NO:

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2023

PATRICK ABOITE,

***Petitioner*,**

v.

UNITED STATES OF AMERICA,

***Respondent*.**

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

PETITION FOR WRIT OF CERTIORARI

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APPENDIX

TABLE OF APPENDICES

APPENDIX A

2023 WL 6803462
Only the Westlaw citation is currently available.
United States Court of Appeals, Eleventh Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.
Patrick ABOITE, Defendant-Appellant.

No. 22-12985 Non-Argument Calendar
|
Filed: 10/16/2023

Appeal from the United States District Court for the Southern District of Florida, D.C. Docket No. 1:21-cr-20385-JLK-1

Attorneys and Law Firms

Brandy Brentari Galler, U.S. Attorney's Office, West Palm Beach, FL, Daniel Matzkin, Lisa Tobin Rubio, U.S. Attorney Service - SFL, Miami, FL, U.S. Attorney Service - Southern District of Florida, Miami, FL, Brittany Bull Panuccio, DOJ-USAO, Miami, FL, for Plaintiff-Appellee.

Lori E. Barrist, Federal Public Defender's Office, West Palm Beach, FL, Michael Caruso, Federal Public Defender's Office, Miami, FL, for Defendant-Appellant.

Before Jill Pryor, Lagoa, and Brasher, Circuit Judges.

Opinion

PER CURIAM:

***1** **Patrick Aboite** appeals his 87-month sentence for one count of possession of a firearm and ammunition by a convicted felon. On appeal, **Aboite** first argues that the district court clearly erred in imposing a four-level enhancement under United States Sentencing Guidelines Manual § 2K2.1(b)(6)(B) for using or possessing a firearm in connection with another felony offense. **Aboite** argues that this enhancement is clear error because the other offense involved a different firearm than the one that he was convicted of possessing. Second, he argues his 87-month sentence is substantively unreasonable because the district court relied too heavily on conduct outside the count to which he pleaded guilty. On both fronts, **Aboite's** arguments fail. Accordingly, we affirm the district court's sentence.

I.

After a shooting in Miami on March 29, 2021, law enforcement agents watched surveillance footage and saw the shooter's vehicle. **Aboite** was pulled over the next day while driving a matching vehicle nearby. During a pat-down search, agents discovered a loaded .380 caliber pistol in **Aboite's** waistband. Because **Aboite** was a convicted felon, the agents arrested him for being a felon in possession of a firearm and ammunition. They also obtained a search warrant for **Aboite's** vehicle. The search of **Aboite's** vehicle uncovered a loaded .40 caliber pistol that had been reported stolen and small amounts of cocaine and Eutylone. That .40 caliber pistol was later determined to have been used to shoot the individual (G.S.) on March 29.

Aboite was indicted and charged with two counts of possessing a firearm and ammunition as a convicted felon in violation of 18 U.S.C. § 922(g)(1). Count 1 was related to the .40 caliber pistol, which **Aboite** possessed between March 29, 2021, and April 1, 2021. Count 2 was related to the .380 caliber pistol—the pistol for which he was initially arrested—which **Aboite** possessed on March 30, 2021, when he was arrested and which he told law enforcement that he had purchased three to four months before he was stopped by law enforcement.

The United States executed an oral plea agreement with **Aboite**. Based on that plea agreement, **Aboite** pleaded guilty to Count 2 (.380 caliber pistol possession), and the United States dismissed Count 1 (.40 caliber pistol possession). **Aboite** and the government also agreed that **Aboite's** possession of the stolen .40 caliber pistol made **Aboite** subject to U.S.S.G. § 2K2.1(b)(4)(A)'s stolen firearm sentencing enhancement and that any sentence imposed would run concurrently with any state sentence for offenses related to possessing these firearms.

The district court found that the victim of the shooting had identified **Aboite** as the shooter and found that both firearms were in **Aboite's** possession the day after the shooting. The district court also found that possessing and using the .40 caliber firearm that **Aboite** used to shoot G.S. was part of the same purpose and plan as that involved with the count to which he pleaded guilty. Moreover, the district court found that the .40 caliber pistol was used in connection with another felony offense. Thus, the district court imposed a

four-level enhancement under U.S.S.G. § 2K2.1(b)(6)(B) for using or possessing a firearm in connection with another felony offense. The district court calculated **Aboite's** advisory Guidelines range to be 70 to 87 months of imprisonment. And after considering the factors under 18 U.S.C. § 3553(a)—with an emphasis on the need for deterrence and protection of the public—the district court ultimately imposed an 87-month sentence. **Aboite** appeals.

II.

***2** We review a district court's legal interpretations and application of the Guidelines to the facts *de novo* and review its factual findings for clear error. *See United States v. Zaldivar*, 615 F.3d 1346, 1350 (11th Cir. 2010) (citing *United States v. De La Cruz Suarez*, 601 F.3d 1202, 1219 (11th Cir. 2010); *United States v. Caraballo*, 595 F.3d 1214, 1230 (11th Cir. 2010)). "A district court's determination that a defendant possessed a gun 'in connection with' another felony offense is a finding of fact that we review for clear error." *United States v. Bishop*, 940 F.3d 1242, 1250 (11th Cir. 2019) (citing *United States v. Whitfield*, 50 F.3d 947, 949 & n.8 (11th Cir. 1995)). Moreover, "[w]e review only for clear error the application of the relevant conduct [G]uideline in § 1B1.3 to the facts of the case." *United States v. Valladares*, 544 F.3d 1257, 1267 (11th Cir. 2008) (citing *United States v. White*, 335 F.3d 1314, 1319 (11th Cir. 2003)).

For a factual finding to be clearly erroneous, we must be "left with a 'definite and firm conviction' " that the district court made a mistake. *United States v. Smith*, 821 F.3d 1293, 1302 (11th Cir. 2016) (quoting *Anderson v. City of Bessemer City*, 470 U.S. 564, 573 (1985)). A factual finding cannot be clearly erroneous just because the factfinder chose between two permissible views of the evidence. *See id.* (quoting *Anderson*, 470 U.S. at 574). Additionally, when reviewing the substantive reasonableness of a sentence, we apply a deferential abuse-of-discretion standard. *See Gall v. United States*, 552 U.S. 38, 41, 51 (2007). Therefore, we review one aspect of the question in Part III.A *de novo* and the other aspects for clear error and review the question in Part III.B for an abuse of discretion.

III.

A.

The Guidelines provide for a four-level enhancement "[i]f the defendant ... used or possessed any firearm or ammunition in connection with another felony offense ...." U.S.S.G. § 2K2.1(b)(6)(B). First, we will examine the "any firearm or ammunition" provision to see if the .40 caliber firearm falls under that provision. Second, we will examine the "another felony offense" provision. In this portion of the analysis, we must compare other felonies—even those **Aboite** was not convicted of—to the felony for which **Aboite** was convicted (felon in possession of a firearm and ammunition related to the .380 caliber pistol). Third, we will examine the "in connection with" provision. In this portion of the analysis, we must analyze whether the district court properly connected the .40 caliber firearm to those other felonies. Based on the record and our analysis, we conclude that the district court properly applied the four-level enhancement.

1.

We have held that the term " 'any firearm' truly means any firearm." *United States v. Williams*, 431 F.3d 767, 770 (11th Cir. 2005); *see also id.* at 770–71 (citing *United States v. Sutton*, 302 F.3d 1226, 1227 (11th Cir. 2002)); *Sutton*, 302 F.3d at 1228 (finding that a different "Guideline seems to use 'the firearm' to refer to the firearm that the defendant is convicted of possessing" (quoting U.S.S.G. § 4B1.4(b)(3)(A))). This case law resolves this part of the dispute. The use of "any" in § 2K2.1(b)(6)(B) and our decision in *Williams* that "any firearm' truly means any firearm" establish that the .40 caliber pistol could properly be considered by the district court in **Aboite's** Guidelines calculation if it was used or possessed in connection with another felony offense within the meaning of the Guidelines and our case law. *Williams*, 431 F.3d at 770; *see also id.* at 772; U.S.S.G. § 2K2.1(b)(6)(B).

2.

***3** Although any firearm can be used under § 2K2.1(b)(6)(B), the firearm must be used or possessed in connection

with "another felony offense." We have stated that, unless the Guidelines language specifies otherwise, the default rule is that "other offenses must be within the relevant conduct of the charged offense." *Williams*, 431 F.3d at 772. After we stated this in *Williams*, the Sentencing Commission added Application Notes 14(A) and 14(E) to the United States Sentencing Guidelines Manual's commentary—which the parties discuss at length because it is ostensibly relevant. The commentary explains that the enhancement at issue here applies if "the firearm or ammunition facilitated, or had the potential of facilitating, another felony offense." U.S.S.G. § 2K2.1, cmt. n.14(A). Additionally, the commentary states that when the firearm is not cited in the offense of conviction, "[i]n determining whether subsection (b)(6)(B) applies, the threshold question for the court is whether the two unlawful [use or] possession offenses ... were 'part of the same course of conduct or common scheme or plan.' " *Id.* § 2K2.1, cmt. n.14(E)(ii) (quoting *id.* § 1B1.3(a)(2)). However, we need not consider and do not defer to the Guidelines' commentary if the Guidelines themselves are unambiguous. *See United States v. Dupree*, 57 F.4th 1269, 1279 (11th Cir. 2023) (en banc).

Because U.S.S.G. § 2K2.1(b)(6)(B) itself did not change and is unambiguous, nothing undermines *Williams*'s continued force nor requires our consideration of the more recently added text in the commentary. The fact that it discusses a relevant topic does not change this result. Therefore, we continue to apply *Williams* and the Guidelines themselves to this question.

Determining whether the other offense was within the relevant conduct involves examining the Guidelines' application. We review the functioning of the Guidelines *de novo*. *See Zaldivar*, 615 F.3d at 1350 (citing *De La Cruz Suarez*, 601 F.3d at 1219; *Caraballo*, 595 F.3d at 1230). Given that § 2K2.1(b)(6)(B) does not specify otherwise, the other offense must be within the relevant conduct of the charged offense, and U.S.S.G. § 1B1.3 applies to determine whether it is relevant conduct. *See Williams*, 431 F.3d at 772. Although *Williams* was about § 2K2.1(c), this result is buoyed by the fact that the four-level enhancement at issue here is categorized as a "[s]pecific [o]ffense [c]haracteristic," U.S.S.G. § 2K2.1(b), and the fact that the relevant conduct Guideline (§ 1B1.3) explicitly states that it applies to "specific offense characteristics," *id.* § 1B1.3(a). Therefore, just as we applied § 1B1.3 to determine relevant conduct with respect to § 2K2.1(c) in *Williams*, we apply that same provision of the Guidelines to determining relevant conduct under § 2K2.1(b)(6)(B). *See Williams*, 431 F.3d at 772; *see also* U.S.S.G. § 1B1.3(a).

The district court found that the use and possession of the .40 caliber pistol was part of the same purpose and plan as the charged felon-in-possession count related to the .380 caliber pistol. Upon clear error review of the application of the relevant conduct guideline to the facts, we agree. *See Valladares*, 544 F.3d at 1267 (citing *White*, 335 F.3d at 1319). There are two potential felonies predicated on **Aboite's** use and possession of the .40 caliber pistol: another unlawful possession and attempted murder under Florida law for the shooting of G.S. Both constitute relevant conduct with respect to the unlawful possession conviction. As we illustrate below, under either path, the enhancement applies.

First, the two unlawful possession offenses were part of the same course of conduct. We agree with our sister circuits that "[w]hen a person prohibited from possessing firearms under federal law possesses other firearms in addition to the ones for which he was charged, these other uncharged firearms can be 'relevant conduct' under the Sentencing Guidelines." *United States v. Parlor*, 2 F.4th 807, 812 (9th Cir. 2021) (citing *United States v. Nichols*, 464 F.3d 1117, 1123–24 (9th Cir. 2006)); *see also United States v. Brummett*, 355 F.3d 343, 345 (5th Cir. 2003); *United States v. Santoro*, 159 F.3d 318, 321 (7th Cir. 1998); *United States v. Windle*, 74 F.3d 997, 1000–01 (10th Cir. 1996); *United States v. Powell*, 50 F.3d 94, 104 (1st Cir. 1995) ("[T]he contemporaneous, or nearly contemporaneous, possession of uncharged firearms is ... relevant conduct in the context of a felon-in-possession prosecution.") (citing *United States v. Sanders*, 982 F.2d 4, 9–10 (1st Cir. 1992)). Section 1B1.3(a)(2) applies to this dual felon-in-possession path because § 2K2.1 is listed within § 3D1.2(d)—which 1B1.3(a)(2) cross-references to establish the types of crimes to which § 1B1.3(a)(2) applies. Therefore, relevant conduct in the dual-possession path is

that conduct which is "part of the same course of conduct or common scheme or plan as the offense of conviction." U.S.S.G. § 1B1.3(a)(2).

*4 And here, the possession of the .40 caliber pistol is relevant conduct. Under these facts, the temporal and spatial proximities of the two illegal firearms possessions are close enough to make possession of the .40 caliber pistol within the relevant conduct of the illegal possession of the .380 caliber pistol that **Aboite** was convicted of possessing. They were possessed at the same time—at the time of arrest. And they were possessed in effectively the same place—in **Aboite's** waistband when he was in the car (.380 caliber pistol) versus in the car (.40 caliber pistol). These felonies are linked closely enough for possession of the .40 caliber pistol to be relevant conduct for purposes of the § 2K2.1(b)(6)(B) sentencing enhancement of **Aboite's** conviction for possessing the .380 caliber pistol.

Second, the .40 caliber firearm was used or possessed in connection with the felony shooting—attempted murder under Florida law—which is relevant conduct with respect to the felon-in-possession conviction related to the .380 caliber pistol. For the attempted murder path, § 1B1.3(a)(2) does not apply. *See* U.S.S.G. § 1B1.3(a)(2); *Williams*, 431 F.3d at 772–73. Instead, the Guidelines require establishing that the shooting "occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense." U.S.S.G. § 1B1.3(a)(1).

Here, under the Guidelines, the use and possession of the .40 caliber pistol to commit attempted murder is relevant conduct with respect to the conviction for being a felon in possession of the .380 caliber pistol because it "occurred during the commission of the offense of conviction." *Id.* That is, it occurred during the felon-in-possession act of having the .380 caliber pistol. We understand the district court to have inferred that **Aboite** had the .380 caliber pistol with him in the car at the time he shot G.S. with the .40 caliber pistol. **Aboite** has not established that this inference is clear error, and our review of the record counsels against any such conclusion. **Aboite** had owned the .380 caliber pistol for three to four months before he was stopped by law enforcement, and the gun was with him the day after the shooting in the same car. Even if we would not make the same inference, we cannot say that the district court clearly erred in doing so. *See Smith*, 821 F.3d at 1302 (quoting *Anderson*, 470 U.S. at 574).

As a result, his felon-in-possession offense—the felony offense of conviction—was ongoing at the time that he used the .40 caliber pistol to shoot G.S. Consequently, under the Guidelines, the attempted murder of G.S. is relevant conduct with respect to the felon-in-possession conviction for purposes of the § 2K2.1(b)(6)(B) sentencing enhancement.

In short, there are two different felonies related to the .40 caliber pistol that are both relevant conduct for purposes of applying § 2K2.1(b)(6)(B) to **Aboite's** felon-in-possession conviction. Thus, the district court did not clearly err in applying this part of the Guidelines.

3.

Finally, we address the district court's "in connection with" determination. Both the firearm and the other offense were properly used under the Guidelines, but we must still determine whether the district court clearly erred in determining that **Aboite's** firearm was "in connection with" that other felony offense. *See* *Bishop*, 940 F.3d at 1250 (citing *Whitfield*, 50 F.3d at 949 & n.8). A firearm is in connection with the other felony offense if it facilitates or could facilitate that other felony offense. The district court found that the victim of the shooting had identified **Aboite** as the shooter and found that both firearms were in **Aboite's** possession the day after the shooting. Consequently, the district court found that the .40 caliber pistol was used in counection with another felony offense. Here, it is the case that the .40 caliber pistol was used in connection with two other felony offenses: possession of that firearm and the offense of shooting the victim.

*5 The district court's reasoned analysis of the application of this enhancement is not entirely clear about for which of these two felonies the enhancement was applied. Indeed, on appeal, **Aboite** focuses on the shooting felony, while the government focuses on the dual-possession theory. But we need not decide the exact felony on which the district court based its application of the enhancement because we would affirm based on either. *See* *United States v. Campbell*, 26 F.4th 860, 879 (11th Cir. 2022) (en banc) ("[W]e have

'discretion to affirm on any ground supported by the law and the record that will not expand the relief granted below.' " (quoting *Upper Skagit Indian Tribe v. Lundgren*, 138 S. Ct. 1649, 1654 (2018)) (citing *SEC v. Chenery Corp.*, 318 U.S. 80, 88 (1943))). Moreover, it is entirely possible that the district court referred to both, given that there were in fact two different felonies in this case. We need only decide whether the district court properly found that the .40 caliber pistol was used in connection with another felony. It did. On this record, **Aboite** has not established that the district court clearly erred in this determination.

* * *

The district court deliberated the applicability of the enhancement, properly applied it, and chose a permissible view of the evidence. *See Smith*, 821 F.3d at 1302 (quoting *Anderson*, 470 U.S. at 574). Therefore, the district court did not err in imposing a four-level enhancement under U.S.S.G. § 2K2.1(b)(6)(B).

B.

The party challenging a sentence bears the burden of proving that it is unreasonable based on the record and the 18 U.S.C. § 3553(a) factors. *See United States v. Tome*, 611 F.3d 1371, 1378 (11th Cir. 2010) (citing *United States v. Thomas*, 446 F.3d 1348, 1351 (11th Cir. 2006)). The § 3553(a) factors include (1) "the nature and circumstances of the offense and the history and characteristics of the defendant"; (2) "the need for the sentence imposed" (A) "to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense"; (B) "to afford adequate deterrence to criminal conduct"; (C) "to protect the public from further crimes of the defendant"; and (D) "to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner"; (3) "the kinds of sentences available"; (4) the Sentencing Guidelines range; (5) the pertinent policy statements of the Sentencing Commission; (6) "the need to avoid unwanted sentencing disparities among defendants with similar records who have been found guilty of similar conduct"; and (7) "the need to provide restitution to any victims of the offense." 18 U.S.C. § 3553(a). A district court must consider all § 3553(a) factors but need not give all factors equal weight. *See United States v. Rosales-Bruno*, 789 F.3d 1249, 1254 (11th Cir. 2015) (citing *United States v. Shaw*, 560 F.3d 1230, 1237 (11th Cir. 2009)).

"A district court abuses its discretion when it (1) fails to afford consideration to relevant factors that were due significant weight, (2) gives significant weight to an improper or irrelevant factor, or (3) commits a clear error of judgment in considering the proper factors." *United States v. Irey*, 612 F.3d 1160, 1189 (11th Cir. 2010) (en banc) (quoting *United States v. Campa*, 459 F.3d 1121, 1174 (11th Cir. 2006) (en banc)). The district court may attach greater weight to one § 3553(a) factor than others. *See Rosales-Bruno*, 789 F.3d at 1254 (quoting *Gall*, 552 U.S. at 57). Moreover, "[t]he decision about how much weight to assign a particular sentencing factor is 'committed to the sound discretion of the district court.' " *See Rosales-Bruno*, 789 F.3d at 1254 (quoting *United States v. Williams*, 526 F.3d 1312, 1322 (11th Cir. 2008)).

But it is still possible for the district court to balance the factors incorrectly: "a district court commits a clear error of judgment when it considers the proper factors but balances them unreasonably." *Irey*, 612 F.3d at 1189 (citing *Ameritas Variable Life Ins. Co. v. Roach*, 411 F.3d 1328, 1330 (11th Cir. 2005)). Thus, provided the proper factors are considered, we consider a sentence substantively unreasonable only 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." *See id.* at 1190 (quoting *United States v. Pugh*, 515 F.3d 1179, 1191 (11th Cir. 2008)) (citing *Shaw*, 560 F.3d at 1238; *United States v. McBride*, 511 F.3d 1293, 1297–98 (11th Cir. 2007); *United States v. Clay*, 483 F.3d 739, 743 (11th Cir. 2007)).

***6** "We are not often 'left with [that] definite and firm conviction' because, as we have explained, our examination of the sentence is made 'through the prism of abuse of discretion.' " *Id.* (alteration in original) (quoting *Pugh*, 515 F.3d at 1191). Additionally, "although we

do not automatically presume [that] a sentence within the [G]uidelines range is reasonable, we 'ordinarily ... expect [it] ... to be reasonable.' " *See United States v. Hunt*, 526 F.3d 739, 746 (11th Cir. 2008) (third alteration in original) (quoting *United States v. Talley*, 431 F.3d 784, 788 (11th Cir. 2005)).

Here, **Aboite** fails to meet his burden to establish that his 87-month sentence was substantively unreasonable. The district court considered the § 3553(a) factors as required. *See Rosales-Bruno*, 789 F.3d at 1254. It was within its discretion to weigh the factors of deterrence and protection of the public more seriously than other factors. *See id.* It was also permitted to consider the seriousness of the offense conduct, including the conduct beyond the count to which **Aboite** pleaded guilty. *See id.* Furthermore, **Aboite's** sentence fell within the Guidelines range—an indicator of reasonableness. *See Hunt*, 526 F.3d at 746. Based on these facts, the sentence of 87-months' imprisonment is not unreasonable. In conclusion, because the district court did not abuse its discretion in weighing the § 3553(a) factors and considering the facts surrounding this offense, **Aboite's** total sentence was not substantively unreasonable.

IV.

For the reasons discussed above, we **AFFIRM** the district court's imposition of **Aboite's** 87-month sentence.

All Citations

Not Reported in Fed. Rptr., 2023 WL 6803462

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APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

UNITED STATES OF AMERICA

v.

PATRICK ABOITE
Date of Original Judgment: 8/24/2022

§ **AMENDED JUDGMENT IN A CRIMINAL CASE**
§
§
§ Case Number: **1:21-CR-20385-JLK(1)**
§ USM Number: **59117-509**
§
§ Counsel for Defendant: **Stewart Glenn Abrams**
§ Counsel for United States: **Arielle Klepach**

THE DEFENDANT:

☒	pleaded guilty to count(s)	**2**
☐	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
☐	pleaded nolo contendere to count(s) which was accepted by the court	
☐	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense	**Offense Ended**	**Count**
18:922G.F Possession Of A Firearm and Ammunition By A Convicted Felon and Forfeiture Count	03/30/2021	2

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

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

☒ Count 1 ☒ is ☐ are dismissed on the motion of the United States

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

August 24, 2022
Date of Imposition of Judgment

Signature of Judge

JAMES LAWRENCE KING
SENIOR UNITED STATES DISTRICT JUDGE
Name and Title of Judge

August 24, 2022
Date

DEFENDANT: PATRICK ABOITE
CASE NUMBER: 1:21-CR-20385-JLK(1)

IMPRISONMENT

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

Eighty-seven (87) Months as to count 2 to run concurrent with Miami-Dade County case no. F21005591.

☒ The court makes the following recommendations to the Bureau of Prisons:
The defendant be designated to a Florida State Correctional Institution to serve this sentence.

☒ The defendant is remanded to the custody of the United States Marshal.
☐ The defendant shall surrender to the United States Marshal for this district:

☐ at ☐ a.m. ☐ p.m. on

☐ as notified by the United States Marshal.

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

☐ before 2 p.m. on
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

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 UNITED STATES MARSHAL

DEFENDANT: PATRICK ABOITE
CASE NUMBER: 1:21-CR-20385-JLK(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : **Three (3) years.**

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

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (*check if applicable*)
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. (*check if applicable*)
7. ☐ You must participate in an approved program for domestic violence. (*check if applicable*)

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

DEFENDANT: PATRICK ABOITE
CASE NUMBER: 1:21-CR-20385-JLK(1)

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at the www.flsp.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: PATRICK ABOITE
CASE NUMBER: 1:21-CR-20385-JLK(1)

SPECIAL CONDITIONS OF SUPERVISION

Financial Disclosure Requirement: The defendant shall provide complete access to financial information, including disclosure of all business and personal finances, to the U.S. Probation Officer.

Mental Health Treatment: The defendant shall participate in an approved inpatient/outpatient mental health treatment program. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

Permissible Search: The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

Substance Abuse Treatment: The defendant shall participate in an approved treatment program for drug and/or alcohol abuse and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

Unpaid Restitution, Fines, or Special Assessments: If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

DEFENDANT: PATRICK ABOITE
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CRIMINAL MONETARY PENALTIES

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$100.00	$.00	$.00	$.00	

☐ The determination of restitution is deferred until An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

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

The defendant must pay the total criminal monetary penalties under the schedule of payments page.
If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

☐ Restitution amount ordered pursuant to plea agreement $

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

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

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

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

Restitution with Imprisonment - It is further ordered that the defendant shall pay restitution in the amount of **$.00**. During the period of incarceration, payment shall be made as follows: (1) if the defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendant must pay a minimum of $25.00 per quarter toward the financial obligations imposed in this order. Upon release of incarceration, the defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change in the defendant's ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, 18 U.S.C. §2259.
** Justice for Victims of Trafficking Act of 2015, 18 U.S.C. §3014.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: PATRICK ABOITE
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SCHEDULE OF PAYMENTS

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

A ☒ Lump sum payments of $100.00 due immediately, balance due

It is ordered that the Defendant shall pay to the United States a special assessment of $100.00 for Count 2, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court. Payment is to be addressed to:

U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 8N09
MIAMI, FLORIDA 33128-7716

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

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

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

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:
FORFEITURE of the defendant's right, title and interest in certain property is hereby ordered consistent with the plea agreement. The United States shall submit a proposed Order of Forfeiture within three days of this proceeding.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

DEFENDANT: PATRICK ABOITE
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ADDITIONAL FORFEITED PROPERTY

DEFENDANT: PATRICK ABOITE
CASE NUMBER: 1:21-CR-20385-JLK(1)

DENIAL OF FEDERAL BENEFITS

(For Offenses Committed On or After November 18, 1988)

FOR DRUG TRAFFICKERS PURSUANT TO 21 U.S.C. § 862

IT IS ORDERED that the defendant shall be:

☐ ineligible for all federal benefits for a period of

☐ ineligible for the following federal benefits for a period of

(specify benefit(s))

OR

☐ Having determined that this is the defendant's third or subsequent conviction for distribution of controlled substances, IT IS ORDERED that the defendant shall be permanently ineligible for all federal benefits.

FOR DRUG POSSESSORS PURSUANT TO 21 U.S.C. § 862(b)

IT IS ORDERED that the defendant shall:

☐ be ineligible for all federal benefits for a period of

☐ be ineligible for the following federal benefits for a period of

(specify benefit(s))

☐ successfully complete a drug testing and treatment program.

☐ perform community service, as specified in the probation and supervised release portion of this judgment.

IS FURTHER ORDERED that the defendant shall complete any drug treatment program and community service specified in this judgment as a requirement for the reinstatement of eligibility for federal benefits.

Pursuant to 21 U.S.C. § 862(d), this denial of federal benefits does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility. The clerk is responsible for sending a copy of this page and the first page of this judgment to:

U.S. Department of Justice, Office of Justice Programs, Washington, DC 20531

DEFENDANT: PATRICK ABOITE
CASE NUMBER: 1:21-CR-20385-JLK(1)

REASON FOR AMENDMENT

(Not for Public Disclosure)

REASON FOR AMENDMENT:

- ☐ Correction of sentence on remand (18 U.S.C. 3742(f)(1) and (2))
- ☐ Reduction of Sentence for Changed Circumstances (Fed.R.Crim.P.35(b))
- ☐ Correction of Sentence by Sentencing Court (Fed.R.Crim.P.36)
- ☐ Correction of Sentence for Clerical Mistake (Fed.R.Crim.P.36)
- ☐ Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
- ☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
- ☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) top the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
- ☐ Direct Motion to District Court Pursuant to ☐ 28 U.S.C. § 2255 or ☐ 18 U.S.C. § 3559(c)(7)
- ☐ Modification of Restitution Order (18 U.S.C. § 3664)