

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

STEVEN DOUGLAS ROCKETT,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

*On Petition For A Writ Of Certiorari
To United States Court of Appeals For The Ninth Circuit*

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Did the district court err in concluding that petitioner received effective assistance of counsel under the Sixth Amendment when petitioner's trial counsel failed to move to dismiss count 1 of his indictment as being vague and duplicitous?

LIST OF PARTIES

Petitioner is Steven Douglas Rockett, defendant-appellant below. Respondent is the United States of America, plaintiff-appellee below. All parties appear in the caption of the case on the cover page.

RELATED CASES

United States District Court (D. Oregon)

United States of America v. Steven Douglas Rockett, No. 3:13-CR-00557-SI
(D. Oregon, Sept. 13, 2016) (Judgment of conviction)

United States Court of Appeals for the Ninth Circuit

United States of America v. Steven Douglas Rockett, Nos. 16-30213, 17-30167
(C. A. 9, Nov. 5, 2018) (Memorandum disposition affirming judgment of conviction)

United States Supreme Court

United States of America v. Steven Douglas Rockett, No. 18-9411
(S. Ct., Nov. 4, 2019) (Order denying petition for writ of certiorari)

United States District Court (D. Oregon)

United States of America v. Steven Douglas Rockett, No. 3:19-CV-02089-SI
(D. Oregon, March 21, 2023) (Opinion and order denying second amended motion under 28 U.S.C. §2255 to vacate, set aside, or correct sentence)

United States Court of Appeals for the Ninth Circuit

United States of America v. Steven Douglas Rockett, No. 23-35225
(C.A. 9, Feb. 6, 2025) (Memorandum disposition denying appeal of second amended motion under 28 U.S.C. §2255 to vacate, set aside, or correct sentence)

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*On Petition For A Writ Of Certiorari
To The United States Court of Appeals For The Ninth Circuit*

PETITION FOR A WRIT OF CERTIORARI

Steven Douglas Rockett respectfully petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Ninth Circuit denying his petition for post-conviction relief pursuant to 28 U.S.C. §2255.

OPINIONS BELOW

The Ninth Circuit's order denying petitioner's appeal of his motion under 28 U.S.C. §2255 to vacate, set aside, or correct sentence and the judgment and opinion and order of the District Court denying petitioner's habeas corpus petition are unpublished. The Ninth Circuit's order is attached to this petition at Appendix 1a. The District Court's habeas opinion is attached at Appendix 5a and its trial

judgment is attached at Appendix 22a. Petitioner's second superseding indictment is attached at Appendix 29a.

JURISDICTION

A Ninth Circuit panel entered the order dismissing petitioner's appeal of his motion under 28 U.S.C. §2255 to vacate, set aside, or correct sentence on February 6, 2025. App. 1a. This court has jurisdiction under 28 U.S.C. §1254(1), which grants it authority to review decisions of the United States Courts of Appeal by certiorari.

LEGAL PROVISIONS INVOLVED

U.S. Const. Amend. VI:

In all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defence.

STATEMENT OF THE CASE

Petitioner was investigated and arrested for alleged instances of child sexual abuse committed both in America and in the Philippines, including the production and possession of child pornography and engaging in illicit sexual conduct in foreign places. At his trial, a number of Filipino and American victims testified about petitioner's illegal conduct, including taking photographs of them and performing sex acts on them while they were showering.

The first count of petitioner's second superseding indictment accused him of

producing child pornography at an unspecified place somewhere outside the United States at an unspecified time between January 23, 2000 and January 29, 2013.

Appendix 29a. No victims were named or identified and their ages at the time of the alleged offense were not stated, making the charge impermissibly vague. *Id.* The failure of count 1 to identify named victims also made the charge improperly duplicative. Despite these defects in the indictment, petitioner's trial counsel failed to object to the count or to move to dismiss it. Petitioner's counsel also provided ineffective assistance in a number of other instances, including failing to object to a witness's improper dual-role testimony and failing to object to several instances of prosecutorial misconduct.

These failures all contributed to the jury's eventual verdict, which convicted petitioner on count 1 and on a majority of the other offenses contained in his second superseding indictment. Petitioner was sentenced to a federal prison term of 60 years and a life term of supervised release. He has consistently maintained that he is innocent of the charges against him.

REASONS FOR GRANTING THE PETITION

Petitioner received ineffective assistance of counsel when his attorney failed to move to dismiss or otherwise object to count 1 of his second superseding indictment.

When determining whether a defendant received ineffective assistance from their counsel, the court employs a two-prong analysis first identified in *Strickland*

v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). A defendant or collateral litigant such as a Section 2255 movant must establish that their attorney's performance fell "below an objective standard of reasonableness" and 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. Quintero-Barraza*, 78 F.3d 1344, 1348 (9th Cir. 1995) (quoting *Strickland*, 466 U.S. at 687-88). This assessment is highly deferential to the original trial counsel. To succeed, a litigant must overcome the presumption that "under the circumstances, the challenged action might be considered sound [...] strategy." *Strickland*, 466 U.S. at 689.

A. Petitioner's Due Process Right Was Violated When His Trial Counsel Failed to Object to Vague and Duplicative Language Contained in Count 1 of His Indictment

Appellate courts review the sufficiency of an indictment de novo. *United States v. Normandeau*, 800 F.2d 953, 958 (9th Cir. 1986). A claim of a defective indictment can be raised at any time, but "[c]hallenges [should] be made at the earliest possible moment.... [I]ndictments which are tardily challenged are liberally construed in favor of validity." *United States v. James*, 980 F. 2d 1314 (9th Cir. 1992) (citing *United States v. Pheaster*, 544 F.2d 353, 361 (9th Cir. 1976) and *Inciso v. United States*, 429 U.S. 1099, 97 S. Ct. 1118, 51 L. Ed. 2d 546 (1977)).

An indictment "must be a plain, concise and definite written statement of the essential facts constituting the offense charged." Fed. R. Crim. P. 7(c)(1). "An indictment is sufficient if it (1) contains the elements of the offense charged and

fairly informs a defendant of the charge against him which he must defend and (2) enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense.” *United States v. Lazarenko*, 564 F.3d 1026, 1033 (9th Cir. 2009) (quoting *Hamling v. United States*, 418 U.S. 87, 117, 94 S. Ct. 2887, 41 L. Ed. 2d 590 (1974), see also *Russell v. United States*, 369 U.S. 749, 763-764, 82 S. Ct. 1038, 8 L. Ed. 2d 240 (1962)).

A proper indictment must provide a defendant with sufficient information to “prepare a defense and to be able to ensure that [they were] prosecuted on the basis of facts presented to the grand jury” and to “inform the district court of the facts alleged so that it can determine the sufficiency of the charge.” *United States v. Cecil*, 608 F.2d 1294, 1296 (9th Cir. 1979) (citing *Russell*, 369 U.S. at 763). “An indictment’s complete failure to recite an essential element of the charged offense is not a minor or technical flaw subject to harmless error analysis, but a fatal flaw requiring dismissal of an indictment.” *United States v. Omer*, 395 F.3d 1087, 1088 (9th Cir. 2005) (quoting *United States v. Du Bo*, 186 F.3d 1177, 1179 (9th Cir. 1999)). While the government is not required to lay out its entire case theory or supporting evidence, it must still identify “the essential facts necessary to apprise a defendant of the crime charged.” *United States v. Buckley*, 689 F.2d 893, 897 (9th Cir. 1982).

“To be sufficient, an indictment must state the elements of the offense charged with sufficient clarity to apprise a defendant of the charge against him, primarily so that he can defend himself against the charge and plead double

jeopardy in appropriate cases.” *United States v. Givens*, 767 F.2d 574, 584 (9th Cir. 1985). To determine whether an indictment is sufficient, it must “be read in its entirety” and “construed according to common sense.” *United States v. Drew*, 722 F.2d 551, 552 (9th Cir. 1983), *cert. denied*, 467 U.S. 1216, 104 S. Ct. 2661, 81 L. Ed. 2d 367 (1984) (see also *Hamling*, 418 U.S. at 117-18). When the sufficiency of an indictment is at issue, the primary question is “whether an error or omission in an indictment worked to the prejudice of the accused.” *United States v. Normandeau*, 800 F.2d 953, 958 (9th Cir. 1986).

In petitioner’s case, count 1 of the indictment alleges that, “from on or about January 23, 2000 to on or about July 29, 2013,” petitioner

knowingly and unlawfully employed, used, persuaded, induced, enticed, and coerced minors to engage in sexually explicit conduct outside of the United States, its territories or possessions, for the purpose of producing visual depictions of such conduct and intending such depictions to be transported to the United States by means or facilities of interstate or foreign commerce, and did attempt to do so[.]

Appendix 29a.

The text of count 1 is impermissibly vague because it fails to provide sufficient specific factual information to allow petitioner to adequately defend himself against the charge, prejudicing him in his attempt to build an adequate defense. The indictment contains an extremely broad date range, accusing him of producing child pornography at an unspecified place somewhere outside the United States at an unspecified time between January 23, 2000 and January 29, 2013. It does not identify even a general location of the alleged unlawful conduct, meaning

that the acts could have taken place anywhere in the world other than U.S. territory.

The indictment also fails to identify the manner or method in which the alleged pornography was recorded, preserved, and imported into the United States. Most importantly, it fails to identify at least one essential element of the charged offense, namely the identity and age of the crime victim or victims. When taken together, all of these defects would combine to prevent petitioner and his counsel from receiving sufficient notice about the factual particulars for that charge.

The indictment's failure to identify those key components of petitioner's alleged offense worked in concert to deny petitioner adequate foreknowledge of the essential elements of the crime he had been charged with. Evidence adduced at trial suggested that petitioner was a regular international traveler and had presumably been to a number of foreign countries during the thirteen-year period alleged in the indictment. By omitting the location of the alleged crimes, petitioner's counsel would be forced to cast a wide net across several different countries over a lengthy period of time.

The indictment also fails to identify the manner and means by which petitioner allegedly recorded, preserved, and imported or attempted to import the resulting pornographic materials into the United States. Again, this lack of factual specificity harmed petitioner's defense case by depriving his defense counsel of the ability to adequately research and prepare the specific, technical evidence that would be required to show whether petitioner actually intended to delete or destroy

those pornographic materials instead of bringing them back to the United States, a point that became one important aspect of his defense case.

The most crucial flaw in the text of the indictment was its failure to identify any victim of the alleged offense, even in a general way, and to omit any statement that the particular victim of the offense was a minor at the time of the alleged pornography production. Given the lengthy time frame at issue, it is entirely possible that a victim could have been a minor at some points during the time specified in the indictment but age into adulthood before the cutoff date for the alleged offense.

The indictment's failure to identify any victims of the alleged offenses caused additional prejudice to petitioner's case when government prosecutors announced during pre-trial hearings that, due to various logistical difficulties, they did not yet know which alleged victims would be coming from the Philippines to testify against him. Petitioner's defense investigators and specialists would thus have substantial difficulty in locating those complaining witnesses and conducting the kind of routine investigation that would normally be performed on alleged victims or potential percipient witnesses.

In addition to the vagueness and factual insufficiency of count 1 of petitioner's indictment, it was also improperly duplicative because it improperly grouped several different potential offenses into one count of production of child pornography. Although the indictment did not identify the time, location, or identity of the alleged victims in count 1, the district court arbitrarily named at least four

victims of petitioner's conduct at the end of his trial. This represented an abuse of discretion by the court.

After various witnesses testified against petitioner at trial, the district court determined that some of them were to be considered victims for count 1 of the indictment, even though the indictment did not specifically identify any of them as victims. The witnesses who testified alleged criminal conduct that happened at different times and different locations. Accordingly, each alleged act would have represented a separate, distinct offense under the law.

Crimes are generally considered separate and distinct "if each requires proof of an additional fact that the other does not." *United States v. Davis*, 306 F.3d 398, 416 (6th Cir. 2012). Because these alleged offenses occurred at different times, at different locations, and with different criminal acts against different alleged victims, each enumerated act would therefore have been a separate element of a separate offense. Grouping them all into a single count made the indictment duplicitous.

At the conclusion of petitioner's trial, the district court did not give a specific unanimity instruction which identified each named victim. As a result, it is very possible that different jurors voted to convict petitioner on the basis of differing facts establishing different offenses. The district court abused its discretion by deciding on its own that the jury convicted unanimously as to all witnesses who testified. It is plain error when the district court does not give a specific unanimity

instruction in a case like petitioner's. See *United States v. Lapier*, 796 F.3d 1090 (9th Cir. 2015).

By failing to challenge the sufficiency and duplicative nature of count 1 of the indictment, petitioner's trial counsel fell below the objective standard of reasonableness that constitutes the first prong of the *Strickland* ineffective assistance analysis. Competent counsel should have determined that the lack of factual specificity, duplicativity, and omission of specific minor victims featured in the indictment rendered it insufficient as a matter of law.

There would have been no sound strategic reason for petitioner's counsel to decline to challenge the indictment, as succeeding in a challenge would have resulted in either the dismissal of the charge or the issuance of a later superseding indictment containing additional information which could be used to reveal the government's trial strategy. Even if the challenge was unsuccessful, petitioner's defense would merely remain in the same position as it had been previously. Thus, there was nothing to lose and everything to gain by pursuing a challenge, indicating that it would be the only sound strategic decision for his defense team.

Moving to the second prong of the *Strickland* analysis, failing to challenge the sufficiency of the indictment caused petitioner actual prejudice because it unnecessarily caused his defense team to be effectively blind to some of the most fundamental aspects of the government's case against him. Petitioner's defense team had the opportunity to discover additional information about the date, time, means and manner of the alleged offenses as well as the identities of the alleged

victims who would be testifying against him much earlier along in the lifespan of his prosecution, but they were unable to obtain that information because they did not force the government to obtain and issue a more factually specific indictment. This additional information would have allowed petitioner's defense team to better investigate and prepare his case, instead of being left in the dark.

Alternatively, if the government would have been unable to obtain a new indictment, petitioner would have avoided conviction on a charge that carries a 15-year mandatory minimum sentence. This is a textbook example of the kind of actual prejudice envisioned by the second portion of the *Strickland* ineffective assistance analysis.

It is thus clear that failing to challenge the legally defective indictment amounted to ineffective assistance of counsel. Accordingly, petitioner's conviction and sentence on that count should be vacated.

CONCLUSION

Petitioner's post-conviction counsel failed to raise and pursue the issue of petitioner's trial counsel having failed to object to the vague and duplicative language in count 1 of petitioner's indictment. Accordingly, the court should grant petitioner's writ of certiorari, order full briefing and argument, vacate petitioner's conviction and sentence, provide petitioner with a new trial, and make any other orders beneficial to petitioner and in the interest of justice. The court's decision on

this matter will serve to correct an egregious error in petitioner's case and clarify the appropriate legal principles underlying his conviction.

Respectfully submitted,

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MAY 2025.

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 6 2025

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 23-35225

Plaintiff-Appellee,

D.C. Nos. 3:19-cv-01850-SI
3:13-cr-00557-SI-1

v.

STEVEN DOUGLAS ROCKETT,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the District of Oregon
Michael H. Simon, District Judge, PresidingSubmitted February 4, 2025**
Portland, Oregon

Before: BEA, KOH, and SUNG, Circuit Judges.

Appellant Steven Rockett was convicted by a federal jury of eight counts relating to the possession, production, and attempted production of child pornography. We affirmed the convictions on direct appeal. *United States v. Rockett*, 752 F. App'x 448 (9th Cir. 2018), *cert. denied sub nom. Rockett v. United*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

States, 140 S. Ct. 484 (2019). Rockett now appeals the district court’s denial of his 28 U.S.C. § 2255 motion, raising one certified issue: whether his trial counsel was constitutionally ineffective for failing to challenge count one of the second superseding indictment as vague and duplicative.¹ We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm the district court’s denial of relief.

Rockett argues that his trial counsel were ineffective because they did not move to dismiss count one of the indictment as vague and duplicative. To show ineffective assistance of counsel, Rockett must satisfy both prongs of *Strickland v. Washington* and demonstrate that: (1) his counsel’s performance was deficient and (2) he suffered prejudice as a result. 466 U.S. 668, 687-88 (1984).

Rockett argues that count one is impermissibly vague because it alleges a wide date range, fails to state the specific location outside of the United States where criminal activity allegedly occurred, and fails to state the identity and age of the alleged victims. An indictment must state “the elements of the offense charged with sufficient clarity to apprise a defendant of the charge against which he must defend, and to enable him to plead double jeopardy.” *United States v. Givens*, 767 F.2d 574, 584 (9th Cir. 1985) (citing *Hamling v. United States*, 418 U.S. 87, 117 (1974)). “An indictment that tracks the words of the statute violated is generally

¹ Rockett also raises two uncertified issues in his opening brief. We construe this briefing as a motion to expand the certificate of appealability, and we deny the motion. *See* 9th Cir. R. 22-1(e).

sufficient” unless the offense includes “implied, necessary elements, not present in the statutory language.” *United States v. Jackson*, 72 F.3d 1370, 1380 (9th Cir. 1995). Here, count one tracks the language of 18 U.S.C. § 2251(c) and includes all of the elements of the offense. We reject Rockett’s argument that the identity and age of the alleged victim(s) are “implied, necessary elements” of 18 U.S.C. § 2251(c). Rockett cites no authority holding that identity and age are “implied, necessary elements” of 18 U.S.C. § 2251(c) and offers no reason for us to conclude that they are. Because count one states the offense charged against Rockett with sufficient specificity, his counsel did not perform deficiently by failing to raise a vagueness challenge.

In the alternative, Rockett argues that his trial counsel was deficient for failing to move to dismiss count one as duplicative. Rockett cannot “overcome the presumption that, under the circumstances,” the failure to raise a duplicity challenge ““might be considered sound trial strategy.”” *Strickland*, 466 U.S. at 689 (quoting *Michel v. Louisiana*, 350 U.S. 91, 101 (1955)). Rockett does not dispute that the government could have sought to cure any duplicity issue by seeking a third superseding indictment charging count one as multiple offenses, each of which would carry a 15-year mandatory minimum sentence. Because a successful challenge to count one based on duplicity risked exposing Rockett to additional charges, his counsels’ decision to not raise the issue can be considered sound trial

strategy.

Because Rockett fails to show that his counsel performed deficiently under *Strickland*'s first prong, we affirm the district court's denial of his § 2255 petition.

AFFIRMED.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

UNITED STATES OF AMERICA,

Plaintiff,

v.

STEVEN DOUGLAS ROCKETT,

Defendant.

Case No. 3:13-cr-557-SI

OPINION AND ORDER

Natalie K. Wight, United States Attorney, and Amy Potter, Paul T. Maloney, and Gary Y. Sussman, Assistant United States Attorneys, UNITED STATES ATTORNEY'S OFFICE, 1000 SW Third Avenue, Suite 600, Portland, OR 97204. Of Attorneys for United States of America.

Bear Wilner-Nugent, BEAR WILNER-NUGENT, COUNSELOR AND ATTORNEY AT LAW LLC, 620 SW Fifth Avenue, Suite 1008, Portland, OR 97204. Of Attorneys for Defendant.

Michael H. Simon, District Judge.

Defendant Steven Douglas Rockett (Rockett) moves under 28 U.S.C. § 2255 to vacate his sentence and remand this case for a new trial. The Court has reviewed Rockett's motion, the government's response, Rockett's reply, and the submission made by Rockett's prior counsel. For the reasons explained below, the Court denies Rockett's motion.

STANDARDS

Section 2255 of Title 28 of the United States Code permits a federal prisoner in custody under sentence to move the court that imposed the sentence to vacate, set aside, or correct the sentence on the ground that:

the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack

28 U.S.C. § 2255(a).

A prisoner seeking relief under § 2255 also must file this motion within a one-year statute of limitations. The limitations period begins to run on the latest of four dates:

- (1) the date on which the judgment of conviction becomes final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Id. § 2255(f). A judgment of conviction becomes final when the period for filing a direct appeal of that judgment lapses. *United States v. Gilbert*, 807 F.3d 1197, 1199 (9th Cir. 2015).

Under § 2255, “a district court must grant a hearing to determine the validity of a petition brought under that section ‘[u]nless the motions and the files and records of the case *conclusively show* that the prisoner is entitled to no relief.’” *United States v. Baylock*, 20 F.3d 1458, 1465 (9th Cir. 1994) (alteration and emphasis in original) (quoting § 2255(b)). In determining whether a

§ 2255 motion requires a hearing, “[t]he standard essentially is whether the movant has made specific factual allegations that, if true, state a claim on which relief could be granted.” *United States v. Withers*, 638 F.3d 1055, 1062 (9th Cir. 2011) (quotation marks omitted) (alteration in original). A district court may summarily dismiss a § 2255 motion based on a facial review of the record “only if the allegations in the motion, when viewed against the record, do not give rise to a claim for relief or are ‘palpably incredible or patently frivolous.’” *Id.* at 1063 (quoting *United States v. Schaflander*, 743 F.2d 714, 717 (9th Cir. 1984)). Conclusory statements in a § 2255 motion do not require a hearing. *United States v. Hearst*, 638 F.2d 1190, 1194 (9th Cir. 1980).

If a court denies a habeas petition, the court may issue a certificate of appealability if “jurists of reason could disagree with the district court’s resolution of [the prisoner’s] constitutional claims or [if] jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); *see* 28 U.S.C. § 2253(c)(2). Although the prisoner need not prove the merits of his case for the court to issue a certificate of appealability, the prisoner must show “something more than the absence of frivolity or the existence of mere good faith on his or her part.” *Miller-El*, 537 U.S. at 338 (quotation marks omitted).

BACKGROUND

On May 25, 2016, a federal jury found Rockett guilty of eight charges. ECF 136. These included one count of producing or attempting to produce child pornography outside the United States, one count of engaging in illicit sexual conduct in foreign places, five counts of attempting to produce child pornography, and one count of possessing child pornography. On September 8, 2016, this Court sentenced Rockett to 60 years’ imprisonment followed by a life term of supervised release. ECF 151. Rockett is to serve forty-five years of his federal sentence consecutive to his state sentence for related charges. *Id.*

Rockett appealed to the Ninth Circuit on May 17, 2017, and again on December 22, 2017. The Ninth Circuit rejected Rockett's challenges in a single opinion dated November 5, 2018. *See United States v. Rockett*, 752 F. App'x 448, 449-50 (9th Cir. 2018), *cert. denied*, *Rockett v. United States*, 140 S. Ct. 484 (2019). Rockett timely moved *pro se* to vacate his sentence under 28 U.S.C. § 2255. The Court appointed counsel to represent Rockett, and counsel filed an amended motion on behalf of Rockett. In that amended motion, Rockett moves for relief on the grounds that his constitutional rights were violated by prosecutorial misconduct and ineffective assistance of trial and appellate counsel.

DISCUSSION

A. Prosecutorial Misconduct

Rockett alleges that prosecutorial misconduct occurred both before and during his trial that violated his constitutional rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments. First, he alleges that the prosecutor knew or should have known that several government witnesses presented false or misleading testimony. Second, Rockett alleges that the prosecutor made improper and prejudicial comments during opening statement, closing argument, and rebuttal argument. The United States responds that Rockett's allegations of constitutional violations are not cognizable in his § 2255 motion because the alleged violations have been previously litigated or were abandoned on direct appeal and thus procedurally defaulted.

1. Previously Litigated Claims

The United States argues that Rockett cannot base his § 2255 motion on several of his prosecutorial misconduct claims because he has already litigated them on appeal. "When a defendant has raised a claim and has been given a full and fair opportunity to litigate it on direct appeal, that claim may not be used as basis for a subsequent § 2255 petition." *United States v. Hayes*, 231 F.3d 1132, 1139 (9th Cir. 2000); *see also United States v. Moses*, 642 F. Supp. 2d

1216, 1223 (D. Idaho 2009) (“To the extent that [a prisoner’s] issues have been raised on appeal, they cannot be relitigated in a collateral proceeding.” (collecting Ninth Circuit cases)).

The United States contends that Rockett has previously litigated two prosecutorial misconduct claims alleged in his motion: first, regarding the amount of evidence that the government offered to support the restitution awarded to the victims; and second, regarding the constitutionality of the jury instructions describing the factors used to determine whether an image is intended to arouse. The record confirms the government’s assertion. Rockett appealed both of these issues to the Ninth Circuit and lost. *See Rockett*, 752 F. App’x at 449-50. Rockett offers no rebuttal to the government’s argument. Accordingly, Rockett cannot base his § 2255 claim on these previously litigated claims.

2. Procedurally Defaulted Claims

The United States also contends that Rockett has procedurally defaulted on his remaining prosecutorial misconduct claims because he failed to raise them on appeal without good cause. “A § 2255 movant procedurally defaults his claims by not raising them on direct appeal and not showing cause and prejudice or actual innocence in response to the default.” *United States v. Ratigan*, 351 F.3d 957, 962 (9th Cir. 2003). A § 2255 movant can overcome this procedural default only if he or she can “demonstrate either cause and actual prejudice or that he is actually innocent.” *United States v. Braswell*, 501 F.3d 1147, 1149 (9th Cir. 2007) (quotation marks omitted).

Rockett responds that at least some of his prosecutorial misconduct claims rely in part on additional evidence that was not reasonably available at the time of his trial or direct appeal. Such circumstances, if true, could satisfy the “cause” prong that Rockett needs to overcome to proceed on his procedurally defaulted prosecutorial misconduct claims. *See Manning v. Foster*, 224 F.3d 1129, 1133 (9th Cir. 2000) (“To allege cause for a procedural default, a

petitioner must assert that the procedural default is due to an objective factor that is external to the petitioner and that cannot fairly be attributed to him.” (quotation marks omitted)). Rockett, however, does not identify any previously unknown evidence. Rockett’s prosecutorial misconduct claims do not on their face appear to rely on evidence unavailable at trial. Rather, Rockett alleges that the prosecutor knew or should have known that various witnesses were testifying falsely during trial, referenced facts not in evidence, made improper and prejudicial comments during opening statement and closing argument, vouched for witnesses, and encouraged jurors to rely on their passions rather than evidence. Because Rockett also bases his ineffective assistance of counsel claims on the same allegations, he appears to concede that such knowledge was available to him and his counsel as well as to the prosecutor at the time.¹ Thus, Rockett cannot overcome the procedural default against these claims by showing that missing evidence provided good cause as to why he did not raise these allegations on direct appeal.

Rockett also argues that ineffective assistance of counsel prevented him from raising these prosecutorial misconduct claims on appeal. “Constitutionally ineffective assistance of counsel constitutes cause sufficient to excuse a procedural default.” *Ratigan*, 351 F.3d at 964-65 (citing *Murray v. Carrier*, 477 U.S. 478, 488 (1986)). Because the Court finds that Rockett fails to show that his trial and appellate counsel provided constitutionally ineffective assistance for the reasons described below, this argument for cause does not overcome the procedural default against Rockett’s prosecutorial misconduct claims.

¹ Rockett does raise one prosecutorial misconduct claim that relies on the testimony of a victim, whose initials are N.L., provided in a subsequent civil legal proceeding. Rockett alleges that this testimony conflicts with the testimony that N.L. gave at Rockett’s trial, and that the prosecutor knew or should have known that N.L.’s testimony was false. Rockett, however, provides no details about this purported conflict of evidence. Thus, there is no evidence before the Court that, even if N.L.’s testimony during Rockett’s trial was false, the prosecutor knew or should have known about this discrepancy.

B. Ineffective Assistance of Counsel

To prevail on a claim of ineffective assistance of counsel, Rockett must show that (1) his counsel's performance was "deficient" and (2) his counsel's performance "prejudiced the defense." *Strickland v. Washington*, 466 U.S. 668, 687 (1984). "Failure to satisfy either prong of the *Strickland* test obviates the need to consider the other." *Rios v. Rocha*, 299 F.3d 796, 805 (9th Cir. 2002).

To satisfy the deficiency prong, Rockett must show that his attorney's actions "were outside the wide range of professionally competent assistance." *Strickland*, 466 U.S. at 690. "This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 687. For reviewing courts, "counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* at 690. "Put differently, the 'defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy.'" *May v. Shinn*, 954 F.3d 1194, 1203 (9th Cir. 2020) (quoting *Strickland*, 466 U.S. at 689).

To satisfy the prejudice prong, Rockett must show that there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. A reasonable probability is "a probability sufficient to undermine confidence in the outcome." *Id.* "It is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding." *Id.* at 693.

In his motion for relief under § 2255, Rockett makes 34 claims of ineffective assistance of counsel. In the interests of clarity and efficiency, the Court groups these claims where appropriate.

1. Trial Testimony

Rockett argues that his counsel was ineffective for failure to prepare for, object to, or otherwise confront false or misleading testimony from several witnesses. Rockett claims that his counsel was constitutionally deficient in failing to oppose testimony by: Michael Hanada, the United States' computer forensic expert, on the ages of individuals in evidentiary photographs and on other allegedly false statements; four witnesses for the United States who appeared in photographs or videos that Rockett took in the Philippines and who were underage at the time; and Justin Lazenby, the United States' forensic technician, who testified about a hidden camera that had been found in the bathroom of Rockett's home, where his elderly mother also lived.

Rockett's claims do not overcome the presumption of competence that the Court must extend to his counsel. The record shows that Rockett's counsel acted effectively with respect to the purportedly false or misleading testimony. For example, Rockett's counsel did in fact object to Hanada's testimony about the age of the individuals depicted in the evidentiary photographs. ECF 171 at 103. Trial counsel cross-examined Hanada and prepared to call rebuttal witnesses but ultimately decided against that approach. *See, e.g.*, ECF 171 at 144 (recross in transcript); ECF 239 at 6, 18, 30 (declarations by trial counsel). Hanada also testified that he worked as a child abuse detective for three years, providing a reasonable explanation for why Rockett's counsel may not have continued to object. ECF 263 at 23. Trial counsel hired investigators² and states under oath that counsel made good faith motions and objections to the government's witnesses based on counsel's knowledge of the facts. ECF 239 at 2, 5-6, 9-12.

Rockett's remaining claims about his trial counsel's failure to object to purportedly false or misleading testimony are similarly unconvincing. The record shows that Rockett's conclusory

² *See* Section B.3, *infra*.

arguments are either inaccurate or unreflective of ineffective lawyering. Under the deferential standard of review required by *Strickland*, Rockett fails to show that his trial counsel's decisions to refrain from objecting to certain testimony were constitutionally deficient rather than "sound trial strategy." *May*, 954 F.3d at 1203.

2. Trial Strategy

Rockett argues that his counsel was ineffective in other respects at trial. Rockett claims that his trial counsel was constitutionally deficient because his counsel failed to: object to the prosecution's purportedly improper and prejudicial comments during opening statement and closing argument; challenge the indictment on Count One against Rockett as unconstitutionally vague and overbroad; move to sever Counts One and Nine from the rest of the counts in Rockett's indictment; contest the sufficiency of the evidence for Count One; and move to suppress evidence related to Rockett's computers, hard drives, and encryption software.

These claims also fail to overcome the presumption of competence that the Court must extend to Rockett's trial counsel. Although Rockett may now disagree with the conduct of his trial counsel, he does not show that his "counsel made errors so serious that performance fell below an objective standard of reasonableness under prevailing professional norms." *Mak v. Blodgett*, 970 F.2d 614, 618 (9th Cir. 1992). Instead, Rockett presents instances of his counsel's conduct that, when afforded proper deference, "might be considered sound trial strategy." *Strickland*, 466 U.S. at 689 (quotation marks omitted).

Whether to seek severance of the United States' allegations against Rockett, for example, presumptively is a strategic consideration. *See United States v. Cardenas*, 735 F. App'x 235, 237 (9th Cir. 2018) (holding that trial counsel's "decision not to seek a severance was not unreasonable and did not constitute ineffective assistance of counsel"); *see also* ECF 239 at 4 (declarations by Rockett's counsel in which they explain why they did not seek severance).

Rockett does not argue otherwise. The same is true for the decision not to object to the prosecutor's purportedly inappropriate remarks during opening statement and closing argument. *See United States v. Necoechea*, 986 F.2d 1273, 1281 (9th Cir. 1993) ("Because many lawyers refrain from objecting during opening statement and closing argument, absent egregious misstatements, the failure to object during closing argument and opening statement is within the 'wide range' of permissible professional legal conduct."); *see also Glasscock v. Taylor*, 740 F. App'x 566, 567 (9th Cir. 2018) ("The district court properly rejected Glasscock's claim that trial counsel rendered ineffective assistance of counsel by failing to seek curative action in response to alleged prosecutorial misconduct during closing argument. Even if the prosecutor's remarks urging the jury to 'protect' the victim were improper, the failure to object to them was within the range of professional conduct.").

The decision by trial counsel not to move to suppress evidence relating to Rockett's hard drives, encryption software, and file cleanup software similarly fell within the bounds of permissible professional legal conduct. Courts in the Ninth Circuit have rejected the argument that "a defendant has everything to gain and nothing to lose in filing a motion to suppress." *Lowry v. Lewis*, 21 F.3d 344, 346 (9th Cir. 1994) (quotation marks omitted). Rather, a "lawyer's zeal on behalf of his client does not require him to file a motion which he knows to be meritless on the facts and the law," for so doing may cost a defendant his lawyer's time and credibility with the judge. *Id.* Rockett retained the same counsel to represent him in related criminal cases in Washington County, Oregon, where his counsel unsuccessfully moved to suppress the same evidence at issue here. ECF 263 at 27-28. Counsel opted to move to exclude and limit related evidence rather than repeat a previously unsuccessful motion to suppress. ECF 88, 89, 90. The

Court denied these motions in relevant part. ECF 121. This conduct reflects informed and professional decisionmaking, not performance below objectively reasonable standards.

As to Rockett's claim that his trial counsel was ineffective because counsel failed to move for a judgment of acquittal on Count One, Rockett does not show that he suffered prejudice from this inaction. Assuming without finding that the decision by defense trial counsel not to move for a judgment of acquittal on Count One was objectively unreasonable, it is well-established in this and other circuits that where the evidence is sufficient to warrant a conviction, no prejudice results "from defense counsel's failure to move for judgment of acquittal." *United States v. Evans*, 978 F.2d 1112, 1114-15 (9th Cir. 1992); *see, e.g., United States v. Brodie*, 524 F.3d 259, 273 (D.C.C. 2008) ("Because the evidence of Brodie's guilt was overwhelming, Brodie was not prejudiced by his counsel's failure to move for a judgment of acquittal."); *United States v. Greer*, 440 F.3d 1267, 1272 (11th Cir. 2006) (denying the defendant's claim that his counsel was ineffective for failing to move for a judgment of acquittal because "the evidence the government presented during its case was sufficient to convict"); *United States v. Allen*, 390 F.3d 944, 951 (7th Cir. 2004) ("[F]ailure to file a motion for acquittal was not prejudicial where the evidence against the defendant was sufficient to support a conviction."); *United States v. Hood*, 593 F.2d 293, 297-98 (8th Cir. 1979) ("[F]ailure to move for a judgment of acquittal or for a new trial also do not [sic] support Hood's contention [of ineffective assistance of counsel] since we find that the evidence was clearly sufficient to sustain the conviction."); *see also United States v. Daniel*, 3 F.3d 775, 779 (4th Cir. 1993) (holding that trial counsel's decision not to move for judgment of acquittal "demonstrate[d] his sound evaluation of their likelihood of success").

3. Investigation

Rockett argues that his trial counsel rendered ineffective assistance of counsel by failing to investigate several pertinent issues before trial. Defense counsel has a "duty to make

reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Strickland*, 466 U.S. at 691. To succeed on an ineffective assistance of counsel claim based on a duty to investigate, a defendant must state “what additional information would be gained by the discovery he now claims was necessary.” *Eggleston v. United States*, 798 F.2d 374, 376 (9th Cir. 1986). “Moreover, ineffective assistance claims based on a duty to investigate must be considered in light of the strength of the government’s case.” *Id.*

Rockett’s trial counsel respond under oath that they hired investigators and experts to review the case, prepared for trial to the best of their ability, and investigated the issues. ECF 239.³ The record also reflects their strategy to defend against the government’s allegations by casting doubt on the validity of the government’s case. *See* ECF 85 (expert witness list); ECF 91 (trial memorandum); ECF 115 (exhibit list). “[C]hoice of a particular strategy can make ‘particular investigations unnecessary.’” *Miles v. Ryan*, 713 F.3d 477, 491 (9th Cir. 2013) (quoting *Cullen v. Pinholster*, 563 U.S. 170, 195 (2011)). Trial counsel, relying on this choice of strategy, reasonably could have decided not to explore several of the issues that Rockett alleges were not investigated. Applying “the strong presumption of competence that *Strickland* mandates,” *Cullen*, 563 U.S. at 196, to the conduct of Rockett’s trial counsel, the Court finds that Rockett does not show that his trial counsel provided ineffective assistance by failing their duty to investigate.

4. Other Alleged Failures at Trial

In his § 2255 motion, Rockett makes several other claims of ineffective assistance of counsel that he does not discuss in his reply brief. These claims allege that Rockett’s trial

³ The record supports trial counsel’s response that they hired investigators. *See, e.g.*, ECF 164 at 5-7, 10-11 (transcript of court proceedings in which the Court discusses with defense counsel their funding authorizations for private investigators).

counsel failed to: inform the Court about jurors sleeping during direct testimony and the introduction of evidence; object to the order that Rockett must pay restitution to two individuals who Rockett argues were unnamed in his indictment; object to the government's purported evidence tampering; introduce a report in federal court that counsel had purportedly attempted to admit in state court and that, Rockett states, depicted his arresting officers engaged in criminal acts; and understand and present the findings from Rockett's own computer expert.

For these claims, Rockett fails to meet his burden of showing "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. Because Rockett must show both prongs of the *Strickland* test to prevail, his claims fail because he does not show prejudice. Courts have not found prejudice when evaluating similar circumstances. *See, e.g., Anderson v. Terhune*, 409 F. App'x 175, 179 (9th Cir. 2011) (holding that a juror's sleep behavior "did not rise to the level of a constitutional violation" sufficient to grant a petition for a writ of habeas corpus and collecting cases to this effect). It is not enough to conclude that an error "reasonably would have affected the judgment of the jury," as Rockett argues. To show prejudice, more is required. Rockett does not demonstrate—and in some cases does not argue—that without these alleged deficiencies there is a reasonable probability the trial outcome would have been different; *i.e.*, that he would not have been convicted.

5. Appellate Strategy

Rockett also claims that his appellate counsel on direct appeal provided constitutionally deficient assistance. Most of these claims repeat allegations that Rockett asserts against his trial counsel. Others raise new allegations of deficiency. For example, Rockett claims that his appellate counsel provided ineffective assistance by failing to appeal the trial court's admission

of Rockett's previous state convictions in light of a witness's later purportedly inconsistent statement in state court.⁴

Rockett must meet a stricter standard for his claims of ineffective assistance of appellate counsel. To prevail on these claims, Rockett must show that his appellate "counsel's advice fell below an objective standard of reasonableness" and that "there is a reasonable probability that, but for counsel's unprofessional errors, [he] would have *prevailed* on appeal." *Miller v. Keeney*, 882 F.2d 1428, 1434 (9th Cir. 1989) (emphasis added). Unlike with trial counsel, appellate counsel "will fail to raise an issue because she foresees little or no likelihood of success on that issue; indeed, the weeding out of weaker issues is widely recognized as one of the hallmarks of effective appellate advocacy." *Id.* The two *Strickland* prongs of reasonableness and prejudice thus "partially overlap" for ineffective assistance claims against appellate counsel where they may not for such claims against trial counsel. *Id.* "Appellate counsel will therefore frequently remain above an objective standard of competence (prong one) and have caused her client no prejudice (prong two) for the same reason—because she declined to raise a weak issue." *Id.*

That is the case here. Rockett mailed a letter to his appellate counsel detailing all but one of his current claims of ineffective appellate counsel. ECF 263 at 2-12. Rockett's appellate counsel responded that most of these issues were not included in Rockett's appeal brief because they "were simply not appellate worthy." *Id.* at 13-14. Appellate counsel then explained why they believed this was so, and what they believed was Rockett's strongest chance at a successful reversal of his conviction. *Id.* Rockett does not show that this analysis by his appellate counsel

⁴ In a separate section of this motion for relief, Rockett argues that the Court violated his due process rights by interpreting 18 U.S.C. § 2251 in such a way as to make the statute unconstitutionally vague. Rockett contends that this error caused the Court to deny his Rule 29 motion and led to his conviction. The Ninth Circuit disagreed when Rockett argued this point on appeal. *See Rockett*, 752 F. App'x at 449-50. This Court need not address this point further.

was deficient or prejudicial. The Court discerns neither deficiency nor prejudice in Rockett's appellate counsel's reasoning. Accordingly, the Court denies these claims of ineffective assistance of appellate counsel.

Appellate counsel did not address Rockett's remaining claim in this letter. In this claim, Rockett asserts that subsequent evidence was produced in his state court proceedings that conflicts with testimony from his federal case. Rockett, however, offers no details about what this evidence is, what the purported conflict revealed, when this new evidence emerged, or whether Rockett's appellate counsel could have incorporated this evidence into the appeal brief. "The standard [for a § 2255 motion] essentially is whether the movant has made specific factual allegations that, if true, state a claim on which relief could be granted." *United States v. Schaflander*, 743 F.2d 714, 717 (9th Cir. 1984); *see also Withers*, 638 F.3d at 1062. This vague, conclusory, and unsubstantiated allegation thus cannot serve as foundation for Rockett's ineffective assistance claim against his appellate counsel.

C. Cumulative Error

Rockett argues that the volume of errors violated his due process rights, even if individually these alleged errors do not. "The cumulative effect of multiple errors can violate due process even where no single error rises to the level of a constitutional violation or would independently warrant reversal." *Parle v. Runnels*, 505 F.3d 922, 927 (9th Cir. 2007). "Under traditional due process principles, cumulative error warrants habeas relief only where the errors have 'so infected the trial with unfairness as to make the resulting conviction a denial of due process.'" *Id.* (quoting *Donnelly v. DeChristoforo*, 416 U.S. 637, 643 (1974)).

In evaluating a due process challenge based on cumulative error, a reviewing court typically must "determine the relative harm caused by the errors." *Id.* at 927-28. Here, however, the Court has not found that any such errors occurred. Nor does Rockett explain his claim

further. Rockett does not show that his defense was “far less persuasive” than it otherwise may have been because of the errors he alleges. *Id.* at 933. The cumulative error claim thus fails.

D. Hearing

When a defendant files a motion under 28 U.S.C. § 2255, a district court must grant an evidentiary hearing “[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief.” 28 U.S.C. § 2255(b); *see also United States v. Rodriguez*, 49 F.4th 1205, 1213 (9th Cir. 2022) (“In other words, a hearing is mandatory whenever the record does not affirmatively manifest the factual or legal invalidity of the petitioner’s claims.” (quotation marks omitted)). “Evidentiary hearings are particularly appropriate when claims raise facts which occurred out of the courtroom and off the record.” *United States v. Chacon-Palomares*, 208 F.3d 1157, 1159 (9th Cir. 2000). Inquiries into what a defendant *would* have done had he been fully informed are also especially appropriate for an evidentiary hearing. *See United States v. Werle*, 35 F.4th 1195, 1202 (9th Cir. 2022) (collecting cases); *see also Lee v. United States*, 137 S. Ct. 1958, 1967-68 (2017) (concluding that the petitioner-defendant overcame *Strickland* by showing in an evidentiary hearing that he “would have gone to trial if he had known about” certain key facts).

An evidentiary hearing is not appropriate for resolving Rockett’s § 2255 claims. Rockett makes conclusory allegations of misconduct against his trial counsel, his appellate counsel, and the government. The record reflects that these attorneys performed their professional duties satisfactorily, however, and shows that Rockett’s “allegations in the motion, when viewed against the record, do not give rise to a claim for relief.” *Withers*, 638 F.3d at 1063. His claims do not rely on counterfactuals or off-the-record allegations. The Court thus need not hold an evidentiary hearing to summarily dismiss Rockett’s motion.

CONCLUSION

The Court DENIES Defendant's Second Amended Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence. ECF 237. The Court declines to issue a Certificate of Appealability because Defendant has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED this 21st day of March, 2023.

/s/ Michael H. Simon

Michael H. Simon
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

Plaintiff,

Case No.: 3:13-CR-00557-SI-1

v.

USM Number: 75742-065

STEVEN DOUGLAS ROCKETT

Andrew D. Coit and Cheslea B. Payment
Defendant's Attorney

Defendant.

Paul T. Maloney and Gary Y. Sussman,
Assistant U.S. Attorney**THE DEFENDANT:**

☒ was found guilty on count(s) 1, 2, and 4 through 9 of the Second Superseding Indictment after a jury trial. The defendant is adjudicated guilty of the following offense(s):

<u>Title, Section & Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number</u>
18:2251(c) and (e) - Producing Child Pornography	- Beginning on or about 1/23/2000 and continuing until 1/29/2013	1ss
18:2423(c) and (e) - International Travel and Engaging in Illicit Sexual Conduct with a Minor	- Beginning on or about 10/10/2007 and continuing until 10/28/2007	2ss
18:2251(a) and (e) - Producing Child Pornography	- Beginning on or about 5/6/2013 and continuing until 6/11/2013	4ss
18:2251(a) and (e) - Producing Child Pornography	- Beginning on or about 4/26/2013 and continuing until 6/22/2013	5ss
18:2251(a) and (e) - Producing Child Pornography	- Beginning on or about 5/2/2013 and continuing until 6/22/2013	6ss
18:2251(a) and (e) - Producing Child Pornography	- Beginning on or about 11/10/2004 and continuing until 9/12/2012	7ss
18:2251(a) and (e) - Producing Child Pornography	- Beginning on or about 11/10/2004 and continuing until 9/12/2012	8ss
18:2252A(a)(5)(B) and (b)(2) - Possession of Child Pornography	- On or about 8/23/2013	9ss

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.

☒ Count(s) Count 3 of the Second Superseding Indictment and the underlying indictments are dismissed on the motion of the United States.

☒ The defendant shall pay a special assessment of \$800 for Count(s) 1, 2, and 4 through 9 of the Second Superseding Indictment payable immediately to the Clerk of the U.S. District Court. (See also the Criminal Monetary Penalties Sheet.)

IT IS ORDERED that the defendant shall 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 shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

September 08, 2016

Date of Imposition of Sentence



Signature of Judicial Officer

Michael H. Simon, U.S. District Judge

Name and Title of Judicial Officer

September 13, 2016

Date

IMPRISONMENT

As to Count 1 of the Second Superseding Indictment, the defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of one hundred-eighty (180) months, said sentence to be served consecutively to the sentence imposed in Washington County Case Nos. C131929Cr and C132673Cr.

As to Count 2 of the Second Superseding Indictment, the defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of One hundred-eighty (180) months, said sentence to be served concurrently with the sentence imposed in Count 1, and consecutively to the sentence imposed in Washington County Case Nos. C131929Cr and C132673Cr.

As to Count 4 of the Second Superseding Indictment, the defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of One hundred-eighty (180) months, said sentence to be served concurrently with the sentence imposed in Count 1, and consecutively to the sentence imposed in Washington County Case Nos. C131929Cr and C132673Cr.

As to Count 5 of the Second Superseding Indictment, the defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of One hundred-eighty (180) months, said sentence to be served concurrently with the sentence imposed in Count 1, and consecutively to the sentence imposed in Washington County Case Nos. C131929Cr and C132673Cr.

As to Count 6 of the Second Superseding Indictment, the defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of One hundred-eighty (180) months, said sentence to be served consecutively to all counts and concurrent to the sentence imposed in Washington County Case Nos. C131929Cr and C132673Cr.

As to Count 7 of the Second Superseding Indictment, the defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of One hundred-eighty (180) months, said sentence to be service consecutively to all counts and consecutively to the sentence imposed in Washington County Case Nos. C131929Cr and C132673Cr.

As to Count 8 of the Second Superseding Indictment, the defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of One hundred-eighty (180) months, said sentence to be service consecutively to all counts and consecutively to the sentence imposed in Washington County Case Nos. C131929Cr and C132673Cr.

As to Count 9 of the Second Superseding Indictment, the defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of eighty-four months (84) months, said sentence to be served concurrently with all counts and concurrently to the sentence imposed in Washington County Case Nos. C131929Cr and C132673Cr.

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

1. That the defendant be incarcerated in FCI Sheridan to be near family who live in the area

☒ The defendant is remanded to the custody of the United States Marshal.

The Bureau of Prisons will determine the amount of prior custody that may be credited towards the service of sentence as authorized by Title 18 USC §3585(b) and the policies of the Bureau of Prisons.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By: _____
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

As to Counts 1, 2, and 4 through 9, and upon release from imprisonment, the defendant shall be on supervised release for a term of Life.

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

If this judgment imposes a fine or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties section of this judgment.

The defendant shall comply with the Standard Conditions of Supervised Release that have been adopted by this court as set forth in this judgment. The defendant shall also comply with the Special Conditions of Supervision as set forth below and any additional conditions attached to this judgment.

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall cooperate in the collection of DNA as directed by the probation officer, if required by law.
2. The defendant shall pay full restitution to the victim identified in the presentence report in an amount to be determined in 90 days. If there is any unpaid balance at the time of the defendant's release from custody, it shall be paid at the maximum installment possible and not less than \$100 per month.
3. To the extent there is any unpaid restitution, the defendant is prohibited from incurring new credit charges or opening additional lines of credit without the approval of the probation officer.
4. To the extent there is any unpaid restitution, the defendant shall disclose all assets and liabilities to the probation officer. Defendant shall not transfer, sell, give away, or otherwise convey any asset with a fair market value in excess of \$500 without approval of the probation officer.
5. To the extent there is any unpaid restitution, the defendant shall authorize release to the U.S. Probation Officer any and all financial information by execution of a release of financial information form, or by any other appropriate means, as directed by the probation officer.
6. The defendant shall participate in a sex offender assessment and treatment program, as directed by the probation officer. The defendant shall abide by all rules and requirements of such program. This assessment and treatment program may include the use of the polygraph to assist in case planning and case monitoring.
7. The defendant shall not view, purchase, or possess (1) any materials including visual depictions of minors under the age of 18 engaged in sexually explicit conduct, as defined in 18 U.S.C. § 2256(2); or (2) any materials depicting sexually explicit conduct involving adults.
8. The defendant is prohibited from being present within 100 feet of places where minor children under the age of 18 congregate, such as playgrounds and schools, unless approved by the probation officer.

9. The defendant is prohibited from residing within 100 yards of schools and playgrounds and other places where minor children congregate, unless approved by the probation officer.
10. The defendant shall register, if required by law, with the state sex offender registration agency in any state where the defendant resides, is employed, carries on a vocation, or is a student and shall provide written notification of compliance with this condition as directed by the probation officer.
11. The defendant shall reside at a residence approved by the probation officer, and shall notify the probation officer at least 30 days prior to any change in residence.
12. The defendant shall have no contact with minors (in person, by telephone, through correspondence, or a third party) unless approved by the probation officer and the Court.
13. The defendant shall provide the U.S. Probation Officer with truthful and complete information regarding all computer hardware, software, electronic services, and data storage media to which the defendant has access.
14. The defendant is prohibited from using or possessing any computer(s) (including any handheld computing device, any electronic device capable of connecting to any on-line service, or any data storage media) without the prior written approval of the U.S. Probation Officer. This includes, but is not limited to, computers at public libraries, Internet cafes, or the defendant's place of employment or education.
15. The defendant shall submit to a search of his/her computer (including any handheld computing device, any electronic device capable of connecting to any on-line service, or any data storage media) conducted by a U.S. Probation Officer, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of a violation of a condition of supervision. Failure to submit to a search may be grounds for revocation. The defendant shall warn all individuals that have access to defendant's computer that it is subject to search and/or seizure.
16. The defendant shall participate in the U.S. Probation Office's Computer Monitoring Program. Participation in the Program may include installation of software or hardware on the defendant's computer that allows random or regular monitoring of the defendant's computer use; periodic inspection of defendant's computer (including retrieval, copying, and review of its electronic contents) to determine defendant's compliance with the Program; and restriction of the defendant's computer use to those computers, software programs, and electronic services approved by the U.S. Probation Officer.
17. The defendant shall have no contact with the victims in this case including MG, HJ, DS, BS, and NS, in person, by telephone, through correspondence or a third party unless approved in advance by the probation officer.

STANDARD CONDITIONS OF PROBATION AND SUPERVISED RELEASE

The Judges of the District of Oregon adopt the following standard conditions of probation and supervised release to apply in every case in which probation and/or supervised release is imposed upon a defendant. The individual judge may impose other conditions deemed advisable in individual cases of probation or supervised release supervision, as consistent with existing or future law.

1. The defendant shall report in person to the probation office for the district to which he or she is released within 72 hours of release from the custody of the Bureau of Prisons.
2. The defendant shall not commit another federal, state, or local crime and shall not illegally possess a controlled substance. Revocation of probation or supervised release is mandatory for illegal possession of a controlled substance.
3. The defendant shall not possess a firearm, destructive, or dangerous device.
4. If the defendant illegally uses drugs or abuses alcohol, has a history of drug or alcohol abuse, or drug use or possession is determined to be an element of the defendant's criminal history or instant offense, the defendant shall participate in a substance abuse treatment program as directed by the probation officer which may include urinalysis testing to determine if the defendant has used drugs or alcohol. In addition to urinalysis testing that may be part of a formal drug treatment program, the defendant shall submit up to eight (8) urinalysis tests per month.
5. The defendant shall submit to a search of his/her person, residence, office or vehicle, when conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of supervision. Failure to submit to a search may be grounds for revocation. The defendant shall warn other residents that the premises may be subject to searches pursuant to this condition.
6. The defendant shall not leave the judicial district without the permission of the court or probation officer.
7. The defendant shall report to the probation officer as directed by the court or probation officer, and shall submit a truthful and complete written report within the first five days of each month.
8. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer. The defendant may decline to answer inquiries if a truthful response would tend to incriminate him/her. Such a refusal to answer may constitute grounds for revocation.
9. The defendant shall support his or her dependents and meet other family responsibilities to the best of his or her financial ability.
10. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons.
11. The defendant shall notify the probation officer within 72 hours of any change in residence or employment.
12. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician. If, at any time, the probation officer has reasonable cause to believe the defendant is using illegal drugs or is abusing alcohol, the defendant shall submit to urinalysis testing, breathalyzer testing, or reasonable examination of the arms, neck, face, and lower legs.
13. The defendant shall not knowingly frequent places where controlled substances are illegally sold, used, distributed, or administered.
14. The defendant shall not knowingly associate with any persons engaged in criminal activity, and shall not knowingly associate with any person convicted of a felony, unless granted permission to do so by the probation officer.
15. The defendant shall permit a probation officer to visit him or her at any reasonable time at home or elsewhere, and shall permit confiscation of any contraband observed in plain view by the probation officer.
16. The defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer.
17. The defendant shall not enter into any agreement to act as an informant or special agent of a law enforcement agency without the permission of the court.
18. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by his or her criminal record or personal history and characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such a notification requirement. This requirement will be exercised only when the probation officer believes a reasonably foreseeable risk exists or a law mandates such notice. Unless the probation officer believes the defendant presents an immediate threat to the safety of an identifiable individual, notice shall be delayed so the probation officer can arrange for a court hearing and the defendant can obtain legal counsel.

AO 245B

Judgment in a Criminal Case - DISTRICT OF OREGON CUSTOMIZED (Rev. 5/2016)
Sheet 5 - Criminal Monetary PenaltiesDEFENDANT: STEVEN DOUGLAS ROCKETT
CASE NUMBER: 3:13-CR-00557-SI-I

Judgment-Page 6 of 7

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the Schedule of Payments set forth in this judgment.

	<u>Assessment</u> (as noted on Sheet 1)	<u>Fine</u>	<u>Restitution</u>	<u>TOTAL</u>
<u>TOTALS</u>	\$800	\$-0-	\$TBD within 90 Days	\$800

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

☐ The defendant shall 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 non-federal victims must be paid in full prior to the United States receiving payment.

☐ If applicable, restitution amount order 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 is waived for the ☐ fine and/or ☐ restitution.

☐ The interest requirement for the ☐ fine and/or ☐ restitution is modified as follows:

AO 245B

Judgment in a Criminal Case - DISTRICT OF OREGON CUSTOMIZED (Rev. 5/2016)
Sheet 5 - Criminal Monetary PenaltiesDEFENDANT: STEVEN DOUGLAS ROCKETT
CASE NUMBER: 3:13-CR-00557-SI-I

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SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment¹ of the total criminal monetary penalties shall be as follows:

- A. ☒ Lump sum payment of \$800 due immediately, balance due
☐ not later than _____, or
☐ in accordance with ☐ C or ☐ D below; or
- B. ☒ Payment to begin immediately (may be combined with ☐ C or ☐ D below); or
- C. ☐ If there is any unpaid balance at the time of defendant's release from custody, it shall be paid in monthly installments of not less than \$ until paid in full, to commence immediately upon release from imprisonment.
- D. ☐ Special instructions regarding the payment of criminal monetary penalties:

☒ Payment of criminal monetary penalties, including restitution, shall be due during the period of imprisonment as follows:
 (1) 50% of wages earned if the defendant is participating in a prison industries program; (2) \$25 per quarter if the defendant is not working in a prison industries program.

It is ordered that resources received from any source, including inheritance, settlement, or any other judgment, shall be applied to any restitution or fine still owed, pursuant to 18 USC § 3664(n).

All criminal monetary penalties, including restitution, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of Court at the address below, unless otherwise directed by the Court, the Probation Officer, or the United States Attorney.

**Clerk of Court
 U.S. District Court - Oregon
 1000 S.W. 3rd Ave., Ste. 740
 Portland, OR 97204**

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 costs:
- ☒ The defendant shall forfeit the defendant's interest in the following property to the United States:

See Preliminary Order of Forfeiture and Final Order of Forfeiture filed with this Judgment.

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

FILED 16 DEC 15 14:33 USDC-ORP

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

UNITED STATES OF AMERICA

3:13-CR-00557-SI

v.

SECOND SUPERSEDING INDICTMENT

STEVEN DOUGLAS ROCKETT,

18 U.S.C. §§ 2251(a), (c) and (e);
2423(c) and (e); and
2252A(a)(5)(B) and (b)(2)

Defendant.

Forfeiture Allegations

THE GRAND JURY CHARGES:

COUNT 1(Producing Child Pornography)
(18 U.S.C §§ 2251(c) and (e))

From on or about January 23, 2000, to on or about January 29, 2013, in the District of Oregon and elsewhere, defendant **STEVEN DOUGLAS ROCKETT**, whose last known residence was in the District of Oregon, knowingly and unlawfully employed, used, persuaded, induced, enticed, and coerced minors to engage in sexually explicit conduct outside of the United States, its territories or possessions, for the purpose of producing visual depictions of such conduct and intending such depictions to be transported to the United States by means or facilities of interstate or foreign commerce, and did attempt to do so;

In violation of Title 18, United States Code, Sections 2251(c) and (e).

COUNT 2**(International Travel and Engaging in Illicit Sexual Conduct with a Minor)
(18 U.S.C §§ 2423(c) and (e))**

From on or about October 10, 2007, to on or about October 28, 2007, defendant **STEVEN DOUGLAS ROCKETT**, a citizen of the United States, did knowingly travel in foreign commerce from the State of Oregon to the country of the Philippines and engage in illicit sexual conduct with another person, and did attempt to do so;

In violation of Title 18, United States Code, Sections 2423(c) and (e).

COUNT 3**(International Travel and Engaging in Illicit Sexual Conduct with a Minor)
(18 U.S.C §§ 2423(c) and (e))**

From on or about January 27, 2010, to on or about February 16, 2010, defendant **STEVEN DOUGLAS ROCKETT**, a citizen of the United States, did knowingly travel in foreign commerce from the State of Oregon to the country of the Philippines and engage in illicit sexual conduct with another person, and did attempt to do so;

In violation of Title 18, United States Code, Sections 2423(c) and (e).

COUNT 4**(Producing Child Pornography)
(18 U.S.C §§ 2251(a) and (e))**

From on or about May 6, 2013, through on or about June 11, 2013, in the District of Oregon, defendant **STEVEN DOUGLAS ROCKETT** knowingly and unlawfully employed, used, persuaded, induced, enticed, or coerced "MG," a minor, to engage in sexually explicit conduct for the purpose of producing a visual depiction of said conduct, and did attempt to do so, said depictions having been produced using materials that had been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer;

In violation of Title 18, United States Code, Sections 2251(a) and (e).

COUNT 5
(Producing Child Pornography)
(18 U.S.C §§ 2251(a) and (e))

From on or about April 26, 2013, through on or about June 22, 2013, in the District of Oregon, defendant **STEVEN DOUGLAS ROCKETT** knowingly and unlawfully employed, used, persuaded, induced, enticed, or coerced "HJ," a minor, to engage in sexually explicit conduct for the purpose of producing a visual depiction of said conduct, and did attempt to do so, said depiction having been produced using materials that had been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer;

In violation of Title 18, United States Code, Sections 2251(a) and (e).

COUNT 6
(Producing Child Pornography)
(18 U.S.C. §§ 2251(a) and (e))

From on or about May 2, 2013, through on or about June 22, 2013, in the District of Oregon, defendant **STEVEN DOUGLAS ROCKETT** knowingly and unlawfully employed, used, persuaded, induced, enticed, or coerced "NS," a minor, to engage in sexually explicit conduct for the purpose of producing a visual depiction of said conduct, and attempted to do so, said depiction having been produced using materials that had been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer;

In violation of Title 18, United States Code, Sections 2251(a) and (e).

7
(Producing Child Pornography)
(18 U.S.C. §§ 2251(a) and (e))

From on or about November 10, 2004, through on or about September 12, 2012, in the District of Oregon, defendant **STEVEN DOUGLAS ROCKETT** knowingly and unlawfully employed, used, persuaded, induced, enticed, or coerced “DS,” a minor, to engage in sexually explicit conduct for the purpose of producing a visual depiction of said conduct, and attempted to do so, said depiction having been produced using materials that had been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer;

In violation of Title 18, United States Code, Sections 2251(a) and (e).

COUNT 8
(Producing Child Pornography)
(18 U.S.C. §§ 2251(a) and (e))

From on or about November 10, 2004, through on or about September 12, 2012, in the District of Oregon, defendant **STEVEN DOUGLAS ROCKETT** knowingly and unlawfully employed, used, persuaded, induced, enticed, or coerced “BS,” a minor, to engage in sexually explicit conduct for the purpose of producing a visual depiction of said conduct, and attempted to do so, said depiction having been produced using materials that had been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer;

In violation of Title 18, United States Code, Sections 2251(a) and (e).

COUNT 9
(Possession of Child Pornography)
(18 U.S.C. §§ 2252A(a)(5)(B) and (b)(2))

On or about August 23, 2013, in the District of Oregon, defendant **STEVEN DOUGLAS ROCKETT** knowingly and unlawfully possessed images of child pornography, as defined in Title 18, United States Code, Section 2256(8), which contained visual depictions of minors engaged in sexually explicit conduct, such images having been shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, or having been produced using materials that were shipped or transported in or affecting interstate or foreign commerce by any means, including by computer;

In violation of Title 18, United States Code, Sections 2252A(a)(5)(B) and (b)(2).

FIRST FORFEITURE ALLEGATION

Upon conviction of any offense in Count 1 and Counts 4-9 of this indictment, defendant shall forfeit to the United States, pursuant to 18 U.S.C. § 2253, any and all matter which contains visual depictions produced, transported, or possessed in violation thereof, and any and all property used or intended to be used in any manner or part to commit or to promote the commission of those violations.

SECOND FORFEITURE ALLEGATION

Upon conviction of any offense in Counts 2 and 3 of this indictment, defendant shall forfeit to the United States pursuant to 18 U.S.C. § 2428 any and all property, real or personal, that was used or intended to be used to commit or facilitate the commission of those offenses, and any property, real or personal, constituting or derived from any proceeds obtained directly as a result of those offenses(s).


Dated this 16 day of December 2015.

A TRUE BILL.

OFFICIATING FOREPERSON

Presented by:

BILLY J. WILLIAMS
United States Attorney


PAUL T. MADONEY
Special Assistant United States Attorney

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

STEVEN DOUGLAS ROCKETT,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains 2,613 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 7, 2025.

Respectfully submitted,

BEAR WILNER-NUGENT
620 SW 5th Avenue, Suite 1008
Portland, Oregon 97204
(503) 351-2327
Counsel for the Petitioner