No. 22-5846

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL L. PACELLI — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS 4TH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MICHAEL L. PACELLI
(Your Name)

F.C.I. JESUP/2680 HWY. 301 SOUTH
(Address)

JESUP, GA. 31599
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED

1.) Can a law enforcement agency sieze evidence or record private phone calls without a warrant, and then use the gathered evidence against a defendant?

2.) Can a person commit a crime in one jurisdiction and be arrested, charged and sentenced in a completely different district?

3.) If a charge against a defendant is dismissed during the plea hearing, and then dismissed again at the sentencing hearing, can the defendant still be enhanced for the dismissed charge and still have that charge appear on his transcript and record?

4.) If the defendant's counsel did not object to the above three issues, has the defendant's counsel delivered an effective defense?

5.) If a defendant has Constitutional errors and Ineffective Assistance of counsel issues, can the defendant file a 2255 motion after the one year Statute of Limitations has expired?

6.) If, at the time of sentencing, the District Court judge issues forth a sentence without taking into consideration all of the 3553(a) factors, can the sentence stand as fair and unbiased?

7.) Should the defendant have been allowed an Evidentiary Hearing to determine whether the evidence was obtained illegally from another jurisdiction, which would be a violation of the fourth ammendment, and of the exclusionary rule, in order to moniter phone calls and sieze personal property?

LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

U.S. DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
CASE #3:12-CR-00084-JAG-1
CASE #3:21-CV-00016-JAG

UNITED STATES COURT OF APPEAL
FOR THE FOURTH CIRCUIT
CASE #21-7433

UNITED STATES COURT OF APPEAL
FOR THE FOURTH CIRCUIT
CASE #21-7433
(EN-BANC ATTEMPT)

TABLE OF CONTENTS

OPINIONS BELOW	PAGE 1
RELATED CASES	PAGE 1-A
JURISDICTIONS	PAGE 2
CONSTITUTIONAL PROVISIONS	PAGE 3
AUTHORITIES CITED	PAGE 4
QUESTIONS PRESENTED	PAGE 5
STATEMENT OF CASE	PAGE 6-7
REASON FOR GRANTING PETITION AND CONCLUSION	PAGE 8-14

TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

STRICTLAND V. WASHINGTON (406 U.S. 668, 104 S.CT 2052 80 L.Ed 2d 674 (1984))

ANDERS V. CALIFORNIA (386 U.S. 87 S. CT 1396 18L.Ed 2d 493 (1967))

BLAND V. CALIFORNIA D.O.C. (20 F.3d 1469 (9th CIR 1994)

DAVIS V. ALASKA (415 U.S. 308/39 L.Ed 2d 347, 94S CT. 1105 (1974))

CLARK V. UNITED STATES (59 F.3d 296 9 (2nd CIR 1995))

EVITTS V. LUCEY (469 U.S. 387, 83 L.Ed 821 105 S, CT 830 (1985))

HARRISON V. REED (894 F.2d 871 (7th CIR 1990)) (PERFORMANCE INCLUDING DECISION NOT TO SUPPORT THEORY ON DEFENSE.)

MATURE V. WAINWRIGHT (811 F.2d 1430 (11th CIR 1987)) (IMPROPER COMMENTS THAT VIOLATED HIS FIFTH AND SIXTH AMENDMENT RIGHTS.)

UNITED STATES V. CICONIC (46d U.S. 618, 104 S.CT 2039, 80 L.Ed 2d 657 (1984))

UNITED STATES V. GORDON, (156 F.3d 376 (2nd CIR 1998)) (DISCREPANCY BETWEEN THE PETITIONER AND LAWYER.)

STATUTES AND RULES

OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix C to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix D to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at N/A; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the N/A court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was Jan. 25th, 2022.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: May 29th, 2022, and a copy of the order denying rehearing appears at Appendix C.

[X] An extension of time to file the petition for a writ of certiorari was granted to and including Oct. 15th, 2022 (date) on Aug. 15th 2022 (date) in Application No. USC A 21-7433.

(The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).)

[ ] For cases from **state courts:** N/A

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION 6th AND 8th AMENDMENTS

THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION PROVIDES, IN RELEVANT PART: "IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL HAVE ASSISTANCE OF COUNSEL FOR HIS DEFENSE."

JURISDICTION AND VENUE IN THE U.S. CODES:

(28 U.S.C. 1251)

(28 U.S.C. 1291)

(28 U.S.C. 1331)

(28 U.S.C. 1391)

(28 U.S.C. 1491)

(18 : 2423(a))

(18 : 2251(a))

(18 : 2253)

STATEMENT OF THE CASE

IN 2009, THE DIVORCE BETWEEN THE DEFENDANT, MICHAEL PACELLI, AND HIS WIFE, TONYA PROPST PACELLI WAS MADE FINAL. AS PART OF THE DIVORCE SETTLEMENT FROM THE VIRGINIA DIVORCE COURT, THE DEFENDANT WAS ALLOWED VISITATION WITH HIS MINOR DAUGHTER, (M.P.), ON ALTERNATING HOLIDAYS (THANKSGIVING AND CHRISTMAS), AND FOR ONE MONTH DURING THE SUMMER MONTHS. IN ADDITION, THE DEFENDANT WAS GRANTED PERMISSION TO TRANSPORT M.P. FROM HER MOTHER'S HOME IN VIRGINIA TO THE DEFENDANT'S HOME IN FLORIDA.

FROM 2010 TO 2011, THE DEFENDANT TRANSPORTED M.P. FROM HER MOTHER'S HOME IN VIRGINIA TO HIS HOME IN FLORIDA FOR VISITS ON THREE OCCASIONS: THE SUMMER OF 2010, THE SUMMER OF 2011, AND FOR THE CHRISTMAS HOLIDAY OF 2011. DURING THESE VISITS, THE DEFENDANT ENGAGED IN THE PRODUCTION OF CHILD PORNOGRAPHY WITH M.P. ON SEVERAL OCCASIONS. IN JANUARY OF 2012, M.P.'S MOTHER BECAME AWARE OF THE SITUATION AND CONTACTED THE LOCAL POLICE. THE STATE INVESTIGATOR THEN TAPED TWO SEPARATE PHONE CALLS BETWEEN THE DEFENDANT AND M.P.'S MOTHER WITHOUT A WARRANT. THESE IMPROPERLY OBTAINED PHONE CALLS WERE THE PRIMARY EVIDENCE SUBMITTED TO THE GRAND JURY TO OBTAIN AN ARREST WARRANT ON MAY 22, 2012. ON MAY 24, 2012, THE DEFENDANT'S EMPLOYER, IN COOPERATION WITH THE F.B.I., DISPATCHED THE DEFENDANT TO A COMPANY-OWNED TRUCK DEPOT TO BE INTERCEPTED BY THE F.B.I.. THE DEFENDANT WAS THEN ARRESTED AND PRESENTED WITH A WARRANT TO SEARCH HIS COMPANY TRUCK. THE VERY NEXT DAY, ON MAY 25th, A SEARCH AND SEIZURE WAS EXECUTED ON HIS HOME IN FLORIDA WITHOUT A WARRANT.

THE DEFENDANT WAS ARRAIGNED ON MAY 25, 2012 IN RICHMOND, VIRGINIA, LOCATED IN THE FOURTH DISTRICT. THE DEFENDANT WAS INITIALLY CHARGED WITH ONE COUNT OF TRANSPORTATION OF A MINOR FOR SEXUAL PURPOSES. LATER ON, ONE COUNT OF PRODUCTION OF CHILD PORNOGRAPHY WAS ADDED. IN BETWEEN THE DEFENDANT'S ARRAIGNMENT AND PLEA HEARING, THE DEFENDANT WAS NEVER NOTIFIED ABOUT THE LACK OF WARRANTS OR ABOUT THE FACT THAT SINCE ALL OFFENSES WERE COMMITTED IN FLORIDA, (THE ELEVENTH DITRICT), HE WAS BEING CHARGED IN THE WRONG DISTRICT AND VENUE AS A RESULT. IN ADDITION, THE DEFENDANT'S COUNSEL FAILED TO OBJECT TO THESE FINDINGS, AND PRESSURED THE DEFENDANT TO PLEAD GUILTY.

AS A RESULT OF THE DEFENDANT'S INEFFECTIVE ASSISTANCE OF COUNSEL AND LACK OF INFORMATION, THE DEFENDANT PLEADED GUILTY IN THE FOURTH DISTRICT VENUE. THE FIRST INDICTMENT AGAINST THE DEFENDANT, (TRANSPORTATION OF A MINOR), WAS DISMISSED. AT HIS SENTENCING ON DECEMBER 19, 2012, THE PROSECUTION COMPARED THE DEFENDANT'S OFFENSES TO INDIVIDUALS THAT

STATEMENT OF THE CASE (CONTINUED)

REFUSED TO ACCEPT RESPONSIBILITY FOR THEIR ACTIONS, HAD MULTIPLE VICTIMS, RAPED THEIR VICTIMS, HAD MULTIPLE PREVIOUS SEX OFFENSES, AND EITHER COMMITTED OR THREATENED VIOLENCE AGAINST THEIR VICTIMS. THE DEFENDANT HAD DONE NONE OF THESE THINGS, WAS AN UPSTANDING MEMBER OF HIS COMMUNITY, AND HAD NO PRIOR CRIMINAL HISTORY. BY THE PROSECUTION PLACING THE "APPLES TO ORANGES" COMPARISON BETWEEN THE CASES, JUDGE GIBNEY WAS UNFAIRLY BIASED AGAINST THE DEFENDANT, MAKING A FAIR AND UNBIASED RULING IMPOSSIBLE. THIS IS EVIDENT IN THE APPARENT DISREGARD OF JUDGE GIBNEY TO THE REQUIREMENTS OF U.S.C. 3553(a). BY FAILING TO TAKE INTO ACCOUNT THE DEFENDANT'S LACK OF A CRIMINAL HISTORY, LACK OF VIOLENCE OF ANY KIND PERPETRATED AGAINST THE VICTIM, OR THE NUMEROUS LETTERS WRITTEN BY SUPPORTERS IN HIS DEFENSE. INSTEAD, JUDGE GIBNEY SENTENCED THE DEFENDANT TO THE MAXIMUM FOR EACH COUNT. (405 MONTHS FOR THE TRANSPORTATION CHARGE, AND 360 MONTHS FOR THE PRODUCTION CHARGE, TO BE SERVED CONCURRENTLY, AND LIFETIME SUPERVISION.) THIS TYPE OF SENTENCE IS ON PAR WITH INDIVIDUALS WHO HAVE A HISTORY OF PREVIOUS SEXUAL OFFENSES, WHO COMMIT ACTS OF VIOLENCE AGAINST THEIR VICTIMS, ENGAGED IN SEXUAL INTERCOURSE WITH THEIR VICTIMS, OR REFUSED TO TAKE RESPONSIBILITY FOR THEIR ACTIONS. (ALSO, THE TRANSPORTATION CHARGE WAS DISMISSED TWICE.)

THE DEFENDANT HAD SERVED OVER 8 YEARS OF HIS ALMOST 34 YEAR SENTENCE BEFORE HE WAS MADE AWARE OF THE NUMEROUS CONSTITUTIONAL AND ETHICAL ERRORS IN HIS CASE. HE GAVE BOTH JUDGE JOHN A. GIBNEY JR. AND THE COURT OF APPEALS AN OPPORTUNITY TO CORRECT THE ERROR, BUT HAS FAILED TO DO SO. NOW, THE DEFENDANT SEEKS RELIEF FROM THE SUPREME COURT OF THE UNITED STATES, BECAUSE THERE IS NO TIME LIMIT TO BRING FORTH ISSUES OF CONSTITUTIONAL VIOLATIONS TO BE CORRECTED.

REASONS FOR GRANTING THE PETITION

BASED ON THE DEFECTS IN THE INDICTMENT AND INFORMATION, MOTIONS TO SUPPRESS SHOULD HAVE BEEN FILED WITHIN THE FRAMEWORK OF RULE 12 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE. THE TIMELINESS OF THIS MOTION HAS BEEN DELAYED SUBSTANTIALLY BECAUSE OF THE JURISDICTIONAL MATTERS. SINCE CONSTITUTIONAL VIOLATIONS CAN BE RAISED AT ANY TIME UNDER RULE 12, THE DEFENDANT RESPECTFULLY REQUESTS THAT THE COURT SUPPRESSES ALL STATEMENTS AND EVIDENCE THAT WAS TAKEN FROM THE 11th DISTRICT AFTER THE DEFENDANT'S ARREST.

THE DEFENDANT ADDITIONALLY REQUESTS THAT AN ALTERNATIVE EVIDENTIARY HEARING BE HELD TO DETERMINE IF HIS CONTINUED INCARCERATION IS NECESSARY, AND THAT THE COURT GRANTS WHATEVER FURTHER RELIEF IT DEEMS JUST AND PROPER. BECAUSE OF THE NECESSITY OF PROVIDING BOTH THE ESSENTIAL ELEMENTS OF THE CRIME CHARGED AND THE SUFFICIENT FACTS REGARDING THE OFFENSE, THE EVIDENCE OBTAINED BY THIS JURISDICTION FROM THE 11th JURISDICTION WAS IN VIOLATION OF THE FOURTH AMENDMENT. THE SEARCH OF THE DEFENDANT'S HOME AND THE SEIZURE OF HIS PROPERTY WAS WARRANTLESS, AND A RULE 11 WAS NEVER FILED FROM THE PROSECUTING DISTRICT TO WAIVE THE STATUTORY JURISDICTION. (SEE UNITED STATES V. CALANDRA 414 U.S. 338/347, 94 S.CT 613 38 L.ED-2d 561 (1974)) THE GOVERNMENT NEVER SHOWED CAUSE FOR THE WARRANTLESS SEARCH. (SEE UNITED STATES V. MATLOCK 415, U.S. 164 S.CT 988)

THE COURT IS AUTHORIZED TO REDUCE THE ORIGINAL SENTENCE UNDER THIS SECTION OF 18 U.S.C.S. 3582(C). THERE NEVER WAS AN ASSAULT OR LIFE THREATENING INJURY TO THE VICTIM, YET THE ENHANCEMENT OF 18 U.S.C. 2B3.1(b)(1) WAS APPLIED TO THE DEFENDANT. THE VEHICLE FOR RELIEF THAT THE DEFENDANT IS SEEKING EXISTS UNDER THE CURRENT GUIDELINE AMENDMENTS RELATED TO THE "FAIR SENTENCING ACT". HOWEVER, THE LANGUAGE OF THE FIRST STEP ACT COMPELS THIS MOTION FOR RELIEF UNDER THE STATUTE BROUGHT UNDER 3582(C)(1)(B). BECAUSE THIS STATUTE IS USED TO MODIFY A SENTENCE BASED ON A RETROACTIVE CHANGE IN THE U.S. SENTENCING GUIDELINES.

THIS MAKES THE FAIR SENTENCING ACT FULLY RETROACTIVE. HOWEVER, THERE ARE DISTINCTIONS BETWEEN THE FAIR SENTENCING ACT AND THE FIRST STEP ACT. THE DEFENDANT WOULD LIKE TO ASK THE COURT FOR A MODIFICATION THAT IS EXPRESSLY PERMITTED BY THAT STATUTE OF 3582(C)(1)(B).

APPLICABLE GUIDELINES ARE THOSE IN EFFECT AS OF THE DATE OF THE OFFENSE. (SEE 1393, 1441) ALL PROSECUTIONS FOR CRIMES SHALL BE HELD WITHIN THE DIVISION OF SUCH DISTRICTS WHERE THE OFFENSE WAS COMMITTED, UNLESS THE COURT OR THE JUDGE THEREOF, UPON THE APPLICATION OF THE DEFENDANT, SHALL ORDER THE CASE TO BE TRANSFERRED TO ANOTHER DIVISION OF THE DISTRICT FOR PROSECUTION.

THIS MISCONDUCT WAS NOT DISCOVERED UNTIL YEARS AFTER SENTENCING.

(RULE 18: PLACE OF PROSECUTION AND TRIAL)

UNLESS A STATUTE OR THESE RULES PERMIT OTHERWISE, THE GOVERNMENT MUST PROSECUTE AN OFFENSE IN THE DISTRICT WHERE THE OFFENSE WAS COMMITTED. THE COURT MUST SET THE PLACE OF TRIAL WITHIN THE DISTRICT WITH DUE REGARD FOR THE CONVENIENCE OF THE DEFENDANT, ANY VICTIMS, WITNESSES AND FOR PROMPT JUSTICE. THE COURTS MUST IMPOSE A SENTENCE SUFFICIENT, BUT NOT GREATER THAN NECESSARY TO COMPLY WITH THE PURPOSE OF SENTENCING SET FORTH IN 18:3553(a) AND (b) AND (c). THESE ARE USED TO STRUCTURE AND REFLECT THE THREE STEP PROCESS USED IN DETERMINING THE PARTICULAR SENTENCE TO BE IMPOSED.

(RULE 18)

WITHIN THE FRAMEWORK OF THE PROVISIONS OF THE GENERAL STATUTE REGULATES THE VENUE OF CRIMINAL PROCEEDINGS: (SEE 28 U.S.C. (FORMER) 114 1393, 1441)

TO REGULATE THE VENUE, THE SIXTH AMENDMENT PROVIDES THAT THE DEFENDANT SHALL HAVE THE RIGHT TO A TRIAL BY AN IMPARTIAL JURY, **OF THE STATE AND DISTRICT WHERE THE CRIME HAS BEEN COMMITTED.**

THE FACTS UNDERLYING THE SIXTH AMENDMENT ARE SET FORTH IN THE OPINIONS OF BOTH COURTS, AND ARE IN VIOLATION OF THE PETITIONER'S SIXTH AND EIGHTH AMENDMENT RIGHTS IN THIS CASE. NOW, NOT ONLY WERE THE RIGHTS OF THE DEFENDANT HIGHLY VIOLATED, BUT WE SEE THE CONDITION OF THE DEFENDANT'S COUNSELOR'S MIND-SET, WHICH DEMONSTRATED A "DELIBERATE INDIFFERENCE" THROUGH THE FACTS STATED IN THIS CASE.

THE DEFENDANT'S SENTENCING WAS AN INJUSTICE AND NOT APPROPRIATE IN THE JURISDICTION WHERE THE DEFENDANT WAS PROSECUTED. BECAUSE, AS WE CAN SEE FROM THE DISTRICT COURT'S STATEMENTS MADE BY JUDGE JOHN A. GIBNEY JR., THE MISCHARACTERIZATION OF JUSTICE AND THE EIGHTH AMENDMENT VIOLATION WHEN THE COURT FIRST ACTED IN THE DISPARITIES. (SEE UNITED STATES V. KAPORDELIS (567 F.3d 1291, 1317 / 11th CIR. 2009))

IN THIS MATTER, THIS DID NOT HAPPEN, BECAUSE THE SEXUAL CONDUCT WAS RECOGNIZED AS BEING "SEVERE". BY THE TIME THE GOVERNMENT EXPRESSED THE CONDUCT OF THE DEFENDANT, JUDGE JOHN A. GIBNEY JR. WAS VERY PREJUDICED IN HIS CHOICE TO INFLICT THE STATUTORY MAXIMUM. THE DEFENDANT'S CASE WAS COMPARED TO OTHER CASES RANGING FROM ADULTS WHO ACTUALLY ENGAGED IN INTERCOURSE WITH CHILDREN, (AND WAS FACING A MUCH LOWER SENTENCE), TO A VIOLENT OFFENDER WITH PRIOR CONVICTIONS WITH ASSAULT WITH A FIREARM. IN WHAT AMOUNTED TO A LIFE SENTENCE, THE DISTRICT COURT UNREASONABLY IMPOSED A PERSONALLY BIASED SENTENCE THAT WAS HIGHLY UNWARRANTED AND "SYSTEMATIC IN NATURE" ON THE DEFENDANT. THE GUIDELINE RANGE IN THIS CASE IS SEVERE. IT IS ESPECIALLY SEVERE FOR A MAN WHOM HAS NEVER SERVED ANY TIME AT ALL AND HAD NO PRIOR CONVICTIONS FOR ANY OFFENSE. THE CHILD PORNOGRAPHY GUIDELINES ARE EMPIRICALLY BASED, AS THE SENTENCING COMMISSION'S REPORT OF 2012; CRITICIZED THEM AND RENDERED THEM INVALID.

THE PETITIONER'S REQUEST FOR "PRODUCTION OF DOCUMENTS" PURSUANT TO RULE (34) OF THE FEDERAL RULES OF CIVIC PROCEDURE WERE NEVER PRODUCED FOR INSPECTION, COPYING, OR EXHIBITION TO BE IDENTIFIED WITHIN THE THIRTY (30) CALANDAR DAYS OF THE DOCUMENTS BEING REQUESTED:

(1.) ANY AND ALL INTERNAL COMMUNICATIONS AND DIRECTIVES THAT WERE IN EFFECT DURING THE INVESTIGATION OF THE PETITIONER'S CASE.

(2a.) ANY NOTES, LETTERS, MEMORANDUMS, FILES, RECORDS OR WRITTEN COMPLAINTS AGAINST THE PETITIONER.

(2b.) WARRANTS FOR PHONE CALLS MADE TO THE PETITIONER AND RECORDED FROM THE MAGISTRATE JUDGE.

(3.) JURISDICTIONAL VENUE ORDERS FROM THE FOURTH CIRCUIT TO THE ELEVENTH DISTRICT.

(AS HEREIN, "DOCUMENTS" MEANS EVERY TYPE OF RECORDED INFORMATION DATED OR PREPARED PRIOR OR SUBSEQUENT TO THIS ACTION CONCERNING COMPLAINTS MADE.)

THE PETITIONER ALSO CONTENDS THAT HIS ATTORNEY WAS INEFFECTIVE FOR FAILING TO CHALLENGE THE GOVERNMENT'S ASSUMPTION, BECAUSE IT LACKED MERIT, AND NOTHING SHOULD HAVE BEEN USED. THIS IS DUE TO A BREAKDOWN IN THE ADVERSARIAL PROCESS THAT OUR JUSTICE SYSTEM COUNTS ON TO PRODUCE JUST RESULTS. (STRICTLAND 466 U.S. A696 104 S.CT 674 (1984)) SURELY, SUCH BREAKDOWN HAS OCCURED HERE, BECAUSE THE DEFENSE COUNCIL DID NOT INVOKE, THE DISTRICT COURT DID NOT ENFORCE, AND THE PROSECUTION DID NOT SATISFY. THE GOVERNMENT'S BURDEN OF PROOF REGARDING HIS SENTENCE IS BASED ON LANGUAGE AND RULES THAT COUNSEL WHO "FALLS ASLEEP" CANNOT BE SAID TO HAVE BEEN EFFECTIVE. (TIPPENS V. WALKER 77 F.3d 682 (2nd CIR. 1996)) (IF MCMULLEN, RATHER THAN GLOVER IS TO BE THE NATIONWIDE STANDARD FOR COUNSEL.) A REMAND FOR HEARING, IN THIS CASE, ON THESE ISSUES, WOULD PROMOTE SUCH A COURTROOM-WIDE VIGILANCE, NOT TO MENTION THE INSISTENCE OF FAIRNESS WHICH ENHANCES STRICTLAND.

ON APPEAL OF THE DISTRICT COURT'S DENIAL OF THE SECTION 2255 CLAIMS, THE COURT OF APPEALS NOTED THAT THE "ORIGINAL SENTENCING COURT" RENDERED ITS SENTENCES NOT ON LEGAL PROOF, BUT RATHER ON THE ASSUMPTION OF VIOLENT CASES THAT WERE PRESENTED BY THE PROSECUTOR AT SENTENCING, WHICH RESULTED IN "IMPROPER COMPARISONS" IN THE DEFENDANT'S CASE.

THE PETITIONER HAS BEEN SEVERELY PUNISHED BECAUSE OF THE PROSECUTOR'S USE OF VIOLENT CASES IN COMPARISON TO THE DEFENDANT'S CASE. NOTHING IN THE DEFENDANT'S RECORDS SUGGESTS THAT THE DEFENDANT'S OFFENSES ARE EVEN REMOTELY COMPARABLE TO THE PROSECUTOR'S EXAMPLES.

PLEA AGREEMENT

(6B1.2)

STANDARDS FOR ACCEPTANCE OF PLEA AGREEMENT

POLICY STATEMENT

FEDERAL SENTENCING GUIDELINES

IN CASES OF A PLEA AGREEMENT THAT INCLUDES THE "DISMISSAL" OF ANY CHARGES OR AN AGREEMENT NOT TO PURSUE POTENTIAL CHARGES: (RULE 11(C)(1)(A)) THE COURT MAY ACCEPT THE AGREEMENT IF THE COURT DETERMINES, FOR REASONS STATED ON THE RECORD THAT THE REMAINING CHARGES ADEQUATELY REFLECT THE SERIOUSNESS OF THE ACTUAL OFFENSE BEHAVIOR, AND THAT ACCEPTING THE AGREEMENT WILL NOT UNDERMINE THE STATUTORY PURPOSES OF SENTENCING OR THE SENTENCING GUIDELINE.

(1B1.3) RELEVANT CONDUCT OF DISMISSAL OF CHARGES OR AGREEMENT SHALL NOT BE PURSUED, IT SHALL PRECLUDE THE CONDUCT OF UNDERLYING CHARGES FROM BEING CONSIDERED UNDER THE THE PROVISION OF (1B1.3) IN WHICH THE DEFENDANT IS CONVICTED.

THE COURT MAY ACCEPT THE RECOMMENDED SENTENCE WITHIN THE APPLICABLE GUIDELINE RANGE FOR JUSTIFIABLE REASONS.

THE PETITIONER NEVER HAD A CHANCE FROM THE BEGINNING OF THIS CASE, STARTING WITH THE INDICTMENT FROM THE GRAND JURY, AND ALSO THE CRIMINAL INFORMATION WHICH STATES THE DEFENDANT WAS IN VIOLATION OF VIRGINIA CODE 18.2-67.3. (PLEASE NOTE: THIS OFFENSE DID NOT HAPPEN IN THE STATE OF VIRGINIA, AND THE DEFENDANT WAS WELL WITHIN HIS RIGHTS TO TRANSPORT THE INDIVIDUAL INVOLVED.

THE INEFFECTIVENESS INSIDE THIS CASE DONE BY THE DEFENDANT'S COUNSEL SHOWS AND PROVES THAT THE PETITIONER'S CONSTITUTIONAL RIGHTS WERE BLATANTLY VIOLATED WITH JURISDICTIONAL ISSUES, (LACK OF) WARRANT ISSUES, AND ILLEGAL RECORDING OF PHONE CALLS. THE ABUSE OF THE DISCRETION TO MAKE THE RIGHT CHOICE WAS UNREASONABLE BY THIS COURT, BECAUSE THE DISTRICT WAS, AND STILL IS IN VIOLATION OF CRIMINAL RULE OF PROCEDURE #18.

CONSTITUTIONAL DEFECTS THAT ARE NOT IRRELEVANT ARE JURISDICTION DEFECTS, WHICH DOES CHALLENGE THE SUFFICIENCY OF THE EVIDENCE AT THE PRELIMINARY EXAMINATION. THE FACTUAL BASIS OF THE OFFENSE WHICH COULD SHOW THAT THE GOVERNMENT HAD NO RIGHT TO PROCEED IN THE FIRST PLACE, BECAUSE OF THE DEFECTS INSIDE THE JURISDICTION. THAT THE DEFENDANT WAS CHARGED UNDER AN INAPPLICABLE STATUTE, WHICH SHOWS THE INEFFECTIVENESS OF COUNSEL. (HALBERT V. MICHIGAN, 545 U.S. 605 (2005))

(GROUND ONE)

MR. PACELLI ARGUES THAT THE SENTENCE ISSUED OF 405 MONTHS IS PROCEDURALLY UNREASONABLE. THE UNREASONABLENESS OF THIS SENTENCE IS DUE TO A BIASED ABUSE OF DISCRETION. WE FIND THIS IN (GALL V. UNITED STATES 552 U.S. 38, 51, 1285. CT. 586, 597, 169 Ed. 2nd 445 (2007)).

WE MUST FIRST LOOK TO WHETHER THE SENTENCE WAS FIRST "BIASED", AND WHY THE DISTRICT COURT ABUSED IT'S DISCRETION. THIS POWER BELONGED TO THE JUDGE, JOHN A. GIBNEY JR., TO MAKE THE RIGHT CHOICE WITHIN CERTAIN LEGAL BOUNDS.

ISSUE ONE: NO WARRANTS WERE OBTAINED FOR RECORDED PHONE CALLS AND SEIZURE OF THE DEFENDANT'S PROPERTY FROM HIS FLORIDA HOME.

RECORDED PHONE CALLS WERE MADE ON JANUARY 17th, 2012 AND FEBRUARY 6th, 2012. (THESE FACTS ARE VERIFIABLE ON PAGES 5-7 OF THE P.S.R..) NO WARRANT WAS OBTAINED TO RECORD THESE PHONE CALLS, AND THE ENTIRETY OF THIS CASE THAT WAS PRESENTED TO THE GRAND JURY WAS BASED ON THE INFORMATION ILLEGALLY RECORDED IN THESE PHONE CALLS. IN ADDITION, THE DEFENDANT'S HOME IN FLORIDA WAS SEARCHED AND HIS PROPERTY WAS SEIZED ON MAY 25th, 2012. A SEARCH WARRANT WAS EXECUTED FOR THE SEARCH OF HIS TRUCK ON MAY 30th, BUT NONE WAS OBTAINED FOR THE HOME SEARCH ON THE 25th. THIS IS A 4th AMENDMENT VIOLATION.

ISSUE TWO: JUDGE JOHN A. GIBNEY JR. VIOLATED THE REQUIREMENTS OF 18 U.S.C.S. 3553(A) WITH AN OVERLY EXCESSIVE SENTENCE.

18 U.S.C.S. 3553(A) REQUIRES THE GOVERNMENT TO "AVOID UNWARRANTED SENTENCING DISPARITIES AMONG DEFENDANTS WHO COMMIT SIMILAR CRIMES". BESIDES HAVING OVER TWENTY EXAMPLES OF DEFENDANTS WHOM RECEIVED LESS TIME FOR SIMILAR (OR WORSE) CRIMES, JUDGE GIBNEY HIMSELF HAD A HAND IN THE ADJUDICATION OF THE DAVID J. FALSO CASE, IN WHICH MR. FALSO HAD TWO VICTIMS, SEVEN SEPARATE CHARGES, A PRIOR SEX OFFENSE ON RECORD, AND YET MR. FALSO RECEIVED A LESS HARSH SENTENCE FROM THE COURT.

ISSUE THREE: IMPROPER DISMISSAL OF INDICTMENTS WHICH VIOLATES RULE 12 AND RULE 21.

THE GOVERNMENT DISMISSED INDICTMENTS AGAINST THE DEFENDANT TWICE: ONCE AT THE PLEA HEARING ON SEPTEMBER 17th, 2012, AND ONCE AGAIN AT THE DEFENDANT'S SENTENCING HEARING ON DECEMBER 19th, 2012. (THESE ARE LISTED AS ITEMS #23, #32 AND #34 RESPECTIVELY ON THE DOCKET SHEET.) SINCE NO WARRANTS WERE OBTAINED , THE INDICTMENTS WERE IMPROPER, DUE TO NEVER BEING INDICTED ON THE PRODUCTION CHARGE.

ISSUE FOUR: THE DEFENDANT WAS ARRESTED, CHARGED AND SENTENCED IN THE WRONG JURISDICTION, AND IS NOW SERVING AN ILLEGAL SENTENCE.

THE DEFENDANT COMMITTED ALL OFFENSES IN THE STATE OF FLORIDA, WHICH IS LOCATED IN THE ELEVENTH DISTRICT. ALL LEGAL PROCEEDINGS AGAINST THE DEFENDANT TOOK PLACE IN CENTRAL VIRGINIA, WHICH IS IN THE FOURTH DISTRICT. THE DEFENDANT SHOULD HAVE BEEN EXTRADITED TO FLORIDA TO STAND TRIAL OR GIVEN THE OPPORTUNITY TO A PLEA. THE DEFENDANT WOULD HAVE NEVER GIVEN PERMISSION TO SWAP THE ELEVENTH DISTRICT FOR THE FOURTH DISTRICT HAD HE KNOWN.

(ISSUE FIVE: THE DEFENDANT'S COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO THE VARIOUS VIOLATIONS OF THE COURT IN THIS CASE.)

THE DEFENDANT'S COUNSEL HAD EVERY OPPORTUNITY TO OBJECT TO BEING PROSECUTED IN THE WRONG VENUE, THE LACK OF PROPER WARRANTS, THE JUDGE'S 3553(A) VIOLATIONS AND THE CONSTITUTIONAL VIOLATIONS THAT WAS THE RESULT. ANY ONE OF THOSE OBJECTIONS BEING BROUGHT UP WOULD HAVE HAD A SIGNIFICANT IMPACT ON THE RESULTS. IN ADDITION TO THESE FAILURES, THE DEFENDANT'S COUNSEL WAS DELIBERATELY DETRIMENTAL TO THE DEFENDANT BY TRYING TO OBSCURE THE DISMISSAL OF THE INDICTMENTS, (DETAILED IN ISSUE THREE), BY CLAIMING THAT AN ADDITIONAL CHARGE OF "POSSESSION OF CHILD PORNOGRAPHY" WOULD BE "DISMISSED" IF THE DEFENDANT WOULD PLEAD GUILTY. NO SUCH CHARGE EXISTED TO BE DISMISSED IN THE FIRST PLACE. THEREFORE, NOT ONLY WAS THE COUNSEL INEFFECTIVE, BUT HE ESSENTIALLY ENGAGED IN SABOTAGE TO THE DEFENDANT'S CASE.

(CONSTITUTIONAL ISSUES - TERMINATED COUNTS)

18:2423(a);18:2253 TRANSPORTATION OF A MINOR FOR ILLEGAL SEXUAL ACTIVITY; FORFEITURE ALLEGATION OF RELATED PROPERTY (THIS IS RECORDED ON THE COURT DOCKET, ON 12/19/12.) THE TERMINATED COUNT WAS USED TO ENHANCE THE DEFENDANT, WHICH IS A VIOLATION OF THE DEFENDANT'S SIXTH AMENDMENT RIGHTS.

THE PETITIONER HAS A RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL! BECAUSE THE COURT IN THIS CASE NEVER HAD JURISDICTION TO IMPOSE A SENTENCE IN THIS CASE, OR TO HAVE AN INDICTMENT ENTERED AS TO THE OFFENSES. AS A RESULT, THE DEFENDANT RECEIVED AN ILLEGAL SENTENCE. REGARDLESS OF WHETHER THE DISTRICT COURT GRANTED THE DEFENDANT A HEARING OR VACATED HIS SENTENCE, THE FOURTH CIRCUIT HELD THAT PACKINGHAM, ELLIS, AND HAMILTON CREATED "NEW, UNFORSEEN OR CHANGED LEGAL CIRCUMSTANCES." THE FOURTH CIRCUIT COURT HAD NO JURISDICTION, AND THE DEFENDANT'S COUNSEL BECAME INEFFECTIVE WHEN HE ABUSED THE DEFENDANT'S FIRST AMENDMENT RIGHTS.

THIS MISCONDUCT WAS NOT DISCOVERED UNTIL YEARS AFTER SENTENCING.

(THE SENTENCING STATEMENT ON DEPARTURES)

THIS SENTENCING STATUTE PERMITS A COURT TO DEPART FROM A GUIDELINE-SPECIFIED SENTENCE ONLY WHEN IT FINDS "AN AGGRAVATING OR MITIGATING CIRCUMSTANCE OF A KIND, OR TO A DEGREE NOT ADEQUATELY TAKEN INTO CONSIDERATION BY THE SENTENCING COMMISSION IN FORMULATING THE GUIDELINES THAT SHOULD RESULT IN A SENTENCE DIFFERENT FROM THAT DESCRIBED IN 18 U.S.C. 3553(b)." THE COMMISSION INTENDS THAT THE SENTENCING COURT TREATS EACH GUIDELINE AS "CARVING OUT A HEARTLAND".

WHEN A COURT FINDS AN ATYPICAL CASE, ONE TO WHICH A PARTICULAR GUIDELINE LINGUISTICALLY APPLIES BUT WHERE CONDUCT SIGNIFICANTLY DIFFERS FROM THE NORM, "THE COURT MAY CONSIDER WHETHER A DEPARTURE IS WARRANTED." HOWEVER, THE COMMISSION DOES NOT INTEND TO LIMIT THESE KIND OF FACTORS, WHETHER OR NOT MENTIONED ANYWHERE ELSE IN THE GUIDELINES, THAT COULD CONSTITUTE GROUNDS FOR A DEPARTURE IN AN UNUSUAL CASE. (UNITED STATES V. ROOF AUG. 25, 2001)

(CONCLUSION)

REASONS FOR GRANTING THE PETITION:

(I.) THE 4TH CIRCUIT REASONING IS FLAWED. THE 10TH CIRCUIT REASONING CORRECTLY CAPTURES THE REQUIREMENTS OF STRICKLAND V. WASHINGTON.

(II.) CLOVER IS SOUND WHEREAS McMILLEN IS UNFAIR AND INVITES FUTURE MISTAKES.

THE SENTENCING OF THE PETITIONER TOOK PLACE ON DECEMBER 19th, 2012. ACCORDING TO THE CRIMINAL DOCKET FOR CASE #3:12-CR-0084-JAG-1, COUNTS (1) 18:2423(a) and 18:2255 WERE DISMISSED ON A MOTION OF THE GOVERNMENT ACCORDING TO THE DOCKET. COUNT (1) WAS DISMISSED, COUNT (2) WAS RAN CONCURRENTLY WITH COUNT (1) (WHICH IS DISMISSED), AND SIGNED BY JUDGE JOHN A. GIBNEY JR. ON 12/19/12.

THEREFORE, THE PETITIONER IS RESPECTFULLY REQUESTING FOR RELEASE AS TO THE JUDGEMENT OF THE COURT, AND ALSO AS TO THE STATEMENT OF JURISDICTION OF THE OFFENSE, AND ITS VENUE. WE ASK FOR A TIMELY DISMISSAL OF THIS CASE FOR THE CLEAR ERRORS THAT WERE MADE, AND IN THE INTEREST OF JUSTICE. THANK YOU.

INDEX TO APPENDICES

APPENDIX A	Review decision of the United States Court of Appeals, Fourth Circuit	PAGES	1A-24A
APPENDIX B	Review decision of the United States District Court findings and recommendations	PAGES	1B-31B
APPENDIX C	Review Petition for Rehearing denied by Appeal En Banc judges	PAGES	1C-5C
APPENDIX D	Review points enhancement for dismissed count of 18 U.S.C. 2423(a)	PAGES	1D-8D
APPENDIX E	Review for remand on 18 U.S.C. 2423(a) Dismissed offense illegally still on record	PAGES	1E-3E
APPENDIX F	Constitutional Violations	PAGES	1F-16F

APPENDIX A

REVIEW DECISION OF THE UNITED STATES

COURT OF APPEALS, FOURTH CIRCUIT

UNITED STATES APPEALS COURT

FOR THE FOURTH DISTRICT: RICHMOND VIRGINIA

UNITED STATES #21-7433

VS. 3:12-CR-00084 JAG

3:12-CR-00016 JAG

MICHAEL PACELLI

NOW COMES THE DEFENDANT MICHAEL PACELLI, "PRO-SE", TO MOVE THIS HONORABLE COURT UNDER LOCAL RULES 22(A) AND 34(B).

THE SENTENCING JUDGE, JOHN A. GIBNEY JR., WAS HIGHLY UNREASONABLE AND HIS JUDGEMENT WAS DISTORTED AT THE DEFENDANT'S SENTENCING HEARING AND ALSO DURING THE INITIAL APPEALS PHASE. ON DECEMBER 19th, 2012, JUDGE GIBNEY IMPOSED WHAT AMOUNTED TO A PREJUDICED OUTLOOK TO THE DEFENDANT'S PERSONAL BACKGROUND DURING THE SENTENCING PHASE.

UNDER LOCAL RULE 60(B), IT AUTHORIZES EXTRAORDINARY RELIEF, BUT ONLY A PARTICULAR KIND OF RELIEF. UNDER THIS RULE, A COURT ONLY HAS THE POWER TO VACATE A PRIOR JUDGEMENT: A COURT MAY NOT AVAIL ITSELF OF LOCAL RULE 22(A) TO GRANT "AFFIRMATIVE RELIEF IN ADDITION TO THE RELIEF CONTAINED IN THE PRIOR ORDER OF JUDGEMENT". (DALAY V. GORDON, 475 F.3d 1039, 1044, (CA9 2007)); THIS OBVIOUSLY DOES NOT MEAN THAT HAVING VACATED THE PRIOR JUDGEMENT UNDER LOCAL RULE 60(B), A DISTRICT COURT MAY DO NOTHING ELSE AT ALL. RATHER, THE CASE IS RETURNED TO THE PROCEDURAL POSTURE IN WHICH IT EXISTED PRIOR TO A COURT'S ENTRY OF JUDGEMENT. A DISTRICT COURT MAY, MOREOVER, ENTER A NEW JUDGEMENT IN THE SAME ORDER IN WHICH THE COURT VACATES THE OLD. (SEE SCHANEN V. THE UNITED STATES DEPT. OF JUSTICE, 798 F.2d (p. 732) 348, 350 (9th CIR. 1986))

(p.733) IT IS WELL ESTABLISHED THAT A DISTRICT COURT MAY VACATE A PREVIOUSLY ENTERED JUDGEMENT DISPOSING OF HABEAS PETITION. LOCAL RULES 22(A), 34(B), AND 2255(F) AUTHORIZES RELIEF FROM JUDGEMENT UNDER FIVE ENUMERATED CIRCUMSTANCES, AS WELL AS A "CATCH-ALL"(.) (I)T IS THE "CATCH-ALL, LOCAL RULE 22(A) THAT IS AT ISSUE HERE.

(p.734) THE "CATCH-ALL", "LOCAL RULES 22(A) AND 34(B) PROVIDE COURTS WITH A BROAD EQUITABLE POWER, (ALTHOUGH) THAT POWER IS TEMPERED BY A STRINGENT STANDARD REQUIRED TO EXERCISE (IT)". 18 USC 2255(F) AND RULE 22(A) APPLY "ONLY IN EXCEPTIONAL OR EXTRAORDINARY CIRCUMSTANCES WHICH ARE NOT ADDRESSED BY THE FIRST FIVE NUMBERED CLAUSES OF THE RULE." (O.L.L.C. VS. HENRY & WRIGHT CORP. 910 F.2d 357, 365 (6th CIR. 1990)); (FINDING EXTRAORDINARY CIRCUMSTANCES , THE COURT GRANTED RELIEF.)

THE DEFENDANT APPLIES HIMSELF UNDER LOCAL RULES 22(A) AND 34(B), WHICH THE DEFENDANT ARGUES THAT THE 405 MONTH SENTENCE IS PROCEDURALLY UNREASONABLE. THE UNREASONABLENESS OF THIS SENTENCE IS DUE TO A BIASED ABUSE OF DISCRETION. WE FIND THIS IN (GALL VS. THE UNITED STATES 552 U.S. 38, 51,/1285. CT 586, 597, 169 2nd ED 445 (2007)).

WE MUST LOOK TO WHETHER THE SENTENCE WAS FIRST "BIASED", AND WHY THE DISTRICT COURT ABUSED IT'S DISCRETION. THIS POWER BELONGED TO JUDGE JOHN A. GIBNEY JR. TO MAKE RIGHT AND PRUDENT CHOICES WITHIN CERTAIN LEGAL BOUNDS. IT IS THE RESPONSIBILITY OF THE JUDGE TO TAKE INTO ACCOUNT THE TOTALITY OF THE EVIDENCE PROVIDED AND STATEMENTS MADE TO EVENTUALLY ARRIVE AT A REASONABLE SENTENCE.

IN THIS CASE, HOWEVER, THIS DID NOT HAPPEN. SINCE THE SEXUAL CONDUCT WAS VIEWED BY JUDGE GIBNEY AS BEING "SEVERE", AND AFTER THE GOVERNMENT EXPRESSED IT'S OPINION ON THE DEFENDANT'S CONDUCT, JUDGE GIBNEY WAS VERY PREJUDICED IN HIS CHOICE TO LEVY THE MAXIMUM STATUTORY PENALTY AGAINST THE DEFENDANT, AND IGNORE ALL OTHER FACTORS THAT WOULD POINT TO A LESS DRACONIAN SENTENCE. COMPARING THE DEFENDANT'S SENTENCE AGAINST ADULTS THAT ACTUALLY ENGAGED IN SEXUAL INTERCOURSE WITH THEIR VICTIMS,

SENTENCING DISPARITIES ARE RECOGNIZED IN 18:USCS 3553(A)(1-7)

THE DEFENDANT'S SENTENCE WAS AN INJUSTICE AND NOT APPROPRIATE IN IT'S APPLICATION BY THE COURT'S EXPRESSION. (SEE PAGE 38 OF THE SENTENCING TRANSCRIPT.) JUDGE JOHN A. GIBNEY JR.'S STATEMENTS DURING THE DEFENDANT'S SENTENCING WERE INAPPROPRIATE AND SHOWED MIS-CHARACTER OF JUSTICE. THIS IS A 6TH AMENDMENT VIOLATION WHEN THIS ACT IS NOT EXERCISED. (SENTENCING DISPARITIES)

JUDGE GIBNEY ACTUALLY STATED DURING THE SENTENCING PHASE: "THE NEED TO AVOID SENTENCING DISPARITIES AMONG DEFENDANTS WHO COMMITTED SIMILAR CRIMES... WELL, ANYBODY WHO DOES WHAT HAPPENED HERE GETS A STIFF SENTENCE, THERE WILL BE NO DISPARITIES HERE TODAY!"

AVOIDING UNWARRANTED SENTENCING DISPARITIES SHOULD BE CONSIDERED AS A FACTOR IN 18 USCS 3553(A). THESE FACTORS REQUIRE PARTICULARS IN THE CONTEXT OF CHILD PORNOGRAPHY OFFENSES. (SEE UNITED STATES V. KAPORDELIS 569 F.3d 1291, 1317 (11th CIR. 2009)) THIS IS IN LIGHT OF THE WIDE RANGE OF CONDUCT THAT CAN CONTRIBUTE TO THIS TYPE OF OFFENSE AS WELL AS OTHER SENTENCES AUTHORIZED UNDER THE CHILD PORNOGRAPHY GUIDELINES.

HERE'S THE SIGNIFICANCE OF CONSIDERING THE SENTENCING DISPARITIES COMPARED TO THE DEFENDANT'S CONDUCT: MR. PACELLI'S CONDUCT IN THIS PARTICULAR CASE SHOULD NOT HAVE BEEN COMPARED TO OR COMBINED WITH THE REFERENCED CASES USED BY THE PROSECUTION. THIS IS VIEWED ON PAGES 10-19 IN THE SENTENCING TRANSCRIPT. WE SEE HOW THE GOVERNMENT HAS USED "EXTREME CASES" TO SHOWCASE AND OVERHYPE THE ELEMENT'S "VIOLENCE".

EQUAL PROTECTION UNDER THE LAW WAS EXTREMELY VIOLATED RELATING TO THE CONSTITUTIONAL RIGHTS OF THE DEFENDANT. FOR EXAMPLE, IN THE DEFENDANT'S CASE, THERE WAS NO ACTUAL INTERCOURSE, FORCED OR OTHERWISE. THERE WERE NO THREATS ISSUED TO THE VICTIM AT ANY TIME IN THIS OFFENSE. THE CASE HAD NONE OF THE ELEMENTS THAT THE PROSECUTION EXPRESSED TO THE COURT THROUGH THEIR COMPARISONS. IN ADDITION, SEVERAL DEFENDANTS IN THE QUOTED CASES DID NOT ACCEPT RESPONSIBILITY FOR THEIR ROLE IN THEIR OFFENCES, BUT STILL QUALIFIED FOR SHORTER SENTENCES. (ALSO NOTE THAT MR. PACELLI DID ACCEPT RESPONSIBILITY FOR HIS ACTIONS IN THIS CASE."

NOT ONLY DID MR. PACELLI ADMIT TO HIS CONDUCT, BUT HE ALSO SHOWED THE COURT HOW REMORSEFUL HE WAS, AND NOW IS AT THE PRESENT TIME, FROM HIS HEART. (THIS CAN BE SEEN IN PAGES 25-32 OF THE SENTENCING TRANSCRIPT.) JUDGE JOHN A. GIBNEY JR. BLATANTLY EXPRESSED HIS BIASED OPINIONS FROM PAGE 32 AFTER THE DEFENDANT'S REMORSEFUL ACCEPTANCE OF RESPONSIBILITY STATEMENT TO THE END OF THE SENTENCING. THE COURT MADE PERSONAL BIASED STATEMENTS WHICH SHOWED EXTREME PREJUDICE IN THE JUDGE'S SENTENCING OF THE DEFENDANT.

MR. PACELLI'S STATEMENTS TO THE COURT WERE PERSONALLY UNACCEPTABLE AND UNWELCOMED BY JUDGE JOHN A. GIBNEY JR.. THE PREJUDICE OF THE COURT VIOLATES THE DEFENDANT'S BASIC PRINCIPLES TO THE LAW TO 18 USC 3553(A)(1-7) (DISPARITIES.) IT ALSO VIOLATES HIS DUE PROCESS BY THE LAW.

THE DEFENDANT HAD THE RIGHT TO BE JUDGED WITH THE SAME PRINCIPLES OF DISPARITY AS ANY CITIZEN OF THE UNITED STATES OF AMERICA. AS SHOWN, CASE BY CASE, FROM THE FIRST CIRCUIT TO THE ELEVENTH CIRCUIT, THE POWERS THAT BE DETERMINING THE DUTIES GUARANTEES CERTAIN RIGHTS TO IT' CITIZENS.

CAN A JUDGE USE DISPARITY WHEN HE FEELS A DEFENDANT HAS A BASIC RIGHT UNDER THE LAW? IT IS DIFFICULT TO UNDERSTAND THE REASONS WHY VIEWING A 15 YEAR SENTENCE AS INSUFFICIENT TO PROMOTE RESPECT FOR THE LAW BY MR. PACELLI OR ANYONE ELSE. A 405 MONTH SENTENCE, WHICH IS OVER 33 YEARS, COMPRISED ALMOST AS MANY YEARS AS THE DEFENDANT HAS BEEN ALIVE. (THE DEFENDANT WAS 37 YEARS OF AGE AT THE TIME OF HIS SENTENCING.) 15 YEARS IS SUFFICIENT, BUT NOT GREATER THAN NECESSARY TO AFFORD ADEQUATE DETERRENCE TO CRIMINAL CONDUCT, AND TO PROTECT THE PUBLIC.

IN JUDICIAL APPLICATION OF THE "USSG" IN UNITED STATES V. CORNER, (598 F.3d 411 (CA. 7, 2010)) WE UNDERSTAND KIMBROUGH AND SPEARS TO MEAN THAT DISTRICT JUDGES ARE AT LIBERTY TO REJECT ANY GUIDELINE ON POLICY GROUNDS, THOUGH THEY MUST ACT REASONABLY WHEN USING THAT POWER. IN UNITED STATES V. KIRKPATRICK (589 F.3d 414, 416 (CA. 7 2009)), THE ALLOWABLE BAND OF VARIANCE IS GREATER AFTER BOOKER THAN BEFORE. BECAUSE A MOTION TO A COURT'S DISCRETION IS A MOTION NOT TO IT'S INCLINATION, BUT TO IT'S JUDGEMENT, AND IT'S JUDGEMENT IS TO BE GUIDED BY SOUND LEGAL PRINCIPLES.

WE CAN SEE THAT JUDGE GIBNEY DID NOT ACT WITH SOUND JUDGEMENT IN THE DEFENDANT'S CASE DURING THE SENTENCING PHASE, BECAUSE THE SENTENCING COMMISSION'S POLICIES ARE NOT BINDING. (SEE UNITED STATES V. CLANTON 538 F.3d 1057 AND UNITED STATES V. WELTON, 583 F.3d 494.)

THE COURT WAS REQUIRED TO MAKE FACTUAL DETERMINATIONS BY THE PREPONDERANCE OF THE EVIDENCE INSIDE THIS CASE AND NOT VIOLATE THE DEFENDANT'S DUE PROCESS. (SEE UNITED STATES V. WILSON, 900 F.2d 1330 (CA. 9 1990)) ACCORDINGLY, THE COURT SHOULD HAVE SENTENCED THE DEFENDANT TO THE 18 USC 3553(A) REQUIREMENTS. THE DISTRICT COURT COMMITTED PLAIN ERROR UNDER BOOKER BY ENHANCING HIS SENTENCE BASED UPON JUDICIAL FACT-FINDING, AND NOT IN ACCORDANCE TO 18 USC 3553 REQUIREMENTS, WHICH STATES THAT A DEFENDANT MUST BE SENTENCED ACCORDINGLY WHEN COMPARED TO OTHER SIMILAR CASES.

THE DEFENDANT WAS ENHANCED BECAUSE THE VICTIM WAS IN THE DEFENDANT'S CARE AND CUSTODY, RESULTING IN A TWO LEVEL INCREASE IN THE DEFENDANT'S OFFENSE LEVEL. THE GOVERNMENT APPLIED THIS TWO LEVEL INCREASE IN THIS CASE BECAUSE OF A SERIES OF VIOLENT CASES USED AS A COMPARISON BY THE PROSECUTION TO REINFORCE A TAINTED OPINION OF THE DEFENDANT AT HIS SENTENCING. THE SUPREME COURT OPENED IT'S OPINION IN THE RITA CASE. (RITA V. THE UNITED STATES, 551 U.S. 338 L.Ed 2d (2007)) THE SUPREME COURT SAID, IN SENTENCING AS IN OTHERS, DISTRICT JUDGES AT TIMES MAKE MISTAKES THAT ARE UNREASONABLE. COURTS EXIST TO CORRECT SUCH MISTAKES WHEN THEY OCCUR. THE DECISION IN BOOKER IS RECOGNIZED AS MUCH; SO THE SENTENCING IN THIS CASE CAN AND SHOULD BE REVIEWED IF SENTENCING DISCRETION IS UNBRIDLED, AND IF "UNREASONABLE" IS A HOLLOW TERM. THE SENTENCE THAT THE DISTRICT COURT AND JUDGE GIBNEY IMPOSED IS A CLEAR ERROR IN JUDGEMENT, BECAUSE OF THE NATURE OF THE DEFENDANT'S CRIMINAL CONDUCT, WHICH WAS PRIMARILY MISREPRESENTED AND MALIGNED BY THE COURT.

CONSTITUTIONAL ISSUES FOR THE PURPOSES OF SENTENCING

THE SUPREME COURT HELD THAT THE SIXTH AMENDMENT GUARANTEES THE RIGHT TO AVOID UNWARRANTED SENTENCING DISPARITIES THAT SHOULD NOT BE APPLIED TO THE U.S. SENTENCING GUIDELINES. IN BLAKELY V. WASHINGTON (159 L ED2d 403, 124 S CT 2531 (US 2004)),BLAKELY FOUND THAT THE SIXTH AMENDMENT GUARANTEE HAD BEN VIOLATED BY THE JUDGE'S IMPOSITION ON A BASIS OF PARTICULAR DETERMINATION OF A PARTICULAR PRISON SENTENCE THAT EXCEEDED THE STATUTORY MAXIMUM. THE REMEDY WAS TO MAKE THE USSG ADVISORY INSTEAD OF MANDATORY. BY HOLDING UNCONSTITUTIONAL THE TWO STATUTORY PROVISIONS 18 USCS 3553(B)(1) WHICH MADE USCS MANDATORY, AND 18 USCS 3742(E).

THE SENTENCING COURT DID VIOLATE THE DEFENDANT'S DUE PROCESS RIGHTS BY UNLAWFULLY LIMITING THE SENTENCING COURT'S ABILITY TO EVALUATE CERTAIN PROCEDURES. THEY UNLAWFULLY ALLOWED THE PROSECUTION AND THE SENTENCING COMMISSION TO DETERMINE HIS SENTENCE. (SEE UNITED STATES V. CASTO (1989, CAS TEX) 889 F.2d 562 DAT DEN (1990), 493 US 1092, 107 L.ED 2d 1067, 110 S CT 1164)

(ALSO SEE UNITED STATES V. JAMES W. SNYDER 635 F.3d 956 (2011 US APP. LEXIS 5361)) BECAUSE THE SENTENCING COURT DID NOT ACKNOWLEDGE THE GUIDELINES AND DID NOT CONSIDER AS REQUIRED BY 18 USCG 3553(A), THE CASE WAS REMANDED FOR SENTENCING.

IN MR. PACELLI'S CASE, THE COURT NEVER CONSIDERED THE SENTENCING DISPARITIES, WHICH IS A DUE PROCEDURE VIOLATION. WE CAN SEE FROM THE APPLICATION OF THE GUIDELINES IN POSING A SENTENCE UNDER 18 USC 3553(A)(1-7) IS MANDATORY UNDER THE INCOMPATIBILITY WITH THE REQUIREMENT OF THE SIXTH AMENDMENT, AND THEREFORE MUST BE SEVERED AND EXCISED.

THE DEFENDANT HAD NO AGGRAVATING OR MITIGATING CIRCUMSTANCES. TO DENY MR. PACELLI'S DUE PROCEDURE RIGHTS THAT ARE MANDATORY, WOULD BE DENOUNCING THE PROCEDURES TO KEEP HIM FROM BEING BURDENED TO AN UNWARRANTED SENTENCING. THE DISTRICT COURT WAS BIASED BY IMPOSING A SENTENCE THAT DOES NOT COMPLY WITH THE PURPOSES OF 18 USC 3553(A)(2). WE FIND THIS TO BE TRUE. XM (UNITED STATES V. CORLAN (500 F.3d 1167 & 1169(10th CIR 2007), QUOTING UNITED STATES V. FORMAX (436 F.3d 638, 644 (6th Cir. 2006)).

WHEN WE LOOK AT THE DAVID J. FALSO CASE, AND MR. PACELLI'S CASE, WE SEE A STARK CONTRAST BETWEEN THESE TWO CASES. HISTORY SHOULD REFLECT THE CHARACTERISTICS BETWEEN THE DEFENDANTS OF THESE TWO CASES. NOW IN DETERMINING MR. PACELLI'S GOOD NATURE AND HIS INHERENT GOOD CHARACTER, THEY WERE SIMPLIFIED AND OF NO IMPORTANCE TO THE COURT! WE SEE FROM THE LETTERS FROM FAMILY, FRIENDS AND LOVED ONES THE GOOD NATURE OF MR. PACELLI. THEY HAVE ALL TESTIFIED TO HIS CHARACTERISTICS OF BEING A HARD-WORKING, SELFLESS PERSON WHO TOOK DELIGHT IN HELPING AND SERVING OTHERS. HE CONSTANTLY SACRIFICED HIS TIME TO MAKE SURE THAT FRIENDS AND STRANGERS ALIKE WERE TAKEN CARE OF.

MR. PACELLI'S LAW ABIDING LIFE SHOULD REFLECT THE RESPECT HE HAD AND STILL HAS FOR THE LAW, AND SHOULD NOT BE IGNORED BECAUSE OF THIS SHORT SERIES OF INCIDENTS. HIS HISTORY WITH HELPING CHILDREN THAT WERE NOT HIS OWN OUTSHINES THE DARK, INHUMAN NATURE THAT THE GOVERNMENT HAD INSINUATED. WHEN THE GOVERNMENT COMPARED MR. PACELLI'S CASE WITH EXTREMELY VIOLENT CASES COMMITTED BY OTHERS, THEY BASICALLY INSINUATED THAT MR. PACELLI HAS AN INHUMAN NATURE. IF WE COULD WEIGH MR. PACELLI'S CHARACTERISTICS AND GOOD NATURE AGAINST THE PICTURE THE GOVERNMENT WAS PAINTING, THE GOVERNMENT'S VERSION IS SIMPLY NOT THE TRUTH.

IN FACT, THE DEFENDANT WAS GRANTED VISITATION TIME WITH HIS DAUGHTER BY THE VIRGINIA STATE DIVORCE COURT. MR. PACELLI HAD AUTHORIZATION TO NOT ONLY TRANSPORT HIS DAUGHTER TO HIS RESIDENCE IN FLORIDA, BUT TO ALSO BE IN POSSESSION OF HER FOR UP TO 1 MONTH EVERY SUMMER, ALTERNATING THANKSGIVING AND CHRISTMAS HOLIDAYS, AND EVERY OTHER WEEKEND, IF ABLE. MR. PACELLI'S DAUGHTER WAS NOT TRANSPORTED FROM VIRGINIA TO FLORIDA ILLEGALLY, NOR WAS SHE OBTAINED BY ILLICIT OR IMPROPER MEANS "FOR THE PURPOSES OF SEXUAL ACTIVITY" AS THE CHARGE OF 2423(A) IMPLIES. THE DEFENDANT NEVER HAD ILLEGAL POSSESSION OF HIS DAUGHTER.

IT IS ALSO IMPORTANT TO NOTE THAT 2423(A) ALSO IMPLIES ENGAGING IN PROSTITUTION WITH A MINOR. THE DEFENDANT WOULD LIKE TO REMIND THE COURT THAT HE NEVER ENGAGED IN SEXUAL INTERCOURSE WITH HIS DAUGHTER OR WITH ANYONE ELSE THAT HAD NOT YET ATTAINED 18 YEARS OF AGE, AND CERTAINLY NEVER ENTICED OR COERCED ANYONE TO ENGAGE IN PROSTITUTION ACTIVITIES. MR. PACELLI'S CONDUCT WAS MADE CLEAR TO THE COURT. HOWEVER, JUDGE GIBNEY MADE ERRONEOUS STATEMENTS TO THE CONTRARY DURING SENTENCING. (PLEASE SEE PAGE 32, LINES 18-19 OF THE SENTENCING TRANSCRIPT WHERE JUDGE GIBNEY STATED: "THIS GENTLEMAN HAD SEXUAL RELATIONS WITH SOMEONE WHO WAS NOT JUST A MINOR, BUT A VERY YOUNG MINOR..." ALSO SEE PAGE 35, LINES 19-22 OF THE SENTENCING TRANSCRIPT WHERE JUDGE GIBNEY STATED: "...I AM SENTENCING SOMEONE WITH AN ASTOUNDING MORAL BLIND SPOT THAT LED HIM TO HAVE SEX WITH SOMEONE WHOM HE HAD A RELATIONSHIP IN THIS CASE." (emphasis added) ALSO, PLEASE NOTE THAT THE PRE-SENTENCING REPORT HAD DETERMINED THAT NO SEXUAL INTERCOURSE HAD TAKEN PLACE.)

THE DEFENDANT ARGUES THAT THE COURT LACKED SUBJECT MATTER JURISDICTION TO CONVICT HIM AS CONGRESS FAILED TO INCLUDE CLEAR INTENT FOR STATUTES TO REACH EXTRA-TERRITORIAL CONDUCT. HOWEVER, THE DISTRICT COURT HAD NO JURISDICTION TO CONVICT THE DEFENDANT OF COUNT 1, WHICH CHARGED THE DEFENDANT OF TRANSPORTATION OF A MINOR FOR ILLEGAL SEXUAL ACTIVITY 2423(A), BECAUSE THE DEFENDANT HAD A LEGAL RIGHT TO TRANSPORT HIS DAUGHTER TO FLORIDA FROM VIRGINIA. THE CHARGE OF PRODUCTION OF CHILD PORNOGRAPHY 2251(A) ADEQUATELY ADDRESSES THE ILLEGAL ACTIVITIES THAT TOOK PLACE IN FLORIDA. THE TRANSPORTATION OF MR. PACELLI'S DAUGHTER WAS NEVER ILLEGAL BECAUSE THE DEFENDANT HAD A LEGAL RIGHT TO TRANSPORT HIS DAUGHTER, AND THE PURPOSE OF THE TRANSPORTATION WAS NEVER FOR THE INTENT OF SEXUAL ACTIVITY. THE PICTURE THAT THE PROSECUTION HAD PAINTED OF THE DEFENDANT WAS REDUNDANT, EXCESSIVE AND ULTIMATELY INCORRECT, AND SHOULD RESULT IN THE REMOVAL OF THE 2423(A) CHARGE.

THE SENTENCE WAS IMPOSED IN VIOLATION OF LAW BECAUSE OF INCORRECT APPLICATION OF THE SENTENCING GUIDELINES, AND THE DISTRICT COURT FAILED TO PROVIDE A WRITTEN STATEMENT OF REASONS AS TO WHY THE COURT ISSUED THE SEVERITY OF THE SENTENCE THAT IT DID. THESE REASONS ARE REQUIRED BY 18 USCS 3553(C). THE COURT SHOULD HAVE DOWNWARDLY DEPARTED FROM THE GUIDELINES BASED ON THE FACTORS OF RELEVANT CONDUCT IN THIS CASE, AND THE NATURE AND CHARACTERISTICS OF THE DEFENDANT PER 18 USCS 3553(B).

IN 18 USCS 3553(C), WE UNDERSTAND THAT A SENTENCE ISSUED BY THE COURT CAN DEPART FROM THE APPLICABLE GUIDELINES RANGE TO A REASONABLE DEGREE WHEN REGARD IS GIVEN TO THE FACTORS THAT ARE REQUIRED TO BE CONSIDERED IN SECTION 3553(A) OF TITLE 18 USCS. THE REASON FOR THE EXISTENCE OF 3553(C) IS TO TAKE INTO ACCOUNT ALL RELEVANT FACTORS AND TO AVOID A MISCARRIAGE OF JUSTICE AND PROSECTORIAL MISCONDUCT.

LACK OF WARRANTS AND GOVERNMENT INVESTIGATIONAL MISCONDUCT

THE DEFENDANT DISCOVERED NEW FACTS WITHIN HIS CASE THAT WERE NOT RAISED BY THE PUBLIC DEFENDER'S OFFICE. THE DEFENDANT DISCOVERED THAT THE UNITED STATES ATTORNEY'S OFFICE HAD CUT CORNERS DURING THE INVESTIGATION, AND MISREPRESENTED THE FACTS IN ORDER TO COMPARE THE DEFENDANT TO ACTUAL SEXUAL PREDATORS. THE DEFENDANT'S COUNSEL SHOULD HAVE OBJECTED AND REQUESTED RELIEF FROM THE COURT REGARDING THE PROSECUTION'S COMMENTS, RATHER THAN RESPONDING WITH ARGUMENTS THAT COUNSEL KNOWS THAT IT COULD NOT EXPAND THE DEFENDANT'S RECORDS WITH "GOOD CAUSE".

THE PROSECUTOR ALSO USED ILL-GOTTEN STATEMENTS BROUGHT FORTH FROM A WARRANTLESS PHONE RECORDINGS THAT WERE USED TO OBTAIN A GRAND JURY INDICTMENT AND TO IMPROVE A CASE ALREADY PENDING. BY USING PREJUDICIAL COMMENTS, THE GRAND JURY WAS MISLED AS TO THE LEGAL STANDARDS TO BE APPLIED WHEN DETERMINING WHETHER TO INDICT THE DEFENDANT OR DELAY THE INVESTIGATION OF THE SUBSEQUENT INDICTMENT.

THE DEFENDANT ALSO CLAIMS THAT THE PROSECUTORIAL MISCONDUCT DURING THE GRAND JURY PRESENTATION WAS VINDICTIVE, AND THUS SERVED THE BASIS FOR A RULE 12 MOTION VIOLATION THAT WAS A CATAGORY DEFECT. THE GOVERNMENT FOUND A WAY TO OBTAIN AN INDICTMENT ON THE DEFENDANT IN AN IMPROPER VENUE. (VIRGINIA INSTEAD OF FLORIDA, WHERE THE CRIMES TOOK PLACE.) SINCE THE OFFENSE OF PRODUCTION OF CHILD PORNOGRAPHY TOOK PLACE IN FLORIDA, THESE PROCEEDINGS SHOULD HAVE TAKEN PLACE IN THE 11TH DISTRICT. THE 4TH DISTRICT HAD NO JURISDICTION TO PROSECUTE THE CASE. THIS WAS A VIOLATION OF THE DEFENDANT'S CONSTITUTIONAL RIGHTS.

IF THE DEFENDANT'S COUNSEL BELIEVES THAT THERE HAS BEEN MISCONDUCT DONE BY THE U.S. ATTORNEY, THE COURT OR OTHER PERSONS THAT AFFECT THE FAIR PRESENTATION OF THE EVIDENCE, THE DEFENSE ATTORNEY SHOULD CHALLENGE THE MISCONDUCT BY APPEALING OR OBJECTING TO THE COURT THROUGH APPROPRIATE AVENUES AND NOT ENGAGE IN RETALITORY CONDUCT. DEFENSE COUNSEL SHOULD NOT BRING THE FACTS THAT THE DEFENSE KNOWS TO BE INADMISSIBLE EVIDENCE, ASKING OBJECTIONAL QUESTIONS OR MAKING IMPERMISSIBLE COMMENTS OR ARGUMENTS. IF THE DEFENSE IS UNCERTAIN ABOUT THE EVIDENCE, THE DEFENSE SHOULD SEEK A RESOLUTION BEFORE THE HEARING OR TRIAL IF POSSIBLE, OR REASONABLY IN TIME FOR PROFFERING THE EVIDENCE BEFORE SENTENCING.

MOTIONS TO SUPPRESS ILLEGALLY OBTAINED EVIDENCE ARE GENERALLY PERMISSIBLE UPON THE DISCOVERY OF GOVERNMENTAL MISCONDUCT DURING THE INVESTIGATION AND ARREST OF THE DEFENDANT, IMPROPER OBTAINING OF SEARCH WARRANTS OR LACK OF PROBABLE CAUSE TO MAKE AN ARREST. SINCE ALL OF THESE ACTIONS ARE NOT PERMISSIBLE, ANY EVIDENCE THAT COMES INTO THE GOVERNMENT'S POSSESSION AS A RESULT OF THE GOVERNMENT'S ILLEGAL OR IMPROPER CONDUCT, SUCH AS STATEMENTS OR ADMISSIONS BY THE DEFENDANT THAT WERE OBTAINED IN VIOLATION OF THE DEFENDANT'S CONSTITUTIONAL RIGHTS AGAINST SELF INCRIMINATION SHOULD BE SUPRESSED AS FRUIT OF THE POISONOUS TREE. (SEE WANG SUN VS. THE UNITED STATES, 371 U.S. 839, 407 9L.ED 2D 441 (1963)) (UNLAWFULLY SEIZED ITEMS)

THE GOVERNMENT USED UNLAWFULLY SEIZED ITEMS TO CONVICT THE DEFENDANT, WHICH IS AGAINST THE DEFENDANT'S CONSTITUTIONAL RIGHTS. IN ERRONEOUSLY, UNSWORN OR SWORN INFORMATION CHARGING THE DEFENDANT WITH 18 USC 2423 IN WHICH THE PROSECUTOR SUMMARIZED THE EVIDENCE THAT WAS UNLAWFULLY SEIZED TO SUPPORT AN ARREST WARRANT THAT PRESUMES FACTS UNDER PENALTY OF LAW. (ARREST WARRANTS ARE SWORN INFORMATION SIGNED BY A JUDGE THAT IS UNDER PENALTY OF LAW. IF THE WARRANT IS FOUND TO BE IN VIOLATION OF THOSE PENALTIES, IT SHALL BE IN VIOLATION OF THE 4TH AMENDMENT OF THE FEDERAL CONSTITUTION OF THE UNITED STATES.)

IN THIS CASE, THE PROSECUTOR STATED TO THE DEFENDANT: FOR HIS PLEA OF GUILTY, THE PROSECUTION WOULD DISMISS THE INDICTMENT BY THE PROSECUTION AT THE PLEA HEARING. HOWEVER, THE PROSECUTION FAILED TO DISCLOSE TO THE DEFENDANT THAT IN THE CRIMINAL INFORMATION, THEY WOULD BE CHARGING THE DEFENDANT WITH ANOTHER UN-INDICTED OFFENSE, IN WHICH CRIMINAL PROCEDURE WAS VIOLATED. FED R. CRIM P.7(A) STATES: "AN OFFENSE (OTHER THAN CONTEMPT) MUST BE PROSECUTED BY AN INDICTMENT, AND THAT ALL CRIMINAL PROSECUTIONS OF THE ACCUSED SHALL ENJOY THE RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATIONS WITHIN THE INDICTMENT."

THE COURT AND THE PROSECUTOR USED PREJUDICE IN THE DEFENDANT'S CASE, BECAUSE WE SEE THAT THERE WAS MORE THAN TECHNICAL DEFICIENCIES WHICH SUPPORTS A DISMISSAL OF THE UN-INDICTED OFFENSE. WHEN WE LOOK AT APPRENDI VS. NEW JERSEY, WE SEE THAT IF A FACT INCREASES THE MAXIMUM PENALTY, IT MUST BE TREATED AS AN ELEMENT OF AN AGGRAVATED OFFENSE CHARGED IN THE INDICTMENT, AND PROVED TO THE GRAND JURY OR JURY BEYOND A REASONABLE DOUBT. (UNITED STATES V. HIGGS 353 F.3d 281 (4th CIR. 2003))
(ALSO SEE HAMLING V. UNITED STATES 418 U.S. 87 94S. CT 2887 41 L. Ed 2D 590 1974))
(ALSO SEE RUSSELL V. THE UNITED STATES 369, U.S. 749 82S. CT 1038 L Ed 2D 240 (1962))
(ALSO SEE UNITED STATES VS. PEREZ-GARCIA 56F 3d 1 (1st Cir. 1995))

IN ORDER FOR VARIANCES BETWEEN INDICTMENTS AND EVIDENCE TO WARRANT REVERSAL, THE DEFENDANT'S SUBSTANTIAL RIGHTS MUST BE EFFECTED. IN UNITED STATES VS. LEE 359 Fd 194 (3rd CIR 2004), EVIDENCE WAS AMENDED AND THE INDICTMENT WAS BROADENED FOR A POSSIBLE BASIS FOR CONVICTION FROM THAT WHICH APPEARED IN THE INDICTMENT. THE VARIANCE VIOLATED THE DEFENDANT'S RIGHT TO BE TRIED ONLY ON CHARGES RETURNED BY THE GRAND JURY. (FED R. CRIM. P (12)(B)(3)) IN THIS CASE INVOLVING A CHILD, THE INDICTMENT CHARGING THE DEFENDANT WITH ATTEMPT TO COMMIT UNLAWFUL SEXUAL OFFENSE FAILED TO SPECIFY THE CONDUCT THAT THE STATE ALLEGED WAS, BY IT'S NATURE, AN UNLAWFUL OFFENSE AGAINST A CHILD. FOR EXAMPLE, INDICTMENTS CHARGING OFFENSES WHICH REQUIRE SINISTER KNOWLEDGE OR WILLFUL STATE OF MIND IN CONNECTING WITH THE ALLEGED CRIMINAL ACTS HAVE BEEN HELD DEFECTIVE WHEN THE LANGUAGE USED IN CHARGING THE DEFENDANT FAILED TO STATE THE REQUIRED DESCRIPTION OR FAILED TO INDICT THE DEFENDANT ON THE OTHER DEFENSES.

"HARM"

TO ASSESS THE PARTY'S POSITIONS HERE, IT REQUIRES US TO CONSIDER A VERY BASIC PREMISE OF CRIMINAL PROCEDURE. FIRST, THE DEFENDANT HAS A RIGHT UNDER ARTICLE 1 SECTION 11 OF THE CONSTITUTION OF THE UNITED STATES' SIXTH AMENDMENT TO PRESENT THE ELEMENTS OF HIS CASE. THEREFORE, THE FIRST QUESTION IS WHETHER THE DEFENDANT, IN FACT, HAD "HARMED" THE VICTIM. TO ENHANCE THE DEFENDANT'S PUNISHMENT, THIS SHOULD HAVE BEEN THE QUESTION POSED TO THE DEFENDANT'S DEFENSE DUE TO THE ABSENCE OF THE ELEMENTS OF HARM AT THE CRITICAL STAGE OF PROSECUTION, AND AT THE DEFENDANT'S SENTENCING HEARING.

WHERE THE DISTRICT COURT ERRED IN APPLYING THE U.S.S.G. 2G2.1(B)(5) ENHANCEMENT, THE DEFENDANT ARGUES THAT THE PHOTOGRAPH EXAMINED BY THIS COURT DID NOT DEPICT ANY HARM AS STATED WITHIN THE CRITERIA OF 2G2.1(B)(5). WE ASK FOR UNPRESERVED OBJECTIONS ONLY FOR PLAIN ERROR. (SEE UNITED STATES V. CORBETT 921 F.3d 1032. 1037 (11th CIR. 2019)). THE DEFENDANT HAS (1) SHOWN THAT AN ERROR WAS MADE, (2) IT WAS OBVIOUS, AND (3) IT EFFECTED THE DEFENDANT'S SUBSTANTIAL RIGHTS. IT ALSO EFFECTED THE FAIRNESS AND INTEGRITY OF THE PROCEEDINGS. THERE WAS NO PHYSICAL FORCE, INJURY OR ABUSE. NONE.

IN ADDITION, THE DEFENDANT HAS NEVER OBSTRUCTED JUSTICE, AND IN FACT, ASSISTED IN HIS OWN PROSECUTION. THEREFORE, THE DEFENDANT SHOULD HAVE BEEN CONSIDERED FOR A LOWER SENTENCE UNDER U.S.S.G. 3C1.1, FOR ANY NEW MATTERS PRESENTED BY HIM IN THE INTEREST OF FAIRNESS AND JUSTICE. BECAUSE OF THE DEFENDANT'S COMPLIANCE WITH THE DISTRICT COURT, AND THE CIRCUMSTANCES OF HIS OFFENSE, UNDER THE FIRST STEP ACT, COURTS MAY IMPOSE A REDUCED SENTENCE ACCORDING TO THE FAIR SENTENCING ACT OF 2010, WHEN THE DEFENDANT'S OFFENSE WAS FIRST COMMITTED.

THE COURT NEVER MADE A DETERMINATION TO THE FRAMEWORK OF FACTS. DUE TO THE GOVERNMENT'S PROCEDURAL ERRORS, THE DEFENDANT HAS NEVER BEEN AFFORDED THE OPPORTUNITY FOR A FAIR AND REASONABLE SENTENCE. DUE TO THE ERRONEOUS FINDINGS AND BIASED STATEMENTS MADE BY THE PROSECUTION, THIS TILTED THE COURT'S BALANCING OF THE 3553(A) FACTORS AGAINST THE DEFENDANT. ALSO, DUE TO THE COURT'S ABUSE OF DISCRETION, THE INTEREST OF JUSTICE WAS NOT PROTECTED. (SEE UNITED STATES V. RUFFIN 978 F.3d 1000, 1005 (6th CIR. 2020)) (ALSO SEE UNITED STATES VS PEMBROOK 609 F.3d 381, 383 (6th CIR. 2010))

THE DEFENDANT IS SUFFERING FROM THE DECEPTION AND ABUSE OF DISCRETION THAT IS GROUNDED DEEP WITHIN THIS CASE, WHICH IS AN EIGHTH AMENDMENT VIOLATION OF CRUEL AND UNUSUAL PUNISHMENT. DUE TO THE ALLEGATIONS AND INSINUATIONS MADE BY THE UNITED STATES ATTORNEY AND USE OF EVIDENCE THAT IS JUDICIALLY QUESTIONABLE, THE GOVERNMENT ESSENTIALLY ENGAGED ITSELF IN SUBTERFUGE IN ORDER TO OBTAIN A MAXIMUM SENTENCE AGAINST THE DEFENDANT.

CONCERNING THIS ISSUE BEING RAISED IN THIS COURT ABOUT THE PLEA: POST CONVICTION RELIEF MUST BE GRANTED BECAUSE THE DISTRICT COURT DID NOT HAVE "SUBJECT MATTER JURISDICTION" OR JURISDICTION OVER THE DEFENDANT TO ACCEPT HIS GUILTY PLEA. HERE, WE FIND THAT THE DEFENDANT WAS NEVER INDICTED FOR THE PRODUCTION OF CHILD PORNOGRAPHY OFFENSE. THEREFORE, THE DISTRICT COURT WAS WITHOUT JURISDICTION TO ACCEPT THE DEFENDANT'S PLEA TO THE UN-INDICTED CHARGE. (SEE CAMPBELL VS. STATE 342 S.C. 100, 535 S.E. SE.2d 928 (2000) TRIAL COURT LACKED OF SUBJECT MATTER

JURISDICTION TO ACCEPT A GUILTY PLEA ON AN UN-INDICTED CHARGE.)

JUDGE GIBNEY DID NOT OBTAIN A KNOWING, VOLUNTARY AND INTELLIGENT WAIVER OF PRESENTMENT TO THE GRAND JURY ON THE RECORD PURSUANT TO MICHAEL PACELLI. THE DEFENDANT HAS TO BE AWARE THAT THE WAIVER OF STATUTORY OR CONSTITUTIONAL RIGHT MUST BE ESTABLISHED BY A COMPLETE RECORD. THE DISTRICT COURT HAS TO FIND THAT THE DEFENDANT VOLUNTARILY, KNOWINGLY, INTELLIGENTLY AND OF HIS FREE WILL ENTERED A PLEA OF GUILTY. INSTEAD, THE DISTRICT COURT DID NOT MAKE A FINDING AS TO WHETHER THE DEFENDANT VOLUNTARILY, KNOWINGLY, INTELLIGENTLY AND OF HIS FREE WILL WOULD WAIVE PRESENTMENT TO THE GRAND JURY. THEREFORE, THE DEFENDANT'S COUNSEL RENDERED INEFFECTIVE ASSISTANCE FOR FAILING TO OBJECT AS A MATTER OF LAW. HAD THE DEFENDANT'S COUNSEL LODGED THE PROPER OBJECTION, THE DISTRICT COURT WOULD HAVE COME TO THE CONCLUSION THAT IT DID NOT HAVE JURISDICTION TO ACCEPT THE PLEA, WHICH IS FAR FROM HARMLESS ERROR.

IN UNITED STATES VS. COTTON 261 F.3d 397 404 (4th CIR. 2001)(REV'A) 535 U.S. 655, 122 S. CT. 1781 152 L.Fd 860 (2002), IT WAS FOUND THAT PLAIN ERROR EXISTED BECAUSE THE INDICTMENT LACKED AN ALLEGATION OF SPECIFIC ELEMENTS. THE UNITED STATES APPEALS COURT OF THE 4TH CIRCUIT STATED REGARDING PRECEDENT WHICH IS REQUIRED THAT A DEFECTIVE INDICTMENT VIOLATED THE DEFENDANT'S SUBSTANTIAL RIGHTS. THE GOVERNMENT'S EVIDENCE OVERWHELMINGLY PROVES THE DEFECTIVE INDICTMENT BECAUSE OF JURISDICTION ISSUES WHEN SENTENCING THE DEFENDANT. THE SUPREME COURT REQUIRED JURISDICTION, AND REQUIRED THE U.S. TO HOLD THAT A SENTENCING COURT MUST HAVE JURISDICTION WHEN SENTENCING A DEFENDANT ON AN INDICTMENT.

THE SUPREME COURT HAS STATED THAT UNDER THE DUE PROCESS CLAUSE OF THE 5TH AMENDMENT, THE NOTICES THAT ARE GIVEN PRIOR TO JURY TRIALS OR PLEAS MUST BE ON THE INDICTMENT BEFOREHAND, WITH THE EXCEPTION OF PRIOR OFFENSES. IN SITUATIONS WHEN THE GOVERNMENT CAN PROVE THE ELEMENTS OF THE OFFENSE BY OVERWHELMING AND UNCONTROVERSIAL EVIDENCE REQUIRES AN APPELLATE COURT TO LOOK AT THE RECORDS IN ORDER TO GLEAN WHETHER THE JURY WOULD, BECAUSE THE ELEMENT ENGAGED AS A CONSEQUENCE OF CHANGE IN THE LAW AS BEING INAPPROPRIATE TO SPECULATE WHETHER A DEFENDANT COULD HAVE CHALLENGED THE ELEMENTS THAT WAS NOT THEN AN ISSUE. (SEE UNITED STATES VS. MEDLEY 972 F.3d 399 AUG. 21, 2020. (THIS CASE IS CALENDARED FOR THE SUPREME COURT. IT'S ABSENCE PENDING GREER VS. UNITED STATES NO. 19-8709.))

APPELLATE COURTS REVIEWING THE REASONABLENESS OF A CRIMINAL SENTENCING APPLY THE DEFERENTIAL ABUSE OF DISCRETION, KNOWING THAT THE DISTRICT COURT HAS FULL KNOWLEDGE OF THE FACTS OF 18 USC 3553(A)(2)(C). THE DEFENDANT HAD NO KNOWLEDGE OF THE FACTS ABOUT THE GRAND JURY. HE HAS NEVER BEEN INDICTED OF THE OFFENSE OF PRODUCTION OF CHILD PORNOGRAPHY, AND THE SENTENCING COURT WAS WITHOUT JURISDICTION TO ACCEPT THE DEFENDANT'S PLEA TO THE UN-INDICTED CHARGE. THE DEFENDANT ALSO ARGUES THAT THE GOVERNMENT'S MOTION THAT WAS CLEARLY UNABLE TO ESTABLISH THAT THERE WAS NO CLEAR FINDING OF MEDIA DISTRIBUTION, (PICTURES OF THE VICTIM), AND THE OFFENSE OF CONVICTION DID NOT CAUSE THE VICTIM ANY MENTAL OR PHYSICAL HARM. (THE GOVERNMENT FAILS TO SHOW ANY CAUSATION, PHYSICAL OR MENTAL.) BUT WE SEE BEYOND THE REALM OF MERE POSSIBILITY IN THIS CASE, BUT ALSO INTO THE PLAUSIBILITY IN SUPPORT OF THIS CLAIM. THE DEFENDANT CONTENDS THAT HE NEVER HAD ANY INTENTION OF INVOLVEMENT IN ILLEGAL FILE TRADING, NOR HAS ANY EVIDENCE OF SUCH "TRADING" EVER BEEN UNEARTHED. THE SENTENCE OF 405 MONTHS CANNOT RATIONALLY BE CONSTRUED AS "NOT MORE THAN NECESSARY". (THE DEFENDANT IS REFERRING TO THE DISTRICT COURT'S STATEMENTS MADE TO EXPLAIN ITSELF DURING SENTENCING WHY THE COURT FELT THAT THE DEFENDANT "SHOULD NOT BE IN A WORLD WHERE CHILDREN LIVE."

THE DISTRICT COURT HAS SHOWN IT'S PREJUDICED OUTLOOK TOWARDS THE DEFENDANT FULLY, THAT IT STANDS AS AN ABSOLUTE BAR TO THE DEFENDANT'S ATTEMPTS TO CHALLENGE HIS SENTENCE ON THE BASIS ALLEGED TO THE EXTENT THAT THE DEFENDANT'S CLAIM WAS NOT WAIVED. PURSUANT TO HIS PLEA AGREEMENT, HIS CLAIM WAS ONLY TIME BARRED AND NOT DISPUTED BY THE PROSECUTION. HOWEVER, THE COURT NEVER STATED THAT THE CLAIMS WITHIN THE 2255 WERE TIME BARRED. IN ORDER TO COLATERALLY ATTACK A CONVICTION OR SENTENCE BASED ON ERRORS THAT COULD HAVE BEEN (BUT WERE NOT) PURSUED ON DIRECT APPEAL, THE DEFENDANT MUST SHOW CAUSE AND ACTUAL PREJUDICE RESULTING FROM ERRORS COMPLAINED OF WITHIN THE 2255 MOTION. (SEE UNITED STATES VS. MIKALAJUNAS 186 F.3d 490, 492, 493, (4th CIR. 1999) (CITING UNITED STATES V. FRADY) 456 U.S. 152 167-168 102 S. CT 1584, 71 L.ED 2d 816 (1982)).

THE DEFENDANT DID NOT RAISE HIS CLAIMS ON DIRECT APPEAL BECAUSE HIS COUNSEL SAID THERE WERE NONE THAT COULD BE APPEALED. THE FACT THAT THIS CURRENT 2255 MOTION IS BASED ON INEFFECTIVE ASSISTANCE OF COUNSEL IS WHAT PREVENTED THE DEFENDANT FROM FILING A DIRECT APPEAL WITH THE ASSISTANCE OF SAID COUNSEL. THEREFORE, THE CLAIMS CANNOT BE TIME BARRED UNDER WHAT THE GOVERNMENT SAID HERE, BECAUSE THE MOTION WAS BEING TREATED WITH HIGHLY UNREASONABLE AND PREJUDICED JUDGEMENT.

THE DEFENDANT WOULD LIKE TO FIRST BRING TO LIGHT THAT THE COURT'S DISMISSAL OF HIS 2255 MOTION BECAUSE OF EQUITABLE TOLLING REASONS. THE SUPREME COURT HAS MADE CLEAR THAT A PETITIONER IS ENTITLED TO EQUITABLE TOLLING ONLY IF HE OR SHE SHOWS 1.) THAT HE OR SHE HAS BEEN PURSING THEIR RIGHTS DILIGENTLY, AND 2.) THAT SOME EXTRA-ORDINARY CIRCUMSTANCES STOOD IN HIS WAY AND PREVENTED TIMELY FILING. (SEE HOLLAND VS. FLORIDA, 560 U.S. 631 649 (2010) WHICH STATES THAT AN INMATE EXERTING EQUITABLE TOLLING BEARS A STRONG BURDEN TO SHOW SPECIFIC FACTS THAT DEMONSTRATE HE FULFILLED BOTH ELEMENTS OF THE TEST.) THE DEFENDANT, MR. PACELLI, ARGUES THAT HE WAS UNAWARE OF THE STATUTE OF LIMITATIONS, AND THIS COURT CANNOT POSSIBLY FIND HIM GUILTY OF THIS LEGAL FLAW BEING THAT HE IS AN UNTRAINED LEGAL PRO-SE INDIVIDUAL, FILING HIS MOTION UNDER PRO-SE CONDITIONS. IN ADDITION, THE DEFENDANT'S COUNSEL MISLED THE DEFENDANT THROUGH STRONG DISCOURAGEMENT AND SUBTERFUGE BY STATING THAT "FILING AN APPEAL WOULD BE A WASTE OF TIME", AND WOULD "BE USELESS". COMBINED WITH HIS FAILURES TO OBJECT TO THE VARIOUS FAILINGS OF THE PROSECUTOR'S CASE AND MISLEADING THE DEFENDANT IN ORDER TO OBTAIN AN EASY GUILTY PLEA, THE DEFENDANT'S COUNSEL HAS DEMONSTRATED SERIOUS MISCONDUCT BORDERING ON EGREGIOUS BEHAVIOR BY ENGAGING IN DISHONESTY AND HAVING DIVIDED LOYALTY BETWEEN THE DEFENSE AND THE PROSECUTION. FOR THESE REASONS, THE DEFENDANT SHOULD NOT HAVE BEEN TIME-BARRED, BECAUSE OF THE GRAVE DEFECTS WITHIN THIS CASE. THE DEFENDANT UNDERSTANDS WHY EQUITABLE TOLLING EXISTS AND THE IMPORTANCE THEREOF. HOWEVER, IN THIS CASE, IT DOES NOT APPLY, AND THE DEFENDANT REQUESTS THAT THIS APPEAL IS NOT STRUCK DOWN IN THE NAME OF BEING TIME-BARRED.

18 U.S.C. 3553(a)(6) EXTOLLS THE VIRTUE OF "THE NEED TO AVOID UNWARRANTED SENTENCING DISPARITIES AMONG DEFENDANTS WITH SIMILAR RECORDS WHO HAVE BEEN FOUND GUILTY OF SIMILAR CONDUCT." WHILE THIS IS NOT AN IRON-CLAD, SET IN STONE, NON-FLEXIBLE MANDATE, IT IS REQUIRED TO RESPECT THIS PART OF THE UNITED STATES CONSTITUTION AND TAKE IT INTO CONSIDERATION WHEN ISSUING A SENTENCE TO A DEFENDANT. A 405 MONTH (33+ YEARS LONG) SENTENCE WITH LIFETIME SUPERVISION IS VERY DIFFICULT TO JUSTIFY CONSIDERING THE DEFENDANT IS A FIRST TIME OFFENDER, NEVER RAPED ANYONE, NEVER HAD CONSENTUAL SEXUAL RELATIONS WITH ANY MINOR, NEVER DISTRIBUTED OR SHARED PORNOGRAPHY WITH ANYONE, NEVER THREATENED THE VICTIM, NEVER FORCED THE VICTIM TO DO ANYTHING AGAINST HER WILL, NEVER EVEN DISPLAYED PORNOGRAPHY TO THE VICTIM, NEVER VICTIMIZED ANYONE ELSE, AND EVEN ASSISTED THE GOVERNMENT IN HIS OWN PROSECUTION! TO PROVE THAT JUDGE GIBNEY'S RULING WAS EXCESSIVELY HARSH AND UNNECESSARILY LONG, THE DEFENSE HUMBLY SUBMITS THE FOLLOWING:

SEE UNITED STATES OF AMERICA V. LOGAN McCAULEY 2019 U.S. APP. LEXIS 14223 (4TH CIR. 2019) MR. McCAULEY TOOK AN UNDERAGE GIRL ACROSS STATE LINES, FILMED HIMSELF HAVING SEX WITH HER, AND RECEIVED 180 MONTHS AND 5 YEARS SUPERVISED RELEASE. ~~(Exhibit 1)~~

SEE UNITED STATES OF AMERICA V. GEORGE ROBERT BELL U.S. COURT OF APPEALS 4TH CIRCUIT 5 F.3d 64; LEXIS 23382 (1993) MR. BELL VIDEOTAPED FOUR VICTIMS RANGING IN AGE FROM 7 TO 13, HAD TWO PRIOR SEX OFFENSES, AND RECEIVED BETWEEN 87 TO 108 MONTHS. ~~(Exhibit 2)~~

SEE CHAD TWO HEARTS VS. UNITED STATES OF AMERICA 585 Fed Appx. 916 LEXIS 22783 8th CIR. (2014) MR. TWO HEARTS HAD SEXUAL RELATIONS WITH HIS SON REPEATEDLY OVER THE COURSE OF A DECADE, HAD A PREVIOUS SEX OFFENSE, FAILED TO REGISTER AS A SEX OFFENDER, AND RECEIVED 324 MONTHS WITH 5 YEARS SUPERVISED RELEASE. ~~(Exhibit 3)~~

SEE COLE MACHADO V. UNITED STATES OF AMERICA, U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, NORFOLK DIVISION, LEXIS 192764 (2013) MR. MACHADO PLED GUILTY TO PRODUCTION OF CHILD PORNOGRAPHY, AND WAS SENTENCED TO 327 MONTHS. ~~(Exhibit 4)~~

SEE DAVID J. FALSO V. ERIC D. WILSON, U.S. 4TH DISTRICT, LEXIS 176988, LEXIS 33038, LEXIS 20334, (2013) MR. FALSO PLED GUILTY TO 242 COUNTS OF CHILD PORNOGRAPHY RELATED CHARGES, AND HAD A PRIOR SEX ABUSE CONVICTION. MR. FALSO RECEIVED A 30 YEAR SENTENCE. (IT IS ALSO IMPORTANT TO NOTE THAT JUDGE JOHN A. GIBNEY JUNIOR HAD A HAND IN THIS CASE.) ~~(Exhibit 5)~~

SEE WEBSTER DOUGLAS WILLIAMS III V. UNITED STATES OF AMERICA, U.S. DISTRICT COURT FOR SOUTH CAROLINA, LEXIS 18441, (2018) MR. WILLIAMS III PLED GUILTY TO THREE CHARGES WITH TWO VICTIMS AND RECEIVED A SENTENCE OF 327 MONTHS. (Exhibit 6)

SEE MICHAEL STEHLIK V. UNITED STATES OF AMERICA, U.S. DISTRICT COURT FOR SOUTH CAROLINA, LEXIS 218157, (2017) MR. STEHLIK WAS CONVICTED OF PRODUCTION AND POSSESSION OF CHILD PORNOGRAPHY, AND HAD A PREVIOUS SEX OFFENSE. HE RECEIVED A SENTENCE OF 396 MONTHS. (Exhibit 7)

SEE LARRY A. CORDELL V. J. GRONOLSKY, U.S. DISTRICT COURT 4TH DISTRICT, LEXIS 124193 (2013) MR. CORDELL WAS SENTENCED TO 300 MONTHS FOR SEXUALLY EXPLOITING A MINOR FOR THE PURPOSE OF PRODUCING CHILD PORNOGRAPHY. (Exhibit 8)

SEE WILLIAM PHUMPHREY V. TERRY O'BRIEN, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF WEST VIRGINIA, LEXIS 95676, (2017) MR. PHUMPHREY HAD NUMEROUS PRIORS AND SEVERAL CHILD PORNOGRAPHY RELATED CHARGES. HE RECEIVED A COMBINED SENTENCE OF 12 YEARS, 4 MONTHS AND 17 DAYS. (Exhibit 9)

SEE UNITED STATES OF AMERICA V. RANDY WAYNE BRUFFY, U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA, LYNCHBURG DIVISION, LEXIS 41299, (2012) MR. BRUFFY WAS CHARGED WITH TWO COUNTS OF PRODUCTION AND ONE COUNT OF POSSESSION OF CHILD PORNOGRAPHY. HE HAD TWO VICTIMS, 917 IMAGES, AND 127 VIDEOS. HE RECEIVED 276 MONTHS. (Exhibit 10)

SEE BRIAN C. JENKINS V. UNITED STATES OF AMERICA, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF WEST VIRGINIA, LEXIS 139390, (2013) MR. JENKINS PLED GUILTY TO PRODUCTION OF CHILD PORNOGRAPHY AND TAMPERING WITH A WITNESS. HE RECEIVED 210 MONTHS WITH 15 YEARS SUPERVISED RELEASE. (Exhibit 11)

SEE UNITED STATES OF AMERICA V. JAMES W. SNYDER, U.S. COURT OF APPEALS FOR THE 7TH CIRCUIT, 635 F.3d 956 U.S. APP LEXIS 5361 (2011) MR. SNYDER WAS CONVICTED ON 4 COUNTS OF PRODUCING, DISTRIBUTION, POSSESSION AND RECEIPT OF CHILD PORNOGRAPHY STEMMING FROM HIM RAPING AND FILMING AN 11 YEAR OLD BOY. HE RECEIVED 168 MONTHS AND 6 YEARS SUPERVISED RELEASE. (Exhibit 12)

SEE RUSSELL GLENN BURNETT V. UNITED STATES OF AMERICA, U.S. DISTRICT COURT FOR THE DISTRICT OF MARYLAND, LEXIS 108654, (2017) MR. BURNETT PLED GUILTY TO ONE COUNT OF PRODUCTION OF CHILD PORNOGRAPHY AND RECEIVED 180 MONTHS. (Exhibit 13)

SEE UNITED STATES OF AMERICA V. SHAWNSTON BEAUDOIN, U.S. COURT OF APPEALS FOR THE 11TH CIRCUIT, 645 FED APPX. 900 U.S. APP LEXIS 4521 (2016) MR. BEAUDOIN RECEIVED A 264 MONTH SENTENCE FOR THREE COUNTS OF PRODUCTION OF CHILD PORNOGRAPHY WITH MULTIPLE VICTIMS. (Exhibit 14)

SEE UNITED STATES OF AMERICA V. JEFFREY PRICE, U.S. DISTRICT COURT FOR THE CENTRAL DISTRICT OF ILLINOIS, SPRINGFIELD DIVISION, LEXIS 38397 (2012) MR. PRICE WAS FOUND GUILTY OF PRODUCTION AND POSSESSION OF CHILD PORNOGRAPHY, AND WAS SENTENCED TO 216 MONTHS. (Exhibit 15)

SEE UNITED STATES OF AMERICA V. KEVIN GARFIELD RICKS, U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, ALEXANDRIA DIVISION, LEXIS 61214, (2013) MR. RICKS PLED GUILTY TO SIX COUNTS OF PRODUCTION AND ONE COUNT OF POSSESSION OF CHILD PORNOGRAPHY. HE WAS SENTENCED TO 300 MONTHS. (Exhibit 16)

SEE THEODORE WAGNER V. UNITED STATES OF AMERICA, U.S. DISTRICT COURT FOR SOUTH CAROLINA, CHARLESTON DIVISION, LEXIS 159663, (2011) MR. WAGNER WAS CONVICTED OF "VARIOUS OFFENCES" OF PRODUCTION AND DISTRIBUTION OF CHILD PORNOGRAPHY. HE WAS SENTENCED TO 151 MONTHS AND 3 YEARS OF SUPERVISED RELEASE. (Exhibit 17)

SEE UNITED STATES OF AMERICA V. WILBERT ROBERT SCHMIDT, U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA, SOUTHERN DIVISION, LEXIS 87256 (2010) MR. SCHMIDT PLED GUILTY TO TWO COUNTS OF PRODUCTION OF CHILD PORNOGRAPHY. HE MOLESTED, ENGAGED IN SEXUAL INTERCOURSE WITH, AND TOOK OVER 6,000 PICTURES OF 20 UNDERAGE BOYS FROM 1980-1999, RANGING IN AGE FROM 6 TO 16. HE RECEIVED 420 MONTHS, ONLY 15 MORE MONTHS THAN THE DEFENDANT WHO ONLY HAD 1 VICTIM WHOM HE DID NOT HAVE SEXUAL INTERCOURSE WITH, GAVE ALCOHOL TO, PHYSICALLY ABUSE OR ANY OF THE OTHER AGGRAVATING FACTORS IN THIS CASE. (Exhibit 18)

SEE LARRY MICHAEL BOLLINGER V. UNITED STATES OF AMERICA, U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA, CHARLOTTE DIVISION, LEXIS 175044, (2019) MR. BOLLINGER TRAVELLED TO HAITI, MOLESTED NUMEROUS GIRLS AS YOUNG AS 11, AND PLED GUILTY. HE RECEIVED A 25 YEAR SENTENCE. (Exhibit 19)

SEE DANIEL HEFFIELD V. UNITED STATES OF AMERICA, U.S. DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, ORLANDO DIVISION, LEXIS 108586, (2017) MR. HEFFIELD PLED GUILTY TO SEXUAL EXPLOITATION OF A MINOR AND POSSESSION OF CHILD PORNOGRAPHY. HE RECEIVED A SENTENCE OF 300 MONTHS. (Exhibit 20)

CONCLUSION

WE MUST TAKE INTO ACCOUNT THE TOTALITY OF THE CIRCUMSTANCES, INCLUDING THE EXTENT OF ANY VARIANCES AND THE DEFECTS WITHIN THIS CASE. THE EXTENT OF UNREASONABLENESS AGAINST THE DEFENDANT WAS BEYOND THE DEFENDANT'S CONTROL DUE TO THE DEFENDANT'S ATTORNEY'S ERRORS AMOUNTING TO NEGLIGENCE AND MISCONDUCT, FROM THE VERY BEGINNING OF THE INVESTIGATION AND THROUGHOUT THE CIRCUMSTANCES OF THE CASE. THE PROOF OF "BAD FAITH" IS WITHIN THE PRESUMPTION OF THE COURT AND WAS FOUND THROUGHOUT THIS CASE.

THE SUPREME COURT HELD THAT THE ADEPA STATUTE OF LIMITATIONS WERE NOT JURISDICTIONAL AND WERE SUBJECT TO PRESUMPTION IN FAVOR OF EQUITABLE TOLLING, AND ALSO IN CASES OF PROFESSIONAL MISCONDUCT. EGREGIOUS BEHAVIOR WAS DISPLAYED BY THE DEFENDANT'S COUNSEL, WHICH AMOUNTED TO THE COURT'S CONSPICUOUSLY BAD AND REPRODUCTIVE THEORIES OF THE DEFENDANT'S INVOLVEMENT WITH THE VICTIM. THE BLATANT PREJUDICE OF THE COURT TOWARDS THE DEFENDANT'S EXPLANATIONS WERE UNCHARACTERIZED.

THE FACT THAT THE COURT WAS NOT APPROPRIATE IN IT'S SENTENCING IS ALSO SHOWN IN UNITED STATES V. LYNN 572 F.3d 572, WHERE A DIFFERENT SENTENCE COULD HAVE BEEN REASONABLE. WE CAN SEE FROM THE FACTS ABOUT THE BEHAVIOR OF THE DEFENDANT THAT THERE WAS NO COERCION OR IMPAIRMENT DUE TO DRUGS OR ALCOHOL. WE SEE FROM SUBSECTION (B)(4) OF 2G1.1 THAT IN A CASE THAT INVOLVES TRANSPORTATION OF A MINOR FOR THE PURPOSES OF PROSTITUTION OR PROHIBITED SEXUAL CONDUCT, IT RECOMMENDS A DOWNWARD DEPARTURE OF EIGHT LEVELS WHEN THERE IS NO VIOLENCE, NO DRUGS OR ALCOHOL USED, AND NO ATTEMPTS MADE TO OBTAIN A PROFIT BECAUSE COMMERCIAL PURPOSE WAS NOT INVOLVED. (THE DEFENDANT ABSOLUTELY QUALIFIES FOR THIS EIGHT LEVEL DOWNWARD DEPARTURE.) IT IS TRUE THAT THE DEFENDANT WAS ENTRUSTED WITH THE POSSESSION AND CARE OF THE VICTIM, AND AS SUCH, HE IS ABLE TO BE SUBJECTED TO THE TWO LEVEL ENHANCEMENT. HOWEVER, IN THE COURT'S DETERMINATIONS, IT SHOULD HAVE LOOKED TO THE ACTUAL RELATIONSHIP THAT EXISTED BETWEEN THE VICTIM AND THE DEFENDANT, AND NOT JUST SIMPLY DEFAULT TO THE LEGAL STATUS OF AN ADULT/CHILD RELATIONSHIP.

THE COURT APPLIED THE ENHANCEMENT NOT FOUND BY A JURY. THIS WAS ALSO PART OF JUDGE GIBNEY'S BROAD DISCRETION TO CONSIDER ALL THE FACTS AT SENTENCING WHEN CONSTITUTIONAL ISSUES WERE PRESENT. INSTEAD, THE DISTRICT COURT CHOSE TO LOOK AWAY FROM THESE ISSUES. THE SUPREME COURT HAS HELD THAT, AT SENTENCING, THE SENTENCING COURT MUST GIVE RESPECTFUL CONSIDERATION TO THE GUIDELINES, BUT THE COURT IS ALSO PERMITTED TO ADJUST THE SENTENCE IN LIGHT OF OTHER STATUTORY CONCERNS. THE SEVENTH AND NINTH CIRCUITS HAVE

INTERPRETED THIS PHRASE TO MEAN EVIDENCE IS "NEW" FOR THE PURPOSE OF ANALYSIS SO LONG AS IT WAS NOT PRESENT AT THE POST CONDITIONS, TRIAL OR PLEA SENTENCING. THE THIRD CIRCUIT AGREES WITH US THAT EVIDENCE IS "NEW" ONLY IF IT WERE NOT AVAILABLE AT THE TIME THROUGH DUE DILIGENCE.

OVERALL, WE CAN BE INCLINED TO ACCEPT THE "AMRINE" DEFINITION OF NEW EVIDENCE WITH THE NARROW LIMITATION THAT THE EVIDENCE WAS NOT DISCOVERED FOR THE USE AT TRIAL BECAUSE THE DEFENDANT'S COUNSEL WAS INEFFECTIVE. THE EVIDENCE MAY HAVE BEEN REGARDED AS "NEW" PROVIDED THAT COUNSEL WAS INEFFECTIVE BECAUSE THE EVIDENCE DEMONSTRATES THE COUNSEL'S MULTIPLE FAILURES THAT DOOMED THE DEFENDANT'S ABILITY TO DEFEND HIMSELF. THEREFORE, WE BELIEVE THAT WE HAVE SUCCESSFULLY DEMONSTRATED THAT SINCE THE DISTRICT COURT HAS MADE SEVERAL SERIOUS ERRORS IN IT'S JUDGEMENT, THAT THE DEFENDANT IS ENTITLED TO RELIEF, EVEN THOUGH THE REQUEST FOR RELIEF IS MANY YEARS OVERDUE.

UNDER THE 4TH AMENDMENT, THE NON-CONSENTUAL SEARCH OF A PRIVATE RESIDENCE REQUIRES A PROPER SEARCH WARRANT. (SEE FERNANDEZ V. CALIFORNIA 571 U.S. 292.) ALSO, WARRANTS ARE REQUIRED TO RECORD PRIVATE PHONE CONVERSATIONS TO BE USED AS EVIDENCE AGAINST A DEFENDANT. SINCE ANY EVIDENCE OBTAINED THROUGH WARANTLESS SEARCHES AND RECORDINGS WOULD BE CONSIDERED "FRUIT OF THE POISONOUS TREE", SAID EVIDENCE MUST BE DISCARDED AND IGNORED. THAT MUST HAPPEN IN THIS CASE, SINCE THERE WAS NO WARRANT TO SEARCH AND SEIZE PROPERTY FROM THE DEFENDANT'S HOME IN FLORIDA, NOR TO RECORD PHONE CONVERSATIONS BETWEEN THE DEFENDANT AND HIS EX-WIFE, WHICH HAPPENS TO BE THE ENTIRE BASIS OF THIS CASE IN THE EYES OF THE GRAND JURY.

ACCORDING TO 3553(A)(6) REQUIREMENTS, A DEFENDANT MUST BE SENTENCED ACCORDINGLY WHEN COMPARED TO OTHER SIMILAR CASES WITH DEFENDANTS OF SIMILAR BACKGROUNDS. THE DEFENDANT HAS NO PREVIOUS CRIMINAL HISTORY, ONLY 1 VICTIM, AND THE LEVEL OF VICTIMIZATION WAS LOW COMPARING THE DEFENDANT'S CASE TO MANY OTHERS THAT INCLUDED RAPE, VIOLENCE, THREATS OF VIOLENCE, ALCOHOL OR DRUGS, EXPOSING THE VICTIM TO OTHER CRIMINALS, OR PUTTING THE VICTIM ON DISPLAY FOR THE WHOLE WORLD TO SEE VIA THE INTERNET. THE COURT SHOULD HAVE GIVEN A REASONABLE SENTENCE CONSIDERING ALL OF THE FACTORS UNDER 18 U.S.C. 3553(A). INSTEAD, THE DISTRICT COURT VIOLATED THE TERMS OF THE PLEA AGREEMENT BY IGNORING THE POSITIVE ASPECTS OF THIS CASE, AND REFUSING TO TAKE THEM INTO CONSIDERATION.

IN CLOSING, THE DEFENDANT BELIEVES THAT HE HAS BROUGHT FORTH SUFFICIENT EVIDENCE TO WARRANT A DISMISSAL OF THIS CASE. AND SHOULD THE APPEALS COURT CHOOSE TO DISMISS THIS CASE, MR. PACELLI WOULD LIKE TO PROVIDE THE APPEALS COURT WITH ASSURANCE THAT HIS LIFE AND PRESENCE OUTSIDE THE JURISDICTION OF THE BUREAU OF PRISONS IS SORELY NEEDED. INCLUDED IN THE PHOTOCOPIED EVIDENCE IS A NOTARIZED LETTER FROM THE DEFENDANT'S PARENTS STATING HOW THEY NEED THE HELP OF THE DEFENDANT IN THEIR ELDERLY YEARS DUE TO THEIR DIMINISHED CAPACITY. THERE IS ALSO A LETTER FROM LUCILLE FAYE "LYNN" HURST ESSENTIALLY SAYING THE SAME THING. THIS, COMBINED WITH THE DEFENDANT'S X COLLEGE DEGREE, YEARS OF AUTOMOTIVE RETAIL EXPERIENCE, A CLASS "A" COMMERCIAL DRIVER'S LICENCE AND HIS SHEER WILL TO NEVER OFFEND AGAIN ENSURES THAT THE DEFENDANT CAN AND WILL BE A PRODUCTIVE MEMBER OF SOCIETY UPON RELEASE. HOWEVER, IF AN OUTRIGHT DISMISSAL IS NOT POSSIBLE, THEN IN THE INTEREST OF JUSTICE AND TO SAVE THE TAXPAYERS THE TIME AND EXPENSE OF A NEW TRIAL, THE DEFENDANT IS WILLING TO AGREE TO A REDUCTION IN TIME FROM 405 MONTHS TO 180 MONTHS, AND A REDUCTION OF SUPERVISED RELEASE FROM LIFETIME TO 5 YEARS. THIS IS MORE THAN SUFFICIENT TO MEET THE NEEDS STATED IN 18 U.S.C. 3553(A). THE DEFENDANT ONLY REQUESTS THAT THE RULING IS EITHER MADE BY THE APPEALS COURT, OR GIVEN TO ANOTHER DISTRICT COURT JUDGE, SINCE JUDGE JOHN A. GIBNEY HAS REPEATEDLY DEMONSTRATED HIS INABILITY TO REMAIN PARTIAL WITH ANYTHING HAVING TO DO WITH THIS CASE.

THANK YOU FOR YOUR TIME AND CONSIDERATION.

I DECLARE (OR CERTIFY, VERIFY OR STATE) UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT AND THAT THIS INFORMAL BRIEF WAS PLACED INTO THE PRISON MAILING SYSTEM ON 11/18/24.

Michael Pacelli 80293-083

MICHAEL PACELLI

80293-083