No. 25-_____

SUPREME COURT OF THE UNITED STATES

CARLOS RAY KIDD,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION APPENDIX

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Appendix A

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
February 11, 2025
Lyle W. Cayce
Clerk

No. 23-11265

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CARLOS RAY KIDD,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:05-CR-117-1

Before CLEMENT, OLDHAM, and WILSON, *Circuit Judges*.

CORY T. WILSON, *Circuit Judge*:

After being convicted in federal court in 2007 for sending threatening communications, Carlos Ray Kidd was sentenced to 60 months' imprisonment. On appeal, this court remanded for resentencing because the district court had miscalculated the Sentencing Guidelines range. But the resentencing hearing did not take place, and neither the Government nor Kidd's counsel alerted the district court to the oversight. Instead, Kidd continued to serve unrelated state sentences under the mistaken impression that his 2007 federal sentence remained valid. It was not until 2023, after

Kidd's attorney discovered the lapse, that the resentencing hearing belatedly occurred.

Kidd now appeals the district court's 2023 sentence, asserting that the sixteen-year delay in resentencing was a violation of his due process rights and contending that the district court erred in imposing his new sentence. We affirm.

I.

In 2005, while serving a 10-year state sentence in Texas for aggravated assault and burglary, Carlos Ray Kidd mailed two threatening letters: one to a federal district judge in Lubbock, Texas, threatening to kill him, and another to the district court clerk's office in Lubbock, threatening to burn down the courthouse and kill several court personnel. Kidd was subsequently indicted by a federal grand jury in Lubbock for two counts of mailing threatening communications in violation of 18 U.S.C. § 876(c), and one count of threatening to damage by fire in violation of 18 U.S.C. § 844(e). In January 2007, Kidd pled guilty to one count of mailing a threatening communication.

The initial presentence report (PSR) recommended awarding Kidd a three-level reduction in offense level for acceptance of responsibility. *See* U.S.S.G. § 3E1.1 (2003). But the Government objected to the reduction because Kidd had sent additional threatening letters to prosecutors in Wisconsin and Kentucky after pleading guilty. A subsequent addendum to the PSR agreed that Kidd would not qualify for the reduction if Kidd had indeed sent those threatening letters.

In April 2007, the district court sentenced Kidd to 60 months' imprisonment, to run consecutively to the 10-year state sentence that Kidd was already serving. Mistakenly believing that the three-level reduction would make no difference in the resulting Guidelines range, the district court

overruled the Government's objection without engaging its merits and ostensibly awarded the reduction. Despite purporting to grant the reduction, the district court erroneously imposed a sentence that reflected Kidd's original offense level.[1]

Kidd appealed the sentence as procedurally unreasonable. While maintaining that Kidd should not receive the reduction for acceptance of responsibility, the Government conceded that the district court had erred in calculating the Guidelines range and moved to remand for resentencing. In December 2007, this court granted the Government's motion for remand without explanation. *United States v. Kidd*, No. 07-10499 (5th Cir. Nov. 16, 2007) (order granting Government's motion).

But the resentencing hearing did not take place. Instead, Kidd's case was essentially memory-holed while he remained in state prison. The district court never set a resentencing hearing, and neither the Government nor Kidd's defense attorneys pressed the matter.[2] Kidd also seems to have been unaware that his case had been remanded and that he needed to be resentenced.

Further muddling matters were Kidd's subsequent state and federal convictions. In 2008, a Texas court sentenced Kidd to ten years in prison for a 2005 prison escape, to run consecutively to his previous state sentence. And in 2012, Kidd received a five-year state sentence for harassment in a

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[1] A three-level reduction in offense level resulted in a Guidelines range of 41 to 51 months. Without the reduction, and pursuant to a statutory cap, the range would have been 57 to 60 months. The district court erroneously believed the reduction made no difference: Weighing the Government's objection, the court asked, "Well, even if the [c]ourt agreed, the statutory maximum is sixty months, so would that make a difference?" When the Government incorrectly answered "[n]o," the court awarded the reduction, believing "it [was] not crucial to the matter."

[2] Even now, neither party can explain why Kidd's case was forgotten.

correctional facility. Both state sentences were ordered to be served concurrently with his federal sentence—which, unbeknownst to the state courts, had not been reimposed—and set to expire in 2022.

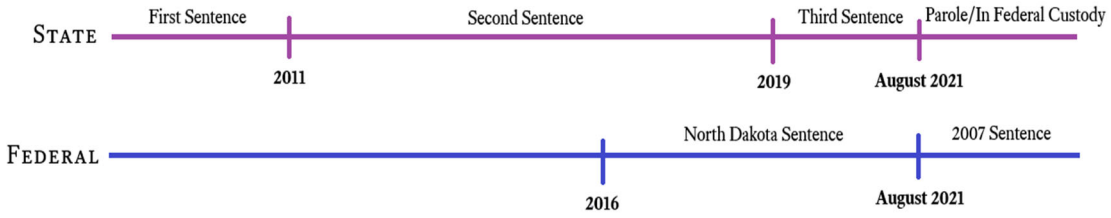
In 2014, Kidd also notched another federal conviction for mailing threatening communications—this time in North Dakota. The district court there sentenced him to 60 months in prison, to run concurrently with his Texas state sentences, but consecutive to the 2007 Texas federal sentence (i.e., for a total of ten years in federal custody). Of course, the North Dakota sentence did not account for the fact that Kidd had never been resentenced for his 2007 federal conviction.

In August 2021, Kidd was released on parole from state custody and entered federal custody. It was only after he began serving federal time—in April 2023, nearly sixteen years after this court's remand for resentencing—that his newly appointed attorney realized Kidd had never been resentenced for his 2007 conviction. Counsel notified the district court, and the court set a September 2023 resentencing hearing. The hearing was continued because Kidd was hospitalized in September due to what he described as a suicide attempt, and because Kidd's attorney and a subsequently appointed attorney both withdrew from representation due to conflicts with Kidd.

The long-delayed resentencing finally took place in December 2023. The district court first denied Kidd's motion to dismiss the underlying charges for denial of due process. While the court expressed astonishment at the unusual procedural history and delay in resentencing, it found that "ultimately, there was no prejudice as a result," because Kidd had been imprisoned all along "serving time in multiple other sentences." The district court then resentenced Kidd to 60 months in prison, to run consecutively to the North Dakota sentence. The court also weighed the merits of Kidd's request for a reduction of offense level for acceptance of responsibility—

correcting the court's original mistake—and denied it. *See* U.S.S.G. § 3E1.1 (2023). Kidd then noticed this appeal, raising both the delay in resentencing and the propriety of the sentence itself.

While this appeal was pending, the North Dakota district court amended its judgment, clarifying and confirming that the North Dakota sentence should run concurrently with Kidd's state sentences. With this clarification, the Federal Bureau of Prisons (BOP) now calculates Kidd's release date to occur in March 2026, very close to the release date BOP calculated prior to resentencing.[3] For the benefit of any (understandably) perplexed reader, the following diagram depicts the interplay between Kidd's federal and state sentences after the most recent clarifications:



II.

This court reviews constitutional questions *de novo*. *United States v. Perez-Macias*, 335 F.3d 421, 425 (5th Cir. 2003). We "review the sentencing court's determination of acceptance of responsibility with even more deference [than] is due under a clearly erroneous standard because the sentencing judge is in a unique position to assess the defendant's acceptance

[3] According to an addendum to the PSR submitted to the district court before the 2023 resentencing, BOP had projected a release date in February 2026 with good time credit. Of course, this was before BOP knew Kidd needed to be resentenced. BOP had determined that the North Dakota sentence would run concurrently with the state sentences, while the 2007 sentence would run consecutively to the state sentences. BOP made additional adjustments to Kidd's sentence calculations while this appeal was pending, but for mercy's sake, we omit those details as they do not bear on our decision.

of responsibility and true remorse." *United States v. Angeles-Mendoza*, 407 F.3d 742, 753 (5th Cir. 2005). This court will affirm "unless the district court's denial of a reduction is 'without foundation.'" *United States v. Lord*, 915 F.3d 1009, 1017 (5th Cir. 2019) (quoting *United States v. Juarez-Duarte*, 513 F.3d 204, 211 (5th Cir. 2008) (per curiam)). The substantive reasonableness of the district court's sentence is reviewed for abuse of discretion. *United States v. Gomez*, 905 F.3d 347, 351 (5th Cir. 2018).

III.

Kidd argues on appeal that (A) the sixteen-year delay between remand and resentencing effected a denial of due process, such that his indictment should be dismissed. In the alternative, he contends (B) that the district court erred by denying a three-level reduction of his offense level for acceptance of responsibility and that the 60-month sentence is substantively unreasonable.

A.

In the past, parties before this court relied on the Sixth Amendment's guarantee of a speedy trial to support their sentencing-delay claims. *See, e.g.*, *United States v. Abou-Kassem*, 78 F.3d 161, 167 (5th Cir. 1996) ("The constitutionally guaranteed right to a speedy trial applies to sentencing."). This was not a universally accepted approach, with at least one other court of appeals concluding "that the Speedy Trial Clause of the Sixth Amendment . . . does not apply to sentencing proceedings." *United States v. Ray*, 578 F.3d 184, 198–99 (2d Cir. 2009). In 2016, the Supreme Court resolved the question in *Betterman v. Montana*, holding that the Speedy Trial Clause "does not apply to delayed sentencing." 578 U.S. 437, 440–41 (2016). Our past precedent to the contrary was thus abrogated by *Betterman*, and it is

now settled that the Sixth Amendment's speedy trial guarantee has no currency in the sentencing context.[4]

Even so, the Supreme Court explained that "due process serves as a backstop against exorbitant delay . . . [and] [a]fter conviction, a defendant's due process right to liberty, while diminished, is still present." *Id.* at 448. By virtue of the Due Process Clauses of the Fifth and Fourteenth Amendments, defendants retain an interest in "fundamentally fair" sentencing proceedings. *Id.* But because the petitioner in *Betterman* did not advance a due process claim, the Court declined to answer how such a claim should be analyzed. *Id.* And this court has likewise not yet articulated a framework for analyzing sentencing delays under the Due Process Clause since *Betterman*.

Kidd asks us to apply the same balancing test that the Supreme Court articulated for speedy-trial claims in *Barker v. Wingo*. 407 U.S. 514, 530 (1972). That test considers four factors: "Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." *Id.* Before *Betterman*, this court used the *Barker* factors when analyzing sentencing-delay claims under the Sixth Amendment, *see, e.g.*, *Abou-Kassem*, 78 F.3d at 167, but many of the concerns related to a delayed trial do not arise in the sentencing-delay context. For example, harms caused by an "unreasonable delay between formal accusation and trial" include "oppressive pretrial incarceration, anxiety and concern of the accused, and the possibility that the accused's defense will be impaired by dimming memories and loss of exculpatory evidence." *Doggett v. United States*, 505 U.S. 647, 654 (1992) (cleaned up) (citing *Barker*, 407 U.S. at 532). But

[4] Kidd initially moved to dismiss for violation of his constitutional right to a speedy trial. When the Government correctly pointed out that *Betterman* foreclosed Kidd's Sixth Amendment argument, Kidd instead asked that the district court assess the delay under the Fifth Amendment's Due Process Clause.

between conviction and sentencing, "[t]here exists . . . no concern over oppressive incarceration before trial, anxiety over public accusation before trial, or any impairment [of] the petitioner's ability to defend himself." *Ray*, 578 F.3d at 197 (internal quotation marks omitted) (citing *Brooks v. United States*, 423 F.2d 1149, 1152–53 (8th Cir. 1970)).

Betterman itself provides some direction. While declining to prejudge how a sentencing-delay claim might fare couched as a due process claim, the Supreme Court suggested that "[r]elevant considerations may include the length of and reasons for delay, the defendant's diligence in requesting expeditious sentencing, and prejudice." 578 U.S. at 448 n.12. These considerations are not dissimilar from those that some courts of appeals had utilized pre-*Betterman* based on *United States v. Lovasco*, in which the Supreme Court examined undue delay before indictment as a due process claim. 431 U.S. 783, 790 (1977); *see, e.g.*, *Ray*, 578 F.3d at 199; *United States v. Sanders*, 452 F.3d 572, 580 (6th Cir. 2006). Those courts crafted a two-step test, weighing: (1) reasons for the delay and (2) prejudice to the accused. *See Ray*, 578 F.3d at 199.

Though *Barker*, *Betterman*, and cases like *Ray* articulate a similar set of considerations, we follow the Supreme Court's guidance in *Betterman* and analyze Kidd's due process claim under the Court's three suggested considerations: (1) "length of and reasons for delay," (2) "the defendant's diligence in requesting expeditious sentencing," and (3) "prejudice." 578 U.S. at 448 n.12. These factors best capture the concerns that arise in the context of sentencing delay. By the same token, though this test facially resembles the *Barker* factors, *see* 407 U.S. at 530 ("[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice"), analyzing a sentencing-delay claim through the lens of due process differs from a Sixth Amendment inquiry.

The most crucial difference is that "proof of prejudice is generally a necessary but not sufficient element of a due process claim." *Lovasco*, 431 U.S. at 790. And "[t]he law is well settled that it is actual prejudice, not possible or presumed prejudice, which is required to support a due process claim." *United States v. Beszborn*, 21 F.3d 62, 66 (5th Cir. 1994); *cf. Adams v. City of Harahan*, 95 F.4th 908, 913 (5th Cir.) ("The Fourteenth Amendment's Due Process Clause protects against deprivations of life, liberty, or property; and those who seek to invoke its procedural protection must establish that one of these interests is at stake." (quoting *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005))), *cert. denied*, No. 24-102, 2024 WL 4427225 (U.S. Oct. 7, 2024) (mem.). On the other hand, a defendant's showing of prejudice does not automatically establish a due process violation. "[T]he due process inquiry must consider the reasons for the delay as well as the prejudice to the accused." *Lovasco*, 431 U.S. at 790.

Mindful of these principles, we address Kidd's due process claim under *Betterman*'s suggested test.

1.

We start with the length of and reason for the delay. Of course, "[t]he court must impose sentence without unnecessary delay." FED. R. CRIM. P. 32(b)(1). And the length of the delay here—sixteen years—is egregious. But an inordinate delay in itself cannot show a due process violation. *See Ray*, 578 F.3d at 201 ("The delay of fifteen years between our order remanding this case for resentencing and the time when [the defendant] was resentenced is, without doubt, extraordinary—[but] that does not alone mandate [vacatur of the sentence]."); *cf. Barker*, 407 U.S. at 523 (refusing to hold that the defendant must be tried within a "specified time period").

As for the reason for the delay, there is plenty of blame to go around. The Government failed to notify the district court of the need promptly to

schedule a resentencing hearing. Kidd's lawyers also failed to request a hearing, and "[t]o the extent [Kidd] seeks . . . to have [his] conviction vacated and the indictment dismissed, [his] failure, or [his] attorney's failure, to seek more prompt sentencing weighs heavily against [him]." *Ray*, 578 F.3d at 200 (citing *Vermont v. Brillon*, 556 U.S. 81, 90–91 (2009)). Regardless, the district court too remained unaware of the lapse, even after Kidd asked for "clarification" of his sentence in 2012 and 2021.

Still, "the ultimate responsibility for such circumstances must rest with the [G]overnment rather than with the defendant." *Brillon*, 556 U.S. at 90 (quoting *Barker*, 407 U.S. at 531); *see Ray*, 578 F.3d at 200. Granted, there are mitigating considerations that favor the Government: The delay was not "an intentional measure in order to gain a technical advantage." *United States v. Crouch*, 84 F.3d 1497, 1508 (5th Cir. 1996) (quoting *United States v. Willis*, 583 F.2d 203, 207 (5th Cir. 1978)). Rather, it was due to a "more neutral reason such as negligence . . . [which] should be weighted less heavily." *Barker*, 407 U.S. at 531. And Kidd concedes fault for the delay that occurred in 2023 due to his hospitalization and conflicts with his attorneys—though that interval of a few months is a pittance of the sixteen-year lapse at issue. On balance, this factor weighs in favor of Kidd.

2.

Our weighing of the second factor—the defendant's diligence in requesting expeditious sentencing—is somewhat hindered because Kidd was apparently not aware of the need for resentencing. To his credit, Kidd actively engaged with his federal sentence, asking on several occasions that the district court set his 2007 sentence to run concurrently with his state

sentences.[5] Even then, Kidd's unawareness, ostensibly caused by his lawyers' failure to inform him of this court's initial remand, does not excuse his failure to request a hearing. To the extent this factor weighs against Kidd, we are hesitant to weigh any negligence on the part of Kidd or his lawyers too heavily in this instance.

3.

The third factor, prejudice to the defendant, decisively weighs against Kidd. That is because he cannot plausibly show that he is worse off now than he would have been had he been timely resentenced. This dooms his due process claim. *See Lovasco*, 431 U.S. at 790; *Beszborn*, 21 F.3d at 66.

First, as the district court found, the resentencing delay did not result in any "dead time," a typical result of a lengthy pretrial incarceration. *See Barker*, 407 U.S. at 532–33 ("The time spent in jail [during pretrial incarceration] is simply dead time."). Kidd thus suffered no loss in liberty. He was in state custody for unrelated state sentences until 2021. Thereafter, BOP gave Kidd credit for the time he served between his transfer to federal custody in 2021 and the December 2023 resentencing hearing. And during the resentencing hearing, the district judge even stated he would have granted Kidd additional credit "had there been dead time present here[,] . . . [but] [t]here wasn't." Kidd therefore never served any uncredited "dead time" due to the delay, long as it was.

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[5] In 2012, when his first state sentence expired, Kidd moved to be transferred to federal custody to serve his federal sentence. The district court construed Kidd's motion as a request for relief under 28 U.S.C. § 2241 and denied his motion. In 2021, Kidd again sought "Sentencing Clarification and Special Consideration," asking for the 2007 federal sentence to run concurrently with his ongoing state sentence. The district court construed that request as a motion for compassionate release and denied it.

Second, Kidd likely did not receive a longer federal sentence because of the delay. In 2007, he was initially sentenced to 60 months. In 2023, the district court resentenced him to 60 months. If there had been a timely resentencing hearing, it seems apparent that Kidd would not have received a shorter sentence. As discussed, the district court awarded an offense level reduction for acceptance of responsibility during Kidd's initial sentencing, under the mistaken impression that the reduction made no difference in the Guidelines range. This court remanded for the district court to rectify that error. Had the district court engaged with the merits of the Government's objection to the offense level reduction, it likely would not have awarded the reduction. *See infra* III.B.1. Instead, it is more likely that the district court, which had initially sentenced Kidd to the statutory maximum, would have adhered to that sentence after remand—just as the district court did, after denying any reduction in offense level, in 2023.

Third, Kidd retained the incentive to challenge his sentence. A defendant may lack such incentive if he has already served his sentence. *See United States v. Washington*, 626 F. App'x 485, 488 (5th Cir. 2015) (per curiam), *as revised* (Feb. 1, 2016) ("[A]t the time of re-sentencing, [the defendant] already had served his entire forty-six-month sentence . . . . The delay in this case thus . . . deprived [the defendant] of any incentive to offer arguments in support of a lesser term of incarceration . . . ."). Because Kidd had only served a portion of the 2007 federal sentence, he did not suffer the kind of prejudice that this court observed in *Washington*. The district court was also fully able to consider Kidd's acceptance-of-responsibility argument despite the delay. And the district court had the chance to decide whether the newly imposed federal sentence would run consecutively or concurrently with Kidd's state sentences, determining that it would run consecutively. Thus, Kidd had the same opportunity to litigate his new sentence that he would have had if there had been a timely resentencing hearing.

Kidd asserts that he suffered great anxiety due to the uncertainty regarding the 2007 sentence. But the resentencing delay could not have been the source of any anxiety because Kidd was unaware that he even needed to be resentenced until April 2023. And given the number of prison sentences that Kidd accumulated, it is unlikely that the 2007 federal sentence specifically caused Kidd anxiety during his incarceration.

Distilled down, despite the egregiousness of the sixteen-year delay, and affording the benefit of the doubt as to his diligence in requesting sentencing modifications, Kidd's due process claim fails because he is unable to show "actual prejudice, . . . which is required to support a due process claim." *Beszborn*, 21 F.3d at 66.

B.

Because we conclude Kidd has suffered no cognizable due process injury, we address his alternative challenges to his sentence, namely that the district court: (1) should have awarded an offense level reduction for acceptance of responsibility and (2) neglected to weigh relevant considerations when it resentenced him to 60 months. Both arguments fail.

1.

The district court initially granted the acceptance-of-responsibility reduction under U.S.S.G. § 3E1.1, but the court denied it at the resentencing hearing. "[O]nce an issue is remanded for resentencing, all new matter relevant to that issue appealed, reversed, and remanded, may be taken into consideration by the resentencing court." *United States v. Carales-Villalta*, 617 F.3d 342, 345 (5th Cir. 2010) (quoting *United States v. Marmolejo*, 139 F.3d 528, 530 (5th Cir. 1998)). Appealing his new sentence, Kidd must show that the district court's denial of a reduction for acceptance of responsibility was "without foundation," an even more deferential standard than our usual review for clear error. *Lord*, 915 F.3d at 1017.

Kidd argues that he clearly demonstrated acceptance of responsibility by entering a guilty plea, admitting to the offense conduct, and admitting all relevant conduct for which he was accountable. But he fails to show that the district court's denial of an offense level reduction was without foundation.

When the district court awarded the reduction in 2007, over the Government's objection and despite an addendum to the PSR recommending denial, the court did so largely based on its mistaken assumption that the reduction would not make a difference in the Guidelines range. On remand, the district court weighed the merits of the issue, considering Kidd's arguments and the Government's objection to the reduction, and it denied relief. In particular, the court considered the fact that Kidd mailed threatening letters to prosecutors in Wisconsin and Kentucky in March 2007—after pleading guilty in this case. In doing so, the district court faithfully followed the 2023 Sentencing Guidelines, which includes "voluntary termination or withdrawal from criminal conduct or associations" as an appropriate consideration in determining whether a defendant qualifies for the reduction. U.S.S.G. § 3E1.1 cmt. n.1. Because Kidd plainly did not cease the criminal conduct at issue (sending threatening mails) after he pled guilty, the district court did not err in denying the offense level reduction.

2.

Likewise, the district court did not abuse its discretion in weighing the relevant factors to resentence Kidd to 60 months in prison. *See* U.S.S.G. § 1B1.4 (2023) ("In determining the sentence to impose within the [G]uideline range . . . the court may consider, without limitation, any information concerning the background, character and conduct of the defendant . . . ."). "[C]ourts of appeals must review all sentences—whether inside, just outside, or significantly outside the Guidelines range—under a

deferential abuse-of-discretion standard." *Gall v. United States*, 552 U.S. 38, 41 (2007). And this court "presume[s] sentences within or below the calculated [G]uidelines range are reasonable." *United States v. Simpson*, 796 F.3d 548, 557 (5th Cir. 2015). Kidd's 60-month sentence on remand was within the properly calculated Guidelines range—51 to 60 months. It is therefore presumptively reasonable.

To rebut the presumption of reasonableness, Kidd must show that the sentence "(1) does not account for a factor that should have received significant weight, (2) gives significant weight to an irrelevant or improper factor, or (3) represents a clear error of judgment in balancing the sentencing factors." *Simpson*, 796 F.3d at 558 (quoting *United States v. Warren*, 720 F.3d 321, 332 (5th Cir. 2013)). Further, "[i]f the sentencing judge exercises her discretion to impose a sentence within a properly calculated Guideline range . . . we will infer that the judge has considered all the factors for a fair sentence set forth in the Guidelines." *United States v. Alvarado*, 691 F.3d 592, 596 (5th Cir. 2012) (quoting *United States v. Alonzo*, 435 F.3d 551, 554 (5th Cir. 2006)).

Kidd contends that the district court did not give enough weight to the trauma he endured while imprisoned leading up to the 2005 offense of conviction. Kidd explains that he did not send the threatening letters at issue as a "get out of jail free card." Rather, he maintains his crime was an act of desperation resulting from the brutal rape and abuse he allegedly endured at the hands of a prison guard and another inmate. He avers that he thought that writing a threatening letter to a federal judge would get him transferred to federal custody, where he believed he would be safer. The transcript from the resentencing hearing, however, clearly shows that the district court took into account the mitigating factors Kidd proffered.

Kidd also argues that the district court did not consider the amount of time that elapsed between the 2007 offense and the 2023 sentence. Because his mailing of threatening communications occurred more than 20 years ago, Kidd contends, a 60-month sentence is far longer than necessary to provide just punishment for the offense and to protect the public. But since his 2007 conviction, Kidd has accrued additional state and federal sentences. And during his incarceration, Kidd also exhibited numerous behavioral problems, including "self-mutilation, two instances of inappropriate sexual conduct, refusing to work, mail abuse, and assaulting a cellmate." "[W]hen a defendant's sentence is set aside on appeal, the district court at resentencing can (and in many cases, must) consider the defendant's conduct and changes in the Federal Sentencing Guidelines since the original sentencing." *Concepcion v. United States*, 597 U.S. 481, 486 (2022). Kidd fails to show that the district court did not properly consider relevant factors when it resentenced Kidd to 60 months—the same length as Kidd's original sentence. In short, we discern no abuse of discretion in the district court's new sentence.

IV.

Courts have an obligation promptly to sentence those who have been convicted. *See* FED. R. CRIM. P. 32(b)(1). Here, a man's fate—his liberty—was in limbo for sixteen years because his case fell through the cracks after remand from this court. As we have said, that delay was egregious. But the sixteen-year delay in Kidd's resentencing, given the facts of this case, did not violate his due process rights because he suffered no prejudice as a result of the delay. Otherwise, the new 60-month sentence imposed by the district court was properly calculated and is substantively reasonable. The district court's judgment is accordingly

AFFIRMED.

Appendix B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS LUBBOCK DIVISION

UNITED STATES OF AMERICA

v.

CARLOS RAY KIDD

§ **JUDGMENT IN A CRIMINAL CASE**
§ **RESENTENCING**
§
§ Case Number: **5:05-CR-00117-H(1)**
§ USM Number: **34211-177**
§ **Michael King**
§ Defendant's Attorney

THE DEFENDANT:

☒	pleaded guilty to count(s)	**2 of the indictment filed December 7, 2005.**
☐	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
☐	pleaded nolo contendere to count(s) which was accepted by the court	
☐	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense	**Offense Ended**	**Count**
18 U.S.C. § 876(c) - MAILING THREATENING COMMUNICATIONS	06/21/2005	2

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)

☒ Remaining count(s) 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.

December 19, 2023
Date of Imposition of Judgment

Signature of Judge

James Wesley Hendrix
United States District Judge
Name and Title of Judge

December 19, 2023
Date

DEFENDANT: CARLOS RAY KIDD
CASE NUMBER: 5:05-CR-00117-H(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:

60 months as to count 2. This sentence shall run consecutively to any sentence which was imposed in the Case No. 1:12-CR-190 in the U.S. District Court for the District of North Dakota.

☒ The court makes the following recommendations to the Bureau of Prisons: Incarceration at USP Coleman II, Sumterville, FL.

The Court recommends that, while incarcerated, the defendant receive appropriate mental-health treatment, but the Court did not lengthen the defendant's prison term to promote rehabilitation. *See Tapia v. United States*, 564 U.S. 319 (2011).

☒ 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: CARLOS RAY KIDD
CASE NUMBER: 5:05-CR-00117-H(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **Two (2) years.**

MANDATORY CONDITIONS

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

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

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STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

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

Defendant's Signature _____ Date _____

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SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall participate in outpatient mental health treatment services as directed by the probation officer until successfully discharged. These services may include medications prescribed by a licensed physician. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least $20.00 per month.

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CRIMINAL MONETARY PENALTIES

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

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

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

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

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

☐ Restitution amount ordered pursuant to plea agreement $

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

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

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

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

* 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 payments of $ _____ due immediately, balance due

☐ not later than , or

☐ in accordance ☐ 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 20 *(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:

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

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

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

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

☐ The defendant shall 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) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.