

APPENDIX A

2023 WL 3580139

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United States Court of
Appeals, Eleventh Circuit.

UNITED STATES of
America, Plaintiff-Appellee,

v.

Jason M. MORIARTY,
Defendant-Appellant.

No. 21-14099

|

Non-Argument Calendar

|

Filed: 05/22/2023

Appeal from the United States District Court
for the Middle District of Florida, D.C. Docket
No. 6:04-cr-00005-CEM-GJK-1

Attorneys and Law Firms

Roberta Josephina Bodnar, U.S. Attorney's
Office, Ocala, FL, Linda Julin McNamara,
Oberheiden P.C., Tampa, FL, U.S. Attorney
Service—Middle District of Florida, U.S.
Attorney, U.S. Attorney's Office, Tampa, FL,
for Plaintiff-Appellee.

Lynn Palmer Bailey, Federal Public Defender's
Office, Jacksonville, FL, Michael Shay Ryan,
Federal Public Defender's Office, Orlando, FL,
Alec Fitzgerald Hall, Federal Public Defender's
Office, Tampa, FL, for Defendant-Appellant.

Before Rosenbaum, Jill Pryor, and Tjoflat,
Circuit Judges.

Opinion

PER CURIAM:

*1 Jason Moriarty appeals his 72-month total sentence, consisting of three consecutive statutory-maximum 24-month sentences, upon the revocation of his supervised release as to three original counts of conviction. On appeal, he argues that the District Court imposed a procedurally unreasonable sentence by relying on an allegedly clearly erroneous fact when imposing his sentence, namely, that he was actively in sex-offender treatment at the time he violated his supervised release. He also argues that his sentence was substantively unreasonable because the District Court exceeded the guideline range and stacked three consecutive, statutory-maximum terms of imprisonment. Finding Moriarty's sentence to be both procedurally and substantively reasonable, we affirm.

I.

In 2004, a federal grand jury in the Middle District of Florida indicted Jason Moriarty on one count of attempting to receive, and receiving and possessing with intent to sell, material containing images of child pornography in violation of 18 U.S.C. §§ 2252A(a)(2)(A), (a)(4)(B), and (b)(1); one count of attempting to possess and possessing material containing images of child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B); and one count of receiving and possessing with intent to distribute an obscene visual depiction of a minor engaging in

sexually explicit conduct, in violation of 18 U.S.C. §§ 1466A(a)(1) and (2).

Moriarty pleaded guilty to all three counts. The District Court sentenced him to 240 months' imprisonment, followed by a lifetime term of supervised release, which included the standard conditions of supervision. Moriarty appealed his sentence, arguing that the District Court erred by imposing a general sentence of 20 years when the statutory maximum for Count Two was ten years. We agreed, and we vacated Moriarty's initial sentence and remanded the case for resentencing. *United States v. Moriarty*, 429 F.3d 1012, 1025 (11th Cir. 2005) (per curiam). On resentencing, the District Court imposed a sentence of 240 months' imprisonment as to Count One, and 120 months each for Counts Two and Three, to run concurrently to Count One. This term of imprisonment was followed by a lifetime term of supervised release as to Count One, a five-year term of supervised release for Count Two, and a three-year term of supervised release for Count Three. The standard conditions of supervision applied.

Moriarty was released, and his period of supervision commenced, on July 1, 2021. On July 6, Moriarty agreed to modify the terms of his supervised release. The new terms (1) required that Moriarty participate in a mental health program specializing in sexual-offender treatment; (2) required Moriarty to submit to polygraph testing for treatment and monitoring purposes; and (3) prohibited Moriarty from "possessing, subscribing to, or viewing, any video, magazines, or literature depicting children in the nude and/or in sexually explicit positions"; and (4) prohibited

Moriarty from either "possessing or using a computer (including a smart phone, a hand-held computer device, a gaming console, or an electronic device) capable of connecting to an online service or an internet service provider," without prior written approval of his probation officer. The last requirement included accessing a computer "at a public library, an internet cafe, [Moriarty's] place of employment, or an educational facility."

***2** On August 19, Probation Officer Matthew Zorn filed a memorandum with the District Court, alleging that Moriarty violated the terms of his supervised release. On August 14, Deputy Diaz of the Orange County Sheriff's Office contacted Zorn and stated that she made contact with Moriarty at a public library in Orlando, Florida. On August 13, a staff member at the library noticed Moriarty viewing sexually explicit images of minors on a public computer. The staff member recognized Moriarty when he returned on August 14 and promptly contacted the authorities. Moriarty told Deputy Diaz that he was looking into adults wearing baby clothes and wearing diapers and was taking photos of those images with his cell phone to masturbate at home. Moriarty contacted Zorn on August 14 as well and informed Zorn that he had been in contact with law enforcement at the library; he admitted to using a computer to look up photos of adults wearing diapers. He further admitted that some photos of children appeared as well, but his intention was to look up photos of adults. Finally, Moriarty admitted to Zorn that he knew he was not permitted to access the internet through the library computers.

On August 16, Zorn spoke with the library employee. She confirmed that she had seen

Moriarty's screen on August 13, and she believed she saw a video depicting a minor female touching herself in a sexual way. She observed images of bondage and minor children who were duct taped. She also said that Moriarty was taking photos of the computer screen with his phone. After speaking with the library employee, Officer Zorn and Probation Officer Curran met Moriarty. He admitted to using the internet on the library computer on August 13 and stated that he entered search terms such as “diaper punishment,” “diaper bondage,” and “diaper kidnapping,” and that he took photos using his cell phone, though he deleted the photos. Moriarty also admitted to accessing the internet from the public library again on August 14 to create an email address. Officers Zorn and Curran confiscated Moriarty's phone for further review. Officer Zorn's memo informed the Court that it may revoke Moriarty's supervised release and impose a term of imprisonment up to two years for each count of conviction, and that these statutory maximums could be imposed concurrently or consecutively under 18 U.S.C. §§ 3583(e) and 3584(a). Officer Zorn petitioned the Court to issue a warrant for Moriarty because he violated the terms of his supervised release. The Court issued the warrant as requested.

The probation officer filed a recommendation with the District Court. After recounting the details of the violation, the report noted that a preliminary review of Moriarty's phone revealed over 400 images of possible child erotica—with many of the images involving minors in bondage or kidnapping scenarios. The recommendation also stated that the conduct in Moriarty's presentence investigation

report for his original arrest reflected that he kept handwritten narratives outlining sexual assaults of and bondage activities involving minors. Moriarty's landlord also notified the probation office that, while cleaning out Moriarty's room for another resident to move in, she found books titled *Design Ideas for Baby Rooms* and *Backyards for Kids*. Another resident notified the probation office that when the new renter moved into Moriarty's room, he found a pair of boy's underwear within the bedding on the bed. The probation office recommended two years' imprisonment followed by a lifetime term of supervised release with all the same special conditions.

At Moriarty's revocation hearing, the District Court found that Moriarty had violated one condition of his supervised release and adjudicated him guilty of one grade C violation. The Court further found that the guideline range was four to ten months, with a statutory maximum of two years' imprisonment, and a maximum of a lifetime term of supervised release. The government clarified that the maximum sentence was two years per count, and that Moriarty was originally sentenced on three counts. The government offered 12 photographs into evidence. These photographs included images of children tied up, children in bondage restraints, children tied to a bed, children wearing diapers, and various other images of children.

***3** Moriarty spoke on his own behalf. He said:

I'm sorry. I got curious about the Internet. I haven't seen a computer in 18 years.... I

got scared and I went back to my old way of thinking. I had treatment in prison, but I lost that support when I got released, and I was lost.

Revocation Hr'g Tr., Doc. 148, at 9. He claimed that he was sorry about the images, and that he had second thoughts almost immediately and deleted them and he noted that he was about to start with a treatment group, but got arrested before he could start.

Moriarty's attorney objected to a sentence of six years, which he anticipated the government was going to ask for. According to the attorney, the original sentence was imposed concurrently, the terms of supervised release were imposed concurrently, and the violation was a single violation. He asked the Court to consider something far less than even the guideline range, and let Moriarty try again with treatment, guidance, and supervision. And if Moriarty stumbles a second time, then impose a sentence like the government was requesting.

The government requested that Moriarty be sentenced to 24 months per count, to be run consecutively, followed by a lifetime of supervised release. The government noted that the type of sentence they were recommending for Moriarty was not something that should be done in every case.

The government reiterated that just over one month after Moriarty was released, he was caught taking photos of individuals wearing baby clothes and diapers, and that he admitted that he took those photos to masturbate at

home. The government believed Moriarty to be a danger to society for several reasons. First, because after being incarcerated for almost 20 years and after receiving sex-offender treatment in prison, Moriarty violated his supervision after just one month. The government stated that the 12 photos it had entered into evidence were representative of the approximately 500 images of child erotica found on Moriarty's phone—images that were created between July 10, 2021 and August 13, 2021. Particularly alarming to the government was that one of the photos on the phone was of a live child—not a photo of a child from the internet—standing in the checkout line of a store.

The government also described the relevant facts of Moriarty's underlying case—facts which, according to the government, made Moriarty's actions here even more concerning. In that case, a search of Moriarty's bedroom uncovered a book titled *Hollywood Kids*, and inside the book were 50 to 100 printed and photographic images of children, including some of a sadistic nature and some of children in diapers. At Moriarty's original sentencing hearing, his neighbors testified that their six-year-old son woke up crying and not wearing the diaper they had put him in before bed. The mother believed Moriarty had come into their house and taken the diaper—the child's window had been left open and photos of the child had been found in Moriarty's home. The government was concerned that (1) Moriarty's past conduct, (2) his own statements that he went back to his old ways of thinking, (3) the fact that he went to the library on two consecutive days just one month after being released, and (4) the number of images he

possessed that were created between July 10 and August 13 all showed that he was not able to follow the conditions of his release.

*4 The government asserted that it was recommending a sentence of two years on each count, to be served consecutively. Moriarty's attorney again requested that the Court “[g]ive him the high end of the guideline sentence, get him back on supervision, get him into treatment, and if he does it again, Your Honor, then lower that kind of boom.” *Id.* at 19.

The Court then began to impose its sentence. The Court was concerned that Moriarty violated his supervised release so quickly. Addressing Moriarty, the Court said:

[T]he only rational explanation for why someone in your situation on the heels of a 17-year prison sentence would be willing to risk [returning to prison]—I mean, you indicated that you were grateful to your probation officer because he helped you find a place to stay and got you back on your feet. You were getting treatment. So why would you do what you did? You did it because you can't control it.

Id. at 20. The Court believed Moriarty was dangerous because, looking at the evidence, it looked like Moriarty was “either planning on kidnapping a child or [was] aroused at the

thought of a child being kidnapped.” *Id.* at 21. While the Court believed that Moriarty should get some benefit for accepting responsibility, it also noted that this was not a particularly difficult violation to prove.

The Court again mentioned that Moriarty could not control his urges, and that he admitted to his probation officer that he collected this material for sexual stimulation, which was alarming. While the Court believed that the type of sentence the government requested should be used sparingly and only for the most dangerous people, it said that Moriarty was that type of person. According to the Court:

[T]his is almost an episode of Law and Order.... That's how bad this is. Everything is in line here. The photos of the kids bound and gagged, his admission that this turns him on. Less than 60 days after getting released from a 17-year prison sentence he's in a public library downloading this stuff and taking photos of it with his phone. Every single thing is here. If this were a movie script, someone would say “This doesn't happen in real life,” but it did.

Id. at 22.

While the Court believed Moriarty should get some kind of benefit for accepting responsibility, the judge said “I couldn't live with myself if the next time you're in here there are parents on the front row of that pew talking about what happened to their child because someone made the wrong decision.” *Id.* at 23. According to the Court, Moriarty had made clear what his obsessions were and he was not going to stop. The Court noted that Moriarty's probation officer should be commended for

going above and beyond to try to help him, and that he was “getting the treatment [he] needed to get.” *Id.* at 23.

Ultimately the Court determined that Moriarty was “a dangerous person engaged in dangerous activity,” as he had “this treasure trove of photos of children bound and gagged as if you’re either going to plan to kidnap one or you are just sexually aroused by the thought of a child being kidnapped, which could turn into something much worse.” *Id.* at 23–24. The Court revoked Moriarty’s supervised release and sentenced him to two years’ imprisonment for each count, to run consecutively to one another, followed by a lifetime term of supervised release. In reaching this sentence, the Court considered the factors set forth in 18 U.S.C. § 3553(a) and the advisory guidelines and policy statements issued by the United States Sentencing Commission. When asked if either side had objections, Moriarty’s attorney said “Yes, Your Honor. I object to procedural and substantive reasonableness,” in addition to the objections he had previously stated.

II.

*5 We review the reasonableness of a sentence, including the imposition of supervised release, under a deferential abuse-of-discretion standard. *Gall v. United States*, 552 U.S. 38, 51, 128 S. Ct. 586, 597 (2007); *see United States v. Zinn*, 321 F.3d 1084, 1087 (11th Cir. 2003) (stating that supervised-release sentences are reviewed for abuse of discretion). “With respect to Sentencing Guidelines issues,

this Court reviews purely legal questions *de novo*, a district court’s factual findings for clear error, and, in most cases, a district court’s application of the guidelines to the facts with due deference.” *United States v. Rothenberg*, 610 F.3d 621, 624 (11th Cir. 2010) (internal quotation marks omitted).

When reviewing for reasonableness, we must first ensure that the district court committed no significant procedural error, such as failing to calculate the guideline range, treating the Guidelines as mandatory, failing to consider the 18 U.S.C. § 3553(a) factors, selecting the sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence, including any deviation from the guideline range. *Gall*, 552 U.S. at 51, 128 S. Ct. at 597. A factual finding is clearly erroneous “when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” *Anderson v. City of Bessemer City*, 470 U.S. 564, 573, 105 S. Ct. 1504, 1511 (1985). Even if the district court erred, “we are not required to vacate the sentence and remand the case if the court would have likely sentenced [the defendant] in the same way without the error.” *United States v. Scott*, 441 F.3d 1322, 1329 (11th Cir. 2006).

Here, the District Court did not impose a procedurally unreasonable sentence by allegedly relying on a clearly erroneous fact because, in the full context of the sentencing hearing, the District Court was not under the misapprehension that Moriarty was actively in sex-offender treatment when he violated his terms of supervised release.¹ The Court made

two statements during the sentencing hearing that referenced Moriarty's treatment. While one way to interpret the Court's comments is that it believed Moriarty was actively receiving sex-offender treatment at the time he violated the terms of his supervised release, another way of interpreting those statements is that the Court knew Moriarty was about to start sex-offender treatment.

The record shows Moriarty agreed to modify the terms of his supervised release to include sex-offender treatment only a month before he violated his supervision. At the sentencing hearing Moriarty, his attorney, and the government all made statements to the effect that Moriarty lost his treatment when he left prison and was about to start treatment again. Moriarty explicitly said "I was about to start with the ITM treatment group, but got arrested before I could start." In light of the entire record, the District Court's comments are best read as a statement that Moriarty's probation officer had gotten him into treatment and Moriarty was about to receive it. We are not left with a definite conviction that an error has been committed.




*6 But even if the Court was under the mistaken impression that Moriarty was receiving treatment at the time of his arrest, the Court would likely have sentenced Moriarty in the same way without the error. *See id.* Based on the Court's comments, it was appalled by the more than 400 photos on Moriarty's phone, the content of those photos, and the quickness with which he violated the terms of his supervision. The Court's concern that Moriarty was a danger to society drove its decision.


The District Court did not abuse its discretion and Moriarty's sentence is procedurally reasonable.





III.

Because the District Court imposed a procedurally reasonable sentence, we next examine substantive reasonableness. Moriarty essentially makes two arguments regarding substantive reasonableness. At bottom, his first argument is that his sentence is substantively unreasonable because it is longer than necessary to achieve the purposes of sentencing. His second argument is that, regardless of whether the Court's variance was warranted, his sentence was substantively unreasonable because the Court lacked authority to impose consecutive sentences.

A.







We review the substantive reasonableness of a sentence under a deferential abuse-of-discretion standard, considering the totality of the circumstances.  *Gall*, 552 U.S. at 51, 128 S. Ct. at 597. Under the abuse-of-discretion standard, we will only vacate the defendant's sentence if we are "left with the definite and firm conviction that the district court committed a clear error of judgment in weighing the  § 3553(a) factors by arriving at a sentence that lies outside the range of reasonable sentences dictated by the facts of the case."  *United States v. Irey*, 612 F.3d 1160, 1190 (11th Cir. 2010) (en banc). The Supreme Court has stated that a defendant

is not required to raise a specific objection that the sentence is unreasonable, which is the standard of review for appeal, but need only bring to the district court's attention his view that a longer sentence is greater than necessary to achieve the purposes of sentencing to preserve a claim that the longer sentence is unreasonable.  *Holguin-Hernandez v. United States*, 140 S. Ct. 762, 766 (2020).

We look to whether a sentence is substantively reasonable considering the totality of the circumstances and the  § 3553(a) factors.  *Irey*, 612 F.3d at 1189. A court imposes a substantively unreasonable sentence only when it (1) fails to consider relevant factors that were due significant weight, (2) gives an improper or irrelevant factor significant weight, or (3) commits a clear error of judgment by balancing the proper factors unreasonably. *United States v. Rosales-Bruno*, 789 F.3d 1249, 1256 (11th Cir. 2015) (citation omitted). Further, a district court must evaluate all the  § 3553(a) factors, but the weight accorded to each factor is within the sound discretion of the district court. *United States v. Ramirez-Gonzalez*, 755 F.3d 1267, 1272-73 (11th Cir. 2014). An appeals court may not apply a heightened standard of review to sentences outside the guideline range.  *Peugh v. United States*, 569 U.S. 530, 536-37, 133 S. Ct. 2072, 2080 (2013).

The Sentencing Guidelines provide that a sentence imposed upon revocation of supervised release should sanction primarily the defendant's "breach of trust" for failing to abide by the conditions of the court ordered supervision, while also accounting for, "to a limited degree, the seriousness of the

underlying violation and the criminal history of the violator." U.S.S.G. Ch. 7, Pt. A, intro. cmt. (3(b)). The Guidelines explain that the Sentencing Commission chose not to sanction violators for the conduct of the revocation as if that conduct was being sentenced as new federal criminal conduct because "the court with jurisdiction over the criminal conduct leading to revocation is the more appropriate body to impose punishment for that new criminal conduct," and "as a breach of trust inherent in the conditions of supervision, the sanction for the violation of trust should be in addition, or consecutive, to any sentence imposed for the new conduct." *Id.* We have "consistently held that the policy statements of Chapter 7 are merely advisory and not binding." *United States v. Silva*, 443 F.3d 795, 799 (11th Cir. 2006).

*7 A district court may revoke a term of supervised release and require the defendant to serve in prison all or part of the term of supervised release.  18 U.S.C. § 3583(e) (3). The relevant  § 3553(a) factors that a district court must consider in determining whether to impose an imprisonment term upon revocation of supervised release include: the nature and circumstances of the offense; the history and characteristics of the defendant; the need for the sentence to afford adequate deterrence to criminal conduct, and protect the public from further crimes of the defendant; the kinds of sentences available; any pertinent policy statements; and the need to avoid unwarranted sentencing disparities. *See*  18 U.S.C. §§ 3553(a)(1),  (a)(2)(B)-(D),  (a)(4)-(7),  3583(e)(3).

In determining whether to impose a variance, a district court may consider the nature of a prior offense under the § 3553(a) factors, because it “fits squarely into ... the history and characteristics of the offender” under § 3553(a)(1). *United States v. Williams*, 526 F.3d 1312, 1324 (11th Cir. 2008). The district court has broad discretion to decide whether the § 3553(a) factors justify a variance. *Gall*, 552 U.S. at 51, 128 S. Ct. at 597. The sentencing court may impose an upward variance based on a defendant's uncharged criminal conduct, the defendant's history and characteristics, and the need to promote respect for the law, afford adequate deterrence, and protect the public. *United States v. Overstreet*, 713 F.3d 627, 637-38 (11th Cir. 2013).

Here, the District Court's sentence was not substantively unreasonable. Moriarty's argument that the Court failed to consider the Chapter 7 sentencing statement is without merit, because the Court explicitly stated that it did. With respect to sentencing disparities, the Court acknowledged that imposing three consecutive statutory maximum sentences was strong medicine that should be used sparingly. But given the quickness with which Moriarty violated the terms of his supervision, the number of photos found on Moriarty's phone, the content of those photos, and the similarity to Moriarty's underlying convictions, the Court believed such a sentence was appropriate here. Further, the Court acknowledged Moriarty's acceptance of responsibility and weighed it along with the other factors it considered. The Court discussed all those factors in both explaining why it varied upward from the guideline range and why it ordered

the statutory maximum sentences to be served consecutively. The Court considered all relevant factors and did not abuse its discretion in balancing them.

B.

Moriarty also argues that the Court lacked the discretion to impose consecutive sentences. If multiple terms of imprisonment are imposed on a defendant at the same time, the terms may run concurrently or consecutively. 18 U.S.C. § 3584(a). “Multiple terms of imprisonment imposed at the same time run concurrently unless the court orders or the statute mandates that the terms are to run consecutively.” *Id.* A court must consider the § 3553(a) factors, as to each offense for which a term of imprisonment is being imposed, in determining whether to order a sentence to run concurrently or consecutively. 18 U.S.C. § 3584(b); *United States v. Ballard*, 6 F.3d 1502, 1505 (11th Cir. 1993).

In *United States v. Quinones*, a defendant was serving concurrent terms of supervised release for two different convictions in two separate district courts. 136 F.3d 1293, 1294 (11th Cir. 1998). He violated the conditions of his supervised release, and his two separate cases were consolidated for a single revocation hearing. *Id.* The district court revoked his terms of supervised release and sentenced him to 18 months' imprisonment for each violation, to be served consecutively. *Id.* Quinones appealed, arguing that the district court lacked the discretion to sentence him to consecutive terms of imprisonment following

the revocation of his concurrent terms of supervised release. *Id.* at 1295. We held that whether the terms of imprisonment for each violation were to be consecutive or concurrent was a question that 18 U.S.C. § 3584(a) entrusts to the court's discretion. *Id.* We then noted that the Sentencing Guidelines's policy statements that address revocation say nothing about concurrence or consecutiveness, leaving intact the district court's statutory discretion. *Id.*

*8 Moriarty argues that *Quinones* does not apply because his terms of supervised release were not imposed by two different jurisdictions in two separate cases—he has one case with supervised release imposed by the same court simultaneously for multiple counts of the same indictment. But our holding in *Quinones* was not limited to such a scenario. We said: “Quinones had two such terms [of supervised release], and the district court could therefore revoke both and sentence Quinones to a term of imprisonment for each violation. Whether these terms were to be consecutive or concurrent was a question that 18 U.S.C. § 3584(a) entrusts to the court's discretion.” *Id.* Here, Moriarty had three terms of supervised release. The District Court had the discretion to revoke and sentence him on all three.


Moriarty further argues that the Supreme Court undermined *Quinones* in 18 U.S.C. § 3583(h) applied retroactively to cases in which the initial offense conduct occurred before the date of its enactment. The Supreme Court determined that

it did not apply retroactively, and that Johnson's case did not present any *ex post facto* issue. 18 U.S.C. § 3583(h), courts could properly impose supervised release following reincarceration. *Id.* at 701–02, 120 S. Ct. at 1802. Thus, Johnson's case turned on whether 18 U.S.C. § 3583(e)(3) permitted the imposition of supervised release following a recommitment. *Id.* at 702–03, 120 S. Ct. at 1802. The Court went on to hold, as a textual matter, that 18 U.S.C. § 3583(e)(3) left open the possibility of supervised release after reincarceration, such that even before 18 U.S.C. § 3583(h), courts could properly impose supervised release following reincarceration. *Id.* at 713, 120 S. Ct. at 1807. Nothing in the Court's discussion addressed 18 U.S.C. § 3584 or whether a district court may impose new terms of imprisonment consecutively.

Under our prior-panel-precedent rule, “a prior panel's holding is binding on all subsequent panels unless and until it is overruled or undermined to the point of abrogation by the Supreme Court or by this [C]ourt sitting *en banc*.” 18 U.S.C. § 3583(h), courts could properly impose supervised release following reincarceration. *Id.* at 713, 120 S. Ct. at 1807. Nothing in the Court's discussion addressed 18 U.S.C. § 3584 or whether a district court may impose new terms of imprisonment consecutively. *United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008). *Johnson* did not undermine *Quinones* to the point of abrogation. And even if it had, post-*Johnson* we have cited *Quinones* to hold that a district court acts within its discretion when imposing a consecutive sentence upon revocation of two terms of concurrent supervised release. *United States v. Sweeting*, 437 F.3d 1105, 1106–07 (11th Cir. 2006).

* * *

Here, the District Court did not impose a substantively unreasonable sentence in sentencing Moriarty to three consecutive

statutory-maximum terms of imprisonment because he violated a condition that applied to all three of his terms of supervised release, the Court had discretion to do so under law, and the Court appropriately weighed the  § 3553(a) factors.

AFFIRMED.

All Citations

Not Reported in Fed. Rptr., 2023 WL 3580139

Footnotes

- 1 The government argues that plain error, and not abuse of discretion, is the appropriate standard of review because Moriarty's objection to "procedural and substantive reasonableness" at the sentencing hearing was not sufficient to preserve that objection for appeal. Because Moriarty's sentence is procedurally reasonable even under the less rigorous abuse of discretion standard, we do not reach this argument.

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

vs

Case Number: 6:04-cr-5-CEM-GJK

JASON M. MORIARTY

USM Number: 07416-028

Michael Shay Ryan, FPD
201 S Orange Ave., Ste 300
Orlando, FL 32801-3417

JUDGMENT IN A CRIMINAL CASE
For Revocation of Supervised Release

The defendant admitted guilt to violation charge number: One of the term of supervision. The defendant is adjudicated guilty to this violation charge number:

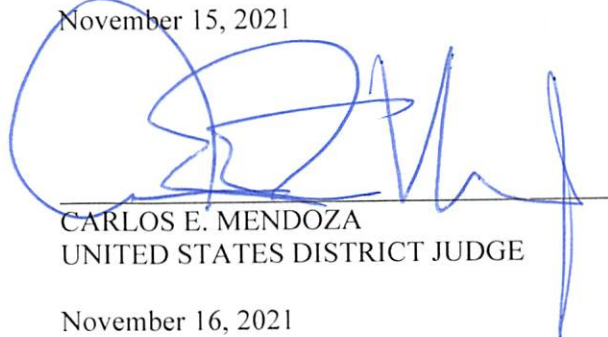
<u>Violation Charge Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
One	Use of a Computer or Online Device	August 14, 2021

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

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

Date of Imposition of Sentence:

November 15, 2021



CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

November 16, 2021

Jason M. Moriarty
6:04-cr-5-CEM-GJK

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **SIX (6) years**. **This term consists of a term of TWO (2) years as to Count One, Two, and Three. All such terms to run CONSECUTIVELY.**

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

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By: _____
Deputy U.S. Marshal

Jason M. Moriarty
6:04-cr-5-CEM-GJK

SUPERVISED RELEASE

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

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

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. The mandatory drug testing requirements of the Violent Crime Control Act are waived. However, the Court orders the defendant to submit to random drug testing not to exceed 104 tests per year.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

The defendant shall also comply with the additional conditions on the attached page.

Jason M. Moriarty
6:04-cr-5-CEM-GJK

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. After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when the defendant must report to the probation officer, and the defendant must report to the probation officer as instructed.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature: _____

Date: _____

Jason M. Moriarty
6:04-cr-5-CEM-GJK

ADDITIONAL CONDITIONS OF SUPERVISED RELEASE

1. The defendant shall participate in a mental health program specializing in sex offender treatment and submit to polygraph testing for treatment and monitoring purposes. The defendant shall follow the probation officer's instructions regarding the implementation of this court directive. Further, the defendant shall contribute to the costs of such treatment and/or polygraphs not to exceed an amount determined reasonable by the probation officer based on ability to pay or availability of third-party payment and in conformance with the Probation Office's Sliding Scale for Treatment Services.
2. The defendant shall register with the state sexual offender registration agency(s) in any state where he or she resides, visits, is employed, carries on a vocation, or is a student, as directed by the probation officer. The probation officer will provide state officials with all information required under Florida sexual predator and sexual offender notification and registration statutes (F.S.943.0435) and/or the Sex Offender Registration and Notification Act (Title I of the Adam Walsh Child Protection and Safety Act of 2006, Public Law 109-248), and may direct the defendant to report to these agencies personally for required additional processing, such as photographing, fingerprinting, and DNA collection.
3. The defendant shall have no direct contact with minors (under the age of 18) without the written approval of the probation officer and shall refrain from entering into any area where children frequently congregate, including: schools, daycare centers, theme parks, playgrounds, etc.
4. The defendant is prohibited from possessing, subscribing to, or viewing, any video, magazine, or literature depicting children in the nude and/or in sexually explicit positions.
5. Without prior written approval of the probation officer, you are prohibited from either possessing or using a computer (including a smart phone, a hand-held computer device, a gaming console, or an electronic device) capable of connecting to an online service or an internet service provider. This prohibition includes a computer at a public library, an internet cafe, your place of employment, or an educational facility. Also, you are prohibited from possessing an electronic data storage medium (including a flash drive, a compact disk, and a floppy disk) or using any data encryption technique or program. If approved to possess or use a device, you must permit routine inspection of the device, including the hard drive and any other electronic data storage medium, to confirm adherence to this condition. The United States Probation Office must conduct the inspection in a manner no more intrusive than necessary to ensure compliance with this condition. If this condition might affect a third party, including your employer, you must inform the third party of this restriction, including the computer inspection provision.
6. The defendant shall submit to a search of his or her person, residence, place of business, any storage units under the defendant's control, computer, or vehicle, conducted by the United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall inform any other residents that the premises may be subject to a search pursuant to this condition.