

APPENDIX

A

NOT RECOMMENDED FOR PUBLICATION

No. 22-1256

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Dec 19, 2022

DEBORAH S. HUNT, Clerk

ORDER

Before: GUY, SUHRHEINRICH, and STRANCH, Circuit Judges.

Daniel Isaiah Thody, a pro se federal supervisee, appeals the district court's amended judgment extending his term of supervised release from 24 months to 30 months for violating the conditions requiring him to make restitution payments to the government and to provide all requested financial information to his probation officer. Thody moves the court to take judicial notice of an Internal Revenue Service memorandum on the collectability of restitution imposed as a term of supervised release in a federal civil proceeding. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In 2013, a federal jury in the Western District of Texas convicted Thody of five counts of income tax evasion, in violation of 26 U.S.C. § 7201. The Texas district court sentenced Thody to a total term of 90 months of imprisonment and three years of supervised release. Additionally, as a part of his tax-evasion sentence, the court ordered Thody to pay restitution of \$162,857 (the tax loss in the case). The Fifth Circuit affirmed Thody’s convictions and prison term but vacated the district court’s restitution order because restitution is not authorized in tax-evasion cases. *See*

Appendix A

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United States v. Thody, 637 F. App'x 790, 793-94 (5th Cir. 2016) (per curiam) (*Thody I*). The court, however, remanded the case to the district court to determine whether to impose restitution as a term of Thody's supervised release. *See id.* at 794.

On remand, the district court ordered Thody to pay restitution of \$162,037 as a term of his supervised release. Further, the court ordered Thody to pay restitution at the rate of \$500 per month, beginning one month after the commencement of his term of supervised release. The court also ordered Thody to provide his probation officer with any requested financial information. The Fifth Circuit affirmed this restitution order. *See United States v. Thody*, 697 F. App'x 433, 435 (5th Cir. 2017) (per curiam) (*Thody II*).

Thody completed his prison term and started his term of supervised release in September 2019. The Western District of Texas transferred jurisdiction over Thody's supervised release to the Western District of Michigan.¹ After the transfer of jurisdiction, Thody filed motions for early termination of supervised release, a notice stating that he was unilaterally terminating his supervised release and would no longer comply with its conditions, and motions to amend the judgment revoking his first term of supervised release to eliminate his restitution obligation. The themes of these pleadings were similar—Thody argued that the Texas district court's restitution order was unlawful because the Fifth Circuit had ruled that restitution could not be imposed as a part of his sentence and that the imposition of any term of supervised release caused his sentence to exceed the statutory maximum sentence. The district court denied all of these motions.

In May 2020, Thody filed a document in the district court that he claimed was a receipt showing that he had paid the entire amount of restitution outstanding. In this document, Thody

¹ In a separate case, the government filed a civil action under 26 U.S.C. § 7401 to reduce to judgment Thody's outstanding federal tax liability and to enforce its tax lien on certain real property owned by Thody. The district court recently entered a judgment in favor of the government in that case and appointed a receiver to oversee the sale of Thody's property. *See United States v. Thody*, No. 1:19-cv-339, 2022 WL 2230169 (W.D. Mich. June 9, 2022); *United States v. Thody*, No. 1:19-cv-339, 2022 WL 1090603 (W.D. Mich. Apr. 12, 2022).

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asserted that because there is no legal definition of “dollar” in the United States, the Uniform Commercial Code required the government to accept the tendered “instrument” as payment in full.

In March 2021, Thody’s probation officer petitioned the district court to revoke Thody’s supervised release on several grounds, including his failure to comply with the \$500-per-month restitution order and his false report that he had paid restitution in full. During the revocation hearing, the district court found that Thody had committed six violations of his supervised release, including disobeying the restitution order and providing false information to his probation officer. The court revoked Thody’s supervised release and sentenced him to six months of imprisonment and 24 months of supervised release. Additionally, the court continued Thody’s restitution order as a term of supervised release, with further instructions to make his payments to the Internal Revenue Service, and ordered him to provide any financial information requested by his probation officer.

We affirmed the district court’s judgment. *United States v. Thody*, No. 21-1416, 2021 WL 7209316, at *2-4 (6th Cir. Aug. 9, 2021) (*Thody III*), *cert. denied*, 142 S. Ct. 1431 (2022). In finding that the evidence supported the district court’s finding that Thody had violated his supervised release by not paying restitution as ordered, we pointed to his tacit admission during the revocation hearing that his purported “payment” to the district court was invalid. Additionally, we concluded that Thody could not make a non-frivolous argument that the district court lacked authority to order him to pay the outstanding balance of his restitution obligation as a term of his supervised release. *See id.* at *2-4.

Thody completed his second term of imprisonment and started his new term of supervised release in October 2021. He almost immediately violated his supervised release by disobeying the district court’s restitution order. In December 2021, Thody informed his probation officer that he had no intention of making restitution payments or providing any requested financial information. On the net-worth statement supplied to him by the probation officer, Thody wrote “5th Amendment Invoked” for each answer. The probation officer therefore petitioned the district court

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to revoke Thody's supervised release. Thody's advisory sentencing range for these Grade C violations was 3 to 9 months of imprisonment.

Thody denied the allegations in the second violation report. During the revocation hearing, Thody's probation officer testified about Thody's failure and ultimate refusal to comply with the district court's restitution order and to provide the financial information necessary to monitor his ability to pay restitution.

Thody elected to proceed without counsel. First, Thody reiterated his position that the district court's restitution order was invalid in view of the Fifth Circuit's decision in his first direct appeal. The district court rejected that argument, pointing out that both this court and the Fifth Circuit had ultimately upheld the validity of the restitution order and therefore that it would not revisit that issue.

Second, Thody argued that the imposition of a term of supervised release caused his sentence to exceed the statutory maximum. He complained further that the district court had failed to provide a statement of reasons for his sentence in the first revocation hearing. Thody proffered additional written submissions in support of these positions that the district court refused to accept. Thody argued further that the district court had not addressed these issues in denying his motions to terminate his term of supervised release. The district court rejected this argument as well, pointing out that it had entered orders denying all of his motions.

Third, Thody argued that his Fifth Amendment right against self-incrimination protected him from having to disclose his financial information to the probation officer and therefore that the court was barred from finding that he violated his supervised release. Thody asserted that he invoked the Fifth Amendment because his belief as to what constitutes "income" differs from the government's definition, and therefore he could not provide the requested information without the risk of being charged with making a false statement. The district court rejected this argument.

The district court concluded that the government had proved the two supervised-release violations, finding by a preponderance of the evidence that Thody had not made any restitution payments since May 2021 and that he had refused or failed to provide the requested financial

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information to his probation officer. Instead of revoking Thody's supervised release and imposing a new term of imprisonment, however, the district court, citing 18 U.S.C. § 3583(e)(3), found that the 18 U.S.C. § 3553(a) sentencing factors weighed in favor of extending Thody's supervised release to the maximum available term of 30 months, with all of the previously imposed terms and conditions to apply. In support of that conclusion, the court found that another prison sentence probably would not compel Thody to comply with his restitution obligation whereas he was working and might ultimately be persuaded to pay restitution as ordered. The court advised Thody of his appellate rights, stating that "you should consider carefully whether you wish to file a claim of appeal" and that he should "be very careful in calculating when you are required to file the claim of appeal." The district court entered its judgment on the case docket on Form AO245C, entitled "Amended Judgment in a Criminal Case."

Thody raises numerous assignments of error in his timely pro se appeal. He argues that the district court (1) lacked authority to impose the sentence it did; (2) erred because its written judgment is inconsistent with its oral pronouncement of his sentence during the revocation hearing; (3) lacked authority to conduct a revocation hearing because the governing revocation statute authorizes only imprisonment upon revocation of supervised release; (4) erred in refusing to accept the documents that he tendered during the revocation hearing; (5) failed to consider prior credits or payments allegedly received by the court; (6) erred by finding a supervised-release violation based on constitutionally protected conduct; (7) erred by disregarding the arguments he raised in the sentencing memorandum he tendered to the court; and (8) attempted to dissuade him from filing a notice of appeal by allegedly using a "menacing tone and language" in advising him of his appellate rights.

As an initial matter, Thody's fourth and seventh assignments of error raise legal challenges to the validity of the Texas district court's restitution order and the Michigan district court's reimposition of the restitution order in his first revocation proceedings. Although these arguments are in fact meritless, *see Thody II*, 697 F. App'x at 435; *Thody III*, 2021 WL 7209316, at *2-4, the district court lacked subject-matter jurisdiction to consider any legal challenges to the terms to

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Thody's supervised release in deciding whether a modification or extension of supervision was warranted., *see United States v. Faber*, 950 F.3d 356, 358-59 (6th Cir. 2020); *see also United States v. McLeod*, 972 F.3d 637, 641-42 (4th Cir. 2020) (collecting cases). This is because “other legal mechanisms allow defendants to challenge the legality of their sentences (e.g., direct appeal, [28 U.S.C.] § 2255, Rule 35 [of the Federal Rules of Criminal Procedure]).” *Faber*, 950 F.3d at 358. And here, Thody filed appeals challenging—albeit unsuccessfully—the legality of both the Texas district court’s restitution order and the Michigan district court’s reimposition of the restitution order in his first revocation hearing. The district court therefore correctly refused to consider Thody’s repeated arguments that the restitution order is illegal, and the court’s refusal to accept his written pleadings on that subject did not affect Thody’s substantial rights. *See Fed. R. Crim. P.* 52(a).

When a defendant commits a non-criminal violation of his supervised release, the district court is authorized to revoke his supervised release and sentence him to a new term of imprisonment; but the court also has discretion to extend or modify the term of supervision. *See* 18 U.S.C. § 3583(e)(2); *see also* USSG § 7B1.3(a)(2)(B); *United States v. Webb*, 30 F.3d 687, 688 (6th Cir. 1994). We review a district court’s order modifying or extending a defendant’s term of supervised release under the abuse-of-discretion standard for procedural and substantive reasonableness. *United States v. Minor*, 440 F. App’x 479, 482 (6th Cir. 2011); *see United States v. Brogdon*, 503 F.3d 555, 563 (6th Cir. 2007). “Procedural reasonableness simply requires the district court to consider the relevant § 3553(a) factors and explain its sentencing decisions in a way that permits ‘reasonable appellate review.’” *United States v. Zabel*, 35 F.4th 493, 509 (6th Cir. 2022) (quoting *United States v. Zobel*, 696 F.3d 558, 572 (6th Cir. 2012)). “A claim that a sentence is substantively unreasonable is a claim that a sentence is too long.(if a defendant appeals) . . .” *United States v. Rayyan*, 885 F.3d 436, 442 (6th Cir. 2018). The “touchstone for our review is whether the length of the sentence is reasonable in light of the § 3553(a) factors.” *United States v. Recla*, 560 F.3d 539, 549 (6th Cir. 2009) (citation omitted); *see also Webb*, 30 F.3d at 689 (stating that a district court’s decision to revoke supervised release “must reflect

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consideration of the factors listed in 18 U.S.C. § 3553, and may not be plainly unreasonable” (footnote omitted)).

Among the sentencing factors that the district court must consider in modifying or extending a defendant’s term of supervised release is “the need to provide restitution to any victims of the offense.” 18 U.S.C. § 3553(a)(7); *see* 18 U.S.C. § 3583(e). Here, the district court considered and rejected revoking Thody’s supervised release and imposing another term of imprisonment and decided instead to extend his supervised release in the hope that he would be persuaded to make his restitution payments. In view of Thody’s persistent refusal to pay restitution as ordered and his frivolous objections to the restitution order, the district court’s decision to extend his term of supervised release by six months in an effort to secure compliance with its restitution order was procedurally and substantively reasonable.

Thody’s other objections to district court’s amended judgment are also meritless.

First, Thody argues that the district court lacked authority to extend his term of supervised release because in pronouncing his sentence the court cited § 3583(e)(3), which applies when a district court revokes a defendant’s term of supervised release, instead of § 3583(e)(2), which authorizes a district court to extend a term of supervised release. As the government persuasively argues, in view of the district court’s obvious intention to extend and not revoke Thody’s term of supervised release, district court’s mistake in citing § 3583(e)(3) was a harmless error. *See United States v. Booth*, 551 F.3d 535, 541 (6th Cir. 2009).

Nor did the district court’s extension of Thody’s term of supervised release cause his sentence to exceed the statutory maximum sentence. Because Thody committed Class D felonies, the district court was authorized to sentence Thody to up to three years of supervised release, less the six months of imprisonment that he had already served for his original supervised-release violations, for the total term of 30 months of supervised release that it ultimately imposed. *See* 18 U.S.C. § 3583(b), (h); *United States v. Price*, 901 F.3d 746, 750 (6th Cir. 2018). Consequently, the district court’s judgment extending Thody’s term of supervised release did not exceed the statutory maximum sentence. *See* 18 U.S.C. § 3583(e)(3) (establishing a statutory maximum term

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of two years of imprisonment upon revocation of supervised release for a Class D felony); *United States v. Sears*, 32 F.4th 569, 575 (6th Cir. 2022) (holding that a defendant is not entitled to “an aggregate credit for previous terms of imprisonment from prior revocations against the statutory maximums outlined in § 3583(e)(3)”).

Second, Thody contends that the district court’s written judgment is inconsistent with its oral pronouncements during the revocation hearing because the court entered its order extending his supervised release on an “Amended Judgment” form. Thody asserts that there is an inconsistency because the court failed to identify the judgment it was amending. “When an oral sentence conflicts with the written sentence, the oral sentence controls.” *United States v. Penson*, 526 F.3d 331, 334 (6th Cir. 2008) (quoting *United States v. Schultz*, 855 F.2d 1217, 1225 (6th Cir. 1988)) (cleaned up). But here, Thody has not identified any inconsistency between the district court’s oral statements and its judgment. Moreover, the amended judgment clearly amended the prior judgment that revoked Thody’s supervised release and imposed a term of 24 months of supervised release, and its use of the amended-judgment form to do so was appropriate.

Third, the district court did not err in refusing to consider any credits towards Thody’s restitution obligation, because there was nothing to credit. Although Thody’s restitution obligation was reduced somewhat through a separate garnishment order, he never made any restitution payments. Thody’s contention that the “receipt” that he filed in the district court in May 2020 was evidence that he completely satisfied his restitution obligation is patently frivolous, as he essentially admitted in his first revocation hearing. *See Thody III*, 2021 WL 7209316, at *2-4.

Fourth, the Fifth Amendment privilege against self-incrimination did not protect Thody from having to provide the probation officer with the financial information she needed to monitor his compliance with the district court’s restitution order. *See Minnesota v. Murphy*, 465 U.S. 420, 435 n.7 (1984); *United States v. Smalcer*, 464 F. App’x 469, 473 (6th Cir. 2012) (per curiam); *United States v. Ross*, 9 F.3d 1182, 1190-91 (7th Cir. 1993), vacated on other grounds by *Staples v. United States*, 511 U.S. 600 (1994); cf. *United States v. Pierce*, 561 F.2d 735, 741-42 (9th Cir. 1977) (holding that the district court did not err in revoking the defendant’s probation for violating

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the term requiring him to answer under oath questions related to his financial condition because his blanket assertion of privilege did not present a reviewable Fifth Amendment claim). And the record is clear that the district court based its decision to extend Thody's supervised release on his refusal to provide the financial information it needed to administer his restitution obligation and not because he invoked his privilege against self-incrimination, which is a critical distinction. *Cf. Ross*, 9 F.3d at 1191. In any case, the district court's decision to extend Thody's supervised release was based not only on his failure to disclose his financial information, but also his failure to pay restitution as ordered. That violation was sufficient by itself to extend his supervised release. *See United States v. Johnson*, 356 F. App'x 785, 793 (6th Cir. 2009) (collecting cases).

Fifth and finally, the record does not support Thody's argument that the district court's comments to him during the revocation hearing demonstrate bias against him and that the court implicitly or explicitly threatened him not to file an appeal. As the government persuasively argues, the district court's statement that Thody should "carefully consider whether to file an appeal" was, in context, not a threat but an admonition to ensure that he understood that he had to make a timely decision about whether to file an appeal. And overall, we are persuaded that the district court's comments and statements to Thody during the revocation hearing do not reflect "deep-seated favoritism or antagonism that would make fair judgment impossible." *Liteky v. United States*, 510 U.S. 540, 555 (1994). Instead, the record shows that even if the district court was brusque with Thody during the hearing, it was trying to confine his presentation to relevant topics and to conduct the hearing in an efficient manner. *Cf. Gordon v. Lafler*, 710 F. App'x 654, 664-65 (6th Cir. 2017).

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Finding no error or abuse of discretion, we **AFFIRM** the district court's amended judgment extending Thody's term of supervised release to 30 months. We **DENY** Thody's motion to take judicial notice as moot.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

United States Court of Appeals for the Sixth Circuit**U.S. Mail Notice of Docket Activity**

The following transaction was filed on 12/19/2022.

Case Name: USA v. Daniel Thody

Case Number: 22-1256

Docket Text:

ORDER filed : Finding no error or abuse of discretion, we AFFIRM the district court's amended judgment extending Thody's term of supervised release to 30 months. We DENY Thody's motion to take judicial notice [6865220-2] as moot. Decision not for publication, pursuant to FRAP 34(a)(2)(C). Mandate to issue. Ralph B. Guy, Jr., Circuit Judge; Richard F. Suhrheinrich, Circuit Judge and Jane Branstetter Stranch, Circuit Judge.

The following documents(s) are associated with this transaction:

Document Description: Order

Notice will be sent to:

Daniel Isaiah Thody
2885 Sanford Avenue, S.W.
Suite 13950
Grandville, MI 49418

A copy of this notice will be issued to:

Ms. Katie Bagley
Ms. Ann E. Filkins
Ms. Elissa Hart-Mahan
Mr. Samuel Robert Lyons
Mr. Joseph Brian Syverson

APPENDIX

B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:19-pt-30

v.

HON. JANET T. NEFF

DANIEL ISAIAH THODY,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending before the Court are Defendant's "Termination of Supervised Release" (ECF No. 31), "Pre-Emptive Reply to Government's Response in Opposition" (ECF No. 33), and "Wish to Resolve Subject Matter Jurisdiction Issue Prior to any Revocation Hearing" (ECF No. 55). The Government submitted a "Response to Defendant's 'Termination of Supervised Release'" (ECF No. 43) and a "Motion to Strike Defendant's 'Preemptive Reply'" (ECF No. 34), to which the Defendant responded (ECF No. 39).

The Court previously denied Defendant's motion (ECF No. 13) for early termination of supervised release in an order on September 22, 2020 (ECF No. 16). The Court also denied the Defendant's request for a hearing pertaining to the Government's garnishment action as a result of Defendant's failure to pay restitution of \$162,857.00 (ECF No. 28).

This case was transferred to this district after Defendant was found guilty by a jury verdict of five counts of tax evasion in violation of 26 U.S.C. § 7201 in the U.S. District Court for the Western District of Texas on November 8, 2013 (ECF No. 5-3 at PageID.90). Defendant was sentenced by Judge Garcia for the Western District of Texas to a term of supervised release, including restitution of the tax loss on October 14, 2016 (*id.* at PageID.92).

Appendix B

Contrary to what Defendant appears to argue in his motion (ECF No. 31 at PageID.189-191), a district court may order restitution to the IRS arising from a 26 U.S.C. § 7201 violation as a condition of supervised released in an amount that does not exceed the tax loss. *See United States v. Butler*, 297 F.3d 505, 518–20 (6th Cir. 2002). Further, as this Court previously stated in its order denying Defendant’s request for a hearing on the garnishment action, the final judgment from the Western District of Texas is res judicata, “it has been appealed and affirmed, and all appeal windows have since expired” (ECF No. 28 at PageID.175). Here, again, Defendant’s “failure to challenge the special conditions of supervised release in either the district court or during the prior appeal . . . precludes our consideration of his claim.” *United States v. Traxler*, 517 F. App’x 472, 474 (6th Cir. 2013) (“waiver doctrine exists for good reason . . . and promotes finality in criminal proceedings by requiring that parties seek review of a claim in the first appeal”). This Court, therefore, applies the waiver doctrine to preclude consideration of the merits of Defendant’s supervised released sentencing claim because these issues, as the Government argues (ECF No. 43 at PageID.231), were not raised in an original appeal. *See Traxler*, 517 F. App’x at 474.

IT IS HEREBY ORDERED that Defendant’s “Termination of Supervised Release” (ECF No. 31) is DENIED.

IT IS FURTHER ORDERED that Plaintiff’s “Motion to Strike Defendant’s ‘Preemptive Reply’” (ECF No. 34) is GRANTED; Defendant’s Preemptive Reply (ECF No. 33) is STRICKEN.

IT IS FURTHER ORDERED that Defendant’s “Wish to Resolve Subject Matter Jurisdiction Issue Prior to any Revocation Hearing” (ECF No. 55) is DENIED as moot.

Dated: April 21, 2021

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge

UNITED STATES DISTRICT COURT
Western District of Michigan

UNITED STATES OF AMERICA

-vs-

DANIEL ISAIAH THODY

JUDGMENT IN A CRIMINAL CASE

(For **Revocation** of Probation or Supervised Release)

Case Number: 1:19-pt-30

USM Number: 17058-040

Richard E. Zambon (standby counsel)
Defendant's Attorney

THE DEFENDANT:

admitted guilt to violation of _____
 was found guilty as to each of Violations One through Six after a denial of guilt.

<u>Violation Number</u>	<u>Nature of Violation</u>
One	Failure to Abide by Restitution Schedule
Two	False Information to Probation Officer
Three	New Law Violation: False Statements
Four	Failure to Report as Instructed
Five	Failure to Report as Instructed
Six	Failure to Submit to Urinalysis

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

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

Date of Imposition of Sentence: April 21, 2021

DATED: April 21, 2021

/s/ Janet T. Neff
JANET T. NEFF
UNITED STATES DISTRICT JUDGE

AO 245D (MIWD Rev. 09/11)- Judgment in a Criminal Case for Revocations

Judgment – Page 2

Defendant: DANIEL ISAIAH THODY

Case Number: 1:19-pt-30

IMPRISONMENT

The defendant's term of supervised release is revoked and the defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **SIX (6) MONTHS** as to each of Counts One through Five, with all counts to run concurrently.

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

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

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

at _____ on _____

as notified by the United States Marshal.

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

before 2:00 P.M. on _____

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

United States Marshal

By: _____
Deputy United States Marshal

AO 245D (MIWD Rev. 09/11)- Judgment in a Criminal Case for Revocations

Judgment – Page 3

Defendant: DANIEL ISAIAH THODY

Case Number: 1:19-pt-30

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **TWENTY-FOUR (24) MONTHS** as to each of Counts One through Five, with all counts to run concurrently.

MANDATORY CONDITIONS

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

AO 245D (MIWD Rev. 09/11)- Judgment in a Criminal Case for Revocations

Judgment – Page 4

Defendant: DANIEL ISAIAH THODY

Case Number: 1:19-pt-30

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 _____

AO 245D (MIWD Rev. 09/11)- Judgment in a Criminal Case for Revocations
Judgment – Page 5
Defendant: DANIEL ISAIAH THODY
Case Number: 1:19-pt-30

SPECIAL CONDITIONS OF SUPERVISION

1. You must provide the probation officer with access to any requested financial information and authorize the release of any financial information. The probation office will share financial information with the U.S. Attorney's Office.
2. You must not apply for, nor enter into, any loan or other credit transaction without the approval of the probation officer.
3. You must not create/form any new business entities during the period of supervision.
4. You must not open any new personal or business accounts without the approval of the probation officer.
5. You must not work in any type of employment without the prior approval of the probation officer.
6. You must comply with all regulations of the Internal Revenue Service pertaining to the payment of future federal tax obligations during the period of supervised release.
7. You shall not associate with any organization or group which is engaged in criminal activity.
8. You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition.

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

9. You must satisfy the remaining \$158,302.66 outstanding restitution balance. Any balance due upon commencement of supervision must be paid, during the term of supervision, in minimum monthly installments of \$500.00, to commence 60 days after release from imprisonment.

AO 245D (MIWD Rev. 09/11)- Judgment in a Criminal Case for Revocations

Judgment – Page 6

Defendant: DANIEL ISAIAH THODY

Case Number: 1:19-pt-30

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on the following pages.

<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
\$500.00 (Paid)	-0-	\$162,037.00 (Balance Remaining of \$158,302.66)	-0-	-0-

The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such a determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(I), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
IRS-RACS Attn: Mail Stop 6261 Restitution 331 W. Pershing Ave. Kansas City, Missouri 64108	\$162,037.00	\$162,037.00	
TOTALS	\$162,037.00	\$162,037.00	

Restitution amount ordered pursuant to plea agreement.

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

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

- the interest requirement is waived for the fine.
- the interest requirement is waived for the restitution.
- the interest requirement for the fine is modified as follows: _____
- the interest requirement for the restitution is modified as follows: _____

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

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

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

AO 245D (MIWD Rev. 09/11)- Judgment in a Criminal Case for Revocations

Judgment – Page 7

Defendant: DANIEL ISAIAH THODY

Case Number: 1:19-pt-30

SCHEDULE OF PAYMENTS

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

A Lump sum payment of **\$0.00** due immediately, balance due
 not later than _____, or
 in accordance with C, D, E, or F below; or

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

C Payment in equal _____ installments of \$_____ over a period of _____, to commence _____ after the date of this judgment; or

D Payment in equal _____ installments of \$_____ over a period of _____, to commence _____ after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within _____ after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:
Any balance due upon incarceration must be paid in minimum quarterly installments of \$25.00 based on IFRP participation, or minimum monthly installments of \$20.00 based on UNICOR earnings, during the period of incarceration, to commence 60 days after the date of this judgment. Any balance due upon commencement of supervision must be paid, during the term of supervision, in minimum monthly installments of \$500.00, to commence 60 days after release from imprisonment. You must apply all monies received from income tax refunds, lottery winnings, judgments, and or any other anticipated or unexpected financial gains to any outstanding court-ordered financial obligations.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court, 399 Federal Building, 110 Michigan N.W., Grand Rapids, MI 49503, unless otherwise directed by the court, the probation officer, or the United States Attorney.

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 cost(s):
 The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) 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.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:19-pt-30

v.

HON. JANET T. NEFF

DANIEL ISAIAH THODY,

Defendant.

ORDER

Pending before the Court are Defendant's first motion to correct sentence (ECF No. 62), second motion to correct sentence (ECF No. 71), and supplements (ECF Nos. 80 & 81).

Defendant was sentenced¹ on April 21, 2021 (ECF No. 59), and the Court is without jurisdiction to correct Defendant's sentence beyond the fourteen-day limitation period in FED. R. CRIM. P. 35(a). *United States v. Hall*, 661 F.3d 320, 322 (6th Cir. 2011) ("Rule 35, in relevant part, allows district courts to correct a sentence that resulted from 'arithmetical, technical, or other clear error' provided it does so within 14 days after sentencing").

Therefore,

IT IS HEREBY ORDERED that Defendant's first motion to correct sentence (ECF No. 62) is **DISMISSED** for lack of jurisdiction.

IT IS FURTHER ORDERED that Defendant's second motion to correct sentence (ECF No. 71) is **DISMISSED** for lack of jurisdiction.

¹ On appeal, the U.S. Court of Appeals for the Sixth Circuit affirmed the judgment (ECF No. 70).

Dated: March 15, 2022

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge

UNITED STATES DISTRICT COURT
Western District of Michigan

UNITED STATES OF AMERICA

-vs-

DANIEL ISAIAH THODY

AMENDED JUDGMENT IN A CRIMINAL
CASE

Case Number: 1:19-pt-30
USM Number: 17058-040

Pro Se
Defendant's Attorney

THE DEFENDANT:

admitted guilt to violation of _____
 was found guilty as to each of Violations One and Two after a denial of guilt

The defendant is adjudicated guilty of these offenses:

<u>Violation Number</u>	<u>Nature of Violation</u>
One	Failure to Pay Restitution
Two	Failure to Provide Financial Information

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

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

Dated: March 29, 2022

/s/ Janet T. Neff

JANET T. NEFF
UNITED STATES DISTRICT JUDGE

SUPERVISED RELEASE

The defendant shall be continued on supervised release for **Two Years and Six Months**.

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 cooperate in the collection of DNA as directed by the probation officer.
5. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6. You must participate in an approved program for domestic violence. *(check if applicable)*
7. 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)*

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 provide the probation officer with access to any requested financial information and authorize the release of any financial information. The probation office will share financial information with the U.S. Attorney's Office.
2. You must not apply for, nor enter into, any loan or other credit transaction without the approval of the probation officer.
3. You must not create/form any new business entities during this period of supervision.
4. You must not open any new personal or business accounts without the approval of the probation officer.
5. You must not work in any type of employment without the prior approval of the probation officer.
6. You must comply with all regulations of the Internal Revenue Service pertaining to the payment of future federal tax obligations during the period of supervised release.
7. You must not associate with any organization or group which is engaged in criminal activity.
8. You must satisfy the remaining \$158,131.08 outstanding restitution balance. Any balance due upon commencement of supervision must be paid, during the term of supervision, in minimum monthly installments of \$500.00.
9. You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition.

The probation officer may conduct a search under this condition only when a 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.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on the following pages.

<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
-\$500.00 (Paid)-	-0-	-\$162,037.00 (Balance Remaining of- \$158,131.08)-	-0-	-0-

The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such a determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
IRS-RACS Attn: Mail Stop 6261 Restitution 331 W. Pershing Ave. Kansas City, Missouri 64108	\$162,037.00	\$162,037.00	
TOTALS	<u>\$162,037.00</u>	<u>\$162,037.00</u>	

Restitution amount ordered pursuant to plea agreement.

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

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

- the interest requirement is waived for the fine.
- the interest requirement is waived for the restitution.
- the interest requirement for the fine is modified as follows: _____
- the interest requirement for the restitution is modified as follows: _____

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

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

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

Reason for Amendment
(Not for Public Disclosure)

DATE OF IMPOSITION OF ORIGINAL JUDGMENT: OCTOBER 14, 2016

DATE OF REVOCATION JUDGMENT: APRIL 21, 2021

REASON FOR AMENDMENT:

- Correction of Sentence on Remand (18 U.S.C. §§ 3742(f)(1) and (2))
- Modification of Supervision Conditions (18 U.S.C. § 3563(c) or 3583(e))
- Reduction of Sentence for Changed Circumstances (Fed. R.Crim. P. 35(b))
- Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
- Correction of Sentence by Sentencing Court (Fed. R.Crim. P. 35(a))
- Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
- Correction of Sentence for Clerical Mistake (Fed. R.Crim. P. 36)
- Direct Motion to District Court Pursuant to
 - 28 U.S.C. § 2255 or
 - 18 U.S.C. § 3559(c)(7)
- Modification of Restitution Order (18 U.S.C. § 3664)

AO 245C - Attachment to an Amended Judgment in a Criminal Case
Sheet 1

Defendant: DANIEL ISAIAH THODY
Case Number: 1:19-pt-30

NOT FOR PUBLIC DISCLOSURE

Defendant's Soc. Sec. No.: 410-43-9115

Defendant's USM No. 17058-040

Defendant's Date of Birth: 10/28/1967

Defendant's Address:

218 Elliott Avenue

Grand Haven, MI 49417

DATED: March 29, 2022

/s/ Janet T. Neff

JANET T. NEFF

UNITED STATES DISTRICT JUDGE

APPENDIX

C

No. 22-1256

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Feb 3, 2023
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,)
Plaintiff-Appellee,)
v.)
DANIEL ISAIAH THODY,)
Defendant-Appellee.)

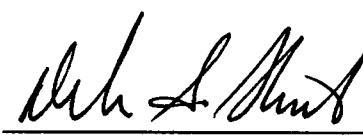
O R D E R

BEFORE: GUY, SUHRHEINRICH, and STRANCH, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

Appendix C

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: February 03, 2023

Daniel Isaiah Thody
2885 Sanford Avenue, S.W.
Suite 13950
Grandville, MI 49418

Re: Case No. 22-1256, USA v. *Daniel Thody*
Originating Case No.: 1:19-pt-00030-1

Dear Mr. Thody,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Beverly L. Harris
En Banc Coordinator
Direct Dial No. 513-564-7077

cc: Ms. Katie Bagley
Ms. Elissa Hart-Mahan
Mr. Samuel Robert Lyons
Mr. Joseph Brian Syverson

Enclosure

APPENDIX

D

APPENDIX D

18 U.S.C. § 3583 pertinent provisions:

(a) In General.—The court, in imposing a sentence to a term of imprisonment for a felony or a misdemeanor, may include as a part of the sentence a requirement that the defendant be placed on a term of supervised release after imprisonment, except that the court shall include as a part of the sentence a requirement that the defendant be placed on a term of supervised release if such a term is required by statute or if the defendant has been convicted for the first time of a domestic violence crime as defined in section 3561(b).

(b) Authorized Terms of Supervised Release.—Except as otherwise provided, the authorized terms of supervised release are—

- (1) for a Class A or Class B felony, not more than five years;
- (2) for a Class C or Class D felony, not more than three years; and
- (3) for a Class E felony, or for a misdemeanor (other than a petty offense), not more than one year.

(c) Factors To Be Considered in Including a Term of Supervised Release.—The court, in determining whether to include a term of supervised release, and, if a term of supervised release is to be included, in determining the length of the term and the conditions of supervised release, shall consider the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)..

(d) Conditions of Supervised Release.—The court shall order, as an explicit condition of supervised release, that the defendant not commit another Federal, State, or local crime during the term of supervision, that the defendant make restitution in accordance with sections 3663 and 3663A, or any other statute authorizing a

sentence of restitution, and that the defendant not unlawfully possess a controlled substance... The court may order, as a further condition of supervised release, to the extent that such condition—

- (1) is reasonably related to the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D);
- (2) involves no greater deprivation of liberty than is reasonably necessary for the purposes set forth in section 3553(a)(2)(B), (a)(2)(C), and (a)(2)(D); and
- (3) is consistent with any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a);

any condition set forth as a discretionary condition of probation in section 3563(b) and any other condition it considers to be appropriate, provided, however that a condition set forth in subsection 3563(b)(10) shall be imposed only for a violation of a condition of supervised release in accordance with section 3583(e)(2) and only when facilities are available...

(e) Modification of Conditions or Revocation.—The court may, after considering the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)—

(1) terminate a term of supervised release and discharge the defendant released at any time after the expiration of one year of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice;

(2) extend a term of supervised release if less than the maximum authorized term was previously imposed, and may modify, reduce, or enlarge the conditions of

supervised release, at any time prior to the expiration or termination of the term of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation and the provisions applicable to the initial setting of the terms and conditions of post-release supervision;

(3) revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on post-release supervision, if the court, pursuant to the Federal Rules of Criminal Procedure applicable to revocation of probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be required to serve on any such revocation more than 5 years in prison if the offense that resulted in the term of supervised release is a class A felony, more than 3 years in prison if such offense is a class B felony, more than 2 years in prison if such offense is a class C or D felony, or more than one year in any other case; or

(4) order the defendant to remain at his place of residence during nonworking hours and, if the court so directs, to have compliance monitored by telephone or electronic signaling devices, except that an order under this paragraph may be imposed only as an alternative to incarceration.

(g) Mandatory Revocation for Possession of Controlled Substance or Firearm or for Refusal To Comply With Drug Testing.—If the defendant—

(1) possesses a controlled substance in violation of the condition set forth in subsection (d);

(2)possesses a firearm, as such term is defined in section 921 of this title, in violation of Federal law, or otherwise violates a condition of supervised release prohibiting the defendant from possessing a firearm;

(3)refuses to comply with drug testing imposed as a condition of supervised release;

or

(4)as a part of drug testing, tests positive for illegal controlled substances more than 3 times over the course of 1 year;

the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment not to exceed the maximum term of imprisonment authorized under subsection (e)(3).

(h)Supervised Release Following Revocation.—When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment, the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release.