NO.

IN THE

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2024

CHRISTOPHER JONES

PETITIONER,

v.

UNITED STATES OF AMERICA

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether the Fourth Circuit erred because the District Court improperly accepted a plea and proceeded with sentencing where Mr. Jones had not been apprised of material provisions in the Plea Agreement, and had not been adequately informed about the plea and sentencing process.

II. Whether the Fourth Circuit erred because the District Court unreasonably sentenced Mr. Jones at the high end of the United States Sentencing Guidelines range.

III. Whether the Fourth Circuit erred because the District Court improperly applied a two-level enhancement for Obstruction under United States Sentencing Guideline Sec. 3C1.1.

RULE 14.1(b) STATEMENT

There are no parties in addition to those listed in the caption.

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TABLE OF AUTHORITIES

OFFICIAL OPINION BELOW

The Judgment of the United States Court of Appeals for the Fourth Circuit was entered on March 4, 2025. The Fourth Circuit Opinion is attached hereto as Appendix I.

STATEMENT OF JURISDICTION

The Judgment of the United States Court of Appeals for the Fourth Circuit was entered on March 4, 2025. This Court's jurisdiction is invoked under 28 U.S.C. Sec. 1254(1).

CONSTITUTIONAL PROVISIONS

There are no constitutional provisions cited in the Petition for a Writ of Certiorari.

STATEMENT OF THE CASE/STATEMENT OF FACTS

A. THE RECORD BEFORE THE DISTRICT COURT.

On April 11, 2023, Mr. Jones was charged in a seven count Indictment. Mr. Jones was charged with: Count I - Coercion and Enticement of a Child, in violation of 18 U.S.C. Sec. 2422(b); Count II - Coercion and Enticement of a Child, in violation of 18 U.S.C. Sec. 2422(b); Count III - Coercion and Enticement of a Child, in violation of 18 U.S.C. Sec. 2422(b); Count IV - Attempted Coercion and Enticement of a Child, in violation of 18 U.S.C. Sec. 2422(b); Count V - Attempted Coercion and Enticement of a Child, in violation of 18 U.S.C. Sec. 2422(b); Count VI - Receipt of Child Pornography, in violation of 18 U.S.C. Secs. 2252A(a)(2) and (b)(1); and Count VII - Receipt of Child Pornography, in violation of 18 U.S.C. Secs. 2252A(a)(2) and (b)(1).

On May 18, 2023, Mr. Jones entered a guilty plea before the Honorable Jamar K. Walker of the United States District Court for the Eastern District of Virginia - Newport News Division. Mr. Jones pled guilty to Counts I and VII of the Indictment. Count I (Coercion and Enticement of a Child) carries a mandatory minimum term of imprisonment of ten (10) years, and Count VII (Receipt of Child Pornography) carries a mandatory minimum term of five (5) years.

Mr. Jones' conduct included sexual acts or attempted sexual acts with minors, and Mr. Jones' receipt of sexually explicit messages from minors.

At sentencing, the Presentence Report calculated the Offense Level at 41, and a Criminal History of I, for a United States Sentencing Guidelines Range of 324-405 months. At sentencing, Mr. Jones objected to the two-level enhancement under U.S.S.G. Sec. 3C1.1 (adjustment for obstruction). Accordingly, Mr. Jones proposed that the Offense Level was 39, a Criminal History of I, or a Guideline range of 262-327 months.

On September 19, 2023, the District Court sentenced Mr. Jones as follows: 405 months on Count I (the high end of the Guideline range); 240 months on Count VII, to run concurrently with Count I, or 33.75 years. A period of 30 years of supervised release was imposed.

Mr. Jones filed a timely notice of appeal on October 3, 2023. On March 4, 2025, the United States Court of Appeals affirmed in part the decision of the District Court regarding his guilty plea, and otherwise dismissed Mr. Jones' appeal regarding ineffective assistance of counsel as these claims did not conclusively appear on the face of the record. (Appendix I.)

SUMMARY OF ARGUMENT

The Fourth Circuit erred because the District Court improperly accepted a plea and proceeded with sentencing where Mr. Jones had not been apprised of material provisions in the Plea Agreement, and had not been adequately informed about the plea and sentencing process.

The Fourth Circuit erred because the District Court unreasonably sentenced Mr. Jones at the high end of the United States Sentencing Guidelines range.

The District Court improperly applied a two-level enhancement for Obstruction under United States Sentencing Guideline Sec. 3C1.1.

ARGUMENT

I. MR. JONES WAS NOT APPRISED OF MATERIAL PARTS OF HIS WRITTEN PLEA AND SENTENCING PROCESS.

A. The Standard Of Review.

By analogy, this Court reviews a district court's denial of habeas relief *de novo*. *See Teleguez v. Pearson*, 689 F.3d 322, 327 (4th Cir. 2012).

B. Mr. Jones Was Not Apprised Of Material Provisions Of His Plea And Sentencing.

Under the Constitution, the plea process requires special efforts and attention from counsel. In 2012, the Supreme Court held in *Missouri v. Frye*, 566 U.S. 134, 140, 132 S.Ct. 1399, 1409-11 (2012), that the Sixth Amendment right to effective assistance of counsel extends to the presentation, explanation and consideration of plea offers. The Sixth Amendment right to effective assistance of counsel applies to "all 'critical' stages of criminal proceedings", *Missouri v. Frye*, 132 S.Ct. at 1409-11(citing *Montejo v. Louisiana* 556 U.S. 778, 786 (2009), quoting *United States v. Wade*, 388 U.S. 218, 227-228 (1967)). *See also Padilla v. Kentucky*,

559 U.S. 356 (2010) (conviction set aside because counsel misinformed defendant of immigration consequences of plea); *Hill v. Lockhart* 474 U.S. 52, 57 (1985) (ineffective assistance of counsel in plea bargain process is governed by *Strickland* two part test). *See also Argersinger v. Hamlin*, 407 U.S. 25 (1972) (critical stage of representation includes entry of guilty pleas).

The Supreme Court stated in *Missouri v. Frye* that "[t]he reality is that plea bargains have become so central to today's criminal justice system that defense counsel have responsibilities in the plea bargain process, responsibilities that must be met to render the adequate assistance of counsel that the Sixth Amendment requires in the criminal process at critical stages." 132 S.Ct. at 1409-11.

To prevail on an ineffective assistance of counsel claim, a movant must show that: (1) counsel's performance fell below an objective standard of reasonableness; and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Missouri v. Frye*, 566 U.S. 134, 132 S.Ct. 1399, 1409-11 (2012). "[A] court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." *Strickland*, 466 U.S. at 697.

According to Mr. Jones:

* Mr. Jones raised certain objections to the Presentence Report to his trial attorney, but these objections were not raised with the District Court. For example, Mr. Jones never admitted contact with one of the Jane Does. He informed his attorney of the exact page and paragraph where this was misstated, but the attorney did not raise this issue with the Court;

* Mr. Jones asserts that one of the Jane Does in the Presentence Report and plea papers was fictional; his attorney did not raise this issue;

* Mr. Jones never was presented with the evidence against him, prior to entering his plea;

* Mr. Jones did not receive the written plea agreement prior to the plea hearing; his attorney read it to him in a non-contact visit; accordingly, he did not know of and understand the material and important provisions in the plea agreement, prior to entering the plea;

* Mr. Jones only received the initial Presentence Report; he never received nor reviewed the revised PSR prior to sentencing; there were certain enhancements Mr. Jones objected to, but his attorney did not object to them with the Court;

* His attorney told him he had to agree to the plea, even though there were certain facts in the plea he did not agree with;

* Mr. Jones wanted to say certain things to the Court at sentencing, but his attorney refused to let him say those things to

the Court; while the attorney promised to say those things, she did not do so.

Mr. Jones did not receive the written Plea Agreement prior to the plea hearing ... he did not receive and review the revised PSR ... he was not allowed to say what he wanted to say to the Court at sentencing.

Trial counsel's performance fell below an objective standard of reasonableness; and there is a reasonable probability that, but for counsel's unprofessional errors, the result of the sentencing proceeding would have been different. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984).

This Court should vacate the judgment against Mr. Jones, and remand the case to the District Court, with an order to appoint new trial level counsel.

II. THE DISTRICT COURT ABUSED ITS DISCRETION BY APPLYING THE HIGH END OF THE USSG RANGE - A LIFE SENTENCE.

A. The Standard Of Review.

This Court reviews all sentences for "reasonableness" by applying the "deferential abuse-of-discretion standard." *United States v. McCain*, 974 F.3d 506, 515 (4th Cir. 2020). Once this Court ensures that the district court committed no significant procedural errors, *see Gall v. United States*, 552 U.S. 38, 51 (2007), the Court then proceeds to substantive reasonableness by considering "the totality of the circumstances." *Id.*

B. The Totality Of The Circumstances Establish That The District Court Abused Its Discretion By Not Granting Mr. Jones A Lower Sentence.

Mr. Jones' crimes were very serious. The Defense conceded that point at sentencing. However, under the totality of circumstances, it is clear that the period of incarceration for Mr. Jones' sentence was unreasonably high, and should have been lower, as recommended by the defense.

1. The Applicable Legal Standard For Sentencing.

It is essential to consider the proper legal standard for sentencing. Sentencing courts enjoy greater latitude to impose alternative sentences that are also reasonable so long as they are tied to the Sec. 3553(a) factors. *See Gall v. United States*, 552 U.S. 38, 59 (2007) ("the Guidelines are not mandatory, thus the 'range of choice dictated by the facts of the case' is significantly broadened. Moreover, the Guidelines are only one of the factors to consider when imposing a sentence, and Sec. 3553(a)(3) directs the [sentencing] judge to consider sentences *other than imprisonment*.") (Emphasis added.)

Further, pursuant to 18 U.S.C. Sec. 3553(a)(2), the sentencing court must impose a sentence that is minimally sufficient to achieve the goals of sentencing based on all of the Sec. 3553(a) factors present in the case. This "parsimony provision" serves as the "overarching instruction" of the statute. *See Kimbrough v.*

United States, 552 U.S. 85, 111 (2007). *See also* Sec. 3553(a) ("[t]he court shall impose a sentence sufficient, *but not greater than necessary*, to comply with the purposes set forth in paragraph (2) of this subsection"). (Emphasis added.)

The "parsimony principle" is the touchstone for "the four identified purposes of sentencing: just punishment, deterrence, protection of the public, and rehabilitation." *Dean v. United States*, 137 S.Ct 1170, 1176, 581 U.S. ____ (2017).

2. Mr. Jones Has No Prior Convictions.

There is no dispute that, at the time of sentencing, Mr. Jones, 43 years old, had *no prior convictions or contact with the criminal justice system*. While Mr. Jones' conduct was very serious, the District Court inexplicably sentenced Mr. Jones at the high end of the Guideline range, 405 months, or 33.75 years.

To put this in perspective, the mandatory minimum sentence on Count I was 10 years, or 120 months. The District Court sentenced Mr. Jones more than *three times* greater than the mandatory minimum. Further, based upon the 33.75 year sentence, Mr. Jones will be 76 years old upon release, and facing 30 years of supervised release through age 106.

3. The District Court Flouted The "Parsimony Provision."

In other words, the District Court imposed a Life Sentence on Mr. Jones. The sentence flouts the "parsimony provision" in Sec. 3553(a) and applicable Supreme Court authority. Further, it

discounts the close scrutiny Mr. Jones will be under in the *30 year period of supervised release*.

Further, this over-the-top, exaggerated sentence bears no connection to Sec. 3553's purposes: "just punishment, deterrence, protection of the public, and rehabilitation." The sentence is egregiously long and harsh in terms just punishment, deterrence and protection of the public. Moreover, the concept of rehabilitation was ignored by the District Court when it imposed its *de facto* life sentence.

The Defense recommended a sentence of 120 months, or 10 years, at sentencing. The District Court could have doubled that - 240 months, or 20 years, a very substantial sentence that would have achieved the Sec. 3553(a) goals. Instead, the District Court more than tripled the 120 month recommended sentence, consigning Mr. Jones to a life sentence.

The District Court did not hear Mr. Jones at sentencing. The Court stated "I sat and listened to you, and I was hopeful that as you talked that I would get some sense of remorse from you, and while the words you said seemed like words of someone that would be remorseful, I have to be honest, I'm not buying what you're selling today."

In fact, Mr. Jones said the following to the Court. "I accept full responsibility for my actions. I am truly sorry for putting the victims through the grueling process and tragedy. Facing the

truth is the only way I can begin to move beyond my flaws and start a new path of redemption ... I ask that you would consider a sentence that will allow me to get the help I need, become a better person, become a better citizen. I ask that you would consider a sentence that will allow me to rejoin society, and to rejoin my family. My goal is to become better in every way possible, never to return to prison."

Mr. Jones accepted responsibility for his conduct, expressed remorse, and asked for the Court's help. The District Court didn't hear him, and instead, imposed am unjustifiably harsh and vindictive sentence.

The District Court cited the need for deterrence, and protecting the public from Mr. Jones. Yet, deterrence is a problematic issue. The National Institute of Justice issued a study on deterrence, and found the following:

> Studies show that most individuals convicted of a crime, short to moderate prison sentences may be a deterrent but longer prison terms produce only a limited deterrent effect. In addition, the crime prevention benefit falls far short of the social and economic costs.

United States Department of Justice, National Institute of Justice, *Five Things About Deterrence*, p. 2 (May 2016).

With this study in mind, the District Court sentenced Mr. Jones, a 43 year old man with no prior criminal history, to 405 months, or 33.75 years.

Mr. Jones does not dispute that his crimes were serious, and

deserve significant punishment. However, this Court should reverse this 33.75 year sentence on a 43 year old man. This Court should reverse this 33.75 year Life Sentence.

III. THE DISTRICT COURT ABUSED ITS DISCRETION BY APPLYING THE SEC. 3C1.1 ENHANCEMENT.

A. The Standard Of Review.

This Court reviews all sentences for "reasonableness" by applying the "deferential abuse-of-discretion standard." *United States v. McCain*, 974 F.3d 506, 515 (4th Cir. 2020). Once this Court ensures that the district court committed no significant procedural errors, *see Gall v. United States*, 552 U.S. 38, 51 (2007), the Court then proceeds to substantive reasonableness by considering "the totality of the circumstances." *Id.*

B. The District Court Imposed An Obstruction Enhancement Based On A "Smirk".

The PSR and the District Court imposed a two-level enhancement based on a "smirk". (JA 143; 75-77; 106.) The District Court stated at sentencing "smirking when you were asked if you factory-reset your phone...."

Who could possibly interpret an alleged look on Mr. Jones' face, as to whether a "smirk" could constitute *admission*! Have we reached the point when police, prosecutors and judges will look at an *uncounseled* defendant's face, determine it to be an admission, and enhance a sentence under the U.S.S.G?

The defense rightly objected to the 3C1.1 enhancement. (JA

Category I, or a USSG range of 262-327 months.

As argued above, a sentence of 262 months, or just under 22 years, would have been more than adequate to achieve the Sec. 3553(a) goals. The 33.75 year sentence was vindictive, outrageous, and should be reversed by this Court.

IV. CONCLUSION

WHEREFORE, Mr. Jones respectfully requests that the Court grant certiorari, reverse the Fourth Circuit and remand this case to the District Court, consistent with the relief sought herein.

Respectfully submitted,

/S/

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APPENDIX I

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-4628

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHRISTOPHER SCOTT JONES,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Newport News. Jamar Kentrell Walker, District Judge. (4:23-cr-00032-JKW-LRL-1)

Submitted: January 28, 2025 Decided: March 4, 2025

Before WILKINSON and QUATTLEBAUM, Circuit Judges, and FLOYD, Senior Circuit Judge.

Affirmed in part and dismissed in part by unpublished per curiam opinion.

ON BRIEF: Peter L. Goldman, Alexandria, Virginia, for Appellant. Peter Gail Osyf, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Newport News, Virginia; Daniel J. Honold, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Christopher Scott Jones pled guilty, pursuant to a written plea agreement, to coercion and enticement of a child, in violation of 18 U.S.C. § 2422(b) (Count 1), and receipt of child pornography, in violation of 18 U.S.C. § 2252A(a)(2)(A) (Count 7). The district court sentenced Jones to 405 months' imprisonment on Count 1 and a concurrent 240 months on Count 7.

On appeal, Jones challenges the validity of his guilty plea and appeal waiver and contends that the district court erred in calculating his advisory Sentencing Guidelines range and by imposing a sentence at the top of that range. The Government has moved to dismiss the appeal based on the appeal waiver in Jones's plea agreement. Jones opposes the motion to dismiss.

Even a valid appeal waiver does not preclude our review of the validity of a guilty plea. *United States v. McCoy*, 895 F.3d 358, 364 (4th Cir. 2018). When accepting a guilty plea, the district court must conduct a plea colloquy in which it informs the defendant of, and ensures that the defendant understands, the rights he is relinquishing by pleading guilty, the nature of the charges to which he is pleading guilty, and the possible consequences of his guilty plea. Fed. R. Crim. P. 11(b)(1); *United States v. DeFusco*, 949 F.2d 114, 116 (4th Cir. 1991). The court must also ensure that the plea is voluntary and not the result of threats, force, or promises extrinsic to the plea agreement, and that a factual basis exists for the plea. Fed. R. Crim. P. 11(b)(2), (3); *see United States v. Stitz*, 877 F.3d 533, 536 (4th Cir. 2017) (discussing proof required to establish factual basis). "[A] properly conducted Rule 11 plea colloquy raises a strong presumption that the plea is final and

binding." *United States v. Walker*, 934 F.3d 375, 377 n.1 (4th Cir. 2019) (internal quotation marks omitted).

Because Jones neither raised an objection during the plea colloquy nor moved to withdraw his guilty plea, we review the adequacy of the colloquy for plain error. *United States v. Sanya*, 774 F.3d 812, 815 (4th Cir. 2014). "There is plain error only when (1) an error was made; (2) the error is plain; (3) the error affects substantial rights; and (4) the error seriously affects the fairness, integrity, or public reputation of judicial proceedings." *United States v. Comer*, 5 F.4th 535, 548 (4th Cir. 2021) (internal quotation marks omitted). "In the Rule 11 context, this inquiry means that [the defendant] must demonstrate a reasonable probability that, but for the error, he would not have pleaded guilty." *Sanya*, 774 F.3d at 816 (internal quotation marks omitted). Our review of the record confirms that the district court substantially complied with Rule 11 and did not plainly err in accepting Jones's guilty plea.

Turning to the appeal waiver, "[a] defendant may waive the right to appeal his conviction and sentence so long as the waiver is knowing and voluntary." *United States v. Copeland*, 707 F.3d 522, 528 (4th Cir. 2013). "We review the validity of an appeal waiver de novo, and will enforce the waiver if it is valid and the issue[s] appealed [are] within the scope of the waiver." *Id.* (internal quotation marks omitted). Generally, if the district court fully questions a defendant during a Rule 11 colloquy regarding the waiver of his right to appeal and the record shows that the defendant understood the waiver's significance, the waiver is both valid and enforceable. *United States v. Thornsbury*, 670 F.3d 532, 537 (4th Cir. 2012).

The language of Jones's appeal waiver was clear and unambiguous, and our review of the record confirms that he knowingly and intelligently executed it. We therefore conclude that the waiver is valid. Pursuant to this waiver, Jones relinquished the right to appeal his convictions and any sentence within the statutory maximum. Jones's challenges to his sentence fall squarely within the scope of the appeal waiver.

In challenging his guilty plea, Jones asserts that he was denied effective assistance of counsel in the plea proceedings and during sentencing. Claims of ineffective assistance are not barred by appeal waivers. *United States v. Johnson*, 410 F.3d 137, 151 (4th Cir. 2005). Nevertheless, we decline to reach these claims because they do not conclusively appear on the face of the record. *See United States v. Benton*, 523 F.3d 424, 435 (4th Cir. 2008). Jones's ineffective assistance claims should be raised, if at all, in a 28 U.S.C. § 2255 motion. *See United States v. Baptiste*, 596 F.3d 214, 216 n.1 (4th Cir. 2010).

Accordingly, as to Jones's challenge to his guilty plea, we affirm. We grant the Government's motion to dismiss as to the sentencing claims and we decline to address the ineffective assistance claims because ineffectiveness does not conclusively appear on the face of the record. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED IN PART,
DISMISSED IN PART

FILED: March 4, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-4628
(4:23-cr-00032-JKW-LRL-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

CHRISTOPHER SCOTT JONES

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed in part. The appeal is dismissed in part.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK