

A P P E N D I X

APPENDIX

Decision of the Court of Appeals for the Eleventh Circuit, <i>United States v. Terius Thomas</i> , 22-14119 (July 29, 2024)	A-1
Judgment imposing sentence	A-2

A-1

108 F.4th 1351

United States Court of Appeals, Eleventh Circuit.

UNITED STATES of America, Plaintiff-Appellee,

v.

Terius THOMAS, a.k.a. Terius Brown,
a.k.a. Terry Brown, Defendant-Appellant.

No. 22-14119

I

Filed: 07/29/2024

Synopsis

Background: Defendant was convicted on guilty plea in the United States District Court for the Southern District of Florida, No. 0:22-cr-60049-RS-1, Rodney Smith, J., of attempted Hobbs Act robbery. Defendant appealed.

Holdings: The Court of Appeals held that:

[1] district court's reliance on presentence investigation report that incorrectly determined defendant's criminal history category (CHC) constituted plain error;

[2] error did not affect defendant's substantial rights;

[3] upward variant sentence of 120 months was not procedurally unreasonable; and

[4] sentence was not substantively unreasonable.

Affirmed.

Procedural Posture(s): Appellate Review;
Sentencing or Penalty Phase Motion or Objection.

West Headnotes (17)

[1] **Criminal Law** 🔑 Necessity of specific objection

To preserve an issue for appeal, a defendant must raise an objection that is sufficient to apprise the trial court and the opposing party of the particular grounds

upon which appellate relief will later be sought.

[2] **Criminal Law** 🔑 Necessity of Objections in General

When an argument is not properly preserved on direct appeal, the appellate court reviews for plain error.

[3] **Criminal Law** 🔑 Necessity of Objections in General

To reverse on plain error review, there must be (1) an error (2) that is plain and (3) that has affected the defendant's substantial rights.

[4] **Criminal Law** 🔑 Necessity of Objections in General

To meet prong three of the “plain error” test, i.e., that the error affected the defendant's substantial rights, a defendant must show a reasonable probability that the error affected the outcome of the district court proceedings.

1 Case that cites this headnote

[5] **Criminal Law** 🔑 Necessity of Objections in General

On “plain error” review, when a defendant has established an error that is plain and that affected his substantial rights, the appellate court may exercise its discretion to correct the error if the error seriously affects the fairness, integrity, or public reputation of judicial proceedings.

[6] **Criminal Law** 🔑 Sentencing and Punishment

When a defendant has not preserved a challenge to the district court's calculation of the Sentencing Guidelines range for review on direct appeal, with a silent

record as to what the district court might have done had the court considered the correct Guidelines range, the court's reliance on an incorrect range in most instances will suffice to show an effect on the defendant's substantial rights, as required for "plain error" review, but sometimes, the record in a case may show that the district court thought the sentence it chose was appropriate irrespective of the Guidelines range.

1 Case that cites this headnote

[7] **Sentencing and**

Punishment 🔑 Intervention, diversion, and withheld adjudication

A sentence where adjudication was withheld does not fall within the Sentencing Guidelines' definition of "prior sentence," specifically, "any sentence previously imposed upon adjudication of guilt, whether by guilty plea, trial, or plea of nolo contendere, for conduct not part of the instant offense," for purposes of calculating a defendant's criminal history score at sentencing on the instant offense; instead, such nolo contendere situations involving withheld adjudication carry only a single point. U.S.S.G. §§ 4A1.1(c), 4A1.2(a)(1).

[8] **Criminal Law** 🔑 Sentencing

The Court of Appeals reviews the reasonableness of a sentence for abuse of discretion.

[9] **Criminal Law** 🔑 Sentencing

When reviewing the reasonableness of a sentence, the appellate court must determine (1) whether a significant procedural error occurred, then (2) whether the sentencing determination was substantively reasonable under the totality of the circumstances.

[10] **Sentencing and Punishment** 🔑 Proceedings

Procedural unreasonableness of a sentence can stem from (1) improperly calculating the Sentencing Guidelines range, (2) adhering to the Guidelines as mandatory, (3) failing to consider the statutory sentencing factors, (4) failing to adequately explain the sentence, or (5) basing a selected sentence on clearly erroneous facts. 18 U.S.C.A. § 3553(a).

1 Case that cites this headnote

[11] **Criminal Law** 🔑 Sentencing

When reviewing the reasonableness of a sentence for abuse of discretion, the appellate court will only vacate a sentence when it is left with the definite and firm conviction that the district court committed a clear error of judgment in weighing the statutory sentencing factors by arriving at a sentence that lies outside the range of reasonable sentences dictated by the facts of the case. 18 U.S.C.A. § 3553(a).

[12] **Sentencing and Punishment** 🔑 Effect of Statute or Regulatory Provision

A sentence well below the statutory maximum indicates reasonableness.

[13] **Sentencing and Punishment** 🔑 Other Offenses, Charges, Misconduct

At sentencing, district courts can exercise broad leeway in deciding how much weight to give to prior crimes the defendant has committed.

[14] **Sentencing and Punishment** 🔑 Intervention, diversion, and withheld adjudication

Prior withheld adjudications on various charges did not constitute "prior

sentence,” within meaning of Sentencing Guidelines, and therefore, counted as one criminal point each, not two points each, for purposes of determining defendant's criminal history category (CHC), in sentencing for attempted Hobbs Act robbery, and thus, miscalculation of criminal history points amounted to plain error; with only two points for prior withheld adjudications instead of four points, when combined with offense level of 24, defendant's Guidelines range was 57 to 71 months in prison, rather than 63 to 78 months in prison. U.S.S.G. §§ 4A1.1(c), 4A1.2(a)(1).

[15] Criminal Law 🔑 Sentencing and Punishment

District court's plain error in relying on erroneous calculation of defendant's criminal history category (CHC) in presentence investigation report, which added two points each for prior withheld adjudications, when prior withheld adjudications did not constitute “prior sentence,” within meaning of Sentencing Guidelines, and therefore counted as only one point each, did not affect defendant's substantial rights, in sentencing for attempted Hobbs Act robbery; although error resulted in CHC III, with Guidelines range of 63 to 78 months in prison, instead of CHC II with Guidelines range 57 to 71 months under properly calculated CHC, district court imposed upward variance sentence of 120 months in view of defendant's criminal history, thus indicating its belief that CHC III underrepresented defendant's criminal history, it almost certainly would have found CHC II even more under-representative, and it noted that defendant would have faced minimum of 20 years in prison had he faced charges in state court for same conduct. U.S.S.G. §§ 4A1.1(c), 4A1.2(a)(1).

[16] Sentencing and Punishment 🔑 Use and effect of report

Sentencing and

Punishment 🔑 Intervention, diversion, and withheld adjudication

Sentencing and

Punishment 🔑 Sufficiency

Upward variant sentence of 120 months for attempted Hobbs Act robbery was not procedurally unreasonable, despite district court's error in relying on presentence investigation report that added two points each for prior withheld adjudications, which were not “prior sentences” within the meaning of the Sentencing Guidelines and counted as one point each, given district court's concerns regarding defendant's criminal history, which began as juvenile and increased in severity, and its finding that defendant would have faced minimum sentence of 20 years had he been charged in state court for same conduct. U.S.S.G. §§ 4A1.1(c), 4A1.2(a)(1).

[17] Robbery 🔑 Sentence and punishment

Sentencing and

Punishment 🔑 Nature, degree or seriousness of offense

Sentencing and

Punishment 🔑 Nature, degree, or seriousness of other misconduct

Upward variant sentence of 120 months for attempted Hobbs Act robbery was not substantively unreasonable, where sentence fell well below statutory maximum of 240 months for offense, district court noted defendant's extensive criminal history that began when defendant was juvenile and escalated in severity, and it considered facts that gave rise to charge, specifically, that after defendant pointed gun at ride-share driver and demanded his wallet, defendant fired two shots at driver's car after he exited car, as driver fled.

***1354** Appeal from the United States District Court for the Southern District of Florida, D.C. Docket No. 0:22-cr-60049-RS-1

Attorneys and Law Firms

Alix I. Cohen, Robert Craig Juman, DOJ-USAO, Southern District of Florida, Lisa Tobin Rubio, U.S. Attorney Service - Southern District of Florida, U.S. Attorney Service, Miami, FL, for Plaintiff-Appellee.

Margaret Y. Foldes, Federal Public Defender's Office, Fort Lauderdale, FL, Juan J. Michelen, Stumphauzer Kolaya Nadler & Sloman, PLLC, Miami, FL, Michael Caruso, Federal Public Defender's Office, Southern District of Florida, Miami, FL, for Defendant-Appellant.

Before Wilson, Grant, and Lagoa Circuit Judges.

Opinion

PER CURIAM:

Defendant-Appellant Terius Thomas appeals his upward-variance sentence of 120 months' imprisonment followed by three years of supervised release. On appeal, Thomas first argues that the district court's inaccurate calculation of his guidelines range affected his substantial rights because it impacted the baseline sentence from which the judge varied upward. Second, Thomas argues that his sentence is both procedurally and substantively unreasonable. Because we find that Thomas's substantial rights were not affected, we **AFFIRM** the decision of the district court.

I. Background

On August 26, 2021, at about 2:11 AM, an Uber driver, J.T., accepted a ride request in Fort Lauderdale, Florida. J.T. picked up Thomas and drove him to a drop-off address in a neighboring town. When J.T. stopped the vehicle for drop off, Thomas threatened J.T. with a firearm and said, "Give me your wallet."

A struggle ensued. Thomas exited the vehicle without J.T.'s wallet.

J.T. quickly drove away from the drop off location and heard two gunshots. Officers who responded to the drop-off location found two shell casings and documented that J.T.'s car had a bullet hole in the hood of the trunk.

Thomas was indicted on two counts: (1) attempted Hobbs Act Robbery; and (2) using and carrying a firearm in relation to a crime of violence. Thomas pled guilty to Count One and the government dismissed Count Two. While Thomas and the government did not enter into a plea agreement, they did agree to a factual proffer.

The Presentence Report (PSR) placed Thomas's total offense level at 24. When calculating Thomas's criminal history category (CHC), the PSR listed three prosecutions under "Adult Criminal Conviction(s)." For the first two, Thomas pled *nolo contendere* to various charges and adjudication was withheld. In both cases, the court sentenced him to 18 months of probation and 280 days' incarceration. The PSR assigned two points for each case pursuant to U.S.S.G. § 4A1.1(b). As for Thomas's third listed prosecution, he pled *nolo contendere* to a charge of loitering or prowling; adjudication was withheld before he received a sentence of 57 days' incarceration, which did not result in any additional criminal history points per U.S.S.G. § 4A1.2(c)(2). These four points placed ***1355** Thomas in CHC III. When combined with his total adjusted offense level of 24, this resulted in a sentencing guidelines range of 63 to 78 months' imprisonment. The statutory maximum was twenty years' imprisonment.

Under "Other Criminal Conduct," the PSR noted Thomas's mostly juvenile criminal history, which did not contribute to his CHC calculation. These offenses included several counts of grand theft of an automobile; one count of trespass of an unoccupied residence; one count of petit theft regarding a stolen bicycle; one count of theft of a credit card; one count of not having a valid driver's license; one count of loitering and prowling; and one count of battery for punching someone. At the time of drafting the PSR,

Thomas also had separate pending burglary charges. None of these earlier offenses involved a firearm.

Neither party objected to the PSR. Before sentencing, the government moved for an upward variance from 63 to 78 months to 150 months' imprisonment based on an alleged under-representation of criminal history. The defense requested a sentence within the guidelines range.

The government moved for an upward variance under 18 U.S.C. § 3553(a), related in part to Thomas's underrepresented criminal history, the severity of the instant offense, his escalating criminal conduct, and high risk of recidivism. The government also noted that if Thomas had been prosecuted in state court for robbery with a firearm, he would have faced twenty years to life in prison.

The district court sentenced Thomas to 120 months' imprisonment, stating that "[t]he only time [Thomas is] not doing anything wrong is when he's in prison or jail." Later, in addressing Thomas directly, the judge said: "you're fortunate that you missed because if you tried to rob the wrong person, you would have been six feet under. ... You're 22 years old. You've been doing this since you were 16 years of age and with no excuse." The court continued: "[y]ou're fortunate that Uber driver did not arm himself and in defending himself shot you." In the final moments of the sentencing hearing, the court stated: "[Y]ou're fortunate they didn't file charges in state court, it would be a minimum of 20 years or perhaps even life imprisonment for these same charges."

The court also sentenced Thomas to three years of supervised release following his imprisonment. At the end of the hearing, the defense objected to the sentence for falling beyond the guidelines range. However, while Thomas's CHC III came up five times during his sentencing hearing, defense counsel did not object to the CHC III at sentencing. Thomas timely appealed, where he objected to his CHC III for the first time.

II. Applicable Law

A. Miscalculated Guidelines Range

[1] [2] [3] [4] [5] To preserve an issue for appeal, a defendant "must raise an objection that is sufficient to apprise the trial court and the opposing party of the particular grounds upon which appellate relief will later be sought." *United States v. Straub*, 508 F.3d 1003, 1011 (11th Cir. 2007) (quotations omitted). When an argument is not properly preserved on appeal, we review for plain error. *Id.* at 1008. To reverse on plain error review, "there must be (1) an error (2) that is plain and (3) that has affected the defendant's substantial rights." *United States v. Madden*, 733 F.3d 1314, 1322 (11th Cir. 2013). To meet prong three, a defendant must "show a reasonable probability that the error affected the outcome of the district court proceedings." *United States v. Iriele*, 977 F.3d 1155, 1177 (11th Cir. 2020) (internal quotations omitted). When all three prongs are met, "we ***1356** may exercise discretion to correct the error if (4) the error seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Madden*, 733 F.3d at 1322.

[6] The Supreme Court has held that "[i]n most cases a defendant who has shown that the district court mistakenly deemed applicable an incorrect, higher Guidelines range has demonstrated a reasonable probability of a different outcome." *Molina-Martinez v. United States*, 578 U.S. 189, 200, 136 S.Ct. 1338, 194 L.Ed.2d 444 (2016). With a silent record "as to what the district court might have done had it considered the correct Guidelines range, the court's reliance on an incorrect range in most instances will suffice to show an effect on the defendant's substantial rights." *Id.* at 201, 136 S.Ct. 1338. But sometimes, "[t]he record in a case may show ... that the district court thought the sentence it chose was appropriate irrespective of the Guidelines range." *Id.* at 200, 136 S.Ct. 1338. Applying *Molina-Martinez*, we have stated that "[a]t least in some circumstances, a sentence well below any possible sentencing range can be a powerful indicator that a miscalculated range did not affect a defendant's substantial rights." *United States v. Corbett*, 921 F.3d 1032, 1040 (11th Cir. 2019).

Criminal history points are governed by U.S.S.G. §§ 4A1.1–4A1.2. Different categories of points are added as follows:

- (a) Add 3 points for each prior sentence of imprisonment exceeding one year and one month.

- (b) Add 2 points for each prior sentence of imprisonment of at least sixty days not counted in (a).
- (c) Add 1 point for each prior sentence not counted in (a) or (b), up to a total of 4 points for this subsection.

U.S.S.G. § 4A1.1.

[7] Under the guidelines, “prior sentence” is defined as “any sentence previously imposed upon adjudication of guilt, whether by guilty plea, trial, or plea of *nolo contendere*, for conduct not part of the instant offense.” § 4A1.2(a)(1). Therefore, a sentence where adjudication was withheld does not fall within § 4A1.2(a)(1)’s definition of “prior sentence.” See *United States v. Wright*, 862 F.3d 1265, 1280 (11th Cir. 2017). Instead, such *nolo contendere* situations involving withheld adjudication fall under § 4A1.1(c) and carry only a single point. See *id.*; see also *United States v. Baptiste*, 876 F.3d 1057, 1062 (11th Cir. 2017).

B. Procedural and Substantive Reasonableness

[8] [9] [10] We review the reasonableness of a sentence for abuse of discretion. *United States v. Irey*, 612 F.3d 1160, 1188–89 (11th Cir. 2010) (en banc). We must determine (1) whether a “significant procedural error” occurred, then (2) whether the sentencing determination was “substantively reasonable under the totality of the circumstances.” *United States v. Green*, 981 F.3d 945, 953 (11th Cir. 2020) (internal quotations omitted). Procedural unreasonableness can stem from (1) improperly calculating the guidelines range, (2) adhering to the guidelines as mandatory, (3) failing to consider the 18 U.S.C. § 3553(a) factors, (4) failing to adequately explain the sentence, or (5) basing a selected sentence on clearly erroneous facts. *Gall v. United States*, 552 U.S. 38, 51, 128 S.Ct. 586, 169 L.Ed.2d 445 (2007).

[11] [12] [13] When reviewing the reasonableness of sentences for abuse of discretion, we will only vacate a sentence when 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 *1357 sentences dictated by the facts of the case.” *Irey*, 612 F.3d at 1190 (quotations omitted). A sentence well below the statutory maximum indicates reasonableness. See *United States v. Gonzalez*, 550 F.3d 1319, 1324 (11th Cir. 2008) (per curiam). “We have upheld large upward deviations based solely on an offender’s extensive criminal history.” *United States v. Osorio-Moreno*, 814 F.3d 1282, 1288 (11th Cir. 2016). District courts can exercise “broad leeway in deciding how much weight to give to prior crimes the defendant has committed.” *United States v. Rosales-Bruno*, 789 F.3d 1249, 1261 (11th Cir. 2015).

III. Analysis

A. Miscalculated Guidelines Range

Although the district court plainly erred when calculating Thomas’s guidelines range, we cannot say that the error affected Thomas’s substantial rights.

[14] Because Thomas did not object to the miscalculation of his criminal history category below, we review for plain error. *Straub*, 508 F.3d at 1008. Here, both parties agree that Thomas’s PSR miscalculated his criminal history as CHC III rather than CHC II. Thomas pled *nolo contendere* and adjudication was withheld for both of his convictions, which means neither falls within § 4A1.2(a)(1)’s definition of “prior sentence.” See *Wright*, 862 F.3d at 1280. Instead, such *nolo contendere* situations involving withheld adjudication fall under § 4A1.1(c) and carry only a single point. See *id.* Rather than four criminal history points, Thomas should have received only two. With only two points, Thomas would fall within CHC II. Combining CHC II with his offense level of 24 would give Thomas a guidelines range of 57 to 71 months in prison rather than 63 to 78 months in prison. This miscalculation constitutes plain error.

[15] Despite the Supreme Court’s general rule that a miscalculated guidelines range often shows that a defendant’s substantial rights were impacted, Thomas falls within an exception. Determining whether the use of an improper guidelines range affected a defendant’s

substantial rights requires us to consult the record and consider the circumstances holistically.

We recognize Thomas's concern with an upward variance from an improperly high baseline guidelines range. However, the nearly-double-the-guidelines sentence that the district court ultimately imposed was “well [above] any possible sentencing range,” which we have suggested “can be a powerful indicator” that a guidelines error did not impact a defendant's substantial rights. *Corbett*, 921 F.3d at 1040. Further, when considering the broader circumstances, the record was not silent as to the reasons for the sentence. Rather, the sentencing judge felt—as demonstrated by his extensive comments—that Thomas's CHC III underrepresented his criminal history by not including Thomas's juvenile conduct. Given how strong the judge's views were about Thomas's criminal history, he almost certainly would have found a CHC II even more under-representative. Beyond commenting on the severity of shooting twice at J.T.'s vehicle, the judge reiterated that Thomas would have faced a minimum of twenty years in prison had he faced charges in Florida state court for the same conduct. The record below indicates “that the district court thought the sentence it chose was appropriate irrespective of the Guidelines range.” *Molina-Martinez*, 578 U.S. at 200, 136 S.Ct. 1338. Therefore, we are unable to intervene regarding the miscalculation of Thomas's criminal history category.

B. Procedural and Substantive Reasonableness

[16] When reviewing the reasonableness of Thomas's sentence for abuse of discretion, we cannot say that the district *1358 court arrived at a sentence beyond the range of reasonable sentences. Improperly calculating a guidelines range can constitute a significant procedural error, but our review must “take

into account the totality of the circumstances.” *Gall*, 552 U.S. at 51, 128 S.Ct. 586. When viewed against the facts, using CHC III to calculate the guidelines range did not create a significant procedural error in Thomas's case.

[17] In addition, the district court did not abuse its discretion regarding the substantive reasonableness of Thomas's sentence. District courts have broad discretion with sentencing decisions. *See Rosales-Bruno*, 789 F.3d at 1261. Thomas's 120-month sentence falls well below the 240-month statutory maximum, which weighs in favor of its reasonableness. *See Gonzalez*, 550 F.3d at 1324. Further, we find that the district court did not abuse its discretion in giving greater weight to the seriousness of Thomas's previous crimes than to the mitigating circumstances of his past. *See Osorio-Moreno*, 814 F.3d at 1288. Because Thomas shot twice at J.T.'s vehicle as he fled the scene, it is difficult to say that Thomas's sentence falls beyond the range of reasonableness given the facts of the case. *See Irey*, 612 F.3d at 1190.

IV. Conclusion

Though it contained a plain error, we cannot find that the district court's calculation of the guidelines range affected Thomas's substantial rights. Further, we do not find the district court abused its discretion in imposing a sentence of 120 months' imprisonment, which was neither procedurally nor substantively unreasonable. Therefore, we affirm the decision of the district court.

AFFIRMED.

All Citations

108 F.4th 1351, 30 Fla. L. Weekly Fed. C 1179

A-2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

UNITED STATES OF AMERICA

v.

TERIUS THOMAS

§ **JUDGMENT IN A CRIMINAL CASE**

§

§

§ Case Number: **0:22-CR-60049-RS(1)**§ USM Number: **93987-509**

§

§ Counsel for Defendant: **Juan Michelen**

§

§ Counsel for United States: **Anita Gail White****THE DEFENDANT:**

<input checked="" type="checkbox"/>	pleaded guilty to count(s)	1 of the Indictment
<input type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	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

18:1951(a) Attempted Hobbs Act Robbery

Offense Ended

08/26/2021

Count

1

The defendant is sentenced as provided in pages 2 through 7 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(s) remaining ☐ 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.

November 30, 2022

Date of Imposition of Judgment



Signature of Judge

RODNEY SMITH**UNITED STATES DISTRICT JUDGE**

Name and Title of Judge

November 30, 2022

Date

DEFENDANT: TERIUS THOMAS
CASE NUMBER: 0:22-CR-60049-RS(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:

120 months as to count 1.

☒ The court makes the following recommendations to the Bureau of Prisons:
Defendant be placed in a facility in Florida or near Florida to be close to family.

☒ 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: TERIUS THOMAS
CASE NUMBER: 0:22-CR-60049-RS(1)

SUPERVISED RELEASE

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

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: TERIUS THOMAS
CASE NUMBER: 0:22-CR-60049-RS(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 www.flsp.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: TERIUS THOMAS
CASE NUMBER: 0:22-CR-60049-RS(1)

SPECIAL CONDITIONS OF SUPERVISION

Employment Requirement: The defendant shall maintain full-time, legitimate employment and not be unemployed for a term of more than 30 days unless excused for schooling, training or other acceptable reasons. Further, the defendant shall provide documentation including, but not limited to pay stubs, contractual agreements, W-2 Wage and Earnings Statements, and other documentation requested by the U.S. Probation Officer.

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.

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.

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: TERIUS THOMAS
CASE NUMBER: 0:22-CR-60049-RS(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$100.00	\$.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.

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:
- | | | |
|---|-------------------------------|--|
| <input type="checkbox"/> the interest requirement is waived for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution |
| <input type="checkbox"/> the interest requirement for the | <input type="checkbox"/> fine | <input type="checkbox"/> 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: TERIUS THOMAS
CASE NUMBER: 0:22-CR-60049-RS(1)

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