

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2023

UNITED STATES OF AMERICA,
Petitioner,

v.

ERNEST LUTHER TAYLOR,
Respondent.

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

APPENDIX

James F. Halley
James F. Halley, P.C.
300 Oswego Pointe Drive, Suite 101
Lake Oswego, OR 97034
(503) 295-0301
Attorney for Petitioner Ernest L. Taylor

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ERNEST LUTHER TAYLOR,

Defendant-Appellant.

No. 22-30032

D.C. No. 1:15-cr-00173-AA-1
District of Oregon,
Medford

ORDER

Before: CANBY, CALLAHAN, and BADE, Circuit Judges.

Appellee's motion to dismiss this appeal in light of the valid appeal waiver (Docket Entry No. 20) is granted. *See United States v. Harris*, 628 F.3d 1203, 1205 (9th Cir. 2011) (knowing and voluntary appeal waiver whose language encompasses the right to appeal on the grounds raised is enforceable). Contrary to appellant's contention, the record shows that appellant's waiver was knowing and voluntary as to the issue he raises on appeal because he was correctly informed in his plea agreement that he would be required to pay interest on any restitution judgment exceeding \$2,500 unless the court waived such payments. *See United States v. Lo*, 839 F.3d 777, 787 (9th Cir. 2016) (explaining that an appeal waiver is enforceable if appellant received adequate notice of his restitution obligation). Further, the restitution order is not illegal. *See id.* at 787-88 ("An award of restitution is illegal only if it is not authorized for the offense at issue or is in

excess of the amount allowed by statute.”).

DISMISSED.

James F. Halley, OSB 911757
JAMES F. HALLEY, P.C.
300 Oswego Pointe Drive, Suite 101
Lake Oswego, OR 97034-3254
503/295-0301; 503/228-6551 (fax)
jimhalley@halleylaw.com
Attorney for Defendant/Appellant Ernest Luther Taylor

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff/Appellee,		No. 22-30032
vs.		No. 1:15-cr-00173-AA-01
ERNEST LUTHER TAYLOR, Defendant/Appellant.		APPELLANT TAYLOR'S OPPOSITION TO PROSECUTION'S MOTION TO DISMISS

I. INTRODUCTION.

The court should deny the prosecution's motion to dismiss this appeal because this case fits within two exceptions to the enforceability of appeal waivers. First, defendant / appellant Taylor did not knowingly and voluntarily waive his right to appeal imposition of interest on restitution. Second, Taylor claims that the district court imposed an illegal sentence claim.

The prosecution is correct that appeal waivers are enforceable, subject to several exceptions. In *United States v. Tsosie*, 639 F.3d 1213 (9th Cir. 2011) the court outlined those exceptions:

We have explained that "[a]n appeal waiver will not apply if: (1) a defendant's guilty plea failed to comply with Fed. R. Crim. P. 11; (2) the sentencing judge

informs a defendant that she retains the right to appeal; (3) the sentence does not comport with the terms of the plea agreement; or (4) the sentence violates the law." *United States v. Watson*, 582 F.3d 974, 987 (9th Cir. 2009) (quoting *United States v. Bibler*, 495 F.3d 621, 624 (9th Cir. 2007)). We have also stated that we will not give effect to an appeal waiver if it is not "made knowingly and voluntarily." *United States v. Gordon*, 393 F.3d 1044, 1050 (9th Cir. 2004) (quotation omitted).

Tsosie, 639 F.3d at 1217.

II. The Appeal Waiver Does Not Apply Here Because Taylor Did Not Knowingly and Voluntarily Waive His Right To Appeal An Order of Interest on Restitution.

When an appeal challenges a restitution order, the knowing and voluntary standard requires that the defendant be given a reasonably accurate estimate of the amount of the restitution order to which he is exposed at the time of the waiver. *United States v. Phillips*, 174 F.3d 1074 (9th Cir. 1999) (plea agreement unclear on amount of restitution and so appeal waiver did not apply); and *United States v. Gordon*, 393 F.3d 1044 (9th Cir. 2004) (same).

There are several reasons for the additional limitation on appeal waivers in the restitution order context: a defendant generally does not have notice at the time of waiver of the full amount of restitution; there is no statutory or guideline limit on the amount; and the amount may depend on a claim by a third party which the defendant may be unable to predict. As a consequence, a defendant may plead guilty believing that he will not owe restitution when in fact "the sky is the only limit to his potential exposure". *United States v. Tsosie*, 639 F.3d 1213, 1219 (9th Cir. 2011).

Here, the plea agreement contemplated restitution but not the amount, and was silent on the question of interest. While the plea petition did recite that the court had the authority to impose interest on restitution over \$2500.00, it was not reasonable to

expect it to do so since it was undisputed that Taylor is disabled and indigent. The defense and prosecution agreed to restitution in the amount of \$7500 shortly before sentencing, but did not agree on interest. In short, defendant Taylor did not knowingly and voluntarily waive his right to appeal the unforeseeable imposition of interest.

III. The Appeal Waiver Does Not Apply Because Taylor Appeals An Illegal Sentence.

An illegal restitution order is an illegal sentence. *Phillips*, 174 F.3d 1074, 1076 (9th Cir. 1999) (citing with approval *United States v. Broughton-Jones*, 71 F.3d 1143 (4th Cir. 1995) for the proposition that “a restitution order which exceeded its authority under the VWPA is equivalent to an illegal sentence”). A restitution order is illegal if it is not authorized for the offense or is in excess of the amount authorized by statute. *United States v. Lo*, 839 F.3d 777, 788-89 (9th Cir. 2016).

Here, Taylor claims that the district court imposed an illegal sentence when it imposed interest on his restitution pursuant to 18 U.S.C. §3612(f) without any evidence he had, or would ever have, the ability to pay.

IV. CONCLUSION.

The court should deny the prosecution’s motion to dismiss Taylor’s appeal because Taylor did not knowingly and voluntarily waive his right to appeal the imposition of interest on restitution, and also because Taylor challenges an illegal sentence.

Date: November 4, 2022

JAMES F. HALLEY, P.C.
/s/ James F. Halley
James F. Halley, OSB #911757
Attorney for Appellant Ernest L. Taylor

NATALIE K. WIGHT, OSB #035576
United States Attorney
AMY E. POTTER
Assistant United States Attorney
amy.potter@usdoj.gov
405 E. 8th Avenue, Suite 2400
Eugene, OR 97401
Telephone: (541) 465-6771
Attorneys for United States of America

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ERNEST LUTHER TAYLOR,

Defendant-Appellant.

No. 22-30032

**(USDC 1:15-cr-00173-AA)
(Medford, Oregon)**

**APPELLEE'S MOTION TO
DISMISS APPEAL**

The United States of America moves to dismiss this appeal because defendant knowingly and voluntarily waived his appellate rights. The issue defendant seeks to appeal—the district court's decision not to waive mandatory interest on restitution—

falls squarely within his appellate waiver. This Court has dismissed an attempt to challenge a restitution judgment in the presence of a similar appellate waiver. *United States v. Lo*, 839 F.3d 777, 787-88 (9th Cir. 2016). This appeal should be dismissed as well.

Defendant is currently in custody at SeaTac FDC. His projected release date is December 14, 2024.

I. Factual and Procedural Background

In 2015, defendant was indicted for production of child pornography; he had recorded himself sexually abusing a minor victim on multiple occasions. ER-105, 117.¹ After over six years of litigation, including motions, a competency proceeding, and multiple defense attorney changes, the parties negotiated a resolution and defendant pleaded guilty to a superseding information charging him with possession of child pornography (18 U.S.C. § 2252A(a)(5)(B)) and transportation of obscene material (18 U.S.C. § 1462). ER-104–05, 117–42. Defendant pleaded guilty pursuant to a plea agreement. ER-104–10.

As part of that agreement, defendant agreed to waive his appellate rights, including “any aspect of the conviction and sentence on any grounds,” with limited exceptions. ER-106. Defendant signed the agreement beneath an additional

¹ “ER” refers to the Excerpts of Record (Docket Entry 12). “Def. Op. Br.” refers to defendant’s Opening Brief (Docket Entry 11).

affirmation that he would “expressly waive [his] rights to appeal as outlined in this agreement.” ER-110. The plea agreement specifically notified defendant that he would be expected to pay restitution. ER-108.

In advance of the change of plea, defendant signed a plea petition. ER-94–101. The plea petition addressed the imposition of restitution and made clear that “[o]n any fine or restitution in an amount of \$2,500 or more, [defendant] know[s] that [he] will be required pay interest unless . . . the court waives interest. [18 U.S.C. § 3612(f)].” ER-99. Defense counsel certified that he had explained the consequence of pleading guilty, including the paragraphs addressing restitution, to defendant. ER-102.

At the change of plea hearing, the district court confirmed that defendant had the opportunity to discuss the case with his lawyer, that he was satisfied with his representation, and that he wished to plead guilty. ER-64, 68–70. The court then addressed the consequences of pleading guilty, and specifically addressed restitution—advising defendant that he would be required to pay restitution to any victim of his crime and as well as interest on any amount over \$2,500 unless the court waived it. ER-64–82. Defendant said that he understood. *Id.*

At the court’s request, the government recited the terms of the plea agreement, including the appellate waiver. ER-81–82, 85–86. Defendant confirmed that he “hear[d] and underst[ood] the recitation of the agreement between [himself] and the government regarding the resolution of this case,” and that he was pleading guilty

“freely and voluntarily.” ER-88–91. The court accepted defendant’s voluntary guilty pleas. ER-91, 103.

At the sentencing hearing on December 15, 2021, the district court accepted the parties’ joint recommendation of 144 months’ imprisonment, noting that it was not the sentence she would have imposed but it was the sentence the parties “agreed to, to get closure to this case” and defendant was the beneficiary of the agreement. ER-43–45. The district court admonished defendant not to abuse that sentence by committing any new violations while in custody or while on supervision. ER-44. The court then turned to restitution and imposed the amount the parties had agreed to—\$7,500—with interest to accrue after 14 days. ER-23, 44. The court declined to impose a fine, finding defendant did not have the ability to pay anything more than the restitution, which the court described as “important.” ER-47.

The court reminded defendant that he had “entered into a plea agreement that waives all or part of [his] appeal rights” and that if he filed a notice of appeal, it would be governed by the plea agreement. ER-48. Defendant acknowledged that he understood that. *Id.* The court recited the 14-day appeal deadline if defendant wished to file. *Id.* The court then asked if there was anything else. *Id.* At that point, defense counsel asked the court to waive interest on restitution. *Id.* The court declined, concluding that defendant would have the ability to pay the restitution, and she wanted to incentivize the payment of restitution. ER-48–49.

In contravention of his appellate waiver, defendant filed a notice of appeal.

ER-113.

II. Discussion

Defendant argues that the district court abused its discretion when it decided not to waive interest on the \$7,500 in restitution that was ordered. Def. Op. Br. at 1. Defendant does not allege that his sentence is illegal or unconstitutional.

A. Standard of Review

This Court reviews *de novo* whether a defendant has waived his appellate rights pursuant to a plea agreement. *United States v. Wells*, 29 F.4th 580, 583 (9th Cir. 2022), *cert. denied*, No. 22-5340, 2022 WL 4657045 (U.S. Oct. 3, 2022).

B. Defendant knowingly and voluntarily waived his appellate rights.

An appellate waiver is enforceable if its language encompasses the right of appeal on the grounds raised and if it is knowingly and voluntarily made. *Id.* (*quoting United States v. Joyce*, 357 F.3d 921, 922–23 (9th Cir. 2004)). Plea agreements are interpreted using contract principles with any ambiguity construed in the defendant’s favor. *United States v. Watson*, 582 F.3d 974, 986 (9th Cir. 2009). This Court enforces “the literal terms of a plea agreement,” *United States v. Ellis*, 641 F.3d 411, 417 (9th Cir. 2011), using objective standards, *United States v. Kamer*, 781 F.2d 1380, 1387 (9th Cir. 1986). When the language of a plea agreement is clear and there is no miscarriage of justice, this Court will not exercise jurisdiction to review the merits of an appeal if the defendant knowingly and voluntarily waived the right to bring the appeal. *Wells*, 29 F.4th at 583–84 (*quoting United States v. Harris*, 628 F.3d 1203, 1205 (9th Cir. 2011)).

(internal quotation marks and citations omitted)).

Waiving the right to appeal “any aspect of the conviction and sentence on any grounds,” includes the right to appeal restitution so long as the defendant has been given a “reasonably accurate estimate of the amount of the restitution order to which he is exposed” at the time that he waives appeal. *Lo*, 839 F.3d at 785–86 (restitution is a component of the federal criminal sentence, after passage of the Victim Witness Protection Act and Mandatory Victims Restitution Act). Here, the issue is not the amount of restitution—an amount defendant agreed to—but, rather, the court’s refusal to waive interest. Defendant was notified of the interest requirement, and he acknowledged that both in his plea petition and at the change of plea hearing. ER-80–81, 99. He waived the right to appeal the court’s decision.

This Court will “decline to enforce an appeal waiver only if the district court failed to comply with Federal Rule of Criminal Procedure 11, the court informed the defendant that [he] retained the right to appeal, the sentence did not comport with the terms of the plea agreement, or the sentence violated the law.” *United States v. Brizan*, 709 F.3d 864, 866 (9th Cir. 2013). A breach of the plea agreement may also vitiate the waiver. *United States v. Hernandez-Castro*, 814 F.3d 1044, 1045 (9th Cir. 2016). This case does not raise any of these circumstances.

The district court fully complied with Rule 11 when accepting defendant’s plea, and he does not allege otherwise. In fact, his opening brief does not address his appellate waiver or the plea agreement at all, let alone why he should not be bound by

their terms. Defendant bypasses this procedural hurdle altogether and advances straight to his substantive argument.

C. Defendant's sentence did not trigger any exceptions to his appellate waiver.

The parties' plea agreement stipulated that defendant waived the right to appeal any aspect of the conviction or sentence, with three specifically enumerated exceptions. ER-106. Defendant retained the right to appeal if (1) the sentence imposed exceeded the statutory maximum; (2) the district court arrived at an advisory sentencing guideline range by applying an upward departure under the provisions of Sentencing Guidelines Chapters 4 or 5K; or (3) the district court exercised its discretion under 18 U.S.C. § 3553(a) to impose a sentence which exceeded the advisory guideline sentencing range as determined by the court. *Id.* None of the three triggering events took place, thus none of these exceptions apply.²

Defendant pleaded guilty to one count of possession of child pornography, which carries a statutory maximum of 10 years' imprisonment, and one count of transporting obscene material, which carries a statutory maximum of 5 years' imprisonment. ER-104. His 144-month sentence (120 months on Count 1 and a consecutive 24 months on Count 2) falls within the statutory limit. ER-6.

² Defendant does not allege, and the record would not support, any claim that the government breached its plea agreement. Therefore, although not specifically delineated as an exception to the appellate waiver in the plea agreement, this legally recognized exception also would not apply.

The district court accepted the guidelines calculation in the PSR then departed down to the parties' agreed-upon sentence. There was neither an upward departure nor a variance applied.

D. The sentence is constitutional.

This Court has also recognized an exception to appellate waivers when a defendant seeks to appeal an illegal sentence that violates the constitution. *Wells*, 29 F.4th at 584. Defendant makes no such allegation here. The only challenge is to the decision of the district court not to waive interest on restitution. By statute, interest is mandatory on all monetary penalties over \$2,500, unless the court decides to exercise its discretion to waive interest. 18 U.S.C. 3612(f). There is nothing unconstitutional about declining to exercise that discretion in this case; the court was aware of its ability to waive interest, it just declined to do so. ER-48–49. This Court should enforce the appellate waiver.

III. Conclusion

The Court should dismiss this appeal based on defendant's valid appellate waiver.

Dated: October 25, 2022.

Respectfully submitted,

NATALIE K. WIGHT
United States Attorney

s/ Amy E. Potter
AMY E. POTTER
Assistant United States Attorney

No. 22-30032

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
ERNEST LUTHER TAYLOR,
Defendant-Appellant.

On Appeal from the United States District Court
for the District of Oregon
1:15-cr-00173-AA-01
The Honorable Ann L. Aiken

APPELLANT'S OPENING BRIEF

James F. Halley
JAMES F. HALLEY, P.C.
Attorney At Law
300 Oswego Pointe Dr., Suite 101
Lake Oswego, OR 97034-3254
503/295-0301; 503/228-6551 (fax)
jimhalley@halleylaw.com
Attorney for Appellant Ernest Luther Taylor

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INTRODUCTION.

Defendant Ernest Taylor appeals the District Court's order that he pay interest on \$7500.00 in restitution imposed following his convictions for possessing child pornography and transportation of obscene material. In the circumstances of this case, imposition of interest is an abuse of discretion. Mr. Taylor suffers from paranoid schizophrenia, has been on social security disability, and has no appreciable prospects for earning a living. While the District Court imposed interest because it believed that over time Mr. Taylor would be able to make the payment, and wanted incentivize him to pay sooner rather than later, it is unreasonable to add a financial burden in circumstances where it is clear he does not have the ability to pay.

JURISDICTIONAL STATEMENT

The district court had jurisdiction of this criminal case pursuant to 18 U.S.C. § 3231. The court of appeals has jurisdiction to hear this appeal as the judgment of conviction (CR 272; ER 5)¹ is a final decision of the district court and is

¹. Throughout this brief, the following designations shall apply: "CR" shall refer to the Clerks Record; "ER" shall refer to Appellant's Excerpt of Record filed herewith; "RT1" shall refer to the transcript of the change of plea hearing, and "RT2" shall refer to the transcript of the sentencing hearing. "PSR" shall refer to the final revised Presentence Report dated December 15, 2021 which will be filed

appealable to the Court of Appeals pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742. Mr. Taylor pled guilty to possessing child pornography in violation of 18 U.S.C. § 2252A(a)(5)(B) and (b)(2), and transportation of obscene material in violation of 18 U.S.C. § 1462. The court imposed sentence on December 15, 2021, and filed the judgment on January 12, 2022. The District Court granted Taylor's motion to extend the time for filing a notice of appeal, resetting the notice of appeal due date to February 25, 2022 (CR 276; ER 276), and Taylor timely filed his notice of appeal that day (CR 279, ER 1) pursuant to Federal Rule of Appellate Procedure 4(b).

Mr. Taylor is serving a 144 month sentence. He is currently housed at FDC Seatac. His projected release date is December 14, 2024.

STATUTORY AND REGULATORY AUTHORITIES.

The statute requiring the trial courts to impose restitution in child pornography cases is 18 U.S.C. § 2259, which provides in part:

(a) In general. Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter.

under seal, along with defendant's confidential sentencing letter, pursuant to Circuit Rule 27-13(d).

The statute giving the court discretionary authority to waive or limit interest on restitution is 18 U.S.C. § 3612(f), which provides:

(f) Interest on fines and restitution.

(1) In general. The defendant shall pay interest on any fine or restitution of more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of the judgment....

...

(3) Modification of interest by court. If the court determines that the defendant does not have the ability to pay interest under this subsection, the court may—

(A) waive the requirement for interest;

(B) limit the total of interest payable to a specific dollar amount; or

(C) limit the length of the period during which interest accrues.

The general statutory directive when imposing a sentence, 18 U.S.C. § 3553, provides:

(a) Factors to be considered in imposing a sentence.--The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider--

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed--

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

...

(7) the need to provide restitution to any victims of the offense.

The United States Sentencing Guidelines address restitution at USSG 5E1.1, which provides in part:

5E.1. Restitution.

(a) In the case of an identifiable victim, the court shall—

(1) enter a restitution order for the full amount of the victim's loss, if such order is authorized under 18 U.S.C. § 1593, § 2248, § 2259, § 2264, § 2327, § 3663, or § 3663A, or 21 U.S.C. § 853(q);

...

(c) If a defendant is ordered to make restitution to an identifiable victim and to pay a fine, the court shall order that any money paid by the defendant shall first be applied to satisfy the order of restitution.

...

(e) A restitution order may direct the defendant to make a single, lump sum payment, partial payments at specified intervals, in-kind payments, or a combination of payments at specified intervals and in-kind payments. *See* 18 U.S.C. § 3664(f)(3)(A). An in-kind payment may be in the form of (1) return of property; (2) replacement of property; or (3) if the victim agrees, services rendered to the victim or to a person or organization other than the victim. *See* 18 U.S.C. § 3664(f)(4).

ISSUE PRESENTED

Did the District Court err when it ordered defendant Taylor to pay interest on a \$7500.00 restitution obligation, where the evidence showed that he suffered from paranoid schizophrenia, had been on social security disability, qualified for court appointed counsel, and lacked income.

STATEMENT OF THE CASE

Defendant Taylor pled guilty to possessing child pornography and to transporting obscene material. His plea agreement called for a 144 month sentence and payment of restitution. (CR 251; ER 104-107). In its objections to the draft presentence report, Taylor told the court that he has been on social security disability and has no assets, and asked that the court not impose any financial obligations. Revised Final PSR at p. 21². In regard to the defendant's financial condition and ability to pay, the revised final presentence report provided:

Financial Condition / Ability to Pay

68. The defendant is in custody. He qualifies for court-appointed counsel. His financial condition is unknown. Due to the defendant's custody status, his lack of income, and his anticipated imprisonment sentence, he does not appear to be able to pay a fine.

Revised Final PSR at 14.

Defendant's confidential sentencing letter to the court included a psychological evaluation that concluded he suffered from schizophrenia, paranoid type. Defense Confidential Sentencing Letter at 2 and 5³. Before sentencing, the

² The Revised Final Presentence Report has been filed under seal pursuant to Circuit Rule 27-13(d).

³ Defendant's Confidential Sentencing Letter has been filed under seal pursuant to Circuit Rule 27-13(d).

parties agreed to jointly recommend \$7500.00 in restitution. RT2 at 11:16 – 20; ER 13-23.

At sentencing, the court imposed the jointly recommended \$7500.00 in restitution, but ordered that defendant Taylor pay interest on that amount:

There is an agreed-upon restitution figure of the amount of \$7,500. That will be included. But in fashioning this sentence -- interest will accrue on that obligation if it is not paid within the next 14 days. And the payments schedule will be set up both -- if you're working in prison, you'll make payments on the restitution. If you're not working, probation will evaluate your payment schedule and set up payments not less than \$100 with regard to the central sentence in this case.
RT2, Sentencing Transcript at 32:12-20; ER 13-44.

The defense objected, noting the defendant's inability to pay and the court responded that it was going to leave interest on as an incentive to pay:

MR. HALLEY: And, Your Honor, not something that you missed. You ordered interest on the restitution. I just would like to ask that the Court consider not imposing interest, because Mr. Taylor has very limited resources.

THE COURT: I'm going to leave the interest on, because I believe that, over time, he'll be able to make this payment. And I want him to be incentivized to get it paid off sooner rather than later. I often waive –

MR. HALLEY: Thank you for hearing me, Your Honor.

THE COURT: Yeah, I appreciate it. Is there anything else we can take up at this point? Anything else I need to take up?

MR. HALLEY: No, Your Honor.

RT2, Sentencing Transcript at 36:21 – 37:7; ER 13-48.

SUMMARY OF THE ARGUMENT

All the evidence before the court at sentencing established that defendant

Taylor is unemployable and lacks the ability to pay. In these circumstances, it was clear error, or an abuse of discretion, for the trial court to impose interest on the \$7500.00 in restitution he must pay.

STANDARD OF REVIEW

The legality of a restitution order is reviewed de novo. See *United States v. Gagarin*, 950 F.3d 596, 607 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2729 (2021); *United States v. Anieze-Smith*, 923 F.3d 565, 570 (9th Cir. 2019) (reviewing de novo the legality of a restitution order, including the district court’s valuation method).

The court also reviews de novo decisions involving the interpretation of federal statutes like the Mandatory Victims Restitution Act, and questions of law regarding the application of restitution statutes. See *United States v. Swenson*, 971 F.3d 977, 980 (9th Cir. 2020); *United States v. Berger*, 574 F.3d 1202, 1204 (9th Cir. 2009) (“We review de novo questions of law regarding the application of restitution statutes.”)

If the order is within statutory bounds, then the restitution calculation is reviewed for abuse of discretion, with any underlying factual findings reviewed for clear error. See *Gagarin*, 950 F.3d at 607; *Anieze-Smith*, 923 F.3d at 570; *United States v. Galan*, 804 F.3d 1287, 1289 (9th Cir. 2015).

ARGUMENT

A decision to impose interest on restitution ordered pursuant to 18 U.S.C. § 3162(f), when considered in light of the requirement under 18 U.S.C. § 3553(a) that a court impose a reasonable sentence that is sufficient, but not greater than necessary, to achieve the purposes of sentencing, requires a finding that the defendant has the ability to pay. Here, there was no evidence that defendant has, or ever will have, the ability to pay interest on the \$7500.00 in restitution ordered. The evidence before the court showed that he had been on social security disability and suffered from paranoid schizophrenia. The Revised Presentence Report concluded that he lacked the ability to pay. In these circumstances, there was simply no evidence to support the conclusion that Taylor has, or ever will have, the ability to pay interest. It was not reasonable to order that he do so.

A district court's findings of fact are clearly when the reviewing court is left with a "definite and firm conviction that a mistake has been committed" (*Easley v. Cromartie*, 532 U.S. 234, 242 (2001); and *United States v. Walter-Eze*, 869 F.3d 891, 912 (9th Cir. 2017)). While this court won't disturb the district court's determination when there are two views of the evidence (*United States v. Elliott*, 322 F.3d 710, 715 (9th Cir. 2003)), the evidence here supports only one conclusion – defendant Taylor doesn't have the ability to pay.

Even if reviewed for an abuse of discretion, the district court erred. A district court abuses its discretion when it does not apply the correct law or rests its decision on a clearly erroneous finding of a material fact. *See Briseno v. Henderson*, 998 F.3d 1014, 1022 (9th Cir. 2021) (“A district court abuses its discretion when it fails to apply the correct legal standard or bases its decision on unreasonable findings of fact.” (alteration, quotation marks, and citation omitted)). Here, there was no evidence that Taylor had the ability to pay, and so it was an abuse of discretion to order that he pay interest.

CONCLUSION

For these reasons, the district court erred when it imposed interest on the \$7500.00 in restitution ordered, and this court should reverse for correction of the error.

DATED THIS August 26, 2022.

JAMES F. HALLEY, P.C.
/s/ James F. Halley
James F. Halley, OSB #911757
Attorney for Ernest Taylor

STATEMENT OF RELATED CASES

9TH Cir. Case Number 22-30032

The undersigned attorney or self-represented party states the following:

[XX] I am unaware of any related cases currently pending in this court.

[] I am unaware of any related cases currently pending in this court other than the case(s) identified in the initial brief(s) filed by the other party or parties.

[] I am aware of one or more related cases currently pending in this court. The case number and name of each related case and its relationship to this case are:

DATED THIS August 26, 2022. JAMES F. HALLEY, P.C.
/s/ James F. Halley
James F. Halley, OSB #911757
Attorney for Ernest Taylor

**CERTIFICATE OF COMPLIANCE WITH FRAP 32 AND CIRCUIT RULE
32(E)**

9TH Cir. Case Number 22-30032

I am the attorney for defendant / appellant Ernest Taylor.

This brief contains 2200 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6). I certify that this brief complies with the word limit of Cir. R. 32-1.

Signature: /s/ James F. Halley Date: August 26, 2022

James F. Halley, OSB 911757
JAMES F. HALLEY, P.C.
300 Oswego Pointe Drive, Suite 101
Lake Oswego, OR 97034-3254
503/295-0301; 503/228-6551 (fax)
jimhalley@halleylaw.com
Attorney for Defendant Ernest Taylor

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ERNEST TAYLOR,
Defendant

No 1:15-cr-00173-AA-01

NOTICE OF APPEAL

(a) Notice is given to the United States Court of Appeals for the Ninth Circuit
that defendant Ernest Taylor appeals from the following:

_____ Conviction only [Fed R Crim P 32(b)];

_____ Conviction and sentence;

xxxx Sentence only (18 USC 3742) (imposition of interest on restitution);

_____ Order (Specify title, nature and date of entry of the order appealed from):

(b) Sentence imposed: 144 months.

(c) Bail status: Defendant Taylor is in custody serving his sentence.

Date: February 25, 2022

JAMES F. HALLEY, P.C.

/s James F. Halley

James F. Halley, OSB #911757

Attorney for Ernest Taylor

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

UNITED STATES OF AMERICA

Plaintiff,

v.

ERNEST LUTHER TAYLOR,

Defendant.

JUDGMENT IN A CRIMINAL CASE

Case No.: 1:15-CR-00173-AA-1

USM Number: 76852-065

James F. Halley,
Defendant's Attorney

Amy E. Potter and Judith Harper,
Assistant U.S. Attorney

THE DEFENDANT:

☒pleaded guilty to Counts 1 & 2 of the Superseding Information.

The defendant is adjudicated guilty of the following offenses:

<u>Title, Section & Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number</u>
18:2252A(a)(5)(B) and (b)(2) - Possession of Child Pornography; 18:1467 and 2253; Forfeiture Allegation	On or before 8/2/2014	1
18:1462 - Transportation of Obscene Material	Between on or about December 2012 and August 2014	2

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) and is discharged as to such count(s).

☒The original Indictment filed May 8, 2015 is dismissed on the motion of the United States.

☒The defendant shall pay a special assessment in the amount of \$200.00 for Counts 1 & 2 payable to the Clerk of the U.S. District Court. (See also the Criminal Monetary Penalties Sheet.)

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

December 15, 2021

Date of Imposition of Sentence

/s/Ann Aiken

Signature of Judicial Officer

Ann L. Aiken, U.S. District Judge

Name and Title of Judicial Officer

January 12, 2022

Date

AO 245B

Judgment in a Criminal Case - DISTRICT OF OREGON CUSTOMIZED (Rev. 10/2019)
Sheet 2 - Imprisonment

DEFENDANT: ERNEST LUTHER TAYLOR
CASE NUMBER: 1:15-CR-00173-AA-1

Judgment-Page 2 of 8

IMPRISONMENT

As to Count 1, the defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of **120 months**. As to Count 2, the defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of **24 months**, to be served consecutive to the sentence imposed in Count 1 for a total sentence of **144 months**.

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

1. That the defendant be incarcerated in USP, Marion.
2. That the defendant participates in a Sex Offender Treatment Program.

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

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

- ☐ at _____ 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 _____ on _____.
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

The Bureau of Prisons will determine the amount of prior custody that may be credited towards the service of sentence as authorized by Title 18 USC §3585(b) and the policies of the Bureau of Prisons.

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

AO 245B

Judgment in a Criminal Case - DISTRICT OF OREGON CUSTOMIZED (Rev. 10/2019)
Sheet 3 - Supervised Release

DEFENDANT: ERNEST LUTHER TAYLOR
CASE NUMBER: 1:15-CR-00173-AA-1

Judgment-Page 3 of 8

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **15 years**.

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.

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.

Defendant's Signature _____

Date _____

SPECIAL CONDITIONS OF SUPERVISION

1. You must submit your person, property, house, residence, vehicle, papers, 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.
2. You must not communicate, or otherwise interact, with MV1 or their immediate family members either directly or through someone else, without first obtaining the permission of the probation officer.
3. You must submit to substance abuse testing to determine if you have used a prohibited substance. Such testing may include up to twelve (12) urinalysis tests per month. You must not attempt to obstruct or tamper with the testing methods.
4. You must not knowingly purchase, possess, distribute, administer, or otherwise use any psychoactive substances (e.g., synthetic marijuana, bath salts, etc.) that impair a person's physical or mental functioning, whether or not intended for human consumption, except with the prior approval of the probation officer.
5. You must not go to, or remain at any place where you know controlled substances are illegally sold, used, distributed, or administered without first obtaining the permission of the probation officer. Except as authorized by court order, you must not possess, use or sell marijuana or any marijuana derivative (including THC) in any form (including edibles) or for any purpose (including medical purposes). Without the prior permission of the probation officer, you must not enter any location where marijuana or marijuana derivatives are dispensed, sold, packaged, or manufactured.
6. You must participate in a mental health treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).
7. You must take all mental health medications that are prescribed by your treating physician.
8. You must participate in a sex offense-specific assessment.
9. You must participate in a sex offense-specific 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.).
10. You must submit to periodic polygraph testing at the discretion of the probation officer as a means to ensure that you are in compliance with the requirements of your supervision or treatment program.
11. You must not go to, or remain at, any place where you know children under the age of 18 are likely to be, including parks, schools, playgrounds, and childcare facilities.
12. You must not go to, or remain at, a place for the primary purpose of observing or contacting children under the age of 18.
13. You must not have direct contact with any child you know or reasonably should know to be under the age of 18, including your own children, without the permission of the probation officer. If you do have any direct contact with any child you know or reasonably should know to be under the age of 18, including your own children, without the permission of the probation officer, you must report this contact to the probation officer within 24 hours. Direct contact includes written communication, in-person communication, or physical contact. Direct contact does not include incidental contact during ordinary daily activities in public places.
14. You must provide the U.S. Probation Officer with truthful and complete information regarding all computer hardware, software, electronic services, and data storage media to which you have access.
15. You must submit your computers (as defined in 18 U.S.C. § 1030(e)(1)) or other electronic communications or data storage devices or media, to a search. You must not install any encryption software or mechanism on any such computer, device, or data storage media. You must furnish any password or passcode required to access the computer, device, or storage media to the probation officer upon request. You must warn any other people who use these computers or devices capable of accessing

the Internet that the devices may be subject to searches pursuant to this condition. A probation officer may conduct a search pursuant to this condition only when reasonable suspicion exists that there is a violation of a condition of supervision and that the computer or device contains evidence of this violation. Any search will be conducted at a reasonable time and in a reasonable manner.

16. You must allow the probation officer to install computer monitoring software on any computer (as defined in 18 U.S.C. § 1030(e)(1)) you use. To ensure compliance with the computer monitoring condition, you must allow the probation officer to conduct initial and periodic unannounced searches of any computers (as defined in 18 U.S.C. § 1030(e)(1)) subject to computer monitoring. These searches shall be conducted for the purposes of determining whether the computer contains any prohibited data prior to installation of the monitoring software; to determine whether the monitoring software is functioning effectively after its installation; and to determine whether there have been attempts to circumvent the monitoring software after its installation. You must warn any other people who use these computers that the computers may be subject to searches pursuant to this condition.
17. You must not possess and/or use computers (as defined in 18 U.S.C. § 1030(e)(1)) or other electronic communications or data storage devices or media except as approved in advance by the probation officer.
18. You must not access the Internet except for reasons approved in advance by the probation officer.
19. You must not work in any type of employment without the prior approval of the probation officer.
20. If the judgment imposes a financial penalty, including any fine or restitution, you must pay the financial penalty in accordance with the Schedule of Payments sheet of the judgment. You must also notify the court of any changes in economic circumstances that might affect your ability to pay this financial penalty.
21. 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.
22. You must not incur new credit charges, or open additional lines of credit without the approval of the probation officer.
23. You must not make application for any loan, or enter into any residential or business lease agreement, without the prior approval of the probation officer.
24. You must appear at status hearing before the court within 30 days after your release from custody to review all special conditions of supervised release. This hearing will be set by your probation officer.

AO 245B

Judgment in a Criminal Case - DISTRICT OF OREGON CUSTOMIZED (Rev. 10/2019)
Sheet 5 - Criminal Monetary PenaltiesDEFENDANT: ERNEST LUTHER TAYLOR
CASE NUMBER: 1:15-CR-00173-AA-1

Judgment-Page 7 of 8

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the Schedule of Payments set forth in this judgment.

	<u>Assessment</u> <u>(as noted on Sheet 1)</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA</u> <u>Assessment¹</u>	<u>JVTA</u> <u>Assessment²</u>	<u>TOTAL</u>
<u>TOTALS</u>	\$200.00	\$7500.00	\$0.00	\$0.00	\$0.00	\$7,700.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* will be entered after such determination.

☒ The defendant shall 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 non-federal victims must be paid in full prior to the United States receiving payment.

<u>Name of Payee</u>	<u>Total Amount of Loss³</u>	<u>Amount of Restitution</u> <u>Ordered</u>	<u>Priority Order or Percentage</u> <u>of Payment</u>
(See Statement of Reasons)	\$7,500.00	\$7500.00	
<u>TOTALS</u>	\$7,500.00	\$7,500.00	

☐ If applicable, restitution amount ordered pursuant to plea agreement: \$_____.

☐ The defendant must pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution 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 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 is waived for the ☐ fine and/or ☐ restitution.

☐ The interest requirement for the ☐ fine and/or ☐ restitution is modified as follows:

Any payment shall be divided proportionately among the payees named unless otherwise specified.

¹ Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

² Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

³ Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994, but before April 23, 1996.

AO 245B

Judgment in a Criminal Case - DISTRICT OF OREGON CUSTOMIZED (Rev. 10/2019)
Sheet 6 - Schedule of PaymentsDEFENDANT: ERNEST LUTHER TAYLOR
CASE NUMBER: 1:15-CR-00173-AA-1

Judgment-Page 8 of 8

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment⁴ of the total criminal monetary penalties shall be as follows:

- A. ☐ Lump sum payment of \$7700.00 due immediately, balance due
☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, or ☐ E below; or
- B. ☒ Payment to begin immediately (may be combined with ☒ C, ☐ D, or ☐ E below); or
- C. ☒ If there is any unpaid balance at the time of defendant's release from custody, it shall be paid in monthly installments of not less than \$100.00, or not less than 10% of the defendant's monthly gross earnings, whichever is greater, until paid in full to commence immediately upon release from imprisonment.
- D. ☐ Any balance at the imposition of this sentence shall be paid in monthly installments of not less than \$_____, or not less than 10% of the defendant's monthly gross earnings, whichever is greater, until paid in full to commence immediately.
- E. ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the Court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties, including restitution, shall be due during the period of imprisonment as follows: (1) 50% of wages earned if the defendant is participating in a prison industries program; (2) \$25 per quarter if the defendant is not working in a prison industries program. . If the defendant received substantial resources from any source, including inheritance, settlement, or other judgment, during a period of incarceration, the defendant shall be required to apply the value of such resources to any restitution or fine still owed, pursuant to 18 USC § 3664(n).

Nothing ordered herein shall affect the government's ability to collect up to the total amount of criminal monetary penalties imposed, pursuant to any existing collection authority.

All criminal monetary penalties, including restitution, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of Court at the address below, unless otherwise directed by the Court, the Probation Officer, or the United States Attorney.

**Clerk of Court
U.S. District Court - Oregon
310 W. 6th St., Rm 201
Medford, OR 97501**

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

☐ **Joint and Several**

Case Number

Defendant and Co-Defendant Names
(including Defendant number)

Total Amount**Joint and Several Amount**

**Corresponding Payee, if
appropriate**

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court costs:

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

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

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,) Case No. 1:15-cr-173-AA
)
v.)
) December 15, 2021, 10:00 AM
ERNEST LUTHER TAYLOR,)
)
Defendant.)
_____)

SENTENCING HEARING BY VIDEOCONFERENCE
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE ANN L. AIKEN
UNITED STATES DISTRICT COURT JUDGE

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VIDEO APPEARANCES

FOR THE PLAINTIFF:

AMY POTTER
United States Attorney's Office
405 E 8th Avenue
Room 2400
Eugene, OR 97401

JUDITH HARPER
United States Attorney's Office
405 E 8th Avenue
Room 2400
Eugene, OR 97401

FOR THE DEFENDANT:

JAMES F. HALLEY
James F. Halley, P.C.
300 Oswego Pointe Drive
Suite 101
Lake Oswego, OR 97034

COURT REPORTER:

Kendra A. Steppler, RPR
United States District Courthouse
District of Oregon
405 E. 8th Avenue, Room 2130
Eugene, OR 97401

* * *

1 THE COURTROOM DEPUTY: Now's the time set for
2 Criminal Case No. 15-173, the United States of America v.
3 Ernest Luther Taylor, for sentencing. If you could please
4 introduce yourselves for the record, beginning with the
5 Government.

6 MS. POTTER: Amy Potter and Judy Harper on behalf of
7 the United States.

8 MR. HALLEY: Jim Halley appearing for Mr. Taylor by
9 video.

10 PROBATION OFFICER JACOBSON: And this is Adam
11 Jacobson calling in for the Probation Office.

12 MR. HALLEY: Your Honor, I should note that
13 Mr. Taylor is visible to me by video, and I hope he is visible
14 to you as well. His consent to appear at sentencing by video
15 appears in the Court's docket at No. 259.

16 THE COURT: Well, more importantly, Mr. Taylor should
17 introduce himself for the record, and I will ask him about that
18 consent.

19 THE DEFENDANT: Ernest Taylor, defendant.

20 THE COURT: And you have agreed to this proceeding --
21 this sentencing -- today by video conference; is that correct?

22 THE DEFENDANT: Yes.

23 THE COURT: All right.

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Thank you. We -- I had a brief moment to

1 talk to the lawyers before we began. And it's my understanding
2 that we're going to start with the victim speaking first, which
3 I think is most appropriate. And we'll begin with that now.

4 And, Ms. Potter, I don't know exactly how, with the video,
5 you're handling this, but I'll leave it up to you to direct
6 Ms. Kramer on how you're going to handle this for the video.

7 MS. POTTER: Thank you, Your Honor. The first victim
8 present is present in this courtroom. So Ms. Harper and I will
9 step away, and he can speak from here. After that, we have a
10 victim who will be appearing audio only. She has logged in,
11 but she's not streaming video. And that's the other victim --
12 the minor victim -- who wishes to speak, Your Honor.

13 THE COURT: Okay. I understand. Thank you.

14 THE DEFENDANT: Manoah's not a victim. Manoah's not
15 a victim.

16 THE COURT: Okay. Please do not speak. If you're
17 not being called on, please mute your sound or do not speak.
18 Do not interrupt.

19 MR. HALL: Thank you, Your Honor.

20 THE COURT: And I'm -- excuse me -- stop, stop. I'm
21 going to ask you to take your mask off. There's nobody around
22 you at the moment. And you'll put it back on before you leave
23 the chair. I'm going to ask you to state your full name, spell
24 your last, and we're going to check the volume. And I'm going
25 to ask you to speak up, because I can barely hear you when you

1 started. And I have a court reporter who will need to take
2 this down. So I'm keeping an eye on whether she can hear or
3 not. All right? So, go ahead, introduce yourself.

4 MR. HALL: My name is Manoah, Hall.

5 THE COURT: We did not hear your first name.

6 MR. HALL: My first name is Manoah Hall.

7 THE COURT: Spell it, please.

8 MR. HALL: M-A-N-O-A-H.

9 THE COURT: All right. Go ahead.

10 MR. HALL: It's been such a long time awaiting
11 this --

12 THE COURT: Okay, stop. You're reading too fast, and
13 I can't hear you. So you're going to need to move the
14 microphone too. You're going to have to scoot up to the --
15 you're going to have to scoot your chair up.

16 MR. HALL: All right. Can you hear me now?

17 THE COURT: That's better. But you're going to have
18 to enunciate and speak slowly.

19 MR. HALL: All right. Such a long time I've been
20 awaiting this day. No child should ever have to wait this long
21 for justice. There are no words that could validate the
22 feelings that I personally carry regarding this case and the
23 collateral damage that you've caused to the family. It was
24 really interesting to hear you say that I wasn't a victim just
25 a moment ago. You don't have to be in a direct line of sight

1 to be a victim of your actions.

2 The label of your charges does not give proper justice of
3 what or who you are. You're a sodomist. A child rapist is the
4 definition of who you are. That is what you will always be
5 known as. And with the help of social media and any other
6 platforms, we will -- you'll never be able to walk down the
7 street without someone knowing who you are and what you are
8 about.

9 THE COURTROOM DEPUTY: We lost the defendant.

10 THE COURT: Time. Stop. I was looking down, but
11 we've lost the defendant.

12 MS. POTTER: Yes, Your Honor. He just briefly went
13 off screen.

14 THE COURT: I can't understand anything you're
15 saying, Ms. Potter.

16 MS. POTTER: He just briefly went off screen. I
17 apologize.

18 THE COURT: Well, we have to get him back on.

19 MS. POTTER: I understand.

20 THE COURT: Are you able to hear us?

21 THE DEFENDANT: Yes.

22 THE COURT: All right. We lost you for a second.
23 We'll go back. Go ahead, Mr. Hall.

24 MR. HALL: You walked into a child's life and
25 befriended the victim -- a 4-year-old victim -- 4 years old,

1 Ernest. During the time frame when the child is playing with
2 G.I. Joes and My Little Ponies and learning small personal
3 victories by spelling words, you are teaching and grooming a
4 child to perform sexual acts on you. When the child couldn't
5 perform, you'd react with violence and threats. I was informed
6 that, at least on one occasion, you placed a pillow over the
7 child's head to keep the victim quiet, as the child was
8 screaming from pain. It makes me absolutely sick to think of
9 this happening.

10 THE DEFENDANT: No, I didn't.

11 THE COURT: Do not --

12 MR. HALL: I pray --

13 THE COURT: Mr. Taylor, do not speak.

14 MR. HALL: I pray for the day that you walk a main
15 line while you're in prison. Anyone that commits the acts that
16 you've done isn't man enough to step foot on any main line. In
17 fact, I'm not even sure how you look at yourself in the mirror
18 and be acceptable with the person that is looking back at you.
19 Sadly, there will be a day that you walk in the gates.

20 This is a time that I would like to ask the Judge to grant
21 society some justice and keep the sorry excuse of a man behind
22 bars. The family has just begun the journey of healing from
23 these tragic events that have taken place, but I know the
24 victim is a trooper and will heal from these events that have
25 taken place. The child is very resilient and will come out the

1 other end a bigger and stronger person than you will ever be.
2 I see the development in the victim daily, growing ever
3 stronger, ever knowledgeable, and then turning into quite a
4 beautiful human being.

5 On one of the last in-person hearings that were allowed
6 here in Medford, everyone who was present had to listen to you
7 slander our Forefathers. You delved into a speech about how
8 your rights were being violated by the Government. I can
9 guarantee that the Forefathers that put together the Bill of
10 Rights were never out to protect a child molester and sodomist.
11 I nearly threw up listening to you slander the men that took
12 the time to put together that bill. You were grasping for
13 straws and going to any length to avoid accountability, even
14 though you took the time to videotape your crimes I guess to
15 look back and reflect on the way you could victimize an
16 innocent child.

17 I'd like to personally thank all the men and women that
18 spent countless hours to put this man behind bars.

19 Miles, you're an absolute trooper.

20 To the detectives that are behind me, thank you for all
21 your time and dedication.

22 Denna, Amy, Judi, Judge Aiken, all of you will always have
23 my respect for finding justice for the victim in this case.

24 I hope my message is heard today. And if there is any
25 media listening, never forget the Ernest Luther Taylor name.

1 He will be walking the streets again, and he'll be walking them
2 way too soon. Thank you.

3 MS. POTTER: Your Honor, as we discussed, the minor
4 victim would also like to speak. It's my understanding she can
5 turn on her audio, at this point, but will not be showing
6 video. And, as we've discussed, if she could refer to herself
7 as "the minor victim," we would appreciate it, Your Honor.

8 THE COURT: That's fine. Let's test that and make
9 sure we have her on.

10 THE MINOR VICTIM: Hi.

11 THE COURT: Hi. And you are, as designated, the
12 minor victim; is that correct?

13 THE MINOR VICTIM: That is correct.

14 THE COURT: I am happy to hear anything you wish to
15 say. Please --

16 THE MINOR VICTIM: I --

17 THE COURT: If you're going to read something, please
18 read slowly.

19 THE MINOR VICTIM: Yes, ma'am.

20 Ernest, I'm talking to say this right now. And I think
21 that you are trash and that you will never be a good person.
22 And you did something to a minor who did not have any consent
23 to you. No consent. I was a child. You are terrible. You
24 are the terrible person, and I hate you. That's all, My
25 Honor -- Your Honor.

1 THE COURT: Thank you.

2 MS. POTTER: Your Honor, I believe that is it. I
3 just want to pause for one moment to see if anyone else wants
4 to speak. I need to turn back to Ms. Rawie.

5 Okay. Your Honor, I think that completes the victim
6 allocutions in this matter.

7 THE COURT: All right. Go ahead then.

8 MS. POTTER: Thank you, Your Honor. Before we get to
9 the actual sentencing arguments, Your Honor, I'd like to cover
10 a couple of ministerial details, please.

11 The first is there's been a disagreement about a paragraph
12 in the PSR. Mr. Halley and I do have a disagreement. I
13 believe the PSR reflects information that is contained in the
14 police report. I do not believe that person should be subject
15 to a tax on her credibility. I also, however, do not believe
16 that that is the purpose of this sentencing hearing.

17 And if what it takes is for me to withdraw that paragraph
18 before we get into heavy litigation, that's fine. Because I
19 say to Mr. Taylor, everyone knows what happened. Everyone
20 does. Whether it's paragraph 52 or just a bunch of memories,
21 everyone knows. So, with that, Your Honor, I don't have
22 anything else to speak to on the PSR.

23 There has been a dispute over property return. Mr. Taylor
24 had a firearm with him. Mr. Halley has identified an FFL
25 through which that firearm could be sold. I will work with

1 Medford PD to have that happen. We will return Mr. Taylor's
2 wallet. It will be reviewed to make sure there's nothing that
3 can't be returned, but we will return it. If there's any
4 disputes, I'll contact Mr. Halley.

5 The Medford Police have graciously agreed to provide a
6 contact list. That contact list will be reviewed by my office
7 and redacted if we think anything needs to be redacted prior to
8 being turned over.

9 And the final thing is, we will review the devices. There
10 may be one device that does not have any contraband. That will
11 be returned. All other devices will be destroyed. That
12 includes devices that could not be accessed. Because, given
13 the sheer volume of child sexual abuse material, I'm simply not
14 going to return a device that could not be thoroughly searched.
15 They contain contraband, and I'm not going to do it.

16 The last ministerial matter is we have come to an
17 agreement for \$7,500 in restitution. I will provide the
18 courtroom deputy with the information for where that
19 restitution should ultimately be sent. But I believe we can
20 agree to that and not hold open restitution.

21 If the Court has any questions about those matters -- if
22 not, I prefer to move on to my sentencing statement.

23 THE COURT: So, essentially, the property list will
24 be given to you. Anything that has contraband or is unable to
25 have been searched will be destroyed.

1 MS. POTTER: Right.

2 THE COURT: The firearm will be sold. And there's a
3 return of the wallet, to the extent that items in the wallet
4 are not contraband. Everything else will be returned. Did I
5 summarize that correctly with the items -- property?

6 MS. POTTER: Yes, Your Honor. I'll -- I guess I will
7 open it to Mr. Halley to make sure I didn't misstate anything.

8 THE COURT: Mr. Halley?

9 MR. HALLEY: Your Honor, can you hear me? I had
10 myself on mute for a bit. I hope I'm audible.

11 THE COURT: I can hear you now.

12 MR. HALLEY: Okay. Thank you. Yes, in regard to
13 property return, my understanding is that a friend that I know,
14 who works at Cabela's, will be able to take the firearm to
15 Cabela's gun counter and have it sold there.

16 In regard to the contacts, we appreciate that being
17 provided. We do hope that Mr. Taylor would be allowed to have
18 notes back from two telephones that were seized from him. We
19 offered to have our expert -- Joel Brillhart -- collect those
20 and certify that there's no contraband in them. I was under
21 the impression we had an agreement that that would be
22 permissible.

23 And in regard to devices, Ms. Potter mentions one -- I was
24 under the impression that we had an agreement regarding others
25 that have been examined and on which no contraband has been

1 found. I --

2 THE COURT: So here's how I'm going to --

3 MR. HALLEY: I don't know that --

4 THE COURT: Here's what I think we should do. I have
5 the framework of the agreement. You and Ms. Potter -- you're
6 going to have to work with people afterwards to return those
7 items. And we don't need to go into nuances now. But I want
8 no items returned to him that has contraband on it. And if
9 they can't determine whether it's on or not, it's to be
10 destroyed. All right?

11 MS. POTTER: Thank you, Your Honor.

12 MR. HALLEY: Understood.

13 THE COURT: And the gun -- you know -- sell the gun.
14 And if he has a wallet -- whatever is appropriate to return --
15 no inappropriate items should be included in it to be returned
16 to him.

17 Other than that, I will remain available to address any
18 property issues that can't be resolved between the two of
19 you -- three of you -- after the hearing, when people are able
20 to have a "nuanced conversation" shall we say. But you've all
21 had plenty of time to talk this all through. So I'm kind of
22 surprised we still have these loose ends.

23 Now, I want to talk about paragraph 52. That's an arrest
24 record, and it appears, if I hear you right, Ms. Potter, that
25 every piece of information is taken from the police report.

1 And I'm assuming that Mr. Halley's had access to that police
2 report; correct?

3 MS. POTTER: Yes, Your Honor.

4 THE COURT: Okay. And you -- your request is that it
5 remain, but you know that Mr. Halley filed a late motion to
6 object to that paragraph, so I'm going to hear him out on that
7 now. Okay?

8 MS. POTTER: Yes, Your Honor.

9 THE COURT: All right.

10 Go ahead. Mr. Halley, go ahead.

11 MR. HALLEY: Thank you, Your Honor. First, in regard
12 to the timeliness, I raised the objection to paragraph 52 in my
13 letter commenting on the draft report. And, at that time, the
14 draft report had a paragraph that referred to this event in
15 1997 I think in Arizona -- or alleged event in Arizona.

16 The reports in discovery regarding the event are almost
17 entirely illegible. We -- the Defense -- sought to obtain a
18 clearer record from the police agency, but were told that
19 that's all there is. So we raised an objection on several
20 grounds. One, that the reports on which the allegations are
21 based are illegible, and, two, the charges were dismissed.

22 The final presentence report then incorporated mostly the
23 text of an interview of someone who was in the household at the
24 time. And we then subsequently learned that that declarant --
25 that person who made the police report interview -- gave a

1 second police interview that clearly is not accurate. And
2 that's detailed in the supplemental objection I filed last
3 night.

4 And so our position is that the information contained in
5 paragraph 52 is not sufficiently reliable whether judged by a
6 clear and convincing standard or by a preponderance of the
7 evidence standard. And it has the potential to affect
8 Mr. Taylor as he progresses through sex offender treatment.
9 Whether they still do so, I don't know. But it's my
10 understanding that, in the past, sex offender treatment
11 programs have required full-disclosure polygraphs, and the
12 people evaluating the success on those use sources such as
13 paragraph 52 to determine whether or not a person is being full
14 and complete in their disclosures. And having this in the
15 presentence report runs the risk of erroneously hindering
16 Mr. Taylor in his success in treatment.

17 I should note, Mr. Taylor's disappeared from my screen,
18 Your Honor.

19 THE COURT: He just --

20 MR. HALLEY: Can we take a moment?

21 THE COURT: I turned my head and he's gone. So we'll
22 wait.

23 MR. HALLEY: Okay.

24
25 (A break was taken from 10:31 AM to 10:32 AM.)

1 THE COURTROOM DEPUTY: He's back.

2 THE COURT: All right. Mr. Taylor --

3 MR. HALLEY: He's returned to my screen.

4 THE COURT: He's back.

5 MR. HALLEY: Can you hear me, Mr. Taylor?

6 THE DEFENDANT: Yeah.

7 MR. HALLEY: All right.

8 THE DEFENDANT: The computer turned off.

9 MR. HALLEY: So, Your Honor, our position in regard
10 to paragraph 52 is that the source of the information is not
11 reliable, because, in a very recent FBI interview, inaccurate
12 information was relayed. I think there's no dispute about
13 whether or not that was inaccurate. And so -- and it had to do
14 with whether or not Mr. Taylor had three-way contact with her
15 by phone from the prison.

16 So I just ask that it be removed. I also ask the Court
17 not to use it in any way to elevate Mr. Taylor's sentence above
18 the agreed 12 years. That is all I have on paragraph 52, Your
19 Honor.

20 THE COURT: Ms. Potter, your argument or position.

21 MS. POTTER: Your Honor, I think, as I reflected to
22 court last night, I did intend to litigate this. But that's
23 not the purpose of sentencing today. I dispute what Mr. Halley
24 is saying. I do think that is a credible person. I do think
25 there is sufficient evidence to put that in the PSR. But that

1 is not the purpose of today. We are not -- I do not want to
2 put these people through more over a paragraph in the PSR.
3 Because he's still going to have to pass a full-disclosure
4 polygraph, and he knows what happened in the past. And whether
5 it's in there or not, he'll still have to pass it.

6 And so, Your Honor, if what it takes is me saying, "Strike
7 paragraph 52," then that's fine. I want to move on to the
8 sentencing at hand, and I think that is the most important
9 thing here today.

10 THE COURT: Well, I didn't rely on it, because this
11 is an agreed-upon sentence. But I think, in terms of his
12 rehabilitation, he will have to pass a polygraph. This
13 information is helpful to that end. But, either way, he's
14 going to have to deal with it. I think it's just as easy to
15 remove it from the presentence report and move on to sentencing
16 at this point.

17 I agree that the most -- this case has gone on a long
18 time. It's taken a very -- it's been a difficult path with
19 COVID, and everything else, to get it to today's point. And it
20 didn't weigh into any of my analysis in this case, because I
21 was -- I know we had an agreed-upon sentence. So I will
22 address that at the appropriate time. So, with that, we'll
23 strike it.

24 Mr. Jacobson, will you correct that presentence report for
25 the final version? Go ahead.

1 PROBATION OFFICER JACOBSON: Your Honor, we'll amend
2 the report. Thank you very much.

3 THE COURT: Thank you.

4 Ms. Potter, go ahead.

5 MS. POTTER: Thank you, Your Honor. As both the
6 victims and the Court have mentioned, this case has taken a
7 long time. Sometimes the wheels of justice turn very slowly.
8 I believe strongly in the system, but I do think -- and the
9 reason we entered into this agreement -- is because it is time
10 for this case to end.

11 There are people, including myself, Your Honor, who
12 thought a longer sentence was the more appropriate thing for
13 the crimes that were committed here. But this isn't just about
14 a length of a sentence. It's about resolving a case that has
15 gone on for seven years. And during that seven years, Ernest
16 Taylor has continued to victimize this child and her family,
17 because they had been unable to get closure. And so I say that
18 ends today.

19 Today these victims get the closure they need, and you go
20 to prison. And you may get out sooner than you want, but
21 when -- or that I want and that they want -- but when you get
22 out, there will be a probation officer who will monitor your
23 every move. And until my dying day, I will make sure you never
24 victimize another child. And if you do, watch out, because the
25 entire resources of the Federal Government will make sure you

1 never walk out of prison again.

2 This is a great deal for you. And when you walk out of
3 prison, you remember that, and you stay as far away from any
4 child ever. You have done your damage, and it is over. This
5 victim -- she is articulate, she is smart, and she has her
6 entire life ahead of her. And you will not -- not -- spend any
7 more time ruining that for her. So we end today.

8 I ask the Court to impose the 12 years and the \$7,500 in
9 restitution, and put this case to bed. Thank you, Your Honor.

10 THE COURT: Mr. Halley?

11 MR. HALLEY: Thank you, Your Honor. I raised a few
12 objections in my response to the draft presentence report. I
13 just would like to raise those again.

14 Several of them have to do with conditions that are
15 proposed -- the polygraph condition. Mr. Taylor's concerned
16 about the fairness of a polygraph -- ask that it not be
17 required. He has anxiety and is concerned about whether or not
18 there would be false positives, not just because of questions
19 about the reliability of a polygraph, but also his own unique
20 circumstances.

21 And then paragraphs 16 and 17 of the special conditions in
22 the presentence report -- we ask that the Court not impose
23 Internet access conditions that in any way would interfere with
24 his First Amendment right to access the Internet, access social
25 media. We anticipate that his Internet access will be

1 monitored, other than maybe a program on any computer or device
2 that he owns, that would allow the probation office to monitor
3 his use. But we do ask that the Court not impose any condition
4 that would bar him from social media and full Internet access
5 as necessary for employment and other need -- means.

6 And then I -- I think the only thing I'd like to ask the
7 Court for is that the Court recommend placement at USP Marion
8 in Illinois. We ask for that because it is the only BOP
9 facility that we can identify that has sex offender treatment,
10 for which Mr. Taylor has volunteered, and it also has UNICOR
11 and RDAP.

12 We ask that the Court recommend RDAP. Mr. Taylor's arrest
13 involved a drug investigation, and he clearly was deeply
14 involved in drugs and drug use at the time of the offense in
15 this case. And if he's eligible for RDAP, that would be
16 beneficial, not just to him but also to society, in helping him
17 in his rehabilitation.

18 And I don't think I have anything else. I do believe that
19 Mr. Taylor would like to address the Court and those present
20 today.

21 THE COURT: Counsel, you know that's part of the
22 regular routine, and I will call on him.

23 Mr. Taylor, you've had a chance to read the presentence
24 report and the documents filed in this case; is that correct?

25 THE DEFENDANT: I've read most of the documents.

1 THE COURT: Have you had a chance to talk it over
2 with your lawyer?

3 THE DEFENDANT: We've been a little tight on time
4 because holidays and stuff, but we've talked a little bit.
5 Yes.

6 THE COURT: Any additions or corrections you want to
7 call the Court's attention to?

8 THE DEFENDANT: No. I think Mr. Halley covered them.

9 THE COURT: This is your time to tell me anything you
10 want me to know.

11 THE DEFENDANT: Okay. Well, I wish to say I'm very
12 sorry for the harm I inflicted on [REDACTED]. In my drug-induced
13 thinking at the time, I never considered how my actions would
14 affect [REDACTED].

15 THE COURT: Stop.

16 THE DEFENDANT: As much love and respect as I have --

17 THE COURT: Stop.

18 THE DEFENDANT: -- for [REDACTED] --

19 THE COURT: Stop.

20 THE DEFENDANT: -- I would never purposely harm her
21 in any way.

22 THE COURT: Mr. Taylor, stop talking right now. I've
23 directed the court reporter to strike the name. What you just
24 did, you did in violation of what we set in motion. That's
25 three strikes right there. You said her name three times. I

1 am -- you violated the order. You're not to do it again. You
2 do not use names.

3 THE DEFENDANT: Oh.

4 THE COURT: Can you continue without doing that?

5 THE DEFENDANT: Yes.

6 THE COURT: Proceed.

7 THE DEFENDANT: The last seven years, I've had a long
8 time to reflect on my actions and consider the psychological
9 harm I caused. I can see how terribly wrong my actions were.
10 I'm very sorry and hope with time the minor victim can forgive
11 me. That's it.

12 THE COURT: I want to speak first -- I don't know if
13 the victim is still listening. By chance are you still
14 listening?

15 THE MINOR VICTIM: Yes, Your Honor.

16 THE COURT: I want to thank you for speaking today.
17 Not only -- because I think always having a victim speak in a
18 person crime is a very important part of a sentencing process.
19 And I think many lawyers miss opportunities to really make a
20 difference by having someone speak at a sentencing. They all
21 think we don't have time for these things, but this really is
22 about the opportunity to bring closure on both sides. So I
23 want to tell you I'm very appreciative that you took the time.

24 I want to also tell you that you have a big life ahead of
25 you, and this is in your past. It's part of your trauma and

1 your story -- your narrative -- but it does not control or own
2 you. And you clearly have some resilience and have gotten the
3 help that you need. And with the agreed-upon \$7,500 in
4 restitution, at some point you will be reimbursed for those
5 counseling sessions. But I would strongly encourage you to
6 take advantage of any and every counseling appointment that can
7 be offered to you, but, that most importantly, you understand
8 that this was not your fault, and that you have a future ahead
9 of you, and today closed this chapter, other than to do the
10 work you need to do and move on.

11 This person has no control over you. And at some such
12 time when he's returned to the community -- and there will be a
13 provision he's not to have any contact with you -- that you are
14 leading a good life, pursuing a career or a family or whatever
15 life offers you, and are doing the things that bring you joy.
16 And I'm happy that this is closing. Ms. Potter I know -- I
17 know everybody worked very hard in this case. And so it has
18 taken a long time. And so I want you to know how much I
19 appreciate your taking the time today to give your message and
20 to be present. So many people just aren't even present when
21 this happens. So -- and I wish you a good life.

22 There are so many good written materials out there for
23 victims. I think the stories and the narratives written by the
24 women gymnasts -- you could name them all -- Simone Biles, Aly
25 Raisman -- you know, all of those young women have written and

1 are incredibly resilient and pursuing the therapy that they
2 need and speaking out so that this doesn't happen to other
3 people. So I hope this -- I hope you feel empowered today as
4 speaking your truth and being heard, because I heard you.

5 THE MINOR VICTIM: Thank you, Your Honor. I
6 appreciate it.

7 THE COURT: You're welcome.

8 Mr. Taylor, I've waited and waited and waited for this
9 case to come to some ending. And I really thought it was
10 probably going to get tried, because you were so difficult in
11 all the sessions that we've had and addressing it. So it
12 surprises me that you've given the statement that you've given.
13 And I'm not sure, but I'll remain hopeful, that it's sincere.
14 But I'm not sure. But at least you had the good sense today to
15 come in and apologize. And I hope it's meaningful, because, at
16 the end of the day, it's not really any more about anybody else
17 other than you better figure out how you can be in society and
18 not revictimize individuals. Yeah, you pled guilty in these
19 cases. I respect the lawyers on both sides of this particular
20 case. And the sentence is going to --

21 THE COURTROOM DEPUTY: He's --

22 THE COURT: Oh, I just lost him. Every time I look
23 away -- I looked down to look at my page.

24
25 (A break was taken from 10:47 AM to 10:48 AM.)

1 THE COURT: Mr. Taylor --

2 THE DEFENDANT: Can you hear me?

3 THE COURT: -- you're back. Yes, we can hear you.

4 I'm going to digress for a second, because I just don't
5 know that anybody really did their homework. I don't know if
6 you people pay attention. I started out as a state court
7 judge. So these kinds of cases I saw on a regular basis, not
8 only as a trial judge, but then, more importantly, I was the
9 juvenile judge. I've seen so many of these cases that it's
10 unbelievable, to the point where I wondered if -- you know --
11 if there were kids that weren't abused. The level of sexual
12 abuse on kids is unbelievable. That's one thing. So I think
13 people forget that.

14 Number 2, one of the things that I always do -- and if you
15 know anything about me -- is I figure out what programs are out
16 there that can make a difference for people. And I regularly
17 sat in on sex offender treatment groups. And what I learned in
18 that process is -- and why I don't think there's a problem with
19 paragraph 52 one way or the other -- is that all the victims
20 and all the abuse is underreported.

21 And when they go through the sex offender treatment, and
22 people have to talk about their sexual assault history -- their
23 sex abuse history -- I've sat in rooms where I've been there
24 for hours, one right after the other, talking about all their
25 victims. Because they have to -- in order to really get

1 through the program, they have to really acknowledge everything
2 that they've done and be truthful. And -- if they're going to
3 heal -- if they're going to do anything -- because, at some
4 point, that's important. So I've sat through that.

5 So, you know, whether it's paragraph number 52 or there
6 are other victims -- there are other victims. You know, I have
7 no doubt. I'm not basing a sentence on any of that. But I've
8 been involved in the therapy and the forensics of all this, and
9 the treatment providers will say that, generally, they're
10 underreported -- the numbers of victims -- just generally.
11 That's a piece of information. So whether 52 is in there or
12 not doesn't really matter. I'm going to do the agreed-upon
13 sentence.

14 But I'm not taking out the polygraph, period. I'm not
15 taking out the provisions about social media or access to the
16 Internet, because it's quite a long time before you're going to
17 be back in circulation. And that will go before the judge
18 who -- if there's better resources to monitor and to address
19 those issues, that will be addressed. Because I'll set a
20 hearing 30 days after your release from custody. Because
21 hopefully by the time you're out, there will be modifications
22 made to the conditions and better technology to make sure to
23 track and trap any inappropriate behavior.

24 So, for the time being, I'm not addressing those, because
25 I don't want any person down the road to think I didn't believe

1 that you needed to be supervised on social media. You need to
2 be monitored closely, and social media needs to be acutely
3 addressed with sophisticated tools that may or may not be
4 developed by that time. But that issue is for when you come
5 out. And you're not out tomorrow, so I'm not going to worry
6 about it. It will be dealt with. And who knows what kind of
7 contracts we'll have with what providers or what technology
8 will be in place. And so I'm going to leave that for another
9 day.

10 What you've acknowledged to have done --

11 What, Mr. Halley?

12 THE COURTROOM DEPUTY: He's on mute.

13 THE DEFENDANT: I can't hear Mr. Halley.

14 THE COURT: No one can.

15 MR. HALLEY: Something has occurred to me that I
16 forgot to mention. So I just wanted to make sure that I have a
17 chance to raise it concerning credit for time served, Your
18 Honor. Pardon me for interrupting.

19 THE COURT: The Bureau of Prisons will do the
20 calculations. That's how we'll deal with the credit for time
21 served.

22 MR. HALLEY: But, if I may, what I'd like to ask is
23 that the judgment reflect that Mr. Taylor's been in custody
24 since August 15th, 2014. Some of that time was state custody,
25 and it has not been credited to any other time.

1 THE COURT: Again, I'm going to leave it to the
2 Bureau of Prisons for calculation. They may or may not give
3 him credit for that. I'm not intending to give him credit for
4 that. My -- by my -- I'm not affirmatively giving him credit
5 for that. I'm not going to put that in the record. If the
6 Bureau of Prisons gives him credit, so be it. But I'm not
7 going to give him credit in the judgment.

8 I cannot begin to tell you -- and I'm just going to -- I
9 just need to tell you the damage that I have seen from people
10 who have sexually assaulted others. And I'm being very
11 careful, because I, more than anything, want the victim in this
12 instance, who had the bravery and the courage to come speak to
13 you, to be empowered. But the damage that's done to many
14 people who are not as resilient is astounding and fills
15 prisons, fills foster care, fills juvenile facilities, and is
16 the start of a very difficult life.

17 That's why the books *The Body Keeps the Score*, *What*
18 *Happened to You* -- and trauma-informed therapy, which has come
19 into its own in these last few years -- is making an incredible
20 difference in people's ability to address child abuse and child
21 sexual abuse in a way in which they can move on and get that
22 burden off their back and give them a chance to survive.

23 I'm going to suspect that you have that trauma as well.
24 And it would be important for you to address those issues in a
25 therapeutic session, and to address and find out why you've

1 done the acts that you've done, which are -- there is no --
2 there is no explaining, other than self-gratification, abusing
3 other children, or because you were sexually assaulted as a
4 child.

5 There's a whole body of literature on this. And you, in
6 treatment I hope, will decide that this isn't just a be-seen,
7 go-and-check-the-box therapy, but you're going to figure out
8 why you're doing these incredibly dangerous, offensive, and
9 brutal acts, and involving children, and implied and direct
10 threats. It's very dangerous behavior. It's ruining people's
11 lives. So I suspect it may have been a part of your early
12 childhood, and it could have been ruining your life. So I hope
13 you will be sincere in taking the therapy that's going to be
14 offered to you.

15 I'm certainly going to make the recommendation for Marion
16 for the treatment facility. And who knows? We can't figure
17 out what the Bureau of Prisons is offering anybody anywhere.
18 So if they have a sex offender program there, and it's actually
19 operational, and you get to go there, that's great. But the
20 Bureau of Prisons right now is -- frankly, it's a little
21 difficult for us to understand what's going on.

22 If you want to -- I'm not going to make a recommendation
23 for RDAP, but I will make a recommendation for the sex offender
24 program. I think there are -- if you want to pursue the RDAP
25 program, I'll let you pursue that. But it's most important

1 that you get the sex offender program. And I don't want the
2 Bureau of Prisons to be confused by my putting two different
3 programs in there when I want and underscore you to be in a sex
4 offender program, period. And I don't want them to get off the
5 hook by putting you in RDAP and not putting you in a sex
6 offender program. So I'm single-referring to get their
7 attention that that's the most important treatment that needs
8 to be offered in prison.

9 There's not a lot I can say in this case that will make a
10 difference. I've told you what I think you need to hear and
11 do, and that's to do honestly the therapy and the treatment you
12 need to do. When you come out, you need to comply with the
13 conditions that will be in place.

14 And I -- Ms. Potter is not the first prosecutor to tell me
15 that she will be unrelenting in following somebody when they
16 come out. And I can name the other prosecutors who are no
17 longer in the office who did that on a regular basis. And,
18 trust me, if I'm still here, and she brings you back in front
19 of me, you better understand I'm not -- I am not going to
20 tolerate any kind of wavering from any of these particular
21 conditions.

22 You are not going to have a lot of leeway. And so don't
23 come out thinking that you're going to be able to pull the wool
24 over everybody's eyes and do what you want to do. We will be
25 on top of this. And I don't say that very often. So I'm

1 saying that in this particular case. I'm on top of my people
2 pretty closely, but nothing like I will be on top of this case
3 when you come out if I'm still here. And I'm not sure, with
4 the calculations, when exactly you'll be out. But if it's not
5 me, I hope that somebody will stay on top of this case. But
6 I'm confident Ms. Potter will bring that to everyone's
7 attention.

8 So, again, I really don't have much more to say, other
9 than I gave you the heads-up on the books, and I gave -- I
10 spoke to the victim who -- it was important to me to see her
11 become resilient in this with closure today, and that you spend
12 your time in treatment in the institution that we'll recommend.
13 And when you come out, you need to understand that you need to
14 comport yourself with the conditions that will be in place.

15 So the Court finds the total offense level is a 37.
16 Criminal history category is a I. It results in an advisory
17 guidelines range -- they have 180 months. I've looked at the
18 factors in 18 USC § 3553, nature and circumstance of this
19 offense, your own criminal history and characteristics, the
20 goals of sentencing, punishment, deterrence, rehabilitation,
21 community safety, and any other factor that the Court deems
22 important in fashioning a reasonable but not greater than
23 necessary sentence for this case.

24 The factor that is important to me is that the lawyers
25 have agreed to this sentence. It might not be the sentence

1 that I would have imposed -- I guess I'm telling you that right
2 now -- but it's the sentence they agreed to, to get closure of
3 this case. I respect that they did that, and you're going to
4 be the beneficiary of that agreement.

5 And you better not abuse, as you are either in the
6 institution or when you're coming out, that that sentence is an
7 agreed-upon sentence, and that -- once you're out on
8 supervision, you'll be under very strict control and
9 guidance -- and if you come back in front of me with anything
10 close to something that's the nature related to this crime, I
11 will have no difficulty imposing an appropriate sentence.

12 There is an agreed-upon restitution figure of the amount
13 of \$7,500. That will be included. But in fashioning this
14 sentence -- interest will accrue on that obligation if it is
15 not paid within the next 14 days. And the payments schedule
16 will be set up both -- if you're working in prison, you'll make
17 payments on the restitution. If you're not working, probation
18 will evaluate your payment schedule and set up payments not
19 less than \$100 with regard to the central sentence in this
20 case.

21 With regard to Count 1, you're committed to the Bureau of
22 Prisons for confinement for a period of 120 months. Regarding
23 Count 2, you're committed to the Bureau of Prisons for
24 confinement for a period of 24 months to be served consecutive
25 to the sentence imposed on Count 1. Upon release from

1 confinement, you will serve a 15-year term of supervised
2 released on Count 1 and a 3-year term of supervised release on
3 Count 2, subject to the mandatory conditions of supervision,
4 the standard conditions of supervision adopted by this Court,
5 and the following special conditions. I am happy to read all
6 of them out loud.

7 Mr. Halley, if you've reviewed those with your client and
8 wish to waive reading of the 22 specific special conditions, I
9 will do so. If not, I'm happy to read them, and I'm adding a
10 23rd.

11 You're on mute. Mr. Halley, you're on mute.

12 MR. HALLEY: Am I audible now, Your Honor?

13 THE COURT: Yes.

14 MR. HALLEY: We're happy to waive the reading of the
15 conditions. I have them in front of me. I've reviewed them
16 with Mr. Taylor. I -- they're at the -- in my copy of the
17 final presentence report, they're at the end of the sentencing
18 recommendation section.

19 THE COURT: Well, I have something -- I always have
20 something separate. But there are 22 conditions, and I have
21 Mr. Jacobson on.

22 And the presentence report conditions mirror the suggested
23 sentencing order you gave me; right, Mr. Jacobson?

24 PROBATION OFFICER JACOBSON: Yes, that's correct,
25 Your Honor.

1 THE COURT: Yep. The 23rd one is you're to have a
2 status hearing in front of the judge that will supervise you
3 within 30 days of your release from custody. And, at that
4 time, everything can be reviewed, and your circumstances will
5 be looked at. And we can read these 22 now, but they'll be
6 most relevant --

7 THE COURTROOM DEPUTY: We lost him.

8 THE COURT: Oh, there we go. We lost him.

9
10 (A break was taken from 11:02 AM to 11:03 AM.)

11
12 THE DETENTION OFFICER: Can they hear you?

13 THE DEFENDANT: You guys can hear me?

14 MS. POTTER: Yes.

15 THE DEFENDANT: Yeah. I think they can hear me.

16 THE COURT: All right. What I -- where I left off, I
17 believe, is that there are 22 conditions. Your lawyer has just
18 waived reading. I've added a 23rd, which is you will have a
19 status conference in front of the sentencing judge or your
20 supervising judge. It may or may not be me. It may be
21 somebody else. But those conditions will be reviewed. Any
22 changes in supervision will be addressed at that particular
23 time. But you're not coming out of prison tomorrow, so I don't
24 think there's -- there's different contracts that will change.
25 And we'll take a look at any -- there's technology that will

1 change. So I'm certain that there will be a review.

2 I'm not imposing a fine. You'll have the financial
3 obligation with restitution. You don't have financial
4 resources or appreciable earning ability to pay anything more
5 than the restitution, which is important. You have an
6 obligation to pay the fee assessments. It's \$100 for the count
7 of conviction. There are two counts, a total of \$200.

8 Payment of any criminal monetary penalties, including the
9 restitution, shall be due during the period of imprisonment as
10 follows: 50 percent of wages earned if you are participating
11 in a Prison Industry Program; \$25 per quarter if you are not
12 working in the Prison Industry Program; if you receive a
13 substantial resource from any source including inheritance,
14 settlement, or other judgment during the period of
15 incarceration, you shall be required to apply this value of
16 such resource to any restitution or fine that is still owed
17 pursuant to 18 USC § 3664(n).

18 With regard to the total criminal monetary penalties in
19 this case, if there's an unpaid balance at the time of your
20 release, it will be paid in monthly installments of not less
21 than \$100 or not less than 10 percent of your monthly gross
22 earnings, whichever is greater, until it's paid in full or
23 commences. And it's to commence beginning upon your release
24 from custody.

25 Again, I consider that something to be reviewed in that

1 status conference. I often give people a little bit of time
2 before they start having to make their payments. But that will
3 be reviewed at that particular moment when you're released.

4 You've entered into a plea agreement that waives all or
5 part of your appeal rights. You understand that; correct?

6 THE DEFENDANT: Yes.

7 THE COURT: And if you wish to file a notice of
8 appeal, you may do so, but it will be governed by your plea
9 agreement. And you understand that; correct?

10 THE DEFENDANT: Yes.

11 THE COURT: You have 14 days in which to file the
12 notice of appeal. If you cannot afford to do so, contact the
13 Clerk's Office. It will be done for you and done for free, but
14 must be done within 14 days of today's date -- or actually the
15 date of the judgment, which I believe will be today.

16 Did I miss anything, Ms. Potter or Mr. Halley?

17 MS. POTTER: Not from the Government, though we would
18 move to dismiss the underlying indictments in this matter. I
19 believe there were -- the -- any remaining indictments will be
20 dismissed.

21 MR. HALLEY: And, Your Honor, not something that you
22 missed. You ordered interest on the restitution. I just would
23 like to ask that the Court consider not imposing interest,
24 because Mr. Taylor has very limited resources.

25 THE COURT: I'm going to leave the interest on,

1 because I believe that, over time, he'll be able to make this
2 payment. And I want him to be incentivized to get it paid off
3 sooner rather than later. I often waive --

4 MR. HALLEY: Thank you for hearing me, Your Honor.

5 THE COURT: Yeah, I appreciate it. Is there anything
6 else we can take up at this point? Anything else I need to
7 take up?

8 MR. HALLEY: No, Your Honor.

9 MS. POTTER: Not from the Government.

10 MR. HALLEY: And not from the Defense.

11 THE COURT: All right. I think I made my points.

12 Mr. Taylor, you have a big choice ahead of you, and you
13 need to decide what you're going to do. And I hope for your
14 sake and for the public, that you will take the treatment
15 seriously, and that you will come back and not revictimize the
16 community. With that, we're in recess.

17 MS. POTTER: Thank you, Your Honor.

18 MR. HALLEY: Thank you very much, Your Honor.

19
20 (The proceedings adjourned at 11:07 AM.)
21
22
23
24
25

C E R T I F I C A T E

United States of America v. Ernest Luther Taylor

1:15-cr-173-AA

Sentencing Hearing

December 15, 2021

I certify, by signing below, that the foregoing is a true and correct transcript, to the best of my ability, of the video conference proceedings heard via video conference, taken by stenographic means. Due to the audio-visual connection, parties appearing via speakerphone or cell phone or wearing masks due to coronavirus, speakers overlapping when speaking, speakers not identifying themselves before they speak, fast speakers, the speaker's failure to enunciate, background noises and/or other technical difficulties that occur during video conference proceedings, this certification is limited by the above-mentioned reasons and any technological difficulties of such proceedings occurring over the video conference at the United States District Court of Oregon in the above-entitled cause.

A transcript without an original signature, conformed signature, or digitally signed signature is not certified.

/s/Kendra A. Stepler, RPR
Official Court Reporter

Signature Date: 5/4/2022

FILED JUN 21 09:46:00 AM 2021

PORTLAND MAIN OFFICE
1000 SW Third Avenue, Suite 600
Portland, Oregon 97204
(503) 727-1000
www.usdoj.gov/usao/or



U.S. DEPARTMENT OF JUSTICE
United States Attorney's Office
District of Oregon
Billy J. Williams, United States Attorney

EUGENE BRANCH
405 E 8th Avenue, Suite 2400
Eugene, Oregon 97401
(541) 465-6771

Judith R. Harper
Assistant U.S. Attorney
Judi.Harper@usdoj.gov
(541) 776-3564
Reply to Medford Office

MEDFORD BRANCH
310 West Sixth Street
Medford, Oregon 97501
(541) 776-3564

May 5, 2021

Jim Halley
Attorney at Law
735 S.W. 1st Ave.
Portland, OR 97204

Re: *United States v. Ernest Luther Taylor*, Case No. 1:15-cr-00173-AA
Amended Plea Agreement Letter

Dear Counsel:

1. **Parties/Scope:** This plea agreement is between this United States Attorney's Office (USAO) and defendant, and thus does not bind any other federal, state, or local prosecuting, administrative, or regulatory authority except as specified herein. This agreement does not apply to any charges other than those specifically mentioned herein.
2. **Charges:** Defendant agrees to plead guilty to a two-count superseding information in which he is charged in Count 1 with possession of child pornography in violation of Title 18, United States Code, Section 2252A(a)(5)(B) and in Count 2 with transportation of obscene material, in violation of Title 18, United States Code, Section 1462.
3. **Penalties:** The maximum sentence for Count 1 is 10 years' imprisonment, a \$250,000 fine, a term of supervised release of five years to life, and a \$100 fee assessment. The maximum sentence for count 2 is 5 years; imprisonment, a fine of \$250,000, a term of supervised release of up to three years, and a \$100 fee assessment. Defendant agrees to pay the fee assessment by the entry of his guilty pleas or to explain to the Court why this cannot be done. Defendant further stipulates to the forfeiture of the assets set forth below. Defendant may be required to pay restitution to any victim of his offenses. Defendant will also be required to register as a sex offender.

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4. **Dismissal/No Prosecution:** The USAO further agrees not to bring additional charges against defendant in the District of Oregon arising out of this investigation, known to the USAO at the time of this agreement.

5. **Elements and Factual Basis:** In order for defendant to be found guilty of Count 1 of the Superseding Information, the government must prove the following elements beyond a reasonable doubt:

First, the defendant knowingly possessed any matter that contained an image of child pornography, as defined in Title 18 United States Code Section 2256(8); and

Second, that such child pornography had been transported in interstate or foreign commerce by any means, including by computer, or that such child pornography had been produced using materials that had been mailed or shipped or transported in interstate or foreign commerce by any means, including by computer; and

Third, the defendant knew that such items constituted child pornography.

In order for defendant to be found guilty of Count 2 of the Superseding Information, the government must prove the following elements beyond a reasonable doubt:

First, the defendant knowingly used an express company or common carrier or interactive computer service to transport certain articles in interstate commerce, as charged; and

Second, the defendant knew, at the time of such transportation, the general nature of the content of the articles; and

Third, the articles were obscene

Defendant admits the elements of the offenses alleged in Counts 1 and 2 of the Superseding Information and admits that he committed each of element.

As part of a drug investigation, defendant's phone was seized and a review of that phone revealed child pornography. Specifically, defendant admits that on that device were videos depicting the sexual abuse of MVI and that those videos constitutes child pornography. Defendant transferred them to and stored them on his phone and hid them using a phone application. At various points he transported those videos to California and Washington while traveling. He admits that he is on the videos.

6. **Sentencing Factors:** The parties agree that the Court must first determine the applicable advisory guideline range, then determine a reasonable sentence considering that range and the

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factors listed in 18 U.S.C. § 3553(a). Where the parties agree that sentencing factors apply, such agreement constitutes sufficient proof to satisfy the applicable evidentiary standard.

7. **Relevant Conduct:** The parties agree that the applicable guideline provision is USSG § 2G2.1.

8. **Acceptance of Responsibility:** Defendant must demonstrate to the Court that defendant fully admits and accepts responsibility under USSG § 3E1.1 for defendant's unlawful conduct in this case. If defendant does so, the USAO will recommend a three-level reduction in defendant's offense level (two levels if defendant's offense level is less than sixteen). The USAO reserves the right to change this recommendation if defendant, between plea and sentencing, commits any criminal offense, obstructs or attempts to obstruct justice as explained in USSG § 3C1.1, or acts inconsistently with acceptance of responsibility as explained in USSG § 3E1.1.

9. **Sentencing Recommendation:** If defendant withdraws all pending motions, agrees to all the terms of this agreement, and enters a guilty plea promptly, the parties will jointly recommend a total sentence of 12 years' imprisonment. If defendant receives the jointly recommended 12 year sentence, the Jackson County District Attorney agrees not to prosecute defendant for the sexual abuse of MV1, some of which is depicted in the videos.

11. **Waiver of Appeal/Post-Conviction Relief:** Defendant knowingly and voluntarily waives the right to appeal from any aspect of the conviction and sentence on any grounds, except for a claim that: (1) the sentence imposed exceeds the statutory maximum, or (2) the Court arrives at an advisory sentencing guideline range by applying an upward departure under the provisions of Guidelines Chapters 4 or 5K, or (3) the Court exercises its discretion under 18 U.S.C. § 3553(a) to impose a sentence which exceeds the advisory guideline sentencing range as determined by the Court. Should defendant seek an appeal, despite this waiver, the USAO may take any position on any issue on appeal. Defendant also waives the right to file any collateral attack, including a motion under 28 U.S.C. § 2255, challenging any aspect of the conviction or sentence on any grounds, except on grounds of ineffective assistance of counsel, and except as provided in Fed. R. Crim. P. 33 and 18 U.S.C. § 3582(c)(2). In the event that defendant's conviction under this agreement is vacated, the government may reinstate and/or file any other charges, and may take any position at a resentencing hearing, notwithstanding any other provision in this agreement.

12. **Court Not Bound:** The Court is not bound by the recommendations of the parties or of the presentence report (PSR) writer. Because this agreement is made under Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, defendant may not withdraw any guilty plea or rescind this plea agreement if the Court does not follow the agreements or recommendations of the parties.

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13. **Full Disclosure/Reservation of Rights:** The USAO will fully inform the PSR writer and the Court of the facts and law related to defendant's case. Except as set forth in this agreement, the parties reserve all other rights to make sentencing recommendations and to respond to motions and arguments by the opposition.

14. **Breach of Plea Agreement:** If defendant breaches the terms of this agreement, or commits any new criminal offenses between signing this agreement and sentencing, the USAO is relieved of its obligations under this agreement, but defendant may not withdraw any guilty plea.

If defendant believes that the government has breached the plea agreement, defendant must raise any such claim before the district court, either prior to or at sentencing. If defendant fails to raise a breach claim in district court, defendant has waived any such claim and is precluded from raising a breach claim for the first time on appeal.

15. **Restitution:** Defendant agrees fully to disclose all assets in which defendant has any interest or over which defendant exercises control, directly or indirectly, including those held by a spouse, nominee, or third party. Defendant agrees to truthfully complete the Financial Disclosure Statement provided herein by the earlier of fourteen days from defendant's signature on this plea agreement or the date of defendant's entry of a guilty plea, sign it under penalty of perjury, and provide it to both the USAO and the United States Probation Office. Defendant agrees to provide updates with any material changes in circumstances, as described in 18 U.S.C. § 3664(k), within seven days of the event giving rise to the changed circumstances.

Defendant expressly authorizes the USAO to obtain a credit report on defendant. Defendant agrees to provide waivers, consents, or releases requested by the USAO to access records to verify the financial information. Defendant also authorizes the USAO to inspect and copy all financial documents and information held by the U.S. Probation Office.

The parties agree that defendant's failure to timely and accurately complete and sign the Financial Disclosure Statement, and any update thereto, may, in addition to any other penalty or remedy, constitute defendant's failure to accept responsibility under USSG § 3E1.1.

Transfer of Assets

Defendant agrees to notify the Financial Litigation Unit of the USAO before defendant transfers any interest in property with a value exceeding \$1000 owned directly or indirectly, individually or jointly, by defendant, including any interest held or owned under any name, including trusts, partnerships, and corporations.

Restitution

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Defendant understands that the Court shall order restitution to each victim in the full amount of each victim's losses as determined by the Court. Based on the Supreme Court's decision in *Paroline v. United States*, 134 S. Ct. 1710 (2014), restitution may be owed to multiple victims who were in the images and videos possessed and traded by the defendant. The USAO will provide any restitution requests that are received to the defense and the Court and make any appropriate request for restitution.

Defendant understands and agrees that the total amount of any monetary judgment that the Court orders defendant to pay will be due and payable immediately. Defendant further understands and agrees that pursuant to 18 U.S.C. § 3614, defendant may be resentenced to any sentence which might have originally been imposed if the court determines that defendant has knowingly and willfully refused to pay a fine or restitution as ordered or has failed to make sufficient bona fide efforts to pay a fine or restitution. Additionally, defendant understands and agrees that the government may enforce collection of any fine or restitution imposed in this case pursuant to 18 U.S.C. §§ 3572, 3613, and 3664(m), notwithstanding any initial or subsequently modified payment schedule set by the court. Defendant understands that any monetary debt defendant owes related to this matter may be included in the Treasury Offset Program to potentially offset defendant's federal retirement benefits, tax refunds, and other federal benefits.

Pursuant to 18 U.S.C. § 3612(b)(1)(F), defendant understands and agrees that until a fine or restitution order is paid in full, defendant must notify the USAO of any change in the mailing address or residence address within 30 days of the change. Further, pursuant to 18 U.S.C. § 3664(k), defendant shall notify the Court and the USAO immediately of any material change in defendant's economic circumstances that might affect defendant's ability to pay restitution, including, but not limited to, new or changed employment, increases in income, inheritances, monetary gifts, or any other acquisition of assets or money.

16. **Forfeiture Terms:** By signing this agreement, defendant knowingly and voluntarily forfeits all right, title, and interest in and to all assets which are subject to forfeiture pursuant to 18 U.S.C. § 2253, including any electronic devices and media storage devices that were seized from him, which defendant admits were used to facilitate defendant's criminal activity.

A. **Agreement to Civil Forfeiture:** Defendant agrees not to file a claim or withdraw any claim already filed to any of the listed property in any civil proceeding, administrative or judicial, which [has been or may be] initiated. Defendant further waives the right to notice of any forfeiture proceeding involving this property and agrees not to assist others in filing a claim in any forfeiture proceeding.

B. **No Alteration or Satisfaction:** Defendant knowingly and voluntarily waives the right to a jury trial on the forfeiture of assets. Defendant knowingly and voluntarily waives all constitutional, legal and equitable defenses to the forfeiture of these assets, including any claim

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or defense under the Eighth Amendment to the United States Constitution, and any rights under Rule 32.2 of the Federal Rules of Criminal Procedure. Defendant further agrees forfeiture of defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty this Court may impose upon defendant in addition to forfeiture.

C. **Final Order of Forfeiture:** Defendant agrees not to contest entry of a Final Order of Forfeiture reflecting these forfeiture terms at the conclusion of the criminal case.

17. **Memorialization of Agreement:** No promises, agreements, or conditions other than those set forth in this agreement will be effective unless memorialized in writing and signed by all parties listed below or confirmed on the record before the Court. If defendant accepts this offer, please sign and attach the original of this letter to the Petition to Enter Plea.

///

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///

///

18. **Deadline:** This plea offer expires if not accepted by May 14, 2021 at 10:00 a.m.

Sincerely,

SCOTT ERIK ASPHAUG
Acting United States Attorney

s/ Judith Harper
JUDITH HARPER
Assistant United States Attorney

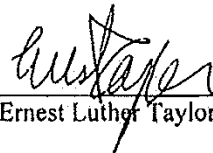
s/ Amy E. Potter
AMY E. POTTER
Assistant United States Attorney

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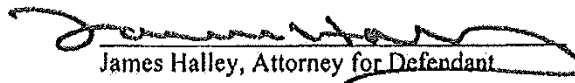
I have carefully reviewed every part of this agreement with my attorney. I understand and voluntarily agree to its terms. I expressly waive my rights to appeal as outlined in this agreement. I wish to plead guilty because, in fact, I am guilty.

5-28-2021
Date


Ernest Luther Taylor, Defendant

I represent the defendant as legal counsel. I have carefully reviewed every part of this agreement with defendant. To my knowledge, defendant's decisions to make this agreement and to plead guilty are informed and voluntary ones.

6/2/2021
Date


James Halley, Attorney for Defendant

Revised May 2018

FILED 01 JUN '21 11:36 USDC-ORE

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

UNITED STATES OF AMERICA

1:15-cr-00173-AA

v.

SUPERSEDING INFORMATION

ERNEST LUTHER TAYLOR,

18 U.S.C. § 2252A(a)(5)(B) and (b)(2)

18 U.S.C. § 1462

Defendant.

FORFEITURE ALLEGATION

THE UNITED STATES ATTORNEY CHARGES:

COUNT 1

**(Possession of Child Pornography)
(18 U.S.C. § 2252A(a)(5)(B) and (b)(2))**

On or before August 2, 2014, in the District of Oregon, defendant **ERNEST TAYLOR**, knowingly and unlawfully possessed child pornography, as defined in Title 18, United States Code, Section 2256(8), which contained a visual depiction of a minor engaged in sexually explicit conduct, such image having been mailed, shipped, and transported in or affecting interstate and foreign commerce by any means, including by computer;

In violation of Title 18, United States Code, Sections 2252A(a)(5)(B) and (b)(2).

COUNT 2

**(Transportation of Obscene Material)
(18 U.S.C. § 1462)**

Between on or about December 2012 and August 2014, in the District of Oregon and elsewhere, defendant **ERNEST TAYLOR**, knowingly used an express company or common

Superseding Information

Page 1

carrier or interactive computer service to transport certain materials that he knew contained any obscene or lewd and lascivious picture or film;

In violation of Title 18, United States Code, Section 1462.

FORFEITURE ALLEGATION

Upon conviction of any of the offenses listed above, defendant **ERNEST TAYLOR**, shall forfeit to the United States, pursuant to 18 U.S.C. §§ 1467 and 2253, any and all property used or intended to be used in any manner or part to commit or to promote the commission of the aforementioned violations or that contain any visual depiction that constitutes obscene material or child pornography.

Dated: June 1, 2021

Respectfully submitted,

SCOTT ERIK ASPHAUG
Acting United States Attorney

s/ Judith R. Harper
JUDITH R. HARPER, OSB #903260
Assistant United States Attorney

s/ Amy E. Potter
AMY E. POTTER, DC Bar #482806
Assistant United States Attorney

FILED 15 MAY 8 9 06 USDC-ORM

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

MEDFORD DIVISION

UNITED STATES OF AMERICA

1:15-CR- ~~00173-AA~~

Plaintiff,

INDICTMENT

v.

18 U.S.C. § 2251(a)

18 U.S.C. §§ 1467, 2253, 2428

ERNEST LUTHER TAYLOR,

Defendant.

THE GRAND JURY CHARGES

COUNT 1

USING A MINOR TO PRODUCE VISUAL DEPICTION

OF SEXUALLY EXPLICIT CONDUCT

On or about December 17, 2012, in the District of Oregon, defendant ERNEST LUTHER TAYLOR knowingly used a minor, B.H., to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, and that such visual depiction was produced using materials that had been shipped or transported in interstate commerce; a Samsung model SGH-T839 sidekick cellular telephone with serial number R26B581605R, in violation of Title 18, United States Code, Section 2251(a).

COUNT 2

**USING A MINOR TO PRODUCE VISUAL DEPICTION
OF SEXUALLY EXPLICIT CONDUCT**

On or about January 10, 2013, in the District of Oregon, defendant ERNEST LUTHER TAYLOR, knowingly used a minor, B.H., to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, and that such visual depiction was produced using materials that had been shipped or transported in interstate commerce; a Samsung model SGH-T839 sidekick cellular telephone with serial number R26B581605R, in violation of Title 18, United States Code, Section 2251(a).

COUNT 3

**USING A MINOR TO PRODUCE VISUAL DEPICTION
OF SEXUALLY EXPLICIT CONDUCT**

On or about January 10, 2013, in the District of Oregon, defendant ERNEST LUTHER TAYLOR, knowingly used a minor, B.H., to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, and that such visual depiction was produced using materials that had been shipped or transported in interstate commerce; a Samsung model SGH-T839 sidekick cellular telephone with serial number R26B581605R, in violation of Title 18 United States Code, Sections 2251(a).

COUNT 4

**USING A MINOR TO PRODUCE VISUAL DEPICTION
OF SEXUALLY EXPLICIT CONDUCT**

On or about January 15, 2013, in the District of Oregon, defendant ERNEST LUTHER TAYLOR, knowingly used a minor, B.H., to engage in sexually explicit conduct for the purpose

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of producing a visual depiction of such conduct, and that such visual depiction was produced using materials that had been shipped or transported in interstate commerce; a Samsung model SGH-T839 sidekick cellular telephone with serial number R26B581605R, in violation of Title 18, United States Code, Section 2251(a).

COUNT 5

**USING A MINOR TO PRODUCE VISUAL DEPICTION
OF SEXUALLY EXPLICIT CONDUCT**

On or about July 1, 2013, in the District of Oregon, defendant ERNEST LUTHER TAYLOR, knowingly used a minor, B.H., to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, and that such visual depiction was produced using materials that had been shipped or transported in interstate commerce; a Samsung model SGH-T839 sidekick cellular telephone with serial number R26B581605R, in violation of Title 18, United States Code, Section 2251(a).

COUNT 6

**USING A MINOR TO PRODUCE VISUAL DEPICTION
OF SEXUALLY EXPLICIT CONDUCT**

On or about August 2, 2014, in the District of Oregon, defendant ERNEST LUTHER TAYLOR, knowingly used a minor, B.H., to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, and that such visual depiction was knowingly transported or transmitted by defendant using a means or facility of interstate commerce (the internet), in violation of Title 18, United States Code, Section 2251(a).

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COUNT 7

**USING A MINOR TO PRODUCE VISUAL DEPICTION
OF SEXUALLY EXPLICIT CONDUCT**

On or about August 2, 2014, in the District of Oregon, defendant ERNEST LUTHER TAYLOR, knowingly used a minor, B.H., to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, and that such visual depiction was knowingly transported or transmitted by defendant using a means or facility of interstate commerce (the internet), in violation of Title 18, United States Code, Section 2251(a).

COUNT 8

**USING A MINOR TO PRODUCE VISUAL DEPICTION
OF SEXUALLY EXPLICIT CONDUCT**

On or about August 2, 2014, in the District of Oregon, defendant ERNEST LUTHER TAYLOR, knowingly used a minor, B.H., to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, and that such visual depiction was knowingly transported or transmitted by defendant using a means or facility of interstate commerce (the internet), in violation of Title 18, United States Code, Section 2251(a).

CRIMINAL FORFEITURE ALLEGATION

Upon conviction of one or more of the offenses alleged in Counts 1 through 8 of this Indictment, defendant ERNEST LUTHER TAYLOR, shall forfeit to the United States any property, real or personal, used or intended to be used to commit or to promote the commission of such offenses, including the following computer equipment seized:

1. Samsung brand cellular phone, model SGH-T839, bearing serial number R2EB514052A in a black nylon pouch (SOHTCTF Item # 1);

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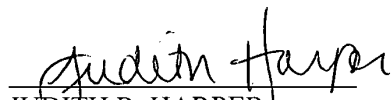
2. Blackberry brand cellular phone black in color, model 9310, bearing IMEI number A00000261EE121 (SOHTCTF Item # 2);
3. Samsung brand cellular phone black in color, model SGH-T839, bearing serial number R28B631152K (SOHTCTF Item # 3);
4. Samsung brand cellular phone black in color, model SGH-T839, bearing IMEI number 354889/04/138861/0 (SOHTCTF Item # 4);
5. Dell Inspiron Duo laptop computer black in color, service code number 6958325881 (SOHTCTF Item # 5);
6. Dell Inspiron Duo laptop computer black in color, service code number 8886751885, inside a black nylon case (SOHTCTF Item # 6);
7. Clear plastic pill case containing 6 Micro SD storage media cards (SOHCTF Item # 7);
8. Dane Elec 1 GB USB storage device silver in color (SOHCTF Item # 8).

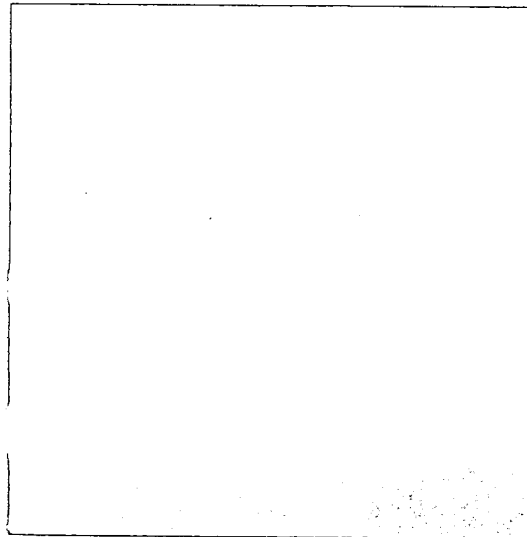
All pursuant to Title 18, United States Code, Sections 1467, 2253 and 2428.

Dated this 7th day of May, 2015.

PRESENTED BY:

S. AMANDA MARSHALL
United States Attorney


JUDITH R. HARPER
Assistant United States Attorney



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