSON, MOTZ, and RICHARDSON, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Mitchell G. Styers, BANZET, THOMPSON, STYERS & MAY, PLLC, Warrenton, North Carolina, for Appellant. G. Norman Acker, III, Acting United States Attorney, Jennifer P. May-Parker, Assistant United States Attorney, Kristine L. Fritz, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

PER CURIAM:

A jury convicted Brandon Marquis Jennings of sex trafficking by force, fraud, or coercion, in violation of 18 U.S.C. § 1591(a)(1)-(2), (b)(1) (Counts 1 & 2); sex trafficking of a minor, in violation of 18 U.S.C. § 1591(a)(1), (b)(2) (Counts 3 & 4); production of child pornography, in violation of 18 U.S.C. § 2251(a), (e) (Count 5); interstate transportation of a minor for illegal sexual activity, in violation of 18 U.S.C. § 2423(a) (Count 6); interstate travel for prostitution by coercion and enticement, in violation of 18 U.S.C. § 2422(a) (Counts 7-9); interstate transportation for prostitution or illegal sexual activity, in violation of 18 U.S.C. § 2421(a) (Counts 10-12); and interstate travel or use of the facilities for interstate commerce to promote an unlawful business enterprise, in violation of 18 U.S.C. § 1952(a)(3) (Count 13). The district court sentenced Jennings to life imprisonment. On appeal, Jennings contends that the district court erred in admitting expert testimony and in denying his motion for judgment of acquittal and that his sentence is unreasonable. Finding no reversible error, we affirm.

I.

Jennings first contends that the district court erred in admitting the expert testimony of Dr. Sharon Cooper, who testified on the culture of sex trafficking and the psychology involved in the relationships between pimps and prostitutes. Although we typically review a district court's decision regarding the admissibility of expert testimony for abuse of discretion, we review the issue for plain error where, as here, the defendant did not object to that testimony at trial. *United States v. Baptiste*, 596 F.3d 214, 223-24 (4th Cir. 2010). To establish plain error, Jennings must demonstrate that (1) an error occurred, (2) the error

was plain, and (3) the error affected his substantial rights. *Henderson v. United States*, 568 U.S. 266, 272 (2013). Even if this standard is met, we will exercise our discretion to correct the error only if "the error seriously affects the fairness, integrity or public reputation of judicial proceedings." *Rosales-Mireles v. United States*, 138 S. Ct. 1897, 1905 (2018) (internal quotation marks omitted).

Expert testimony is permitted by a witness "qualified as an expert by knowledge, skill, experience, training, or education," so long as: (a) the expert's "specialized knowledge will help the trier of fact to understand the evidence" or determine a fact at issue; "(b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case." Fed. R. Evid. 702. For her opinion to be admissible, the witness must "explain how [her] experience leads to the conclusion reached, why [her] experience is a sufficient basis for the opinion, and how [her] experience is reliably applied to the facts." *United States v. Bynum*, 604 F.3d 161, 167 (4th Cir. 2010) (cleaned up). By contrast, a district court should exclude expert testimony that is "within the common knowledge of jurors." *United States v. Lespier*, 725 F.3d 437, 449 (4th Cir. 2013) (internal quotation marks omitted).

Jennings relies heavily on *United States v. Delgado*, in which the Third Circuit concluded that a district court did not abuse its discretion in excluding Cooper from testifying on the background and culture of sex trafficking because the Government did not argue that her testimony went "to any element of the charged offenses." 677 F. App'x 84, 85 (3d Cir. 2017). However, the weight of authority supports the Government's position,

as it cites several decisions, including an unpublished decision issued by this court, in which courts have upheld the admission of expert testimony on the culture of sex trafficking and the psychology behind it. *See United States v. Warren*, 774 F. App'x 778, 782 (4th Cir. 2019) (No. 18-4562); *United States v. Bryant*, 654 F. App'x 807, 813 (6th Cir. 2016); *United States v. Brinson*, 772 F.3d 1314, 1319 (10th Cir. 2014); *United States v. Evans*, 272 F.3d 1069, 1094 (8th Cir. 2001); *United States v. Anderson*, 851 F.2d 384, 392-93 (D.C. Cir. 1988). Thus, we conclude that Jennings cannot establish plain error. *See United States v. Harris*, 890 F.3d 480, 491 (4th Cir. 2018) ("At a minimum, courts of appeals cannot correct an error pursuant to plain error review unless the error is clear under current law." (cleaned up)); *United States v. Garcia-Lagunas*, 835 F.3d 479, 496 (4th Cir. 2016) (noting that unpublished Fourth Circuit case contradicting appellant's argument "suggests that even if the district court erred, such error was not plain").

II.

Next, Jennings argues that the district court erred in denying his motion for judgment of acquittal on Counts 3 and 4 because there was insufficient evidence to show that he knew or recklessly disregarded the fact that R.W. and J.C. were minors. "We review the denial of a motion for judgment of acquittal de novo." *United States v. Savage*, 885 F.3d 212, 219 (4th Cir. 2018). In assessing the sufficiency of the evidence, we determine whether there is substantial evidence to support the convictions when viewed in the light most favorable to the Government. *Id.* "Substantial evidence is evidence that a reasonable finder of fact could accept as adequate and sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." *United States v. Rodriguez-Soriano*, 931

F.3d 281, 286 (4th Cir. 2019) (cleaned up). In making this determination, we may not resolve conflicts in the evidence or evaluate witness credibility. *Savage*, 885 F.3d at 219. "A defendant who brings a sufficiency challenge bears a heavy burden, as appellate reversal on grounds of insufficient evidence is confined to cases where the prosecution's failure is clear." *Id.* (internal quotation marks omitted).

To secure a conviction under 18 U.S.C. § 1591(a)(1), the Government must prove that the defendant: (1) knowingly recruited, transported, harbored, maintained, obtained, or enticed a person; (2) in or affecting interstate commerce; (3) knowing or in reckless disregard of the fact that the victim had not attained the age of eighteen years and would be made to engage in a commercial sex act. *United States v. Garcia-Gonzalez*, 714 F.3d 306, 312 (5th Cir. 2013). However, when "the defendant had a reasonable opportunity to observe the person so recruited, enticed, harbored, transported, provided, obtained, maintained, patronized, or solicited, the Government need not prove that the defendant knew, or recklessly disregarded the fact, that the person had not attained the age of 18 years." 18 U.S.C. § 1591(c).

We conclude that sufficient evidence supports the jury's verdict. First, under § 1591(c), Jennings had reasonable opportunities to observe both victims. Second, the jury could have reasonably concluded that Jennings knew or recklessly disregarded knowledge of their ages. R.W.'s Facebook profile stated that she was in high school, and Jennings admitted to T.C. that R.W. began prostituting for him at 16. As for J.C., two witnesses testified that she did not appear to be 18. One john refused to have sex with J.C. because she appeared so young, and T.C. informed Jennings of this. Moreover, J.C. told Jennings

that she had a friend who was 11, could not leave her current home with just anyone, and that she did not have identification. Therefore, we affirm Jennings' convictions.

III.

Finally, Jennings contends that his sentence is substantively unreasonable. We review a defendant's sentence "under a deferential abuse-of-discretion standard." *Gall v. United States*, 552 U.S. 38, 41 (2007). Under the *Gall* standard, a sentence is reviewed for both procedural and substantive reasonableness. *Id.* at 51. In determining procedural reasonableness, we consider whether the district court properly calculated the defendant's advisory Sentencing Guidelines range, gave the parties an opportunity to argue for an appropriate sentence, considered the 18 U.S.C. § 3553(a) factors, and sufficiently explained the selected sentence. *Id.* at 49-51. If a sentence is free of "significant procedural error," then we review it for substantive reasonableness, "tak[ing] into account the totality of the circumstances."[*] *Id.* at 51. We apply "a presumption of reasonableness to a sentence within or below a properly calculated guidelines range." *United States v. Vinson*, 852 F.3d 333, 357 (4th Cir. 2017) (internal quotation marks omitted). This "presumption can only be rebutted by showing that the sentence is unreasonable when measured against the 18 U.S.C. § 3553(a) factors." *Id.* at 357-58 (internal quotation marks omitted).

[*] We must "review the sentence for procedural reasonableness *before* addressing whether it is substantively reasonable," even if the parties do not address it in their opening briefs. *United States v. Provance*, 944 F.3d 213, 215, 218 (4th Cir. 2019). Although Jennings does not contend his sentence is procedurally reasonable, his argument does implicate some aspects of our procedural reasonableness review. We discern no procedural error in this case.

We conclude that Jennings' sentence is reasonable. The district court reviewed Jennings' history at the beginning of the sentencing hearing and, thus, it did not err in declining to address it further at the end of the hearing when announcing the sentence. While Jennings' counsel requested a less than life sentence to give him hope at redemption, Jennings' allocution undercut that argument when he stated that he did not care if the court sentenced him to life imprisonment and blamed the victims for their role in the offense. Moreover, we conclude that Jennings cannot overcome the presumption of reasonableness accorded his within-Guidelines sentence. The offense conduct in this case was abhorrent, as Jennings targeted vulnerable girls and young women, and not only sold their bodies for his own personal gain, but physically abused them as well.

IV.

Accordingly, we affirm the district court's judgment. We deny Jennings' pro se motions. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

Appendix B

FILED: July 1, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-4432
(5:18-cr-00318-FL-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

BRANDON MARQUIS JENNINGS, a/k/a Smilez, a/k/a Smilez Finesse, a/k/a Beezy, Mustafa Bey

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK