

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

RONALD DAVID MCCALISTER, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

APPENDIX

/s/ Christopher A. Curtis

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Appendix A Judgment and Opinion of Fifth Circuit, CA No. 20-10642, dated June 15, 2021, *United States v. McCalister, Jr.*, 850 Fed. Appx. 277 (5th Cir.) (unpublished).

Appendix B Judgment and Sentence of the United States District Court for the Northern District of Texas, entered June 18, 2020.
United States v. McCalister, Jr., Dist. Court 4:20-CR-00059-P-1.

APPENDIX A

United States Court of Appeals for the Fifth Circuit

No. 20-10642
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 15, 2021

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

RONALD DAVID McCALISTER, JR.,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:20-CR-59-1

Before KING, SMITH, and HAYNES, *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 appeal is DISMISSED.

United States Court of Appeals
for the Fifth Circuit

No. 20-10642
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

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Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

RONALD DAVID McCALISTER, JR.,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
No. 4:20-CR-59-1

Before KING, SMITH, and HAYNES, *Circuit Judges.*

PER CURIAM:*

Ronald McCalister, Jr., pleaded guilty of enticement of a child in violation of 18 U.S.C. § 2422(b), that is, using a means of interstate commerce to attempt to persuade, induce, and entice a minor to engage in sexual activity for which any person can be criminally charged. The district court sentenced

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.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. 20-10642

McCalister within the guidelines range to 235 months of imprisonment and 15 years of supervised release.

For the first time, McCalister contends that the district court plainly erred by applying U.S.S.G. § 4B1.5 to enhance his sentence because his prior Texas conviction did not qualify as a “sex offense conviction” within the meaning of § 4B1.5. The government argues that the appeal is barred by the appeal waiver in the plea agreement and that the appeal should be dismissed on that basis.

We review *de novo* whether an appeal waiver bars an appeal. *United States v. Keele*, 755 F.3d 752, 754 (5th Cir. 2014). We consider “(1) whether the waiver was knowing and voluntary and (2) whether the waiver applies to the circumstances at hand, based on the plain language of the agreement.” *United States v. Bond*, 414 F.3d 542, 544 (5th Cir. 2005).

McCalister does not maintain that his appeal waiver was not knowing and voluntary or that it does not apply to his guidelines challenge. Rather, he avers that we should adopt a miscarriage-of-justice exception and address his argument on the merits.

We have repeatedly declined to adopt, or to reject, a miscarriage-of-justice exception to the enforcement of an appeal waiver. *See United States v. Barnes*, 953 F.3d 383, 389 (5th Cir.), *cert. denied*, 141 S. Ct. 438 (2020). We need not resolve the issue here, because McCalister fails to show that his challenge to the § 4B1.5 enhancement should be allowed to proceed even if such an exception existed.

Accordingly, the motion is GRANTED, and the appeal is DISMISSED.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

RONALD DAVID MCCALISTER, JR.

Case Number: 4:20-CR-00059-P(01)
U.S. Marshal's No.: 60020-177
Aisha Saleem, Assistant U.S. Attorney
Michael Lehmann, Attorney for the Defendant

On March 4, 2020 the defendant, RONALD DAVID MCCALISTER, JR., entered a plea of guilty as to Count One of the Information filed on February 27, 2020. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 2422(b)	Enticement of a Child	2/04/2020	One

The defendant is sentenced as provided in this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 as to Count One of the Information filed on February 27, 2020.

The defendant shall pay an assessment pursuant 18 U.S.C. § 3014, to the United States in the amount of \$5,000, payable to the U.S. District Clerk, 501 West 10th Street, Room 310, Fort Worth, TX 76102. If the assessment imposed pursuant to 18 U.S.C. § 3014 has not been paid in full within 30 days, the defendant shall make payments on such unpaid balance at the rate of at least \$100 per month, until the fine is paid in full.

The defendant shall notify the United States Attorney for this district within thirty 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.

Sentence imposed June 11, 2020.



MARK T. PITTMAN
U.S. DISTRICT JUDGE

Signed June 18, 2020.

Judgment in a Criminal Case

Defendant: RONALD DAVID MCCALISTER, JR.

Case Number: 4:20-CR-00059-P(1)

IMPRISONMENT

The defendant, RONALD DAVID MCCALISTER, JR., is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **TWO HUNDRED THIRTY-FIVE (235) months** as to Count One of the Information filed on February 27, 2020.

The Court recommends to the BOP that the defendant be incarcerated at a facility that would allow the defendant to participate in the Inmate Responsibility Program, if eligible. The Court further recommends that the defendant be housed at an FCI facility within the D/FW area, if possible.

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

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **FIFTEEN (15) years** as to Count One of the Information filed on February 27, 2020.

While on supervised release, in compliance with the standard conditions of supervision adopted by the United States Sentencing Commission, the defendant shall:

- 1) The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame;
- 2) After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed;
- 3) The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer;
- 4) The defendant shall answer truthfully the questions asked by the probation officer;
- 5) The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall 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, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change;
- 6) The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that he or she observed in plain view;

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- 7) The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation excuses the defendant from doing so. If the defendant does not have full-time employment, he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her employment (such as the position or the job responsibilities), the defendant shall 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, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change;
- 8) The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer;
- 9) If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours;
- 10) The defendant shall 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) The defendant shall not act or make an 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 the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk; and,
- 13) The defendant shall follow the instructions of the probation officer related to the conditions of supervision.

In addition the defendant shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

not possess a firearm, destructive device, or other dangerous weapon;

cooperate in the collection of DNA as directed by the U.S. probation officer;

report in person to the U.S. Probation Office in the district to which the defendant is released within 72 hours of release from the custody of the Federal Bureau of Prisons;

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refrain from any unlawful use of a controlled substance. The defendant 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;

participate in a program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered (copayment) at the rate of at least \$25 per month;

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;

neither possess nor have under his/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;

participate in sex-offender treatment services as directed by the probation officer until successfully discharged, which services may include psychophysiological testing to monitor the defendant's compliance, treatment progress, and risk to the community, contributing to the costs of services rendered (copayment) at the rate of at least \$25 per month;

comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which the defendant resides, works, is a student, or was convicted of a qualifying offense; and,

pay any remaining balance of the Justice for Victims Trafficking Act assessment in the amount of \$5,000, as set out in this Judgment.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

Judgment in a Criminal Case

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Defendant: RONALD DAVID MCCALISTER, JR.

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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 Marshal