

No. 17 – _____

IN THE
SUPREME COURT OF THE UNITED STATES

Edric Norvell Robinson, Dr.

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

APPENDIX

Appendix A

United States v. Robinson

United States Court of Appeals for the Fifth Circuit

November 14, 2017, Filed

No. 17-10152 Summary Calendar

Reporter

701 Fed. Appx. 381 *; 2017 U.S. App. LEXIS 22814 **; 2017 WL 5479580

UNITED STATES OF AMERICA, Plaintiff-Appellee v.
EDRIC NORVELL ROBINSON, SR., Defendant-Appellant

Notice: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Prior History: **[**1]** Appeal from the United States District Court for the Northern District of Texas. USDC No. 3:15-CR-418-1.

United States v. Robinson, 2016 U.S. Dist. LEXIS 62029 (N.D. Tex., May 11, 2016)

Counsel: For UNITED STATES OF AMERICA, Plaintiff - Appellee: Jay Stevenson Weimer, Assistant U.S. Attorney, U.S. Attorney's Office, Northern District of Texas, Fort Worth, TX; James Wesley Hendrix, Assistant U.S. Attorney, U.S. Attorney's Office, Northern District of Texas, Dallas, TX.

For EDRIC NORVELL ROBINSON, SR., Defendant - Appellant: Brandon Elliott Beck, Federal Public Defender's Office, Northern District of Texas, Lubbock, TX; Lauren Anita Woods, Federal Public Defender's Office, Northern District of Texas, Dallas, TX.

Judges: Before DAVIS, CLEMENT, and COSTA, Circuit Judges.

Opinion

[*381] PER CURIAM:*

Edric Norvell Robinson, Sr., pleaded guilty to sex trafficking of children, in violation of 18 U.S.C. § 1591(a), (b)(2), and was sentenced to 216 months of imprisonment, a downward

*Pursuant to *5TH CIR. R. 47.5*, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in *5TH CIR. R. 47.5.4*.

variance from the guidelines range. On appeal, Robinson argues that the district court clearly erred by applying a two-level enhancement for "undue influence" of his victim, "Jane Doe," pursuant to U.S.S.G. § 2G1.3(b)(2)(B).

This court reviews the district court's application of the Sentencing Guidelines de novo and its findings of facts for clear error. United States v. Cisneros-Gutierrez, 517 F.3d 751, 764 (5th Cir. 2008). To apply a sentencing enhancement, **[**2]** the district court must find facts supporting the enhancement by a preponderance of the evidence. United States v. Anderson, 560 F.3d 275, 283 (5th Cir. 2009). If the district court's findings are plausible in light of the record as a whole, there is no clear error. United States v. Serfass, 684 F.3d 548, 550 (5th Cir. 2012).

Under § 2G1.3(b)(2)(B), an offender should receive a two-level increase if he "otherwise unduly influenced a minor to engage in prohibited sexual conduct." The commentary instructs the district court to "closely consider the facts of the case to determine whether a participant's influence over the minor compromised the voluntariness of the minor's behavior." § 2G1.3(b)(2), cmt. n.3(B). When the offender is at least 10 years older than the minor, there is a rebuttable presumption that the enhancement applies. *Id.*

While he admits that the presumption of undue influence applied based on his and Doe's respective ages, Robinson argues **[*382]** that he rebutted the presumption by showing that Doe engaged in prostitution before she became involved with him in the instant offense. However, this court has found that evidence of the victim's prior prostitution is insufficient to rebut the presumption. Anderson, 560 F.3d at 283. Moreover, the evidence showed that Robinson controlled Doe's accommodations, transportation, and communication. Therefore, the **[**3]** district court's findings of fact were plausible in light of the record as a whole. *See Serfass, 684 F.3d at 550*.

The district court's determination that the preponderance of the evidence supported the enhancement was not clearly erroneous. *See Anderson, 560 F.3d at 283; Cisneros-Gutierrez, 517 F.3d at 764*. Accordingly, Robinson's sentence is AFFIRMED.

Appendix B

United States District Court
Northern District of Texas Dallas Division

UNITED STATES OF AMERICA

v.

EDRIC NORVELL ROBINSON, SR

§ JUDGMENT IN A CRIMINAL CASE

§

§

§ Case Number: 3:15-CR-00418-K (01)

§ USM Number: 50562-177

§

§ Lauren Anita Woods

§ Defendant's Attorney

THE DEFENDANT:

☐	pleaded guilty to count(s)	
☒	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	To the One Count Indictment, filed on September 23, 2015.
☐	pleaded nolo contendere to count(s) which was accepted by the court	
☐	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

<u>Title & Section / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC § 1591(a) and (b)(2) Sex Trafficking of Children	08/19/2015	1

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s)
- ☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

February 1, 2017

Date of Imposition of Judgment



Signature of Judge

Ed Kinkeade, United States District Judge

Name and Title of Judge

February 2, 2017

Date

DEFENDANT: EDRIC NORVELL ROBINSON, SR
CASE NUMBER: 3:15-CR-00418-K (01)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

TWO HUNDRED-SIXTEEN (216) Months. The defendant shall receive credit for time served in federal custody, prior to sentencing.

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

The Court recommends that the defendant be allowed to serve his sentence at FCI Seagoville, Seagoville, Texas. Further, the Court recommends that the defendant be allowed to participate in the Residential Institutional Drug Treatment Program, or ANY drug treatment program offered by the Bureau of Prisons, if eligible.

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

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at ☐ a.m. ☐ p.m. on

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: EDRIC NORVELL ROBINSON, SR
CASE NUMBER: 3:15-CR-00418-K (01)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **FIFTEEN (15) years.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. ☒ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6. ☒ You must participate in an approved program for domestic violence. *(check if applicable)*

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

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

DEFENDANT: EDRIC NORVELL ROBINSON, SR
CASE NUMBER: 3:15-CR-00418-K (01)

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

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

Defendant's Signature _____

Date _____

DEFENDANT: EDRIC NORVELL ROBINSON, SR
CASE NUMBER: 3:15-CR-00418-K (01)

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall participate in sex offender treatment services as directed by the probation officer until successfully discharged. These services may include psycho-physiological testing (i.e., clinical polygraph, plethysmograph, and the ABEL screen) to monitor the defendant's compliance, treatment progress, and risk to the community. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$10 per month.

Pursuant to the Sex Offender Registration and Notification Act (SORNA) (42 U.S.C. § 16901, et seq), the defendant shall register, and keep the registration current, with state and local law enforcement, as directed by the probation officer, in each jurisdiction where the defendant resides, is employed, or is a student. The defendant shall, no later than 3 business days after each change of name, residence, employment, or student status, appear in person in at least one of the jurisdictions and inform that jurisdiction of all changes in the information required in the sex offender registry. The defendant shall also initially register in the jurisdiction in which the defendant was convicted if such jurisdiction is different from the jurisdiction of residence. Initial registration shall occur before completion of the sentence of imprisonment with respect to the offense giving rise to the registration requirement. The defendant shall provide to the appropriate official all information required in accordance with SORNA guidelines and additional state-specific regulations for inclusion in the sex offender registry. The defendant shall provide written verification of registration to the probation officer within 3 business days following registration. This registration shall be renewed as required by the defendant's assigned tier.

The defendant shall participate and comply with the requirements of the Computer and Internet Monitoring Program, contributing to the cost of the monitoring in an amount not to exceed \$40 per month. The defendant shall consent to the probation officer's conducting ongoing monitoring of his computer/computers. The monitoring may include the installation of hardware and/or software systems that allow evaluation of computer use. The defendant shall not remove, tamper with, reverse engineer, or circumvent the software in any way. The defendant shall only use authorized computer systems that are compatible with the software and/or hardware used by the Computer and Internet Monitoring Program. The defendant shall permit the probation officer to conduct a preliminary computer search prior to the installation of software. At the discretion of the probation officer, the monitoring software may be disabled or removed at any time during the term of supervision.

The defendant shall submit to periodic, unannounced examinations of his computer/computers, storage media, and/or other electronic or Internet-capable devices, performed by the probation officer at reasonable times and in a reasonable manner based on reasonable suspicion of contraband evidence of a violation of supervision. This may include the retrieval and copying of any prohibited data and/or the removal of such systems for the purpose of conducting a more thorough inspection. The defendant shall provide written authorization for release of information from the defendant's Internet service provider.

The defendant shall not use any computer other than the one the defendant is authorized to use, without prior approval from the probation officer.

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SPECIAL CONDITIONS OF SUPERVISION CONTINUED

The defendant shall not use any software program or device designed to hide, alter, or delete records and/or logs of the defendant's computer use, Internet activities, or files stored on the defendant's computer.

The defendant shall participate in a domestic violence treatment program (i.e. batterer's intervention program and anger management program) as directed by the probation officer until successfully discharged. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$10 per month.

The defendant shall not have any form of unsupervised contact with persons under the age of 18 at any location, including but not limited to, the defendant's residence, place of employment, and public places where persons under the age of 18 frequent or congregate, without prior permission of the probation officer.

The defendant shall have no contact with any victim of this offense, including by correspondence, telephone, or communication through third parties, except under circumstances approved in advance by the probation officer. The defendant shall not enter onto the premises, travel past, or loiter near any victim's residence, place of employment, or other places frequented by the victim.

The defendant shall make all court-ordered child support payments on a timely basis, producing proof of payment to the probation officer within the first 5 days of each month, whether as a part of a written report required by the probation officer or otherwise.

DEFENDANT: EDRIC NORVELL ROBINSON, SR
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CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	\$0.00	\$0.00	\$0.00

- ☐ The determination of restitution is deferred until after such determination. An Amended Judgment in a Criminal Case (AO245C) will be entered
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

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

- ☐ Restitution amount ordered pursuant to plea agreement \$
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- | | | |
|---|-------------------------------|--|
| ☐ the interest requirement is waived for the | ☐ fine | ☐ restitution |
| ☐ the interest requirement for the | ☐ fine | ☐ restitution is modified as follows: |

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

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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SCHEDULE OF PAYMENTS

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

- A** ☐ Lump sum payments of \$ _____ due immediately, balance due
☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B** ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C** ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D** ☐ Payment in equal 20 (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E** ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** ☒ Special instructions regarding the payment of criminal monetary penalties:
It is ordered that the Defendant shall pay to the United States a special assessment of \$100.00 for Count 1 which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

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

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

- ☐ Joint and Several
See above for Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- ☐ Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

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