

APPENDIX

A

NOT RECOMMENDED FOR PUBLICATION

No. 21-1416

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Aug 09, 2021

DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,)
)
Plaintiff-Appellee,)
v.)
DANIEL ISAIAH THODY,)
)
Defendant-Appellant.)

O R D E R

Before: GUY, BUSH, and LARSEN, Circuit Judges.

Daniel Isaiah Thody, a federal prisoner, appeals the judgment of the district court revoking his supervised release and imposing a term of imprisonment of six months. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In 2013, a jury in the United States District Court for the Western District of Texas convicted Thody of five counts of tax evasion, in violation of 26 U.S.C. § 7201. Evidence at trial indicated that Thody considers himself a “sovereign citizen,” subject only to common law and not any local, state, or federal statutes, including those requiring the payment of taxes. A presentence report calculated Thody’s guidelines range of imprisonment as 33 to 41 months. The report noted that the statutory maximum sentence for each count was 60 months and that consecutive sentences could be ordered for each count. The district court ultimately sentenced Thody to 45 months of imprisonment on Counts 1 and 2, to be served consecutively, and 41 months of imprisonment on Counts 3, 4, and 5, to be served concurrently with each other and with Counts 1 and 2, to be

Appendix A

No. 21-1416

- 2 -

followed by a three-year term of supervised release. The district court also ordered that Thody pay restitution of \$162,037. Thody appealed his sentence. The Fifth Circuit vacated and remanded, holding that restitution was improperly imposed independent of supervised release, but could be imposed as a condition of supervised release. *See United States v. Thody*, 637 F. App'x 790, 793-94 (5th Cir. 2016) (per curiam). On remand, the district court ordered payment of \$162,037 in restitution as a condition of Thody's three-year term of supervised release at a rate of no less than \$500 per month. Thody again appealed, and the Fifth Circuit affirmed. *United States v. Thody*, 697 F. App'x 433 (5th Cir. 2017) (per curiam).

Thody's term of supervised release, served in the Western District of Michigan, commenced on September 13, 2019. He thereafter secured employment, found adequate housing, and began to report to the United States Probation Office as directed. He also submitted purported payments to the Internal Revenue Service (IRS) and to the clerk of court, which consisted of documents stating that they were "dollars" in payment of his court-ordered obligations; that they must be accepted as dollars because no legal definition of "dollar" exists since the elimination of the unit as a measure of gold or silver by an act of Congress in 1965; and that federal law specifically prohibits the demand of payment of a debt to be in any particular form of currency. But neither the IRS nor the court accepted his "payment." Nevertheless, the probation officer recommended that no action be taken. Although no action was taken, the government applied for, and was granted, a writ to garnish Thody's wages in May 2020.

After the order of garnishment, Thody sent to the district court a letter and another document titled "Dollars in Payment/Discharge and Affidavit Re" purporting to be a payment in the amount of \$166,004.11 to satisfy his debt. He thereafter moved for early termination of his supervised release on the basis that he had fulfilled all of the conditions of his release. The district court denied the motion in September 2020.

In March 2021, the Probation Office filed a petition for a warrant for Thody's arrest, asserting that he had committed the following violations of his supervised release: (1) failing to pay at least \$500 per month toward his restitution; (2) providing false information on his monthly

No. 21-1416

- 3 -

supervision report by stating that he had paid his restitution in full (3) committing a violation of federal law by making false statements on his monthly supervision form; (4) failing to submit monthly supervision reports; (5) failing to report to his probation officer; and (6) failing to submit to a urinalysis as instructed.

Thody was thereafter arrested. He was granted a request to represent himself at his proceedings with stand-by counsel present. Prior to his final hearing, he filed another motion for early termination of supervised release. Thody also filed a motion challenging the district court's jurisdiction on the basis that the order of restitution was improper. In a memorandum opinion, the district court denied the motion for early termination of supervised release and denied the other motion as moot.

At Thody's final revocation hearing in April 2021, he pleaded not guilty to violating the terms of his release. The government presented the testimony of a paralegal in the United States Attorney's Office who works in restitution debt collection and who worked on Thody's case. The government also presented the testimony of Thody's probation officer. Thody testified in his defense. The district court found him guilty of all six violations and sentenced him to serve six months of imprisonment on each violation, to run concurrently, to be followed by a two-year term of supervised release. The court also ordered, as a condition of his release, that he pay the outstanding balance on his restitution, which totaled \$158,302.66.

Thody now appeals. Appellate counsel, who also served as standby counsel at Thody's final hearing, has filed a motion and brief pursuant to *Anders v. California*, 386 U.S. 738, 744 (1967), and Sixth Circuit Rule 12(c)(4)(C), requesting permission to withdraw because of a lack of any good faith issues to appeal. Counsel asserts that the district court's evidentiary hearing was procedurally correct and the trial court's finding that Thody violated the terms of his release was supported by the evidence. In addition, counsel notes that the district court did not abuse its discretion in imposing a within-guidelines sentence. Thody has filed a response to counsel's brief, arguing that the district court was not authorized to impose supervised release at all for his offense. After independently examining the record, pursuant to *Penson v. Ohio*, 488 U.S. 75, 82-83 (1988),

No. 21-1416

- 4 -

as well as counsel's brief and Thody's response, we agree that no grounds for appeal can be sustained.

To revoke a defendant's supervised release, a district court must find by a preponderance of the evidence that the defendant violated a condition of supervised release. 18 U.S.C. § 3583(e)(3); *United States v. Carr*, 421 F.3d 425, 429 (6th Cir. 2005). When considering whether this standard is met, we will "not weigh the evidence, consider the credibility of witnesses or substitute our judgment for that of the jury." *United States v. Blakley*, 708 F. App'x 265, 268 (6th Cir. 2017) (quoting *United States v. Hilliard*, 11 F.3d 618, 620 (6th Cir. 1993)). We review a district court's decision to revoke a defendant's term of supervised release for an abuse of discretion. *Carr*, 421 F.3d at 429.

As stated, the government presented a paralegal at the hearing who testified to Thody's failure to make the required restitution payments. Thody's probation officer also testified to Thody's failure to pay restitution, his falsification of his monthly report by declaring that he had submitted payment, and his failure to report to the office and to submit to a drug screening. Thody was allowed to present evidence in his defense, *see* Fed. R. Crim. P. 32.1(b)(2)(C), and he argued that the "payments" he submitted were valid based on only his own belief system. He acknowledged on cross-examination that he would not pay any other bill in this way but that his payments to the IRS and to the clerk of court were "intentionally of only legal substance." He stated that:

[the document had] no utilitarian value other than the purpose for which [he was] using it, which [was] essentially to raise the issue to the Government about the Government's decision to eliminate the definition of a dollar, to make the economic basis of this country based on a financial fraud, and to bring that to a head as an issue.

The evidence at the hearing also supported the district court's finding that Thody's belief in the validity of his "payments" was the basis for his other violations. Thody stated in his monthly supervision report that he had paid his restitution in full because he believed his "payments" should have been accepted. Consequently, because he believed he had complied with the terms of his supervision and should no longer be subject to its oversight, he admitted that he stopped complying

No. 21-1416

- 5 -

with the terms of his release. The evidence therefore supports the district court's determination that Thody violated the terms of his supervised release.

After revoking a term of supervised release, a district court may "require the defendant to serve a new term of imprisonment pursuant to 18 U.S.C. § 3583(e)." *United States v. Polihonki*, 543 F.3d 318, 322 (6th Cir. 2008). Generally, we review challenges to sentences imposed after the revocation of supervised release under the same standard that is applied to sentences after conviction. *See United States v. Kontrol*, 554 F.3d 1089, 1092 (6th Cir. 2009). In short, we must first "ensure that the district court committed no significant procedural error" and then "consider the substantive reasonableness of the sentence imposed under an abuse-of-discretion standard." *Gall v. United States*, 552 U.S. 38, 51 (2007).

Thody can raise no non-frivolous argument that his sentence was procedurally unreasonable. When considering whether a sentence is procedurally reasonable, the court must "ensure that the district court committed no significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence." *Id.* Thody, however, did not object to the calculated advisory guidelines range of four to ten months, which was based on a serious Grade B violation and a criminal history category of I. *See USSG §§ 7B1.1(a)(2), 7B1.4(a)*. He also did not claim that the calculation of his sentence was based on erroneous information, and the district court recognized the advisory nature of the guidelines range and explained the sentence imposed. Therefore, Thody can raise no arguable issue on appeal that his sentence is procedurally unreasonable.

If a sentence is procedurally sound, the next consideration is whether the sentence is substantively reasonable. *See Polihonki*, 543 F.3d at 322. "A claim that a sentence is substantively unreasonable is a claim that a sentence is too long . . ." *United States v. Rayyan*, 885 F.3d 436, 442 (6th Cir. 2018). The "touchstone for our review is whether the length of the sentence is reasonable in light of the § 3553(a) factors." *United States v. Recla*, 560 F.3d 539, 549 (6th Cir.

No. 21-1416

- 6 -

2009). A rebuttable presumption of reasonableness attaches to sentences within the applicable guidelines range. *United States v. Vonner*, 516 F.3d 382, 389 (6th Cir. 2008) (en banc).

Thody cannot arguably assert that a six-month sentence—close to the lower end of his guidelines range—is substantively unreasonable. As the district court explained, Thody “believes himself to be in a different category from other Defendants who come before this court . . . [and] [t]hat he has no obligation to follow the rules and regulations like the rest of us.” The court believed that Thody had a “very high risk of continued illegal behavior” given that he had been unwilling to comply with the simplest conditions of supervised release, including appearing at the probation office and submitting to drug testing. The court candidly acknowledged that it was tempted to avoid a term of incarceration and impose an additional three-year term of supervised release, but ultimately concluded that a custodial sentence had to have some impact on Thody and that a six-month sentence was sufficient.

Nor can Thody raise a non-frivolous argument regarding the district court’s imposition of the remainder of his restitution obligation as a condition of Thody’s supervised release. First, the Sentencing Guidelines specifically authorize that any restitution previously “imposed in connection with the sentence for which revocation is ordered that remains unpaid . . . shall be ordered to be paid.” USSG § 7B1.3(d). Second, on direct appeal from resentencing, the Fifth Circuit determined that the amount of restitution had been properly set at \$162,037.00. *Thody*, 697 F. App’x at 435. The district court properly credited Thody for the restitution he had already paid and ordered that he pay the outstanding balance of \$158,302.66 as a condition of his supervised release.

Finally, to the extent that Thody challenges the district court’s imposition of a term of supervised release as part of his original sentence, he forfeited any such challenge by failing to raise it on direct appeal following his conviction. See *Huff v. United States*, 734 F.3d 600, 605-06 (6th Cir. 2013).

No. 21-1416

- 7 -

The record does not reveal an arguable issue for appeal. We **GRANT** counsel's motion to withdraw and **AFFIRM** the judgment of the district court.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

APPENDIX

B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:19-pt-30

v.

HON. JANET T. NEFF

DANIEL ISAIAH THODY,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending before the Court are Defendant's "Termination of Supervised Release" (ECF No. 31), "Pre-Emptive Reply to Government's Response in Opposition" (ECF No. 33), and "Wish to Resolve Subject Matter Jurisdiction Issue Prior to any Revocation Hearing" (ECF No. 55). The Government submitted a "Response to Defendant's 'Termination of Supervised Release'" (ECF No. 43) and a "Motion to Strike Defendant's 'Preemptive Reply'" (ECF No. 34), to which the Defendant responded (ECF No. 39).

The Court previously denied Defendant's motion (ECF No. 13) for early termination of supervised release in an order on September 22, 2020 (ECF No. 16). The Court also denied the Defendant's request for a hearing pertaining to the Government's garnishment action as a result of Defendant's failure to pay restitution of \$162,857.00 (ECF No. 28).

This case was transferred to this district after Defendant was found guilty by a jury verdict of five counts of tax evasion in violation of 26 U.S.C. § 7201 in the U.S. District Court for the Western District of Texas on November 8, 2013 (ECF No. 5-3 at PageID.90). Defendant was sentenced by Judge Garcia for the Western District of Texas to a term of supervised release, including restitution of the tax loss on October 14, 2016 (*id.* at PageID.92).

Appendix B

Contrary to what Defendant appears to argue in his motion (ECF No. 31 at PageID.189-191), a district court may order restitution to the IRS arising from a 26 U.S.C. § 7201 violation as a condition of supervised released in an amount that does not exceed the tax loss. *See United States v. Butler*, 297 F.3d 505, 518–20 (6th Cir. 2002). Further, as this Court previously stated in its order denying Defendant’s request for a hearing on the garnishment action, the final judgment from the Western District of Texas is res judicata, “it has been appealed and affirmed, and all appeal windows have since expired” (ECF No. 28 at PageID.175). Here, again, Defendant’s “failure to challenge the special conditions of supervised release in either the district court or during the prior appeal . . . precludes our consideration of his claim.” *United States v. Traxler*, 517 F. App’x 472, 474 (6th Cir. 2013) (“waiver doctrine exists for good reason . . . and promotes finality in criminal proceedings by requiring that parties seek review of a claim in the first appeal”). This Court, therefore, applies the waiver doctrine to preclude consideration of the merits of Defendant’s supervised released sentencing claim because these issues, as the Government argues (ECF No. 43 at PageID.231), were not raised in an original appeal. *See Traxler*, 517 F. App’x at 474.

IT IS HEREBY ORDERED that Defendant’s “Termination of Supervised Release” (ECF No. 31) is DENIED.

IT IS FURTHER ORDERED that Plaintiff’s “Motion to Strike Defendant’s ‘Preemptive Reply’” (ECF No. 34) is GRANTED; Defendant’s Preemptive Reply (ECF No. 33) is STRICKEN.

IT IS FURTHER ORDERED that Defendant’s “Wish to Resolve Subject Matter Jurisdiction Issue Prior to any Revocation Hearing” (ECF No. 55) is DENIED as moot.

Dated: April 21, 2021

/s/ Janet T. Neff

JANET T. NEFF
United States District Judge

UNITED STATES DISTRICT COURT
Western District of Michigan

UNITED STATES OF AMERICA

-vs-

DANIEL ISIAH THODY

JUDGMENT IN A CRIMINAL CASE

(For Revocation of Probation or Supervised Release)

Case Number: 1:19-pt-30

USM Number: 17058-040

Richard E. Zambon (standby counsel)
Defendant's Attorney

THE DEFENDANT:

admitted guilt to violation of _____
 was found guilty as to each of Violations One through Six after a denial of guilt.

<u>Violation Number</u>	<u>Nature of Violation</u>
One	Failure to Abide by Restitution Schedule
Two	False Information to Probation Officer
Three	New Law Violation: False Statements
Four	Failure to Report as Instructed
Five	Failure to Report as Instructed
Six	Failure to Submit to Urinalysis

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

IT IS FURTHER 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 the United States attorney of material changes in economic circumstances.

Date of Imposition of Sentence: April 21, 2021

DATED: April 21, 2021

/s/ Janet T. Neff
JANET T. NEFF
UNITED STATES DISTRICT JUDGE

AO 245D (MIWD Rev. 09/11)- Judgment in a Criminal Case for Revocations

Judgment - Page 2

Defendant: DANIEL ISAIAH THODY

Case Number: 1:19-pt-30

IMPRISONMENT

The defendant's term of supervised release is revoked and the defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **SIX (6) MONTHS** as to each of Counts One through Five, with all counts to run concurrently.

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

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

The defendant shall surrender to the United States Marshal for this district:

at _____ on _____

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2:00 P.M. on _____

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

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 United States Marshal

AO 245D (MIWD Rev. 09/11)- Judgment in a Criminal Case for Revocations

Judgment – Page 3

Defendant: DANIEL ISAIAH THODY

Case Number: 1:19-pt-30

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **TWENTY-FOUR (24) MONTHS** as to each of Counts One through Five, with all counts to run concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state, or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must cooperate in the collection of DNA as directed by the probation officer.
5. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6. You must participate in an approved program for domestic violence. *(check if applicable)*
7. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)* You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

AO 245D (MIWD Rev. 09/11)- Judgment in a Criminal Case for Revocations

Judgment – Page 4

Defendant: DANIEL ISAIAH THODY

Case Number: 1:19-pt-30

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the Court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at www.uscourts.gov.

Defendant's Signature _____ Date _____

AO 245D (MIWD Rev. 09/11)- Judgment in a Criminal Case for Revocations

Judgment – Page 5

Defendant: DANIEL ISAIAH THODY

Case Number: 1:19-pt-30

SPECIAL CONDITIONS OF SUPERVISION

1. You must provide the probation officer with access to any requested financial information and authorize the release of any financial information. The probation office will share financial information with the U.S. Attorney's Office.
2. You must not apply for, nor enter into, any loan or other credit transaction without the approval of the probation officer.
3. You must not create/form any new business entities during the period of supervision.
4. You must not open any new personal or business accounts without the approval of the probation officer.
5. You must not work in any type of employment without the prior approval of the probation officer.
6. You must comply with all regulations of the Internal Revenue Service pertaining to the payment of future federal tax obligations during the period of supervised release.
7. You shall not associate with any organization or group which is engaged in criminal activity.
8. You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition.

The probation officer may conduct a search under this condition only when reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

9. You must satisfy the remaining \$158,302.66 outstanding restitution balance. Any balance due upon commencement of supervision must be paid, during the term of supervision, in minimum monthly installments of \$500.00, to commence 60 days after release from imprisonment.

AO 245D (MIWD Rev. 09/11)- Judgment in a Criminal Case for Revocations

Judgment - Page 6

Defendant: DANIEL ISAIAH THODY

Case Number: 1:19-pt-30

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on the following pages.

<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
\$500.00 (Paid)	-0-	\$162,037.00 (Balance Remaining of \$158,302.66)	-0-	-0-

The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such a determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(I), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
IRS-RACS Attn: Mail Stop 6261 Restitution 331 W. Pershing Ave. Kansas City, Missouri 64108	\$162,037.00	\$162,037.00	

TOTALS \$162,037.00 \$162,037.00

Restitution amount ordered pursuant to plea agreement.

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

- the interest requirement is waived for the fine.
- the interest requirement is waived for the restitution.
- the interest requirement for the fine is modified as follows: _____
- the interest requirement for the restitution is modified as follows: _____

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

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

AO 245D (MIWD Rev. 09/11)- Judgment in a Criminal Case for Revocations

Judgment – Page 7

Defendant: DANIEL ISAIAH THODY

Case Number: 1:19-pt-30

SCHEDULE OF PAYMENTS

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

A Lump sum payment of **\$0.00** due immediately, balance due
 not later than _____, or
 in accordance with C, D, E, or F below; or

B Payment to begin immediately (may be combined with C, D, or F below); or

C Payment in equal _____ installments of \$_____ over a period of _____, to commence _____ after the date of this judgment; or

D Payment in equal _____ installments of \$_____ over a period of _____, to commence _____ after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within _____ after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:
 Any balance due upon incarceration must be paid in minimum quarterly installments of \$25.00 based on IFRP participation, or minimum monthly installments of \$20.00 based on UNICOR earnings, during the period of incarceration, to commence 60 days after the date of this judgment. Any balance due upon commencement of supervision must be paid, during the term of supervision, in minimum monthly installments of \$500.00, to commence 60 days after release from imprisonment. You must apply all monies received from income tax refunds, lottery winnings, judgments, and or any other anticipated or unexpected financial gains to any outstanding court-ordered financial obligations.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of 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, 399 Federal Building, 110 Michigan N.W., Grand Rapids, MI 49503, unless otherwise directed by the court, the probation officer, or the United States Attorney.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Case Number

Defendant and Co-Defendant Names
(including defendant number)

Total Amount

Joint and Several
AmountCorresponding Payee,
if appropriate

The defendant shall pay the cost of prosecution.
 The defendant shall pay the following court cost(s):
 The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

APPENDIX

C

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: November 24, 2021

Daniel Isaiah Thody
218 Elliott Avenue
Grand Haven, MI 49417

Re: Case No. 21-1416, *USA v. Daniel Thody*
Originating Case No. : 1:19-pt-00030-1

Dear Mr. Thody,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Julie Connor for
Roy G. Ford, Case Manager
Direct Dial No. 513-564-7016

cc: Mr. Thomas Dorwin
Ms. Jennifer S. Murnahan

Enclosure

Mandate to issue

Appendix C

No. 21-1416

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,)
)
 Plaintiff-Appellee,)
)
 v.)
)
 DANIEL ISAIAH THODY,)
)
 Defendant-Appellant.)
)
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FILED
Nov 24, 2021
DEBORAH S. HUNT, Clerk

O R D E R

Before: GUY, BUSH, and LARSEN, Circuit Judges.

Daniel Isaiah Thody petitions for rehearing of this court's order of August 9, 2021, that affirmed the order of the district court revoking Thody's supervised release and imposing a term of imprisonment of six months.

Upon careful consideration, this panel concludes that it did not misapprehend or overlook any point of law or fact when it issued its order. Fed. R. App. P. 40(a).

We therefore **DENY** the petition for rehearing.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

APPENDIX

D

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18 U.S.C. § 3583 pertinent provisions:

(a) In General.—The court, in imposing a sentence to a term of imprisonment for a felony or a misdemeanor, may include as a part of the sentence a requirement that the defendant be placed on a term of supervised release after imprisonment, except that the court shall include as a part of the sentence a requirement that the defendant be placed on a term of supervised release if such a term is required by statute or if the defendant has been convicted for the first time of a domestic violence crime as defined in section 3561(b).

(b) Authorized Terms of Supervised Release.—Except as otherwise provided, the authorized terms of supervised release are—

- (1)** for a Class A or Class B felony, not more than five years;
- (2)** for a Class C or Class D felony, not more than three years; and
- (3)** for a Class E felony, or for a misdemeanor (other than a petty offense), not more than one year.

(c) Factors To Be Considered in Including a Term of Supervised Release.—The court, in determining whether to include a term of supervised release, and, if a term of supervised release is to be included, in determining the length of the term and the conditions of supervised release, shall consider the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7).

(d) Conditions of Supervised Release.—The court shall order, as an explicit condition of supervised release, that the defendant not commit another Federal, State, or local crime during the term of supervision, that the defendant make restitution in accordance with sections 3663 and 3663A, or any other statute authorizing a

sentence of restitution, and that the defendant not unlawfully possess a controlled substance... The court may order, as a further condition of supervised release, to the extent that such condition—

- (1) is reasonably related to the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D);
- (2) involves no greater deprivation of liberty than is reasonably necessary for the purposes set forth in section 3553(a)(2)(B), (a)(2)(C), and (a)(2)(D); and
- (3) is consistent with any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a);

any condition set forth as a discretionary condition of probation in section 3563(b) and any other condition it considers to be appropriate, provided, however that a condition set forth in subsection 3563(b)(10) shall be imposed only for a violation of a condition of supervised release in accordance with section 3583(e)(2) and only when facilities are available...

(e) Modification of Conditions or Revocation.—The court may, after considering the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)—

(1) terminate a term of supervised release and discharge the defendant released at any time after the expiration of one year of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice;

(2) extend a term of supervised release if less than the maximum authorized term was previously imposed, and may modify, reduce, or enlarge the conditions of

supervised release, at any time prior to the expiration or termination of the term of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation and the provisions applicable to the initial setting of the terms and conditions of post-release supervision;

(3) revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on post-release supervision, if the court, pursuant to the Federal Rules of Criminal Procedure applicable to revocation of probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be required to serve on any such revocation more than 5 years in prison if the offense that resulted in the term of supervised release is a class A felony, more than 3 years in prison if such offense is a class B felony, more than 2 years in prison if such offense is a class C or D felony, or more than one year in any other case; or

(4) order the defendant to remain at his place of residence during nonworking hours and, if the court so directs, to have compliance monitored by telephone or electronic signaling devices, except that an order under this paragraph may be imposed only as an alternative to incarceration.

(g) Mandatory Revocation for Possession of Controlled Substance or Firearm or for Refusal To Comply With Drug Testing.—If the defendant—

(1) possesses a controlled substance in violation of the condition set forth in subsection (d);

(2)possesses a firearm, as such term is defined in section 921 of this title, in violation of Federal law, or otherwise violates a condition of supervised release prohibiting the defendant from possessing a firearm;

(3)refuses to comply with drug testing imposed as a condition of supervised release;

or

(4)as a part of drug testing, tests positive for illegal controlled substances more than 3 times over the course of 1 year;

the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment not to exceed the maximum term of imprisonment authorized under subsection (e)(3).

(h)Supervised Release Following Revocation.—When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment, the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release.