

# APPENDIX 1

## UNITED STATES DISTRICT COURT

Southern District of Mississippi

UNITED STATES OF AMERICA

v.

JUSTIN STABLER

## JUDGMENT IN A CRIMINAL CASE

Case Number: 3:17cr130HTW-LRA-001

USM Number: 20614-043

Michael L. Scott

Defendant's Attorney

## THE DEFENDANT:

 pleaded guilty to count(s) Count 1 of the single count Indictment pleaded nolo contendere to count(s) \_\_\_\_\_ which was accepted by the court. was found guilty on count(s) \_\_\_\_\_ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

| <u>Title &amp; Section</u> | <u>Nature of Offense</u>         | <u>Offense Ended</u> | <u>Count</u> |
|----------------------------|----------------------------------|----------------------|--------------|
| 18 U.S.C. § 922(g)(1)      | Felon in Possession of a Firearm | 9/1/2017             | 1            |

The defendant is sentenced as provided in pages 2 through 7 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.

December 21, 2021

Date of Imposition of Judgment

Signature of Judge

The Honorable Henry T. Wingate, U.S. District Judge

Name and Title of Judge

Date

DEFENDANT: **JUSTIN STABLER**  
CASE NUMBER: 3:17cr130HTW-LRA-001**IMPRISONMENT**

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

one hundred and twenty (120) months as to Count 1 of the single count Indictment.

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

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

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

at \_\_\_\_\_  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: **JUSTIN STABLER**

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**SUPERVISED RELEASE**

Upon release from imprisonment, you will be on supervised release for a term of:

three (3) years as to Count 1 of the single count Indictment.

**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 the location where 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.

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**STANDARD CONDITIONS OF SUPERVISION**

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

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

**U.S. Probation Office Use Only**

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

Defendant's Signature \_\_\_\_\_

Date \_\_\_\_\_

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**SPECIAL CONDITIONS OF SUPERVISION**

1. You shall participate in a program of testing and/or treatment for alcohol/drug abuse as directed by the probation officer. If enrolled in an alcohol/drug treatment program, you shall abstain from consuming alcoholic beverages during treatment and shall continue abstaining for the remaining period of supervision. You shall contribute to the cost of treatment in accordance with the probation office co-payment policy.
2. You shall not possess, ingest, or otherwise use a synthetic cannabinoid or synthetic narcotic, unless prescribed by a licensed medical practitioner for a legitimate medical purpose.
3. You shall refrain from consuming alcohol while under supervision of the probation office.
4. In the event that you reside in, or visit, a jurisdiction where marijuana or marijuana products have been approved, legalized, or decriminalized, you shall not possess, ingest, or otherwise use marijuana or marijuana products unless prescribed by a licensed medical practitioner for a legitimate medical purpose.
5. You shall not incur new credit charges or open additional lines of credit without the approval of the probation office, until such time that the fine is paid in full.
6. You shall provide the probation office with access to any requested financial information.
7. You shall submit your person, house, residence, vehicle, papers, electronic communication devices, or office to a search conducted by a United States Probation Officer. Failure to submit to a search may be grounds for revocation of supervised release. You shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your 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.

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**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Page 7.

| <b>TOTALS</b> | <u>Assessment</u> | <u>Restitution</u> | <u>Fine</u> | <u>AVAA Assessment*</u> | <u>JVTA Assessment**</u> |
|---------------|-------------------|--------------------|-------------|-------------------------|--------------------------|
|               | \$ 100.00         | \$                 | \$ 1,500.00 | \$                      | \$                       |

The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case (AO 245C)* 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, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

| <u>Name of Payee</u> | <u>Total Loss***</u> | <u>Restitution Ordered</u> | <u>Priority or Percentage</u> |
|----------------------|----------------------|----------------------------|-------------------------------|
|----------------------|----------------------|----------------------------|-------------------------------|

|               |                |                |
|---------------|----------------|----------------|
| <b>TOTALS</b> | \$ <u>0.00</u> | \$ <u>0.00</u> |
|---------------|----------------|----------------|

Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

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

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

the interest requirement is waived for the  fine  restitution.

the interest requirement for the  fine  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.

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**SCHEDEULE OF PAYMENTS**

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

A  Lump sum payment of \$ 1,600.00 due immediately, balance due  
 not later than \_\_\_\_\_, or  
 in accordance with  C,  D,  E, or  F below; or

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

C  Payment in equal \_\_\_\_\_ (*e.g., weekly, monthly, quarterly*) installments of not less than \$ \_\_\_\_\_ 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 monthly (*e.g., weekly, monthly, quarterly*) installments of not less than \$ 100.00 over a period of months (*e.g., months or years*), to commence 60 days (*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:  
The fine is payable immediately and during the term of incarceration. In the event that the fine is not paid in full prior to the termination of supervised release, the defendant is ordered to enter into a written agreement with the Financial Litigation Program of the U.S. Attorney's Office for payment of any remaining balance. Additionally, the value of any future discovered assets may be applied to offset the balance of criminal monetary penalties. The defendant may be included in the Treasury Offset Program allowing qualified benefits to be applied to offset the balance of criminal monetary penalties.

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

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

Joint and Several

| Case Number<br>Defendant and Co-Defendant Names<br>(including defendant number) | Total Amount | Joint and Several<br>Amount | Corresponding Payee,<br>if appropriate |
|---|--------------|-----------------------------|--|
|---|--------------|-----------------------------|--|

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

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

# APPENDIX 2-A

United States Court of Appeals  
for the Fifth Circuit

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United States Court of Appeals  
Fifth Circuit

**FILED**

November 4, 2022

No. 22-60005

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Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

JUSTIN STABLER,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Southern District of Mississippi  
USDC No. 3:17-CR-130-1

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Before STEWART, WILLETT, and OLDHAM, *Circuit Judges.*

PER CURIAM:\*

Justin Stabler pleaded guilty to possession of a firearm by a felon in violation of Title 18 U.S.C. § 922(g)(1). The district court sentenced Stabler to the statutory maximum of 120 months' imprisonment followed by a 3-year term of supervised release. Stabler challenges the length of his sentence and

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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two of his special conditions of supervised release. We affirm the judgment of the district court.

## **I. FACTS & PROCEDURAL HISTORY**

Police officers responded to a call stating that a man in a black and white jacket and blue shorts was walking in the street brandishing a weapon. The officers approached the scene and saw a man matching that profile. Officers demanded that the man drop the weapon and get on the ground. The man complied dropping a loaded 45/.410 caliber revolver. Officers identified and confirmed that the man was Stabler, a convicted felon on parole. As a result, Stabler was arrested and charged under § 922(g)(1) for being a felon in possession of a firearm. He pleaded guilty to the offense, pursuant to a plea agreement.

The U.S. Probation Office compiled a Presentence Report (“PSR”) detailing Stabler’s criminal history. The PSR calculated Stabler’s offense level to be 13, taking into consideration that the weapon was stolen and that Stabler accepted responsibility for his actions. Stabler’s total offense level considered alongside his criminal history score of VI resulted in an advisory Guidelines range of 33 to 41 months of imprisonment. The Government recommended, in accordance with the plea agreement, that Stabler be sentenced within the lower half of the Guidelines range.

However, the district court sentenced Stabler to 90 months’ imprisonment and three years of supervised release. The district court noted that Stabler received suspended sentences for his prior convictions and “never really served any significant time for all those violations that have come up in his lengthy criminal past.” The district court also revealed that the probation officer recommended a 120-month sentence in the sealed sentencing recommendation and stated that, while it did not impose this

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sentence, it thought “that 120-months could have been a legitimate and appropriate sentence for [Stabler’s] prior conduct.”

The district court imposed seven special conditions of release, including that Stabler (1) “shall refrain from consuming alcohol while under supervision of the probation office” and (2) must “submit his person, his house, his residence, his vehicle, his papers, electronic communication devices, or office to a search conducted by a United States Probation Officer.” The court limited the search condition stating that “[a]n officer may conduct a search . . . only when reasonable suspicion exists that [Stabler] had violated a condition of his supervision and that the areas to be searched contain evidence of the violation. Any search must be conducted at a reasonable time and in a reasonable manner.”

Stabler objected to the above-the-Guidelines sentence, the alcohol, and the electronics-search conditions. He argued that he only had “one arrest when he was 18 years old in 2004 for a DUI refusal” and that there was “no evidence presented to the court that he has any kind of alcohol issues.” The district court responded that it was going to leave that condition in place as he did not “quite understand why he was walking down the street with a loaded gun.” As to the electronics-search condition, Stabler argued that such a condition “is typically associated with sex offenders as a special condition,” but there was no evidence that Mr. Stabler ever used electronic devices “for that purpose or for any other reason such as drug use.” The district court stated it was going to keep that provision in place as well since Stabler had escaped or absconded in “at least two places in his criminal record.”

Stabler appealed to this court challenging, *inter alia*, whether the confidential sentencing recommendation of the United States Probation Office contained additional factual matters that were not part of the PSR. The Government filed an unopposed motion seeking to vacate Stabler’s sentence

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and remand for resentencing, and we granted the motion. On remand, the PSR was revised to reflect that after pleading guilty, Stabler engaged in additional criminal behavior while he was incarcerated including numerous minor infractions and offenses such as “destruction of government property, failure to obey commands, refusing to work, assault on fellow inmates, possession of contraband, possession of a weapon, lewd sexual behavior, and making sexual advances towards a staff member.” Accordingly, Stabler’s PSR was revised to reflect an increased offense level of 16. That combined with his criminal history score produced a new advisory Guidelines range of 46 to 57 months of imprisonment. The district court adopted the PSR and the new supplemental PSR addendum in full.

At resentencing, Stabler was sentenced to 120 months in prison, which is the statutory maximum term of imprisonment.<sup>1</sup> The district court found that an above-the-Guidelines sentence was appropriate “due to the nature and characteristics of the defendant, to promote respect for the law, and to protect the public from future crimes of the defendant.” The court emphasized that Stabler was on parole for four separate crimes at the time of the offense, and that “nearly every time [Stabler] [had] been paroled, he [had] absconded or committed new crimes or had that parole revoked.” The court also noted that the crimes included multiple offenses against the property of others. The district court concluded that it was “apparent [Stabler had] no respect for the law and no respect for others in the

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<sup>1</sup> At both the sentencing and resentencing, although Stabler denied membership in a gang, the district court heard testimony and determined that Stabler was a member and, therefore, was untruthful to probation. Despite this determination, the district court stated that it would have sentenced Stabler to the same 120-month sentence “regardless of its finding as to this matter of gang membership.”

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community” and that Stabler’s record was an “abomination” that “cries out for such a sentence.”

Along with the 120 months’ imprisonment, Stabler was again sentenced to a 3-year term of supervised release, including the aforementioned electronics-search and alcohol special conditions. Stabler objected on the same grounds as before, and the district court overruled the objections. Stabler timely appealed.

## II. DISCUSSION

Stabler argues (1) that his 120-month above-the-Guidelines sentence is substantively unreasonable given that the advisory Guidelines range was 46 to 57 months; and (2) that the district court abused its discretion when it imposed the electronics-search and alcohol special conditions of supervised release. We address each argument in turn.

### *A. Sentencing Decision*

We review a district court’s sentencing decision for reasonableness. *Gall v. United States*, 552 U.S. 38, 46 (2007). First, we ensure that the district court did not commit a “significant procedural error.” *Id.* at 51. If the district court’s decision is procedurally sound, we “consider the substantive reasonableness of the sentence imposed under an [abuse of discretion] standard.” *Id.*

Stabler does not argue that the district court made a procedural error, nor could he. The district court correctly calculated the Guidelines range, treated the Guidelines as advisory, considered the 18 U.S.C. § 3553(a) factors, allowed both parties to present arguments, and made an “individualized assessment based on the facts presented.” *Id.* at 50. Accordingly, the central issue is whether Stabler’s sentence was substantively unreasonable, or in other words, whether the district court

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abused its discretion in determining that the § 3553(a) factors justified a substantial deviation from the Guidelines range.

Stabler argues that his sentence is substantively unreasonable because the district court erroneously balanced the sentencing factors. Primarily, Stabler emphasizes that most of his prior crimes do not involve violence against others.<sup>2</sup> We disagree.

When reviewing the substantive reasonableness of a sentence, we look at the totality of the circumstances. *United States v. Churchwell*, 807 F.3d 107, 123 (5th Cir. 2015). We “may not apply a presumption of unreasonableness” where, as is the case here, the sentence is outside the Guidelines range. *Gall*, 552 U.S. at 51. Instead, we “may consider the extent of the deviation, but must give due deference to the district court’s decision that the § 3553(a) factors, on a whole, justify the extent of the variance.” *Id.* That this court “might reasonably have concluded that a different sentence was appropriate is insufficient to justify reversal.” *Id.* In this circuit, “[a] non-Guidelines sentence unreasonably fails to reflect the statutory sentencing factors set forth in § 3553(a) where it (1) does not account for a factor that should have received significant weight, (2) gives significant weight to an irrelevant or improper factor, or (3) represents a clear error of judgment in balancing the sentencing factors.” *United States v. Diehl*, 775 F.3d 714, 724 (5th Cir. 2015) (citing *United States v. Smith*, 440 F.3d 704, 708 (5th Cir. 2006)).

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<sup>2</sup> Stabler also contends that the district court erred in considering his prior convictions as a basis to deviate from the advisory Guidelines range because the convictions were already accounted for in the offense level calculation. However, this court has already rejected this same argument in *Smith*, holding that “[a] defendant’s criminal history is one of the factors that a court may consider in imposing a non-Guideline[s] sentence.” *Smith*, 440 F.3d at 709 (citing *United States v. Mares*, 402 F.3d 511, 519 (5th Cir. 2005)).

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Here, even if many of Stabler's past convictions do not involve violence against others, Stabler's extensive criminal history supports the conclusion that the maximum sentence would promote respect for the law. The district court gave specific attention to the fact that Stabler was on parole for four separate convictions when he committed the instant offense; nearly every time Stabler was on parole he absconded or committed a new crime; and he had not yet served any significant time for his previous convictions. The district court acknowledged that the sentence was above the Guidelines but determined that such a deviation was necessary here particularly because it was apparent that Stabler had "no respect for the law and no respect for others in the community."

The district court further determined that the maximum sentence was appropriate due to the nature and characteristics of the defendant and to protect the public from future crimes. We agree. Many of Stabler's convictions were against the property of others, and the district court reasonably assigned great weight to the fact that even after the initial sentencing, Stabler committed numerous criminal acts that spanned nearly the entire time he was imprisoned. While the 120-month sentence significantly deviated from the advisory range, the district court provided a reasoned basis for imposing the maximum sentence. Indeed, "[e]ven a significant variance from the Guidelines does not constitute an abuse of discretion if it is 'commensurate with the individualized, case-specific reasons provided by the district court.'" *Diehl*, 775 F.3d at 724 (citation and quotation omitted). For these reasons, we conclude that Stabler's sentence was substantively reasonable.

#### *B. Conditions of Supervised Release*

We next address Stabler's arguments regarding his special conditions of supervised release. Though "[a] district court has wide discretion in

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imposing terms and conditions of supervised release,” it is subject to the limitations set forth in 18 U.S.C. § 3583(d). *United States v. Vigil*, 989 F.3d 406, 409 (5th Cir. 2021) (per curiam) (quoting *United States v. Paul*, 274 F.3d 155, 164 (5th Cir. 2001)). First, under § 3583(d), the condition must be “reasonably related” to at least one of the following factors: (1) “the nature and circumstances of the offense and the history and characteristics of the defendant”; (2) “afford[ing] adequate deterrence to criminal conduct”; (3) “protect[ing] the public from further crimes of the defendant”; and (4) “provid[ing] the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.” § 3553(a)(1), (a)(2)(B)–(D); § 3583(d)(1); *see Vigil*, 989 F.3d at 409.

Second, “the condition must be narrowly tailored such that it does not involve a ‘greater deprivation of liberty than is reasonably necessary’ to fulfill the purposes set forth in § 3553(a).” *United States v. Scott*, 821 F.3d 562, 570 (5th Cir. 2016) (quoting *United States v. Duke*, 788 F.3d 392, 398 (5th Cir. 2015) (per curiam)); *see* § 3583(d)(2). Lastly, the condition must “be ‘consistent with any pertinent policy statements issued by the Sentencing Commission.’” *Vigil*, 989 F.3d at 409 (quoting § 3583(d)(3)).

The district court must also provide factual findings justifying the conditions. *United States v. Salazar*, 743 F.3d 445, 451 (5th Cir. 2014). In the absence of such a justification by the district court, “a court of appeals may nevertheless affirm a special condition ‘where the [district] court’s reasoning can be inferred after an examination of the record.’” *United States v. Caravayo*, 809 F.3d 269, 275 (5th Cir. 2015) (per curiam) (alteration in original) (quoting *Salazar*, 743 F.3d at 451). “On the other hand, ‘[w]here the district court’s rationale’ in imposing the special condition ‘is unclear’ even after a review of the record, the special condition must be vacated . . .’”

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*Id.* at 272 (quoting *Salazar*, 743 F.3d at 451). Because Stabler objected to the conditions before the district court, we review for abuse of discretion. *Id.*

*i. Electronics-search*

Stabler argues that the electronics-search condition does not meet the requirements of 18 U.S.C. § 3583(d). We disagree. Although the district court did not explain why it imposed the condition at the resentencing, at the initial sentencing it explained that Stabler had a lengthy criminal history which included multiple occasions of abscondment or escape. We can, therefore, reasonably infer that Stabler’s criminal history and characteristics were a basis for the electronics-search condition. This court has previously held that criminal history can justify imposing electronics-search conditions. *See United States v. Hathorn*, 920 F.3d 982, 987 (5th Cir. 2019) (holding electronics-search condition was “reasonably related” to conviction, history of drug use, and need to deter crime and protect the public); *United States v. Balla*, 769 F. App’x 127, 128–29 (5th Cir. 2019) (unpublished) (affirming electronics-search condition for defendant convicted of being a felon in possession of a firearm and ammunition because defendant’s criminal history implicated the sentencing goal of deterring future crime and protecting the public). The instant condition is likewise reasonably related to the necessary § 3553(a) factors.

The electronics-search condition is also narrowly tailored. In *United States v. Dean*, 940 F.3d 888 (5th Cir. 2019) we upheld, on plain-error review, a virtually identical condition against a defendant that was also convicted of being a felon in possession of a firearm and had the same criminal history score of VI. *Dean* included a special condition which required the defendant submit his electronic communications to a search upon reasonable suspicion and required probation officers to conduct the search “at a reasonable time and in a reasonable manner.” *Dean*, 940 F. 3d at 890. We held that, given the

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defendant's criminal history, the special condition was narrowly tailored because "the condition further requires that the probation officer must reasonably suspect that the areas to be searched contain evidence of the violation." While *Dean* was reviewed for plain error rather than abuse of discretion, we find it persuasive. We, thus, hold that in this case the limited electronics-search condition does not involve a greater deprivation of liberty than is reasonably necessary to fulfill the purpose of § 3553(a).<sup>3</sup>

*ii. Alcohol*

Stabler argues that the alcohol condition does not meet the requirements of § 3583(d) because he does not have a history of abuse. We disagree. The district court did not state a reason for the special condition. However, we can infer from the record that the basis of this condition is Stabler's 2004 conviction of DUI refusal, possession of marijuana in a vehicle, and possession of alcohol by a minor. The record also shows that Stabler was arrested for consumption of alcohol as a minor. Additionally, in a separate incident, Stabler was found in possession of a "green leafy substance" while incarcerated on other charges and refused to provide drug screens to correctional officers. Thus, Stabler's record shows multiple incidents involving alcohol and drugs and an extensive criminal history exemplifying a lack of respect for the law. Applying the deferential abuse-of-discretion standard of review, under these circumstances, we cannot say that

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<sup>3</sup> Stabler also argues in conclusory fashion that the Sentencing Commission policy statement does not state anything "about ordering any special condition of supervision in relation to a felon in possession conviction." However, we have held that "[a] district court has discretion to craft conditions of [supervised release], even if the Guidelines do not recommend those conditions." *United States v. Windless*, 719 F.3d 415, 421 (5th Cir. 2013); *Hathorn*, 920 F.3d at 985-87; *United States v. Acosta-Navarro*, 781 F. App'x 318, 325 n. 9 (5th Cir. 2019) (unpublished) (recognizing that "we have affirmed electronic-search conditions even when the underlying conviction is not a sex crime").

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the district court's rationale is unclear or that its reasoning cannot be inferred from the record. *See Caravayo*, 809 F.3d at 275 (holding that a special condition will not be disturbed on appeal if the district court's reasoning can be inferred from the record). We therefore hold that the district court did not abuse its discretion in imposing the alcohol condition.

### **III. CONCLUSION**

For the foregoing reasons, we AFFIRM Stabler's sentence in full.

# APPENDIX 2-B

United States Court of Appeals  
for the Fifth Circuit

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No. 22-60005

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United States Court of Appeals  
Fifth Circuit

**FILED**

November 4, 2022

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

JUSTIN STABLER,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Southern District of Mississippi  
USDC No. 3:17-CR-130-1

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Before STEWART, WILLETT, and OLDHAM, *Circuit Judges.*

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.