23-6113(L)
United States v. Jones

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 11th day of July, two thousand twenty-four.

PRESENT:

DENNIS JACOBS,
ROBERT D. SACK,
RICHARD J. SULLIVAN,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

v. Nos. 23-6113(L), 23-6220(Con)

DEREK JONES,

Defendant-Appellant.[*]

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[*] The Clerk of Court is respectfully directed to amend the official case caption as set forth above.

For Defendant-Appellant: DANIEL S. NOOTER, Washington, DC.

For Appellee: GEORGIA KOSTOPOULOS (David R. Lewis, Karl Metzner, *on the brief*), Assistant United States Attorneys, *for* Damian Williams, United States Attorney for the Southern District of New York, New York, NY.

Appeal from a judgment of the United States District Court for the Southern District of New York (Loretta A. Preska, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED AS MODIFIED**.

Derek Jones appeals from the district court's judgment following his guilty plea to one count of wire fraud, in violation of 18 U.S.C. §§ 1343 and 2, based on his years-long scheme to defraud real estate and venture capital investors of millions of dollars. One week before Jones's trial on a multi-count indictment, Jones pleaded guilty to the wire fraud count without a plea agreement. At his change of plea hearing, Jones offered a minimal but legally sufficient allocution, admitting that "during a portion of the time charged in [Count One] in the indictment, I participated in a scheme to defraud other individuals by making material misrepresentations for the purpose of causing them to invest in my

business. As an example of my misconduct, in February of 2018, I sent an email to an individual that overstated the balance of a bank account of one of my businesses." App'x at 73. After a series of post-plea events – including Jones's attempt to withdraw his guilty plea on the eve of his originally scheduled sentencing and his subsequent request for a sentencing hearing as to loss amount pursuant to *United States v. Fatico*, 603 F.2d 1053, 1057 n.9 (2d Cir. 1979), which the district court denied as unnecessary – the district court sentenced Jones to sixty-six months' imprisonment to be followed by three years' supervised release. The district court ordered forfeiture in the amount of $8,679,787.66 and restitution in the amount of $5,462,733.15.

Jones raises a number of issues on appeal, arguing that (1) his sentence was procedurally unreasonable because the district court denied him a reduction for acceptance of responsibility, (2) the district court's loss determination was erroneous, (3) he received ineffective assistance when his counsel allegedly promised that he would receive a *Fatico* hearing if he pleaded guilty, (4) the district court's forfeiture order was erroneous, and (5) his sentence should be vacated so that the district court can resentence him under recent amendments to the United

States Sentencing Guidelines ("U.S.S.G." or "Guidelines"). We assume the parties' familiarity with the facts, procedural history, and issues on appeal.

I. The district court did not clearly err in finding that a reduction for acceptance of responsibility was unwarranted.

Jones argues that his sentence was procedurally unreasonable because the district court declined to reduce his offense level for acceptance of responsibility under U.S.S.G. § 3E1.1(a). We are not persuaded.

A "district court's determination of acceptance of responsibility is a factual finding that must be upheld unless it is without foundation." *United States v. Hirsch*, 239 F.3d 221, 226 (2d Cir. 2001) (internal quotation marks omitted). We have affirmed the denial of a reduction for acceptance of responsibility when a defendant "accept[s] responsibility for conduct that satisfies the bare essentials of the offense of conviction" yet provides an "unbelievable" explanation of his conduct. *United States v. Reyes*, 9 F.3d 275, 279, 281 (2d Cir. 1993) (internal quotation marks omitted).

Here, the district court had ample reason to deny Jones a reduction for acceptance of responsibility. While the Probation Office initially recommended that Jones be granted such a reduction, that recommendation was made in January 2022, long before Jones sought to take back his plea on the grounds that "he did

not commit the fraud offense as set forth in Count One," App'x at 82, and that he "was not guilty of the misconduct as charged in both the original Indictment and the Superseding Indictment," *id.* at 84. Jones later clarified these professions of innocence, claiming to be "guilty of [a] very narrow portion of the alleged scheme" and innocent of "the overbroad and all-inclusive scheme that the [g]overnment ha[d] accused [him] of participating in." *See* Dist. Ct. Doc. No. 129 at 10–11.

Jones continued to deny responsibility leading up to sentencing. In moving for a *Fatico* hearing, Jones argued that one of his investment schemes – for which he had manipulated a bank statement to show a balance of $7 million instead of the account's actual *negative* balance, *see* Dist. Ct. Doc. No. 186 at 13 – was "an entirely legitimate enterprise." App'x at 165; Confidential App'x at 14. And at sentencing, he made a lengthy, euphemism-laced speech in which he described his fraud as a set of "poor choices" through which he merely "fell short of [his] ability to maintain an ownership stake" in his real estate investments in "many instances," and "at times overstated the deliverability of [his] projects," or "misstated the finality or existence of financial agreements." App'x at 183, 190, 200; *see generally id.* at 179–202.

Given this record, the district court did not err in finding that a reduction in Jones's offense-level for acceptance of responsibility was unwarranted. While Jones did "accept[] responsibility for conduct that satisfies the bare essentials of the offense of conviction," his explanation of his conduct was "unbelievable" and inconsistent with the extent and scope of the fraud found by the district court (as discussed further below). *Reyes*, 9 F.3d at 279, 281 (internal quotation marks omitted).

II. The district court's loss determination was not clearly erroneous.

Jones further argues that the district court clearly erred in calculating the applicable loss amount, since the district court allegedly determined "that every dollar invested" with Jones "represented actual loss." Jones Br. at 30. With respect to restitution, Jones's sole argument – made in two sentences – is that because the overall loss calculation was erroneous, the restitution amount must be erroneous as well. *See id.* at 31. Again, we disagree.

We review a district court's loss determination for clear error, *see United States v. Lacey*, 699 F.3d 710, 719 (2d Cir. 2012), and we will find such error "only if, after reviewing all of the evidence, [we are] left with the definite and firm conviction that a mistake has been committed," *United States v. Cramer*, 777 F.3d

597, 601 (2d Cir. 2015) (internal quotation marks omitted). "A district court's factual findings at sentencing need be supported only by a preponderance of the evidence." *United States v. Ryan*, 806 F.3d 691, 694 (2d Cir. 2015). "[A]bsolute precision" in the loss amount is not required; the evidence "need only permit the district court to make a reasonable estimate of the loss given the available information." *United States v. Coppola*, 671 F.3d 220, 250 (2d Cir. 2012) (internal quotation marks omitted). Loss amount for purposes of the Guidelines "is the greater of actual loss or intended loss." U.S.S.G. § 2B1.1 cmt. n.3(A)(i). As for restitution, we review the district court's order for abuse of discretion. *See United States v. Grant*, 235 F.3d 95, 99 (2d Cir. 2000).

The district court did not err, let alone clearly so, in finding that the loss amount from Jones's fraud was $8.6 million, thus warranting an 18-level increase under section 2B1.1. The district court received detailed submissions from the government showing that Jones had fraudulently collected $8.6 million in contributions from his dozens of victims. *See* Dist. Ct. Doc. Nos. 107, 155, 169, 190; Confidential App'x at 25, 47–50. While Jones paid back approximately $2.3 million to his victims, the district court noted (1) that such repayments would warrant a reduction in the loss amount for purposes of the Guidelines only if made

before the offense was detected by the government or a victim, and (2) that Jones made such repayments in response to allegations of fraud or in response to civil judgments against him. *See* App'x at 159–60; U.S.S.G. § 2B1.1 cmt. n.3(E)(i). Regardless, as the district court explained, even if it were to deduct the repayments for purposes of the Guidelines loss amount – and the district court *did* deduct the repayments for purposes of calculating restitution – the loss amount would have remained well above the $3.5 million threshold for the 18-level adjustment that the district court applied. *See* App'x at 159; *United States v. Rigas*, 583 F.3d 108, 120 (2d Cir. 2009) (affirming district court's loss estimate because even under defendant's proposed alternative calculation, the amount would "still satisfy" the applicable Guidelines threshold).

Jones argues that the district court erred in concluding that "*every* dollar invested with Mr. Jones was the actual result of fraud." Jones Br. at 33. But the district court did not so conclude. Instead, it determined that four of Jones's investment vehicles – specifically, "BlueRidge, Atiswin, Living City, and Realize" – were "pervaded by fraud" because "[t]he undisputed evidence showed that [Jones] did not (1) own the properties he claimed, [which he] misrepresent[ed] to potential investors by removing pages from contracts; (2) maintain th[e] $105

million investment balance he claimed; (3) have the advisors or executives he claimed; (4) rent the office he claimed; (5) have the employees he claimed; or (6) use the investment funds he received for real estate investments." App'x at 157, 159 (citations omitted). Indeed, the government submitted evidence showing that from the very beginning of Jones's schemes, he was falsely marketing to investors that "[w]e already have six . . . sites in our portfolio," Dist. Ct. Doc. No. 107 at 5, and a year later he was misappropriating investor funds to repay debts from prior dealings, *id.* at 7. Accordingly, the district court found that "the entire flow of funds into those businesses [is] the measure of the loss." App'x at 157. But the district court did not include in its loss calculation other business ventures controlled by Jones – for example, Rincon Point and Chisholm Creek – since the government did not present evidence regarding whether those other ventures were fraudulent. *See id.* at 196–97.

Jones insists that he spent a portion of the funds he raised for his fraudulent schemes on "legitimate" business expenses such as investment marketing brochures, architectural drawings, and escrow deposits. But the mere existence of such expenditures did not make Jones's investment vehicles legitimate. *See id.* at 158 (finding that Jones was not actually trying in good faith to purchase the

resort he marketed to investors and instead was "engaged in repeated financial tricks"). We therefore cannot say that the district court clearly erred or abused its discretion in concluding that Jones's four investment vehicles were entirely fraudulent notwithstanding these expenses.

Jones next argues that the district court's loss determination was erroneous because the government did not present direct evidence that every investor in the four "thoroughly fraudulent" schemes actually received one of the fraudulent misrepresentations, *i.e.*, one of the "false bank statements," "forged leases," "carefully altered real estate contracts," "expertly crafted but fraudulent investor brochures," or "doctored fake e-mails from purported employees who in fact were not employees" used by Jones to execute his fraud. App'x at 161; *see* Reply Br. at 8. Jones cites our decision in *United States v. Stanley* for the proposition that the "correct calculation of loss in a fraud case includes only investors who actually received fraudulent misrepresentations" and contends that the district court must have "record evidence to support [its] finding that every victim included in the loss calculation had actually been defrauded by the defendant." Reply Br. at 8 (citing *United States v. Stanley*, 12 F.3d 17, 21 (2d Cir. 1993)). But the district court here had just such record evidence. It expressly found that the "overwhelming

circumstantial evidence" established that the four investment vehicles were "thoroughly fraudulent," a conclusion that in turn allowed the district court to find, by a preponderance of the evidence, that every investor in those four fraudulent schemes had been defrauded. App'x at 159.

Stanley, which involved a coverup of unexpected losses in entirely legitimate trust accounts, does not require a different conclusion. Only certain clients were deceived through the doctored account statements at issue in *Stanley*, so we held that "only the loss attributable to those customers may be considered for purposes of determining actual loss." *Stanley*, 12 F.3d at 21. Here, by contrast, the district court concluded that Jones's four investment vehicles were "pervaded by fraud" and that therefore "the entire flow of funds into those businesses [is] the measure of the loss."[2] App'x at 157, 159. The district court had no need to confirm which brochure or manipulated bank statement each

[2] Jones suggests in a footnote that if the case were to be remanded for further fact-finding as to loss amount, such factfinding might give him an opportunity to raise numerous issues, including: whether venue is appropriate, whether there were ten or more victims, whether Jones used "special skills" and "sophisticated means" in his fraud, as well as whether his fraud was a single, continuous scheme, and, if not, whether a portion of the loss amount in his restitution order was barred by the applicable statute of limitations. Jones Br. at 42–43 n.10. We do not treat Jones's cursory footnote as raising or preserving any of these arguments. *See United States v. Restrepo*, 986 F.2d 1462, 1463 (2d Cir. 1993).

investor received – the fact that a person contributed funds to one of Jones's four schemes was conclusive of loss as to that person.

Our review of the evidence does not leave us "with the definite and firm conviction" that the district court's conclusion was mistaken. *Cramer*, 777 F.3d at 601 (internal quotation marks omitted). And since Jones's sole argument on appeal with respect to restitution is that the overall loss calculation – but not any of the district court's deductions – was erroneous, we conclude that the district court did not abuse its discretion in calculating restitution. Accordingly, we affirm the district court's loss determination for purposes of both Jones's Guidelines calculation and his restitution amount.

III. Jones's ineffective assistance of counsel claim fails.

Jones contends – as he did in his motion to withdraw his guilty plea – that his counsel provided "erroneous legal advice that [he] would be entitled to a *Fatico* hearing on loss amount if he pleaded guilty to the fraud." Jones Br. at 52. Absent this purported promise of a *Fatico* hearing, Jones claims he would not have pleaded guilty. *See id.* at 49; Reply Br. at 24.

When a defendant brings an ineffective assistance claim on direct appeal, we may "(1) decline to hear the claim, permitting the [defendant] to raise the issue

as part of a subsequent petition for writ of habeas corpus; (2) remand the claim to the district court for necessary factfinding; or (3) decide the claim on the record before us." *United States v. Overton*, 24 F.4th 870, 880 (2d Cir. 2022) (alterations and internal quotation marks omitted). "[I]n most cases a motion brought under § 2255 is preferable to direct appeal for deciding claims of ineffective assistance," since "a trial record [is] not developed precisely for the object of litigating or preserving" such claims. *Massaro v. United States*, 538 U.S. 500, 504–05 (2003). However, in a case where "the defendant has new counsel on appeal and he argues no ground that is not fully developed in the record," there is "no reason [for our Court] to defer consideration of the claim." *United States v. Finley*, 245 F.3d 199, 204 (2d Cir. 2001). Given the facts of this appeal, we will decide Jones's claim on the record before us.

A challenge to a guilty plea based on ineffective assistance of counsel is governed by the two-part *Strickland v. Washington* test. *See Hill v. Lockhart*, 474 U.S. 52, 58 (1985). Under that test, a defendant must (1) "show that his counsel's representation fell below an objective standard of reasonableness" and (2) demonstrate "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."

United States v. Freeman, 17 F.4th 255, 265–66 (2d Cir. 2021) (alterations and internal quotation marks omitted). "[T]he burden to show that counsel's performance was deficient rests squarely on the defendant." *Burt v. Titlow*, 571 U.S. 12, 22–23 (2013) (internal quotation marks omitted). There is a "strong presumption that counsel's conduct fell within the wide range of reasonable professional assistance," and an "absence of evidence" obviously cannot overcome that presumption. *Id.* at 23 (alterations and internal quotation marks omitted).

Jones's assertion that "[he] was led to believe by [his former counsel] that he would have *the right* to a *Fatico* hearing even if he pleaded guilty," Reply Br. at 24 n.6 (emphasis added), is contradicted by the record. In his 2023 sentencing letter to the district court, Jones stated that he "was informed and believed based upon the guidance I received from my counsel at Federal Defenders that . . . an evidentiary hearing would be available, as a matter of right *or at least as a matter of course*, to resolve questions concerning the scope and scale of alleged misconduct and whatever financial losses may have been proximately caused by same." Dist. Ct. Doc. No. 189-1 at 3–4 (emphasis added). In a January 2022 declaration in Jones's family court proceeding, Jones's former counsel stated that "the entire loss schedule [for Jones's wire fraud conviction] remains contested and will

presumably be the subject of a 'Fatico' hearing in the context of sentencing." Dist. Ct. Doc. No. 187-2 at 2. Neither statement reflected that Jones's former attorney promised him that he would receive such a hearing as a matter of *right*. Indeed, counsel's use of the word "presumably" suggests just the opposite – that while a *Fatico* hearing was a possibility, it was far from guaranteed.

Moreover, Jones's statement reflects his awareness that a *Fatico* hearing would be warranted only "to resolve questions concerning the scope and scale of alleged misconduct and whatever financial losses may have been proximately caused by same." Dist. Ct. Doc. No. 189-1 at 3–4. Obviously, the determination as to whether such a hearing would be warranted was for the judge – not Jones or his counsel – to make. The district court's ultimate denial of Jones's request for a *Fatico* hearing – based on the court's "determin[ation] that a *Fatico* hearing is not required to adjudicate the Defendant's objections," App'x at 114 – was perfectly consistent with the representations made by his former counsel prior to his guilty plea.

Based on the record evidence, Jones has not overcome the "strong presumption" that his "counsel's conduct fell within the wide range of reasonable professional assistance." *Burt*, 571 U.S. at 23 (alterations and internal quotation

marks omitted). Nor has he shown that he was prejudiced by his counsel's statements, since he could not have reasonably believed that he was entitled to a *Fatico* hearing even if the district court determined that such a hearing was not necessary. *See United States v. Prescott*, 920 F.2d 139, 144 (2d Cir. 1990) (noting that "procedure followed in resolving disputed factors at sentencing rests in the district court's sound discretion," and "court is under no duty to conduct a full-blown evidentiary hearing").[3]

IV. We affirm as modified the district court's judgment to correct the forfeiture amount stated therein.

Shortly after the district court entered its judgment, the government filed a motion pursuant to Federal Rule of Criminal Procedure 36 to correct the judgment, since the forfeiture amount listed therein was overstated by $55,000. *See* App'x at 240. When Jones made clear in his response to the government's motion that he planned to raise numerous substantive objections regarding the forfeiture amount, the government withdrew its motion, since Jones had expanded it beyond the "clerical" correction authorized by Rule 36. *Id.* at 242. On appeal, Jones now

[3] In his reply brief, Jones expressly disavows the other ineffective-assistance argument he presented to the district court, which was that his former counsel's performance was deficient because he failed to *request* a *Fatico* hearing. *See* Reply Br. at 25. Of course, Jones did ultimately request such a hearing, which the district court denied.

raises the $55,000 error as a single issue. The government agrees, as it did in its Rule 36 motion, that the forfeiture amount stated in the judgment should be reduced by $55,000 to $8,624,787.66.[4]

"[W]e have long recognized the power to modify judgments to conform with the district court's authority and to affirm them as modified, as may be just under the circumstances." *United States v. Adams*, 955 F.3d 238, 250 (2d Cir. 2020) (internal quotation marks omitted). Since we agree with the parties that the forfeiture amount stated in the district court's judgment should be $8,624,787.66, we exercise our authority to affirm the judgment as so modified.

V. Jones is free to seek a reduction in sentence under 18 U.S.C. § 3582(c)(2).

Finally, Jones points out that, while this appeal was pending, the Sentencing Commission adopted Amendment 821 to the Sentencing Guidelines, which he contends would have reduced his sentencing range due to his status as a zero-point offender. *See* U.S.S.G. § 4C1.1. Accordingly, Jones asks us to vacate his sentence so that the district court can resentence him under the new Guidelines.

[4] The restitution order, entered after the $55,000 overstatement had been raised to the district court, does not contain the same error. *See* Dist. Ct. Doc. Nos. 195, 199.

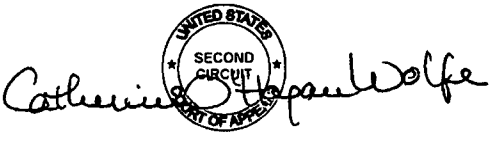
It is well-established that "we may not, in the first instance, apply post-sentence amendments that embody a substantive change to the Guidelines." *United States v. Jesurum*, 819 F.3d 667, 672 (2d Cir. 2016) (internal quotation marks omitted). Changes to the way the Guidelines are calculated are typically deemed substantive. *See United States v. Major*, No. 23-6166, 2024 WL 1404577, at *3 (2d Cir. Apr. 2, 2024) (collecting cases). It is "readily apparent" that Amendment 821's creation of a new reduction for zero-point offenders "effects a substantive change to the Guidelines and does not merely clarify the Guidelines' application." *Jesurum*, 819 F.3d at 672–73; *cf. United States v. Guerrero*, 863 F.2d 245, 250 (2d Cir. 1988) (applying Guidelines amendment because it "only clarif[ied] a meaning that was fairly to be drawn from the original version"). Because we "may not apply [a substantive change] when assessing whether the district court erred in its application" of the Guidelines, we have no grounds to vacate Jones's sentence. *Jesurum*, 819 F.3d at 673. Nonetheless, Jones remains free to seek a reduction of his term of imprisonment pursuant to 18 U.S.C. § 3582(c)(2), which allows a district court, after considering the section 3553(a) factors, to reduce the term of imprisonment of a defendant who has been sentenced "based on a sentencing

range that has subsequently been lowered by the Sentencing Commission." 18 U.S.C. § 3582(c)(2).

* * *

We have considered Jones's remaining arguments and find them to be without merit. Accordingly, we **AFFIRM AS MODIFIED** the judgment of the district court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



APPENDIX B

AO 245B (Rev. 09/19) Judgment in a Criminal Case Sheet 1 (form modified within District on Sept. 30, 2019)

UNITED STATES DISTRICT COURT

Southern District of New York

UNITED STATES OF AMERICA
v.
DEREK JONES

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:21CR00059-01 (LAP)

USM Number: 29399-509

Louis Fasulo
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) One

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☐ was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18USC1343 and 2	Wire Fraud	12/31/2019	One

The defendant is sentenced as provided in pages 2 through 8 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) Any Open ☐ 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.

1/17/2023
Date of I

Loretta A. Preska
Signature of Judge

Loretta A. Preska, Senior U.S.D.J.
Name and Title of Judge

1/18/2023
Date

DEFENDANT: DEREK JONES
CASE NUMBER: 1:21CR00059-01 (LAP)

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
66 MONTHS

☑ The court makes the following recommendations to the Bureau of Prisons:
That the defendant be designated to the Lompac Facility in California.

☐ 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 **60 DAYS**.

☐ 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: DEREK JONES
CASE NUMBER: 1:21CR00059-01 (LAP)

ADDITIONAL IMPRISONMENT TERMS

While serving the term of imprisonment, you shall make installment payments toward your restitution obligation and may do so through the bureau of Prisons' (BOP) Inmate Financial Responsibility Plan (IFRP). Pursuant to BOP policy, the BOP may establish a payment plan by evaluating your six-month deposit history and subtracting an amount determined by the BOP to be used to maintain contact with family and friends. The remaining balance may be used to determine a repayment schedule. BOP staff shall help you develop a financial plan and shall monitor the inmate's progress in meeting your restitution obligation.

DEFENDANT: DEREK JONES
CASE NUMBER: 1:21CR00059-01 (LAP)

SUPERVISED RELEASE

Upon release from imprisonment, you will 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.
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 the location where 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 other conditions on the attached page.

DEFENDANT: DEREK JONES
CASE NUMBER: 1:21CR00059-01 (LAP)

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. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

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

Defendant's Signature _____ Date _____

DEFENDANT: DEREK JONES
CASE NUMBER: 1:21CR00059-01 (LAP)

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall submit his person, and any property, residence, vehicle, papers, computer, other electronic communication, data storage devices, cloud storage or media, and effects, to a search by any united States Probation Officer, and if needed, with the assistance of any law enforcement. The search is to be conducted where there is reasonable suspicion concerning violation of of a condition of supervision or unlawful conduct by the person being supervised. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. Any search shall be conducted at a reasonable time and in a reasonable manner.

2. The defendant must provide the probation officer with access to any requested financial information.

3. The defendant must not incur new credit charges or open additional lines of credit without the approval of the probation officer unless the defendant is in compliance with the installment payment schedule.

The defendant is to report to the nearest Probation Office within 72 hours of release from custody.

The defendant shall be supervised by the district of residence.

DEFENDANT: DEREK JONES
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CRIMINAL MONETARY PENALTIES

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

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

☑ The determination of restitution is deferred until 6 WEEKS. An *Amended Judgment in a Criminal Case (AO 245C)* 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.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ 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:

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

☐ the interest requirement for the ☐ fine ☐ 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.

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SCHEDULE OF PAYMENTS

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

A ☑ Lump sum payment of $ 100.00 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:
The defendant must make payments at a rate of no less than 20% of his gross monthly income. Payments shall begin 30 days after the release from custody. Payments shall be made to the Clerk of the Court, Southern District of New York, 500 Pearl Street, New York, NY 10007. From time to time, the Clerk of the Court shall make proportionate payments to the victims.

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

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

☐ Joint and Several

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount	Joint and Several Amount	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:
$8,679,787.66

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

APPENDIX C

UNITED STATES COURT OF APPEALS
for the
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 4th day of September, two thousand twenty-four,

Present: Dennis Jacobs,
Robert D. Sack,
Richard J. Sullivan,
Circuit Judges,

United States of America,

Appellee,

v.

Derek Jones,

Defendant - Appellant.

ORDER
Docket No. 23-6113, 23-6220

Derek Jones having filed a petition for panel rehearing and the panel that determined the appeal having considered the request,

IT IS HEREBY ORDERED that the petition is DENIED.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court