

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-13647
Non-Argument Calendar

Appendix "A"
The 11th Circuit's
Opinion of the Appeal

D.C. Docket No. 6:19-cr-00024-CEM-EJK-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

VORARUT VORASIANGSUK,

Defendant-Appellant.

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

(August 10, 2021)

Before NEWSOM, LAGOA, and ANDERSON, Circuit Judges.

PER CURIAM:

Vorarut Vorasiangsuk appeals the district court's denial of his motion to suppress and his 168-month sentence for receiving and possessing child pornography. First, he argues he was subjected to a custodial interrogation without a *Miranda*¹ warning. Second, he argues the district court gave undue weight to improper sentencing factors, namely his family support and occupation.

I.

The denial of a motion to suppress is a mixed question of fact and law. *United States v. Thomas*, 818 F.3d 1230, 1239 (11th Cir. 2016). We review questions of law *de novo* and questions of fact for clear error, construing the facts in the light most favorable to the party that prevailed before the district court. *Id.*

The Fifth Amendment provides that “[n]o person . . . shall be compelled in any criminal case to be a witness against himself.” U.S. Const. amend. V. *Miranda* established that statements made during a custodial interrogation are not admissible at trial unless the defendant was first advised of his rights, including the right against self-incrimination. 384 U.S. at 444-45.

An individual is considered to be “in custody” for *Miranda* purposes where there is a “formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.” *United States v. Brown*, 441 F.3d 1330, 1347 (11th Cir. 2006) (quotation marks omitted). This test is from the perspective of a reasonable innocent

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

person, and “the actual, subjective beliefs of the defendant and the interviewing officer on whether the defendant was free to leave are irrelevant.” *Id.* (quotation marks omitted). And in this determination, we consider the totality of the circumstances, including the location and “whether the officers brandished weapons, touched the suspect, or used language or a tone that indicated that compliance with the officers could be compelled.” *United States v. Luna-Encinas*, 603 F.3d 876, 881 (11th Cir. 2010) (quotation marks omitted).

An interviewee’s “status as a suspect, and the ‘coercive environment’ that exists in virtually every interview by a police officer of a crime suspect, [does] not automatically create a custodial situation.” *United States v. Muegge*, 225 F.3d 1267, 1270 (11th Cir. 2000). The location of the interview is not necessarily dispositive, but courts are much less likely to find a custodial encounter when the interrogation occurs “in familiar or at least neutral surroundings, such as the suspect’s home.” *Brown*, 441 F.3d at 1348 (quotation marks omitted).

Here, we conclude that the district court did not err by finding Vorasiangsuk was not in custody for *Miranda* purposes based on the totality of the circumstances. Supporting the conclusion that a reasonable innocent person would not have believed he was restrained as if formally arrested, the agents did not physically touch, threaten, point their guns at, handcuff, or even raise their voices to Vorasiangsuk. See *Luna-Encinas*, 603 F.3d at 881; *Brown*, 441 F.3d at 1347. The

district court found the interview was calm and cordial. Further, Vorasiangsuk stated in the recording that no one compelled him to do anything and that he was trying his best to cooperate. Although he was escorted out of his apartment, the conversation took place at Vorasiangsuk's residence, which also bolsters the conclusion that he was not in custody. *See Brown*, 441 F.3d at 1347.

Because Vorasiangsuk was not in custody when he admitted to downloading child pornography, the agents were not obligated to advise him of his *Miranda* rights and no Fifth Amendment violation occurred. Accordingly, the district court properly denied the motion to suppress, and we affirm.

II.

When reviewing for substantive reasonableness, we consider the totality of the circumstances under a deferential abuse-of-discretion standard. *Gall v. United States*, 552 U.S. 38, 51 (2007). The party challenging the sentence bears the burden of establishing that it is unreasonable based on the facts of the case and the § 3553(a) factors. *United States v. Tome*, 611 F.3d 1371, 1378 (11th Cir. 2010). We will reverse for abuse of discretion only if we are “left with the definite and firm conviction that the district court committed a clear error of judgment in weighing the [§] 3553(a) factors by arriving at a sentence that lies outside the range of reasonable sentences dictated by the facts of the case.” *United States v. Kirby*, 938 F.3d 1254, 1257 (11th Cir. 2019) (quotation marks omitted).

The district court must impose a sentence “sufficient, but not greater than necessary, to comply with the factors and purposes” in § 3553(a), which include “the need to reflect the seriousness of the offense, promote respect for the law, provide just punishment for the offense, deter criminal conduct, and protect the public.” *United States v. Plate*, 839 F.3d 950, 957 (11th Cir. 2016). The district court must also consider “the nature and circumstances of the offense, the history and characteristics of the defendant, the kinds of sentences available, the applicable guidelines range, the pertinent policy statements of the Sentencing Commission, the need to avoid unwarranted sentencing disparities, and the need to provide restitution to the victim.” *Id.*

The weight given to any specific § 3553(a) factor is “committed to the sound discretion of the district court.” *United States v. Clay*, 483 F.3d 739, 743 (11th Cir. 2007) (quotation marks omitted). Nonetheless, a district court can abuse its discretion when it (1) fails to consider relevant factors that were due significant weight; (2) gives an improper or irrelevant factor significant weight; or (3) commits a clear error of judgment by balancing the proper factors unreasonably. *United States v. Irej*, 612 F.3d 1160, 1189 (11th Cir. 2010) (en banc). Although we do not presume that a sentence falling within the guideline range is reasonable, a sentence imposed well below the statutory maximum penalty is another indicator of

reasonableness. *See United States v. Gonzalez*, 550 F.3d 1319, 1324 (11th Cir. 2008).

Here, we conclude that the district court did not abuse its discretion when it sentenced Vorasiangsuk. It considered his history and characteristics, along with the other § 3553(a) factors, as required. *See Plate*, 839 F.3d 950, 957. Balancing § 3553(a) factors is within the district court's discretion, and Vorasiangsuk has not shown that the district court committed a clear error of judgment and improperly weighed those factors. *See Kirby*, 938 F.3d at 1257; *Clay*, 483 F.3d at 743. The district court did not, as Vorasiangsuk suggests, weigh his family support and occupation against him. Instead, the district court simply found that they were not reason enough to vary downward, noting that it "desperately looked for a way to vary downward" but could not find one. Additionally, a sentence 42 months below the top of the guideline range and 72 months below the statutory maximum indicates reasonableness. *See Hunt*, 526 F.3d at 746; *Gonzalez*, 550 F.3d at 1324. Accordingly, we conclude that the district court did not abuse its discretion as the 168-month sentence was substantively reasonable.

AFFIRMED.

107

1 and then another witness who talked about his interactions.
2 and yet we have not one thing showing that there was ever a
3 witness to refute the assertion by my client that he asked for
4 a lawyer. And then finally, let me close with this, because
5 the United States has made much of this, but it's the
6 interaction that took place on page 45.

7 When Agent Kaufmann says on line 9, "Because --
8 because you realize you're not under arrest. I mean, it's --
9 it's" -- and then the response from my client is, "Well,
10 it's -- I am not at the moment, but I -- I don't know. It's
11 kind of make me afraid of many things," only a tortured
12 analysis or spin could take that phrase and that sentence from
13 what its actual meaning is, someone expressing confusion about
14 what his status is at the time. When someone is asked a
15 question and when they say "I don't know," what it simply
16 means is they're saying, I don't know. When he says, "I'm not
17 at the moment," that opens up the interpretation that at some
18 point earlier, perhaps a point when there was no recording,
19 perhaps he felt that he was not under arrest. But what's
20 important is right here when he says, "I don't know." That
21 means there was some doubt about his status. And I would say
22 to the Court, what don't you know? What you don't know is
23 what took place between the agents and my client in that
24 garage. And if he asked for a lawyer and they continued on,
25 then they violated his rights and the statement should be

108

1 suppressed.


2 Thank you.

3 THE COURT: Thank you for your argument.

4 We're going to take a 15-minute recess. I want a
5 chance to look through this again and then I'm going to issue
6 my order on the record.

7 Court's in recess.

8 (Recess at 11:49 a.m., until 12:05 p.m.)

9  THE COURT: This cause is before the Court on
10 defendant's motion to suppress, Document 28, filed on
11 April 23rd, 2019. The United States stands in opposition to
12 the defendant's motion.

13 Defendant asserts that during the course of the
14 execution of a search warrant, he was told that he was not
15 free to leave the residence while the warrant was being
16 executed. Defendant further asserts that at some point during
17 the execution of the warrant, he was approached by a law
18 enforcement agent who began to interrogate him about the
19 alleged offenses. Defendant stated that he twice told law
20 enforcement officers, specifically Special Agent Rodney Hyre
21 at least once, that he wanted to speak to an attorney.
22 Defendant asserts that the law enforcement officers did not
23 read him his Miranda rights before this interrogation and,
24 further, that they told defendant that he did not need an
25 attorney since they were just having a conversation.

"B"
Appendix
The District Court's
opinion of the
Motion to Suppress

105
1 He was placed in a garage where agents stood between him and
2 the door. He was in his house told where to sit. When he,
3 based upon his testimony, stood up to stretch, he was asked,
4 What are you doing? When he wanted to go to the restroom, he
5 had to get the permission of the agents. And then when he
6 did, in fact, go to the restroom, the door was kept open.

7 All of these are consistent restraints on an
8 individual's liberty that an objective person at some point --
9 perhaps not one of them, but in the aggregate -- would make a
10 reasonable person conclude, I'm not free to leave.

11 Now, the United States characterized this as an
12 interview taking place within the familiar environs of a home.
13 Well, how many individuals in their home are told when they
14 can move, how they can move, and that they have to get
15 permission to use the restroom? That converted a comfortable
16 home to essentially a police station that was operating
17 remotely. And this was no longer a consensual -- and frankly
18 never was a consensual interview between law enforcement and
19 an individual. Rather, this was an individual who was going
20 through custodial interrogation.

21 One other thing to note as well. He was separated
22 from his family. Now, I understand the United States would
23 contend that this is standard protocol because they're trying
24 to save the family members from hearing certain embarrassing
25 details given the subject matter. But when an individual is

106
1 awakened early in the morning, directed to his garage, told
2 that he has to stay there until things are cleared up, then he
3 can go back into the house, is taken into the house with
4 escorts, is told where to sit, is told when he can go to the
5 bathroom, and is separated from his family, what more does the
6 Court need to hear in order to come to the conclusion that we
7 have the functional equivalent of an arrest?

8 What I would hope the Court would also focus in on
9 is something that is frankly somewhat troubling. And I want
10 to be very careful here. I'm not alleging anything at all in
11 terms of bad faith or so forth. But what's troubling is when
12 you have interrogations like this that take place where only
13 portions are recorded. You have, based upon the
14 cross-examination and the answers that were elicited, an agent
15 who admittedly doesn't remember anything. But on some key
16 critical questions, the response is, Well, I don't remember,
17 but that's what I always do. And I think that that's
18 particularly troubling and telling. This all could have been
19 resolved easily if from the minute that my client was
20 questioned there was a recording in place. Then the Court
21 would not be left to wonder three critical issues here.

22 First, what exactly was said to him when there were
23 interactions that were not recorded? Second, what exactly did
24 he say? It's interesting and I would note that the United
25 States called one witness who talked about his interactions

109

1 Defendant seeks to suppress the incriminating statements about
2 the alleged offenses that the United States intends to use in
3 its case in chief.

4 At an evidentiary hearing on April 24th, 2019,
5 Special Agent Rodney Hyre, Matt Oliver, and the defendant
6 testified. Agents attempted to execute a search warrant on a
7 certain address on Brighton Lane in Orlando, Florida, on the
8 morning of January 15th, 2019, with approximately 20 law
9 enforcement officers and a police K9 officer trained in the
10 area of electronic equipment identification.

11 The agents first approached the main residence only
12 to realize that the subject in the main residence was not the
13 person they were looking for or the precise area they were
14 seeking to search. They then made their way to a garage
15 apartment on the same property where they located the
16 defendant and his wife.

17 Special Agent Rodney Hyre says that although he does
18 not specifically recall telling the defendant he was not under
19 arrest and that the defendant did not have to talk to him,
20 Hyre says that he informs defendants of this in every case and
21 on every occasion. Hyre is confident he told defendant that
22 he was not under arrest and that the defendant did not have to
23 speak to him.

24 Additionally, Hyre testified that defendant even
25 continued to volunteer information after the interrogation

110

1 ended. Hyre further asserts that no one touched the defendant
2 in any way and that the defendant voluntarily agreed to speak
3 to him. Hyre also testified that defendant never asked for an
4 attorney. Most, but not all, of the verbal exchanges were
5 recorded.

6 In his testimony, defendant claims that within
7 minutes of contact with the officers, he asked to go inside to
8 avoid the cold 15 to 20 times and that he asked for an
9 attorney twice. However, despite this insistence and his
10 purportedly chattering teeth, the defendant never made any of
11 these requests during the approximately 40-minute recorded
12 interview. In fact, in the recording, defendant states that
13 he was treated fairly, that no one compelled him to do
14 anything, and that he was trying his best to cooperate.

15 The tone of the interview for the portions played
16 for the Court were calm and the exchanges were cordial. The
17 parties do not dispute that the interview was calm, although
18 counsel for defendant argues that his client in at least part
19 of the interview was afraid and not calm.

20 Hyre testified that he spoke to the defendant for
21 only a couple of minutes before the interview was recorded.
22 So the two requests for an attorney and the 15 to 20 requests
23 to go inside would have occurred during the limited number of
24 minutes -- during that limited number of minutes. And, again,
25 these requests were not recorded. It is also worth noting the

111

1 defendant never asked to end the interview during the recorded
2 portion of the interview, nor did he say anything that could
3 be interpreted as a request to end the interview.

4 Quote, "Whether a suspect is in custody for the
5 purposes of receiving Miranda protection, the ultimate inquiry
6 is simply whether there is a formal arrest or restraint on
7 freedom of movement of the degree associated with a formal
8 arrest." That's from *California v. Beheler*, 463 U.S. 1121 at
9 1125, 1983.

10 This determination, quote, "depends on whether under
11 the totality of the circumstances a reasonable man in his
12 position would feel a restraint on his freedom of movement to
13 such an extent that he would not feel free to leave," closed
14 quote. That's from *United States v. Brown*, 441 Fed.3rd 1330
15 at 1347, Eleventh Circuit, 2006.

16 Quote, "The test is objective: The actual
17 subjective beliefs of the defendant and the interviewing
18 officer on whether the defendant was free to leave are
19 irrelevant," closed quote, *Id.*

20 Court's, quote, "consider several factors in
21 determining custody, including whether the officers brandished
22 weapons, touched the suspect, or used language or a tone that
23 indicated that compliance with the officers could be
24 compelled," closed quote. That's from *United States v.*
25 *Strinson*, 659 Fed. Appx 534 at 536, Eleventh Circuit, 2016.

112

1 Here, the Court finds that the agents did draw their
2 weapons, but that they did not point said weapons at anyone.

3 The recorded exchange was calm and cordial. Defendant was not
4 physically restrained, nor was any force applied. This
5 interrogation also occurred in the defendant's home. *Brown*
6 441 F.3d at 1348, stating that, quote, "courts are much less
7 likely to find the circumstances custodial when the
8 interrogation occurs in familiar or at least neutral
9 surroundings such as the suspect's home," closed quote.

10 Defendant's recorded statements are consistent with
11 the Court's findings. Curiously, none of the defendant's
12 claims, all of which serve as the primary basis for the
13 motion, were recorded. They all apparently took place during
14 the limited number of minutes before the agents started the
15 recording device. Further, defendant's claims that were not
16 recorded are flatly inconsistent with the recorded
17 conversation.

18 It is therefore ordered and adjudged as follows:

19 The discussions leading up to and including the
20 recorded exchange between the defendant and Special Agent Hyre
21 were not a custodial interrogation.

22 The motion Doc 28 is denied.

23 All right. This case is already set for trial.

24 Is there anything further from the Government at
25 this time?

113

1 MS. CHANG: No, Your Honor.

2 THE COURT: Mr. Smith, is there anything further
3 from the defense at this time?

4 MR. SMITH: No, Your Honor.

5 THE COURT: All right. Thank you both. I hope you
6 have a good afternoon. Court's going to be in recess.
7 (WHEREUPON, this matter was concluded at 12:11 p.m.)

8 * * *

9 CERTIFICATE OF REPORTER

10 I certify that the foregoing is a correct transcript of the
11 record of proceedings in the above-entitled matter.

12 /s/ Suzanne L. Trimble 5/6/19
13 Suzanne L. Trimble, CCR, CRR, RPR Date
14 Official Court Reporter

Tab 45

1	UNITED STATES DISTRICT COURT
2	MIDDLE DISTRICT OF FLORIDA
3	ORLANDO DIVISION
4	CASE NUMBER 6:19-cr-24
5	UNITED STATES OF AMERICA,
6	Plaintiff,
7	v.
8	VORARUT VORASIANGSUK,
9	Defendants.
10	TRANSCRIPT OF INITIAL APPEARANCE,
11	PRELIMINARY HEARING AND DETENTION HEARING
12	BEFORE THE HONORABLE KARLA R. SPAULDING
13	UNITED STATES MAGISTRATE JUDGE
14	APPEARANCES:
15	Counsel for Plaintiff: Emily C.L. Chang
16	Counsel for Defendant: Yadirah M. Rodriguez
17	Court Reporter: Amie R. First, RDR, CRR, CRC, CPE
18	Federal Official Court Reporter
19	401 West Central Boulevard, Suite 4600
20	Orlando, Florida 32801
21	AmieFirst.CourtReporter@gmail.com
22	Proceedings recorded by FTR Gold Digital Recording.
23	Transcript produced by Computer-Aided Transcription.
24	
25	

1	INDEX OF PROCEEDINGS
2	
3	GOVERNMENT WITNESSES
4	
5	Joanna Bailey
6	6 13
7	DEFENDANT WITNESSES
8	
9	Sumate Vorasiangsuk
10	16 19
11	Kannapat Chookul
12	24 27
13	Channongnuj Vorasiangsuk
14	31
15	By The Court
16	32
17	Initial Appearance
18	4
19	Preliminary Hearing
20	5
21	Detention Hearing
22	15
23	Argument by Ms. Chang
24	34
25	Argument by Ms. Rodriguez
	40

38

1 years before that. And so whatever cause and effect, just put
2 that for the Court to consider, his victimization of children
3 predated his issues with his wife. So this may be his first
4 conviction, but he admitted to investigators that this has
5 been going on for the better part of two decades.

6 This is not a picture of that we're painting. This
7 is about what the defendant actually did. And, clearly, this
8 defendant needs help, but he also has to be punished for his
9 very serious long-term offenses. The public also needs to be
10 protected from him, and, therefore, a sentence within the
11 guidelines will be sufficient but not greater than necessary
12 to satisfy the factors set forth in Title 18 United States
13 Code, Section 3553(a).

14 THE COURT: All right. Thank you for your argument.
15 I'm going to take a brief recess to deliberate over
16 the arguments. In no more than 15 minutes I'll return to
17 impose a sentence.

18 (Recess at 11:17 a.m., until 11:36 a.m.)

19 THE COURT: The Court has asked the defendant why
20 judgment should not now be pronounced, and after hearing the
21 defendant's response, the Court has found no cause to the
22 contrary. The parties have made statements on their behalf or
23 have waived the opportunity to do so, and the Court has
24 reviewed the presentence report.

25 There's a troubling component to this, and we've

39

1 already had a discussion. You're never going to be penalized
2 in any courtroom for exercising your constitutional rights.
3 That's your decision, and I respect and understand that, and
4 that will not come into play with the Court's sentence here
5 today.

6 What I do in every one of the cases are we have a
7 set of advisory guidelines, and they're advisory only.
8 They're a sort of starting point to give the Court a step into
9 the case and offer some potential guidance. And what I do in
10 all of these cases is I in some cases desperately look for a
11 reason to downward vary because I don't think you should
12 ever -- I'm never going to impose any more than I think is
13 absolutely necessary to meet the goals of sentencing. So I
14 look for any reason I can to vary downward.

15 And there are some things about this case that are
16 very troubling. First of all, you have a wonderful family. I
17 can't imagine a person could have a better set of loving
18 family members than you have. They're wonderful. And they've
19 sacrificed everything to give you the opportunity to come here
20 and succeed. You couldn't ask for better. And your parents
21 are some of the best people I've ever seen in the courtroom,
22 as are your sisters, your wife. They're wonderful people.
23 I'm overwhelmed with how impressed I am over what a wonderful
24 family that you have. And the tough part about this is that
25 no matter what happens here today, they're going to be

"C"
Appendix C
The District Court's
opinion at the
Sentencing Hearing

36

1 street. They don't know. They live in fear for their lives.
2 The Court has extensive victim impact statements
3 available attached to the PSR, and I would encourage the Court
4 to review those again. The material keeps circulating around,
5 and the seriousness of these offenses cannot be
6 underestimated. This defendant has left countless victims in
7 his wake.

8 And so it was argued in the defense argument that no
9 harm has been posed to any children because there were no
10 contact offenses. I argue the opposite is true. Your Honor,
11 Harm has not only been posed to many children, it has been
12 inflicted on many children as a result of what this defendant
13 has done.

14 The history and characteristics of the defendant
15 also call for a guideline sentence. There is no grounds for a
16 variance here. What the defendant -- what did he not have
17 that he could have wanted? He had an education. He got to
18 come to the United States. He has a tremendous family, an
19 incredible community of people who are supporting him
20 notwithstanding his conduct. He had a good job.

21 Speaking of his job, he worked at the hospital with
22 infants and little children for the better -- for more than a
23 decade, and he told investigators during the interview that he
24 believed he had an addiction to child pornography, and he
25 couldn't guarantee that he wouldn't view it again in the

37

1 future. Knowing what he knew about his sexual interest in
2 children, this defendant nevertheless put himself in a
3 position to be in close proximity to children at work every
4 day.

5 So in terms of what the Court heard today, right,
6 the Court heard that people know this defendant as someone who
7 is moral, he treats other people with respect, he's
8 compassionate, he is honorable. He may be those things to
9 some people, to the people who are close to him, but as his
10 own attorney said, people are more than one thing.

11 And hidden away in a room. Locked away from his
12 family, this person was not moral. He did not treat these
13 victims with respect. He was certainly not compassionate or
14 honorable. He victimized them, over and over and over. And
15 so notwithstanding all of the good things and all of the good
16 people in his life, he victimized children.

17 I would note, Your Honor, there was a lot of -- the
18 defendant expressed a lot of things. He did not express a
19 word of sorrow over the victimization of these children. We
20 heard about the pain to his family. We heard about the pain
21 to him. But what about the many children left in his wake?
22 This defendant has been viewing child pornography and,
23 therefore, victimizing children for approximately 16 years.

24 His wife has said they haven't been sexually
25 intimate for ten. This addiction started before that, six

40

1 crushed, and they don't deserve this. But I want to be clear
2 that you did it to them.

3 And there are some things about the way that these
4 arguments have been framed that really give me a lot of
5 concern. Number one, I think Ms. Chang amply pointed out
6 you've been married ten years, but you told law enforcement
7 that you have been looking and downloading and potentially
8 addicted to this stuff for 16. So that predated your
9 marriage.

10 And your attorney made very capable arguments, but I
11 couldn't help but notice that he argued that stress and the
12 lack of marital intimacy were part of the reasons that you may
13 have gone down this road, but this doesn't make any sense to
14 me. If you needed a release or there was a lack of marital
15 intimacy, then there's plenty of adult pornography out there
16 that would have never landed you in a courtroom. There are
17 plenty of other ways to release that sort of frustration short
18 of looking at child pornography. This is a whole different
19 thing.

20 So you have a big problem with child pornography,
21 and as Ms. Chang indicated, you even told law enforcement
22 officers that you couldn't guarantee that you wouldn't go back
23 to it if given the opportunity, and if you stack on top of
24 that the fact that you were working as a therapist with
25 children, that's horrifying, children that can't speak in some

41

1 cases, that can't describe what could have been done to them.
2 And I'm not saying you did. I'm saying that if you have this
3 acknowledged addiction to child pornography, you could have
4 pulled yourself out of that situation because God only knows
5 what would have happened. I'm not going to conclude that
6 anything did happen, but it's scary.

7 So that's sort of where I am. As I've looked and
8 looked and looked -- and I don't want to criticize the
9 strategy involved in litigating this case and maybe you'll be
10 granted some relief by the Eleventh Circuit on the motion to
11 suppress --

12 And I probably shouldn't even say this, but I will.
13 In going on 20 years of practicing law as a criminal defense
14 attorney, a prosecutor, a state court judge, and a federal
15 judge, I have never had a motion to suppress in any case that
16 I've been involved in reversed by an appellate court.

17 So maybe that's going to happen here for the first
18 time in nearly 20 years, but that's quite a risk to take
19 because I calculated what your guideline range would have been
20 had you gotten three levels for acceptance of responsibility.
21 It would have subtracted 47 months from the top of your
22 guideline score. So you would have been looking at 119 at the
23 bottom of the guidelines. Again, you're not being penalized
24 for exercising your constitutional rights, but as the
25 Government amply points out, you're not entitled to acceptance

42

1 of responsibility if you do not accept responsibility. And
2 that's sort of where I'm at there.

3 So I hate waste in any part of life. It's a
4 horrible thing. In looking through your resume here, there's
5 so much good that you can do. You're obviously a bright guy.
6 You're obviously an accomplished guy. And a lot of that is
7 going to waste. If I gave you as little as I could, your
8 talents are probably going to go to waste because you're a
9 convicted felon. You're going to be a registered sex
10 offender. You'll never be working with children again, not
11 this country. So that's why it's so tough because you're
12 obviously a talented and bright person with some very dark
13 demons. And to answer my question before, as I desperately
14 looked for a way to vary downward, I just can't find one.
15 And I continue to be concerned with the fact that
16 you have been over a lengthy period of time working, probably
17 unsupervised in many ways, with very young children who you're
18 obviously attracted to, so much so that you put your freedom
19 and you put your liberty at risk by downloading and looking at
20 this stuff. There's no other way to explain it.

21 This is a tough day, and this is going to stay with
22 everyone. Nobody walks out of here satisfied with what
23 happens no matter what happens. I just wish your family
24 didn't have to go through what they're going through.

25 If you would be kind enough to stand with your

43

1 attorney, I'm ready to impose the sentence.

2 Pursuant to Title 18 U.S. Code, Sections 3551 and
3 3553, it is the judgment of the Court that the defendant is
4 hereby committed to the custody of the Bureau of Prisons to be
5 imprisoned for a term of 168 months. This term consists of
6 168 months as to Counts 1, 2, and 3 to all run concurrently.
7 Upon release from imprisonment, you shall serve a 10-year term
8 of supervised release. This will be concurrent as to
9 Counts 1, 2, and 3. While on supervised release you shall
10 comply with the mandatory and standard conditions adopted by
11 the Court in the Middle District of Florida. In addition, you
12 shall comply with the following special conditions:

13 You shall participate in a mental health program
14 specializing in sexual offender treatment and submit to
15 polygraph testing for treatment and monitoring purposes. You
16 shall follow the probation officer's instructions regarding
17 the implementation of this court directive. Further, you
18 shall contribute to the costs of such treatment and/or
19 polygraphs not to exceed an amount determined reasonable by
20 the probation officer based on ability to pay or availability
21 of third party payment and in conformance with the probation
22 office's sliding scale for treatment services.

23 You shall register with the state sexual offender
24 registration agencies in any state where you reside, visit,
25 are employed, carry on a vocation, or are a student, as

44

1 directed by probation.

2 The probation officer shall provide state officials

3 with all information required under Florida sexual predator

4 and sexual offender notification and registration statutes

5 and/or the Sex Offender Registration and Notification Act,

6 Title I of the Adam Walsh Child Protection and Safety Act of

7 2006, and probation may direct the defendant to report to

8 these agencies personally for any required additional

9 processing, such as photographing, fingerprinting, and DNA

10 collection.

11 You shall have no direct contact with minors, a

12 minor is a person defined as under the age of 18, without the

13 prior written approval of the probation officer, and you shall

14 refrain from entering into any area where children frequently

15 congregate, including but not limited to schools, daycare

16 centers, theme parks, playgrounds.

17 You are prohibited from possessing, subscribing to,

18 or viewing, any images, video, magazines, literature, or other

19 materials depicting children in the nude and/or in sexually

20 explicit positions.

21 Without prior written approval from the probation

22 officer, you are prohibited from either possessing or using a

23 computer, including a smart phone, a hand-held computer

24 device, a gaming console, or an electronic device capable of

25 connecting to an online service or an internet service

45

1 provider. This prohibition includes a computer at a public

2 library, an internet cafe, your place of employment, or an

3 educational facility.

4 Also, you are prohibited from possessing an

5 electronic data storage medium, that includes but is not

6 limited to a flash drive, a compact disk, or a floppy disk, or

7 using any data encryption technique or program. If approved

8 to possess or use a device, you must permit routine inspection

9 of the device, including the hard drive and any other

10 electronic data storage medium, to confirm adherence to this

11 condition. The United States Probation Office must conduct

12 the inspection in a manner no more intrusive than necessary to

13 ensure compliance with this condition. If this condition

14 might affect a third party, including your employer, you must

15 inform the third party of this restriction, including the

16 computer inspection provision.

17 You shall submit to a search of your person,

18 residence, place of business, any storage units under your

19 control, computer, or vehicle, conducted by the United States

20 Probation officer at a reasonable time and in a reasonable

21 manner, based upon reasonable suspicion of contraband or

22 evidence of a violation of a condition of release. You shall

23 inform any other residents that the premises may be subject to

24 a search pursuant to this condition. Failure to submit to a

25 search may be grounds for revocation.

46

1 You are also prohibited from incurring new credit
2 charges, opening additional lines of credit, or obligating
3 yourself for any major purchases without the approval of our
4 probation officer.
5 You shall provide the probation officer access to
6 any requested financial information.
7 Having been convicted of a qualifying felony, you
8 must cooperate in the collection of DNA as directed by
9 probation.
10 The mandatory drug testing requirements of the
11 Violent Crime Control Act are suspended. However, you must
12 submit to random drug testing not to exceed 104 tests per
13 year.
14 The Court hereby orders \$3,000 in restitution shall
15 be made payable with regard to the victim in the Jenny series.
16 This restitution shall be made payable to the Clerk U.S.
17 District Court for distribution to the victim. While in the
18 custody of the Bureau of Prisons you shall either, one, pay
19 \$20 quarterly if you have a non-UNICOR job or, two, pay at
20 least 50 percent of your monthly earnings, if you have a
21 UNICOR job.
22 Upon release from custody you shall pay restitution
23 at the rate of \$100 per month. At any time during the course
24 of your post-release supervision, the victim, the Government,
25 or you may notify the Court of a material change in your

47

1 ability to pay and the Court may adjust payment accordingly.
2 The Court finds the defendant does not have the
3 ability to pay interest and waives the requirement to pay
4 interest as part of restitution.
5 Based on the financial status of the defendant, the
6 Court is going to waive the imposition of a fine.
7 Ms. Chang, are there forfeiture -- I think there are
8 pending, and I saw them recently. Is that correct?
9 MS. CHANG: Yes, that's correct, Your Honor, and
10 there's also a \$5,000 special assessment.
11 THE COURT: Are you asking for the special
12 assessment?
13 MS. CHANG: I am, Your Honor.
14 THE COURT: All right. She's entitled to the
15 special assessment, unless there's a showing by the defense
16 that he's indigent. Are you asking for an opportunity to
17 brief that before the Court?
18 MR. SMITH: Yes, sir.
19 THE COURT: All right. So here's what we'll do. I
20 know what the Government's position is. It's your burden to
21 show your client is indigent. You'll be required to submit
22 those matters to the Court. And Ms. Chang will be offered an
23 opportunity to respond in writing. I don't think we're going
24 to need a hearing for that. If we do, you'll be notified.
25 The Court will defer on making a determination

48

1 whether or not the \$5,000 special assessment will be assessed
2 pursuant to 18 U.S. Code, Section 3014.

3 All right. There's also a \$300 special assessment,
4 100 per count.

5 After considering the advisory sentencing guidelines
6 and all of the factors identified in Title 18 U.S. Code,
7 Sections 3553(a)(1) through (7), the Court finds that the
8 sentence imposed is sufficient, but not greater than
9 necessary, to comply with the statutory purposes of
10 sentencing.

11 The Court having pronounced sentence, does counsel
12 for defendant have any objections to the sentence imposed or
13 to the manner in which the Court imposed sentence, other than
14 those previously stated for the record?

15 MR. SMITH: Yes, sir. There is an objection, if I
16 could, sir, just to be clear for the record.

17 THE COURT: Sure. And your client can be seated.
18 If you want to make argument, you're certainly welcome to do
19 so.

20 Ms. Chang, if you would like to respond, you'll be
21 offered that opportunity.

22 MR. SMITH: Yes, sir. And this argument is not made
23 in any way to be disrespectful to the Court. I just want to
24 point out that I think that this sentence is substantively
25 unreasonable for the reason that I believe that the Court has

49

1 made reference to a number of things that should not have
2 factored into the sentence to the extent that they may have,
3 and I'm talking in particular about my client's occupation.
4 There's absolutely no evidence whatsoever that there was ever
5 anything inappropriate that was done with children.

6 THE COURT: I agree with that. I hope I made that
7 clear. My concern is your client -- and it's established on
8 the record in excruciating detail, what he was downloading was
9 described for the Court, and he had been downloading that for
10 16 years per the evidence. You may disagree with the veracity
11 of that testimony, but that's the testimony before the Court.
12 And I did say I expressed some concern, although there's no
13 evidence, and I'm not holding it against him, that if he told
14 law enforcement that he was so attracted to that that he
15 couldn't stop and would likely continue after this whole
16 incident occurred that I was concerned that he was working in
17 that occupation.

18 MR. SMITH: I understand, sir.

19 THE COURT: I agree with you. There's no evidence
20 that he ever laid a hand on a child and that did not weigh
21 into the Court's sentence.

22 MR. SMITH: Okay. Very well. And just I want to
23 make certain because the Court went on about that to a certain
24 extent.

25 I also wanted to make one thing clear for the

50

1 record, and that is the statement my client made about not
2 being able to stop has been truncated. The actual statement
3 that he made was that he would not be able to stop, unless he
4 was able to obtain some treatment. And so I think that's a
5 significant point that I want to at least make sure is here on
6 the record. There is a significant difference between someone
7 saying, I can't stop no matter what and someone saying, I
8 can't stop, unless I'm given treatment.

9 So, again, my only concern is that what I heard
10 mostly from the Court when articulating the fact that there
11 was no reason to grant a variance was because of the concern
12 about the fact that he did not withdraw himself from his job.
13 I just respectfully don't think that that's fair because there
14 was never any evidence connected in any way, shape, form, or
15 fashion to this trial that there were offenses relating to his
16 work or with children. Again, I understand the
17 all-encompassing argument about children being victims, things
18 of that nature, but there was never any evidence whatsoever
19 that Mr. Vorasiangsuk did anything other than his job in the
20 most professional manner.

21 I would also say that the Court stated that you
22 couldn't find a reason to grant a variance and made reference
23 to Mr. Vorasiangsuk's family. Again, the sentence has been
24 handed down. But just to support any arguments that may be
25 made later on about the sentence not being proper, I want to

51

1 point out that the probation office, the independent neutral
2 arbiter, specifically cited to Mr. Vorasiangsuk's family as a
3 reason to grant a variance. As the Court has heard oftentimes
4 when someone does have a loving and supportive family, that
5 can be a basis if a person does get a variance for
6 readjustment into this society.

7 So I anticipate that he's most likely going to want
8 to appeal the sentence imposed because of the reference to
9 things that were not a part of the trial, not a part of the
10 charges. And so I wanted to make sure that I put those things
11 out clearly and specifically and respectfully.

12 THE COURT: I appreciate that. I appreciate your
13 thoughtful comments.

14 Ms. Chang would you like to respond?

15 MS. CHANG: Your Honor, I think the Court covered
16 pretty clearly its reasons for imposing sentence.

17 With respect to the loving family, I would just note
18 that defendants like to argue this both ways. I have no
19 family. No one is here for me. I had an awful childhood.
20 Therefore, you should give me a variance. Or I have a loving
21 family. Everyone is terrific. I'm great. Therefore, you
22 should give me a variance.

23 I think the Court decided this appropriately. This
24 defendant has been given many opportunities. He has
25 tremendous support. Notwithstanding that, he engaged in the

52

1 conduct that he engaged in.

2 With respect to the, I can't stop unless I have
3 treatment -- I have the transcript here. I was not prepared
4 for that objection. I will note on page 23 of the transcript
5 of the defendant's interview, which was put before the Court
6 in a previous hearing, so it's in evidence:

7 "QUESTION: Have you tried to stop over these
8 15 years?" This is page 23.

9 "THE DEFENDANT: Yes, several times."

10 "QUESTION: And what happens when you try to stop?"

11 "ANSWER: It's hard. I can't do it."

12 Later on.

13 "QUESTION: What do you think the longest you've
14 been able to stop for is?"

15 "ANSWER: Religiously there was three months that I
16 stopped."

17 "QUESTION: Okay."

18 "ANSWER: And that's the only time, the longest."

19 So I can't find the specific passage that the
20 defense is referencing at this moment. If he has it, maybe
21 bring it to our attention. I don't recall that he said, I
22 can't stop unless I have treatment, but I do confess I haven't
23 reviewed it recently. This was just brought up, but this
24 passage that I read, which is from the same interview, makes
25 clear he's not able to stop. He's tried multiple times. So I

53

1 would just note that in response.

2 I also want to just clean up one thing for the
3 Court. If I heard correctly, the Court imposed 168 months as
4 to each count to run concurrently, but the statutory maximum
5 for Count 3 is 10 years. So it has to be 120 months.

6 THE COURT: And I appreciate that. So it will be
7 120 concurrent on that count.

8 All right. The objections made by the defense have
9 been preserved.

10 Are there any objections from the United States?

11 MS. CHANG: No, Your Honor. Thank you.

12 THE COURT: The defendant is hereby remanded to the
13 custody of the U.S. Marshals to await designation by the
14 Bureau of Prisons.

15 You have the right to appeal from the judgment and
16 sentence within 14 days from entry of judgment. Failure to
17 appeal within that 14-day period shall constitute a waiver of
18 your right to appeal. The Government may also file an appeal
19 from this sentence.

20 You are also advised that you are entitled to the
21 assistance of counsel in taking an appeal, and that if you
22 cannot afford a lawyer, one will be provided for you.

23 If you are unable to afford the filing fee, the
24 Clerk of the Court will be directed to accept notice of appeal
25 without such fee.

54

1 Is there anything further from the United States at
2 this time?

3 MS. CHANG: No, Your Honor.

4 THE COURT: Mr. Smith?

5 MR. SMITH: Yes, sir. Briefly, just for reasons of
6 familial proximity, if the Court could recommend housing to
7 take place as close to central Florida as possible.

8 THE COURT: All right. That will be the Court's
9 recommendation, and that will be the basis for it. It will it
10 will be in the judgment.

11 Anything further?

12 MR. SMITH: No, sir.

13 THE COURT: All right. Court's in recess. Thank
14 you. Have a good morning.

15 (WHEREUPON, this matter was concluded at 11:54 a.m.)

16 . . .

17 CERTIFICATE OF REPORTER

18 I certify that the foregoing is a correct transcript of the
19 record of proceedings in the above-entitled matter.

20 /s/ Suzanne L. Trimble
21 Suzanne L. Trimble, CCR, CRR, RPR
22 Official Court Reporter

23 5/20/20
24 Date
25

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of September, 2020, a true and correct copy of the foregoing Appendix was filed with the Clerk of the Court using the CM/ECF system, which will send notice of the electronic filing to Assistant United States Attorney Sean Siekkinen and to Assistant United States Attorney Yvette Rhodes;

I further certify that on this 28th day of September, 2020, a true and correct copy of the Sealed Appendix was served on the Clerk of the Court via email at clerks_office@ca11.uscourts.gov; and a copy of the Sealed Appendix was served via email on Assistant United States Attorney Sean Siekkinen at sean.siekkinen@usdoj.gov and on Assistant United States Attorney Yvette Rhodes at yvette.rhodes@usdoj.gov.

Adeel Bashir
Assistant Federal Defender
Counsel for Appellant

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-13647-BB

Appendix "F"
the misconstrue and
denial of the 2nd
ground of his Motion

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

VORARUT VORASIANGSUK,

Defendant - Appellant.

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

ORDER:

The letter received 9/17/21, construed as a Motion to Supplement Appellant's Petition for Panel Rehearing filed by Appellant Vorarut Vorasiangsuk is DENIED.

On the Court's own motion, the Court also construes Appellant's Motion to Supplement as a motion to exceed the 15-page Petition for Rehearing limitation set forth by FRAP 40(b)(2). The request to exceed the Petition for Rehearing page limitation with Appellant's 9/17/21, Supplemental Petition for Rehearing is DENIED.

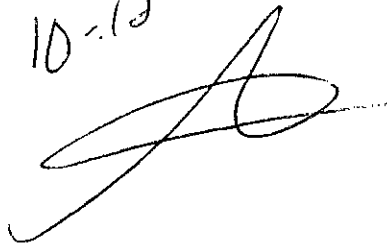
DAVID J. SMITH
Clerk of the United States Court of
Appeals for the Eleventh Circuit

ENTERED FOR THE COURT - BY DIRECTION

19-13647

Vorarut Vorasiangsuk
#71598-018
FCI Coleman Low - Inmate Legal Mail
PO BOX 1031
COLEMAN, FL 33521-1031

Inmate Received
on 10-12-21



IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-13647-BB

Appendix "G"
the denial of his
Motion for Rehearing
(1st Ground)

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

VORARUT VORASIANGSUK,

Defendant - Appellant.

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

BEFORE: NEWSOM, LAGOA, and ANDERSON, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by the Appellant is DENIED.

ORD-41

**UNITED STATES COURT OF APPEALS
For the Eleventh Circuit**

No. 19-13647

District Court Docket No.
6:19-cr-00024-CEM-EJK-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

VORARUT VORASIANGSUK,

Defendant - Appellant.

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

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: August 10, 2021
For the Court: DAVID J. SMITH, Clerk of Court
By: Djuanna H. Clark

*Stroch
Received
10/25/21*

RECEIVED 11/2/21
2PM

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

October 27, 2021

Vorarut Vorasiangsuk
FCI Coleman Low - Inmate Legal Mail
PO BOX 1031
COLEMAN, FL 33521-1031

Appendix "H"
"No action will be taken"
regarding his timely
motions

Appeal Number: 19-13647-BB
Case Style: USA v. Vorarut Vorasiangsuk
District Court Docket No: 6:19-cr-00024-CEM-EJK-1

Notice of receipt: "Motion for extension of time" (received October 18, 2021) and "Amended motion for rehearing & motion to reinstate" (Received October 22, 2021) as to Appellant Vorarut Vorasiangsuk.

NO ACTION WILL BE TAKEN- On October 19, 2021, the mandate closing the appeal issued. The Order denying Petition for Rehearing issued October 8, 2021. The Order denying appellant's Motion to Supplement the Petition for Rehearing & file excess pages issued October 7, 2021.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Tonya L. Richardson, BB
Phone #: (404) 335-6174

MP-1

**Additional material
from this filing is
available in the
Clerk's Office.**