

APPENDIX

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United States Court of Appeals

For The Eighth Circuit

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RE: 21-3849 United States v. James Norris, Jr.

Dear Sir or Madam:

A published opinion was filed today in the above case.

Counsel who presented argument on behalf of the appellant and appeared on the brief was Carter Collins Law, of Clayton, MO.

Counsel who presented argument on behalf of the appellee was Zachary Bluestone, AUSA, of Saint Louis, MO. The following attorney appeared on the appellee brief; Hal Goldsmith, I, AUSA, of Saint Louis, MO.

The judge who heard the case in the district court was Honorable Stephen N. Limbaugh, Jr.. The judgment of the district court was entered on October 28, 2021.

If you have any questions concerning this case, please call this office.

Michael E. Gans
Clerk of Court

NDG

Enclosure(s)

cc: MO Lawyers Weekly

District Court/Agency Case Number(s): 4:08-cr-00238-SNLJ-1

United States Court of Appeals
For the Eighth Circuit

No. 21-3849

United States of America

Plaintiff - Appellee

v.

James B. Norris, Jr.

Defendant - Appellant

Appeal from United States District Court
for the Eastern District of Missouri - St. Louis

Submitted: September 23, 2022
Filed: March 13, 2023

Before SMITH, Chief Judge, KELLY and GRASZ, Circuit Judges.

SMITH, Chief Judge.

James B. Norris appeals the district court's¹ denial of his pro se motion to terminate supervision or modify conditions of supervised release. Norris argues that the district court violated Federal Rule of Criminal Procedure 32.1 and his Fifth

¹The Honorable Stephen N. Limbaugh, Jr., United States District Judge for the Eastern District of Missouri.

Amendment due process rights when it denied Norris's motion in a sealed document without the procedural protections of appointed counsel, a hearing, and the opportunity to review and challenge the U.S. Probation Office's recommendation. Additionally, he challenges the terms of his supervised release as overbroad and unconstitutional. We affirm.

I. Background

In 2009, Norris pleaded guilty to one count of possession of child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B). He was sentenced to 37 months' imprisonment, followed by a lifetime of supervised release. One of the supervised-release conditions that the court imposed on Norris was a ban on his usage of computers to access the internet without prior approval of the probation office. *See* R. Doc. 32, at 4, ¶ 12 ("The defendant shall not possess or use a computer, peripheral equipment, or any other devices with access to any 'on line computer services' at any location (including employment), or subscribe to or use any Internet service, without the prior written approval of the probation office.").

In July 2021, Norris violated special conditions of his supervised release. A final revocation hearing was held on August 24, 2021. At the hearing, Norris did not contest the violations. He admitted to violating the ban on his usage of computers to access the internet without prior approval of the probation office. Based on Norris's admission, the district court found Norris in violation of the terms and conditions of his supervised release.

The court then explained that the advisory Guidelines range for the violation was three to nine months, followed by a supervised release period of five years to life. Norris did not object. The court then adopted the Guidelines calculations. The government requested four months' imprisonment, while Norris requested three months' imprisonment.

Norris then made the following statement to the court:

I've been trying for so many years to stay compliant, and I—it's becoming so frustrating after this many years. And I feel it's so difficult to try to get these conditions to be made more reasonable, and it's difficult to deal with a sentence, a lifetime sentence of supervision, when I have to consider the time that I'm required to register for is not even that long. I have—it's very difficult for me to live under all of this.

R. Doc. 87, at 6. The court responded that Norris's "remedy . . . was to abide by all the conditions to the T, to the letter, and then apply to have a reduction in [his] supervision." *Id.* The court advised that Norris would need to "start over." *Id.* The court was "not saying that [Norris] couldn't get a reduction . . . eventually." *Id.*

Norris expressed frustration with seeing violations that he disputed appearing on his file. The court responded, "Had you been a perfect participant in supervised release, chances are I might have been willing to reduce your time of supervised release. But you haven't." *Id.* at 7.

The court then revoked Norris's supervised release. "Pursuant to . . . Section 3553(a) and all the factors thereunder, and also in view of the sentencing objectives of just punishment, general deterrence, and incapacitation, and in order to fashion a sentence that's sufficient but not greater than necessary to comply with the statute," the district court sentenced Norris to "a term of three months." *Id.* at 7–8. The court did afford Norris "some relief" by sentencing Norris to 20 years of supervised release instead of a lifetime of supervised release. *Id.* at 8. The court advised Norris that he must "comply with all of the conditions of supervision, both the mandatory conditions that have been adopted by this Court and the special conditions . . . imposed against [him] originally." *Id.* One of those special conditions was the ban on internet usage without prior approval of the probation office. *See id.* The court advised Norris that

he had “a right to appeal from the sentence” within 14 days. *Id.* Norris indicated that he understood. Norris did not appeal.

Shortly after the revocation hearing, on September 1, 2021, Norris filed a pro se motion to terminate his supervision or modify the conditions of his supervised release. The motion was a one-page conclusory letter requesting termination of his supervised release. On October 25, 2021, Norris, acting pro se, “provid[ed] additional information for consideration of [his] motion.” R. Doc. 71.² The filing contained five attachments, which were all law review articles or other articles about probation and supervised release. *See id.*

On October 28, 2021, a “Report on Offender Under Supervision” (Report) was docketed as a sealed document. R. Doc. 72, at 1 (all caps omitted). The Report provided as follows:

SUPERVISION SUMMARY

The following supervision summary is respectfully submitted to the Court in response to a motion filed by James Norris for an early termination from supervised release. Pursuant to 18 U.S.C. § 3564(c) and 3583(e)(1), Courts are permitted to terminate supervised release or probation in felony cases after one year, if such action is warranted. Norris’ motion also requested his conditions be modified.

On April 17, 2011, Norris was released from the Bureau of Prisons, during which time his supervised release commenced. On August 24, 2021, Norris’ supervised release was revoked. Norris was on supervised release for approximately ten years and three months when he committed the violations that led to his revocation. While on supervision, seven violation reports had been submitted to the Court.

²The clerk docketed the filing on October 26 as “Amendment/Supplemental Pleadings.” *See id.* (all caps omitted).

Norris' noncompliance included possessing internet capable devices without permission, accessing the internet without permission, viewing obscene material, and his belief that he did not have to abide by the Court ordered special conditions. Norris was not considered amenable to supervision in the community and he [was] sentenced to 3 months custody following the revocation of his supervised release.[] Norris filed the motion while he was in custody on the revocation for violating his conditions.

Norris was released on October 13, 2021 to begin his new term of supervised release. Norris has returned to his previous home plan and his previous employer.

On October 21, 2021, Assistant U.S. Attorney Hal Goldsmith was contacted regarding this matter and advised he would be opposed to an early termination of supervision or modification of conditions at this time.

RECOMMENDATION:

The U.S. Probation Office respectfully recommends that the motion for early termination and modification of conditions be denied due to the fact Norris was recently revoked for violating conditions of his supervision that were put in place to protect the community.

Id. at 1–2 (bold omitted). The supervising U.S. probation officer had signed the report on October 27, 2021, and the U.S. probation officer had signed the report on October 26, 2021. The district court marked, “I agree with the recommendation of the Probation Officer” and signed the Report on October 28, 2022. *Id.* at 2.

On November 9, 2021, Norris, acting pro se, filed “empirical evidence for consideration to [his] motion for termination of supervision.” R. Doc. 73, at 1. The filing attached 171 pages of secondary sources relating to supervised release. The clerk docketed the filing as “Memorandum in Support . . . re Motion to Modify

Conditions of Release.” *Id.* (all caps omitted). Then, on November 15, 2021, Norris filed more “empirical evidence for consideration of motion,” R. Doc. 74, at 1, which attached 703 pages of secondary materials. The clerk docketed the filing as “Additional Supplemental Pleadings.” *Id.* (all caps omitted).

On November 22, 2021, defense counsel entered an appearance on Norris’s behalf. Defense counsel moved for an extension of time to file a notice of appeal. In that motion, defense counsel noted, in relevant part:

According to a voice mail his probation officer left for Mr. Norris at his home number . . . on or about Tuesday, November 16, 2021, this court entered its order denying Mr. Norris’s *pro se* Motion to Terminate Supervision or Modify Conditions of Release (doc. #68) on October 28, 2021. There is no entry within Mr. Norris’s docket in this case described in any way in which to identify it as the order denying relief. There are, however, two anonymous and unidentified docket entries, including doc. #72, which occurred sometime between doc. #71 (entered on October 26, 2021) and doc. #73 (entered on November 9, 2021).

R. Doc. 76, at 1. Defense counsel argued that the “court should make a finding of good cause to extend the time to file a Notice of Appeal” “[b]ecause Mr. Norris had no reason to know of the court’s October 28, 2021 order denying his *pro se* Motion for Termination of Supervision or for Modification of Conditions until the voice mail message left last week.” *Id.* at 2.

Defense counsel also filed a motion to “unseal, for purposes of a potential appeal of th[e] court’s order denying Mr. Norris’s *pro se* Motion To Terminate Supervision or Modify Conditions of Release, documents 70 and 72 herein and to release those two documents to [counsel].” R. Doc. 77, at 1.³ Defense counsel also

³On October 6, 2021, a “Report on Offender Under Supervision” was docketed as a sealed document. R. Doc. 70 (all caps omitted). The report “request[ed] [that] the

“request[ed] that these two documents be resealed once they have been released to [counsel].” *Id.*

On November 23, 2021, the district court entered a docket text order granting the motion to unseal documents 70 and 72 and entered a docket text order granting the motion for extension of time to file the notice of appeal. *See* R. Doc. 78.

On December 13, 2021, Norris filed a Notice of Appeal, appealing the district “court’s order denying [his] motion for early termination of supervised release (doc #72), filed on October 28, 2021.” R. Doc. 81, at 1.

II. Discussion

On appeal, Norris asserts that the district court erred in denying his pro se motion to terminate supervision or modify the conditions of his supervised release. First, he argues that the district court violated Federal Rule of Criminal Procedure 32.1 and his Fifth Amendment due process rights by failing to afford him certain procedural protections prior to denying his motion. Second, he argues that the district court erred by failing to grant his motion because the condition banning his internet usage is overly broad and in violation of his First Amendment rights.

A. Procedural Protections

“[W]e review de novo ‘[u]nderlying questions regarding compliance with the rules of criminal procedure and the provision of due process.’” *United States v. Winston*, 850 F.3d 377, 379–80 (8th Cir. 2017) (second alteration in original) (quoting *United States v. Davies*, 380 F.3d 329, 332 (8th Cir. 2004)).

Court order the destruction of . . . items . . . seized by the Probation Office during the course of supervising James B. Norris” on September 27, 2018. The district court indicated “agree[ment] with the recommendation of the Probation Officer” and signed off. *Id.* at 2.

1. Federal Rule of Criminal Procedure 32.1

Norris argues that he was denied certain procedural rights guaranteed to him under Federal Rule of Criminal Procedure 32.1. Specifically, he asserts that Rule 32.1 affords him the right to assistance of counsel and a hearing.

Rule 32.1(c)(1) provides that “[b]efore *modifying* the conditions of probation or supervised release, the court must hold a hearing, at which the person has the right to counsel and an opportunity to make a statement and present any information in mitigation.” Fed. R. Crim. P. 32.1(c)(1) (emphasis added); *see also United States v. Sterling*, 959 F.3d 855, 860–61 (8th Cir. 2020) (stating that Rule 32.1(c)(1) provides that a “person has the right to counsel and an opportunity to make a statement and present any information in mitigation” at a “hearing” “[b]efore [the district court] *modif[ies]* the conditions of . . . supervised release” (emphasis added)).

By its plain language, Rule 32.1(c)(1) applies *only* if a district court “*modif[ies]* the conditions of . . . supervised release.” Here, the district court *refused* to modify Norris’s conditions of supervised release. Under Rule 32.1’s plain language, neither a hearing nor counsel were required before the court denied Norris’s motion. *See, e.g., United States v. Bautista-Gunter*, 22 F.4th 506, 511 (5th Cir. 2022) (concluding that “Rule 32.1(c) ‘does not compel the court to hold a hearing before refusing a request for modification’” (quoting *United States v. Nonahal*, 338 F.3d 668, 671 (7th Cir. 2003))).

Accordingly, we hold that the district court did not violate Rule 32.1(c)(1) by failing to provide Norris with counsel and a hearing before it denied his motion to terminate supervision or modify the conditions of his supervised release.

2. Due Process

Norris also argues that the district court violated his Fifth Amendment due process rights by failing to (1) appoint counsel, (2) hold a hearing on the motion, (3)

notify him that it had requested a recommendation from the probation office, (4) notify him that the probation office's response revealed that it had contacted the government for its position on the motion, or (5) afford him an opportunity to review and challenge the Report.

Norris filed a motion to terminate supervision or modify the conditions of his supervised release. "Section 3583(e) provides that, after considering a number of defined factors, a district court may[, among other things,] terminate supervised release [or] extend supervised release or modify its conditions" *United States v. Stewart*, 7 F.3d 1350, 1351 (8th Cir. 1993) (citations omitted).

We have previously recognized that "[t]here is no constitutionally protected liberty interest in a discretionary sentence reduction, so the Due Process Clause does not afford procedural protections to those who seek one." *United States v. Beltran-Estrada*, 990 F.3d 1124, 1126 (8th Cir. 2021) (per curiam) (motion for sentence reduction under 18 U.S.C. § 3582(c)(2)) (quoting *United States v. Alaniz*, 961 F.3d 998, 999 (8th Cir. 2020) (per curiam) (motion for sentence reduction under 18 U.S.C. § 3582(c)(2))). But "we have [also] held that a district court abuses its discretion when there is no 'opportunity [for a movant] to respond to [*prejudicial*] information' because he or she lacks access 'to the material on which the court will base its sentencing decision.'" *Alaniz*, 961 F.3d at 999 (emphasis added) (second and third alterations in original) (quoting *United States v. Foster*, 575 F.3d 861, 863 (8th Cir. 2009)). Additionally, the Eleventh Circuit, relying on *Foster*, has "h[e]ld that each party must be given notice of and an opportunity to contest *new* information relied on by the district court." *United States v. Jules*, 595 F.3d 1239, 1245 (11th Cir. 2010) (motion for sentence reduction under § 3582(c)(2)).

Norris asserts that the Report's Supervision Summary included new information that he was never allowed to contest; specifically, it "included a new hearsay statement." Appellant's Reply Br. at 3. The statement represented that

“Norris’ noncompliance included possessing internet capable devices without permission, accessing the internet without permission, viewing obscene material, and *his belief that he did not have to abide by the Court ordered special conditions.*” R. Doc. 72, at 1 (emphasis added). Norris maintains that “[n]o one at [his revocation] hearing, or in any document prior thereto, ever suggested that [he] did not believe himself bound by the district court’s special conditions of supervision.” Reply Br. at 3. He contends that because this hearsay statement was attributed to him, it was prejudicial, and, therefore, he should have had the opportunity to challenge it. He further asserts that the Supervision Summary revealed that—unbeknownst to Norris—the probation office had contacted the government for its position on the motion.

We have reviewed the record. Document 61 is the “Supervised Release Revocation Sentencing Computation,” which was docketed prior to Norris’s revocation hearing. Norris has not argued that he was deprived of access to Document 61. That document provides, in relevant part:

When interviewed on July 2, 2021, the offender admitted to the noncompliance noted above. Additionally, he stated that he has been accessing the internet on a daily basis through the various means listed directly above. When advising the offender that he has no permission to access the internet through any means and he must cease access immediately, *he became angry and stated that accessing the internet is a human right and is not something that the U.S. Probation Office can legally restrict. He further advised the undersigned that he does not know how the undersigned can do his job as I am “torturing people” and his “conscience” would not allow him to enforce these conditions of supervision.* The offender advised that he last accessed the internet on his smart television at his residence on July 2, 2021, and he would like to continue accessing the internet on his television because he enjoys checking his email and accessing his Twitter account.

R. Doc. 61, at 1–2 (emphasis added); *see also* R. Doc. 49, at 2 (“Petition for Warrant or Summons for Offender Under Supervision”).

The Supervision Summary reveals that the authoring probation officer was referring to Norris’s prior statements that appear in Document 61. The Supervision Summary summarizes the “seven violation reports . . . submitted to the Court.” R. Doc. 72, at 1. It lists Norris’s “noncompliance” in those violations reports as “includ[ing]” “his belief that he did not have to abide by the Court ordered special conditions.” *Id.* While not artfully crafted, the Supervision Summary’s statement—when read in context—references Document 61 and Norris’s statement that “the U.S. Probation Office can[not] legally restrict” his access to the internet. R. Doc. 61, at 2. This information is not “new.” *See Jules*, 595 F.3d at 1245.

Even assuming that the Supervision Summary’s statement that Norris “belie[ved] that he did not have to abide by the Court ordered special conditions,” R. Doc. 72, at 1, constitutes “new” information, *see Jules*, 595 F.3d at 1245, this information did not prejudice Norris. *See Alaniz*, 961 F.3d at 999. First, Norris was not eligible for *termination* of his supervised release at the time he filed the motion. Supervised release can only be terminated after the expiration of one year. 18 U.S.C. § 3583(e)(1). Second, Norris has shown no prejudice from the Supervision Summary’s reference to Norris having indicated that he did not believe he had to follow his supervised-release conditions. This is especially true in light of the Supervision Summary’s otherwise accurate representation of Norris’s “seven violation reports,” including his “possessing internet capable devices without permission, accessing the internet without permission, [and] viewing obscene material.” R. Doc. 72, at 1.

Additionally, while the Supervision Summary stated the government’s opposition to Norris’s motion for an early termination of supervision or modification, this information, though “new” to Norris, *see Jules*, 595 F.3d at 1245, was not

prejudicial. *See Alaniz*, 961 F.3d at 999. The court was *already* aware of Norris’s position because he was the one who *filed* the motion. Further, Norris filed his motion just four weeks after his revocation hearing. At that hearing, the court made clear its position on Norris’s desire to modify the supervised-release conditions. Norris expressed frustration with “trying for so many years to stay compliant” and his desire to “get these conditions to be made more reasonable.” R. Doc. 87, at 6. In response, the court advised Norris that his “remedy . . . was to abide by all the conditions to the T, to the letter, and then apply to have a reduction.” *Id.* The court also noted that “[h]ad [Norris] had perfect compliance, [it] would have given [him] some relief already.” *Id.* at 9. Despite Norris’s violations, the court did “give [Norris] some relief” and imposed a term of “20 years” of supervised release “instead of a lifetime term of supervised release.” *Id.* at 8.

Because Norris suffered no prejudice from the information contained in the Supervision Summary, no due-process violation occurred.

B. Termination of Supervision and Modification of Conditions

Norris also challenges the district court’s substantive denial of his motion to terminate his supervision or to modify the conditions of his supervised release. According to Norris, the denial “allowed to stand the supervised release condition imposing a complete ban on [his] possession of devices capable of internet access.” Appellant’s Br. at 10. He argues that no court has upheld such a ban “without sufficient relation to the nature of the crime committed, because it is overbroad and impinges on the modern day necessity of internet access.” *Id.* at 10–11.

“We review for abuse of discretion a district court’s denial of a motion to modify the terms of supervised release, including a motion for early termination of supervised release.” *United States v. Mosby*, 719 F.3d 925, 930 (8th Cir. 2013) (citations omitted). The district court has “broad discretion in this area” and “is in the

best position to evaluate the circumstances of each individual defendant.” *Id.* (internal quotation marks omitted).

Section 3583(e) of 18 U.S.C. provides, in relevant part:

(e) Modification of conditions or revocation. The court *may, after considering [certain] . . . factors . . .*

(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; [or]

(2) . . . *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

(Emphases added.)

By its plain language, § 3583(e) requires the district court to consider certain factors when it chooses to terminate a supervised-release term or modify the supervised-release conditions. But what must the district court do if it summarily *denies* a motion for termination of supervised release or modification of conditions? Is the district court required to offer reasons for denying the motion?

We addressed this scenario in *Mosby*. In that case, “the district court *summarily denied* [the defendant’s] motion [for early termination of supervised release], rejecting his equitable arguments without comment.” 719 F.3d at 930–31 (emphasis added). On appeal, the defendant asserted, among other things, “that at minimum [this court] should remand for the district court to explain its reasoning for *denying* his motion.” *Id.* at 931. We held that “the district court did not abuse its discretion,” explaining that the district court

had presided over [the defendant’s] trial and was well acquainted with his extensive criminal record, which includes convictions for violent offenses such as first degree attempted murder and first degree sexual assault. The district court was aware of the time that [the defendant] had been detained related to his [18 U.S.C.] § 4248 proceeding, his subsequent positive transition to life outside of custody, and his status as a sex offender subjecting him to state monitoring. *Neither 18 U.S.C. § 3583(e) nor relevant case law required the district court to explain its denial of early termination of supervised release.* We see no abuse of discretion in its summary denial of [the defendant’s] motion.

Id. (emphasis added).⁴

⁴The majority of other circuits have held to the contrary. *See, e.g., United States v. Johnson*, 877 F.3d 993, 998 (11th Cir. 2017) (“We accordingly conclude that for a § 3583(e)(1) motion to be properly denied, the court’s order, in light of the record, must indicate that the court considered the factors enumerated in the provision. We join a number of our sister circuits in so holding.” (citation omitted)); *United States v. Mathis-Gardner*, 783 F.3d 1286, 1287 (D.C. Cir. 2015) (holding district court must consider specified statutory sentencing factors before denying motion for early termination of supervised release); *United States v. Emmett*, 749 F.3d 817, 820 (9th Cir. 2014) (“A district court’s duty to explain its sentencing decisions must also extend to requests for early termination of supervised release.”); *United States v. Lowe*, 632 F.3d 996, 998 (7th Cir. 2011) (“[W]e have held that although a court need not make explicit findings as to each of the factors, the record must reveal that the court gave consideration to the § 3553(a) factors”); *United States v.*

Mosby controls the present case. As in *Mosby*, the district court has presided over Norris's case since its inception. It thoroughly explained at the revocation hearing why it was imposing a 20-year term of supervised release with the original, unobjected-to supervised-release conditions. Under *Mosby*, the court was not required "to explain its denial of early termination of supervised release." *Id.*

Furthermore, we find no abuse of discretion in the court's refusal to modify Norris's restrictions on internet and computer use.⁵ No "*per se* rule [exists] that a district court may never impose a prior-approval Internet use restriction based on a defendant's receipt and possession of child pornography." *United States v. Morais*, 670 F.3d 889, 896 (8th Cir. 2012).

Gammarano, 321 F.3d 311, 315–16 (2d Cir. 2003) (requiring a statement that the court has considered the statutory factors but not findings of fact); *United States v. Pregent*, 190 F.3d 279, 283 (4th Cir.1999) ("[B]ecause the district court followed the statutory mandate to consider both Pregent's conduct and the interest of justice and concluded that Pregent's behavior did not warrant an early termination of supervised release, the district court did not abuse its discretion [in denying the defendant's motion under § 3583(e)]."). The Eighth Circuit is routinely cited as the outlier. *See, e.g., Johnson*, 877 F.3d at 998 n.10. However, "[i]t is a cardinal rule in our circuit that one panel is bound by the decision of a prior panel." *Mader v. United States*, 654 F.3d 794, 800 (8th Cir. 2011) (en banc) (quoting *Owsley v. Luebbbers*, 281 F.3d 687, 690 (8th Cir. 2002)).

⁵The government argues that "because [Norris] did not challenge these conditions of supervised release when they were originally imposed, his request to modify them now constitutes an improper collateral attack on his underlying sentence." *United States v. Trimble*, 969 F.3d 853, 856 (8th Cir. 2020) (per curiam). "But this appeal does not arise from a supervised-release revocation proceeding, and [Norris] does not challenge the validity of his underlying supervised-release conditions. Instead, [he] has asked the district court to exercise its statutory authority to modify the terms of his supervised release." *Id.* (citing 18 U.S.C. § 3582(e)(2)). As we explained in *Trimble*, "[t]he district court had authority to rule on this request, and there is no barrier to our reviewing the district court's judgment on appeal." *Id.*

Such a *per se* rule would be in tension with our cases holding that a district court should fashion conditions of supervised release on an individualized basis in light of the statutory factors and not by treating defendants as part of a class that is defined solely by the offense of conviction.

Id. (citations omitted). Indeed, we have “conclude[d] that [a] district court did not abuse its discretion by declining to modify or eliminate” a condition prohibiting the defendant from “access[ing] the internet or possess[ing] and/or us[ing] computers . . . , internet capable devices, cellular telephones, and other electronic communications or data storage devices or media without the prior approval of the U.S. Probation Officer” where the defendant had a “past [history of] us[ing] . . . electronic devices during both his offense conduct [of possessing child pornography] and while on supervised release.” *Trimble*, 969 F.3d at 857 (internal quotation marks omitted); *cf. United States v. Koch*, 625 F.3d 470, 481–82 (8th Cir. 2010) (holding district court did not abuse its discretion in prohibiting defendant, who had been found guilty of possessing or receiving child pornography, from using or possessing computer or accessing Internet, without prior permission from probation officer, as condition of supervised release for conviction of child pornography possession, where defendant did more than merely possess child pornography, he was sophisticated computer user who already had violated less restrictive condition of release, and restriction was not complete ban); *United States v. Boston*, 494 F.3d 660, 668 (8th Cir. 2007) (“The special condition here, prohibiting Boston from accessing or possessing a computer without written approval of his probation officer, did not constitute an abuse of discretion because it was not absolute and because evidence was presented at the suppression hearing that Boston had used a computer to print out images of child pornography which could easily have been done for the purpose of transferring them to others.”).

Like the defendant in *Trimble*, Norris has a “past [history of] us[ing] . . . electronic devices during both his offense conduct [of possessing child

pornography] and while on supervised release.” *Trimble*, 969 F.3d at 857 (internal quotation marks omitted). In Norris’s plea agreement to the original charge, he stipulated to knowingly possessing (1) “a graphic video file depicting a nude minor female engaged in the lascivious display of her genitalia”; (2) “[a] graphic video file depicting two nude minor females engaged in the lascivious display of their genitalia”; and (3) “more than 10 images, but less than 150 images of child pornography,” “[s]ome of [which] . . . depicted prepubescent minors or minors under the age of twelve engaged in sexually explicit conduct.” R. Doc. 28, at 9. He also agreed that certain specific offense characteristics applied, including (1) a two-level enhancement under U.S.S.G. § 2G2.2(b)(2) “because ‘the material involved a prepubescent minor or a minor who had not attained the age of 12 years’”; (2) a two-level enhancement under U.S.S.G. § 2G2.2(b)(6) “because ‘the offense involved the use of a computer or an interactive computer service for the possession, transmission, receipt, or distribution of the material’”; and (3) a two-level enhancement under U.S.S.G. § 2G2.2(b)(7)(A) “because ‘the offense involved at least 10 but fewer than 150 images.’” *Id.* at 6.

Consistent with his plea agreement, Norris did not object at his original sentencing to the “factual statements set out in the presentence report” or to application of the specific offense characteristics. R. Doc. 38, at 3. In announcing Norris’s sentence, the district court imposed the ban on Norris’s usage of computers to access the internet without prior approval of the probation office as a special condition of his supervised release.

Thereafter, Norris admittedly violated the ban on his usage of computers to access the internet without approval of the probation office. The district court then revoked his supervised release, sentenced him to three months’ imprisonment and 20 years’ supervised release, and reimposed the same conditions of supervised release. Furthermore, “[t]he condition is not an absolute prohibition, and it specifically contemplates that [Norris’s] probation officer may allow access to these devices for

employment purposes.” *Trimble*, 969 F.3d at 857 (citing *United States v. Notman*, 831 F.3d 1084, 1089 (8th Cir. 2016) (stating that “whether the restriction is a total ban” is a relevant factor in assessing restrictions like this one)).

“In light of [Norris’s] conduct, and because he may seek approval [from the probation office], we conclude that the district court did not abuse its discretion by declining to modify or eliminate this condition.” *Id.*

III. Conclusion

Accordingly, we affirm the judgment of the district court.

KELLY, Circuit Judge, concurring.

I concur in the court’s conclusion that, in light of our case law and the specific facts here, Norris raises no procedural error warranting reversal.

I also agree that, on the record before us, the district court did not abuse its discretion in denying Norris’s pro se motion to modify the supervised release conditions that impose an outright ban on his use of a computer or the internet without the prior approval of the probation office. Norris did not address those conditions at his revocation hearing and then moved to modify them barely a week later, when he was still in custody serving his revocation sentence. Norris also offered no concrete details in his motion as to why the conditions would be unreasonably restrictive once he was released from custody, or why they are otherwise unrelated to the relevant sentencing factors in his case. See *United States v. Romig*, 933 F.3d 1004, 1006–07 (8th Cir. 2019).

Nevertheless, while there is indeed no “*per se* rule” barring a district court from imposing a prior-approval restriction on a defendant’s computer and internet use, *United States v. Morais*, 670 F.3d 889, 896 (8th Cir. 2012), it is also true that we have

established what can only be described as a presumption against such restrictions where, like here, a defendant was “solely convicted of knowingly receiving and possessing child pornography.” United States v. Wiedower, 634 F.3d 490, 495 (8th Cir. 2011); see United States v. Crume, 422 F.3d 728, 733 (8th Cir. 2005) (“We are not convinced that a broad ban from such an important medium of communication, commerce, and information-gathering is necessary given the absence of evidence demonstrating more serious abuses of computers or the Internet.”). Computer- and internet-use restrictions, “like other special conditions of supervised release,” cannot be categorically imposed on all sex offenders, but instead must be justified by “an individualized inquiry into a particular offender’s circumstances.” United States v. Sanchez, 44 F.4th 1100, 1105 (8th Cir. 2022) (discussing the well-established standards for reviewing supervised released conditions “imposed in sentencing sex offenders”). We have upheld such restrictions when that individualized inquiry showed that the defendant “sold, transferred, [or] produced” child pornography. United States v. Bender, 566 F.3d 748, 751 (8th Cir. 2009); see United States v. Boston, 494 F.3d 660, 668 (8th Cir. 2007) (“A restriction on computer usage does not constitute an abuse of discretion if the district court has found that the defendant used his computer to do more than merely possess child pornography . . .”). And we have done the same when the particular facts of a defendant’s possession offense proved to be especially “egregious.” Morais, 670 F.3d at 896.

But here, there has never been a finding—not at Norris’s sentencing, at his final revocation hearing, or in the order denying his motion to modify the conditions of his supervised release—explaining why Norris’s individual circumstances warrant banning him from using computers or the internet without prior approval. See Wiedower, 634 F.3d at 495 (reversing a prior-approval computer restriction in part because the district court did not “conduct[] an individualized inquiry into the appropriateness of” such a restriction). Now that Norris has been released from custody, he might once again move to modify the restrictions at issue here. And after conducting an individualized inquiry into the specific facts of Norris’s case and his

post-release circumstances, the district court may conclude that the restrictions, or some variation of them, are in fact necessary.

Yet our observation nearly two decades ago that the internet is an “important medium of communication, commerce, and information-gathering,” Crume, 422 F.3d at 733, has by now become an understatement. Using the internet for such basic tasks as paying bills, finding directions, checking the weather, scheduling medical appointments, or searching and applying for a job is not just commonplace. It is, in many respects, the norm. Accordingly, prohibitions on the use of the internet and internet-capable devices that are more restrictive than necessary to protect the public and achieve the other goals of sentencing might very well end up being counter-productive, creating needless obstacles to defendants’ ability to re-enter, and become productive and engaged members of, their communities. If the matter of Norris’s internet use were properly before the district court, I am confident the court would conduct the appropriate analysis, keeping these and other relevant concerns in mind.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI**

Report on Offender Under Supervision

Name of Offender: James B. Norris Jr.

Docket No.: 4:08CR00238-1 SNLJ

Name of Sentencing Judicial Officer: The Honorable Stephen N. Limbaugh Jr.
Senior United States District Judge

Date of Original Sentence: February 18, 2009

Original Offense: Possession of Child Pornography

Original Sentence: 37 months imprisonment and Life supervised release. Supervised release revoked on August 24, 2021, and sentenced to 3 months imprisonment, followed by 20 years supervised release.

Type of Supervision: Supervised Release

Date Supervision Commenced: October 13, 2021

Expiration Date: October 12, 2041

SUPERVISION SUMMARY

The following supervision summary is respectfully submitted to the Court in response to a motion filed by James Norris for an early termination from supervised release. Pursuant to 18 U.S.C. § 3564(c) and 3583(e)(1), Courts are permitted to terminate supervised release or probation in felony cases after one year, if such action is warranted. Norris' motion also requested his conditions be modified.

On April 17, 2011, Norris was released from the Bureau of Prisons, during which time his supervised release commenced. On August 24, 2021, Norris' supervised release was revoked. Norris was on supervised release for approximately ten years and three months when he committed the violations that led to his revocation. While on supervision, seven violation reports had been submitted to the Court. Norris' noncompliance included possessing internet capable devices without permission, accessing the internet without permission, viewing obscene material, and his belief that he did not have to abide by the Court ordered special conditions. Norris was not considered amenable to supervision in the community and he sentenced to 3 months custody following the revocation of his supervised release.. Norris filed the motion while he was in custody on the revocation for violating his conditions.

Norris was released on October 13, 2021 to begin his new term of supervised release. Norris has returned to his previous home plan and his previous employer.


On October 21, 2021, Assistant U.S. Attorney Hal Goldsmith was contacted regarding this matter and advised he would be opposed to an early termination of supervision or modification of conditions at this time.

RECOMMENDATION:

The U.S. Probation Office respectfully recommends that the motion for early termination and modification of conditions be denied due to the fact Norris was recently revoked for violating conditions of his supervision that were put in place to protect the community.

Approved,

by



Clinton S. Vestal
Supervising U.S. Probation Officer
Date: October 27, 2021

Respectfully submitted,

by



Valerie R. Butler
U.S. Probation Officer
Date: October 26, 2021

-
- ☒ I agree with the recommendation of the Probation Officer
☐ Discharge from Supervised Release
☐ Other



Signature of Judicial Officer

10/28/2021

Date

02/2020	Supervised Release Revocation Sentencing Computation		
U.S. vs.	James B. Norris Jr.	Docket No.	4:08CR00238-1 SNLJ
U.S. District Court, Eastern District of Missouri			
Violation(s)			Grade
<p><u>Violation Number</u></p> <p>Special Condition No. 9: The defendant shall not possess obscene material as deemed inappropriate by the probation officer and/or treatment staff, or patronize any place where such material or entertainment is available. [USSG §7B1.1(3)(b)] Violation Ended 07/02/2021</p> <p>Special Condition No. 12: The defendant shall not possess or use a computer, peripheral equipment, or any other devices with access to any "on line computer services" at any location (including employment), or subscribe to or use any Internet service, without the prior written approval of the probation office. In addition, the defendant shall consent to his probation officer or probation service representative conducting random or periodic unannounced examinations of any computer(s) equipment to which he has access, including web enabled cell phones. The examination may include retrieval and copying of all data from the defendant's computer(s), or any computer(s) to which the defendant has access, and any internal and external peripherals to insure compliance with this condition and/or removal of such equipment for the purpose of conducting a more thorough inspection; the defendant shall, at the direction of his probation officer, consent to having installed on the computer(s), at the defendant's expense, any hardware or software systems to monitor or filter his computer use. Prior to installation of any such hardware or software systems, the defendant shall allow the U.S. Probation Office to examine the computer and/or electronic storage device. The defendant shall pay for the costs associated with monitoring based on a co-payment fee approved by the U.S. Probation. [USSG §7B1.1(3)(b)] Violation Ended 07/02/2021</p> <p>Special Condition No. 13: The defendant shall advise the probation office of all computers, electronic equipment, and web enabled equipment, including cell phones, to which he possesses or has access within 24 hours of obtaining same. [USSG §7B1.1(3)(b)] Violation Ended 07/02/2021</p>			<p><u>C</u></p> <p><u>C</u></p> <p><u>C</u></p>
<p>Nature of Noncompliance</p> <p>On June 30, 2021, the offender participated in a polygraph examination with Yarborough Polygraph Services, as required. According to the polygraph examiner, the offender disclosed that he has accessed the internet through a smart television at his residence to access his Twitter account, to view his email account, and to stream on-line networks. He further stated that the offender disclosed accessing the internet on a computer at his employment to view his email account and on-line banking. The offender also disclosed that he accessed the internet at the Carondelet and Buder branches of the St. Louis Public Library system to print documents, view his email account and to access his Twitter account. Lastly, he advised that the offender disclosed that while in his mother's presence, he accessed the internet on her computer to view his email account. The examiner advised that throughout the conversation with the offender, he stated that he frequently accessed his Twitter account to engage in conversation regarding ending registered sex offender policy and that he had inadvertently viewed nude images of adult females on Twitter but denied using them for sexual gratification purposes.</p> <p>When interviewed on July 2, 2021, the offender admitted to the noncompliance noted above. Additionally, he stated that he has been accessing the internet on a daily basis through the</p>			

various means listed directly above. When advising the offender that he has no permission to access the internet through any means and he must cease access immediately, he became angry and stated that accessing the internet is a human right and is not something that the U.S. Probation Office can legally restrict. He further advised the undersigned that he does not know how the undersigned can do his job as I am "torturing people" and his "conscience" would not allow him to enforce these conditions of supervision. The offender advised that he last accessed the internet on his smart television at his residence on July 2, 2021, and he would like to continue accessing the internet on his television because he enjoys checking his email and accessing his Twitter account.

Most Serious Grade of Violation [<u>USSG §7B1.1(b)</u>]		<u>C</u>
Criminal History Category [<u>USSG §7B1.4(a)</u>]		<u>I</u>
Term of Imprisonment Imposed on Prior Revocation(s)		<u>N/A</u>
Statutory Maximum Imprisonment [<u>18 U.S.C. § 3583(e)(3)</u>]		2 years
Guideline Range of Imprisonment	[<u>USSG §7B1.4(a)</u>]	3-9 months

Range of Supervised Release

Under provisions of 18 U.S.C. § 3583(h), as modified by the Protect Act, reimposition of supervised release is permissible regardless of whether the Court has imposed the maximum allowable revocation prison term under 18 U.S.C. § 3583(e); however, the period of supervised release may not exceed the statutory maximum term of supervised release less the total terms of imprisonment that the court has imposed on revocations. To determine the permissible length of a new term of supervised release, subtract the aggregate of all revocation prison terms imposed from the maximum authorized term of supervised release for the original offense.

Departure information: At the time of sentencing, the Court found no basis for either a departure or a variance from the sentencing range.

Approved by,

Respectfully submitted,



Monica B. Mannino
Supervising U.S. Probation Officer



Brad W. Mueller
Senior U.S. Probation Officer

James B.

I:\Supervision\Sentencing Computation-Supervised Release\ Norris Jr., James B. Sentencing Computation-Supervised Release 408CR00238-1 SNLJ 07-12-2021.docx

United States District Court

Eastern District of Missouri

UNITED STATES OF AMERICA

v.

JAMES B. NORRIS, JR.

JUDGMENT IN A CRIMINAL CASE

CASE NUMBER: 4:08CR238 SNLJ

USM Number: 35102-044

Bradford Kessler, Michael Katz

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) one on November 19, 2008 to the single-count indictment.

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 2252A(a)(5)(B)	Possession of Child Pornography	May 2, 2007	one

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.


☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ dismissed on the motion of the United States.

IT IS FURTHER 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 must notify the court and United States attorney of material changes in economic circumstances.

February 18, 2009

Date of Imposition of Judgment


Signature of Judge

STEPHEN N. LIMBAUGH, JR.

UNITED STATES DISTRICT JUDGE

Name & Title of Judge

February 18, 2009

Date signed

DEFENDANT: JAMES B. NORRIS, JR.CASE NUMBER: 4:08CR238 SNLJDistrict: Eastern District of Missouri**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of THIRTY-SEVEN MONTHS

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

Defendant be evaluated for participation in the Residential Drug Abuse Program and the sex offender treatment and counseling program, if consistent with the Bureau of Prisons policies.

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

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

☐ at _____ a.m./pm on _____

☐ as notified by the United States Marshal.

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

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal

☐ as notified by the Probation or Pretrial Services Office

MARSHALS RETURN MADE ON SEPARATE PAGE

DEFENDANT: JAMES B. NORRIS, JR.
CASE NUMBER: 4:08CR238 SNLJ
District: Eastern District of Missouri

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of LIFE

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm as defined in 18 U.S.C. § 921. (Check, if applicable.)
- ☐ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The Defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment

The defendant shall comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: JAMES B. NORRIS, JR.

CASE NUMBER: 4:08CR238 SNLJ

District: Eastern District of Missouri

ADDITIONAL SUPERVISED RELEASE TERMS

WHILE ON SUPERVISION, THE DEFENDANT SHALL COMPLY WITH THE STANDARD CONDITIONS THAT HAVE BEEN ADOPTED BY THIS COURT AS WELL AS THE FOLLOWING ADDITIONAL CONDITIONS:

1. The defendant shall refrain from any unlawful use of a controlled substance and submit to a drug test within 15 days of commencement of supervision and at least two periodic drug tests thereafter for use of a controlled substance.
2. The defendant shall participate in a drug or alcohol abuse treatment program approved by the United States Probation Office, which may include substance abuse testing, counseling, residence in a Community Corrections Center, residence in a Comprehensive Sanctions Center, Residential Re-Entry Center, or inpatient treatment in a treatment center or hospital. The defendant shall pay for the costs associated with substance abuse services based on a co-payment fee established by the United States Probation Office. Co-payments shall never exceed the total cost of services provided.
3. The defendant shall abstain from the use of alcohol and/or all other intoxicants.
4. The defendant shall comply with all federal, state, and local sex offender registration laws and provide verification of registration to the probation officer.
5. The defendant shall participate in a sex-offense specific treatment program. The defendant shall enter, cooperate, and complete said program until released by the United States Probation Officer. The defendant shall abide by all policies and procedures of the sex-offense specific program. During the course of said treatment, the defendant shall be subject to periodic and random physiological testing which may include but is not limited to polygraph testing and/or other specialized assessment instruments. The defendant shall pay for the costs associated with treatment based on a co-payment fee approved by the United States Probation Office. Co-payments shall never exceed the total costs of treatment.
6. The defendant shall be prohibited from contact with children under the age of 18 without the prior written permission of the probation officer and shall report to the probation office immediately, but in no event later than 24 hours, any unauthorized contact with children under the age of 18.
7. The defendant shall be prohibited from engaging in any occupation, business, profession, or volunteer work where he has access to children under the age of 18 without prior written approval from the probation officer.
8. The defendant shall not loiter within 100 feet of schools, parks, playgrounds, arcades, or other places frequented by children under the age of 18.
9. The defendant shall not possess obscene material as deemed inappropriate by the probation officer and/or treatment staff, or patronize any place where such material or entertainment is available.
10. The defendant shall not purchase or maintain a post office box or any other type of private mailbox without written approval of the probation officer.
11. The defendant shall submit his person, residence, office, computer, or vehicle to a search, conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. The defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
12. The defendant shall not possess or use a computer, peripheral equipment, or any other devices with access to any "on line computer services" at any location (including employment), or subscribe to or use any Internet service, without the prior written approval of the probation office. In addition, the defendant shall consent to his probation officer or probation service representative conducting random or periodic unannounced examinations of any computer(s) equipment to which he has access, including web enabled cell phones. The examination may include retrieval and copying of all data from the defendant's computer(s), or any computer(s) to which the defendant has access, and any internal and external peripherals to insure compliance with this condition and/or removal of such equipment for the purpose of conducting a more thorough inspection; the defendant shall, at the direction of his probation officer, consent to having installed on the computer(s), at the defendant's expense, any hardware or software systems to monitor or filter his computer use. Prior to installation of any such hardware or software systems, the defendant shall allow the U.S. Probation Office to examine the computer and/or electronic storage device. The defendant shall pay for the costs associated with monitoring based on a co-payment fee approved by the U.S. Probation.
13. The defendant shall advise the probation officer of all computer, electronic equipment, and web enabled equipment, including cell phones, to which he possesses or has access within 24 hours of obtaining same.

DEFENDANT: JAMES B. NORRIS, JR.

CASE NUMBER: 4:08CR238 SNLJ

District: Eastern District of Missouri

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on sheet 6

Assessment

Fine

Restitution

Totals:

\$100.00

☐ The determination of restitution is deferred until _____. *An Amended Judgment in a Criminal Case (AO 245C)*

☐ The defendant shall make restitution, payable through the Clerk of Court, to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional 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.

Name of PayeeTotal Loss*

<u>Restitution Ordered</u>	<u>Priority or Percentage</u>

Totals:☐ Restitution amount ordered pursuant to plea agreement

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

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

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

DEFENDANT: JAMES B. NORRIS, JR.CASE NUMBER: 4:08CR238 SNLJDistrict: Eastern District of Missouri**SCHEDULE OF PAYMENTS**

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

- A ☒ Lump sum payment of \$100.00 due immediately, balance due
☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, or ☐ E below; or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ E below; or ☐ F below; or
- C ☐ Payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of _____ over a period of _____ e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of _____ over a period of _____ e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after Release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

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

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

- ☐ Joint and Several
 Defendant and Co-defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and 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) fine principal, (5) fine interest (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.



DEFENDANT: JAMES B. NORRIS, JR.

CASE NUMBER: 4:08CR238 SNLJ

USM Number: 35102-044

UNITED STATES MARSHAL
RETURN OF JUDGMENT IN A CRIMINAL CASE

I have executed this judgment as follows:

The Defendant was delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

- ☐ The Defendant was released on _____ to _____ Probation
- ☐ The Defendant was released on _____ to _____ Supervised Release
- ☐ and a Fine of _____ ☐ and Restitution in the amount of _____

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

I certify and Return that on _____, I took custody of _____

at _____ and delivered same to _____

on _____ F.F.T. _____

U.S. MARSHAL E/MO

By DUSM _____

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE
(For **Revocation** of Probation or Supervised Release)

v.

JAMES B. NORRIS, JR.Case Number: **4:08-CR-00238-SNLJ(1)**USM Number: **35102-044****Eric M. Selig**

Defendant's Attorney

THE DEFENDANT:

<input checked="" type="checkbox"/>	admitted guilt to the following violation of condition(s):	(See violations listed below)
<input type="checkbox"/>	was found in violation of the following condition(s) after denial of guilt:	(See violations listed below)

The defendant is adjudicated guilty of these violations:

Violation Number	Nature of Violation	Violation Ended
Special Condition No. 9:	The defendant shall not possess obscene material as deemed inappropriate by the probation officer and/or treatment staff, or patronize any place where such material or entertainment is available.	July 2, 2021
Special Condition No. 12:	The defendant shall not possess or use a computer, peripheral equipment, or any other devices with access to any "on line computer services" at any location (including employment), or subscribe to or use any Internet service, without the prior written	July 2, 2021
	Continued on Page 2	

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has not violated condition(s) and is discharged as to such violation(s) condition.

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

Last Four Digits of Defendant's Soc. Sec. 6819

August 24, 2021

Defendant's Year of Birth: 1971

Date of Imposition of Judgment

City and State of Defendant's Residence:
St. Louis, Missouri

Signature of Judge

STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE

Name and Title of Judge

August 24, 2021

Date

DEFENDANT: JAMES B. NORRIS, JR.
CASE NUMBER: 4:08-CR-00238-SNLJ(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:
three (3) months as to count 1r.

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

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

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

☐ at ☐ a.m. ☐ p.m. on

☐ as notified by the United States Marshal.

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

☐ before 2 p.m. on

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

MARSHALS RETURN MADE ON SEPARATE PAGE

DEFENDANT: JAMES B. NORRIS, JR.
CASE NUMBER: 4:08-CR-00238-SNLJ(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : 20 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 additional conditions on the attached page.

DEFENDANT: JAMES B. NORRIS, JR.
CASE NUMBER: 4:08-CR-00238-SNLJ(1)

STANDARD CONDITIONS OF SUPERVISION

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

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
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. I understand additional information regarding these conditions is available at www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: JAMES B. NORRIS, JR.
CASE NUMBER: 4:08-CR-00238-SNLJ(1)

SPECIAL CONDITIONS OF SUPERVISION

While on supervision, the defendant shall comply with the standard conditions that have been adopted by this Court and shall comply with the following additional conditions. If it is determined there are costs associated with any services provided, the defendant shall pay those costs based on a co-payment fee established by the probation office.

You must not use or possess alcohol.

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.

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.

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.

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.

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 without approval of the probation office.

You must participate in a substance abuse treatment program and follow the rules and regulations of that program **which may include inpatient treatment at the discretion and/or direction of the probation officer.** The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).

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.).

You must not possess or use any audio/visual recording or producing equipment at any location without the written approval of the probation office. If approval is given, you must consent to the probation office or probation service representative conducting unannounced examinations, including retrieval and copying of all data related to the equipment.

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.

You must not access the Internet except for reasons approved in advance by the probation officer.

You must not view or possess any "visual depiction" (as defined in 18 U.S.C. § 2256), including any

DEFENDANT: JAMES B. NORRIS, JR.
CASE NUMBER: 4:08-CR-00238-SNLJ(1)

photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of "sexually explicit conduct" (as defined in 18 U.S.C. §2256).

You must advise the probation office of all computer, electronic equipment, and web enabled equipment, including cell phones, to which he possesses or has access within 24 hours of obtaining same.

You must submit to periodic physiological testing which may include but is not limited to 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.

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. 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.

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.).

You must submit to substance abuse testing to determine if you have used a prohibited substance. You must not attempt to obstruct or tamper with the testing methods.

You must not purchase or maintain a post office box, any other type of private mail box or any type of storage locker, unit or facility without written approval of the probation office.

DEFENDANT: JAMES B. NORRIS, JR.

CASE NUMBER: 4:08-CR-00238-SNLJ(1)

USM Number: 35102-044

**UNITED STATES MARSHAL
RETURN OF JUDGMENT IN A CRIMINAL CASE**

I have executed this judgment as follows:

Date defendant was delivered with certified copy of this judgment: _____

Name and location of facility: _____

☐ Defendant was sentenced to Time Served and was released on: _____

☐ Defendant was sentenced to _____ months/years of Probation and was released on: _____

☐ Defendant was sentenced to _____ months/years of Supervised Release and was released on: _____

NAME OF US MARSHAL/WARDEN

By: NAME OF DEPUTY US MARSHAL/CSO

(PROCEEDINGS STARTED AT 3:42 PM.)

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT AND WITH
THE DEFENDANT PRESENT:)

THE COURT: Counsel, you can come up to the podium.

The next case is United States of America v. James B.
Norris, Jr. The Case Number is 08-CR-238.

Counsel, announce your appearances.

MR. LIVERGOOD: Your Honor, Robert Livergood on
behalf of the United States.

MR. SELIG: And Eric Selig on behalf of Mr. Norris,
the defendant.

THE COURT: And the defendant appears in person, I
see.

This matter is set today for supervised release
revocation hearing. Is the matter contested?

MR. SELIG: It is not, Your Honor. Mr. Norris is
willing to admit that he violated the condition of being on
the -- accessing the internet without permission.

THE COURT: Mr. Norris, you're entitled to have an
evidentiary hearing on the question of whether or not you
violated the terms and conditions of your supervised release.

At that hearing, the Government would have to
introduce evidence to prove those violations; and, of course,
you could introduce evidence to disprove the violations,
including taking the witness stand, testifying, telling your

1 side of the story, and calling witnesses in your own behalf.

2 You know all of that, don't you?

3 THE DEFENDANT: It was explained to me earlier, I
4 believe.

5 THE COURT: Do you understand all of that?

6 THE DEFENDANT: I believe so, yes.

7 THE COURT: Okay. You can lower your mask when
8 you're answering questions.

9 THE DEFENDANT: All right.

10 THE COURT: So your lawyer says you want to give up
11 your right to have that evidentiary hearing and admit the
12 violations. Is that what you want to do?

13 THE DEFENDANT: Yes.

14 THE COURT: Have you had plenty of time to talk with
15 him about this?

16 THE DEFENDANT: We've discussed it.

17 THE COURT: Have you had plenty of time to talk with
18 him about this?

19 THE DEFENDANT: I believe so, yes.

20 THE COURT: And this is your free and voluntary
21 decision, then?

22 THE DEFENDANT: Yes.

23 THE COURT: Okay. So I think -- do you admit that
24 you've been accessing the internet on a daily basis through
25 various means and --

1 THE DEFENDANT: Yes.

2 THE COURT: Now, this also says that on April 8,
3 2021, you failed to answer truthfully to the probation officer
4 that you either possessed obscene materials, possessed
5 internet-capable devices without permission, and that the
6 probation office seized a laptop, a smart phone, and that the
7 forensic examination revealed that you had accessed numerous
8 pornographic websites.

9 Do you admit all of that too?

10 THE DEFENDANT: They were dating websites, but they
11 were of an adult nature.

12 THE COURT: My question is that you had accessed
13 numerous pornographic websites. Do you admit that?

14 THE DEFENDANT: Yes. I admit they could be viewed
15 that way, yes.

16 THE COURT: Okay. Based on your admissions, the
17 Court finds that you violated the terms and conditions of your
18 supervised release in those respects.

19 But I'll review with you specifically the sentencing
20 guidelines calculations. Grade of violation is C. Criminal
21 history category is 1. The statute provides for up to two
22 years in prison. The guidelines, though, are three to nine
23 months. And a supervised release period of five years to
24 life.

25 Any objections, Counsel?

1 MR. LIVERGOOD: No, Your Honor.

2 MR. SELIG: No, Your Honor.

3 THE COURT: The Court then will adopt as its
4 additional findings the sentencing guidelines calculations as
5 stated.

6 What, then, is the Government's recommendation?

7 MR. LIVERGOOD: Your Honor, the parties have
8 discussed this. The Government was going to ask for four
9 months' imprisonment, and the defense is going to ask for
10 three months' imprisonment.

11 THE COURT: Mr. Selig?

12 MR. SELIG: That is correct, Your Honor. And the
13 reason we're asking for three months is because Mr. Norris has
14 been working at Advance Auto Parts for the last two and a half
15 years. And I spoke with his manager today. They consider him
16 an exemplary employee. And they are holding his position for
17 90 days, and it's part of a policy that that's the longest
18 they can hold it for. They are hoping that he'll be able to
19 come back in 90 days.

20 And Mr. Norris also has a brother who has mental
21 health issues, and Mr. Norris is his guardian. His brother
22 John lives with Mr. Norris, and Mr. Norris takes care of him.

23 So I think if Your Honor was kind enough to sentence
24 him to 90 days, I think his housing would be able to be
25 retained, he would be able to retain his job, and he would be

1 able to take care of his brother.

2 THE COURT: Mr. Norris, do you want to make a
3 statement?

4 THE DEFENDANT: I've been trying for so many years to
5 stay compliant, and I -- it's becoming so frustrating after
6 this many years. And I feel it's so difficult to try to get
7 these conditions to be made more reasonable, and it's
8 difficult to deal with a sentence, a lifetime sentence of
9 supervision, when I have to consider the time that I'm
10 required to register for is not even that long. I have --
11 it's very difficult for me to live under all of this.

12 THE COURT: Well, your remedy, probably, was to abide
13 by all the conditions to the T, to the letter, and then apply
14 to have a reduction in your supervision.

15 THE DEFENDANT: Yeah.

16 THE COURT: But that's not what you did,
17 unfortunately.

18 THE DEFENDANT: No. I --

19 THE COURT: It's almost like you're going to have to
20 start over. It's not saying that you couldn't get a reduction
21 of me eventually, but you understand what I'm saying.

22 THE DEFENDANT: I understand what you're saying. I
23 just -- I -- I feel frustrated because of some of the
24 violations that are currently showing in my file I dispute. I
25 contest some of the erroneous information.

1 And I feel -- I struggle with how do I get this
2 corrected? Because when you read it, it looks to someone
3 who's not familiar with me on a regular basis -- it appears
4 very derogatory against me. And I --

5 THE COURT: Well, the problem is, you know, it has
6 been a long time now. Had you been a perfect participant in
7 supervised release, chances are I might have been willing to
8 reduce your time of supervised release. But you haven't. I
9 mean --

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right.

12 THE DEFENDANT: I intended to fully comply to the
13 best of my ability, sir.

14 MR. LIVERGOOD: Your Honor, after hearing about his
15 job and everything, the Government has no objection to the
16 three months.

17 THE COURT: Okay. Having found that you violated the
18 conditions of your supervised release, a term of supervised
19 release is hereby revoked.

20 Pursuant to the Sentencing Reform Act of 1984 and the
21 provisions of Title 18, United States Code, Section 3553(a)
22 and all the factors thereunder, and also in view of the
23 sentencing objectives of just punishment, general deterrence,
24 and incapacitation, and in order to fashion a sentence that's
25 sufficient but not greater than necessary to comply with the

1 statute, it's the judgment and sentence of the Court that you,
2 James B. Norris, Jr., is hereby committed to the custody of
3 the Bureau of Prisons to be imprisoned for a term of three
4 months.

5 Now, I'm going to go ahead and give you some relief,
6 although I question whether it would be appropriate given your
7 current violations.

8 But when you're released, instead of a lifetime term
9 of supervised release, I'm going to make it 20 years.

10 Within 72 hours of your release, you have to report
11 in person to the probation office in the district to which you
12 are released.

13 While on supervision, you are still obligated to
14 comply with all the sex offender registration laws -- local,
15 state, national, federal.

16 And you're also required to comply with all of the
17 conditions of supervision, both the mandatory conditions that
18 have been adopted by this Court and the special conditions
19 that I imposed against you originally.

20 Those are all ordered to be complied with again. And
21 I'll not read those again because they were the ones that are
22 imposed against you now already, and so there's no need to
23 reread all of those conditions. But it's the same conditions.

24 So with that, you have a right to appeal from the
25 sentence, but you have to bring your appeal within 14 days.

1 You know that, don't you?

2 THE DEFENDANT: I did not, but I do now.

3 THE COURT: Okay. Is there anything further for the
4 Government?

5 MR. LIVERGOOD: No, Your Honor.

6 THE COURT: For defendant?

7 MR. SELIG: No, Your Honor. Thank you.

8 THE COURT: All right.

9 Mr. Norris, I've explained to you the problem. I
10 think everybody here wishes that you would have had perfect
11 compliance. Had you had perfect compliance, we would have
12 given you some relief already from the sentencing guidelines.
13 But you keep committing these violations, and as long as you
14 keep doing that, we'll be back in court again. You
15 understand?

16 THE DEFENDANT: I understand.

17 THE COURT: All right.

18 Anything further for defendant, then?

19 MR. SELIG: No, thank you.

20 THE COURT: Good luck to you, then.

21 **(PROCEEDINGS CONCLUDED AT 4:00 PM.)**

22

23

24

25

CERTIFICATE

I, Shannon L. White, Registered Merit Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 10 inclusive and that this reporter takes no responsibility for missing or damaged pages of this transcript when same transcript is copied by any party other than this reporter.

Dated at St. Louis, Missouri, this 10th day of February, 2022.

/s/Shannon L White
/s/Shannon L. White
Shannon L. White, CRR, RMR, CCR, CSR
Official Court Reporter



U.S. Department of Justice

United States Attorney's Office
Eastern District of Missouri

Zachary M. Bluestone
Assistant United States Attorney

111 South Tenth Street, Room 20.333
Saint Louis, MO 63102

Direct: 314.539.6886
zack.bluestone@usdoj.gov

September 20, 2022

Michael E. Gans, Clerk of Court
U.S. Court of Appeals for the Eighth Circuit
111 South Tenth Street, Room 24.329
Saint Louis, MO 63102

Re: *United States v. Norris*, No. 21-3849 – Notice of Supplemental Authority

Dear Mr. Gans:

Pursuant to Rule 28(j), the Government provides notice of authority demonstrating the futility of remand and record citations for two factual corrections.

First, Norris criticizes the Government's "speculative prognosis" that remanding his Motion to Terminate would yield the same result. Reply at 5. But this outcome is unavoidable given that "[Norris] is not yet eligible for relief under §3583(e)(1) because he has not completed one year of supervised release." *U.S. v. Bundy*, 391 F. App'x 886, 887 (D.C. Cir. 2010). Indeed, his current term of supervision commenced in mid-October 2021, R. Doc. 72, so even a motion filed today would be premature, *U.S. v. Banks*, 2015 WL 926534, at *4 (W.D. Pa. 2015) (applying one-year requirement to post-revocation term of supervision). Norris's ineligibility renders his first claim nonjusticiable or, at least, supports affirmance. *See U.S. v. Bravo*, 362 F. App'x 456, 459 (6th Cir. 2010) (request for reduction moot where "court would lack the authority to reduce [the] term of supervised release at this time"); *U.S. v. Waltanen*, 356 F. App'x 848, 852 (6th Cir. 2009) ("[A]ny issue relating to early termination is premature and not ripe . . .").

Second, in attempting to identify new information in the Supervision Summary, Norris points to one "hearsay statement" he claims was "not . . . described in any other probation document." Reply at 3-4. But that uncontested charge, which paraphrases Norris's declaration that internet access "is not something [USPO] can legally restrict," appears in multiple filings. R. Docs. 49, 61. Similarly, in suggesting that four violation reports are missing from the record, Br. at 7-8, Norris overlooks that the modification requests and petition each detail new violations, R. Docs. 43-49. Apparently as a result, Norris understates his misconduct "simple possession," Reply at 10, despite admitting to having "eight hands-on minor victims," "utilizing his

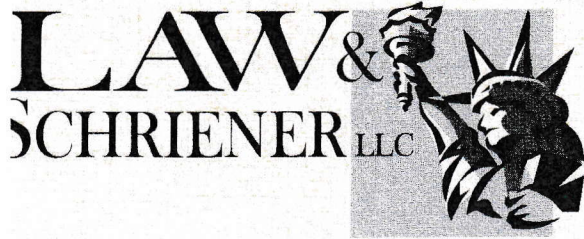
employment to frequent a school,” and “reset[ting] [his] computer to conceal [online] activity.” R. Doc. 49 at 2-3; R. Doc. 48 at 4. As these citations confirm, this information “has been before [Norris] all along.” *U.S. v. Davies*, 380 F.3d 329, 332 (8th Cir. 2004).

Respectfully,

SAYLER A. FLEMING
United States Attorney

/s/ Zachary M. Bluestone
ZACHARY M. BLUESTONE, #69004MO
Assistant United States Attorney

cc: Carter Collins Law, Attorney for Appellant James Norris, Jr. (via CM/ECF)



September 21, 2022

Partners:

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Michael Gans
Clerk
U.S. Court of Appeals
for the Eighth Circuit
111 South Tenth Street
Room 24.329
St. Louis, Missouri 63102

Re: *United States v. John B. Norris, Jr.*
Case No. 21-3849
Response to Government's Fed. R. App. P. 28(j) Letter

Dear Mr. Gans:

First, the government erroneously asserts Mr. Norris is ineligible for early termination under 18 U.S.C. Sec. 3583(e)(1). This assertion completely ignores the fact that the probation office does not suggest that Mr. Norris is ineligible for the relief sought in his Motion for Early Termination. And, at page 1 of R. Doc. 72, it notes that Norris "was on supervised release for approximately ten years and three months."

The government's authority does not support its allegation of "futility of remand." *United States v. Bundy*, 391 F. App'x 886 (D.C. Cir. 2010) involves a motion for sentence reduction pursuant to 18 U.S.C. Sec. 3582(c)(2). Bundy was released from prison and began his term of supervised release on September 28, 2009. 391 F. App'x at 886. The *Bundy* decision was dated September 3, 2010. *Accord United States v. Bravo*, 362 F. App'x 456 (6th Cir. 2010) (Sec. 3582(c)(2) motion; release from prison September 14, 2009; date of decision January 22, 2010); *United States v. Waltanen*, 356 F. App'x 848 (6th Cir. 2009) (Sec. 3582(c)(2) motion; release from prison October 10, 2008; date of decision December 16, 2009). *United States v. Banks*, 2015 WL 926534 (W. D. Pa. 2015) involved a person who had been revoked for committing new crimes, and sentenced to a new term of supervised release of three months. The court denied his motion for early termination, without authority, because one year had not expired.

Second, the government at no point accurately reiterates the "new information" the probation office attributes to Mr. Norris, referred to at p. 3 of Mr. Norris's reply brief – "his [purported] belief that he did not have to abide

by the Court ordered special conditions.” The “facts” collected in paragraph *Second* all derive from “R. Docs. 43-49” (49 is not a document, but indicates Mr. Norris’s arrest on 07/14/2021). R. Docs. 43-48 were created prior to Mr. Norris’s *pro se* motion; none of them contain the statement referred to at p. 3 of Mr. Norris’s reply brief.

Norris accurately refers to the indictment charges, which arose out of “simple possession of child pornography.” Reply Br. p. 10.

Most sincerely,

/s/ Carter Collins Law

CARTER COLLINS LAW

CCL/tms