No. 23-

IN THE

Supreme Court of the United States

JORDAN COLE LAWS

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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Question Presented

Did the district court err when it imposed a $5,000 special assessment, pursuant to the Justice for Victims of Trafficking Act of 2015, 18 U.S.C. § 3014(a), even though the defendant is, and by all indications always will be, indigent, and where the court made no factual findings to support application of the special assessment.

Related Proceedings

- *United States v. Laws*, No 1:19 -CR-00076-MOC-WCM-1, United States District Court for the Western District of North Carolina. Judgment entered June 29, 2020.
- *United States of America v. Laws*, No. 20-4373, United States Court of Appeals for the Fourth Circuit. Judgment entered May 19, 2023.

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Petition for Writ of Certiorari

Jordon Cole Laws, an inmate currently in the custody of the Federal Bureau of Prisons at USP Marion, by and through William R. Terpening, court appointed appellate counsel, respectfully petitions this court for a Writ of Certiorari to review the decision of the Fourth Circuit Court of Appeals.

Opinion Below

The decision by the United States Court of Appeals for the Fourth Circuit is unpublished. *United States of America v. Laws*, No. 20-4373 (4th Cir. May 19, 2023). The opinion is attached at the Appendix.

Jurisdiction

The Fourth Circuit affirmed the Laws' judgment on May 19, 2023, so this appeal is timely under Rule 13. This Court has jurisdiction under 28 U.S.C. § 1254(1).

Statute Involved

18 U.S.C. § 3014(a).

a) In general. -- Beginning on the date of enactment of the Justice for Victims of Trafficking Act of 2015 and ending on December 23, 2024, in addition to the assessment imposed under section 3013, the court shall assess an amount of $5,000 on any non-indigent person or entity convicted of an offense under--

(1) chapter 77 (relating to peonage, slavery, and trafficking in persons);

(2) chapter 109A (relating to sexual abuse);

(3) chapter 110 (relating to sexual exploitation and other abuse of children);

(4) chapter 117 (relating to transportation for illegal sexual activity and related crimes); or

(5) section 274 of the Immigration and Nationality Act (8 U.S.C. § 1324) (relating to human smuggling), unless the person induced, assisted, abetted, or aided only an individual who at the time of such action was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

Statement of the Case

On August 6, 2019, Mr. Laws was indicted on several charges related to child pornography. App., 2a. He was appointed counsel and represented by the Federal Defenders Office because he was indigent. On December 12, 2019, he pled guilty to a violation of 18 U.S.C. § 2252A(a)(5)(B). Mr. Laws was sentenced to 144 months of imprisonment.

The district court imposed a $5,000 assessment pursuant to 18 U.S.C. § 3014(a), which Mr. Laws challenged on appeal and again challenges now. App., 2a. Mr. Laws objected to this assessment on the basis that he was indigent at the time of sentencing and would be indigent in the future, but § 3014(a) expressly does not apply to indigent defendants. Mr. Laws' Presentence Investigation Report ("PSR") confirmed this by noting his only work experience was mowing his grandfather's lawn and briefly earning $9.48 an hour at Burger King. Moreover, the district court engaged in speculation but did not make any factual findings supporting the enhancement. App., 5a-6a. Laws had no education, dropped out of high school in 10th

Grade, and has no vocational training. App., 5a. In short: all the objective facts point to chronic indigency. The district court and Fourth Circuit ignored this, in favor of speculation.

The Fourth Circuit found that the district court was correct in imposing the assessment since he *might* be able to pay it off in the future. App., 3a. The district court imposed the assessment finding that Mr. Laws was 20 years old and, it speculated, able-bodied. App., 6a. The district court also remarked on the possibility he *might* earn his General Education Development diploma in prison. *Id.* The court believed that under these circumstances he *might* be able to pay off the assessment after his incarceration. *Id*. The district court, however, did not consider any existing facts or evidence in making this decision. *Id*. at 5a-6a. The PSR did not include an analysis of "Mr. Laws' future earning potential." His PSR only has the generic expectation that he will gain full-time employment after serving his term of incarceration.

On appeal for the Fourth Circuit, Mr. Laws argued that the district court's decision that he would be "non-indigent" in the future was wrong because the determination of "non-indigence" is based on factors such as education, and a good employment record – that is, specific, concrete, objective facts. Mr. Laws is lacking in both of those criteria and the court's analysis did not depend on facts. App., 5a-6a.

The Fourth Circuit affirmed the district court's decision. *United States of America v. Laws*, No. 20-4373 at 3 (4th Cir May 19, 2023). The district court had jurisdiction because this case was prosecuted as an offense against the United States,

over which the federal district courts have original jurisdiction. 18 U.S.C. § 3231. The Fourth Circuit had jurisdiction over the appeal pursuant to 28 U.S.C. § 1291.

Reasons for Granting the Writ

Allowing Laws to be deemed "non-indigent" would make "virtually every single defendant non-indigent for JVTA purposes," because the district court applied the special assessment based on subjective speculation about factors that *might* make Laws non-indigent in the future. App., 5a-6a. The Fourth Circuit did not correctly identify objective facts supporting future earning potential, as required in its own decision in *United States v. McMiller*, 954, F. 3d 670, 674 (4th Cir. 2020). Moreover, to the extent it did not require the district court to support its application of the assessment with objective factual findings, the Fourt Circuit diverts from all the other Circuits, which do.

There is no evidence that Mr. Laws will ever be "non-indigent." In *McMiller*, the Fourth Circuit upheld a trial court's decision to apply the $5,000 special assessment to a former schoolteacher based off factors such as "financial resources and assets, financial obligations, projected earnings, income, age, education, health, dependents, and work history". *Id*. McMiller's probation officer paid special attention to his employment history and education when determining whether he could pay the assessment. *Id*. Additionally, McMiller also relied on his master's degree and employment history in seeking a downward variance. *Id*. McMiller, unlike Mr. Laws, had an employment history and education that provided evidence he had the skills to be able to find a job and become "non- indigent" after his incarceration.

Mr. Laws' case is more like *United States v. Kibble*, where the Fourth Circuit reversed the district court's order of a special assessment because it failed to make a finding of "non-indigence". No. 20-4106, 2021 WL 5296461, at *4. Kibble appealed the mandatory special assessment pursuant to 18 U.S.C. § 3014(a)(4). *Id.* The Fourth Circuit distinguished *Kibble* from *McMiller*. *Id.* at *4. The court pointed out that in *McMiller* several facts were used to determine McMiller's ability to pay the assessment. *Id.* In *Kibble*, no factual finding was made to determine the defendant's ability to pay. *Id.* The district court in *Kibble* observed that it, "does believe that [he] has the potential for earning capacity following his period of incarceration to enable him to make the $5,000 payment." *Id.* at *1. As with Mr. Laws, this belief was grounded in speculation. *Id.* Without the consideration of facts before imposing the $5,000 assessment the district court had not met the implicit finding criteria in *McMiller*. *Id.*

Mr. Laws' situation reflects *Kibble* more than it does *McMiller*. Mr. Laws was considered indigent at the time of sentencing. App., 6a. The government offered no evidence that demonstrated Mr. Laws would be "non-indigent" in the future. *Id.* The government and the district court speculated as to certain jobs Mr. Laws might be able to do but they did not provide evidence showing what he could do other than work at Burger King and mow his grandfather's lawn. *Id.* at 5a-6a. His employment history and lack of education would suggest that Mr. Laws will remain indigent. *Id.* at 5a. While the government, the district court, and Mr. Laws himself might aspire

to him getting a better education and a better paying job, there is no evidence to suggest this will happen upon the end of his incarceration.

Cases in other circuits that answer the question of future "non-indigence" use similar factors to those used in the Fourth Circuit. Every Circuit requires objective evidence of ability to pay – a standard not met here.

In *United States v. Graves*, the Fifth Circuit affirmed the district court's decision in applying the $5,000 assessment because the defendant's future ability to pay was based off several factors. 908 F.3d 137, 143 (5th Cir. 2018). The defendant had taken "advanced placement courses in high school, obtained his GED," gained some college experience, and had received vocational training. *Id*. Also, the defendant had "a long employment history," earned $40,000 annually, and was able bodied.

The Sixth Circuit standard requires even more factual support than the Fifth and Fourth Circuits. In *United States v. Meek*, the standard used to determine "non-indigence" before imposing the special assessment was to consider "(1) whether the defendant was currently impoverished and (2) whether the defendant has "the means to provide for himself so that he will not always be impoverished." 32 F.4th 576, 581 (6th Cir. 2022) (quoting *United States v. Shepard*. 922 F.3d 753, 758 (6th Cir. 2019). Meek had significant financial liabilities and was unemployed due to his incarceration. *Meek*, 32 F.4th at 581. The evidence also showed he was a college graduate, ordained minister, had a certificate in armed security, was "earning more than $2000 a month," and had been employed his entire adult life. *Id*. Because of his prior work experience and education, the Sixth Circuit held that Meek was not

indigent. *Id.* at 582. Even so, the Sixth Circuit notes that the district court must consider evidence that takes a defendant's financial circumstances into account and should at least consider the assessment of the "defendant's financial condition" listed in the PSR. *Id.* at 583 (quoting Fed. R. Crim P. 32(d)(2)(A)(ii)).

The Eighth Circuit also required more evidence before ordering the special assessment than the Fourth Circuit did in Laws' case. In *United States v. Kelley,* the Eighth circuit, like its sister circuits, considered the defendant's future as well as current financial condition when upholding the district court's order to impose the $5,000 special assessment. 861 F.3d 790, 801 (8th Cir. 2017). Kelley had sold his house – valued around $98,000 – was an Eagle Scout, and had a college degree, suggesting in the future he had the skills to be able to find a job to pay off the special assessment. *Id.* at 802.

While many of the other circuits strongly consider the evidence of a person's work history, education and other factors before determining "non-indigence," the district court required no actual evidence of Mr. Laws' future ability to work and was not held to that same standard. The district court and Fourth Circuit held that Mr. Laws could pay the special assessment purely on speculation and the *possibility* his economic prospects in the future *might* be better. They did not consider how his limited work experience, the specific nature of his offense, and lack of education will keep him indigent in the future. In every other case where a special assessment was affirmed, actual evidence was offered to show that the appellant had the skills, work experience, and education necessary to become "non-indigent" in the future. Mr. Laws

does not have that level of education, work experience, or skills to become "non-indigent."

Conclusion.

For these reasons, Mr. Laws requests that the Court grant a Writ of Certiorari to review the Fourth Circuit's judgment.

Respectfully submitted,

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-4373

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JORDAN COLE LAWS,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Ashville. Max O. Cogburn, Jr., District Judge. (1:19-cr-00076-MOC-WCM-1)

Submitted: October 3, 2022 Decided: May 19, 2023

Before GREGORY, Chief Judge, KING, Circuit Judge, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

ON BRIEF: William R. Terpening, TERPENING LAW, PLLC, Charlotte, North Carolina, for Appellant. Dena J. King, United States Attorney, Anthony J. Enright, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jordan Cole Laws pled guilty, pursuant to a plea agreement, to possession of child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B). Laws contends that the district court erroneously determined that he was non-indigent and thereby erred in imposing a mandatory $5,000 special assessment under 18 U.S.C. § 3014. We affirm.

Section 3014(a) provides that, "in addition to the assessment imposed under [18 U.S.C. §] 3013, the [district] court shall assess an amount of $5,000 on any non-indigent person . . . convicted of [enumerated] offense[s]," including, as here, possession of child pornography. § 3014(a)(3). The $5,000 assessment "shall . . . be collected in the manner that fines are collected in criminal cases." § 3014(f); *see* 18 U.S.C. § 3572(d)(1) ("A person sentenced to pay a fine or other monetary penalty . . . shall make such payment immediately, unless, in the interest of justice, the court provides for payment on a date certain or in installments.").

Laws bore the burden of showing that he was indigent. *See United States v. Kelley*, 861 F.3d 790, 800 n.5, 801 (8th Cir. 2017). We review for clear error the district court's factual finding that Laws was non-indigent and review de novo "[w]hether the district court applied the correct legal standard in assessing [Laws'] non-indigence." *United States v. Graves*, 908 F.3d 137, 140 (5th Cir. 2018); *see Kelley*, 861 F.3d at 801. "Under the clear error standard, we will only reverse if left with the definite and firm conviction that a mistake has been committed." *United States v. Doctor*, 958 F.3d 226, 234 (4th Cir. 2020) (internal quotation marks omitted).

Laws correctly notes that the district court found he was indigent at the time of sentencing. However, as Laws recognizes on appeal, district courts may also "consider a defendant's future earnings potential when determining his ability to pay an assessment under" § 3014(a). *See United States v. McMiller*, 954 F.3d 670, 675 (4th Cir. 2020). Instead, Laws contends that the record did not support the district court's finding that Laws would ever have the ability to pay the assessment.

We have reviewed the record and conclude that the district court did not clearly err in imposing an assessment under § 3014(a). Although Laws did not graduate from high school and does not have a significant employment history, the district court found that Laws appeared able-bodied and, as Laws argued in seeking lenience, that he intended to obtain his high school equivalency degree while in prison. Furthermore, the district court allowed Laws to make $50 monthly payments toward the $5,000 assessment without interest, which provides Laws with a significant period of time to pay the assessment. In light of these facts, we are not "left with the definite and firm conviction" that the district court made a mistake in imposing the assessment under § 3014(a). *Doctor*, 958 F.3d at 234 (internal quotation marks omitted).

We therefore affirm the district court's judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
(Asheville Division)

UNITED STATES OF AMERICA, Plaintiff,	:	
vs	:	Criminal Action:1:19-CR-76
JORDAN COLE LAWS, Defendant.	:	

June 23, 2020
Asheville, North Carolina

The above-entitled action came on for a Sentencing Hearing Proceeding before the HONORABLE MAX O. COGBURN, Jr., United States District Judge, in Courtroom 1, commencing at 10:55 a.m.

APPEARANCES:
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Official Court Reporter

houses. He could mow lawns. He can lay tile. He could pay that one day. We don't have a reason to think that he won't be able to do that.

MS. SISON: And then again, Your Honor, he's got no skills at this point. If we want him to get treatment, if we want him to get any kind of schooling, what we believe would help him in his life, how can we take away $5,000 from him now and in the future? At this point, we don't know what's going to happen. What if something happens to him? What if he has to decide between paying this fine and paying for school?

THE COURT: This money doesn't go to the victim. It goes to the government.

MR. THORNELOE: It goes to a fund, Your Honor, that could potentially stay with the victims. This is not just like a fine that goes to Treasury.

THE COURT: It's further ordered the defendant shall pay the $5,000 of the JVTA assessment. These children -- just the children who have their pictures taken have some problems. This little girl may have some problems. She may need help from such a fund. I'm going to go ahead and impose that.

The Court finds the defendant does not have the ability to pay a fine or interest, and the Court recognizes -- let me say this for the record. This may

be an appeallable issue. The Court sees the defendant is indigent today, but the defendant's 20-some years old and appears to be able-bodied. He opines he's going to get his GED while he's in jail. The court believes he will be able to make money while he is out, and it sounds like he will be able to pay this. And this money sounds like it is going to a good cause rather than Treasury so they can do something, whether building walls or whatever they decide on a good day it makes sense to do. Since it sounds like it's going to a good cause the Court believes it should happen, but I will say the defendant is indigent today. You can have that for the record.

The Court finds the defendant does not have an ability to pay a fine or interest. And having considered the factors noted in 18, United States Code, Section 3572(a) will waive payment of fine or interest in this case.

Defendant shall forfeit defendant's interest in any properties identified by the United States as indicated in the ECF document 21 filed on December 2nd 2019, which is made part of this judgment.

Payment of the criminal monetary penalty of $100 is due and payable immediately.

The Court has considered the financial and other information contained in the presentence report and finds

the following is feasible. If the defendant is unable to pay any monetary penalty immediately during the period of imprisonment payments shall be made to the Federal Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from imprisonment any remaining balance shall be paid in monthly installments of not less than $50 a month to commence within 60 days of going on supervision until paid in full.

Throughout the period of supervision the probation officer shall monitor the defendant's economic circumstances and shall report to the court with recommendations as warranted any material changes that affect the defendant's ability to pay any court ordered penalties.

Any reason why that should not be the sentence in this case from the defense?

MS. SISON: Your Honor, other than the objection I made towards the special assessment.

THE COURT: Okay. Well if you take that up they'll defend it and we'll have another Fourth Circuit case that says it's good, bad, or they'll get me reversed and it will be coming back. So we'll just deal with that when that happens.

That is the sentence in this case. You may appeal this conviction of sentence to the Fourth Circuit Court

of Appeals. Any appeal may be -- must be in writing and must be within 14 calendar days from when I enter the written judgment in this case. If you wish to appeal and cannot afford to appeal you may appeal at government expense. I suggest you speak with your excellent counsel about these rights and whether or not to exercise them. Do you understand your right to appeal as I've just explained it to you?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right.

MR. THORNELOE: Your Honor, just one small request. Would the Court order that as a condition of supervised release the defendant have no contact with the victim or her family?

THE COURT: Oh, yes. Absolutely. That has to be a condition. Add that to the supervised release, yeah.

MR. THORNELOE: Thank you, Your Honor. And then the government does have a motion.

THE COURT: Okay.

MR. THORNELOE: The government moves to dismiss counts one, two, three, five and six of the Bill of Indictment.

THE COURT: Let those be dismissed pursuant to the plea agreement.

Anything further from anyone?