

APPENDIX A

United States v. Rivers, No. 22-51082

(5th Cir. June 9, 2023)

United States Court of Appeals
for the Fifth Circuit

No. 22-51082

United States Court of Appeals
Fifth Circuit

FILED

June 9, 2023

Lyle W. Cayce
Clerk

Plaintiff—Appellee,

UNITED STATES OF AMERICA,

versus

KYLE ROSS RIVERS,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:20-CR-433-1

UNPUBLISHED ORDER

Before ELROD, GRAVES, and HO, *Circuit Judges*.

PER CURIAM:

IT IS ORDERED that the Appellee's opposed motion to dismiss the appeal is GRANTED.

IT IS FURTHER ORDERED that the Appellee's alternative extension request to file brief fourteen (14) days from the denial of the motion to dismiss is DENIED AS MOOT.

APPENDIX B

Guilty Plea Hearing
(W.D. Tex. Aug. 23, 2022)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA)

v.)

KYLE ROSS RIVERS,)

Defendant.)

Docket No. 5:20-cr-00433-FB-1

San Antonio, Texas

August 23, 2022

TRANSCRIPT OF REARRAIGNMENT/PLEA HEARING
BEFORE THE HONORABLE FRED BIERY
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE GOVERNMENT:

Tracy Thompson
United States Attorney's Office
601 NW Loop 410, Suite 600
San Antonio, TX 78216

FOR THE DEFENDANT:

David Joseph Kimmelman
Federal Public Defender's Office
727 East Cesar E. Chavez, Suite B-207
San Antonio, TX 78206

COURT REPORTER:

Chris Poage, CRR, RMR
United States Court Reporter
262 West Nueva Street, Rm. 1-426
San Antonio, TX 78207
Telephone: (210) 244-5036
chris_poage@txwd.uscourts.gov

Proceedings reported by stenotype. Transcript produced by
computer-aided transcription.

REARRAIGNMENT - AUGUST 23, 2022

1 (10:22 a.m.)

2 THE COURT: Okay. Next will be 20-CR-433,
3 United States of America versus Kyle Ross Rivers.

4 For the United States.

5 MS. THOMPSON: Good morning, Your Honor. Tracy
6 Thompson appearing on behalf of the United States.

7 THE COURT: And for the defense.

8 MR. KIMMELMAN: Good morning, Your Honor. David
9 Kimmelman for Mr. Rivers. We're ready for rearraignment, entry
10 of a plea pursuant to our plea agreement.

11 THE COURT: All right. Mr. Rivers, if you'll raise
12 your right hand, please.

13 *(The oath was administered)*

14 THE COURT: Are you the same Kyle Ross Rivers,
15 represented by -- you can put your hand down -- by
16 Mr. Kimmelman, who's charged here in Count 1 of an indictment
17 involving 18 USC 2252A(a) (2)?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. Do you understand that charge?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Mr. Kimmelman, are you satisfied that
22 Mr. Rivers is legally competent to go forward?

23 MR. KIMMELMAN: Yes, Your Honor.

24 THE COURT: Have you looked at the government's
25 evidenced, analyzed it and given him your advice and counsel

REARRAIGNMENT - AUGUST 23, 2022

1 about the strength or weakness of the government's case?

2 MR. KIMMELMAN: Yes, Your Honor.

3 THE COURT: And, Mr. Rivers, have you had enough time
4 to think about that advice and come to your own independent
5 decision about what to do with this plea agreement?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And have you -- excuse me. I've got a
8 hand cramp. The punishment for this kind of case is up to 20
9 years in prison, a five-year period of supervision after you
10 get out of prison up to the rest of your natural life, a
11 mandatory minimum prison term of five years, a \$250,000
12 possible monetary fine, a \$100 assessment for the Victim of
13 Crime Fund and then various amounts of restitution and
14 forfeiture of assets.

15 Your actual punishment will be decided several months from
16 now. When the probation office prepares a presentence report,
17 you and Mr. Kimmelman will go over that for changes or
18 corrections, and we'll meet back here to decide the punishment.

19 Do you understand the punishment aspect of the case?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: On Page 3 and thereafter the plea
22 agreement contains a written summary of what the government
23 said happened, in terms of April of 2020, June of 2020, between
24 you and law enforcement, electronic communications and so
25 forth. Have you gone over those facts with Mr. Kimmelman?

REARRAIGNMENT - AUGUST 23, 2022

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And are those facts true and correct?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Even though you've told the Court those
5 facts are true, that doesn't make you legally guilty unless you
6 were to plead guilty or unless a jury of 12 people were to find
7 you guilty after a trial.

8 If you do plead guilty, you're giving up your rights to
9 have that trial, the right to require the government to prove
10 this charge beyond a reasonable doubt, not to the Court, but to
11 12 citizens who would have to decide that unanimously. The
12 witnesses would be brought here for you to confront, not just a
13 written summary. Mr. Kimmelman would cross-examine those
14 witnesses against you. You could testify if you wanted to, but
15 you always have the right to remain silent. If the jury did
16 convict you, you would have the right to appeal, directly and
17 by habeas corpus.

18 Do you understand all of those rights that you have?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Has anyone forced you, threatened you or
21 paid you any money to make you give up your rights or plead
22 guilty?

23 THE DEFENDANT: No, sir.

24 THE COURT: At this -- at this time the Court finds
25 Mr. Rivers legally competent to go forward. He's received

REARRAIGNMENT - AUGUST 23, 2022

1 effective advice and counsel from Mr. Kimmelman. He knows and
2 understands the nature of the charge and the punishment
3 options. There's a factual basis to support a plea of guilty,
4 and there's an arm's length, negotiated plea agreement
5 containing a written and now orally-confirmed waiver of
6 constitutional rights.

7 Ms. Thompson, do you wish the Court to admonish further?

8 MS. THOMPSON: No, Your Honor. Thank you.

9 THE COURT: Mr. Kimmelman?

10 MR. KIMMELMAN: No, Your Honor. Thank you.

11 THE COURT: Mr. Rivers, to the federal felony charge
12 against you, which alleges that you, Kyle Ross Rivers, within
13 the Western District of Texas, violated the federal felony of
14 18 USC 2252A(a) (2), do you answer guilty or not guilty?

15 THE DEFENDANT: Guilty.

16 THE COURT: I accept Mr. Rivers' plea of guilty, find
17 him guilty of Count 1 of the indictment. And we'll set the
18 punishment date for December the 6th.

19 Mr. Rivers, you'll need to continue to report to pretrial
20 services as you have been. You'll need to wait here today to
21 meet with probation to begin their process of making the
22 background report. And then we'll see you back here on
23 December the 6th.

24 Ms. Thompson, anything further on this matter?

25 MS. THOMPSON: No, Your Honor. Thank you.

REARRAIGNMENT - AUGUST 23, 2022

1 THE COURT: Mr. Kimmelman?

2 MR. KIMMELMAN: No, Your Honor. Thank you.

3 THE COURT: Mr. Rivers, do you have any questions
4 about what we've done thus far?

5 THE DEFENDANT: No, sir, I don't.

6 THE COURT: All right. You may have a seat back
7 there. Thank you, sir.

8 Thank you, Counsel.

9 * * *

10 (10:28 a.m.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

REARRAIGNMENT - AUGUST 23, 2022

-oOo-

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

Date: 2/8/2023 /s/ Chris Poage
United States Court Reporter
262 West Nueva Street, Rm. 1-426
San Antonio, TX 78207
Telephone: (210) 244-5036

APPENDIX C

Sentencing Hearing
(W.D. Tex. Dec. 6, 2022)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA)

v.)

KYLE ROSS RIVERS,)

Defendant.)

Docket No. 5:20-cr-00433-FB-1

San Antonio, Texas

December 6, 2022

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE FRED BIERY
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE GOVERNMENT:

Tracy Thompson
United States Attorney's Office
601 NW Loop 410, Suite 600
San Antonio, TX 78216

FOR THE DEFENDANT:

David Joseph Kimmelman
Federal Public Defender's Office
727 East Cesar E. Chavez, Suite B-207
San Antonio, TX 78206

COURT REPORTER:

Chris Poage, CRR, RMR
United States Court Reporter
262 West Nueva Street, Rm. 1-426
San Antonio, TX 78207
Telephone: (210) 244-5036
chris_poage@txwd.uscourts.gov

Proceedings reported by stenotype. Transcript produced by
computer-aided transcription.

SENTENCING - DECEMBER 6, 2022

1 (10:34 a.m.)

2 THE COURT: All right. Next will be the sentencing in
3 20-CR-433, United States versus Kyle Ross Rivers.

4 For the United States.

5 MS. THOMPSON: Good morning, Your Honor. Tracy
6 Thompson appearing on behalf of the United States.

7 THE COURT: All right. For the defense.

8 MR. KIMMELMAN: Good morning, Your Honor. David
9 Kimmelman for Mr. Rivers.

10 THE COURT: Okay. Counsel approach, please.

11 *(At the bench)*

12 THE COURT: Okay. And I'm getting my people -- there
13 was a kid -- a younger man, I think, here recently. Was that
14 child pornography? But this young man is on the autism scale,
15 also?

16 MR. KIMMELMAN: Yes, Your Honor.

17 MS. THOMPSON: Well, there's a -- there's a diagnosis
18 of autism for him. I don't know if -- he worked at an autism
19 center. The people at the center, who I think had a better --
20 while they did not diagnose him, had a better opportunity to
21 observe his behavior, did not in any way -- of autism.

22 THE COURT: Okay. Well, the one I was thinking of --
23 kept talking. But this -- last week.

24 MS. THOMPSON: Yeah. No. No. That's not this one.

25 THE COURT: Okay.

SENTENCING - DECEMBER 6, 2022

1 MS. THOMPSON: No. He's been nothing but respectful.

2 THE COURT: Separate and apart from that, 20 years? I
3 mean, that's a long, long time. How does that -- I mean,
4 compared to some of these other people.

5 MS. THOMPSON: He's distributing very disturbing
6 material -- to self-produce and send it to --

7 MR. KIMMELMAN: So, Judge, he was diagnosed by a
8 provider -- a healthcare provider here in the area with his
9 autism, who did a battery of tests. That 15-year-old actually
10 initiated the contact with Mr. Rivers on the Kik program. And
11 so, I mean, that 15-year-old, obviously, is a -- he has -- he's
12 in an unfortunate situation. And I don't mean to say anything
13 bad about a 15-year-old who's on a Kik chat room with people
14 who are interested in child pornography.

15 THE COURT: A girl or a boy?

16 MR. KIMMELMAN: A boy.

17 But I just want it to be clear that that boy initiated the
18 contact with Mr. Rivers. And that kind of gives you some
19 context about how all of that happened.

20 THE COURT: Okay. But it was an ongoing situation
21 with the defendant?

22 MS. THOMPSON: Yes. He used Kik to receive and
23 distribute. He's been convicted of distributing child
24 pornography --

25 THE COURT: So A year or two or five? Or do we know

SENTENCING - DECEMBER 6, 2022

1 how long he'd been doing this stuff?

2 MS. THOMPSON: I think he said four years.

3 THE COURT: Okay.

4 MS. THOMPSON: And that would be consistent with the
5 forensics, that -- on a number of devices.

6 THE COURT: Okay.

7 MS. THOMPSON: And he worked at a residential autism
8 center --

9 THE COURT: Right.

10 MS. THOMPSON: -- taking care of kids, some of which
11 he --

12 THE COURT: Okay. All right. Yeah. I saw that.
13 Okay. Thank you.

14 *(Open court)*

15 THE COURT: All right. Mr. Rivers, raise your right
16 hand.

17 *(The oath was administered)*

18 THE COURT: All right. Are you the same Kyle Ross
19 Rivers, represented by Mr. Kimmelman, who's been here convicted
20 of distribution of child pornography?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. And I don't think I need to
23 say this, but you don't fit the profile of someone who ends up,
24 at your age, being a federal felon. You come -- and I want to
25 make sure I've got all this straight, because these -- yes.

SENTENCING - DECEMBER 6, 2022

1 You come from a wonderful family. Both of your parents spent
2 at least 20 years in the Air Force?

3 THE DEFENDANT: Mother was Air Force. Dad was Army.

4 THE COURT: I'm sorry?

5 THE DEFENDANT: My mother's Air Force. My dad is
6 Army.

7 THE COURT: Okay. But they were career soldiers?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. And so, yeah, you moved around a
10 lot, but all people in the military move around a lot.

11 And is this your mom and dad back here with you?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. And I'm sure they're not happy to
14 have to be here, right?

15 THE DEFENDANT: No, sir.

16 THE COURT: All right. So help me understand. And
17 maybe -- and you've already had this talk with them, perhaps.
18 And when all of this sort of thing started years ago, it was
19 men your age and older, who were retired military, doctors,
20 lawyers, businesspeople, who got into this newfangled thing,
21 computers. And then they got into child pornography. Lost
22 their licenses, lost their retirement, went to prison, so
23 forth.

24 But over the course of the years most of that demographic
25 has gotten the word: Don't do this stuff. So now we're seeing

SENTENCING - DECEMBER 6, 2022

1 more 22-, 23-, 24-year-old young men who get involved, first,
2 in adult pornography on their phone, and then they gravitate
3 into this other stuff. Okay? So you don't fit either one of
4 those.

5 So tell me, how did you get into this sort of thing?

6 THE DEFENDANT: Originally, it was like -- I was
7 just -- originally, just a way of socializing.

8 THE COURT: Slow down because Mr. Poage has to write
9 this down, and I have to comprehend it.

10 THE DEFENDANT: Initially, the avenue that led to this
11 was, really, I joined this little app thing just as a way of
12 socializing, trying to just socialize. This was during COVID.
13 And during that interaction I was asked, it's like, okay, hey
14 I'm into art and stuff like this. And so I don't know -- who I
15 was chatting with on transferred me to a group.

16 It's like, okay. It's like a bunch of people. It's like,
17 okay, they like to see your art and stuff like that. So I show
18 them my --

19 *(Discussion off the record between Mr. Kimmelman and the*
20 *defendant)*

21 THE COURT: Okay.

22 THE DEFENDANT: Sorry. This is a tick I have. When
23 --

24 THE COURT: I understand. Go ahead.

25 THE DEFENDANT: So I was invited into the group. It's

SENTENCING - DECEMBER 6, 2022

1 like, okay. And it was like, okay, yeah, this is really good
2 stuff and -- after that. Then, over time, they got to
3 thinking, hey, do you -- it was like -- there's something else
4 we can invite you. I was transferred to a different group
5 where they started exchanging images of this.

6 Initially, I said, no, I'm not -- it's like -- it's like,
7 no, thank you -- steered away from the group. Then, later on,
8 when I went back to socializing things, they brought me to a
9 different group that was -- to my experience was more subtle,
10 and then just started talking and more discussion.

11 And then -- like, oh, it's just role play. It's not real.
12 So it made it seem like it was more fantastical and non-real.

13 THE COURT: Okay. All right. Well, I'm looking here
14 at Page 6, paragraph 16. And this went on for -- well, let me
15 ask you. From the time that you started with either adult
16 pornography -- did you start with adult pornography?

17 THE DEFENDANT: No, sir.

18 THE COURT: Okay. So these chat rooms, whatever, did
19 that go on for a year, until law enforcement found out, or did
20 it go on for five years, or how long?

21 THE DEFENDANT: It was just under a year, sir, because
22 originally -- just really -- it's just chat, mostly just
23 discussion and stuff like that, more verbal stuff. And then,
24 later, it became more of -- the images came later. And that
25 was when -- expanded the path, like from -- I think from March

SENTENCING - DECEMBER 6, 2022

1 till August of --

2 THE COURT: Okay. Well, I'm looking at paragraph 16,
3 that law enforcement found 675 videos and 1,318 images
4 depicting the sexual abuse and exploitation of prepubescent
5 children. And then it goes on to describe what you had.

6 And were you looking at these things?

7 THE DEFENDANT: Yes.

8 THE COURT: Okay. Well, did that give you some sexual
9 gratification to look at these things?

10 THE DEFENDANT: No. For me it was more like -- just
11 like, they desire this. So I'm like, okay. You need to have
12 this so you can socialize with them. That was like the price
13 of socializing with them.

14 THE COURT: Okay. Well, did you have -- okay. If it
15 wasn't giving you sexual gratification and this was part of
16 your social life -- and I understand, from reading, that you've
17 had difficulty in social interactions, whatever. But if it --
18 if it didn't give you any gratification sexually, did you have
19 any empathy about what these children were -- what was
20 happening to them, being tortured? Did you think, gee, I
21 wouldn't want that to happen to me?

22 THE DEFENDANT: Because it was like images, it's kind
23 of like -- it's hard to distinguish like, okay -- put together
24 like, hey, if you see somebody smiling, you assume, oh, this
25 person must be happy or something like that. So that's how I

SENTENCING - DECEMBER 6, 2022

1 kind of interpret things like that.

2 THE COURT: Well --

3 THE DEFENDANT: And then it's just interpretation.

4 But when it came down to -- when I was later explained, like,
5 okay, hey, this is harmful, that's when I was like, okay. This
6 is harm -- so this is not the way it looks.

7 THE COURT: Okay. Well, I was trying to avoid doing
8 this, but I don't feel I have any choice. So I'm looking at
9 this video of a prepubescent male child, that means a little
10 boy, with three adult males. One of them is inserting his
11 penis into the child's anus. The other one is inserting his
12 penis into the child's mouth. And the other one, he's using
13 his hand on the other male.

14 Do you remember seeing things like that?

15 THE DEFENDANT: Again -- if they have it there, but I
16 cannot say to my -- that I remember it.

17 THE COURT: Okay. Well, all right.

18 THE DEFENDANT: I do acknowledge that it is -- it is
19 wrong. Straight up, it is wrong. There's no gray area. It is
20 straight up wrong.

21 THE COURT: Well, I know -- okay. Well, let me ask it
22 this way.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay. I'm looking for what was going on
25 in your mind back when this was going on. And so now, after

SENTENCING - DECEMBER 6, 2022

1 the FBI goes, knock, knock, knock, we need to talk to you, then
2 you decide it's wrong.

3 But when you were -- before the FBI showed up, did you
4 think, gee, I wouldn't want somebody doing this to me, this is
5 wrong; or not?

6 THE DEFENDANT: No, sir. Or else -- no, sir.

7 THE COURT: Okay. All right. Well, that --

8 THE DEFENDANT: Because -- because, no, sir --

9 THE COURT: That answers my question. Because there's
10 something going on here, that if a reasonably well-educated --
11 what's your level of education? Some college, right?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. A reasonably well-educated
14 38-year-old man can't have empathy, then there's something that
15 needs to be dealt with psychiatrically. And so we're going to
16 give you that opportunity for that to happen.

17 So the Court is going to make some very strong
18 recommendations that you be afforded the professional services
19 that the Bureau of Prisons has to help understand that.

20 Ms. Thompson, I mean, Springfield or Fort Worth comes to
21 mind. I think of Fort Worth more as medical and Springfield,
22 psychiatric. Do you have an insight?

23 MS. THOMPSON: I don't, Your Honor. I'm sorry.

24 THE COURT: Mr. Kimmelman?

25 MR. KIMMELMAN: Your Honor, I don't know about those

SENTENCING - DECEMBER 6, 2022

1 two facilities. But the expert that evaluated Mr. Rivers made
2 that very same recommendation as you're suggesting.

3 THE COURT: Okay. And if I read it, I've forgotten
4 it. Did that expert come to that similar observation, that
5 there's something that -- the lack of empathy, or not? Speak
6 to that?

7 MR. KIMMELMAN: So Dr. Samenow did talk about his
8 suspicion that Mr. Rivers suffered from autism; that he was on
9 the spectrum. And that was confirmed later by a local
10 healthcare provider. But Dr. Samenow did talk about the fact
11 that autism does affect the ability to interact with others,
12 and part of that is empathy that the Court was talking about.

13 THE COURT: Right. Okay. Okay. Well --

14 MR. KIMMELMAN: Now --

15 THE COURT: Well, if it can be fixed, it needs to be.

16 But in the meantime, Mr. Rivers, what the Court has to do
17 is deal with trying to send a message out to other men,
18 particularly, you can't do this sort of thing, because these
19 children are being kidnapped, exploited, sold into sexual
20 slavery, is what's happening to them, all because of these
21 computers, that we didn't used to have this problem. So, yeah,
22 there are some good things about computers, but there's some
23 real negative ones.

24 All right. Ms. Thompson, allocution for the United States.

25 MS. THOMPSON: Your Honor, autism -- whether or not

SENTENCING - DECEMBER 6, 2022

1 he's autistic, autism did not cause this behavior. His sexual
2 interest in prepubescent boys caused this behavior, and that
3 alone. He did not just demonstrate empathy, but each of the
4 support letters that were submitted on his behalf talk about
5 how he -- I wrote it down. One of them says he has a keen
6 compassion towards the vulnerable. Others talk about how he
7 likes to help people, and he interacts with them when they come
8 to the house, and he's the first one to offer them something to
9 eat or drink and make sure they're comfortable.

10 And it seems like that is a common thread, that people who
11 know him see, and that that is part of who he is, except with
12 regard to his own sexual gratification, because there's no way
13 you can view these videos, like the one the Court demonstrated
14 and the one in 16A, where, while the adult male is anally
15 penetrating the prepubescent child, who is handcuffed and has
16 tape over his mouth -- the audio depicts the child in distress.
17 You can tell the child is not enjoying being raped by this
18 adult.

19 And there are other ones like that, that he had, and
20 presumably he shared with others, because he's not just
21 obtaining the material, as if that's not bad enough. He is
22 also trafficking in that material and sharing it with others.

23 So when it comes to his own sexual interest in children,
24 which is what got him here in the first place and which is why
25 he creates such a danger to society, that compassion towards

SENTENCING - DECEMBER 6, 2022

1 the vulnerable goes away.

2 Nelson Mandela said, "There can be no keener revelation of
3 a society's soul than the way it treats its children." People
4 like the defendant, who sexually exploit children, have to be
5 held accountable, not just to society, but to their own
6 victims. Everybody agrees the exploitation of children is a
7 horrific crime, but we tend to forget how it plagues these
8 victims, not just at the time the sexual assault is occurring,
9 but for years afterwards.

10 And people like the defendant, who traffic in these images
11 and cause more images to be produced, exacerbate that trauma.
12 Each time someone like the defendant views these images, those
13 children, real, live children in our society and around the
14 world, are re-abused. They're re-exploited. And that trauma,
15 as the Court knows from reading these victim impact statements,
16 lasts throughout their lives.

17 So when the 30-year San Antonio police veteran calls it a
18 mistake, that's offensive. This is not a mistake. He did this
19 over and over and over. He communicated with an undercover
20 officer, which is what led to the FBI's involvement and his
21 arrest. He admitted using multiple platforms to communicate
22 with a variety of people.

23 He can say he got onto these platforms to socialize. But
24 there are millions -- probably not millions -- hundreds of
25 different social media platforms and different groups that have

SENTENCING - DECEMBER 6, 2022

1 other focuses, other than the rape of little boys. That's what
2 he was interested in.

3 The Kik group he was in is called Wicked Boners. That was
4 one. I don't remember the names of the others. He
5 specifically targeted prepubescent boys. There is about 20
6 percent of what was found on his devices that is adult male
7 pornography. But 80 percent of it is prepubescent boys.

8 I have seen in my experience the harm done to children when
9 they are sexually assaulted. I have also, unfortunately, been
10 doing this long enough to see the harm to children that are
11 sexually exploited by others, like the defendant, and that will
12 continue to be exploited by others because of people who have a
13 sexual interest in children and act on that. And he did act on
14 that. He admitted finding sexual gratification in those images
15 and masturbating to them.

16 He's quite an artist. He draws anime of the sexual abuse
17 of little boys.

18 His job put him around children. He worked, I think
19 full-time, at an autism residential center where he cared for
20 prepubescent autistic boys. That's who he -- that's who he was
21 surrounded by. He even admitted in the FBI interview that
22 there were times where one of the children at his employment,
23 one of the male children, or a few -- there were times where
24 male children would sit on his lap, and he would become
25 sexually aroused and have to excuse himself and get somebody

SENTENCING - DECEMBER 6, 2022

1 else to care for the child.

2 THE COURT: Well, that sounds different than what
3 Mr. Rivers told the Court.

4 MS. THOMPSON: I think -- in my experience defendants
5 who show up at sentencing and express remorse feel sorry for
6 themselves that they got caught. If you had any remorse for
7 these children and what they went through, then when you saw
8 this material, you wouldn't keep it. You wouldn't masturbate
9 to it. You wouldn't share it with others. You wouldn't joke
10 about it. And you wouldn't try and encourage other people to
11 produce it and send it to you.

12 Child sexual abuse material re-traumatizes these victims.
13 The Supreme Court in *Paroline* recognized that fact, when it
14 allowed victims depicted in child sex abuse material to obtain
15 mandatory restitution from distributors like the defendant, as
16 well as voyeurs, long after the initial sexual abuse occurred.

17 People like Mr. Rivers are causing more child sex abuse
18 material to be created. Because where there's a demand for it,
19 it will be produced. It's kind of like when we all went
20 through COVID and all our favorite TV shows stopped production.
21 You don't want to watch reruns. You get tired of watching the
22 same thing, for the most part. And so you want more and
23 different stuff. And that has led -- statistics show, over the
24 last few years, that the type of child pornography has gotten
25 much more graphic, and the age of children depicted in this

SENTENCING - DECEMBER 6, 2022

1 material is down to infants and toddlers, which are perfect
2 victims because, again, they're nonverbal. They can't tell
3 anybody.

4 THE COURT: Okay. That's fine.

5 MS. THOMPSON: So we are asking for a sentence -- for
6 a guideline sentence and think it's appropriate in this case.

7 THE COURT: All right. Now, Mr. Kimmelman, I have
8 read your sentencing memorandum. And so anything you wish to
9 add to that, and what we've discussed --

10 But before we do that, let me -- while I'm remembering it,
11 Mr. Rivers, what I heard the government recount as what you
12 told the FBI about having been sexually gratified. But now,
13 today, you told me that you were not sexually gratified. So
14 what is the truth, young man? And you're under oath. Either
15 you were or you weren't?

16 Well, let me ask it this way. Did you masturbate while you
17 were looking at these videos?

18 THE DEFENDANT: (No response).

19 THE COURT: Okay. Well, I will not infer anything
20 from the silence.

21 But at any rate, Mr. Kimmelman, brief allocution, please.

22 MR. KIMMELMAN: Your Honor, a couple of things. And
23 one is, nobody is saying that Mr. Rivers' autism caused this.
24 But it's certainly something that the Court needs to take into
25 consideration.

SENTENCING - DECEMBER 6, 2022

1 I need to emphasize here that Mr. Rivers did not create any
2 of that material. Mr. Rivers did not commit any contact
3 offenses. Contrary to what the government suggests, Mr. Rivers
4 immediately extracted himself from the situation where he was
5 aroused. He notified others to relieve him and take him out of
6 that position. I think that speaks highly of Mr. Rivers'
7 acknowledgment that it was inappropriate.

8 I think it's important to note that Mr. Rivers' supervisor
9 at the autism treatment center said that she had absolutely no
10 problems with Mr. Rivers' behavior there at work.

11 Judge, I think that you have seen Mr. Rivers struggling
12 with the limitations on his ability to interact socially. And
13 I think that, while it's true that users create a market, I
14 think you have to take into account the fact that Mr. Rivers --
15 his circumstances. I mean, there's a reason why the government
16 doesn't prosecute users of drugs and they go after the
17 traffickers.

18 The same thing here. Mr. Rivers was a user. The doctors
19 who evaluated him said that he is a low risk, 16 percent, low
20 risk. They said that he is amenable to treatment. He doesn't
21 have any underlying sociopathic, anti-social, any of that, that
22 would prevent him from benefiting from mental health treatment.

23 THE COURT: And all of that's going to take place.
24 And I, for the sake of discussion, will agree with the experts
25 that he is a low risk for recidivism. But that's not what

SENTENCING - DECEMBER 6, 2022

1 we're here about. We're here about punishment for what's
2 happened from here, back. So I don't have a crystal ball as to
3 the future.

4 At any rate, Ms. Thompson, I meant to ask you -- and, of
5 course, there are other jurisdictions involved. But has law
6 enforcement been able to crack these other users and people who
7 create the demand, and in this particular investigation?

8 MS. THOMPSON: The users -- the members of that
9 particular Kik group have been identified and apprehended. The
10 FBI and HSI worked constantly to identify the children depicted
11 in the material. And many of the victims in his collection of
12 child pornography were identified, six of which have requested
13 restitution. But there's still a lot of them that have not.
14 And part of that is his interest in prepubescent boys, because
15 boys are less likely to disclose the abuse than girls.

16 THE COURT: Right. But the -- but the potential --
17 the defendants within Mr. Rivers' group, have they been
18 indicted in other jurisdictions?

19 MS. THOMPSON: Yes.

20 THE COURT: Okay. All right. Well, good.

21 So, Mr. Rivers, you've not alone.

22 And I want to go back to this autism thing. While I have
23 sympathy for Mr. Rivers -- I've been doing this a long time,
24 Mr. Rivers. I hate to even admit. Ms. Thompson was probably
25 about, without disclosing her age, which I don't know -- was

SENTENCING - DECEMBER 6, 2022

1 probably about in the sixth grade when I started doing this
2 kind of work. Okay? You are the first autism spectrum
3 defendant I have ever had, child pornography, drugs, whatever
4 it may be. So I sympathize with you, and I hope you can get
5 all that together. But to my knowledge, you're the only one.

6 All right. Now, one -- I'm ready to move on,
7 Mr. Kimmelman, but I don't want to cut you off. So anything
8 else before I hear from Mr. Rivers?

9 MR. KIMMELMAN: Just very briefly, Your Honor. The
10 diagnosis from Dr. Samenow and his team was that Mr. Rivers is
11 not a pedophile. He doesn't qualify for that diagnosis.

12 THE COURT: Okay. Well, he's not here, being charged
13 with being an active, touching pedophile. He's here because of
14 what he's charged and what he's convicted of.

15 Okay. Mr. Rivers, you've been here this morning. So you
16 know the drill. And I have to watch the pain that your parents
17 are having to go through.

18 By the way, do you have brothers and sisters?

19 THE DEFENDANT: Older sister, sir, five years'
20 difference.

21 THE COURT: Okay. All right. Well, turn around. And
22 what do you have to say to your family for putting them through
23 this? And I sympathize with them, for having to be here.

24 THE DEFENDANT: First of all, you guys did nothing
25 wrong. You did what you could. You often say like, oh, if

SENTENCING - DECEMBER 6, 2022

1 only we'd known. But no one can ever really know anything on
2 anybody. You just deal with what you deal with. And I
3 appreciate everything you guys have ever done for me, the
4 support, the love, everything else, even through this entire
5 endeavor.

6 I know you guys have been having your own issues. And
7 you've put a whole lot of stuff aside for me, to make sure this
8 goes the best of its ability. I apologize for literally taking
9 away your son from you. That is my fault and no one else.
10 It's not the Court's. It's not anybody else. I'm the one
11 doing this to you. So don't blame yourself. But I know you're
12 going to do it anyway, because regardless of -- when you love
13 somebody, you still feel responsible. And I can't take that
14 from you. But I do apologize for putting you through all this
15 heartache.

16 THE COURT: All right. Thank you, sir.

17 All right. I think you and I have had our discussion. But
18 if there's anything else you want to say to the Court, now is
19 your opportunity.

20 THE DEFENDANT: I have some stuff written down here,
21 because if I say it out, it's going to come out as gibberish.

22 THE COURT: Okay.

23 THE DEFENDANT: I need to get this out. All right.

24 My life has been painful. I've been ignored, harassed,
25 physically abused, emotionally scared and self-hating for not

SENTENCING - DECEMBER 6, 2022

1 achieving some unspoken level of normal. He's too quiet. He
2 doesn't socialize right. He's in his own world. When I did
3 interact, it was done wrong. He has no friends. Why do you
4 talk only about these type of stuff? Look me in the eyes when
5 I'm talking to you. Toughen up, boys. Don't cry. And keep
6 those feelings to yourself. Don't raise your voice to me
7 because angry black men go to jail.

8 I developed a tick when I'm under stress, where I speak
9 extremely quickly so that I can say what I need to, so I can
10 end the interaction and escape.

11 My self-worth was nonexistent. Any feelings that I had
12 that were considered not within the realm of what I'm expected
13 to feel like were suppressed. My way of fitting in was trying
14 to adapt to those around me, to meet their range of comfort
15 over my own. Be nice to people, even when it hurts. This
16 became my default to gaining any kind of acceptance. Asking
17 questions like, how old do I seem to you, was me asking for
18 permission, how am I supposed to act around you?

19 The use of -- my weak -- at using humor was to explain any
20 funny or odd, abnormal behavior that they may feel towards me.
21 I felt drained when dealing with people that I'm not used to.
22 And that left me very tattered internally. But I knew I just
23 had to survive it and stick it out.

24 Being nonjudgmental -- being a nonjudgmental person, due to
25 my own struggles -- being treated harshly and unable to

SENTENCING - DECEMBER 6, 2022

1 maneuver the social puzzle of making friends, social cues or
2 reading a room left me isolated.

3 At present I'm in therapy, addressing my traumas and their
4 impact on my life. This has been a great weight lifted on me,
5 to actually be heard and actually get my story across and
6 articulate my thoughts. I've been finding myself more
7 assertive of my feelings. The greatest progress came when I
8 finally achieved a proper diagnosis for my ASD. This gave me
9 clarity, which gave me -- to say, there's actually help, and
10 I'm not the only one going through this struggle.

11 I take full responsibility for my past actions and the harm
12 that was done. And I know it must be treated and addressed. I
13 will grow better from this. I'm currently pursuing trying to
14 improve on my communication skills through writing. In the
15 future I hope to eventually gain stable employment and return
16 to being a productive citizen and give myself a second chance,
17 that I know I can do better and improve myself as a person.

18 THE COURT: All right. Thank you, sir.

19 The Court will find the guideline range are 210 to 240
20 months. The Court will sentence Mr. Rivers to 210 months, a
21 \$5,000 assessment pursuant the plea agreement, a \$100
22 assessment for the Victim of Crime Fund and then ten years of
23 supervision, Mr. Rivers, after you get out of prison, during
24 which time, if you violate the rules of supervision, you could
25 be sent back to prison.

SENTENCING - DECEMBER 6, 2022

1 You will be under the standard conditions of supervision,
2 in addition to the extra conditions having to do with this type
3 of offense, specifically computer monitoring. And you also
4 will, for the rest of your life, register as a sex offender
5 wherever you are residing, which carries with it other state
6 and federal penalties if you do not register.

7 Your report date -- you will -- because you have been
8 compliant on pretrial release, you may self-surrender on or
9 after March the 6th, 2023, as the Bureau of Prisons and U.S.
10 Marshal Service may instruct you.

11 The Court will recommend that you be sent to the facility
12 at Springfield, Missouri, for evaluation and perhaps placement
13 there. But wherever you are placed, that you be afforded all
14 counseling opportunities, academic and vocational education
15 opportunities, counseling, of course, to include mental health,
16 social adjustment, so forth.

17 Ms. Thompson, I think that covers everything. Anything
18 else for the United States?

19 MS. THOMPSON: Your Honor, you mentioned the \$5,000
20 assessment. And the assessment under the Juvenile Victims of
21 Trafficking Act I believe does not apply to Mr. Rivers, as he's
22 indigent, by way of having the Public Defender's office
23 represent him.

24 THE COURT: Okay.

25 MS. THOMPSON: He did in the plea agreement agree to

SENTENCING - DECEMBER 6, 2022

1 pay restitution in the amount of \$5,000 to each victim that's
2 identified and requested. So that would be a total of \$30,000
3 restitution, as set forth in paragraph 83 of the presentence
4 report. And then I would just ask for an order of forfeiture
5 consistent with the preliminary order.

6 THE COURT: All right.

7 MS. THOMPSON: And move to dismiss -- I'm sorry.

8 THE COURT: Go ahead.

9 MS. THOMPSON: Move to dismiss any remaining counts.

10 THE COURT: All right. The other counts are
11 dismissed. The computers are forfeited. And the plea
12 agreement is approved, including the \$30,000 in restitution to
13 the victims involved.

14 Mr. Kimmelman, anything further?

15 MR. KIMMELMAN: Your Honor, just for the record, I
16 understand the Court is overruling my objections?

17 THE COURT: Yes. The objections are overruled.

18 MR. KIMMELMAN: Thank you, Your Honor.

19 THE COURT: Mr. Rivers, any questions, sir?

20 THE DEFENDANT: No, sir.

21 THE COURT: All right. Have a seat there till the
22 officers can talk with you. Thank you, sir. Good luck.

23 * * *

24 (11:12 a.m.)

25

SENTENCING - DECEMBER 6, 2022

-oOo-

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

Date: 2/8/2023 /s/ Chris Poage
United States Court Reporter
262 West Nueva Street, Rm. 1-426
San Antonio, TX 78207
Telephone: (210) 244-5036