

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ROBERT DOYLE HARPER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

APPENDIX

/s/ Kevin Joel Page

JASON HAWKINS
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Northern District of Texas
TX State Bar No. 00759763
525 Griffin Street, Suite 629
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(214) 767-2746
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Appendix A Order of the Fifth Circuit, *United States v. Harper*, CA No. 21-11018, dated April 14, 2022, granting Appellee's Motion to Dismiss appeal.

Appendix B Judgment and Sentence of the United States District Court for the Northern District of Texas, entered September 28, 2021. *United States v. Harper*, Dist. Court 2:21-CR-14-Z-BR-1.

APPENDIX A

United States Court of Appeals
for the Fifth Circuit

No. 21-11018

United States Court of Appeals
Fifth Circuit

FILED

April 14, 2022

Lyle W. Cayce
Clerk

Plaintiff—Appellee,

UNITED STATES OF AMERICA,

versus

ROBERT DOYLE HARPER,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:21-CR-14-1

Before JONES, DUNCAN, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that Appellee's opposed motion to dismiss the appeal is GRANTED.

IT IS FURTHER ORDERED that Appellee's unopposed alternative motion for an extension of (30) days to file Appellee's brief is DENIED AS MOOT.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Amarillo Division

UNITED STATES OF AMERICA, DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
SEP 28 2021
CLERK, U.S. DISTRICT COURT
By: [Signature] Deputy

JUDGMENT IN A CRIMINAL CASE

v.

Case Number: 2:21-CR-14-Z-BR-(1)
U.S. Marshal's No.: 34305-509
Joshua Jerome Frausto, Assistant U.S. Attorney
Cristy J McElroy, Attorney for the Defendant

ROBERT DOYLE HARPER

On May 21, 2021 the defendant, ROBERT DOYLE HARPER, entered a plea of guilty as to Count Two of the Indictment filed on March 11, 2021. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 2252A(a)(5)(B) and (b)(2)	POSSESSION OF PREPUBESCENT CHILD PORNOGRAPHY	06/02/2020	Two

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 as to Count Two of the Indictment filed on March 11, 2021.

Upon Motion of the government, all remaining Counts are dismissed, as to this defendant only.

The defendant shall notify the United States Attorney for this district within thirty days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Sentence imposed September 28, 2021.


MATTHEW J. KACSMARK
UNITED STATES DISTRICT JUDGE

Signed September 28, 2021.

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IMPRISONMENT

The defendant, ROBERT DOYLE HARPER, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **One Hundred Eighty (180) months as to Count Two** of the Indictment filed on March 11, 2021.

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

1. that the Defendant be allowed to participate in a full medical diagnostic review to address the hypertension and pancreatitis reflected in PSR; and a follow up mental health review to identify any psychiatric or psychological care that may include mental health counseling and psychiatric prescription; and be allowed to participate in any and all substance abuse programs and drug rehabilitation, if eligible, if consistent with security classification;
2. that the Defendant be allowed to serve his term of incarceration at FCI – Seagoville, if eligible, if consistent with security classification; and
3. that the Defendant be allowed to participate in any and all vocational training, if eligible, if consistent with security classification.

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

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **LIFE** as to Count Two of the Indictment filed on March 11, 2021.

While on supervised release, in compliance with the Standard Conditions of supervision adopted by the United States Sentencing Commission at Section 5D1.3(c), the defendant shall:

1. The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed.
3. The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer.
4. The defendant shall answer truthfully the questions asked by the probation officer.

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5. The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that he or she observes in plain view.
7. The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her work (such as the position or the job responsibilities), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours.
10. The defendant shall not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers).
11. The defendant shall not act or make 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 the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk.
13. The defendant shall follow the instructions of the probation officer related to the conditions of supervision.

Also, as set forth in the Notice of Intent to Impose Conditions of Supervised Release signed and dated September 28, 2021, the Defendant shall comply with the below-listed other conditions of supervised release, which are derived from Sections 5D1.3(a), (b), (d), and (e), in relevant part:

1. The defendant shall not commit another federal, state or local offense (*see* 18 U.S.C. § 3583(d)).
2. The defendant shall not unlawfully possess a controlled substance (*see* 18 U.S.C. § 3583(d)).

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3. The defendant who is convicted for a domestic violence crime as defined in 18 U.S.C. § 3561(b) for the first time shall attend a public, private, or private non-profit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is available within a 50-mile radius of the legal residence of the defendant (*see* 18 U.S.C. § 3583(d)).
4. The defendant shall refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release on supervised release and at least two periodic drug tests thereafter (as determined by the court) for use of a controlled substance, but the condition stated in this paragraph may be ameliorated or suspended by the court for any individual defendant if the defendant's presentence report or other reliable information indicates a low risk of future substance abuse by the defendant (*see* 18 U.S.C. § 3583(d)).
5. If a fine is imposed and has not been paid upon release to supervised release, the defendant shall adhere to an installment schedule to pay that fine (*see* 18 U.S.C. § 3624(e)).
6. The defendant shall (A) make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A, or any other statute authorizing a sentence of restitution; and (B) pay the assessment imposed in accordance with 18 U.S.C. § 3013. If there is a court-established payment schedule for making restitution or paying the assessment (*see* 18 U.S.C. § 3572(d)), the defendant shall adhere to the schedule.
7. If the defendant is required to register under the Sex Offender Registration and Notification Act, the defendant shall comply with the requirements of that Act (*see* 18 U.S.C. § 3583(d)).
8. The defendant shall submit to the collection of a DNA sample from the defendant at the direction of the United States Probation Office if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (34 U.S.C. § 40702).
9. The defendant shall neither possess nor have under his/her control any sexually oriented, or sexually stimulating materials of adults or children. The defendant shall not patronize any place where such material is available.
10. The defendant shall participate in sex offender treatment services as directed by the probation officer until successfully discharged. These services may include psycho-physiological testing (i.e., clinical polygraph, plethysmograph, and the ABEL screen) to monitor the defendant's compliance, treatment progress, and risk to the community. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$10 per month.
11. The defendant shall have no contact with minors under the age of 18, including by correspondence, telephone, internet, electronic communication, or communication through third parties, with the exception of the defendant's own children. The defendant's contact with his children will be limited to occasions when the probation officer is informed in advance of the defendant's intent to have that contact and the probation officer approves it. The defendant shall not have access to or loiter near school grounds, parks, arcades, playgrounds, amusement parks or other places where children may frequently congregate, except as may be allowed upon advance approval by the probation officer.

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12. The defendant shall not use or possess any gaming consoles or devices that have internet access without prior permission from the probation officer.
13. The defendant shall participate and comply with the requirements of the Computer and Internet Monitoring Program, contributing to the cost of the monitoring in an amount not to exceed \$10 per month. The defendant shall consent to the probation officer's ongoing monitoring of his/her computer/computers. The monitoring may include the installation of hardware and/or software systems that allow evaluation of computer use. The defendant shall not remove, tamper with, reverse engineer, or circumvent the software in any way. The defendant shall only use authorized computer systems that are compatible with the software and/or hardware used by the Computer and Internet Monitoring Program. The defendant shall permit the
14. probation officer to conduct a preliminary computer search prior to the installation of software. At the discretion of the probation officer, the monitoring software may be disabled or removed at any time during the term of supervision.
15. The defendant shall submit to periodic, unannounced examinations of his/her computer/computers, storage media, and/or other electronic or Internet-capable devices, performed by the probation officer at reasonable times and in a reasonable manner based on reasonable suspicion of contraband evidence of a violation of supervision. This may include the retrieval and copying of any prohibited data and/or the removal of such system for the purpose of conducting a more thorough inspection. The defendant shall provide written authorization for release of information from the defendant's Internet service provider.
16. The defendant shall not use any computer other than the one the defendant is authorized to use without prior approval from the probation officer.
17. The defendant shall not use any software program or device designed to hide, alter, or delete records and/or logs of the defendant's computer use, Internet activities, or files stored on the defendant's computer.
18. Without prior approval of the probation officer, the defendant shall not maintain or create a user account on any social networking site (i.e., Facebook, Twitter, Snapchat, Instagram, Grindr, Tinder, etc.) that allows access to persons under the age of 18, or allows for the exchange of sexually-explicit material, chat conversations, or instant messaging. The defendant shall neither view nor access any web profile of users under the age of 18.
19. The defendant shall not engage in or utilize any service that allows peer-to-peer file sharing or file transfer protocol activity.
20. The defendant shall participate in outpatient mental health treatment services as directed by the probation officer until successfully discharged. These services may include medications prescribed by a licensed physician. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$10 per month.
21. The defendant shall participate in an outpatient program approved by the probation officer for treatment of narcotic, drug, or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, and contributing to the costs of services rendered (copayment) at the rate of at least \$10 per month.

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22. The defendant shall pay restitution in the amount of \$3,000, payable to the U.S. District Clerk, 205 East Fifth Avenue, Room 133, Amarillo, Texas 79101-1559 for disbursement to the identified victims in this case. If upon commencement of the term of supervised release any part of the restitution remains unpaid, the defendant shall make payments in the amount of \$50 per month on such unpaid balance beginning 60 days from the date of this judgment with another payment to be made on the same day of each month thereafter until the restitution is paid in full.
23. The defendant shall pay the Justice for Victims of Trafficking assessment of \$5,000. If upon commencement of the term of supervised release any part of the assessment remains unpaid, the defendant shall make payments in the amount of \$50 per month on such unpaid balance beginning 60 days from the date of this judgment with another payment to be made on the same day of each month thereafter until the assessment is paid in full.
24. The defendant shall pay the Amy, Vicky, and Andy Child Pornography assessment of \$17,000 pursuant to 18 U.S.C. § 2259A(1). If upon commencement of the term of supervised release any part of the assessment remains unpaid, the defendant shall make payments in the amount of \$50 per month on such unpaid balance beginning 60 days from the date of this judgment with another payment to be made on the same day of each month thereafter until the assessment is paid in full.

FINE/RESTITUTION

The Court *does* order the Defendant pay the **Justice for Victims of Trafficking Assessment Act** assessment in the amount of **\$5,000**.

The Court *does also* order the Defendant to pay the **Amy, Vicky, and Andy Child Pornography Assistance Act of 2018 Assessment** in the amount of **\$17,000**.

The Court does not order a fine or costs of incarceration because the Defendant does not have the financial resources to pay costs of incarceration, in addition to the JVTA and AVAA assessments.

Pursuant to 18 U.S.C. § 2259(c)(3), this is a child pornography trafficking offense and thus restitution is mandatory as set forth in 18 U.S.C. § 2259(b)(2).

As such, The Defendant is ordered to make restitution, in the amount of **\$3,000**. Restitution shall be paid to the U.S. District Clerk, 205 East Fifth Avenue, Room 133, Amarillo, TX 79101-1559, for disbursement to:

Marsh Law Firm PLLC
Attn: Jenny
P.O. Box 4668 #65135
New York, New York 10163-4668

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FORFEITURE

Pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), and subject to the provisions of 21 U.S.C. § 853(n), it is hereby ordered that Defendant's interest in the following property is condemned and forfeited to the United States: **A black Samsung Galaxy S10a, model SM-G970U1, bearing IMEI 354425101103662.**

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

United States Marshal

BY _____
Deputy Marshal