

APPENDIX

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United States v. Joshua Hayes,

United States District Court Opinion, 8:20-cr-00222-CEH-TGWAppendix A

United States v. Joshua Hayes,

--- F. App'x ---, 2022 WL 810429 (11th Cir. 2020)Appendix B

Appendix A

Joshua Hayes
8:20-cr-222-T-36TGW

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA

Case Number: 8:20-cr-222-T-36TGW

v.

USM Number: 73718-018

JOSHUA HAYES

Adam Joseph Nate, AFD

JUDGMENT IN A CRIMINAL CASE

Defendant pleaded guilty to Counts One, Two, and Three of the Indictment. Defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 U.S.C. §§ 2251(a) and (e)	Production of Child Pornography	On or about January 31, 2020	One
18 U.S.C. §§ 2251(a) and (e)	Production of Child Pornography	On or about February 5, 2020	Two
18 U.S.C. § Section 2252(a)(4)(B)	Possession of Child Pornography	On or about February 21, 2020	Three

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

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IT IS ORDERED that 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, Defendant shall notify the Court and United States Attorney of any material change in Defendant's economic circumstances.

Date of Imposition of Judgment:

April 1, 2021

Charlene Edwards Honeywell

CHARLENE EDWARDS HONEYWELL
UNITED STATES DISTRICT JUDGE

April 1, 2021

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IMPRISONMENT

Defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 480 months. This term consists of a 240 month term each as to Counts One and Two, to run concurrently, and a 240 month term as to Count Three, to run consecutively to the term imposed as to Counts One and Two.

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

1. Defendant be incarcerated at the closest correctional facility with the appropriate security level to FCC Coleman.
2. Defendant be allowed to study for and obtain his GED.
3. Defendant be allowed to receive vocational training in the following areas: welding, electrical services and plumbing.
4. Defendant be allowed to participate in the UNICOR program, if eligible.

Defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By: _____
Deputy U.S. Marshal

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SUPERVISED RELEASE

Upon release from imprisonment, Defendant will be on supervised release for a term of 30 years as to each count, all such terms to run concurrently.

MANDATORY CONDITIONS

1. Defendant shall not commit another federal, state or local crime.
2. Defendant shall not unlawfully possess a controlled substance.
3. Defendant shall refrain from any unlawful use of a controlled substance. The mandatory drug testing requirements of the Violent Crime Control Act are suspended. However, the Court orders Defendant to submit to random drug testing not to exceed 104 tests per year.
4. Defendant shall cooperate in the collection of DNA as directed by the Probation Officer.

Defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

Defendant shall also comply with the additional conditions on the attached page.

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STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, Defendant shall 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. Defendant shall 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. After initially reporting to the Probation Office, Defendant will receive instructions from the court or the Probation Officer about how and when Defendant must report to the Probation Officer, and Defendant must report to the Probation Officer as instructed.
2. After initially reporting to the Probation Office, you will receive instructions from the court or the Probation Officer about how and when Defendant shall report to the Probation Officer, and Defendant shall report to the Probation Officer as instructed.
3. Defendant shall 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. Defendant shall answer truthfully the questions asked by your Probation Officer
5. Defendant shall 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), Defendant shall notify the Probation Officer at least 10 days before the change. If notifying the Probation Officer in advance is not possible due to unanticipated circumstances, Defendant shall notify the Probation Officer within 72 hours of becoming aware of a change or expected change.
6. Defendant shall allow the Probation Officer to visit you at any time at your home or elsewhere, and Defendant shall permit the Probation Officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. Defendant shall 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 Defendant shall 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), Defendant shall notify the Probation Officer at least 10 days before the change. If notifying the Probation Officer at least 10 days in advance is not possible due to unanticipated circumstances, Defendant shall notify the Probation Officer within 72 hours of becoming aware of a change or expected change.
8. Defendant shall not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, Defendant shall 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, Defendant shall notify the Probation Officer within **72 hours**.

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10. Defendant shall not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. Defendant shall 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 Defendant shall comply with that instruction. The Probation Officer may contact the person and confirm that you have notified the person about the risk.
13. Defendant shall 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: _____

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ADDITIONAL CONDITIONS OF SUPERVISED RELEASE

1. Defendant shall participate in a mental health program specializing in sexual offender treatment and submit to polygraph testing for treatment and monitoring purposes. Defendant shall follow the probation officer's instructions regarding the implementation of this court directive. Further, Defendant shall contribute to the costs of such treatment and/or polygraphs not to exceed an amount determined reasonable by the probation officer based on ability to pay or availability of third party payments and in conformance with the Probation Office's Sliding Scale for Treatment Services.
2. Defendant shall register with the state sexual offender registration agency(s) in any state where Defendant resides, visits, is employed, carries on a vocation, or is a student, as directed by the probation officer.
3. The probation officer shall provide state officials with all information required under Florida sexual predator and sexual offender notification and registration statutes (F.S. 943.0435) and/or the Sex Offender Registration and Notification Act (Title I of the Adam Walsh Child Protection and Safety Act of 2006, Public Law 109-248), and may direct Defendant to report to these agencies personally for required additional processing, such as photographing, fingerprinting, and DNA collection.
4. Defendant shall have no contact, direct or indirect, with the victims identified in Counts One and Two, A.H. and D.H.
5. Defendant shall have no direct contact with minors (under the age of 18) without the written approval of the probation officer and shall refrain from entering into any area where children frequently congregate including: schools, daycare centers, theme parks, playgrounds, etc.
6. Defendant is prohibited from possessing, subscribing to, or viewing, any images, video, magazines, literature, or other materials depicting children in the nude and/or in sexually explicit positions.
7. Without prior written approval of the probation officer, Defendant is prohibited from either possessing or using a computer (including a smart phone, a hand-held computer device, a gaming console, or an electronic device) capable of connecting to an online service or an internet service provider. This prohibition includes a computer at a public library, an internet café, your place of employment, or an educational facility. Also, Defendant is prohibited from possessing an electronic data storage medium (including a flash drive, a compact disk, and a floppy disk) or using any data encryption technique or program. If approved to possess or use such a device, Defendant must permit routine inspection of the device, including the hard drive and any other electronic data storage medium, to confirm adherence to this condition. The United States Probation Office must conduct the inspection in a manner no more intrusive than necessary to ensure compliance with this condition. If this condition

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might affect a third party, including your employer, you must inform the third party of this restriction, including the computer inspection provision.

8. Defendant shall submit to a search of his person, residence, place of business, any storage units under his control, computer, or vehicle, conducted by the United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Defendant shall inform any other residents that the premises may be subject to a search pursuant to this condition. Failure to submit to a search may be grounds for revocation.
9. Defendant shall provide the probation officer access to any requested financial information.

CRIMINAL MONETARY PENALTIES

Defendant must pay the following total criminal monetary penalties under the schedule of payments set forth in the Schedule of Payments.

<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
\$300.00	TBD	WAIVED	N/A	WAIVED

*Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pu. 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.

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SCHEDULE OF PAYMENTS

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

Special Assessment shall be paid in full and is due immediately.

Unless the Court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be 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, unless otherwise directed by the Court, the Probation Officer, or the United States attorney.

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

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, and (9) penalties, and (10) costs, including cost of prosecution and court costs.

Appendix B

2022 WL 810429
Only the Westlaw citation
is currently available.
United States Court of
Appeals, Eleventh Circuit.

UNITED STATES of
America, Plaintiff-Appellee,
v.
Joshua HAYES, Defendant-Appellant.

No. 21-11142
|
Non-Argument Calendar
|
Filed: 03/17/2022

Appeal from the United States District Court
for the Middle District of Florida, D.C. Docket
No. 8:20-cr-00222-CEH-TGW-1

Attorneys and Law Firms

U.S. Attorney Service, [Sean Siekkinen](#),
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Cakmis](#), Law Office of Rosemary Cakmis,
Orlando, FL, Adam Joseph Nate, Federal
Public Defender's Office, Tampa, FL, for
Defendant-Appellant.

Before [JILL PRYOR](#), [BRANCH](#), and
[BRASHER](#), Circuit Judges.

Opinion

PER CURIAM:

*1 Joshua Hayes appeals his sentence following his conviction on two counts of producing child pornography and one count of possession of child pornography. Specifically, he challenges one of the supervised release conditions, Standard Condition (12), imposed by the district court under [U.S.S.G. § 5D1.3\(c\)\(12\)](#). That condition allows a probation officer to require Hayes to notify an individual if the probation officer determines that Hayes poses a risk to that individual. Hayes argues for the first time on appeal that the condition is an unconstitutional delegation of judicial authority and unconstitutionally vague. Reviewing only for plain error, we affirm.

I.

In February 2020, the Department of Homeland Security received a report that someone with the username “DaddyJ” had posted images online of two prepubescent girls in the shower and was soliciting advice on how to groom the older of the two girls to have sexual intercourse with him. The subsequent investigation led DHS agents to a residence in Mulberry, Florida, where Joshua Hayes lived with his girlfriend and their two daughters, aged two and nine. Hayes admitted that he had taken photographs of his two- and nine-year-old daughters, fully nude, and sent those images over the internet under the username “DaddyJ.” Hayes also admitted that he had downloaded images of child pornography depicting other children. Hayes eventually pleaded guilty to two counts of producing child pornography in violation of 18 U.S.C. § 2551(a) and (e) and one count of possession of child pornography in violation of [18 U.S.C. § 2252\(a\)\(4\)\(B\)](#) and [\(b\)\(2\)](#).

The district court sentenced Hayes to twenty years' imprisonment on the two production counts and a consecutive term of twenty years' imprisonment on the possession count, followed by thirty years of supervised release. As a condition of Hayes' supervised release, the district court imposed Standard Condition (12), which provides: "If the probation officer determines that the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction."  U.S.S.G. § 5D1.3(c)(12). In addition, "[t]he probation officer may contact the person and confirm that the defendant has notified the person about the risk." *Id.*

Hayes did not object to this condition at sentencing despite being given an opportunity to do so.

II.

Questions of constitutional law are reviewed for plain error when raised for the first time on appeal.  *United States v. Nash*, 438 F.3d, 1302, 1304 (11th Cir. 2006). On plain error review, we will not correct an unpreserved error unless the district court's error (1) was plain, (2) affected the defendant's substantial rights, and (3) seriously affected the fairness, integrity, or public reputation of judicial proceedings. *United States v. Innocent*, 977 F.3d 1077, 1081 (11th Cir. 2020). "An error is plain if ... the explicit language of a statute or rule or

precedent from the Supreme Court or this Court directly resolv[es] the issue." *Id.* (cleaned up). "[T]here can be no plain error where there is no precedent from the Supreme Court or this Court directly resolving it."  *United States v. Lange*, 862 F.3d 1290, 1296 (11th Cir. 2017). An error affects a defendant's substantial rights "if there is a reasonable probability of a different result absent the error,"  *United States v. Hesser*, 800 F.3d 1310, 1325 (11th Cir. 2015), which means "a probability sufficient to undermine confidence in the outcome,"  *United States v. Rodriguez*, 398 F.3d 1291 (11th Cir. 2005) (quotation omitted). And it is the defendant's burden to establish such a probability.  *United States v. Margarita Garcia*, 906 F.3d 1255, 1267 (11th Cir. 2018).

III.

***2** Hayes argues for the first time on appeal that Standard Condition (12) is an unconstitutional delegation of judicial authority and unconstitutionally vague. But Hayes has not shown that the district court plainly erred because there is no precedent from this Court or the Supreme Court demonstrating that Standard Condition (12) unconstitutionally delegates judicial authority or is unconstitutionally vague. See  *Lange*, 862 F.3d at 1296. Accordingly, the district court is **AFFIRMED**.

All Citations

Not Reported in Fed. Rptr., 2022 WL 810429