

No.

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IN THE SUPREME COURT OF THE UNITED STATES

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ALBERT TRAMPIS DOGSKIN,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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On Petition for a Writ of Certiorari  
To the United States Court of Appeals  
For the Ninth Circuit

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**APPENDIX TO PETITION  
FOR A WRIT OF CERTIORARI**

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APPENDIX 1a

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

AUG 27 2024

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ALBERT TRAMPIS DOGSKIN, AKA  
Albert Trampis Dogskin,

Defendant - Appellant.

No. 23-4301

D.C. No. 2:22-cr-00122-SAB-1  
Eastern District of Washington,  
Spokane

ORDER

Before: CANBY, PAEZ, and SUNG, Circuit Judges.

Appellant's motion for reconsideration (Docket Entry No. 20) is denied. *See*  
9th Cir. R. 27-10.

APPENDIX 2a

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

JUN 20 2024

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ALBERT TRAMPIS DOGSKIN, AKA  
Albert Trampis Dogskin,

Defendant - Appellant.

No. 23-4301

D.C. No. 2:22-cr-00122-SAB-1  
Eastern District of Washington,  
Spokane

ORDER

Before: CANBY, PAEZ, and SUNG, Circuit Judges.

Appellee’s motion to dismiss this appeal in light of the valid appeal waiver (Docket Entry No. 14) is granted. *See United States v. Harris*, 628 F.3d 1203, 1205 (9th Cir. 2011) (knowing and voluntary appeal waiver whose language encompasses the right to appeal on the grounds raised is enforceable). Even assuming appellant’s due process claim is a challenge to “the terms of the sentence itself,” *see United States v. Wells*, 29 F.4th 580, 587 (9th Cir. 2022) (defining scope of “illegal sentence” exception to appeal waivers), appellant has not established that his due process rights were violated, *see United States v. Vanderwerfhorst*, 576 F.3d 929, 935-36 (9th Cir. 2009) (to establish a due process violation, appellant must show that the challenged information lacked “some minimal indicium of reliability” and was “demonstrably made the basis for the

**APPENDIX 3a**

sentence” (internal quotations omitted)). For the same reason, even assuming this court recognized a miscarriage of justice exception to the enforcement of an appellate waiver, appellant has not shown that it would apply here. Finally, because the government objected to the district court’s advisement of appellate rights, appellant did not have a reasonable expectation that his appeal waiver would not apply. *See United States v. Schuman*, 127 F.3d 815, 817 (9th Cir. 1997).

**DISMISSED.**

UNITED STATES DISTRICT COURT  
Eastern District of Washington

Sep 06, 2024

SEAN F. McAVOY, CLERK

UNITED STATES OF AMERICA

v.

ALBERT TRAMPIS DOGSKIN

## AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 2:22-CR-00122-SAB-1

USM Number: 19560-510

Sandy D Baggett

Defendant's Attorney

Date of Last Amended Judgment \*9/4/2024

## THE DEFENDANT:

- ☒ pleaded guilty to count(s) Count 1 of the Information Superseding Indictment
- ☐ 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:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
*18 U.S.C. §§ 113(a)(6), 1153 - ASSAULT RESULTING IN SERIOUS BODILY INJURY IN INDIAN COUNTRY		10/10/2018	1ss

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) all remaining counts ☐ 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.

12/15/2023

Date of Imposition of Judgment

Signature of Judge

The Honorable Stanley A. Bastian

Chief Judge, U.S. District Court

Name and Title of Judge

9/6/2024

Date

DEFENDANT: ALBERT TRAMPIS DOGSKIN  
Case Number: 2:22-CR-00122-SAB-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: 72 months as to Count 1ss.

Defendant shall receive credit for time served.

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends defendant serve his sentence at FCI Tucson to participate in treatment and rehabilitation programs offered. The Court also recommends defendant participate in the RDAP program.

☒ 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: ALBERT TRAMPIS DOGSKIN  
Case Number: 2:22-CR-00122-SAB-1

## **SUPERVISED RELEASE**

Upon release from imprisonment, you shall be on supervised release for a term of: 3 years

## **MANDATORY CONDITIONS**

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance, including marijuana, which remains illegal under federal law.
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 cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
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 which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6. ☐ 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 other conditions on the attached page.



DEFENDANT: ALBERT TRAMPIS DOGSKIN  
Case Number: 2:22-CR-00122-SAB-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 be truthful when responding to 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 this judgment imposes restitution, a fine, or special assessment, it is a condition of supervised release that you pay in accordance with the Schedule of Payments sheet of this judgment. You shall notify the probation officer of any material change in your economic circumstances that might affect your ability to pay any unpaid amount of restitution, fine, or special assessments.
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](http://www.uscourts.gov).

Defendant's Signature \_\_\_\_\_

Date \_\_\_\_\_

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DEFENDANT: ALBERT TRAMPIS DOGSKIN  
Case Number: 2:22-CR-00122-SAB-1

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### **SPECIAL CONDITIONS OF SUPERVISION**

1. You must not communicate, or otherwise interact, with Josephine Lukes either directly or through someone else, without first obtaining the permission of the probation officer. You must not enter the premises or loiter within 1000 feet of the victim's residence or place of employment.
2. You must complete a mental health evaluation and follow any treatment recommendations of the evaluating professional which do not require forced or psychotropic medication and/or inpatient confinement, absent further order of the court. You must allow reciprocal release of information between the supervising officer and treatment provider. You must contribute to the cost of treatment according to your ability to pay.
3. You must submit your person, residence, office, or vehicle and belongings to a search, conducted by a probation officer, at a sensible time and manner, based upon reasonable suspicion of contraband or evidence of violation of a condition of supervision. Failure to submit to search may be grounds for revocation. You must warn persons with whom you share a residence that the premises may be subject to search.
4. You must undergo a substance abuse evaluation and, if indicated by a licensed/certified treatment provider, enter into and successfully complete an approved substance abuse treatment program, which could include inpatient treatment and aftercare upon further order of the court. You must contribute to the cost of treatment according to your ability to pay. You must allow full reciprocal disclosure between the supervising officer and treatment provider.
5. You must abstain from the use of illegal controlled substances, and must submit to urinalysis and sweat patch testing, as directed by the supervising officer, but no more than 6 tests per month, in order to confirm continued abstinence from these substances.
6. You must not enter into or remain in any establishment where alcohol is the primary item of sale. You must abstain from alcohol and must submit to urinalysis and Breathalyzer testing as directed by the supervising officer, but no more than 6 tests per month, in order to confirm continued abstinence from this substance.

DEFENDANT: ALBERT TRAMPIS DOGSKIN  
Case Number: 2:22-CR-00122-SAB-1

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
<b>TOTALS</b>	\$100.00	\$ .00	\$ .00	\$ .00	\$ .00

- ☐ The special assessment imposed pursuant to 18 U.S.C. § 3013 is hereby remitted pursuant to 18 U.S.C. § 3573(1) because reasonable efforts to collect this assessment are not likely to be effective and in the interests of justice.
- ☐ 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, 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 before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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- ☐ 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 Sheet 6 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: |

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

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

\*\*\* 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: ALBERT TRAMPIS DOGSKIN  
Case Number: 2:22-CR-00122-SAB-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 \$ \_\_\_\_\_ due immediately, balance due  
☐ not later than \_\_\_\_\_, or  
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☒ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☒ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:

Defendant shall participate in the BOP Inmate Financial Responsibility Program. During the time of incarceration, monetary penalties are payable on a quarterly basis of not less than \$25.00 per quarter.

While on supervised release, monetary penalties are payable on a monthly basis of not less than \$25.00 per month or 10% of the defendant's net household income, whichever is larger, commencing 30 days after the defendant is released from imprisonment.

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 online at [www.waed.uscourts.gov/payments](http://www.waed.uscourts.gov/payments) or mailed to the following address until monetary penalties are paid in full: Clerk, U.S. District Court, Attention: Finance, P.O. Box 1493, Spokane, WA 99210-1493.

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

- ☐ Joint and Several  
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 pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

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.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

1	UNITED STATES OF AMERICA,	)	Case No. 2:22-cr-00122-SAB-1
2		)	
3		)	
4	Plaintiff,	)	December 15, 2023
5	vs.	)	Spokane, Washington
6	ALBERT TRAMPIS DOGSKIN,	)	Sentencing Hearing
7	Defendant.	)	Pages 1 - 29

BEFORE THE HONORABLE STANLEY A. BASTIAN  
CHIEF UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

11	For the Plaintiff:	RICHARD BARKER
12		U.S. Attorney's Office
13		P.O. Box 1494
14		920 W. Riverside Ave, Suite 300
15		Spokane, WA 99210
16	For the Defendant:	SANDY D. BAGGETT
17		Attorney at Law
18		170 S. Lincoln, Suite 150
19		Spokane, WA 99201

21	Official Court Reporter:	Crystal L. Hicks, CRR, RPR
22		United States District Courthouse
23		P.O. Box 700
24		Spokane, Washington 99210
25		(509) 458-3434

Proceedings reported by mechanical stenography; transcript  
produced by computer-aided transcription.

## APPENDIX 12a

1 (Court convened on December 15, 2023, at 8:36 a.m.)

2 THE COURTROOM DEPUTY: We have United States of  
3 America v. Albert Trampis Dogskin, Case No. 2:22-cr-122-SAB.  
4 Time set for a sentencing hearing.

5 Counsel, would you please make your appearances for the  
6 record.

7 MR. BARKER: Good morning, your Honor. Richard Barker  
8 for the United States. Seated at counsel table with me is  
9 Special Agent Brian Hoff from the FBI.

10 THE COURT: Good morning.

11 MS. BAGGETT: Good morning, your Honor. Sandy Baggett  
12 for Mr. Dogskin.

13 THE COURT: Good morning to both of you.

14 So we're here for sentencing. I have reviewed all the  
15 material, and I'll summarize where we are as follows:  
16 Mr. Dogskin has pled guilty to one count of assault resulting in  
17 serious injury, which occurred in Indian Country. Carries a  
18 maximum sentence of up to ten years in prison, can include a  
19 fine of \$250,000 and a special penalty assessment of \$100, and  
20 it can include -- supervised release is I believe three years.

21 I reviewed the presentence report. It has these  
22 calculations: A total offense level of 16, criminal history  
23 category of level 6, and that leads to a range -- recommended  
24 range of 46 to 57 months.

25 I'm aware that the plea agreement is an 11(c) (1) (C)

## APPENDIX 13a

1 agreement, which is binding on the Court if the Court accepts  
2 it, and that establishes a range of 48 months to 72 months,  
3 which is a higher range than the guidelines calculations. So  
4 I'm aware of that dynamic.

5 I'll start. Are there any objections to the presentence  
6 report that need to be addressed?

7 MS. BAGGETT: Your Honor, we did file written  
8 objections to certain portions of the report that are not  
9 relevant conduct and to ask that those be removed and not taken  
10 into consideration by the Court.

11 THE COURT: And that has to do with -- I guess I have  
12 to look at the presentence report -- the section that is  
13 entitled -- I'll find it here.

14 MS. BAGGETT: I think it's entitled "not relevant  
15 conduct."

16 MR. BARKER: I believe it's on page 8, your Honor.

17 THE COURT: Yep. There it is. Offense behavior not  
18 part of relevant conduct, and it is paragraphs 45 through --  
19 it's a long section -- through 102, so a total of eight pages  
20 and all of those paragraphs. That's the section you're  
21 referring to?

22 MS. BAGGETT: That's correct, your Honor.

23 THE COURT: All right. So I understand the defense  
24 argument. The government's response?

25 MR. BARKER: Your Honor, the government does believe

## APPENDIX 14a

1 that those paragraphs from page 8 to paragraph 102 are  
2 appropriate for purposes of the PSIR and are appropriate for the  
3 Court to take into account. As this Court reiterates at every  
4 sentencing, the Court has to consider the factors under 3553(a),  
5 and one of those factors is the history and characteristics of  
6 the defendant. I appreciate those allegations have not been  
7 proven beyond a reasonable doubt; however, they do have the  
8 indicia of reliability.

9       There is -- as the government laid out in its sentencing  
10 memorandum, the government believes that there is significant  
11 information corroborating these victims, these witnesses. The  
12 government appreciates that these witnesses -- these victims  
13 carry their own baggage, that they have criminal histories  
14 themselves, that they were in relationships with the defendant.  
15 But, based on the totality of the information that the Court has  
16 before it and the corroborating information with respect to  
17 these victims' accounts, the government does believe it is  
18 relevant for the Court to take into account for purposes of  
19 sentencing and to determine what the appropriate sentence is in  
20 this case. And we would ask that the Court not strike those  
21 paragraphs from the PSIR.

22       THE COURT: Let me ask you a couple questions before I  
23 make a final decision. These incidents in those -- in that  
24 section, were these part of the original charges that  
25 Mr. Dogskin was charged with?



## APPENDIX 15a

1           MR. BARKER: They were, your Honor. They are part of  
2 the original indictment that was dismissed as part of the plea  
3 agreement, whereby the defendant, if he pled to the count  
4 involving the assault on JI, then the remaining counts would be  
5 dismissed, and the guidelines certainly do contemplate that the  
6 Court can take into account dismissed or uncharged conduct.

7           THE COURT: So I think there's really three victims,  
8 and I'm not going to state them on the record, but they're in  
9 the presentence report. I think it was at least three  
10 incidents -- three victims. It might have been more incidents,  
11 but there are three victims throughout. Were the facts in those  
12 paragraphs -- were all of those facts or at least -- that's not  
13 the appropriate question that I'm trying to ask.

14           Were facts regarding all of those incidents presented to  
15 the grand jury?

16           MR. BARKER: Yes, your Honor.

17           THE COURT: Okay. And was the issue of the government  
18 presenting this at sentencing -- was that discussed or  
19 negotiated at all when the plea agreement was put together?

20           MR. BARKER: You know, I'm not sure that Ms. Baggett  
21 and I see this eye-to-eye. The government certainly  
22 contemplated it, and the government certainly believed that this  
23 was a, if you want to call it a quid pro quo, that we would  
24 dismiss these charges, and he would plead guilty to a separate  
25 offense pursuant to an information. That was certainly

## APPENDIX 16a

1 discussed and is contemplated in the PSIR.

2       The restitution section in the plea agreement certainly  
3 contemplates that the government would seek restitution for  
4 identifiable victims, and there may have been a miscommunication  
5 between us. We certainly did not discuss and in any way suggest  
6 that, no, under no circumstance the government will not allude  
7 to these. I intended to allude to them throughout. These are I  
8 believe very serious incidents, and I don't feel it's  
9 appropriate for the government to stand up and act as though  
10 these incidents didn't happen or that the government --

11           THE COURT: Well, no. You don't have to defend your  
12 position on that. I'm just trying to find out what was  
13 discussed and what wasn't. It was part of the plea agreement  
14 that we have these incidents. They were charged, and part of  
15 the exchange was we'll dismiss these --

16           MR. BARKER: Correct.

17           THE COURT: -- in exchange for a plea to what he's  
18 pled guilty to.

19           MR. BARKER: Yes, and that's written in the plea  
20 agreement. That's part of the plea agreement, and that's  
21 documented in the plea agreement. There was certainly no  
22 promise made that we would not allude to these, and I believe  
23 that there is a provision in the plea agreement. And if I can  
24 just grab that from counsel table really quickly?

25           THE COURT: Go ahead.

## APPENDIX 17a

1 MR. BARKER: So, as I said in the restitution section,  
2 it indicates that the United States --

3 THE COURT: Will you tell me the page you're looking  
4 at?

5 MR. BARKER: It's on page 10, your Honor.

6 THE COURT: Thank you.

7 MR. BARKER: It says, "The United States and defendant  
8 agree that restitution is appropriate and mandatory without  
9 regard to defendant's economic situation to identifiable  
10 victims." I think that is relevant in this analysis, and I want  
11 to be very clear. Ms. Baggett and I have a very positive  
12 working relationship. We work together on many, many cases.  
13 And if there was a misunderstanding, I certainly did not intend  
14 for that to happen in this case, and I don't think --

15 THE COURT: I wasn't trying to suggest there was. Let  
16 me -- well, I'm not going to go further. I wasn't trying to  
17 suggest there was or that I was suspicious of that.

18 MR. BARKER: No. I appreciate that, your Honor.

19 So the other provision that I would point the Court to is  
20 on page 8. It's in Section 10D where it indicates that there's  
21 no other agreements regarding the guidelines, the application of  
22 any guideline enhancements, departures, or variances.

23 And in the government's view, that does leave the  
24 government the opportunity or at least the right to argue for  
25 the inclusion of this information, and the government certainly

## APPENDIX 18a

1 is arguing for an upward variance. It's about a 25 percent  
2 upward variance from the top of the guideline range, from  
3 57 months to 72 months. The government does believe that the  
4 information supports that in this case, and again, wants to give  
5 voices to these victims.

6 We agreed to what we agreed to. We reached this plea  
7 agreement because bringing these victims in, having them testify  
8 at a hearing before this Court or at trial before a jury was  
9 going to be incredibly hard for these victims. And there was  
10 litigation risk involved in that too. I'm not going to discount  
11 that.

12 THE COURT: I think there always is when you're  
13 dealing with a victim of violence. Will they, you know -- I  
14 think that's always a dynamic that the government has to face,  
15 yeah.

16 MR. BARKER: And so that's a lot of what drove the  
17 plea agreement. We felt like we could reach -- we may not have  
18 necessarily agreed with respect to -- Mr. Dogskin obviously  
19 denies that he committed these sexual assaults. The government  
20 believes that he did, and we were able to reach a meeting of the  
21 minds with respect to a separate physical assault related to JJ,  
22 and we were able to agree upon a guideline, or not a guideline,  
23 but a sentencing range that the parties felt was fair and that  
24 captured the conduct. Whether the Court considers the sexual  
25 assaults or not, the government does believe that this range is

## APPENDIX 19a

1 appropriate.

2 THE COURT: How many counts was Mr. Dogskin charged  
3 with initially?

4 MR. BARKER: Originally, he was charged with the -- I  
5 believe it's in the plea agreement. I want to make sure I get  
6 it right. I did not articulate each of them. He was charged  
7 with four counts of sexual assault.

8 THE COURT: Okay.

9 MR. BARKER: And he was charged with an obstruction  
10 count as well, and he was charged with assault with a dangerous  
11 weapon relative to KD, who is the individual who alleged that  
12 the defendant assaulted her with the knife before sexually  
13 assaulting her.

14 THE COURT: You've answered my questions. Thank you.

15 MR. BARKER: Thank you, your Honor.

16 THE COURT: Before I make a final decision on it,  
17 Ms. Baggett, did you want to respond at all?

18 MS. BAGGETT: Yes, your Honor.

19 THE COURT: Okay.

20 MS. BAGGETT: Your Honor, I think from the defense's  
21 perspective, this is a bit of a bait and switch, that we had an  
22 extremely extensive investigation in this case, which is  
23 detailed to some extent in our filing -- written filings with  
24 the Court, very extensive investigation into these women, and we  
25 stopped that investigation. We could have gone much further and

## APPENDIX 20a

1 I think revealed a whole lot more material against them.  
2 Because we reached this plea agreement where there was an  
3 understanding that, at least from the defense perspective, that  
4 these -- the information was not sufficient for the government  
5 to be able to get a conviction on those counts and that that was  
6 motivating the plea agreement.

7 Your Honor, I appreciate that these were presented to the  
8 grand jury, but the standard here for you to consider it in  
9 sentencing, an evidentiary standard, is far higher.

10 THE COURT: I don't think it is. Why do you think  
11 it's higher than that?

12 MS. BAGGETT: Because the Ninth Circuit says that  
13 whenever there's a substantial increase in --

14 THE COURT: Do you have a case that says that?

15 MS. BAGGETT: It's cited at --

16 THE COURT: Because I have cases that say just the  
17 opposite.

18 MS. BAGGETT: Your Honor, we cited a case in our  
19 sentencing memo that the standard is clear and convincing.

20 THE COURT: It's not.

21 MS. BAGGETT: I disagree, your Honor.

22 THE COURT: Okay.

23 MS. BAGGETT: The Ninth Circuit has said that it  
24 should be clear and convincing in a situation like this.

25 THE COURT: Okay.

## APPENDIX 21a

1 MS. BAGGETT: So a far higher evidentiary standard.

2 The use of nonrelevant conduct in this way was not  
3 contemplated in the agreement between the parties. The fact  
4 that there is some boilerplate language in a restitution  
5 section, your Honor, that's the exact same boilerplate language  
6 the government uses in every single restitution statement. So I  
7 don't think that that's evidence in this particular case that  
8 that was contemplated that there would be more than one victim.

9 THE COURT: My questions about the plea agreement  
10 really weren't about restitution. I appreciate Mr. Barker's  
11 argument and your objection to it, but it's not factoring into  
12 my decision.

13 MS. BAGGETT: Understand, your Honor.

14 THE COURT: Okay.

15 MS. BAGGETT: So, your Honor, the situation we have  
16 here is that the government is asking the Court to accept on its  
17 face one statement that each of these women made without  
18 revealing to the Court a lot of other background information on  
19 these women, such as the fact that they made multiple  
20 inconsistent statements, both to defense and to the government  
21 itself. He didn't give you those statements.

22 THE COURT: Well, you could.

23 MS. BAGGETT: I referred to a lot of them. Yes, your  
24 Honor.

25 THE COURT: Okay.

## APPENDIX 22a

1 MS. BAGGETT: He didn't give you their criminal  
2 histories, which basically show that they lie, cheat, and steal.

3 THE COURT: But you could.

4 MS. BAGGETT: No. A lot of this information, I didn't  
5 have, your Honor.

6 THE COURT: Well, you're saying that you know it. How  
7 do you know it if you don't have it?

8 MS. BAGGETT: Your Honor, some of the information --  
9 yeah. Yes. Granted, your Honor. I think if the burden is on  
10 the government to use this material for sentencing purposes,  
11 it's their obligation to be forthcoming and truthful to the  
12 Court about all of the information.

13 THE COURT: I agree with that.

14 MS. BAGGETT: Yes. Some of this material is in the  
15 nature of Brady evidence as well. For example, that --

16 THE COURT: We're well beyond Brady. I don't think  
17 Brady applies here. This isn't a trial.

18 MS. BAGGETT: I realize that.

19 THE COURT: We're here for sentencing.

20 MS. BAGGETT: But the government should have the  
21 obligation, if they want to use this information to increase  
22 above the sentencing guidelines, should have an obligation to be  
23 forthcoming and frank with the Court, as an officer of the  
24 court, on all the background material. So I'm just pointing out  
25 some of the material that the government hasn't revealed to the



## APPENDIX 23a

1 Court when they're asking the Court to rely on this information  
2 to depart 25 percent above the guideline range.

3 THE COURT: Okay. But you agreed to that range. I  
4 mean, this is an agreement that you agreed to.

5 MS. BAGGETT: Yes, your Honor, because the only way to  
6 get a four-year bottom was to agree to a six-year top.

7 THE COURT: Right.

8 MS. BAGGETT: It's the nature of negotiations. That  
9 doesn't mean that --

10 THE COURT: That's fine, but you still agreed to it.  
11 You didn't have to. You did it. That's great. You can; you  
12 can't. You made a decision, and the decision was an 11(c) (1) (C)  
13 in which you're allowed to argue for 48 months, and you knew the  
14 government can argue for 72 months. My observation, in doing  
15 this job for ten years, is when there's an agreed range, the  
16 defense never argues for the high, and the prosecution never  
17 argues for the low. So I think you went into this with your  
18 eyes wide open.

19 MS. BAGGETT: Yes, but not about the fact that the  
20 government was going to use noncredible information as the basis  
21 for arguing for the top of the 11(c) (1) (C).

22 THE COURT: Okay. All right.

23 MS. BAGGETT: I appreciate that there may have been  
24 other reasons that the government could have argued for that  
25 number, but not the basis of noncredible, nonrelevant

## APPENDIX 24a

1 information.

2 THE COURT: Okay. I understood.

3 All right. Let me make a ruling on that issue. I am going  
4 to not strike the paragraphs between eight -- pages 8 and 16 of  
5 the presentence report for the following reasons: The Court has  
6 done an extensive amount of thinking and research on this issue.  
7 It is apparent in the Ninth Circuit, and I think everywhere,  
8 district courts at sentencing may rely on dismissed charges at  
9 sentencing. It does not violate Criminal Rule 32. It does not  
10 violate due process and does not violate the Sixth Amendment  
11 rights to a jury trial.

12 I do believe that there still is the requirement that the  
13 information have an indicia of reliability. I believe it does  
14 here. The -- the writer of the presentence report makes  
15 specific reference to the various reports that were relied on to  
16 put those paragraphs in the report, and those incidents were  
17 part of the plea negotiations between the parties.

18 That information was provided to the grand jury, which  
19 voted -- returned an indictment which showed that the grand jury  
20 believed that there was probable cause to file charges, and I  
21 think the grand jury's consideration of that provides this Court  
22 sufficient indicia of reliability. So I will leave them in the  
23 presentence report and allow the parties to argue how they  
24 should be considered at sentencing recommendation.

25 I do believe, however, it's only fair, given the

**APPENDIX 25a**

1 disagreement that the parties have expressed to the Court -- and  
2 this is the basis why I was asking questions about the plea  
3 agreement -- is -- I'm not a big fan of waivers of appeal, but I  
4 recognize they do form the basis of plea agreements. But here,  
5 there's I think a substantial issue as to -- I made my ruling,  
6 and my ruling is going to stand for purposes of this hearing.  
7 But there's a fair disagreement, and my intent is to allow and  
8 to give Mr. Dogskin the right to appeal that decision, you know,  
9 in spite of the waiver in the plea agreement.

10           MR. BARKER: That's understood, your Honor. And I  
11 would just note the government's objection to the voiding of the  
12 waiver, and I think we can leave it at that. The government's  
13 position is that that's binding, and I understand what the Court  
14 is saying.

15           THE COURT: I'm sure you'll take that to the circuit,  
16 too, if the sentence is appealed. And I just think sometimes  
17 it's good to hear from the circuit so we can understand how to  
18 deal with cases in the future. I know how I'm going to deal  
19 with this case, in terms of I'm going to allow you to argue that  
20 material, and the Court hasn't made a decision exactly where the  
21 sentence will be. I'll wait until I hear from everyone. That  
22 will be on the table.

23           MR. BARKER: That makes sense, your Honor.

24           THE COURT: So any other objections?

25           MR. BARKER: Not from the government, your Honor.

**APPENDIX 26a**

1           THE COURT: Okay. I'll take the government's  
2 recommendation then.

3           MR. BARKER: Thank you, your Honor, and thank you for  
4 your thoughtfulness and consideration of what I think are some  
5 difficult issues, and this is a difficult case. There's no  
6 question about it.

7           I appreciate Ms. Baggett's advocacy on behalf of her  
8 client. I certainly disagree with some of the statements that  
9 she's made. I'm not sure what Brady she believes is not -- or  
10 what exculpatory information, if you want to call it that, has  
11 not been disclosed or not been made clear to the Court. The  
12 government -- I certainly laid out the inconsistencies in the  
13 search warrant affidavits, even in our sentencing memoranda that  
14 were provided. Those inconsistencies are in the PSIR.

15          There's also the note of their prior criminal histories,  
16 their prior statements --

17          THE COURT: Let me take that burden off your  
18 shoulders, and I'm not faulting Ms. Baggett. She's zealously  
19 advocating on behalf of her client, and the Court would expect  
20 nothing less. But Brady is an explosive word, and I don't see a  
21 Brady violation here, and I think it's important for your  
22 reputation that I state that on the record. I don't see this as  
23 Brady. So --

24          MR. BARKER: I appreciate that, your Honor. I really  
25 do, and I appreciate the Court saying that. I have thick skin.

## APPENDIX 27a

1 I've practiced outside of this district, and I've had a defense  
2 bar that's maybe more zealous than this defense bar in terms of  
3 using that word and throwing that word out there. And it's not  
4 a word that I certainly take lightly, but at the same time, I've  
5 got a thick skin, and I understand it.

6 Also, I kind of, at this juncture, I just want to make sure  
7 that if there is -- if the Ninth Circuit does ever hear this  
8 appeal, that I do kind of complete that record a little bit  
9 further, too, but I think I've done that, and I think I can move  
10 forward at this juncture.

11 The government does believe that a 72-month sentence is  
12 fair when you look at the nature of the conduct and you consider  
13 the defendant's characteristics and history. And I'm not just  
14 talking about his history involving the other women that were  
15 identified in the indictment and the other incidents. His  
16 history is incredibly troubling. He has a history that involves  
17 20 criminal history points. He has a number of tribal  
18 convictions that are unscored in this case. And when you take  
19 into account the prior history, the unscored tribal convictions,  
20 this Court could reach that 72-month sentence and do an upward  
21 departure based on the uncharged criminal conduct to get to  
22 that, without even considering the sexual assaults against the  
23 women that I've talked about and that are relayed in the PSIR  
24 and that are the subject of certain objections.

25 With respect to what happened in this case, you have three

## APPENDIX 28a

1 women, one of whom walked miles barefoot to escape her attacker.  
2 You have another woman who was beaten. The defense contests  
3 that she was free to go, that she could have left the trailer if  
4 she wanted to. I don't think the government has to prove that  
5 she was restrained in that trailer, but she was certainly  
6 beaten. She described a sexual assault.

7 And you have another individual who was, granted, in a  
8 relationship with Mr. Dogskin, but he went beyond -- he went  
9 beyond the scope of that relationship when he engaged in sexual  
10 activity with her and physically assaulted her on a number of  
11 occasions. And the sexual assaults in particular are troubling  
12 because she said no. She did not want to engage in sexual  
13 activity when he engaged in sexual activity on those two  
14 occasions.

15 And so that certainly plays into the government's  
16 recommendation. The physical assault that is the subject of the  
17 information that the defendant has now pled guilty to, the Court  
18 has seen the pictures from that assault. It's a very troubling  
19 assault. There were significant, serious injuries that were  
20 suffered by the victim in that case. And unfortunately, this is  
21 a pattern and practice with Mr. Dogskin, that he engages in this  
22 type of physical, assaultive conduct, and he directed it at  
23 Native American women. And that is what happened in this case.

24 And we recognize that there are litigation risks. I don't  
25 think that Ms. Baggett is seriously arguing that the government

## APPENDIX 29a

1 has not been forthcoming with respect to discovery. I think  
2 there were some things in her materials, her sentencing  
3 materials, the government had never heard before, that were  
4 never provided to the government. This lengthy investigation  
5 that she speaks of, I'm not aware. That investigation has not  
6 been disclosed to the government. So if there's more out there,  
7 I'm happy to look at it.

8 But what the government has before it, the information that  
9 the government has before it and that the Court has before it  
10 now supports a 72-month sentence. So I'd ask the Court to  
11 accept the (c) (1) (C) and sentence Mr. Dogskin to 72 months,  
12 followed by three years of supervised release.

13 THE COURT: Thank you.

14 MR. BARKER: Thank you, your Honor.

15 THE COURT: Ms. Doggett [sic].

16 MS. BAGGETT: Your Honor, just I wanted to begin by  
17 speaking on behalf of Mr. Dogskin's mother, who, because we  
18 changed the date, was unable to be present. The -- what she  
19 would say to the Court, your Honor, if she was here, is that  
20 really related to Mr. Dogskin's release plan after he finishes  
21 his period of incarceration. She now lives over on the west  
22 side. She is a recovering addict of many, many years. She's  
23 been through this, this process, and she knows how to get  
24 through it and how to come out the other end, your Honor. And  
25 she's now actually an addiction counselor and works with people

## APPENDIX 30a

1 and is a working professional in that area.

2 He plans to not return to the reservation where he knows  
3 that there are environmental factors and personal histories that  
4 contribute to his addictive habits, and so he does not want to  
5 return to that environment. And he plans to go and live with  
6 his mother and with her assistance. She has a job lined up for  
7 him and to help him get through to the other side of his  
8 addiction issues.

9 Your Honor, as we have noted in our written materials, this  
10 really is a case of -- granted, Mr. Dogskin does have a very  
11 lengthy criminal history, but if you look at that history, it is  
12 a case where his criminality is entirely revolving around his  
13 addiction.

14 THE COURT: Something is going on behind you.

15 THE DEFENDANT: My mom.

16 MS. BAGGETT: Oh, she's here.

17 A SPEAKER: I made it.

18 MS. BAGGETT: Great. Okay. Well, we'll let her come  
19 up in just a minute.

20 THE COURT: I don't need to hear from her. Go ahead.

21 MS. BAGGETT: But his criminality is really a function  
22 of his addiction and in addition to his extremely -- I don't  
23 think anybody can say -- profoundly traumatic childhood and  
24 incredibly awful, traumatic events that have occurred throughout  
25 his life that have led to a significant mental health history.



## APPENDIX 31a

1       We provided a report from Dr. Cosby as well for the Court  
2 to consider. And I know that the Court is also aware that,  
3 during the course of these events, Mr. Dogskin has twice  
4 attempted suicide related, and that just sort of gives the Court  
5 an indication of the significant mental health issues involved  
6 in his life and involved and related to his criminal background,  
7 your Honor.

8       Mr. Dogskin absolutely 100 percent denies the sexual  
9 assault charges, 100 percent. And, your Honor, you know, as  
10 I've articulated and as we have put based on our investigation,  
11 which we did stop once we had a plea agreement, we believe that  
12 there's significant material from independent witnesses that  
13 undermine the claims of these women and that it should not be  
14 taken into account at sentencing. I think we've articulated  
15 that quite clearly in our written materials. So I --

16               THE COURT: I did read those.

17               MS. BAGGETT: Thank you, your Honor.

18               THE COURT: I think I said that before, but I'll say  
19 it again.

20               MS. BAGGETT: So I think, your Honor, the balance that  
21 the Court needs to strike here is to understand Mr. Dogskin's  
22 mental health issues, his addiction issues, and how those are  
23 related to his criminal conduct, both in his past and in the  
24 current charges -- the current charge, assault charge. And I  
25 think even the victim in the charge of conviction admitted that

## APPENDIX 32a

1 they were both heavily intoxicated and that intoxication played  
2 a significant role in both of their conduct on that date.

3 And, your Honor, if I could let Mr. Dogskin speak for  
4 himself.

5 THE COURT: Of course. Mr. Doggett [sic], why don't  
6 you join your lawyer up here at the -- or Dogskin. I'm sorry.  
7 Not Mr. Doggett. It's Dogskin.

8 MS. BAGGETT: Okay. Maybe we'll let his mother -- his  
9 mother would like to address the Court.

10 THE COURT: I don't need to hear from his mother. I'm  
11 not required to hear from anyone, other than attorneys and  
12 victims. With all due respect to his mother, I'm glad she's  
13 here for him, but I don't need to hear from her for the  
14 sentencing.

15 MS. BAGGETT: I understand, your Honor.

16 THE COURT: Mr. Dogskin, you have the right to make  
17 comments now if you'd like.

18 THE DEFENDANT: I just want to say sorry for wasting  
19 the Court's time being here. If I would have known that I had  
20 these charges back then when I was out there, eight years ago or  
21 six years ago, I would have took care of it. You know? And  
22 this charge that I'm getting charged with right now, that I  
23 would have took care of that. I thought it was dismissed  
24 because I pled to another charge, and they were dismissing this  
25 charge with the same prosecutor. So I would have took care of

## APPENDIX 33a

1 that, you know, but I didn't know that I was going to be charged  
2 with this. And I never knew I had the rape allegation charges  
3 when I was working for the Tribe.

4 And I'm sorry, and I just want to take advantage of  
5 everything that I can while I'm locked up so I can better  
6 myself, and I'll be living with my mother in Seattle. And she's  
7 working with, you know, like Sandy said, helping people. And  
8 I'll have a place to live when I get out, and I'm not going to  
9 go back to the reservation. And I'm back on medications, so  
10 that's going to be a big deal. You know? And I'm just, you  
11 know, thankful that I'm getting it taken care of right now, this  
12 problem. You know?

13 And I just want to say I'm sorry to JI for what I did. You  
14 know? And I take responsibility for that, for that night. You  
15 know? And that will never happen again. Thank you.

16 THE COURT: Okay. All right. Thank you.

17 All right. Well, my job is to fashion a sentence that is  
18 sufficient but not greater than necessary, that's reasonable,  
19 and that considers all of the factors that are identified as  
20 factors for sentencing, such as your criminal history, your  
21 characteristics, the seriousness of the crime, the need to  
22 protect the public, the need to discourage behaviors like this  
23 by you and others by treating this behavior seriously and  
24 sentencing seriously.

25 I -- my sentence is as follows, and the reasons for it is

## APPENDIX 34a

1 as follows: I will accept the 11(c)(1)(C) agreement, which  
2 means that I will sentence within the range suggested by the  
3 parties, which is 48 to 72 months.

4 I do give Mr. Dogskin credit for the fact that he pled  
5 guilty, saving the victim involved in this charged and convicted  
6 crime the necessity of coming in and testifying against him. I  
7 also gave him credit for reaching a plea agreement in which some  
8 of these other charges were dismissed as part of that agreement.

9 I am concerned, however, by your criminal history,  
10 predating either the case at hand or the cases that are  
11 mentioned, the other charges or incidents that are mentioned on  
12 pages 8 through 16. Even before any of that, you had a fairly  
13 extensive criminal history.

14 I'm concerned by the facts of this case, both the charge  
15 that you've pled guilty to and the charges that were dismissed.  
16 Mr. Dogskin, frankly, it shows that you have been a danger to  
17 women within your community for many years, and the Court takes  
18 that into consideration in the sentence.

19 The various issues that the parties have talked about,  
20 whether those other uncharged -- well, they were charged, but  
21 they were dismissed as part of the plea agreement -- but whether  
22 those other incidents mentioned on page 8 through 16 of the  
23 presentence report -- there's been some reference that these are  
24 strong charges, reference that they're maybe not as strong as  
25 the prosecutor thinks they are. That was accounted for by this

## APPENDIX 35a

1 binding plea agreement, 11(c)(1)(C) with a range of 48 to  
2 72 months. And the risks of those charges were necessarily  
3 evaluated by the parties when they reached that agreement, which  
4 the Court has accepted.

5       If the government had gone to trial on all of the charged  
6 conduct from the grand jury and had been successful, we would be  
7 looking at a sentence much higher than 72 months. And so you  
8 have already received the benefit of your attorney and the  
9 prosecutor evaluating the strengths and weaknesses of the entire  
10 case, reaching a plea agreement that everybody agreed to, and  
11 now the Court has agreed to as well.

12       I'm going to sentence you to 72 months with credit for time  
13 served, no monetary fine, other than the \$100 special penalty  
14 assessment. I'll impose three years of supervised release.

15       Have the conditions of the recommended supervised release  
16 conditions been discussed with your client?

17               MS. BAGGETT: We reviewed it in the presentence  
18 report. Yes, your Honor.

19               THE COURT: Does he waive me going through them right  
20 now?

21               MS. BAGGETT: Yes. Yes, your Honor.

22               THE COURT: Thank you. They will be reviewed with you  
23 when they apply, when you get out of custody, and they will be  
24 written into your Judgment and Sentence, which will be prepared  
25 later today, Monday at the latest.

## APPENDIX 36a

1 I do think that it's a legitimate issue regarding whether,  
2 frankly -- I want to refer to the right term, so I'm going to  
3 turn to page 8. I've made my ruling. I'm comfortable with my  
4 ruling, but I do believe that the concept of offense behavior  
5 not part of relevant conduct and how that works into sentencing,  
6 I think that's a legitimate issue, and I wouldn't mind Ninth  
7 Circuit review of that and how this Court has handled it. And  
8 so I am going to tell you you have the right to appeal my  
9 sentence, and if you want to appeal, you must file a notice of  
10 appeal within 14 days.

11 THE DEFENDANT: So I'm not pleading to no sex charges,  
12 right?

13 THE COURT: You did not plead to --

14 THE DEFENDANT: Will they bring it against me?

15 THE COURT: I've done all the explanation I intend to  
16 give.

17 THE DEFENDANT: All right. So can I appeal it?

18 MS. BAGGETT: Yes.

19 THE COURT: Do you have any other questions, sir?

20 THE DEFENDANT: Yeah. No.

21 THE COURT: All right. Thank you. Anything else?

22 MS. BAGGETT: Your Honor, if you could just put into  
23 the judgment that you recommend that he attend the RDAP  
24 treatment program, and he's requesting to go to FCI Tucson.

25 THE COURT: What reason in Tucson? If I put a reason

**APPENDIX 37a**

1   apparently, they will pay more attention to my recommendation.

2               MS. BAGGETT: They have extensive treatment programs,  
3   your Honor, and rehabilitation programs that the defendant is  
4   interested in. In addition, they have both a high security and  
5   a medium security facility there, and we're not quite sure which  
6   he's going to end up in, and so if he ends up in high, he may  
7   get a step down to a medium at that particular facility.

8               THE COURT: I will make the recommendations.

9               Mr. Dogskin, the Bureau of Prisons makes the final decision  
10   as to your placement. They do consider the recommendation that  
11   I make, but I can't promise that they will follow it.

12              THE DEFENDANT: So I can put like Arizona or South  
13   Carolina or somewhere?

14              THE COURT: Well, I'm not a tour guide, so I will make  
15   the recommendation.

16              MS. BAGGETT: We appreciate it. Thank you, your  
17   Honor.

18              THE COURT: All right. Thank you.

19              MR. BARKER: Your Honor, to the extent that the  
20   original indictment is in any way still open or outstanding, the  
21   government would move to dismiss that at this time. And the  
22   government would just also reiterate its objection to the  
23   defendant's right to appeal.

24              THE COURT: I understand and I would as well. I get  
25   it.

## APPENDIX 38a

1           MR. BARKER: Thank you, your Honor.

2           THE COURT: All right. I will grant the motion to  
3 dismiss any other pending charges.

4           MS. BAGGETT: Your Honor, I just have one final  
5 request for those particular paragraphs, the not relevant  
6 conduct. Would it be possible for the Court to consider putting  
7 them in a separate addendum? Because they pose a security risk  
8 for the defendant when he is in a BOP facility if that's  
9 included in his presentence report.

10          THE COURT: I -- no. I'm not going to grant that  
11 motion.

12          MS. BAGGETT: Thank you.

13          THE COURT: Thank you. Court's in recess.

14          (Proceedings concluded on December 15, 2023, at 9:13 a.m.)  
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## C E R T I F I C A T E

I, CRYSTAL L. HICKS, do hereby certify:

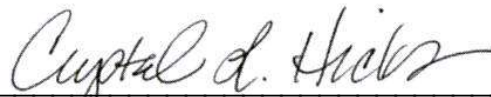
That I am an Official Court Reporter for the United States District Court for the Eastern District of Washington in Spokane, Washington;

That the foregoing proceedings were taken on the date and place as shown on the first page hereto; and

That the foregoing proceedings are a full, true, and accurate transcription of the requested proceedings, duly transcribed by me or under my direction.

I do further certify that I am not a relative of, employee of, or counsel for any of said parties, or otherwise interested in the event of said proceedings;

DATED this 27th day of December, 2023.



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CRYSTAL L. HICKS, CRR, RPR  
Washington CCR No. 2955  
Official Court Reporter  
Spokane, Washington