

No. 20-____

IN THE
Supreme Court of the United States

DELAMON A. MARSHALL,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

APPENDIX

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NOT RECOMMENDED FOR PUBLICATION
File Name: 22a0419n.06

No. 21-3574

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Oct 20, 2022
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

V.

DELAMON A. MARSHALL,
Defendant-Appellant.

ON APPEAL FROM THE
UNITED STATES DISTRICT
COURT FOR THE NORTHERN
DISTRICT OF OHIO

OPINION

Before: BATCHELDER, GRIFFIN, and KETHLEDGE, Circuit Judges.

GRIFFIN, Circuit Judge.

Defendant Delamon Marshall pleaded guilty to four firearm charges and was sentenced to 240 months imprisonment. On appeal, he raises several challenges to his conviction and sentence, including that his sentence was procedurally and substantively unreasonable. We affirm.

I.

In February 2017, Ohio police officers stopped the car Marshall was driving for a traffic violation. During the stop, the officers found a firearm in the vehicle that Marshall admitted was his. Then, on March 17, 2017, officers responded to a shooting in Akron, where they found Marshall and another man, each wounded with several gunshot wounds. Witnesses told police that the other man (who ultimately died from his wounds) was retrieving belongings from the residence when Marshall arrived; a dispute ensued, and each man shot the other. The weapons found in Marshall's possession in both instances had an obliterated serial number.

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A federal grand jury indicted Marshall on two counts of possessing a firearm and ammunition as a felon, 18 U.S.C. § 922(g)(1), and two counts of possessing a firearm with an obliterated serial number, 18 U.S.C. § 922(k). He pleaded guilty to the four charges without a plea agreement.

The presentence report recommended that Marshall be classified as a career criminal under Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e), based on a prior conviction for bank robbery and his two prior convictions for Ohio felony domestic violence under Ohio Rev. Code § 2919.25(A). He objected to being sentenced as such, but the district court concluded otherwise, noting it was bound by Sixth Circuit precedent. The district court allowed defense counsel, Marshall, and the government to address the court. It then calculated Marshall's Guideline's range at 180 to 210 months, and the district court sentenced Marshall to an above-Guidelines sentence of 240 months. Marshall now appeals.

II.

Marshall begins his appeal by raising two arguments that are foreclosed by our circuit's precedent. He first contends that his two prior felony convictions under Ohio Rev. Code § 2919.25(A) are not predicate violent felony convictions for purposes of the ACCA. *United States v. Gatson* holds otherwise, 776 F.3d 405, 411 (6th Cir. 2015), and we are bound by that determination. *See Salmi v. Sec'y of Health & Human Servs.*, 774 F.2d 685, 689 (6th Cir. 1985). And we have twice rejected the argument that our en banc decision in *United States v. Burris*, 912 F.3d 386 (6th Cir. 2019) (en banc), abrogated *Gatson*. *See United States v. Mickel*, No. 21-3561, 2022 WL 1100459, at *2 (6th Cir. April 13, 2022); *United States v. Melendez-Perez*, No. 20-3925, 2021 WL 3045781, at *3 (6th Cir. July 20, 2021). Therefore, we are bound by *Gatson*, and Marshall's prior domestic-violence convictions qualify as violent felonies for ACCA purposes.

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Second, Marshall argues that, pursuant to *United States v. Lopez*, 514 U.S. 549 (1995), the Commerce Clause did not give Congress the authority to enact § 922(g)(1)’s felon-in-possession proscription. Again, we have resolved this issue to the contrary. See *United States v. Chesney*, 86 F.3d 564, 568–70 (6th Cir. 1996); *United States v. Turner*, 77 F.3d 887, 889 (6th Cir. 1996). And we have continued to conclude that § 922(g)(1) is constitutional, even after the Supreme Court decided the subsequent (and distinguishable) case noted by Marshall, *United States v. Morrison*, 529 U.S. 598 (2000). See, e.g., *United States v. Henry*, 429 F.3d 603, 619–20 (6th Cir. 2005); see also *United States v. Goolsby*, No. 21-3087, 2022 WL 670137, at *1–2 (6th Cir. March 7, 2022). We cannot depart from the holdings of *Turner* and *Chesney* and therefore reject Marshall’s Commerce Clause challenge. See *Salmi*, 774 F.2d at 689.

III.

Next, Marshall raises several arguments regarding his sentence, contending that it was procedurally and substantively unreasonable and that he was denied his right to allocution. We disagree.

A.

First, he contends that his sentence was procedurally unreasonable because the district court relied on issues for which he was not given notice prior to sentencing. Because Marshall did not raise a specific objection, we review this contention for plain error. See *United States v. Bostic*, 371 F.3d 865, 871 (6th Cir. 2004) (citation omitted). “A ‘plain error’ is an error that is clear or obvious, and if it affects substantial rights, it may be noticed by an appellate court.” *Id.* at 873 (citation omitted).

A district court’s sentence may be procedurally unreasonable for several reasons, including “selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen

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sentence—including an explanation for any deviation from the Guidelines range.” *Gall v. United States*, 552 U.S. 38, 51 (2007). This may occur when “the facts or issues on which the district court relied to impose a variance came as a surprise and the defendant’s presentation to the court was prejudiced by the surprise.” *United States v. Fleming*, 894 F.3d 764, 768 (6th Cir. 2018) (brackets and citation omitted). “[T]he weight the court ultimately assigned to unexpected considerations’ may contribute to the surprise.” *Id.* at 769 (brackets and citation omitted).

Marshall points to certain comments made by the district court, contending that they “came as a surprise” to him. Specifically, he states that the district court relied on vague references to the need to break the “cycle of violence.” According to Marshall, the district court was concerned that “everybody is killing each other nowadays” and that children too often turned into adults who were “killing people[,] . . . knifing people, carjacking[,], beating up older people.” He contends that the court’s reliance on these considerations was unexpected and unfairly prejudiced him, likening the scenario to *Fleming*, where the district court surprised the defendant by relying on an unrelated news article on cocaine-opioid deaths to sentence the defendant. 894 F.3d at 768–70.

But a review of the hearing demonstrates that these comments should not have been unexpected to him because they were directly responsive to comments he previously made to the court. *Cf. id.* at 768. Marshall raised numerous arguments in support of mitigation during allocution. Specifically, he noted several young family members who had been “gunned down” and who had died from “senseless violence.” He explained that he had been doing community service with children alongside a local pastor; he wanted “to focus on the kids, on the children, because the only way to change anything is through the children.” His view was that “change ain’t going come today; it’s going to come down the line.” Because of that work and his new perspectives, he wanted the court to judge him “as the person that [he is] and not the person that

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[he] was.” The district court’s statements directly responded to Marshall’s prior arguments—the court merely “agree[d] with [him]” that change “has to be with the kids.” For the district court, that started with Marshall because his “kids are looking at” him and he had demonstrated a “constant disrespect for the law.” In other words, the district court’s comments responded to the broader societal implications raised by defendant, and, thus, nothing about the district court’s comments was surprising. But when the time came to sentence Marshall, the district court based its sentence on the circumstances of Marshall’s offenses, his lack of responsibility, and the need to protect and deter the public from other crimes. These are all proper factors to consider under 18 U.S.C. § 3553(a). *Cf. United States v. Davis*, 458 F.3d 505, 511–12 (6th Cir. 2006). Therefore, the district court neither “surprised” Marshall nor relied on improper factors.

B.

Marshall next contends that his sentence was substantively unreasonable because the district court improperly considered local issues unrelated to his conduct. Unlike procedural reasonableness challenges, substantive reasonableness challenges need not be preserved for appeal; thus, this review is for an abuse of discretion. *United States v. Freeman*, 640 F.3d 180, 185–86 (6th Cir. 2011). “A sentence may be considered substantively unreasonable when the district court selects a sentence arbitrarily, bases the sentence on impermissible factors, fails to consider relevant sentencing factors, or gives an unreasonable amount of weight to any pertinent factor.” *United States v. Conatser*, 514 F.3d 508, 520 (6th Cir. 2008).

Marshall’s substantive reasonableness challenge fails for similar reasons as his procedural reasonableness one. Contrary to his argument, the district court did not rely on unrelated local issues that did not pertain to Marshall, such as news reports or crime statistics. Rather, the district court responded to Marshall’s mitigation argument that he was concerned about the community

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and agreed with the broad social theories advanced by defendant, but it then rejected the premise that they warranted a mitigated sentence. Instead, the need to protect the community, Marshall's lack of responsibility, and the circumstances of his offense warranted greater punishment. These are, again, permissible factors to consider. *See Davis*, 458 F.3d at 511–12. Consequently, Marshall's sentence is substantively reasonable.

C.

During sentencing, Marshall's attorney argued that Marshall should not be assessed a four-level Guidelines enhancement in connection with another crime under U.S.S.G. § 2K2.1(b)(6)(B) given his position that Marshall's actions on March 17 constituted "self-defense and not a crime." The district court agreed and did not impose the increase. The government responded by asserting that: (1) Marshall's sentence should still account for the fact that a death resulted, allowing an upward departure under U.S.S.G. § 5K2.1; and (2) the name of Marshall's security company, "Try Me Security," evinced his proclivity to respond violently. Defense counsel then asked, "[M]ay I respond very briefly?" When the district court denied the request, Marshall raised no further comment. He contends on appeal that the district court's refusal denied him the right to allocution.

A defendant must indicate "some type of discontent" to ensure de novo, not plain-error, review for a claim of denial of allocution. *United States v. Carter*, 355 F.3d 920, 926 & n.3 (6th Cir. 2004). When a defendant asks to "at least straighten out a fact," that "'indicate[s] some type of discontent' regarding [the defendant's] inability to readdress the court." *United States v. Lanning*, 633 F.3d 469, 476 (6th Cir. 2011) (citing *Carter*, 355 F.3d at 926 n.3). Defense counsel's generic request to respond briefly did not so indicate. *Id.*; *cf. Bostic*, 371 F.3d at 871 (noting that a defendant must "object with that reasonable degree of specificity"). Thus, we review the issue for plain error.

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Federal Rule of Criminal Procedure 32(i)(4)(A)(ii) requires a district court to “address the defendant personally in order to permit the defendant to speak or present any information to mitigate the sentence.” This right to allocution “is the right to present a defendant’s plea in *mitigation* and is not unlimited.” *Carter*, 355 F.3d at 926 (internal citation omitted); *see also United States v. Oliver*, 441 F. App’x 328, 329 (6th Cir. 2011) (per curiam) (“Rule 32 permits reasonable limitations on counsel’s time to address the court.” (internal quotation marks omitted)). A defendant is not denied the right to allocution merely because he was not allowed the “last word in rebuttal” or that the “district court refused to allow him to readdress the court after the government rested.” *Lanning*, 633 F.3d at 476.

The district court did not err, plainly or otherwise, by denying Marshall’s request to readdress the court. For one, it provided Marshall and his attorney a full opportunity to address the court. *See* Fed. R. Crim. P. 32(i)(4)(A)(i)–(ii). When doing so, defense counsel presented a self-defense argument contending that Marshall was not criminally responsible for the March 17 death, which necessarily addressed the factual basis for the government’s “death resulting” contention. Second, Marshall’s mitigation arguments attempted to convince the court that he had personally changed through his community service, and, therefore, he had neither a proclivity for violence nor was a danger to his community. This too addressed the basis for the government’s “Try Me” contention—that Marshall had a propensity for violence. Therefore, the district court did not err by refusing to permit Marshall to simply have the “last word.” *Cf. Lanning*, 633 F.3d at 476.

Further, Marshall was not prejudiced by this refusal. The district court did not grant a Guidelines-based departure under § 5K2.1, nor did it reference “Try Me Security” as showing defendant’s proclivity for violence. Instead, the district court relied on other permissible factors—

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the seriousness of Marshall's crimes, his criminal history, and the need to protect the community by punishing Marshall. *See Davis*, 458 F.3d at 511–12. The court's reliance on those factors was appropriate, especially when Marshall had already presented his mitigation arguments.

IV.

For those reasons, we affirm the judgment of the district court.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 21-3574

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DELAMON A. MARSHALL,

Defendant - Appellant.

FILED
Oct 20, 2022
DEBORAH S. HUNT, Clerk

Before: BATCHELDER, GRIFFIN, and KETHLEDGE, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Northern District of Ohio at Akron.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the sentence imposed on Delamon Marshall by the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA

v.

DELAMON A. MARSHALL

Original Judgment Date: 6/16/21

§ **AMENDED JUDGMENT IN A CRIMINAL CASE** §
 Page 1 amended to correct disposition and signature
 dates.
 § Case Number: **5:17-CR-00406-CAB(1)**
 § USM Number: **53316-060**
 § **Robert A. Dixon**
 § Defendant's Attorney

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input checked="" type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	1, 2, 3, and 4 of the Indictment
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense

18:922(g)(1) and 924(e)(1) Felon in Possession of Firearm
 18:922(g)(1) and 924(e)(1) Felon in Possession of Firearm
 18:922(k) and 924(a)(1)(B) Possession of Firearm with Obliterated Serial Number.
 18:922(k) and 924(a)(1)(B) Possession of Firearm with Obliterated Serial Number.

Offense Ended

03/17/2017
 03/17/2017
 03/17/2017
 03/17/2017

Count

1
 2
 3
 4

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s)
☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

June 10, 2021

Date of Imposition of Judgment

s/ Christopher A. Boyko

Signature of Judge

CHRISTOPHER A. BOYKO, Senior United States District Judge

Name and Title of Judge

June 17, 2021

Date

DEFENDANT: DELAMON A. MARSHALL
CASE NUMBER: 5:17-CR-00406-CAB(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

240 months as to Counts 1 and 2, and 60 months as to Counts 3 and 4. Terms to run concurrently.

- ☒ The court makes the following recommendations to the Bureau of Prisons:
- Defendant shall participate in the 500 hour RDAP drug treatment program, or the most intense program the institution has to offer.
 - Defendant shall participate in Cognitive Behavioral Treatment.

- ☒ The defendant is remanded to the custody of the United States Marshal.
☐ The defendant shall surrender to the United States Marshal for this district:

☐ at ☐ a.m. ☐ p.m. on

☐ as notified by the United States Marshal.

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

- ☐ before 2 p.m. on
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: DELAMON A. MARSHALL
CASE NUMBER: 5:17-CR-00406-CAB(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **five (5) years on Counts 1 and 2, and three (3) years on Counts 3 and 4, terms to run concurrently.**

MANDATORY CONDITIONS

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

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: DELAMON A. MARSHALL
CASE NUMBER: 5:17-CR-00406-CAB(1)

STANDARD CONDITIONS OF SUPERVISION

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

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change. If not in compliance with the condition of supervision requiring full-time occupation, you may be directed to perform up to 20 hours of community service per week until employed, as approved or directed by the pretrial services and probation officer.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. As directed by the probation officer, you shall notify third parties who may be impacted by the nature of the conduct underlying your current or prior offense(s) of conviction and/or shall permit the probation officer to make such notifications, and/or confirm your compliance with this requirement.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at the www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: DELAMON A. MARSHALL
CASE NUMBER: 5:17-CR-00406-CAB(1)

SPECIAL CONDITIONS OF SUPERVISION

Mandatory Drug Testing

You must refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release from imprisonment and to at least two periodic drug tests thereafter, as determined by the Court.

Financial Disclosure

You must provide the probation officer with access to any requested financial information and authorize the release of any financial information. The probation office may share financial information with the U.S. Attorney's Office.

No New Debt/Credit

You must not incur new credit charges or open additional lines of credit without the approval of the probation officer.

Substance Abuse Treatment and Testing

The defendant shall participate in an approved program of substance abuse testing and/or outpatient or inpatient substance abuse treatment as directed by their supervising officer; and abide by the rules of the treatment program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.). The defendant shall not obstruct or attempt to obstruct or tamper, in any fashion, with the efficiency and accuracy of any prohibited substance testing.

Cognitive Behavioral Treatment

You must participate in a cognitive-behavioral treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).

Search / Seizure

You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition.

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

Gang

You must not communicate, or otherwise interact, with any known member of the Crips gang, without first obtaining the permission of the probation officer.

DEFENDANT: DELAMON A. MARSHALL
CASE NUMBER: 5:17-CR-00406-CAB(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$400.00	\$0.00	\$0.00	\$0.00	

- ☐ The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

- ☐ Restitution amount ordered pursuant to plea agreement \$
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the schedule of payments page may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- | | | |
|---|-------------------------------|--|
| <input type="checkbox"/> the interest requirement is waived for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution |
| <input type="checkbox"/> the interest requirement for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution is modified as follows: |

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

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

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

DEFENDANT: DELAMON A. MARSHALL
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SCHEDULE OF PAYMENTS

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

- A** ☐ Lump sum payments of \$ _____ due immediately, balance due
☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B** ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C** ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D** ☐ Payment in equal 20 (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E** ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** ☒ Special instructions regarding the payment of criminal monetary penalties:
It is ordered that the Defendant shall pay to the United States a special assessment of \$400.00 for Counts 1, 2, 3 and 4, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

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

- ☐ Joint and Several
See above for Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- ☐ Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☒ The defendant shall forfeit the defendant's interest in the following property to the United States:
- Glock Model 17, 9mm pistol, serial number obliterated, and ammunition
 - Ruger P95, 9mm pistol, serial number obliterated, and ammunition

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

DEFENDANT: DELAMON A. MARSHALL
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DENIAL OF FEDERAL BENEFITS
(For Offenses Committed On or After November 18, 1988)

FOR DRUG TRAFFICKERS PURSUANT TO 21 U.S.C. § 862

IT IS ORDERED that the defendant shall be:

- ☐ ineligible for all federal benefits for a period of
- ☐ ineligible for the following federal benefits for a period of
(specify benefit(s))

OR

- ☐ Having determined that this is the defendant's third or subsequent conviction for distribution of controlled substances, IT IS ORDERED that the defendant shall be permanently ineligible for all federal benefits.

FOR DRUG POSSESSORS PURSUANT TO 21 U.S.C. § 862(b)

IT IS ORDERED that the defendant shall:

- ☐ be ineligible for all federal benefits for a period of
- ☐ be ineligible for the following federal benefits for a period of
(specify benefit(s))

- ☐ successfully complete a drug testing and treatment program.
- ☐ perform community service, as specified in the probation and supervised release portion of this judgment.

IS FURTHER ORDERED that the defendant shall complete any drug treatment program and community service specified in this judgment as a requirement for the reinstatement of eligibility for federal benefits.

Pursuant to 21 U.S.C. § 862(d), this denial of federal benefits does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility. The clerk is responsible for sending a copy of this page and the first page of this judgment to:

U.S. Department of Justice, Office of Justice Programs, Washington, DC 20531

No. 21-3574

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Aug 8, 2022
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

V.

DELAMON A. MARSHALL,

Defendant-Appellant.

ORDER

The court having received a petition for initial hearing en banc, and the petition having been circulated to all active judges of this court, and no judge of this court having favored the suggestion,

It is **ORDERED** that the petition be and hereby is denied.

ENTERED BY ORDER OF THE COURT

Rich L. Hunt

Deborah S. Hunt, Clerk