

A P P E N D I X

APPENDIX

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2021 WL 2822291

Only the Westlaw citation is currently available.
United States Court of Appeals, Eleventh Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.
Alfred E. DAKING, Jr., Defendant-Appellant.

No.

20

-

13042

|
Non-Argument Calendar

|
(July 7, 2021)

Appeal from the United States District Court for the Southern District of Florida, D.C. Docket No. 2:12-cr-14069-DLG-1

Attorneys and Law Firms

Eduardo Gardea, Jr., Assistant U.S. Attorney, Emily M. Smachetti, U.S. Attorney's Office, Miami, FL, Jason Wu, Assistant U.S. Attorney, U.S. Attorney Service - Southern District of Florida, U.S. Attorney Service - SFL, Miami, FL, Debbie Maken, Lydecker Diaz, LLC, Miami, FL, for Plaintiff-Appellee.

Margaret Y. Foldes, Michael Caruso, Federal Public Defender, Federal Public Defender's Office, Fort Lauderdale, FL, for Defendant-Appellant.

Before JILL PRYOR, BRANCH, and LUCK, Circuit Judges.

Opinion

PER CURIAM:

*1 Alfred Daking, Jr., a 77-year-old federal prisoner, appeals the district court's denial of his 18 U.S.C. § 3582(c)(1)(A) motion for compassionate release. Because the district court did not err in denying Daking's motion, we affirm.

I. Background

Daking is currently serving a 180-month sentence for transporting child pornography, in violation of 18 U.S.C. § 2252(a)(1) and (b)(1).¹ The district court sentenced Daking to 180 months' imprisonment and a lifetime of supervised release, which was below Daking's applicable guidelines range of 235 to 240 months' imprisonment.

¹ Daking's presentence investigation report ("PSI") explains that the charge arose out of the virtual sexual exploitation of his (then) 13-year-old step-nephew. Daking also had two prior convictions for sexual assault involving sexual contact with minors.

After serving a little over half of his sentence, in May 2020, Daking filed a *pro se* motion for a sentence reduction under 18 U.S.C. § 3582(c)(1)(A) seeking compassionate release based on his age, his health issues, and the COVID-19 pandemic. The district court appointed him counsel, and, with the benefit of counsel, Daking supplemented his § 3582(c)(1)(A) motion.

Daking argued the district court should grant him compassionate release because he was 77 years old and suffered from multiple health conditions that made him more susceptible to serious complications or death from COVID-19, including hyperinflated lungs (which he claimed was associated with chronic obstructive pulmonary disease ("COPD")), hypertension, bilateral leg edema, a prosthetic eye, and a history of gastrointestinal disorders and skin cancer. He argued that his vulnerability to COVID-19 was an "extraordinary and compelling reason" justifying compassionate release. Daking also argued that the 18 U.S.C. § 3553(a) sentencing factors supported his request for compassionate release.

Following the government's response in opposition, the district court denied Daking's motion for three reasons. First, the district court concluded that Daking was ineligible for a reduction because he failed to show an extraordinary and compelling reason for release under U.S.S.G. § 1B1.13 as he had not demonstrated that his ailments were terminal, that he was unable to provide self-care while incarcerated, or that the BOP medical staff was unable to provide him adequate healthcare in light of COVID-19. Although the court stated that it was sympathetic to his health challenges, the court found that the mere existence of COVID-19 was not enough independently to justify compassionate release. Second, the court concluded that, regardless of whether his health

conditions constituted extraordinary and compelling reasons for compassionate release, the § 18 U.S.C. § 3553(a) factors did not support a reduction in sentence considering the nature and circumstances of the offense and Daking's criminal history. Finally, the court found that granting Daking compassionate release would be inconsistent with the applicable policy statements because he posed a danger to society—not only to minors within his community but to any minor with access to the internet. Daking now appeals the denial of his motion.

II. Standard of Review

*2 We review *de novo* a district court's determination about a defendant's eligibility for an § 18 U.S.C. § 3582(c) sentence reduction. *United States v. Bryant*, 996 F.3d 1243, 1251 (11th Cir. 2021). And because § 3582(c)(1)(A) "permissively states that a district court 'may' reduce a sentence after eligibility is established, we review for abuse of discretion a district court's grant or denial of an eligible defendant's reduction request."

Id.

III. Discussion

Daking argues that we should reverse the district court's denial of his § 3582(c)(1)(A) motion for three reasons: (1) the district court erred in finding that Daking was ineligible for relief because he failed to demonstrate an extraordinary and compelling reason for a sentence reduction; (2) the district court abused its discretion in finding that Daking would be a danger to the community if released; and (3) the district court abused its discretion by improperly weighing the § 3553(a) factors.

Under § 18 U.S.C. § 3582(c)(1)(A), a district court may reduce a defendant's sentence "after considering the factors set forth in section 3553(a) ... if it finds that ... extraordinary and compelling reasons warrant such a reduction ... and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission."²

² In full, § 3582(c)(1)(A) provides:

[T]he court, upon motion of the Director of the Bureau of Prisons, or upon motion of the

defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent they are applicable, if it finds that—extraordinary and compelling reasons warrant such a reduction ... and that such a reduction is consistent with applicable policy statements issued by the sentencing Commission[.]

With the passage of the First Step Act, Congress expanded the availability of compassionate release by allowing defendants to file motions directly with a district court seeking such relief. *See First Step Act of 2018*, Pub. L. No. 115-391, § 603, 132 Stat. 5194, 5239.

The policy statements applicable to § 3582(c)(1)(A) are found in U.S.S.G. § 1B1.13, and the commentary to § 1B1.13 outlines four circumstances that can qualify as extraordinary and compelling reasons to justify a reduction under § 3582(c)(1)(A).³ First, a defendant's medical condition may constitute an extraordinary and compelling reason where the defendant is "suffering from a terminal illness" or the defendant's ability to provide self-care within the environment of a correctional facility is substantially diminished due to a serious physical or medical condition; a serious functional or cognitive impairment; or the deterioration of physical or mental health because of the aging process, from which he is not expected to recover. U.S.S.G. § 1B1.13, cmt. n.1(A). Second, the age of the defendant can qualify as an extraordinary and compelling reason if the defendant is at least 65 years old, "experiencing a serious deterioration in physical or mental health because of the aging process," and "has served at least 10 years or 75 percent" of his term of imprisonment, whichever is less. *Id.*, cmt. n.1(B). Third, certain family circumstances can constitute an extraordinary and compelling reason. *Id.*, cmt. n.1(C). Fourth, a "catch-all" provision explains that a qualifying reason may exist if "the Director of the Bureau of Prisons" determines "there exists in the defendant's case an extraordinary and compelling reason other than, or in

combination with, the reasons described in subdivisions (A) through (C).⁴ *Id.*, cmt. n.1(D).

³ Daking argues that the district court erred in relying on the commentary to U.S.S.G. § 1B1.13 to determine what constitutes an extraordinary and compelling reason because the commentary has been superseded by the 2018 First Step Act. Daking's argument is squarely foreclosed by our recent decision in *Bryant*.

Bryant clarified that “[t]he statute's procedural change” which allows defendants to file § 3582(c)(1)(A) motions “does not affect the statute's or 1B1.13's substantive standards, specifically the definition of ‘extraordinary and compelling reasons,’” and thus “[§] 1B1.13 is an applicable policy statement for all Section 3582(c)(1)(A) motions.” 996 F.3d at 1247–48 (“[T]he structure of the Guidelines, our caselaw's interpretation of ‘applicable policy statement,’ and general canons of statutory interpretation all confirm that 1B1.13 is still an applicable policy statement for a Section 3582(c)(1)(A) motion, no matter who files it.”).

⁴ In *Bryant*, we rejected the defendant's argument that “because the statute now allows for defendant-filed motions, we should replace ‘as determined by the BOP’ with ‘as determined by the court’” in this catch-all provision. 996 F.3d at 1248 (alterations adopted). In other words, courts do not have “unlimited discretion to grant or deny motions under Application Note 1(D),” and the catch-all provision is only applicable when the Director of the BOP determines an additional extraordinary and compelling reason exists. *Id.*

⁴ Because Daking did not establish an extraordinary and compelling reason for compassionate release, the district court did not err in denying Daking's motion. Daking does not argue that he meets any of the four circumstances outlined in § 1B1.13, rather, he

reiterates his argument that his age, medical conditions, and the COVID-19 pandemic together constitute an extraordinary and compelling reason justifying his release. In other words, he asks us to create an additional “extraordinary and compelling reason” based on his particular circumstances in combination with the pandemic. This we cannot do. *Bryant*, 996 F.3d at 1248 (“Application Note 1(D) [to § 1B1.13] does not grant discretion to courts to develop ‘other reasons’ that might justify a reduction in a defendant's sentence.”). Because Daking's “circumstances do not match any of the four categories [of extraordinary and compelling reasons]” listed in § 1B1.13, “he is ineligible for a reduction.” *Id.* at 1254; 18 U.S.C. § 3582(c)(1)(A) (giving a district court discretion to grant a reduction only if “such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.”). Thus, the district court did not err by denying Daking's motion for a sentence reduction.⁵

⁵ Because Daking was ineligible for a sentence reduction, we need not address his other arguments that the district court abused its discretion in weighing the 18 U.S.C. § 3553(a) factors or in determining that he would pose a danger to the community if granted early release.

AFFIRMED.

All Citations

Not Reported in Fed. Rptr., 2021 WL 2822291

A-2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 12-CR-14069

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALFRED E. DAKING, JR.,

Defendant.

ORDER

THIS CAUSE came before the Court on Defendant Alfred E. Daking Jr.'s *pro se* Motion for Compassionate Release. [D.E. 127].

THE COURT has reviewed the pleadings and is otherwise fully advised in the premises. Accordingly, it is

ORDERED AND ADJUDGED that Defendant Alfred E. Daking Jr.'s *pro se* Motion for Compassionate Release [D.E. 127] is **DENIED** for the reasons stated in the Court's July 29, 2020 Amended Order [D.E. 149] denying Daking's Motion for Modification of Sentence for Extraordinary and Compelling Reasons Pursuant to 18 U.S.C. §3582 (c)(1)(A)(i) [D.E. 132].

DONE AND ORDERED in Chambers at Miami, Florida, this 10th day of August, 2020.

S/Donald L. Graham
DONALD L. GRAHAM
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record

A-3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 12-CR-14069-GRAHAM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALFRED E. DAKING, JR.,

Defendant.

AMENDED ORDER

THIS CAUSE came before the Court on Defendant Alfred E. Daking Jr.'s Motion for Modification of Sentence for Extraordinary and Compelling Reasons Pursuant to 18 U.S.C. §3582 (c)(1)(A)(i)[D.E. 132], the Government's response in opposition [D.E. 134], and Defendant's reply [D.E. 135].

THE COURT has reviewed the pleadings and is otherwise fully advised in the premises. Defendant Daking's motion is denied for the following reasons.

I. Background

Alfred E. Daking ("Daking") is an inmate at the Bureau of Prisons (BOP) FCI Seagoville, in Seagoville, Texas. On October 31, 2013, the Court sentenced Daking to a 180-month term of imprisonment followed by a term of supervised release for life for transportation of a visual depiction of a minor engaged in sexually explicit conduct in violation of 18 U.S.C. §2252(a)(1). [D.E.94].

Daking is scheduled to be released on June 17, 2025. [D.E. 94]. Daking filed this motion for immediate compassionate release pursuant to 18 U.S.C. §3582(c)(1)(A)(i), which authorizes this Court to grant compassionate release for extraordinary and compelling reasons. [D.E. 132]. However, as explained below, Daking's medical conditions do not qualify as compelling and extraordinary reasons, and he still poses a danger to society.

II. Analysis

Under 18 U.S.C. §3582(c)(1)(A), generally a court may not modify a term of imprisonment once it has been imposed. 18 U.S.C. § 3852(c)(1)(A)(2018). However, pursuant to the First Step Act of 2018, a court may reduce a term of imprisonment if the defendant files a motion for compassionate release. *Id.* Before the Court can consider a defendant's motion, the defendant must first fully exhaust his administrative remedies by filing a request for relief to the warden of the defendant's facility. *Id.* Only after this request has been denied or 30 days have lapsed with no response from the warden may the court consider the merits of the defendant's motion. *Id.*

Once the defendant fully exhausts his administrative remedies, the Court may modify the defendant's term of imprisonment if it finds that extraordinary and compelling reasons warrant such a reduction, considers the §3553(a) factors and decides the defendant is no longer a danger to society. *Id.* However, the

Court's decision to modify the term of imprisonment cannot offend Federal Sentencing Guidelines. Id. The defendant bears the burden of establishing that compassionate release is warranted. United States v. Hamilton, 715 F.3d 328, 337 (11th Cir. 2013).

Here, the defendant established that he exhausted all administrative remedies. Specifically, Daking's request for relief to the warden was denied on April 20, 2020, and more than 30 days have passed since the denial. [D.E. 132]. The Court may now consider Daking's 18 U.S.C. §3582(c)(1)(A) motion for compassionate release on the merits. The government opposes this motion. [D.E. 134].

A. Extraordinary and Compelling Reasons

A defendant must show that extraordinary and compelling reasons warrant a reduction of imprisonment. 18 U.S.C. § 3582 (c)(1)(A)(2018). Application note 1 to U.S.S.G. § 1B1.13 provides a list of circumstances in which "extraordinary and compelling reasons" warranting a sentence reduction may exist. See U.S.S.G. § 1B1.13 (policy statement), application note 1. One such circumstance is where the defendant is "suffering from a serious physical or medical condition . . . that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover." Id. §1B1.13, application note 1(A)(ii). Extraordinary and compelling reasons may also exist if, "[a]s

determined by the Director of the Bureau of Prisons, there exists in the defendant's case an extraordinary and compelling reason other than, or in combination with, the reasons described" in the application note. Id. § 1B1.13, application note 1(D).

Daking is 77 years old. He asserts that his health conditions in confluence with COVID-19 qualify as extraordinary and compelling reasons that warrant a sentence reduction. [D.E 132]. According to the BOP Health Services report, Daking suffers from hypertension, blindness in his right eye, uveitis, and gastrointestinal disorders. [D.E 132-1]. Additionally, Daking argues that he has onset Chronic Obstruction Pulmonary Disorder (COPD), however the BOP health report does not include this in its diagnosis. In 2017, Daking was seen for an acute respiratory infection and had a chest x-ray, which noted "hyperinflated lungs." According to the National Institute of Health, hyperinflated lungs produce significant detrimental effects on breathing and is often a symptom of COPD. The CDC guidelines state that the risk of severe illness from COVID-19 increases with age, with those 85 years or older at the greatest risk, and people with hypertension "might be at an increased risk."¹

The Court recognizes that FCI Seagoville has been hit extremely hard by COVID-19. As of July 14, 2020, BOP reports 882

¹ <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>

inmates and seven staff members have tested positive.² In response, BOP has taken significant measures to protect the health of its inmates; it has issued face masks, screened newly admitted inmates for COVID-19 symptoms, and limited group gatherings.

Although the Court is sympathetic to Daking's health challenges, the mere existence of COVID-19 cannot independently justify compassionate release. United States v. Raia, 954 F.3d 594, 597 (3rd Cir. 2020). Daking fails to provide any medical records showing that his ailments are terminal or that he is unable to provide self-care while incarcerated. [D.E 132]. Additionally, there is no information that indicates BOP's medical services are unable to provide adequate healthcare to Daking in light of COVID-19 or otherwise. Instead, while incarcerated, Daking has been treated for skin cancer, hypertension, bilateral leg edema, hemorrhoids, and hyperinflated lungs. Moreover, Daking has never filed a complaint against the BOP for his medical care. Taken together, the record does not show that Daking suffers from a serious medical or physical condition that qualifies as an extraordinary and compelling reason in confluence with COVID-19 warranting release.

² <https://www.bop.gov/coronavirus/>

B. Consideration of §3553(a) Factors

Regardless of whether Daking's health conditions constitute as extraordinary and compelling reasons, the Court finds that a sentence modification is not warranted in light of the §3553(a) sentencing factors. §3553(a) factors consider the nature and circumstance of the instant offense, criminal history, the need to reflect the seriousness of the offense, and protect the public from future crimes. 18 U.S.C. §3553(a)(2018).

Here, Daking pled guilty to one count of transportation of a visual depiction of a minor engaged in sexually explicit conduct in violation of 18 U.S.C. §2252(a)(1)[D.E 63]. Specifically, Daking sent approximately 500 emails to a minor containing links to adult and child pornography. [D.E. 62]. Also, prior to this conviction, Daking was convicted in 1976 and 1984 in Delaware for sexual assault involving a minor, and a 1984 conviction for obscene literature harmful to minors. [D.E 133].

At sentencing, although Daking's PSI guideline imprisonment range was 235 to 293 months (PSI ¶84), the Court considered his existing mental health issues and granted a downward variance reducing his sentence to 180 months. [D.E 115-55]. At the filing of this motion, Daking has served 80 months or approximately 45 percent of his sentence. Daking's criminal history involves minor victims, and he has served less than half of a sentence that was already reduced by 55 months. A further reduction this severe would

not provide just punishment. United States v. Hylander, No.18-cr-60017, 2020 WL 1915950 at *3 (S.D. Fla. Apr. 20, 2020)(denying compassionate release to a 66-year-old defendant with hypertension convicted of possessing 600 videos of child pornography because he had served only $\frac{1}{3}$ of his sentence). Therefore, the Court finds that a sentence reduction is not justified considering the nature and circumstances of Daking's offense, his criminal history and characteristics, and the need for a sentence that reflects the seriousness of his offense, promotes respect for the law, provides just punishment, and affords adequate deterrence. 18 U.S.C. §3553(a)(2018).

C. Daking Poses a Danger to society

Similarly, the Court finds that granting compassionate release would not be consistent with applicable policy statements issued by the United States Sentencing Commission. U.S.S.G. §1B1.13. As provided in 18 U.S.C.A. §3142(g), the Court must use the §3553(a) factors to decide if the defendant poses a threat to society. 18 U.S.C.A §3142(g)(2020). Daking was convicted of transporting child pornography over the internet in violation of 18 U.S.C. § 2252(a)(1) in 2013. Daking argues that based on his age of 77, statistically, he has a lower rate of recidivism. [D.E. 132-15]. The court finds this argument unpersuasive. Daking was a 69-year-old repetitive sex offender when he committed this instant offense, thus his age is not a

reliable factor to consider when deciding his likelihood of recidivism. Moreover, at sentencing the Court expressed concern for the public and imposed a term of imprisonment "that protects the public." [D.E. 115, pp. 55-56].

Finally, Daking's release plan is to return to his home in Florida where he committed the instant offense. Even more concerning, his house is located within 2,500 feet of a church, daycare, and park which is in violation of state and county ordinances. [D.E 133]. The Court finds that Daking's release would pose a danger not only to the minors in his community but also to any minors with access to and using the internet. United States v. Miezin, No. 1:13CR15, 2020 WL 1985042 at *5 (N.D. Ohio Apr. 27, 2020)(denying motion for compassionate release for defendant convicted of receiving and distributing child pornography in part because "[i]n today's society with smartphones, tablets, laptops, smart TVs, and countless other devices, it would not be possible to place [defendant] in home confinement and eliminate his ability to engage in his prior criminal conduct.") Based thereon, the Court finds that Daking still poses a threat to society, and a sentence reduction is inconsistent with the U.S. Sentencing Guidelines.

III. Conclusion

For the foregoing reasons, the Court finds that Daking's health conditions are not extraordinary and compelling reasons

warranting a sentence reduction, and he poses a danger to society if released. Accordingly, it is hereby

ORDERED AND ADJUDGED that Defendant Alfred E. Daking Jr.'s Motion for Modification of Sentence for Extraordinary and Compelling Reasons Pursuant to 18 U.S.C. §3582(c)(1)(A)(i)[D. E. 132] is **DENIED**.

DONE AND ORDERED in Chambers at Miami, Florida, this 29th day of July, 2020.

S/Donald L. Graham
DONALD L. GRAHAM
UNITED STATES DISTRICT JUDGE

A-4

United States District Court
Southern District of Florida
FT. PIERCE DIVISION

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number - 2:113C 12CR14069-1

ALFRED E. DAKING, JR.

USM Number: 00658-104

Counsel For Defendant: Fletcher Peacock, AFPD
 Counsel For The United States: Diana Acosta, AUSA
 Court Reporter: Dawn Whitmarsh

The defendant pleaded guilty to Count One of the Indictment.
 The defendant is adjudicated guilty of the following offense:

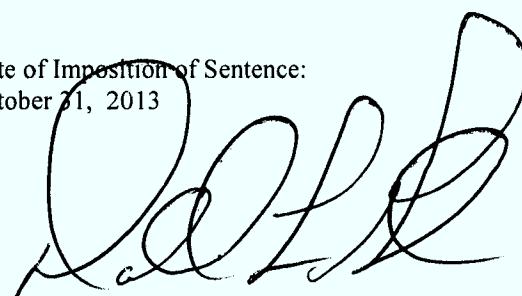
<u>TITLE/SECTION NUMBER</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
18 U.S.C. § 2252(a)(1)	Transportation of a Visual Depiction of a Minor Engaged in Sexually Explicit Conduct	September 5, 2012	1

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.

The remaining counts 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 any material changes in economic circumstances.

Date of Imposition of Sentence:
 October 31, 2013


 DONALD L. GRAHAM
 United States District Judge

November 12, 2013

DEFENDANT: ALFRED E. DAKING, JR.
CASE NUMBER: 2:113C 12CR14069-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **180 months**. The defendant shall receive credit for time served as applicable by statute.

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

DEFENDANT: ALFRED E. DAKING, JR.
CASE NUMBER: 2:113C 12CR14069-1

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **life**.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons. The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall 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 defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

If this judgment imposes a fine or a restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

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

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer **at least ten (10) days prior** to any change in residence or employment;
7. The defendant shall refrain from the excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. 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 probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
11. The defendant shall notify the probation officer within **seventy-two (72) hours** of being arrested or questioned by a law enforcement officer;
12. 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; and
13. 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.

DEFENDANT: ALFRED E. DAKING, JR.
CASE NUMBER: 2:113C 12CR14069-1

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall also comply with the following additional conditions of supervised release:

Adam Walsh Act Search Condition - The defendant shall submit to the U.S. Probation Officer conducting periodic unannounced searches of the defendant's person, property, house, residence, vehicles, papers, computer(s), other electronic communication or data storage devices or media, include retrieval and copying of all data from the computer(s) and any internal or external peripherals and effects at any time, with or without warrant by any law enforcement or probation officer with reasonable suspicion concerning unlawful conduct or a violation of a condition of probation or supervised release. The search may include the retrieval and copying of all data from the computer(s) and any internal or external peripherals to ensure compliance with other supervision conditions and/or removal of such equipment for the purpose of conducting a more thorough inspection; and to have installed on the defendant's computer(s), at the defendant's expense, any hardware or software systems to monitor the defendant's computer use.

Computer Modem Restriction - The defendant shall not possess or use a computer that contains an internal, external or wireless modem without the prior approval of the Court.

Computer Possession Restriction - The defendant shall not possess or use any computer; except that the defendant may, with the prior approval of the Court, use a computer in connection with authorized employment.

Data Encryption Restriction - The defendant shall not possess or use any data encryption technique or program.

Employer Computer Restriction Disclosure - The defendant shall permit third party disclosure to any employer or potential employer, concerning any computer-related restrictions that are imposed upon the defendant.

Mental Health Treatment - The defendant shall participate in an approved inpatient/outpatient mental health treatment program. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

No Contact with Minors - The defendant shall have no personal, mail, telephone, or computer contact with children/minors under the age of 18 or with DR, the victim

No Contact with Minors in Employment - The defendant shall not be employed in a job requiring contact with children under the age of 18 or with the victim.

No Involvement in Youth Organizations - The defendant shall not be involved in any children's or youth organization.

Restricted from Possession of Sexual Materials - The defendant shall not buy, sell, exchange, possess, trade, or produce visual depictions of minors or adults engaged in sexually explicit conduct. The defendant shall not correspond or communicate in person, by mail, telephone, or computer, with individuals or companies offering to buy, sell, trade, exchange, or produce visual depictions of minors or adults engaged in sexually explicit conduct.

Sex Offender Treatment - The defendant shall participate in a sex offender treatment program to include psychological testing and polygraph examination. Participation may include inpatient/outpatient treatment, if deemed necessary by the treatment provider. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

Sex Offender Registration - The defendant shall 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 he or she resides, works, is a student, or was convicted of a qualifying offense.

DEFENDANT: ALFRED E. DAKING, JR.
CASE NUMBER: 2:113C 12CR14069-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on the Schedule of Payments sheet.

<u>Total Assessment</u>	<u>Total Fine</u>	<u>Total Restitution</u>
\$100.00		To Be Determined

The determination of restitution is hereby referred to Magistrate Judge Frank J. Lynch Jr. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such a determination.

*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: ALFRED E. DAKING, JR.
CASE NUMBER: 2:113C 12CR14069-1

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A. Lump sum payment of **\$100.00** due immediately, balance due

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during 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.

The assessment is payable immediately to the CLERK, UNITED STATES COURTS and is to be addressed to:

**U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 8N09
MIAMI, FLORIDA 33128-7716**

The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

The defendant's right, title and interest to the property identified in the preliminary order of forfeiture, which has been entered by the Court and is incorporated by reference herein, is hereby forfeited.

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