

No.

In the
**Supreme Court of the
United States**



FERRELL WALKER,
Petitioner,
vs.
UNITED STATES,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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April 6, 2023

QUESTIONS PRESENTED

1. Whether the subsequent imposition of a sentence to a term of imprisonment of 168 months on a charge of possession of child pornography, to run consecutive to the previously-imposed sentence of 60 months (now corrected to 24 months) imprisonment for revocation of supervision based on the same conduct, possession of child pornography, violated Defendant's right under the Fifth Amendment to the U.S. Constitution not to be twice put in jeopardy for the same offense and is therefore, due to be vacated.
2. Alternatively, and without waiving Defendant's assertion of former jeopardy, whether pursuant to 18 U.S.C. § 3583(e)(3), U.S.S.G. § 7B1.4, *United States v. Haymond*, 139 S.Ct. 2369 (2019), and *United States v. Walker*, 849 Fed. App'x. 822 (11th Cir. 2021), the defendant should be sentenced to a reasonable term of months (concurrent on all violations) not to exceed two years, followed by termination of his supervised release?

PARTIES TO THE PROCEEDINGS

Petitioner (Defendant below) is Ferrell Walker.

Respondent is the United States of America.

RULE 29.6 STATEMENT

Petitioner Ferrell Walker is an individual with no corporate affiliation, no parent corporation, and no publicly held corporation owning 10% or more of its stock.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Eleventh Circuit which affirmed Petitioner's sentence in Case No. 7:07-cr-00030-HL-TQL-1.

OPINIONS BELOW

The most recent decision of the United States Court of Appeals for the Eleventh Circuit is not reported but appears at 2023 WL 119422 (11th Cir. Jan. 6, 2023), and is reproduced at Pet. App. 1a-7a. The Amended Judgment on remand of the United States District Court for the Middle District of Georgia, Valdosta Division, dated July 13, 2021, in Case No. 7:07-cr-00030-HL-TQL-1, is not reported but is reproduced at Pet. App. 8a-22a. The first decision of the United States Court of Appeals for the Eleventh Circuit is reported at 849 Fed. Appx 822 WL 915763 (11th Cir. 2021), and is reproduced at Pet. App. 23a-36a. The Judgment of the United States District Court for the Middle District of Georgia, Valdosta Division, revoking defendant's supervised release dated May 9, 2018, in Case No. 7:07-cr-00030-HL-TQL-1, is not reported but is reproduced at Pet. App. 37a-53a. The Judgment of the United States District Court for the Middle District of Georgia, Valdosta Division, dated December 4, 2018, in Case No. 7:17-cr-00034-HL-TQL, is not reported but is reproduced at Pet. App. 54a-69a. The Judgment of the United States District Court for the Middle District of Georgia, Valdosta Division, dated November 27, 2007, in Case No. 7:07-cr-00030-HL-TQL-1, is not reported but is reproduced at Pet. App. 70a-83a.

JURISDICTION

The United States Court of Appeals for the Eleventh Circuit entered its judgment affirming petitioner's corrected sentence on remand in Case No. 7:07-cr-00030-HL-TQL on January 6, 2023. Pet. App. 1a-7a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the United States Constitution provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land and naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. U.S. Const. amend. V.

INTRODUCTION

This case presents the question whether a defendant's right not to be twice put in jeopardy for the same offense was violated where he was tried, convicted for violating the conditions of his supervision, and sentenced under 18 U.S.C. § 3583(k) to the minimum, mandatory term of 60 months imprisonment (now corrected to 24 months) for possession of child pornography, and subsequently indicted, tried, convicted, and sentenced to a consecutive term of 168 months' imprisonment for possession of the same child pornography on the same date. Because the defendant was twice put in jeopardy for the same offense, his right guaranteed under the Fifth Amendment's Double Jeopardy Clause was violated.

Further, the precedents of this Court demonstrate the merit of the defendant's claim that he was twice put in jeopardy for the same offense. As such, it was error for the defendant to suffer a second prosecution for the same offense. *Jones v. Thomas*, 491 U.S. 376, 380-81 (1989); *North Carolina v. Pearce*, 395 U.S. 711, 717 (1969), *overruled on other grounds by Alabama v. Smith*, 490 U.S. 794 (1989). For these reasons, the judgment of the court of appeals is due to be reversed and the case remanded to the district court with instructions to vacate the defendant's conviction and sentence in Case No. 7:17-cr-00034-HL-TQL, the second prosecution.

STATEMENT OF THE CASE

1. Defendant Walker is currently incarcerated at FCI Miami.

2. On August 23, 2007, Defendant Walker pleaded guilty to a one-count information charging him with possession of child pornography in violation of 18 U.S.C. § 2252(a)(4)(B). Defendant Walker was sentenced on November 27, 2007, to a term of imprisonment for 87 months to be followed by a term of supervision for 25 years, a fine of \$2,000.00, and a mandatory assessment fee of \$100.00.

3. On May 16, 2014, Defendant Walker began serving his term of supervision in the Middle District of Georgia. On November 17, 2017, Defendant Walker was arrested on a new indictment charging him with possession of child pornography and on a warrant for violation of the conditions of his supervision. *United States v. Walker*, 7:17-cr-00034-HL-TQL.

4. On May 16, 2018, the district court, sitting without a jury, heard evidence relating to the charges that Defendant Walker violated the conditions of his supervision. At the conclusion of the hearing, the district court found, by a preponderance of the evidence, that Defendant Walker had violated several conditions of his supervision, including that Defendant Walker had possessed child pornography. Pursuant to the provisions of 18 U.S.C. § 3583(k), the district court sentenced him to a minimum, mandatory term of imprisonment of 60 months to be

followed by a term of supervision of 25 years. *United States v. Walker*, 7:07-cr-00030-HL.

5. Counsel for Defendant Walker timely objected to the district court's sentence as did Defendant Walker when asked by the Court if he had any objections to the Court's sentence. Defendant Walker appealed the imposition of the minimum, mandatory sentence of 60 months pursuant to 18 U.S.C. § 3583(k), for violation of the conditions of supervision based only on judge-found facts, including a finding that Defendant possessed child pornography, under a preponderance-of-the-evidence standard of proof. *United States v. Walker*, 849 Fed. App'x. 822 (11th Cir. 2021).

6. Subsequently, in July 2018, Defendant Walker went to trial on the indictment returned against him in *United States v. Walker*, 7:17-cr-00034-HL-TQL. The jury returned a verdict of guilty on July 31, 2018. At sentencing on December 4, 2018, based on the report of the presentence investigation, the district court found that the defendant's advisory sentencing guideline range was between 135 and 168 months, based on an offense level of 31, and a criminal history category of III. The district court sentenced the defendant to a term of imprisonment of 168 months to be followed by a term of supervision for life, to run consecutive to the sentence previously imposed for the defendant's violation of his conditions of supervised release in case no. 7:07-cr-0030-HL. *Id.* Defendant Walker appealed from the district court's 168-month sentence in *United States v. Walker*, 7:17-cr-00034-

HL-TQL. See, *United States v. Walker*, 849 Fed. App'x. 822 (11th Cir. 2021). The court of appeals consolidated the two appeals.

7. The court of appeals found that the defendant's sentence under 18 U.S.C. § 3583(k) violated the Ex Post Facto Clause because the conduct for which the defendant was originally prosecuted occurred before the effective date of the statute under which he was sentenced. *United States v. Walker*, 849 Fed. App'x. at 825-26. The court of appeals vacated the defendant's sentence for violating the conditions of his supervision and remanded the case for further proceedings consistent with its opinion. *Id.* Walker's subsequent petition for a writ of certiorari was denied by this Court. *Walker v. United States*, 142 Sup. Ct. 240 (2021).

8. On July 13, 2021, on remand, the district court corrected the defendant's sentence and re-sentenced him under 18 U.S.C. § 3583(e)(3)—the statute in effect in 2007—to the statutory maximum sentence of twenty-four months' imprisonment followed by twenty-five years' supervised release. Defendant Walker appealed from the district court's imposition on remand of a sentence to a term of imprisonment of twenty-four months followed by a term of supervision of twenty-five years.

9. On appeal from the district court's revocation sentence, Defendant Walker first argued, as he did at sentencing, that his revocation sentence which was based on the same facts used in his prosecution for

possessing child pornography, violated the Double Jeopardy Clause, citing this Court’s decision in *United States v. Haymond*, 139 S.Ct. 2369 (2019). Second, he argued that the statutory maximum sentence of twenty-four months is substantively unreasonable.

10. The court of appeals affirmed, finding no violation of the Double Jeopardy Clause because Walker’s revocation sentence was imposed as part of the penalty for the initial offense. Thus, the court of appeals reasoned, the second prosecution was not a successive prosecution for the same offense. The court found that *Haymond* had no bearing on Walker’s appeal. *United States v. Walker*, ___ Fed. App’x. ___, 2023 WL 119422 (11th Cir. Jan. 6, 2023).

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari, review the proceedings below, reverse the judgment of the court of appeals, and remand the case to the district court with instructions to vacate the defendant’s conviction and sentence in Case No. 7:17-cr-00034-HL-TQL, the second prosecution. Further, pursuant to 18 U.S.C. § 3583(e)(3), U.S.S.G. § 7B1.4, *Haymond*, and *United States v. Walker*, 849 Fed. App’x. 822 (11th Cir. 2021), Defendant should be sentenced to a reasonable term of months (concurrent on all violations) not to exceed two years, with supervised release set at “time served.” There are several reasons for this outcome.

1. The Defendant was Twice Put in Jeopardy

For the Same Offense

Defendant went to trial in May, 2018, and again in July, 2018, for possessing the same child pornography on September 20, 2017. The first trial was on the charge of violating the conditions of the defendant's supervision by possessing child pornography. Upon conviction, the defendant was sentenced under 18 U.S.C. § 3583(k), to the minimum, mandatory term of 60 months imprisonment.

The second trial was on the indictment charging the defendant with possessing the same child pornography on the same date, *i.e.* the same offense, as was charged in the first trial. Following his conviction on the second trial, the defendant was sentenced to a term of imprisonment for 168 months to run consecutive to the 60-month sentence imposed following the first trial.

The Fifth Amendment's Double Jeopardy Clause guarantees that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const. amend. V. The protection afforded by this provision guarantees against a second prosecution for the same offense after acquittal, a second prosecution for the same offense after conviction, and multiple punishments for the same offense. *See, Jones v. Thomas*, 491 U.S. 376, 380-81 (1989); *North Carolina v. Pearce*, 395 U.S. 711, 717 (1969), *overruled on other grounds by Alabama v. Smith*, 490 U.S. 794 (1989). Relevant to this case is the prohibition embodied in the Double Jeopardy Clause against a second prosecution after conviction of the same offense.

The prohibition is against “being twice put in jeopardy The ‘twice put in jeopardy’ language of the Constitution thus relates to a potential, *i.e.*, the risk that an accused for a second time will be convicted of the ‘same offense’ for which he was initially tried.” *Price v. Georgia*, 398 U.S. 323, 326 (1970). In *Abney v. United States*, 431 U.S. 651, 661 (1977), this Court stated:

Because of this focus on the “risk” of conviction, the guarantee against double jeopardy assures an individual that, among other things, he will not be forced ... to endure the personal strain, public embarrassment, and expense of a criminal trial more than once for the same offense. It thus protects interests wholly unrelated to the propriety of any subsequent conviction.

Id. See also, *Green v. United States*, 355 U.S. 184, 187-88 (1957) (“... the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty.”)

Because Walker was sentenced for the violation of his conditions of supervision under 18 U.S.C. § 3583(k), which “more closely resembles the punishment for [a] new criminal offense,” *United States v. Haymond*, 139 S.Ct. 2369 (2019), and does not relate back to his original offense, his subsequent indictment and trial for the same offense,

possession of child pornography, violated his right under the Double Jeopardy Clause not to be twice put in jeopardy. *Johnson v. United States*, 529 U.S. 694, 700 (2000).

The violation of the defendant's Fifth Amendment right is not remedied by the mere vacation of his sentence imposed following the first trial. Whether the defendant was acquitted or convicted in the first trial is not the issue. The violation occurred because the defendant had "to endure the personal strain, public embarrassment, and expense of a criminal trial more than once for the same offense." *Abney*, 431 U.S. at 661. This proposition is deeply ingrained in the Anglo-American system of jurisprudence. In *Ex parte Lange*, 18 Wall. 163, 169, 21 L.Ed. 872 (1874), this Court stated:

The common law not only prohibited a second punishment for the same offence, but it went further and (forbade) a second trial for the same offence, whether the accused had suffered punishment or not, and whether in the former trial he had been acquitted or convicted.

Id. Thus, the judgment in the appellate court below vacating the defendant's sentence from the first trial does not to remedy the violation of his Fifth Amendment right not to be twice put in jeopardy for the same offense. The constitutional violation was complete upon the defendant's indictment and second trial for the same offense.

Further, there can be no doubt that the two trials to which the defendant was subjected were both for the same

offense. In the first trial, it was the defendant's possession of child pornography that constituted the violation of the conditions of his supervision. In the second trial, it was the defendant's possession of the same child pornography on the same date, September 20, 2017, as charged in the first trial that constituted the basis for his indictment. The offense in both trials was the defendant's possession of child pornography on September 20, 2017.

Because this case does not involve prosecution under two separate statutes proscribing the same conduct, it is not necessary to resort to this Court's test of statutory construction set out in *Blockburger v. United States*, 284 U.S. 299, 304 (1932). There, the appropriate inquiry is "whether each provision requires proof of a fact which the other does not." Here, there is one statute, the statute prohibiting possession of child pornography. *See*, 18 U.S.C. § 2252A.

In *United States v. Haymond*, 139 S.Ct. 2369 (2019), a plurality of this Court found that the imposition of a minimum, mandatory 60-month term of imprisonment for violation of conditions of supervision under 18 U.S.C. § 3583(k), violated the defendant's Fifth and Sixth Amendment rights because certain features of the statute "more closely resemble the punishment of new criminal offenses, but without granting a defendant the rights, including the jury right, that attend a new criminal prosecution." *Id.* at 2386 (Breyer, J., concurring). Until *Haymond*, punishment imposed on a defendant for his violation of conditions of supervision was understood to be part of the punishment for the original offense because, for one thing, the maximum term of imprisonment could not

exceed the maximum punishment for the initial offense. *Johnson v. United States*, 529 U.S. 694, 700 (2000). To view such punishment otherwise “would raise an issue of double jeopardy.” *Id.*

But because § 3583(k) authorized a greater minimum as well as maximum punishment than that authorized by the defendant’s initial offense, punishment under § 3583(k) implicates constitutional rights, including the protection afforded by the Double Jeopardy Clause, attending prosecution for a new criminal offense. This is especially true where, as with Walker’s case, the conduct constituting the violation of the conditions of supervision is itself a criminal offense. The double jeopardy issue foreseen by the Court in *Johnson* is squarely presented after the decision in *Haymond* because, unlike Haymond, Walker was twice put in jeopardy for the same offense by his re-prosecution for the same offense that led to his conviction for violating the conditions of his supervision. Walker’s conviction and sentence resulting from his second prosecution for the same offense in case no. 7:17-0034, are due to be vacated.

2. The Statutory Maximum Revocation Sentence of Twenty-four Months is Substantively Unreasonable.

Pursuant to 18 U.S.C. § 3583(e)(3), U.S.S.G. § 7B1.4, *Haymond*, and *United States v. Walker*, 849 Fed. App’x. 822 (11th Cir. 2021), the defendant should be sentenced on remand to a reasonable term of months (concurrent on all violations) not to exceed two years, with supervised release set at “time served.”

Pursuant to U.S.S.G. § 7B1.4, the defendant's criminal history category for purposes of the revocation table is the criminal history category of his original offense which was criminal history category I. The alleged violations are Grade B because they do not involve a crime of violence, possession of a controlled substance, possession of a firearm or destructive device, and do not involve any offense punishable by a term of imprisonment exceeding twenty years. U.S.S.G. §§ 7B1.1(a)(1) and (2). Thus, the applicable range of imprisonment is 4 to 10 months. Under U.S.S.G. § 7B1.4(b)(3)(A), the sentence imposed may not exceed the statutory maximum punishment which, under 18 U.S.C. § 3583(e)(3), is two years.

The district court's upward departure from the guideline range of four to ten months was based on U.S.S.G. § 7B1.4, comment (n.3). The comment cited refers to a Grade C violation that is associated with new high-risk felonious conduct. But, as previously noted, the defendant's alleged violation is not a Grade C violation, it is a Grade B violation. Thus, the comment cited was not applicable to the defendant and did not provide any basis for an upward departure from the guideline range of 4 to 10 months.

At the time that the defendant's sentence for violating the conditions of his supervision was vacated on appeal, he had already been detained since September, 2017, approximately three and a half years. Since the defendant's 168-month sentence on the criminal conviction in case no. 7:17-0034 was

required to be served consecutive to any sentence imposed on remand, the defendant's incarceration since September, 2017, can only be attributed to his conviction for violating the conditions of his supervision. Accordingly, the defendant had already been incarcerated approximately 18 months longer than the maximum authorized term of imprisonment for violating the conditions of his supervision. Under these circumstances, the defendant should have been sentenced to time served.

CONCLUSION

Based on the foregoing arguments and authorities, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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APPENDICES

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1a

APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-12471
Non-Argument Calendar

D.C. Docket No. 7:07-cr-00030-HL-TQL-1

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
versus

FERRELL WALKER,
Defendant-Appellant.

Appeals from the United States District Court
for the Middle District of Georgia
D.C. Docket No. 7:07-cr-00030-HL-TQL-1

Before LUCK, LAGOA, and ANDERSON, Circuit Judges

PER CURIAM:

Ferrell Walker appeals his sentence of imprisonment for violating conditions of his supervised release. He argues that the district court violated his right against double jeopardy because the conduct that formed the basis of the sentence also formed the basis of a separate prosecution. He argues in the alternative that the sentence is unreasonable. Because the first argument is foreclosed by precedent and the second is unsupported by the record, we affirm.

I.

In 2007, Walker pleaded guilty to one count of possessing child pornography. During the term of supervised release included in his sentence, the government searched his home and discovered a cell phone containing more than one thousand images of child pornography, a photograph of his driver's license, a nude photograph that he had taken of himself, and a sexually explicit messaging thread with photographs of Walker's face and unidentified male genitalia. Upon finding that Walker violated conditions of his supervised release by possessing these materials, the district court revoked his supervised release and sentenced him to sixty months' imprisonment, the statutory minimum under section 3583(k), followed by twenty-five years' supervised release. In a

separate criminal action, Walker was convicted of possessing child pornography and was sentenced to 168 months' imprisonment and a lifetime term of supervised release to be served consecutively and concurrently with his revocation sentence, respectively.

Walker appealed both sentences. After consolidating the cases, we affirmed his sentence for possession but remanded his revocation sentence on ex post facto grounds because the sixty-month mandatory minimum provision of section 3583(k) was not in effect when Walker was sentenced in 2007. On remand, the district court resentenced Walker under section 3583(e)(3)—the statute in effect in 2007—to the statutory maximum sentence of twenty-four months' imprisonment followed by twenty-five years' supervised release.

Walker appeals the district court's revocation sentence. First, he argues that, under *Haymond*,¹ the district court violated the Double Jeopardy Clause by basing his revocation sentence on the same set of facts used in his prosecution for possessing child pornography. Second, he argues that his statutory maximum sentence is substantively unreasonable.

¹ *United States v. Haymond*, 139 S. Ct. 2369 (2019).

II.

We review “claims of double jeopardy de novo.” *United States v. Campo*, 840 F.3d 1249, 1267 (11th Cir. 2016) (emphasis omitted). The Double Jeopardy Clause provides that no person shall “be subject for the same offence to be twice put in jeopardy “of life or limb.” U.S. Const. amend. V. “This guarantees against a second prosecution for the same offense after acquittal, a second prosecution for the same offense after conviction, and multiple punishments for the same offense.” *United States v. Bobb*, 577 F.3d 1366, 1371 (11th Cir. 2009).

Walker argues that his sentences were based on “the same conduct” and thus “he was twice placed in jeopardy and twice punished for the same offense...in violation of the Fifth Amendment.” He bases this argument on the proposition that “[t]he facts in *Haymond* are almost identical to the facts presented in [this] case.”

However “identical” the facts of these cases may be, the corresponding law is dissimilar. *Haymond* dealt only with section 3583(k), under which Walker originally was sentenced for violating the conditions of his supervised release. See 139 S. Ct. at 2386 (Breyer, J., concurring). But *Haymond* did not disturb our precedent that a sentence for violating supervised release under section 3583(e)(3), under which Walker was resentenced, doesn’t violate the Double Jeopardy Clause because it isn’t a successive punishment for the same offense but rather is a part of the penalty for

the initial offense. *See Johnson v. United States*, 529 U.S. 694, 700 (2000); *United States v. Woods*, 127 F.3d 990, 992–93 (11th Cir. 1997). *Haymond* has no bearing on this case. *See* 139 S. Ct. at 2383 (plurality opinion) (“As we have emphasized, our decision is limited to [section] 3583(k)...and the *Alleyne* problem raised by its [five]-year mandatory minimum term of imprisonment.”).

III.

We review a “sentence imposed upon the revocation of supervised release for reasonableness.” *United States v. Velasquez Velasquez*, 524 F.3d 1248, 1252 (11th Cir. 2008). To this end, we must ensure that the district court didn’t commit a “significant procedural error,” *Gall v. United States*, 552 U.S. 38, 51 (2007), “fail[] to afford consideration to relevant factors that were due significant weight, give[] significant weight to an improper or irrelevant factor, or commit[] a clear error of judgment in considering the proper factors,” *United States v. Irey*, 612 F.3d 1160, 1189 (11th Cir. 2010) (en banc) (cleaned up).

“On appeal, [Walker] bears the burden to show that his sentence is unreasonable.” *United States v. Carpenter*, 803 F.3d 1224, 1232 (11th Cir. 2015). “Given the broad sentencing discretion that district courts have,” *United States v. Rosales-Bruno*, 789 F.3d 1249, 1261 (11th Cir. 2015), we do not overturn a sentencing decision unless we are “left with the definite and firm conviction that the district court

committed a clear error of judgment . . . by arriving at a sentence that lies outside the range of reasonable sentences dictated by the facts of the case,” *Irey*, 612 F.3d at 1190 (internal quotation omitted).

Walker hasn’t carried his burden to show such “clear error of judgment.” He doesn’t argue that the district court committed any procedural error. Instead, he argues only that “the applicable [guidelines] range of imprisonment is [four] to [ten] months.”

But the record lacks any indication that the district court failed to treat the guidelines as advisory, selected a sentence based on clearly erroneous facts, or failed to explain the chosen sentence adequately. The district court articulated the section 3553(a) factors used to support its sentence, including the need “to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment for the violation offenses, and to protect the public from further crimes of” Walker. It noted that Walker was “intentionally deceptive” about his “possession and use of internet[-]capable devices which allowed [him] to commit further crimes of possession of child pornography.” It heard the parties’ arguments at length and explicitly stated that it considered the advisory guidelines range and the totality of the circumstances. The record therefore shows that the district court “considered the parties’ arguments and ha[d] a reasoned basis for exercising [its] own legal decision-making authority.” *United States v. Livesay*, 525 F.3d 1081, 1090 (11th Cir. 2008) (internal

quotation omitted).

As to supervised release, for a defendant convicted for possessing child pornography, such as Walker, a district court may impose “any term of years or life” under section 3583(k).² Walker’s twenty-five-year term of supervised release, which is well below “this statutory maximum, is reasonable for all the reasons the district court gave under section 3553(a). See *United States v. Gonzalez* Cir. 2008).

CONCLUSION

Binding precedent forecloses Walker’s argument that his revocation sentence violated his right against double jeopardy, and the record does not support his argument that it is unreasonable. Thus, we affirm the sentence.

AFFIRMED.

² Unlike the sixty-month mandatory minimum, this provision was in effect in 2007 and was unaffected by *Haymond*. See 139 S. Ct. at 2379 n.4 (“Because we hold that this mandatory minimum rendered Mr. Haymond’s sentence unconstitutional . . . we need not address the constitutionality of the statute’s effect on his maximum sentence under *Appreni*.” (citations omitted)).

APPENDIX B
Case 7:07-cr-00030-HL-TQL Document 142
Filed 07/13/21 Page 1 of 8

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA

UNITED STATES
OF AMERICA

v.

**Amended Judgment in a
Criminal Case**
(For **Revocation** of Probation
or Supervised Release)

FERRELL WALKER Case No. 7:07-CR-00030-001

USM No. 93414-020

Barbara H. Agricola
Defendant's Attorney

THE DEFENDANT

☒ admitted guilt to violation of condition(s) 1,2,7
and 9 of the term of supervision.

☒ was found in violations of conditions (s) 3, 4, 5
and 6 after denial of guilt.

The defendant is adjudicated guilty of these violations:

Violation Number	Nature of Violation	Violation Ended
1	By Committing the Offense of Unlawful Use of License	9/06/2017
2	By Failing to Notify Probation Within 72 Hours of Arrest	9/06/2017

3 9a
By Failing to 9/20/2017
Answer Truthfully
all Inquiries of the
Probation Officer

Violations continued last page

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 not violated condition(s) 8 and is discharged as to such violations (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 shall notify the court and United States attorney of any material changes in economic circumstances.

Last Four Digits of 7/12/2021
Defendant's Soc. Date of Imposition of
Sec. 7100 Judgment

Defendant's Year of s/ Hugh Lawson
Birth 1968 Signature of Judge

City and State of HUGH LAWSON, SENIOR
Defendant's U.S. DISTRICT JUDGE
Residence: Name and Title of Judge
Quitman, GA

7/13/2021
Date

DEFENDANT: FERRELL WALKER
CASE NUMBER 7:07-CR-00030-001

JUDGMENT- Page 2 of 6

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 24 months.

☐ 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 Office.

RETURN

I have executed this judgment as follows:

11a

Defendant delivered on _____ to _____
at _____, with a certified copy of this
judgment.

UNITED STATES MARSHAL

By: _____
Deputy United States Marshal

DEFENDANT: FERRELL WALKER
CASE NUMBER 7:07-CR-00030-001

JUDGMENT- Page 3 of 6

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: 25 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*)

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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 cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)

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

DEFENDANT: FERRELL WALKER

CASE NUMBER 7:07-CR-00030-001

JUDGMENT- Page 4 of 6

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.

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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 mandatory standard and any special conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at the www.gamd.uscourts.gov.

Defendant's Signature _____ Date _____

USPO Officer's Signature _____ Date _____

DEFENDANT: FERRELL WALKER
CASE NUMBER 7:07-CR-00030-001

JUDGMENT- Page 5 of 6

SPECIAL CONDITIONS OF SUPERVISION

You shall participate in a mental health treatment program to include any available sexual offender treatment as recommended by a psychiatrist or psychologist. Such treatment may include mental health counseling, residential treatment, outpatient treatment, and/or the prescription of psychotropic medications by a medical doctor. The US Probation Office shall administratively supervise your participation in the program by approving the program and monitoring your participation in the program. You shall contribute to the costs of such treatment not to exceed an amount determined reasonable by the court approved "U.S. Probation Office's Sliding Scale for Services", and shall cooperate in securing any applicable third-party payment, such as insurance or Medicaid.

You shall not associate with any person under the age of 18 except in the presence of a responsible adult who is aware of the nature of your background and current offense, and who has been approved in advance by the probation officer. Contact includes any direct correspondence, telephone, internet, or other electronic communication or by using third parties.

You shall not possess or have under your control any matter that is pornographic/erotic or that describes sexually explicit conduct, violence towards children or "child pornography" as defined in 18 USC

18a

2256(2) and (8), including photographs, images, books, writings, drawings, videos and electronic material.

You shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. §16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex gistration agency in which you reside, work, are a student, or were convicted of a qualifying offense.

You shall submit to polygraph testing to determine if you are in compliance with the conditions of supervision and/or treatment program. The U.S. Probation Office shall administratively supervise your participation in the program by approving the program and monitoring your participation in the program. You shall contribute to the costs of such treatment not to exceed an amount "determined reasonable by the court approved 'U.S. Probation Office's Sliding Scale for Services.'

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

You shall not have another individual access the internet on your behalf to obtain files or information that you are restricted from accessing yourself, or accepting files or information from another person.

DEFENDANT: FERRELL WALKER

CASE NUMBER 7:07-CR-00030-001

JUDGMENT- Page 6 of 6

You are prohibited from possessing or using alcoholic beverages while participating in treatment such as mental health, sex offender, or substance abuse treatment.

You shall participate in a program of drug and alcohol testing and treatment. The U.S. Probation Office shall administratively supervise your participation in the program by approving the program, administering the testing, and supervising the treatment. You shall contribute to the costs of such treatment not to exceed an amount determined reasonable by the court approved "U.S. Probation Office's Sliding Scale for Services", and shall cooperate in securing any applicable third-party payment, such as insurance or Medicaid.

You shall provide the Probation Office with truthful and complete information regarding all computer hardware, software, Internet providers, cellular devices and storage media to which you have access, whether at home, work, or other locations. You shall also provide all passwords used on your computer, cellular devices and online accounts.

You are only authorized to use computers or cellular devices that are approved by the Probation Office. Any computer or cellular device in your residence or possession must be approved by the Probation Office.

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You shall not own or possess any type of camera producing device without the approval of the Probation Office

You shall not use any network or Internet connection other than those which are authorized by the Probation Office

You are prohibited from access to the Internet or any public or private computer network at any location unless approved by the Probation Office. This includes but is not limited to computers or devices located in private homes, libraries, schools, cyber cafes or other public or private locations.

You shall not use or own any device which allows Internet access unless approved by the Probation Office. This includes but is not limited to PDAs, electronic games, Internet appliances and cellular devices.

All repairs to your authorized computer systems and cellular devices must be pre-approved by the Probation Office. Repairs must be performed by repair locations approved by the Probation Office. Documentation indicating repairs and reason for repairs must be obtained and submitted to the Probation Office.

You shall not make modifications or install software on authorized computer systems or cellular devices without pre-approval by the Probation Office.

You shall not dispose of computers, storage devices or other Internet capable devices without the approval of the Probation Office.

You shall submit your computer, associated hardware, cellular devices and digital media for review by the Probation Office.

DEFENDANT: FERRELL WALKER
CASE NUMBER 7:07-CR-00030-001

JUDGMENT- Page 6 of 6

You will allow the Probation Office to use detection tools to discover the existence of wireless Internet signals or devices at your residence.

You shall relinquish possession of your computer and associated hardware and media to the Probation Office at the onset of supervision if a review cannot be completed onsite or if prohibited content is discovered.

You shall not possess or use removable media configured with bootable operating systems or portable web browsers.

You shall provide financial information to the Probation Office upon request.

You shall notify all parties who reside in your residence of these conditions.

You may only access email accounts, chat rooms, instant messaging services, social networking sites, peer-to-peer networks and/or other online environments via accounts pre-approved and authorized by the Probation Office.

You shall submit to the installation of monitoring hardware, software or services that the Probation Office will use to manage and view your computer and Internet activity. You may be required to pay all expenses related to this monitoring.

Violations Continued:

4	By Committing the Offense of Poss. of Child Pornography	9/20/2017
5	By Possessing Unapproved Cellular Telephone	9/20/2017
6	By Possessing or Controlling Material that Contains Sexually Explicit Conduct	9/20/2017
7	By Using Methamphetamines	9/20/2017
9	By Failing to Notify Probation With 72 Hours of Arrest	11/06/2017

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APPENDIX C

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-12256
Non-Argument Calendar

D.C. Docket No. 7:07-cr-00030-HL-TQL-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FERRELL WALKER,

Defendant-Appellant.

No. 18-15283
Non-Argument Calendar

D.C. Docket No. 7:17-cr-00034-HL-TQL-1

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FERRELL WALKER,

Defendant-Appellant.

Appeals from the United States District Court
for the Middle District of Georgia

(March 10, 2021)

Before MARTIN, ROSENBAUM, and BRANCH,
Circuit Judges. PER CURIAM:

Ferrell Walker was convicted for possessing child pornography in 2007. After he violated the conditions of his supervised release by possessing child pornography in 2017, his supervision was terminated and he was sentenced to 60 months' imprisonment. He was also later tried and convicted for possessing that same child pornography. In this consolidated appeal, Walker challenges both his sentence for violating the conditions of his supervised release and his criminal conviction. Walker argues that the revocation sentence is unconstitutional and the government agrees.

As to his criminal conviction, Walker raises four arguments. First, he argues that his prosecution for

the same conduct that led to the revocation of his supervised release violates the Double Jeopardy Clause. Second, he says there was insufficient evidence to support his conviction for possession of child pornography. Third, he says the district court abused its discretion in requiring that his two sentences run consecutively. And finally, he says the district court improperly admitted evidence of his prior offense.

We are unpersuaded by Walker's challenges to his criminal prosecution and therefore affirm his conviction and sentence. But we agree that Walker's revocation sentence violated the Ex Post Facto Clause and therefore vacate the sentence imposed for his supervised release violation and remand for further proceedings consistent with this opinion.

I.

In 2007, Walker pled guilty to possession of child pornography in violation of 18 U.S.C. § 2252(a)(4)(B). Walker accessed this pornography digitally, on a personal computer in 2005. His sentence for that conviction included a 25-year term of supervised release, which he began serving in May 2014.

In September 2017, the government searched Walker's home and found a cellphone in his bedroom, inside a pillow case on his bed. Over one thousand child pornography images were found on the cellphone. The phone also contained a photograph of Walker's driver license and a nude photograph that Walker had taken of himself. The cellphone included

a sexually explicit “chat” from a messaging application in which the user of the phone sent a photo of Walker’s face and of male genitalia.

In November 2017, Walker was arrested on a warrant for violations of his conditions of supervision. That same month, a grand jury charged Walker with possession of child pornography in violation of 18 U.S.C. § 2252(a)(4)(B), based on those materials the government found on his cellphone that September.

In May 2018, the district court conducted a supervision revocation hearing. The government presented evidence about the child pornography it found on Walker’s cellphone as well as the evidence linking the phone to Walker. Walker testified that he owned more than one cellphone and that the cellphone discovered in his pillow case was used by multiple people. He denied accessing or viewing any child pornography on the phone.

The district court found by a preponderance of the evidence that Walker violated a number of conditions of his supervision, including by possession of child pornography. Pursuant to 18 U.S.C. § 3583(k), the district court sentenced Walker to a mandatory minimum term of 60 months’ imprisonment. Walker objected to the district court’s reliance on § 3583(k). He argued that since the child pornography offense underlying his term of supervision occurred before § 3583(k) was enacted, reliance upon it in sentencing him violated the Ex Post Facto Clause of the Constitution.

In July 2018, Walker was tried before a jury on the 2017 incident of possession of child pornography. Over two days, the jury heard testimony about the cellphone the government found at Walker's home, including that it contained child pornography. The jury heard evidence indicating that Walker personally accessed the phone. The evidence also included testimony that Walker admitted to a law enforcement officer that he used this phone to search for pornography featuring teens. The government admitted evidence of Walker's 2007 conviction for possession of child pornography as well.

But Walker also presented evidence that someone other than he may have used the phone to access child pornography. During cross-examination, government witnesses conceded that the cellphone had not been fingerprinted and that it was not password protected. Walker testified there were several people who were doing construction on his home at the time who regularly used the phone to access social media websites and pornography, and to sell items online. But Walker again testified he did not know there was any child pornography on the phone and denied using the phone to view child pornography.

The jury nevertheless convicted Walker of possession of child pornography. The district court sentenced Walker to 168 months' imprisonment, to run consecutively to his revocation sentence. Walker timely appealed both his revocation judgment and his 2018 conviction and sentence.

II.

A. Walker's revocation sentence violates the Ex Post Facto Clause.

We review de novo whether a conviction or sentence violates the Ex Post Facto Clause. United States v. Futrell, 209 F.3d 1286, 1289 (11th Cir. 2000) (per curiam). That clause prohibits the government from retroactively applying a law that “imposes additional punishment” for a crime than was provided for at the time the crime was committed. United States v. W.B.H., 664 F.3d 848, 852 (11th Cir. 2011) (quotation marks omitted). The retroactive application of a law that “raisesthe penalty” for violating conditions of supervised release violates the Ex Post Facto Clause. Johnson v. United States, 529 U.S. 694, 699–701, 120 S. Ct. 1795, 1800–1801 (2000).

The conduct that led to Walker's first child pornography conviction occurred in 2005. At that time, the maximum sentence that could be imposed on Walker upon revocation of supervised release was two years. 18 U.S.C. § 3583(e)(3) (2003).¹ One year later, Congress enacted the new provision that prescribed a mandatory minimum five years' imprisonment for people who are required to register as a sex offender and who then commit one of a subset of offenses, including possession of child pornography. Adam

¹ Walker's conviction was classified as a class C felony as it carried a maximum punishment of between 10 and 25 years of imprisonment. See 18 U.S.C. § 3559(a)(3) (2004); 18 U.S.C. § 2252 (b)(2) (2003).

Walsh Child Protection and Safety Act of 2006 (“Adam Walsh Act”), Pub. L. No. 109-248, § 141(e)(2), 120 Stat. 587, 603 (codified at 18 U.S.C. § 3583(k)). When Walker’s supervised release was revoked in 2017, the district court sentenced him to the mandatory minimum 60 months’ imprisonment prescribed by the Adam Walsh Act. Yet, the conduct that triggered Walker’s eligibility for sentencing under 18 U.S.C. § 3583(k) occurred before the Adam Walsh Act was enacted and Walker was subject to a lower penalty at that time. Therefore, as the government now concedes, his revocation sentence violated the Ex Post Facto Clause. See W.B.H., 664 F.3d at 852. We therefore vacate Walker’s revocation sentence and remand for further proceedings consistent with this opinion.²

B. Walker does not show plain error in his 2018 conviction for the same conduct that resulted in revocation of his supervised release.

Walker argues that because he had already been sentenced to a term of imprisonment for his 2017 child pornography possession when his supervision was revoked, his subsequent prosecution for that same

² Because we are vacating Walker’s sentence on Ex Post Facto grounds, we need not address his other constitutional challenge to that sentence. And while we are aware that United States Sentencing Guideline § 7B1.3(f) calls for serving a sentence for supervised release violations consecutive to a term of imprisonment a defendant is serving, we do not address Walker’s argument on this topic because we will not pass on a sentence that has not yet been imposed.

conduct violated the Double Jeopardy Clause. Ordinarily, we review de novo double jeopardy claims. United States v. Campo, 840 F.3d 1249, 1267 (11th Cir. 2016). But when, as here, the defendant raises a double jeopardy claim for the first time on appeal, we review only for plain error. Id. To succeed on plain error review, a defendant must show an “error that is plain; that affects substantial rights; and that seriously affects the fairness, integrity, or public reputation of judicial proceedings.” United States v. Holt, 777 F.3d 1234, 1261 (11th Cir. 2015) (quotation marks omitted). “A plain error is an error that is obvious and is clear under current law,” which means that there “can be no plain error where there is no precedent from the Supreme Court or this Court directly resolving it.” United States v. Lange, 862 F.3d 1290, 1296 (11th Cir. 2017) (quotation marks omitted).

Ordinarily, a sentence resulting from the revocation of supervised release does not raise double jeopardy issues. That is because the revocation is considered punishment for the original offense conduct, not whatever conduct led to the revocation. See Johnson, 529 U.S. at 701, 120 S. Ct. at 1801 (attributing “postrevocation penalties to the original conviction.”).

However, revocation penalties imposed pursuant to 18 U.S.C. § 3583(k) may indeed raise double jeopardy concerns. In United States v. Haymond, 588 U.S. ___, 139 S. Ct. 2369 (2019), a fractured Supreme Court determined that imposing a sentence under 18 U.S.C. § 3583(k) without empaneling a jury violated a

defendant's right to a jury trial. Id. at 2378–79, id. at 2386 (Breyer, J., concurring). In his controlling concurrence,³ Justice Breyer explained that this provision operates “less like ordinary revocation and more like punishment for a new offense, to which the jury right would typically attach.” Id. at 2386 (Breyer, J., concurring). He pointed to three aspects of the provision that informed his conclusion:

First, § 3583(k) applies only when a defendant commits a discrete set of federal criminal offenses specified in the statute. Second, § 3583(k) takes away the judge's discretion to decide whether violation of a condition of supervised release should result in imprisonment and for how long. Third, § 3583(k) limits the judge's discretion in a particular manner: by imposing a mandatory

³ “When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as the position taken by those Members who concurred in the judgments on the narrowest grounds.” Marks v. United States, 430 U.S. 188, 193, 97 S. Ct. 990, 993 (1977) (quotation marks omitted). Justice Breyer's concurrence is narrower than the plurality opinion because he does not “transplant the Appendi line of cases to the supervised-release context.” Haymond, 139 S. Ct. at 2385 (Breyer, J., concurring). His concurrence is therefore controlling. See also United States v. Savarese, __ F. App'x __, 2021 WL 194147, at *3 (11th Cir. Jan. 20, 2021) (unpublished) (noting that Justice Breyer's concurrence in Haymond is “binding”).

minimum term of imprisonment of “not less than 5 years” upon a judge’s finding that a defendant has “committed any” listed “criminal offense.”

Id. (alteration adopted). For these reasons, Justice Breyer concluded that § 3583(k) “more closely resemble[s] the punishment of new criminal offenses, but without granting a defendant the rights . . . that attend a new criminal prosecution.” Id. He therefore joined the plurality in finding § 3583(k) unconstitutional as applied. Id.

Walker argues that the same aspects of § 3583(k) that make it similar to punishment for a new criminal offense for the purposes of the right to a jury trial make it similar to punishment for a new criminal offense for the purposes of the Double Jeopardy Clause. We note that the Tenth Circuit, in the opinion that the Supreme Court took up in Haymond, noted that § 3583(k) may raise double jeopardy concerns for the very reasons Walker raises. United States v. Haymond, 869 F.3d 1153, 1165 (10th Cir. 2017), vacated by 588 U.S._____, 139 S. Ct. 2369 (2019).

Walker’s problem is that he has failed to show a double jeopardy violation that constitutes plain error. In this circuit, for error to be “plain” there must be “precedent from the Supreme Court or this Court directly resolving it.” Lange, 862 F.3d at 1296 (quotation marks omitted). Neither the plurality opinion nor Justice Breyer’s controlling concurrence in Haymond even mentions the potential double jeopardy implications of their reasoning. See

generally Haymond, 139 S. Ct. at 2371–86. While the reasoning of Justice Breyer’s concurrence may support Walker’s argument, Haymond does not directly resolve the double jeopardy question. Therefore, any error on this issue is not plain and we cannot find any double jeopardy violation in this case.

C. Sufficient evidence supported Walker’s 2018 conviction for possessing child pornography.

We review de novo a challenge to the sufficiency of the evidence. United States v. Moran, 778 F.3d 942, 958 (11th Cir. 2015). If, after reviewing the evidence “in the light most favorable to the government” we find that “any rational trier of fact could have reached a verdict of guilty,” we must affirm the verdict. United States v. Wetherald, 636 F.3d 1315, 1320 (11th Cir. 2011). When we review the sufficiency of the evidence, we do not usurp the jury’s role in resolving conflicts in testimony, weighing the evidence, or drawing reasonable inferences. Musacchio v. United States, 577 U.S. ___, 136 S. Ct. 709, 715 (2016).

In order to prove a defendant possessed child pornography in violation of 18 U.S.C. § 2252(a)(4)(B), the government must show, beyond a reasonable doubt, that a defendant “knowingly” possessed or accessed the material at issue. Walker argues that the government failed to present sufficient evidence that he “knowingly” possessed the child pornography it found on the cellphone in his home. He points out that the phone was not password protected, that many people used the phone, and that the government did not present any direct evidence as to who downloaded

the child pornography onto the phone.

In fact, the government presented ample evidence that Walker used the phone. It contained a photo of his driver license and a nude photograph Walker had taken of himself. The cellphone also included a sexually explicit “chat” from a messaging application in which the user of the cellphone sent a photo of Walker’s face and of male genitalia. The phone was found in a pillowcase in the bedroom of Walker’s home. And Walker admitted to using the phone to search for pornography that featured teens. The government also introduced evidence that there were “numerous” images of child pornography on the phone. Given the volume of child pornography on the phone and the numerous pieces of evidence establishing that Walker used the phone, it was reasonable for the jury to find that Walker knew there was child pornography on the phone that he possessed. We therefore reject Walker’s sufficiency of the evidence challenge to his conviction.

D. The district court did not abuse its discretion in admitting evidence of Walker’s 2007 conviction.

We review the district court’s evidentiary rulings for abuse of discretion. United States v. Woods, 684 F.3d 1045, 1062 n.17 (11th Cir. 2012) (per curiam). Walker says the introduction of evidence of his 2007 conviction violated Federal Rule of Evidence 404(b). That rule prohibits the admission of “evidence of other crimes” unless the government can demonstrate “(1) a proper purpose for introducing the evidence; (2) that

the prior act occurred and that the defendant was the actor; and (3) that the probative value of introducing the evidence outweighs any prejudicial effect the evidence might have.” United States v. Cancelliere, 69 F.3d 1116, 1124 (11th Cir. 1995) (quotation marks omitted and alteration adopted). One proper purpose is to prove “knowledge . . . or absence of mistake.” Id. (quotation marks omitted).

Walker says the government did not have a proper purpose in introducing evidence of his 2007 conviction because he did not raise an accident or mistake defense. But the prior conviction was still relevant to whether Walker had “knowingly” possessed or accessed the material at issue. 18 U.S.C. § 2252(a)(4)(B). Walker put this question into issue by disclaiming any knowledge there was child pornography on the phone found in his home. The fact that Walker had previously accessed and possessed a significant amount of digital child pornography undermined the plausibility of his testimony that he was unaware that the cellphone at issue in 2018 contained a significant amount of digital child pornography.

Walker also says the 2007 conviction was more prejudicial than probative and therefore failed on the third prong of admissibility under Rule 404(b). See Cancelliere, 69 F.3d at 1124. But we see no abuse of discretion in the district court’s decision to admit the evidence. The prior offense was very similar to the one for which he was standing trial and Walker’s entire defense was to dispute the government’s evidence of

36a

the knowledge requirement of 18 U.S.C. § 2252(a)(4)(B). The fact that he had a history of accessing child pornography through digital means tended to rebut that defense.

Therefore, we **VACATE** Walker's conviction Walker's revocation sentence and **REMAND** for further proceedings consistent with this opinion, and we **AFFIRM** his 2018 conviction and sentence.

APPENDIX D

Case 7:17-cr-00034-HL-TQL Document 46

Filed 12/12/18 Page 1 of 7

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA**
**UNITED STATES
OF AMERICA****JUDGMENT IN A
CRIMINAL CASE****V.**

Case Number

7:17-CR-00034-001-HL-TQL(1)

FERRELL WALKER

USM Number 93414-020

THE DEFENDANTNICOLE WILLIAMS
Defendant's Attorney☐ pleaded guilty to count(s) _____☐ pleaded nolo contendere to count(s) which was
accepted by the court. _____☒ was found guilty on count(s) after a plea of
not guilty. 1 _____

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended
18 U.S.C.	Possession of	09/20/2017
§ 2252(a)(4)(B)	Child	<u>Count</u>
	Pornography	1

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

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

38a

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

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

December 4, 2018
Date of Imposition of Judgment

s/ Hugh Lawson
Signature of Judge

HUGH LAWSON, SENIOR UNITED
STATES DISTRICT JUDGE
Name and Title of Judge

December 12, 2018
Date

DEFENDANT: FERRELL WALKER

CASE NUMBER 7:17-CR-00034-HL-TQL(1)

JUDGMENT- PAGE 2 of 7

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: one Hundred sixty eight (168) months as to count 1 to run consecutively to the revocation sentence imposed in case 7:07-cr-30-HL.

☐ 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 Office.

RETURN

I have executed this judgment as follows:

40a

Defendant delivered on _____ to _____
at _____, with a certified copy of this
judgment.

UNITED STATES MARSHAL

By: _____
Deputy United States Marshal

DEFENDANT: FERRELL WALKER

CASE NUMBER 7:17-CR-00034-HL-TQL(1)

JUDGMENT- PAGE 3 of 7

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: life to run concurrently to the revocation sentence imposed in case 7:07-cr-30-HL.

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)*

5. ☐ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*

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

DEFENDANT: FERRELL WALKER

CASE NUMBER 7:17-CR-00034-HL-TQL(1)

JUDGMENT- PAGE 4 of 7

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.

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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.

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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 mandatory standard and any special conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at the www.gamd.uscourts.gov.

Defendant's Signature _____ Date _____
USPO Officer's Signature _____ Date _____

DEFENDANT: FERRELL WALKER

CASE NUMBER 7:17-CR-00034-HL-TQL(1)

JUDGMENT- PAGE 5 of 7

SPECIAL CONDITIONS OF SUPERVISION

You shall participate in a program of drug and alcohol testing and treatment. The U.S. Probation Office shall administratively supervise your participation in the program by approving the program, administering the testing, and supervising the treatment. You shall contribute to the costs of such treatment not to exceed an amount determined reasonable by the court approved "U.S. Probation Office's Sliding Scale for Services", and shall cooperate in securing any applicable third-party payment, such as insurance or Medicaid.

You shall waive any confidentiality regarding sex offender treatment and allow the Probation Officer unrestricted access to monitor your treatment.

You shall not associate with any person under the age of 18 except in the presence of a responsible adult who is aware of the nature of your background and current offense, and who has been approved in advance by the probation officer. Contact includes any direct correspondence, telephone, internet, or other electronic communication or by using third parties.

You shall not engage in a relationship or cohabitate with any individual who has children under the age of 18 unless approved by the probation officer after third party risk issues have been identified and notification has been provided by the probation officer.

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You shall participate in a mental health treatment program to include any available sexual offender treatment as recommended by a psychiatrist or psychologist. Such treatment may include mental health counseling, residential treatment, outpatient treatment, and/or the prescription of psychotropic medications by a medical doctor. The US Probation Office shall administratively supervise your participation in the program by approving the program and monitoring your participation in the program. You shall contribute to the costs of such treatment not to exceed an amount determined reasonable by the court approved "U.S. Probation Office's Sliding Scale for Services", and shall cooperate in securing any applicable third-party payment, such as insurance or Medicaid.

You shall not possess or have under your control any matter that is pornographic/erotic or that describes sexually explicit conduct, violence towards children or "child pornography" as defined in 18 USC 2256(2) and (8), including photographs, images, books, writings, drawings, videos and electronic material.

You are prohibited from possessing or using alcoholic beverages while enrolled in treatment.

You shall submit to polygraph testing to determine if you are In compliance with the conditions of supervision and/or treatment program. The US Probation Office shall administratively supervise your participation in the testing by approving the testing and monitoring your participation in the testing.

You shall contribute to the costs of such testing not to exceed an amount determined reasonable by the court-approved "US Probation Office's Sliding Scale for Services."

48a

You shall not have another individual access the Internet on your behalf to obtain files or information that you are restricted from accessing yourself, or accepting files or information from another person.

You shall submit your person, property, house, residence, vehicle, papers, computers (as defined by 18 U.S.C. § 10 30(e)(I)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. The Defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition.

You shall comply with the level (#3) restrictions of the Middle District of Georgia's Technology Access Program under the guidance and supervision of the U.S. Probation Office. A copy of these restrictions will be included as an addendum to the Judgment and Commitment Order.

You shall consent to third-party disclosure to any employer or potential employer, concerning the history, characteristics, criminal background or any computer related restrictions that have been imposed.

Case 7:17-cr-00034-HL-TQL Document 46

Filed 12/12/18 Page 6 of 7

DEFENDANT: FERRELL WALKER

CASE NUMBER 7:17-CR-00034-HL-TQL(1)

JUDGMENT- PAGE 6 of 7**CRIMINAL MONETARY PENALTIES**

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

	<u>Assessment</u>	<u>JVTA</u> <u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00			Deferred at this time.

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

☐ The defendant must make restitution (including community restitution) to the following victims in the amounts listed below.

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

Name of Payee Total Loss*

Restitution Ordered Priority or Percentage

TOTALS \$ _____ \$ _____

50a

- ☐ Restitution amount ordered pursuant to plea agreement \$
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The Court has determined that the defendant does not have the ability to pay interest, and it is ordered that:
- ☐ the interest requirement is waived for the
☐ fine ☐ restitution
- ☐ the interest requirement is waived for the
☐ fine ☐ restitution is modified
as follows:

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

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

DEFENDANT: FERRELL WALKER**CASE NUMBER 7:17-CR-00034-HL-TQL(1)****JUDGMENT- PAGE 7 of 7****SCHEDULE OF PAYMENTS**

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

A ☐ Lump sum payment of \$ due immediately,
balance due

☐ not later than , or

☐ in accordance with ☐ C, ☐ D, ☐ E; or ☐ F
below; or

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

C ☐ Payment in equal _____ (*e.g., weekly, monthly,
quarterly*) installments of \$ _____ 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 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

E ☐ Payment during the term of supervised release
will commence within 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:

Any criminal monetary penalty ordered by the court shall be due and payable in full immediately. Present and future Assets are subject to enforcement and may be included in the treasury offset program allowing qualified federal benefits to be applied to the balance of criminal monetary penalties.

Payment during the term of supervised release will commence within 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. (fine/restitution) payment shall be due during the period of imprisonment at the rate of not less than \$25 per quarter and pursuant to the bureau of prisons' financial responsibility program. The value of any future assets may be applied to offset the balance of criminal monetary penalties. The defendant may be included in the treasury offset program, allowing qualified benefits to be applied to offset the balance of any criminal monetary penalties.

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

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

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

53a

☐ 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: **Visual depictions of minors engaged in sexually explicit conduct, including but not limited to those visual depictions referred to in Count One of the indictment; and one Samsung Galaxy J7 Pro Sky, Model SM-S727LM.**

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.

54a
APPENDIX E

Case 7:07-cr-00030-HL-TQL Document 118
Filed 05/16/18 Page 1 of 9

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA

UNITED STATES
OF AMERICA

v.

**Amended Judgment in a
Criminal Case**
(For **Revocation** of Probation
or Supervised Release)

FERRELL WALKER Case No. 7:07-CR-00030-001

USM No. 93414-020

Barbara H. Agricola
Defendant's Attorney

THE DEFENDANT

☒ admitted guilt to violation of condition(s) 1,2,7
and 9 of the term of supervision.

☒ was found in violations of conditions (s) 3, 4, 5
and 6 after denial of guilt.

The defendant is adjudicated guilty of these violations:

Violation Number	Nature of Violation	Violation Ended
1	By Committing the Offense of Unlawful Use of License	9/06/2017
2	By Failing to Notify Probation Within 72 Hours of Arrest	9/06/2017

3 55a
By Failing to 9/20/2017
Answer Truthfully
all Inquiries of the
Probation Officer

Violations continued last page

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 not violated condition(s) 8 and is discharged as to such violations (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 shall notify the court and United States attorney of any material changes in economic circumstances.

Last Four Digits of 05/09/2017
Defendant's Soc. Date of Imposition of
Sec. 7100 Judgment

Defendant's Year of s/ Hugh Lawson
Birth 1968 Signature of Judge

City and State of HUGH LAWSON, SENIOR
Defendant's U.S. DISTRICT JUDGE
Residence: Name and Title of Judge
Quitman, GA

05/16/2018
Date

DEFENDANT: FERRELL WALKER
CASE NUMBER 7:07-CR-00030-001

JUDGMENT- Page 2 of 6

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 24 months.

☐ 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 Office.

RETURN

I have executed this judgment as follows:

57a

Defendant delivered on _____ to _____
at _____, with a certified copy of this
judgment.

UNITED STATES MARSHAL

By: _____
Deputy United States Marshal

DEFENDANT: FERRELL WALKER

CASE NUMBER 7:07-CR-00030-001

Judgment Page 2 of 6

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: 25 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*)

59a

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 cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)

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

DEFENDANT: FERRELL WALKER

CASE NUMBER 7:07-CR-00030-001

Judgment Page 4 of 6

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.

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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.

62a

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 mandatory standard and any special conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at the www.gamd.uscourts.gov.

Defendant's Signature _____ Date _____

USPO Officer's Signature _____ Date _____

DEFENDANT: FERRELL WALKER
CASE NUMBER 7:07-CR-00030-001

Judgment Page 5 of 6

SPECIAL CONDITIONS OF SUPERVISION

You shall participate in a mental health treatment program to include any available sexual offender treatment as recommended by a psychiatrist or psychologist. Such treatment may include mental health counseling, residential treatment, outpatient treatment, and/or the prescription of psychotropic medications by a medical doctor. The US Probation Office shall administratively supervise your participation in the program by approving the program and monitoring your participation in the program. You shall contribute to the costs of such treatment not to exceed an amount determined reasonable by the court approved "U.S. Probation Office's Sliding Scale for Services", and shall cooperate in securing any applicable third-party payment, such as insurance or Medicaid.

You shall not associate with any person under the age of 18 except in the presence of a responsible adult who is aware of the nature of your background and current offense, and who has been approved in advance by the probation officer. Contact includes any direct correspondence, telephone, internet, or other electronic communication or by using third parties.

You shall not possess or have under your control any matter that is pornographic/erotic or that describes sexually explicit conduct, violence towards children or "child pornography" as defined in 18 USC

64a

2256(2) and (8), including photographs, images, books, writings, drawings, videos and electronic material.

You shall participate in a mental health treatment program to include any available sexual offender treatment and shall comply with the treatment regimen as directed by your mental health provider(s). You shall contribute to the costs of such treatment not to exceed an amount "determined reasonable by the court approved "U.S. Probation Office's Sliding Scale for Services."

You shall submit to polygraph testing to determine if you are in compliance with the conditions of supervision and/or treatment program. The U.S. Probation Office shall administratively supervise your participation in the program by approving the program and monitoring your participation in the program. You shall contribute to the costs of such treatment not to exceed an amount "determined reasonable by the court approved 'U.S. Probation Office's Sliding Scale for Services.'

You are prohibited from possessing or using alcoholic beverages while participating in treatment such as mental health, sex offender, or substance abuse treatment.

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

DEFENDANT: FERRELL WALKER

CASE NUMBER 7:07-CR-00030-001

JUDGMENT- Page 6 of 6

You shall not have another individual access the internet on your behalf to obtain files or information that you are restricted from accessing yourself, or accepting files or information from another person.

You shall submit to the installation of monitoring hardware, software, or services that the Probation Office will use to manage and view your computer and Internet activity. You may be required to pay all expenses related to this monitoring.

You shall comply with the level (#4) restrictions of the Middle District of Georgia's Technology Access Program under the guidance and supervision of the U.S. Probation Office. A copy of these restrictions will be included as an addendum to the Judgment and Commitment Order.

TAP Level 4 Restrictions

You shall provide the Probation Office 'with truthful and complete information regarding all computer hardware, software, Internet providers, cellular devices and storage media to which you have access, whether at home, work, or other locations. You shall also provide all passwords used on your computer, cellular devices and online accounts.

You are only authorized to use computers or cellular devices that are approved by the Probation Office. Any computer or cellular device in your residence or possession must be approved by the Probation Office.

You shall not own or possess any type of camera, photographic device or video producing device without the approval of the Probation Office.

You shall not use any network or Internet connection other than those which are authorized by the Probation Office.

You are prohibited from access to the Internet or any public or private computer network at any location unless approved by the Probation Office. This includes but is not limited to computers or devices located in private homes, libraries, schools, cyber cafes or other public or private locations.

You shall not use or own any device which allows Internet access unless approved by the Probation Office. This includes but is not limited to PDAs, electronic games, Internet appliances and cellular devices.

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All repairs to your authorized computer systems and cellular devices must be pre-approved by the Probation Office. Repairs must be performed by repair locations approved by the Probation Office. Documentation indicating repairs and reason for repairs must be obtained and submitted to the Probation Office.

You shall not make modifications or install software on authorized computer systems or cellular devices without pre-approval by the Probation Office.

You shall not dispose of computers, storage devices or other Internet capable devices without the approval of the Probation Office.

You shall submit your computer, associated hardware, cellular devices and digital media for review by the Probation Office.

You will allow the Probation Office to use detection tools to discover the existence of wireless Internet signals or devices at your residence.

You shall relinquish possession of your computer and associated hardware and media to the Probation Office at the onset of supervision, if a review cannot be completed onsite or if prohibited content is discovered.

You shall not possess or use removable media configured with bootable operating systems or portable web browsers.

You shall provide financial information to the Probation Office upon request. You shall notify all parties who reside in your residence of these conditions.

You may only access email accounts, chat rooms, instant messaging services, social networking sites, peer-to-peer networks and/or other online environments via accounts pre-approved and authorized by the Probation Office.

Violations Continued:

4	By Committing the Offense of Poss. of Child Pornography	9/20/2017
5	By Possessing Unapproved Cellular Telephone	9/20/2017
6	By Possessing or Controlling Material that Contains Sexually Explicit Conduct	9/20/2017
7	By Using Methamphetamines	9/20/2017
9	By Failing to Notify Probation With 72 Hours of Arrest	11/06/2017

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APPENDIX F

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA,
VALDOSTA DIVISION

UNITED STATES OF
AMERICA

**JUDGMENT IN A
CRIMINAL CASE**

V.

Case Number
7:07-CR-00030-001-HL

FERRELL WALKER

USM Number 93414-020

John G. Edwards
Defendant's Attorney

THE DEFENDANT

- ☒ pleaded guilty to count(s) 1.
☐ 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>Offense Ended</u>
18 U.S.C.	Possession of	06/10/2005
§ 2252(a)(4)(B)	Child Pornography	<u>Count</u> 1

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

- ☐ The defendant has been found guilty on count(s)
Count(s) dismissed on the motion of the United
States.

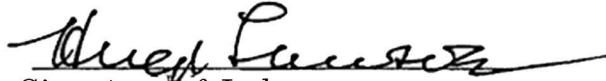
Filed: 11/27/07 9:00 AM
Dkt. # 1676-7
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA

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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 shall notify the court and United States attorney of any material changes in economic circumstances.

November 15, 2007

Date of Imposition of Judgment



Signature of Judge

HUGH LAWSON, Chief United States
District Judge

11-26-07

Date

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DEFENDANT: FERRELL WALKER

CASE NUMBER 7:07-CR-00030-001-HL

DISTRICT: MIDDLE DISTRICT OF GEORGIA

JUDGMENT- PAGE 2

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 87 months.

☐ 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 Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on ^{73a}_____ to _____ at
_____, with a certified copy of this
judgment.

UNITED STATES MARSHAL

By: _____
Deputy U.S. Marshal

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DEFENDANT: FERRELL WALKER

CASE NUMBER 7:07-CR-00030-001-HL

DISTRICT: MIDDLE DISTRICT OF GEORGIA

JUDGMENT- PAGE 3

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: 25 years.

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

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

The defendant shall not unlawfully 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 determined by the Court.

☐ 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, destructive device, or any other dangerous weapon. (Check, if applicable.)

☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

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- ☐ The defendant shall register with the state sex offender registration agent 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 restitution, it is a condition of supervised release that defendant pay in accordance with the Schedule of Payments sheet of this judgment.

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 as directed by the court or 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 at least ten days prior to any change In residence or employment;

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7) the defendant shall refrain from the excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any 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 by 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; and

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.

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DEFENDANT: FERRELL WALKER

CASE NUMBER 7:07-CR-00030-001-HL

DISTRICT: MIDDLE DISTRICT OF GEORGIA

JUDGMENT- PAGE 4

SPECIAL CONDITIONS OF SUPERVISED RELEASE

You shall participate in a mental health treatment program that may include, upon the recommendation of a psychiatrist or psychologist, mental health counseling, residential treatment, outpatient treatment, and/or the prescription of psychotropic medications by a medical doctor. The U.S. Probation Office shall administratively supervise your participation in the program by approving the program and monitoring your participation the program.

You shall participate in a mental health program to include any available sexual offender treatment as recommended by a psychiatrist or psychologist. Such treatment may include mental health counseling, residential treatment, outpatient treatment, and/or the prescription of psychotropic medications by a medical doctor. The U.S. Probation Office shall administratively supervise your participation in the program by approving the program and monitoring your participation in the program.

You shall register with the State Sex Offender Registration Agency in the state where you reside, work, or are a student, as directed by the Probation Officer.

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You shall not own, possess or use any type of camera or photographic device and/or equipment, including a camcorder, IPOD, or cellular phone capable of photography, without prior approval of the U.S. Probation Officer.

You shall not possess or have under your control any material that contains "sexually explicit conduct" or "child pornography" as defined in 18 USC §2256. This includes, but is not limited to, any matter obtained through access to any computer or any material linked to computer access or use.

You shall not possess or use a computer or any device with access to any "on-line computer service." This includes any internet service provider, bulletin board service, or any other public or private computer network.

You shall provide financial information to the probation officer upon request.

You are prohibited from incurring new credit charges or opening additional lines of credit without approval of the U.S. Probation Office.

You shall neither use any form of pornography or erotica nor enter any establishment where pornography or erotica can be obtained or viewed.

You shall consent to third party disclosure to any employer or potential employer, concerning any computer-related restrictions that are imposed upon you.

You shall submit to any program of psycho-physiological assessment at your expense at the discretion of the probation office, to include the use of the plethysmograph to assist in treatment, planning, and case monitoring. Any refusal to submit such assessment as scheduled is a violation of the conditions of supervision.

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DEFENDANT: FERRELL WALKER

CASE NUMBER 7:07-CR-00030-001-HL

DISTRICT: MIDDLE DISTRICT OF GEORGIA

JUDGMENT- PAGE 5

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties in accordance with the schedule of payments set forth in the Schedule of Payments.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	\$2,000.00	\$

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

☐ The defendant must make restitution (including community restitution) to the following victims in the amounts listed below.

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

☐ Restitution amount ordered pursuant to plea agreement \$

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- ☐ The defendant must pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution 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 the Schedule of Payments sheet may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The Court has determined that the defendant does not have the ability to pay interest, and it is ordered that:

☐ the interest requirement is waived for the
☐ fine ☐ restitution

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

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

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DEFENDANT: FERRELL WALKER

CASE NUMBER 7:07-CR-00030-001-HL

DISTRICT: MIDDLE DISTRICT OF GEORGIA

JUDGMENT- PAGE 6

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 \$ due immediately, balance due

☐ not later than , or

☐ in accordance with ☐ C, ☐ D, ☐ E; or ☐ F below; or

B ☒ Payment to begin immediately (may be combined

with ☐ C, ☐ D, or ☒ E, ☒ F below; or

C ☐ Payment in equal installments of \$ over a period of to commence 60 days after the date of this judgment; or

D ☐ Payment equal installments of \$ over a period of to commence 60 days after release from imprisonment to a term of supervision; or

E ☒ Payment during the term of supervised release will commence within 60 days after release from imprisonment. The Court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☒ Special instructions regarding the payment of criminal monetary penalties:

The Court recommends to the BOP that you participate in the Financial Responsibility Program.

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

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

☐ Joint and Several

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) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.