

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-13887

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CODY DILLON HOGAN,
a.k.a. Stonetelephone,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:20-cr-00143-BJD-MCR-1

"Appendix A"

Before GRANT, LAGOA, and BRASHER, Circuit Judges.

PER CURIAM:

Jenny Devine, appointed counsel for Cody Hogan in this direct criminal appeal, has moved to withdraw from further representation of the appellant and filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). Our independent review of the entire record reveals that counsel's assessment of the relative merit of the appeal is correct. Because independent examination of the entire record reveals no arguable issues of merit, counsel's motion to withdraw is **GRANTED**, and Hogan's conviction and sentence are **AFFIRMED**. Hogan's motion to withdraw his prior motions and supplement his brief is **GRANTED**, and his motions to supplement his brief are **DENIED AS MOOT**.

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"Appendix B"

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Order of the Court

22-13887

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR
REHEARING EN BANC

Before GRANT, LAGOA, and BRASHER, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 35. The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. FRAP 35, IOP 2.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

Case Number: 3:20-cr-143-BJD-MCR

v

USM Number: 17061-509

CODY DILLON HOGAN
a/k/a "stonetelephone"

Michael Paul Reiter, Esq.
Law Office of Michael P. Reiter
4 Mulligan Court
Ocala, FL 34472

JUDGMENT IN A CRIMINAL CASE

The defendant pleaded guilty to Count One of the Indictment. The defendant is adjudicated guilty of this offense:

| <u>Title & Section</u> | <u>Nature of Offense</u> | <u>Date Offense Concluded</u> | <u>Count Number(s)</u> |
|---|---|-----------------------------------|----------------------------|
| 18 U.S.C. § 2251(a), 18 U.S.C. § 2251(e) | Attempted Production of Child Pornography | January 2020 | One |

The defendant is sentenced as provided in pages 2 through 9 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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.

Date of Imposition of Sentence: November 1, 2022



BRIAN J. DAVIS
UNITED STATES DISTRICT JUDGE

November 3rd, 2022

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of TWO-HUNDRED AND FORTY (240) MONTHS.

The Court makes the following recommendations to the Bureau of Prisons:

- Incarceration at a facility located as close as possible to Forrest City, Arkansas.
- Defendant participate in any sexual offender treatment programs as are available.

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 United States Marshal

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of LIFE.

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 mandatory drug testing requirements of the Violent Crime Control Act are suspended.
4. You must cooperate in the collection of DNA as directed by the probation officer.
5. 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 the location where you reside, work, are a student, or were convicted of a qualifying offense.
6. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution.

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

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 nunchucks 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: _____

ADDITIONAL CONDITIONS OF SUPERVISED RELEASE

1. You shall participate in a mental health program specializing in sexual offender treatment and submit to polygraph testing for treatment and monitoring purposes. You shall follow the probation officer's instructions regarding the implementation of this court directive. Further, you 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. You shall register with the state sexual offender registration agency(s) in any state where you reside, visit, are employed, carry on a vocation, or are a student, as directed by the probation officer.
3. The probation officer shall 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.
4. You 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.
5. You are prohibited from possessing, subscribing to, or viewing, any images, video, magazines, literature, or other materials depicting children in the nude and/or in sexually explicit positions.
6. 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 internet service provider. This prohibition includes a computer at a public library, an internet café, 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.
7. You shall submit to a search of your person, residence, place of business, any storage units under your 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. You shall inform any other residents that the premises may be subject to a search pursuant to this condition. Failure to submit to a search may be grounds for revocation.
8. You shall provide the probation officer access to any requested financial information.

CRIMINAL MONETARY PENALTIES

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

| | <u>Assessment</u> | <u>AVAA</u> <u>Assessment</u> ¹ | <u>JVTA</u> <u>Assessment</u> ² | <u>Fine</u> | <u>Restitution</u> |
|--------|-------------------|---|---|-------------|--------------------|
| TOTALS | \$100.00 | \$0.00 | \$0.00 | \$0.00 | \$71,000.00 |

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

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

| <u>Name of Payee</u> | <u>Total Loss</u> ³ | <u>Restitution Ordered</u> | <u>Priority or Percentage</u> |
|---|--------------------------------|----------------------------|-------------------------------|
| Pia from Sweet White Sugar Series Make Payable to: Deborah A. Bianco, in trust for Pia Send to: Deborah A. Bianco, P.S. PO Box 6503 Bellevue, WA 98008 | \$5,000.00 | \$5,000.00 | |
| Sarah from Marineland1 Series Make Payable to: Carol L. Hepburn in trust for Sarah of the Marineland series Send to: Carol L. Hepburn, P.S. PO Box 17718 Seattle, WA 98127 | \$10,000.00 | \$10,000.00 | |
| Violet from At School Series Make Payable to: Carol L. Hepburn in trust for Violet of the At School series Send to: Carol L. Hepburn, P.S. PO Box 17718 Seattle, WA 98127 | \$10,000.00 | \$10,000.00 | |

¹ Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

² Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

³ 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.

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Lily from Vicky Series

Make Payable to: Carol L. Hepburn in trust

for Lily of the Vicky series

Send to: Carol L. Hepburn, P.S.

\$10,000.00 \$10,000.00

PO Box 17718

Seattle, WA 98127

Janet Dove from DollDance Series

Make Payable to: The Zarzaur Law Firm on

behalf of Janet Dove

Send to: The Zarzaur Law Firm

\$3,000.00 \$3,000.00

2332 2nd Avenue North

Birmingham, AL 35203

Anna from Middle Model Sister Series Make

Payable to: Utah Crime Victims Legal Clinic

in trust for Anna

Send to: Utah Crime Victims Legal Clinic

\$3,000.00 \$3,000.00

404 East 4500 South, Ste B24

Salt Lake City, UT 84107

Jane from CinderblockBlue Series

Make Payable to: Marsh Law Firm PLLC in

trust for Jane

Send to: Marsh Law Firm PLLC

\$3,000.00 \$3,000.00

Attn: Jane

PO Box 4668 #65135

New York, NY 10163-4668

Jenny from Jenny Series Make Payable to:

Marsh Law Firm PLLC in trust for Jenny

Send to: Marsh Law Firm PLLC

Attn: Jenny

\$3,000.00

\$3,000.00

PO Box 4668 #65135

New York, NY 10163-4668

Raven from Teal&PinkPrincess Series Make

Payable to: Marsh Law Firm PLLC in trust
for Raven

Send to: Marsh Law Firm PLLC

\$3,000.00

\$3,000.00

Attn: Raven

PO Box 4668 #65135

New York, NY 10163-4668

Cara from MotorCouch Series Make

Payable to: Carol L. Hepburn in trust for

Cara of the MotorCouch series

\$5,000.00

\$5,000.00

Send to: Carol L. Hepburn, P.S.

PO Box 17718

Seattle, WA 98127

Maria from Best Necklace Series Make

Payable to: Carol L. Hepburn in trust for

Maria of the Best Necklace series

\$5,000.00

\$5,000.00

Send to: Carol L. Hepburn, P.S.

PO Box 17718

Seattle, WA 98127

Tara⁴

Make Payable to: For "Tara"

\$5,000.00

\$5,000.00

Jen from JBN Flowers 1

Make Payable to: Restore the Child in trust
for Jen

\$3,000.00

\$3,000.00

Send to: Restore the Child, PLLC

2522 N. Proctor St., Suite 85

Tacoma, WA 98406

⁴ Name and address confidential for privacy purposes. Payment address provided to the Court's Finance Department in Orlando, Florida.

Taylor from RedGlassesCry
Make Payable to: Utah Crime Victims Legal
Clinic in trust for Taylor
Send to: Utah Crime Victims Legal Clinic \$3,000.00 \$3,000.00
404 East 4500 South, Ste B24
Salt Lake City, UT 84107

Totals: \$71,000.00 \$71,000.00

- ☒ 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 restitution

SCHEDULE OF PAYMENTS

The Special Assessment in the amount of \$100.00 is due in full and immediately.

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

You shall pay restitution in the amount of \$71,000.00. This restitution obligation shall be payable to the Clerk, U.S. District Court, for distribution to the victims. While in the custody of the Bureau of Prisons, you shall either (1) pay at least \$25.00 quarterly if you have a non-Unicor job or (2) pay at least 50 percent of your monthly earnings if you have a Unicor job. Upon release from custody, you shall pay restitution at the rate of \$50.00 per month. At any time during the course of post-release supervision, the victim, the government, or the defendant, may notify the Court of a material change in the defendant's ability to pay, and the Court may adjust the payment schedule accordingly.

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

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

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) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

FORFEITURE

The defendant shall forfeit to the United States the assets identified in the Preliminary Order of Forfeiture (Doc. 68).