

No. _____

**In the
Supreme Court of the United States of America**

STEVEN DEAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

**Appendix to the
Petition for Writ of Certiorari**

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Provisions of Law Involved

The United States Criminal Code provides in relevant part:

18 U.S.C. § 3553. Imposition of a sentence

(a) **Factors To Be Considered in Imposing a Sentence.**—The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed—

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for—

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement—

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

* * *

18 U.S.C. § 3583. Inclusion of a term of supervised release after imprisonment

* * *

(d) Conditions of Supervised Release.—The court shall order, as an explicit condition of supervised release, that the defendant not commit another Federal, State, or local crime during the term of supervision, that the defendant make restitution in accordance with sections 3663 and 3663A, or any other statute authorizing a sentence of restitution, and that the defendant not unlawfully possess a controlled substance. The court shall order as an explicit condition of supervised release for a defendant convicted for the first time of a domestic violence crime as defined in section 3561(b) that the defendant attend a public, private, or private nonprofit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is readily available within a 50-mile radius of the legal residence of the defendant. The court shall order, as an explicit condition of supervised release for a person required to register under the Sex Offender Registration and Notification Act, that the person comply with the requirements of that Act. The court shall order, as an explicit condition of supervised release, that the defendant cooperate in the collection of a DNA sample from the defendant, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000. The court shall also order, as an explicit condition of supervised release, that the defendant refrain from any unlawful use of a controlled substance and submit to a drug test within 15 days of release on supervised release and at least 2 periodic drug tests thereafter (as determined by the court) for use of a controlled substance. The condition stated in the preceding sentence may be ameliorated or suspended by the court as provided in section 3563(a)(4). The results of a drug test administered in accordance with the preceding subsection shall be subject to confirmation only if the results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 3583(g) when considering any

action against a defendant who fails a drug test. The court may order, as a further condition of supervised release, to the extent that such condition—

(1) is reasonably related to the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D);

(2) involves no greater deprivation of liberty than is reasonably necessary for the purposes set forth in section 3553(a)(2)(B), (a)(2)(C), and (a)(2)(D); and

(3) is consistent with any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a); any condition set forth as a discretionary condition of probation in section 3563(b) and any other condition it considers to be appropriate, provided, however that a condition set forth in subsection 3563(b)(10) shall be imposed only for a violation of a condition of supervised release in accordance with section 3583(e)(2) and only when facilities are available. If an alien defendant is subject to deportation, the court may provide, as a condition of supervised release, that he be deported and remain outside the United States, and may order that he be delivered to a duly authorized immigration official for such deportation. The court may order, as an explicit condition of supervised release for a person who is a felon and required to register under the Sex Offender Registration and Notification Act, that the person submit his person, and any property, house, residence, vehicle, papers, computer, other electronic communications or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of supervised release or unlawful conduct by the person, and by any probation officer in the lawful discharge of the officer's supervision functions.

Federal Rule of Criminal Procedure 32.1. Revoking or Modifying Probation or Supervised Release

(a) Initial Appearance.

(1) Person In Custody. A person held in custody for violating probation or supervised release must be taken without unnecessary delay before a magistrate judge.

(A) If the person is held in custody in the district where an alleged violation occurred, the initial appearance must be in that district.

(B) If the person is held in custody in a district other than where an alleged violation occurred, the initial appearance must be in that district, or in an adjacent district if the appearance can occur more promptly there.

(2) Upon a Summons. When a person appears in response to a summons for violating probation or supervised release, a magistrate judge must proceed under this rule.

(3) Advice. The judge must inform the person of the following:

(A) the alleged violation of probation or supervised release;

(B) the person's right to retain counsel or to request that counsel be appointed if the person cannot obtain counsel; and

(C) the person's right, if held in custody, to a preliminary hearing under Rule 32.1(b)(1).

(4) Appearance in the District With Jurisdiction. If the person is arrested or appears in the district that has jurisdiction to conduct a revocation hearing--either originally or by transfer of jurisdiction--the court must proceed under Rule 32.1(b)-(e).

(5) Appearance in a District Lacking Jurisdiction. If the person is arrested or appears in a district that does not have jurisdiction to conduct a revocation hearing, the magistrate judge must:

(A) if the alleged violation occurred in the district of arrest, conduct a preliminary hearing under Rule 32.1(b) and either:

(i) transfer the person to the district that has jurisdiction, if the judge finds probable cause to believe that a violation occurred; or

(ii) dismiss the proceedings and so notify the court that has jurisdiction, if the judge finds no probable cause to believe that a violation occurred; or

(B) if the alleged violation did not occur in the district of arrest, transfer the person to the district that has jurisdiction if:

(i) the government produces certified copies of the judgment, warrant, and warrant application, or produces copies of those certified documents by reliable electronic means; and

(ii) the judge finds that the person is the same person named in the warrant.

(6) Release or Detention. The magistrate judge may release or detain the person under 18 U.S.C. § 3143(a)(1) pending further proceedings. The burden of establishing by clear and convincing evidence that the person will not flee or pose a danger to any other person or to the community rests with the person.

(b) Revocation.

(1) Preliminary Hearing.

(A) In General. If a person is in custody for violating a condition of probation or supervised release, a magistrate judge must promptly conduct a hearing to determine whether there is probable cause to believe that a violation occurred. The person may waive the hearing.

(B) Requirements. The hearing must be recorded by a court reporter or by a suitable recording device. The judge must give the person:

(i) notice of the hearing and its purpose, the alleged violation, and the person's right to retain counsel or to request that counsel be appointed if the person cannot obtain counsel;

(ii) an opportunity to appear at the hearing and present evidence; and

(iii) upon request, an opportunity to question any adverse witness, unless the judge determines that the interest of justice does not require the witness to appear.

(C) Referral. If the judge finds probable cause, the judge must conduct a revocation hearing. If the judge does not find probable cause, the judge must dismiss the proceeding.

(2) Revocation Hearing. Unless waived by the person, the court must hold the revocation hearing within a reasonable time in the district having jurisdiction. The person is entitled to:

- (A) written notice of the alleged violation;
- (B) disclosure of the evidence against the person;
- (C) an opportunity to appear, present evidence, and question any adverse witness unless the court determines that the interest of justice does not require the witness to appear;
- (D) notice of the person's right to retain counsel or to request that counsel be appointed if the person cannot obtain counsel; and
- (E) an opportunity to make a statement and present any information in mitigation.

(c) Modification.

(1) In General. Before modifying the conditions of probation or supervised release, the court must hold a hearing, at which the person has the right to counsel and an opportunity to make a statement and present any information in mitigation.

(2) Exceptions. A hearing is not required if:

- (A) the person waives the hearing; or
- (B) the relief sought is favorable to the person and does not extend the term of probation or of supervised release; and
- (C) an attorney for the government has received notice of the relief sought, has had a reasonable opportunity to object, and has not done so.

(d) Disposition of the Case. The court's disposition of the case is governed by 18 U.S.C. § 3563 and § 3565 (probation) and § 3583 (supervised release).

(e) Producing a Statement. Rule 26.2(a)-(d) and (f) applies at a hearing under this rule. If a party fails to comply with a Rule 26.2 order to produce a witness's statement, the court must not consider that witness's testimony.

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-15038
Non-Argument Calendar

D.C. Docket No. 1:10-tp-20199-JEM-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

STEVEN DEAN,

Defendant - Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(December 1, 2017)

Before WILSON and ROSENBAUM, Circuit Judges, and ROBRENO,^{*} District Judge.

PER CURIAM:

^{*} Honorable Eduardo C. Robreno, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

While on supervised release following a federal drug crime conviction, Steven Dean was convicted of felony child abuse in Florida. After he was released from state prison, the district court revoked Dean's federal supervised release and sentenced him to 24 months in prison followed by 36 months of supervised release. The court also imposed three special conditions, which require Dean to (1) have no unsupervised contact with children, minors, or the victim; (2) participate in a sex offender treatment program; and (3) submit to unannounced, warrantless searches of his person, property, and computers based on reasonable suspicion of unlawful conduct or a violation of a condition of his supervised release. Dean appeals the imposition of all three special conditions. For the reasons that follow, we affirm.

I.

A. Federal Drug Conviction

In 1989, Dean was convicted in the United States District Court for the Northern District of Florida for conspiracy to possess cocaine base with the intent to distribute, a class A felony under 21 U.S.C §§ 841 and 846. Dean was sentenced to 365 months of imprisonment followed by five years of supervised release, which included the standard condition that he would "not commit another Federal, state or local crime." After Dean was released from federal prison, jurisdiction over his supervised release was transferred to the United States District Court for the Southern District of Florida on October 19, 2010.

B. Florida Child Abuse Conviction

On June 5, 2012, Dean was arrested in Miami Gardens, Florida, and charged with committing lewd and lascivious molestation on a child under 12 years old, in violation of Fla. Stat. § 800.004(5)(B), and lewd and lascivious conduct, in violation of Fla. Stat. § 800.04(6)(B). The police affidavit accompanying Dean's arrest described the allegations: the ten-year-old victim was helping her aunt move out of Dean's home, when Dean grabbed her, forced her to kiss him, stuck his tongue in her mouth, grabbed her buttocks over her clothing, and forced her to kiss him again. On September 4, 2014, Dean pled guilty to aggravated child abuse in violation of Fla. Stat. § 827.03(2)(A).¹

C. Probation Revocation

After Dean's arrest on the state charge, the district court issued a warrant for Dean's arrest for violating the terms of his federal supervised release, by violating the law as charged in his state case. Following Dean's conviction on the state charge, the Probation Office filed a superseding petition to revoke Dean's supervised release, based on Dean's actual conviction for his violation of state law. The probation officer submitted a Report and Recommendation ("R&R") recounting the facts as alleged in the police report supporting the state charges. He

¹ The state dropped the original charges of lewd and lascivious molestation and conduct. The probation officer's Report and Recommendation reported that the state explained its decision to drop the charges as based on preventing the child from having to testify in court.

recommended that Dean's supervised release be revoked, but he did not request any special conditions. Dean filed objections to the R&R but did not challenge the facts as set forth in the R&R, instead arguing only about which version of the federal Sentencing Guidelines applied.²

At the revocation hearing, Dean admitted that on June 5, 2012, he committed "child abuse, aggravated, great bodily harm or torture," in violation of Fla. Stat. § 827.03(2)(a) and that he pled guilty to that charge. Accordingly, the district court, having "considered the statements of all the parties and the information contained in the violation report," found that Dean "violated the terms and conditions of supervised release." The district court sentenced Dean to 24 months in prison followed by 36 months of supervised release.

The district court also imposed three special conditions. Condition One mandates that Dean "shall have no unsupervised personal mail, telephone or computer contact with children or minors or with -- and especially the victim." Condition Two states that Dean "shall participate in a sex offender treatment program to include psychological testing and polygraph examination," including inpatient or outpatient treatment. Condition Three requires Dean to submit to unannounced, warrantless searches based on reasonable suspicion:

The defendant shall submit to the US Probation Office conducting periodic **unannounced searches** of the defendant's person, property,

² Dean does not advance this argument on appeal.

house, residence, vehicles, papers, computers, other electronic communication or data storage device or media, including retrieval and copying of all data from the computers and any internal or external peripherals and effects at any time, **with or without warrant**, by any law enforcement or probation office, **with reasonable suspicion concerning unlawful conduct or a violation of condition of probation or supervised release**. The search may include the retrieval and copying of all data from the computer and any internal or external peripherals to ensure compliance with other supervision conditions and/or removal of such equipment for the purpose of conducting a more thorough inspection, and to have installed on the defendant's computers, at the defendant's expense, any hardware or software systems to monitor the defendant's computer use.

(emphasis added).

After imposition of sentence, Dean generally objected to the second and third special conditions. The entirety of his objection, as relevant to this appeal, consisted of the following: "Your Honor, to preserve his right to appeal, should he choose to do so, I . . . would . . . object to the court's imposition of sex offender treatment program and the computer search condition." Dean now appeals the imposition of all three special conditions.

II.

On appeal, Dean argues that the district court (1) denied him due process of law when it imposed three special conditions without notice and in reliance on hearsay and (2) abused its discretion when it imposed these conditions even though Dean's aggravated-child-abuse conviction does not make him a sex offender under Florida law. Because the parties dispute the applicable standard of review, we

begin there. We then review the due-process claims and analyze each special condition.

A. Standard of Review

Generally, we review the imposition of special conditions of supervised release for an abuse of discretion. *United States v. Taylor*, 338 F.3d 1280, 1283 (11th Cir. 2003) (“*Taylor I*”). But because Dean did not object to Condition One and failed to provide the basis for his objections to Conditions Two and Three, we review for plain error. *See United States v. Nash*, 438 F.3d 1302, 1304 (11th Cir. 2006) (noting that objections not raised in the district court are reviewed for plain error); *United States v. Straub*, 508 F.3d 1003, 1011 (11th Cir. 2007), *cert. denied*, 555 U.S. 812 (2008) (“To preserve an issue for appeal, one must raise an objection that is sufficient to apprise the trial court and the opposing party of the particular grounds upon which appellate relief will later be sought.” (internal quotation marks omitted)).

“To prevail under a plain error standard, [Dean] must prove that (1) there is an error; (2) that is plain; and (3) that affects substantial rights.” *See United States v. Parrish*, 427 F.3d 1345, 1348 (11th Cir. 2005). If a defendant establishes all three requirements, we may choose to exercise our discretion to correct a forfeited error, but only if “the error seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *United States v. Monroe*, 353 F.3d 1346, 1349

(11th Cir. 2003) (citation and internal quotation marks omitted and alteration adopted).

B. Due Process and Hearsay

Dean argues that the district court imposed special conditions without providing him with adequate notice and an opportunity to be heard and by basing the conditions on unreliable, layered hearsay. We find no plain error.

1. *Notice*

Dean was not entitled to notice. We have held that a defendant generally is not entitled to notice before a district court may impose special conditions of supervised release to address a defendant's proclivity to sexual misconduct when the crime of conviction did not involve sexual activity. *United States v. Moran*, 573 F.3d 1132, 1135 (11th Cir. 2009).

As we explained in *Moran*, where a presentence report contains allegations of sexual misconduct, a "defendant ordinarily should not be surprised when a sentencing court imposes conditions of supervised release." *Id.* at 1138. And here, as in *Moran*, Dean does not appear to have been unfairly surprised: he did not allege that he was prejudiced by the court's decision, he did not move for a continuance to develop additional arguments, and the record shows he knew the district court would consider his criminal history and the allegations in the R&R.

In fact, Dean filed an objection to the R&R but failed to object to any of the facts contained therein.

2. *Opportunity to be heard*

Dean was not denied a meaningful opportunity to be heard after his counsel's objections to Conditions Two and Three. In support of this contention, Dean asserts that the court should have inquired as to the basis of his objections. But the court was under no such obligation. *See United States v. Carpenter*, 803 F.3d 1224, 1237–38 (11th Cir. 2015).

Nor was the court required to say any more at the hearing or in its order to justify the imposition of the special conditions, as Dean contends. “When pronouncing a defendant’s sentence, the court need only ‘set forth enough to satisfy the appellate court that he has considered the parties’ arguments and has a reasoned basis for exercising his own legal decisionmaking authority.’” *Carpenter*, 803 F.3d at 1232 (quoting *Rita v. United States*, 551 U.S. 338, 356 (2007)). In particular, a “sentencing court is not required to incant the specific language used in the guidelines or articulate its consideration of each individual § 3553(a) factor, so long as the record reflects the court’s consideration of many of those factors.” *Id.* (internal quotation marks omitted) (quoting *United States v. Ghertler*, 605 F.3d 1256, 1262 (11th Cir. 2010)); *United States v. Ridgeway*, 319 F.3d 1313, 1317 (11th Cir. 2003) (when the condition being imposed is clear and

undisputed facts in the PSI support the condition, then no error where court did not make a specific findings on each sentencing factor).

Here, the district court listed everything it considered in determining the sentence: the R&R, the Superseding Petition for offender under supervision, the order reducing the defendant's sentence, the original presentence investigation report for the 1988 conspiracy charge, and the defendant's objections to the R&R. It also stated before ruling that it had carefully considered the statements of all the parties and the information contain in the violation report. This is enough to allow this Court to understand the basis for the special conditions.

3. *Hearsay*

Dean also argues that the court relied upon unsubstantiated, layered hearsay in the R&R in violation of his right to confront witnesses. Again, we find no plain error.

First, as we have noted, Dean failed to object at all to the facts in the R&R, much less to object based on hearsay. So the district court had the authority to consider all of the unobjected-to-facts in the R&R. *See, e.g., United States v. Cobb*, 842 F.3d 1213, 1215 n.1 (11th Cir. 2016).

Plus, the Federal Rules of Evidence do not apply in supervised-release revocation hearings. *United States v. Frazier*, 26 F.3d 110, 114 (11th Cir. 1994). Rather, the admission of hearsay evidence, while not automatic, is limited by

minimal due-process rights. *Id.* “Admission of hearsay evidence in probation hearings does not violate due process, as long as it bears some indicia of reliability.” *United States v. Taylor*, 931 F.2d 842, 847 (11th Cir. 1991) (“*Taylor II*”).

And even assuming that the court’s consideration of the hearsay violated due process, Dean bears the burden to show (1) that the challenged evidence is materially false or unreliable and (2) that it actually served as the basis for the court’s sentence. *Taylor II*, 931 F.2d at 847. Dean has failed to meet this burden. He never lodged a hearsay objection or otherwise objected to the facts in the R&R, and it is too late to claim for the first time on appeal that the evidence was materially false or unreliable. We thus conclude that the district court did not plainly err by considering the unobjected-to-facts underlying Dean’s conviction when imposing the special conditions.

C. Standard for Imposing Special Conditions

In 18 U.S.C. § 3583(d), Congress granted the district court broad authority to impose additional conditions of supervised release to the extent such conditions fall within three limitations:

The court may order, as a further condition of supervised release, to the extent that such condition—

(1) is reasonably related to the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D);

(2) involves no greater deprivation of liberty than is reasonably necessary for the purposes set forth in section 3553(a)(2)(B), (a)(2)(C), and (a)(2)(D); and

(3) is consistent with any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a);

any condition set forth as a discretionary condition of probation in section 3563(b) and **any other condition** it considers to be appropriate

18 U.S.C. § 3583(d) (emphasis added); *see also* U.S.S.G. § 5D1.3(b) (setting forth similar requirements for imposing a discretionary condition of supervised release); *United States v. Okoko*, 365 F.3d 962, 965 n.5 (11th Cir. 2004) (explaining that because § 5D1.3(b) mirrors the language of § 3583(d) we consider them together).

The particular 18 U.S.C. § 3553(a) factors that § 3583(d)(1) references are (1) the nature and circumstances of the offense and the history and characteristics of the defendant and (2) the need for the sentence imposed to reflect the seriousness of the offense, afford adequate deterrence, protect the public from further crimes of the defendant, and provide the defendant with needed training, medical care, or other correctional treatment. 18 U.S.C. § 3553(a)(1), (a)(2)(B-D). A special condition of supervised release need not be related to all of the § 3553(a) factors; rather, each is an independent consideration to be weighed. *United States v. Zinn*, 321 F.3d 1084, 1089 (11th Cir. 2003) (citing *United States v. Bull*, 214 F.3d 1275, 1278 (11th Cir. 2000)).

D. Special Conditions

All three special conditions meet the three factors in 18 U.S.C. § 3538(d). We discuss each in turn.

1. *Condition One: Restrictions on contact with minors*

Condition One prohibits Dean from having “unsupervised, personal, mail, telephone, or computer contact with children/minors, or with the victim.” This condition is reasonably related to Dean’s history as a convicted child abuser as well as to the need to protect the victim—and other children—from potential future harm. This condition also does not unreasonably deprive Dean of his liberty, as “the district court was entitled to find that a restriction on [Dean’s] affiliation with children was justified based on previous incidents involving minor victims.” *Moran*, 573 F.3d at 1140.

Furthermore, the restriction is narrowly tailored and not unduly restrictive because the restriction prohibits only unsupervised contact, so Dean may seek permission from his probation officer to have supervised contact with minors. *See Zinn*, 321 F.3d at 1092-93 (affirming restriction on sex offender’s use of the internet where it was narrowly tailored and permitted the defendant to access the internet with his probation officer’s permission); *Moran*, 573 F.3d at 1140 (“the right of association ‘may properly be restricted where the doing so is necessary to protect the public.’”). Accordingly, the district court did not plainly err in imposing this condition.

2. *Condition Two: Sex-offender therapy*

The Second Condition requires Dean to participate in sex-offender therapy, which includes psychological testing and polygraph examination. The guideline pertaining to mental-health programs states,

(d) “Special” Conditions (Policy Statement) The following “special” conditions of supervised release are recommended in the circumstances described and, in addition, may otherwise be appropriate in particular cases:

...

(5) Mental Health Program Participation

If the court has reason to believe that the defendant is in need of psychological or psychiatric treatment—a condition requiring that the defendant participate in a mental health program approved by the United States Probation Office.

§ 5D1.3(d)(5).

We have previously held that mental-health treatment, including sexual-offender therapy, may be imposed even where the conviction did not involve the defendant’s mental health or was not a sexual offense. *See, e.g., Moran*, 573 F.3d at 1139-40 (approving condition for sexual offender therapy where the defendant, who pled guilty to being a felon in possession of a firearm, had a documented history of sex-related offenses); *Bull*, 214 F.3d at 1278 (requiring mental-health treatment for anger and violence based on defendant’s history of domestic violence where defendant was convicted of use of an unauthorized credit card).

Furthermore, we cannot say that it was plain error to impose polygraph testing as a part of the mental-health treatment. *See Zinn*, 321 F.3d at 1090 (concluding that “polygraph testing to ensure compliance with probationary terms is both reasonably related to Appellant’s offense [of possession of child pornography] and personal history, and when reasonably applied will not unduly burden his rights”); *Taylor I*, 338 F.3d at 1283 n.2 (noting that polygraph examinations “help insure compliance with the conditions of supervised release because probationers fear that any false denials of violations will be detected”). If it was not plain error to require sex-offender therapy, we cannot say it was plain error to require polygraph testing to support that therapy.

3. *Condition Three: Warrantless searches upon reasonable suspicion*

The third special condition requires Dean to submit to searches of his property, including electronic data, with or without a warrant by any law-enforcement officer or probation officer with reasonable suspicion that Dean is engaging in unlawful conduct or violating the terms of his supervised release.

It is undisputed that Dean’s conviction for aggravated child abuse does not require him to register as a sex offender under the Sex Offender Registration and Notification Act (SORNA). *See* 34 U.S.C. § 20913; Fla. Stat. § 943.0435(1)(h)(1)(a) (listing the statutes of conviction triggering sex offender status). Dean argues that the third condition is improper because § 3583(d), which

expressly permits warrantless searches on “felons required to register as sex offenders,”³ cannot be applied to felons who are not sex offenders. We disagree. The text of § 3583(d) specifically permits a district court to impose “any other condition it considers to be appropriate,” which includes a warrantless search.

Indeed, the Circuits have imposed warrantless search conditions for crimes unrelated to sex offenses. *See, e.g., United States v. Betts*, 511 F.3d 872, 876 (9th Cir. 2007) (approving warrantless search condition in a bribery conspiracy case even with no reasonable suspicion requirement); *United States v. Kingsley*, 241 F.3d 828, 837 (6th Cir. 2001) (finding a blanket search condition was necessary, justifiable, and advanced the legitimate goals of supervised release, given the defendant’s extensive criminal record); *United States v. Germosen*, 139 F.3d 120, 132 (2d Cir. 1998) (holding that a condition of supervised release subjecting the

³ The statute provides, in relevant part, that the court may order, to the extent the condition is reasonably related to the factors in § 3553(a), involves no greater deprivation of liberty than necessary, and is consistent with policy,

any condition set forth as a discretionary condition of probation in section 3563(b) and **any other condition it considers to be appropriate** The court may order, as an explicit condition of supervised release **for a person who is a felon and required to register under the Sex Offender Registration and Notification Act**, that the person submit his person, and any property, house, residence, vehicle, papers, computer, other electronic communications or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of supervised release or unlawful conduct by the person, and by any probation officer in the lawful discharge of the officer's supervision functions.

18 U.S.C. § 3583(d) (emphasis added).

defendant in a wire-fraud case to searches necessary to secure financial information was reasonably necessary to ensure compliance with the restitution order).

The Sentencing Commission has also recognized that warrantless searches may be appropriate in cases not involving sexual offenders. “In fact, while the Sentencing Commission recommends that persons convicted of sex offenses against minors always be subject to a special condition permitting warrantless searches, the Commission has also said that the same condition ‘may otherwise be appropriate in particular cases.’” *United States v. Neal*, 810 F.3d 512, 520-21 (7th Cir. 2016) (emphasis and citation omitted) (citing U.S.S.G. § 5D1.3(d)). “The [United States Sentencing Guidelines] policy statement therefore indicates warrantless-search conditions may be appropriate in cases other than those involving sex offenders,” and such a condition could thus “satisfy § 3583(d)(3) because it would be consistent with the relevant policy statement.” *United States v. Flaughner*, 805 F.3d 1249, 1252 (10th Cir. 2015), *cert denied*, 137 S. Ct. 35 (2016).

Thus, the district court had the statutory authority to impose this condition. We must now determine whether the condition is reasonably related here to a § 3553(a) factor and if it involves no greater deprivation than necessary. Under

plain-error review, we cannot say that the imposition of this condition was improper.

The condition is reasonably related to the goals of deterring further criminal activity and protecting the public because the searches will ensure that Dean is complying with the terms of his supervised release. *See Neal*, 810 F.3d at 521 (search condition reasonably related to goal of discouraging further drug use because a search would ensure defendant did not possess drugs). Moreover, while the condition allows Dean to use the internet for legitimate purposes, a search of Dean's computer and electronic data will safeguard against his contacting the victim, whom he knew, or other minors. *See Taylor I*, 338 F.3d at 1284-85 (sex offender "used the internet as his tool to harass his former client and to endanger her daughter by capitalizing on the internet's effectiveness as a means of reaching pedophiles."); *Owens v. Kelley*, 681 F.2d 1362, 1368 (11th Cir. 1982) (searches help "to deter the commission of crime and to provide supervisors with information on the progress of their rehabilitative efforts.").

Finally, a search may be conducted only upon a "reasonable suspicion" that Dean is engaging in illegal conduct or violating the terms of his supervised release. We have previously upheld warrantless searches that were not premised on reasonable suspicion. *See Owens*, 681 F.2d at 1366-69 (finding a Georgia probation condition allowing warrantless searches without reasonable cause for a

person convicted of a violation of the Georgia Controlled Substances Act did not violate the Fourth Amendment); *see also Samson v. California*, 547 U.S. 843, 846 (2006) (holding that a suspicion-less search based on a California condition for release on state parole does not violate the Constitution). Thus, we cannot say that the court plainly erred in imposing this condition.

III.

For the foregoing reasons, we affirm Dean's sentence.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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December 01, 2017

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 16-15038-X
Case Style: USA v. Steven Dean
District Court Docket No: 1:10-tp-20199-JEM-1

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Stephanie Tisa at (305) 579-4432.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Djuanna Clark
Phone #: 404-335-6161

OPIN-1 Ntc of Issuance of Opinion

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 10-20199-TP-MARTINEZ

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STEVEN DEAN,
Reg. No. 08756-017

Defendant.

JUDGMENT AND COMMITMENT
UPON REVOCATION OF
OFFENDER UNDER SUPERVISION

THIS MATTER came before the Court, at a Final Revocation Hearing of Supervised Release. The defendant was previously sentenced by a United States District Judge, in the Northern District of Florida, Tallahassee Division on March 28, 2008, to a reduced term of Two Hundred Ninety Three (293) months for the offense in Count One: conspiracy to possess with intent to distribute 50 grams or more of cocaine base in violation of 21 U.S.C. § 841 and 846, followed by 5 years supervised release, with special conditions.

The defendant appeared before a United States Magistrate Judge in the Southern District of Florida on January 15, 2016 for his Initial Appearance Hearing in respect to a Petition for Warrant or Summons for Offender Under Supervision.

The Defendant having now been duly brought before this Court for a Final Revocation of Supervised Release Hearing, upon a Superseding Petition for Offender Under Supervision signed on January 19, 2016.

The Court held a hearing on June 29, 2016, in respect to the violation of the Superseding Petition in which he admits to violation number 1. The Court finds the Defendant in violation of his Supervision as to violation number 1 and adjudicates the defendant.

The Defendant violated by:

Failing to refrain from violation of the law. On or about June 5, 2012, in Miami-Dade County, Florida, the defendant committed the offense of Child Abuse/Aggravated/Great Bodily Harm/Torture, contrary to Florida Statute 827.03(2)(A), in Case Number F12-014020.

The Court has carefully considered the statements of all parties and the information contained in the violation report. The Court finds that the defendant has violated the terms and conditions of supervised release and hereby revokes the period of supervised release. It is

ORDERED AND ADJUDGED that **Steven Dean** is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of Twenty Four **(24) months**.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of Thirty Six **(36) months**. While on supervised release, the defendant shall not commit any Federal, State, or local crime and shall be prohibited from possessing a firearm or other dangerous device and shall not possess a controlled substance. In addition, the defendant shall comply with the standard conditions of supervised release that have been adopted by this Court.

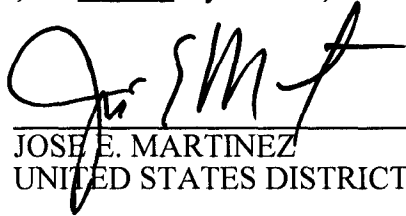
Special Conditions of Supervision are as follows:

1. The defendant shall have no unsupervised, personal, mail, telephone, or computer contact with children/minors, or with the victim.
2. The defendant shall participate in a sex offender treatment program to include psychological testing and polygraph examination. Participation may include inpatient/outpatient treatment. The defendant will contribute to the cost of services rendered (co-payment) based on ability to pay or availability of third party payment.
3. The defendant shall submit to the U.S. Probation Officer conducting periodic unannounced searches of the defendant's person, property, house, residence, vehicles, papers, computer(s), other electronic communication or data storage devices or media, including retrieval and copying of all data from the computers(s) and any internal or external peripherals and effects

at any time, with or without warrant by any law enforcement or probation officer with reasonable suspicion concerning unlawful conduct or a violation of a condition of probation or supervised release. The search may include the retrieval and copying of all data from the computer(s) and any internal or external peripherals to ensure compliance with other supervision conditions and/or removal of such equipment for the purpose of conducting a more thorough inspection; and to have installed on the defendant's computer(s), at the defendant's expense, any hardware or software systems to monitor the defendant's computer use.

The defendant shall be assigned to a facility as close to South Florida as possible commensurate with his background and the offense of which he stands convicted.

DONE AND ORDERED at Miami, Florida, this 30 day of June, 2016.



JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

cc:
All Counsel Of Record
U.S. Probation Officer
U.S. Marshal (1 certified copy)

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA
3 MIAMI DIVISION
4 CASE NO. 10-20199-TP-MARTINEZ

5 UNITED STATES OF AMERICA,
6 Plaintiff,

7 VS.

8 STEVEN DEAN,

9 Defendant.

Miami, Florida
June 29, 2016
Pages 1-19

11 TRANSCRIPT OF HEARING
12 ON SUPERVISED RELEASE VIOLATION
13 BEFORE THE HONORABLE JOSE E. MARTINEZ
14 UNITED STATES DISTRICT JUDGE

15 APPEARANCES:

16 FOR THE PLAINTIFF:

17 *United States Attorney's Office*
18 BY: ROBERT BRADY, A.U.S.A.
99 Northeast Fourth Street
Miami, Florida 33132

19 FOR THE DEFENDANT:

20 *Federal Public Defender's Office*
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22 REPORTED BY:

23 DAWN M. SAVINO, RPR
24 Official Court Stenographer
400 N. Miami Avenue, 10S03
Miami, Florida 33128
25 Telephone: 305-523-5598

1 P-R-O-C-E-E-D-I-N-G-S

2 COURTROOM DEPUTY: Case number 10-20199-TP-Martinez,
3 United States of America versus Steven Dean.

4 Counsel, please state your appearance.

5 MR. BRADY: Good afternoon, Your Honor. Robert Brady
6 on behalf of the United States.

7 THE COURT: Mr. Brady.

8 MS. BECKER: Good afternoon, Your Honor. Abigail
9 Becker on behalf of Mr. Dean.

10 THE COURT: Ms. Becker.

11 All right. We're here -- can I get an appearance from
12 probation?

13 THE PROBATION OFFICER: Good afternoon, Your Honor.
14 Gary Hackett on behalf of United States Probation.

15 THE COURT: All right, Mr. Hackett.

16 We're here on the final revocation of supervised
17 release on Steven Dean. He was originally charged with
18 conspiracy to possess with intent to distribute 50 grams or more
19 of cocaine, and he was sentenced, which was eventually reduced
20 to 293 months at the Bureau of Prisons, followed by five years
21 of supervised release.

22 I have reviewed the Probation's report and
23 recommendation for final revocation, the superseding petition
24 for offender under supervision signed by Judge Moore, the order
25 reducing defendant's sentence, the original presentence

1 investigation report, the defendant's objections to report and
2 recommendation for final revocation hearing, and I have reviewed
3 all of that and I'm ready to proceed at this time.

4 what issues remain to be resolved, Ms. Becker?

5 MS. BECKER: Your Honor, Mr. Dean is admitting the one
6 violation in the superseding petition so it's uncontested as to
7 that. But I don't believe there's a joint recommendation with
8 respect to the sentence.

9 THE COURT: Okay. So he is admitting that on -- hold
10 on, I'll get there -- that on or about June the 5th, 2012 in
11 Miami-Dade County, he committed the offense of child abuse,
12 aggravated, great bodily harm or torture, contrary to Florida
13 Statute 827.03(2)(a), by pleading guilty in case number -- in
14 Florida case number F12-014020; is that correct?

15 MS. BECKER: Yes, Judge. That's what he pled to in the
16 state case and he's admitting the same violation.

17 THE COURT: All right. And therefore I will find that
18 he has violated his terms and conditions of probation and I will
19 now then go to the sentencing time.

20 Government, what do you believe is a fair sentence in
21 this case?

22 MR. BRADY: Your Honor, we believe --

23 THE COURT: Well, wait. I think we need to discuss and
24 make sure that we all agree on the appropriate guidelines.

25 Criminal history category is three; is that correct?

1 Everybody agree?

2 MR. BRADY: Yes sir, Your Honor.

3 MS. BECKER: Yes, Judge.

4 THE COURT: And that would result in imprisonment range
5 of 30 to 37 months, probation is not appropriate, no fine, and
6 supervised release of the statutory maximum of five years minus
7 any revocation imprisonment range.

8 Does everybody agree those are the applicable
9 guidelines?

10 MR. BRADY: Yes sir, Your Honor.

11 MS. BECKER: No, Your Honor. We don't agree with that.
12 That was the subject of the objection that I filed.

13 THE COURT: All right. Tell me why you don't agree so
14 we can deal with that first.

15 MS. BECKER: Judge, our objection is based on the fact
16 that at the time that Mr. Dean was sentenced in 1989, these were
17 not the guidelines that applied to supervised release
18 revocations. And in fact, there was not a numerical guideline
19 range in effect at that time.

20 THE COURT: But doesn't the result of that mean that I
21 can give him just five years if I want to?

22 MS. BECKER: Judge, I think regardless the law provides
23 that that's the maximum that's allowed under the law. But I
24 don't believe that the grade system whereby we designate this
25 violation a Grade A violation with the resulting numerical range

1 of 30 to 37 months applies. And likewise, the guideline
2 provision that requires that any sentence in the supervised
3 release revocation proceeding shall run consecutive to any other
4 sentence, as I will discuss a bit more in a moment, that
5 provision also was not in effect at the time of his sentencing
6 in 1989.

7 THE COURT: All right. So you say that it is not.
8 Mr. Brady, do you have a position on that?

9 MR. BRADY: Yes sir, Your Honor. We filed a response
10 to the defense's objection yesterday afternoon. I'll go ahead
11 and echo what I have stated in that written response.

12 THE COURT: Yeah, you better, because I didn't get it.

13 MR. BRADY: Well, in sum Your Honor, it's my
14 understanding the defense's is objecting because they believe
15 it's an ex post facto violation for the court to apply the
16 guidelines in this particular case. The government doesn't view
17 it that way. There was no increase in the penalty in the time
18 since the guidelines that applied originally at the time of the
19 defendant's sentencing up to the present, the guidelines are
20 supposed to apply now.

21 The court, statutorily, is authorized to impose a term
22 of imprisonment of up to five years. That hasn't changed.
23 whether it's 1989 or now, that is still a constant. The only
24 difference that has happened since 1989 is that the guidelines
25 have been amended to create a guideline range, a category

1 depending upon the type of violation, as well as taking into
2 account the original offense.

3 The court is still free either to follow the guidelines
4 or not. The court is free to impose a term of imprisonment of
5 five years, whether it's 1989 or right now. The only thing that
6 happened was that those guidelines apply to supervised release
7 violations and were created primarily for the purpose to avoid
8 sentencing disparity and just to find an appropriate range
9 within that statutory range that's available to the court.

10 And so the court or the government does not see that as
11 an increase in the penalty that is required for the court to
12 determine if there was in fact an ex post facto violation.

13 Now, in addition to that, the defense has stated that
14 the court, since 1989, is now required to impose a consecutive
15 sentence. Well, that's true. That perhaps wasn't required back
16 in 1989, but it still remained a possibility in 1989.

17 THE COURT: And isn't that up to me?

18 MR. BRADY: It is. Well, no. Right now, apparently if
19 you do decide to impose a term of imprisonment, it has to be
20 ordered consecutive to any other term of imprisonment or any
21 other type of imprisonment that he has faced or may be facing.

22 THE COURT: But I could have done that before.

23 MR. BRADY: Exactly. So it still remained. Even
24 though it's required now, it was always a possibility dating
25 back to 1989 up to the present. So the government does not view

1 the requirement that there must be a consecutive term of
2 imprisonment as an ex post facto violation. It was still a
3 possibility in 1989 that the court at that time, if there was a
4 revocation, could have imposed a consecutive term of
5 imprisonment.

6 And so the government believes that a term of 30 months
7 is appropriate. And the factor, the sentencing factor that we
8 believe predominates is protection of society from the offender.
9 This isn't just a situation where he tested hot on a urinalysis.
10 There is an identifiable victim, it was a child, and he
11 committed an unspeakable act. And people who commit these type
12 of offenses, it could be argued one way or another, are
13 predisposed to engage in this type of activity again.

14 So it's the government's view that 30 months is fair
15 and appropriate.

16 MS. BECKER: Your Honor, I disagree with the
17 government's position with respect to the applicability of the
18 guideline -- the 2015 guidelines as I put forth in the memo.
19 And I won't rehash it more for the court other than to say I
20 think going from no guidelines to a range of 30 to 37 months
21 does increase the penalty. And applying a higher guideline
22 range than what was applicable at the time of the offense is an
23 ex post facto violation, even in light of the fact that the
24 guidelines are advisory. And in light of the fact that the
25 court, in 1989 and today, has the full statutory range at its

1 disposal for sentencing applying a guideline range that is --
2 it's necessarily, I think, higher than what existed at the time
3 of sentencing because at the time of sentencing there was no
4 guideline range.

5 THE COURT: It's not higher though, because at that
6 time then, I could have given him anything. I could have given
7 him 60 months.

8 MS. BECKER: And I think, Your Honor, we know that the
9 effect of the guidelines, even under the post-Booker advisory
10 scheme where the court has the authority to go below or go above
11 the guidelines, the effect of the guidelines is nonetheless to
12 anchor the sentences that the courts give. It has a magnetic
13 effect on the sentence that the court does impose. So applying
14 a guideline range that was not in effect at the time of
15 sentencing, we know it has an effect on the outcome of the case.
16 And it's for that reason that we object to the application of
17 the guidelines in this case.

18 And separate and apart from that, Your Honor, what I'm
19 asking --

20 THE COURT: What am I supposed to make it consecutive
21 to?

22 MS. BECKER: Well Your Honor, what we're asking for is
23 for the court to impose a sentence of 12 months and a day here.

24 THE COURT: No, but I understand that. But what is it
25 that I'm supposed to make any sentence that I give consecutive

1 to? The state case that he's presently on?

2 MS. BECKER: Under the current guidelines scheme, the
3 guidelines say that any sentence in a supervised release
4 proceeding shall run consecutive to any other sentence. And in
5 this case, this violation is based on a state case that has
6 happened, it was resolved, Mr. Dean was sentenced, he was
7 sentenced to a term of four years plus five years of probation.

8 THE COURT: And he's finished with that.

9 MS. BECKER: He is finished with that. So in effect,
10 any sentence that the court imposes at this point is necessarily
11 consecutive to the sentence that he's already received.

12 THE COURT: What if it wasn't? I mean, the way I see
13 it, I could give him from zero to 60 months then, now or any
14 time. And whatever I give him is going to be consecutive to
15 what he's already done. Because that's the way it's worked out.
16 If I thought that he didn't deserve anymore time, I would give
17 him time served.

18 MS. BECKER: Yes, Your Honor.

19 THE COURT: And if I don't feel like it, I'll give --
20 any sentence that I give him is, by itself, automatically going
21 to be consecutive.

22 MS. BECKER: Due to the fact that he has already served
23 that term of incarceration, any additional sentence is, by
24 necessity, a consecutive term.

25 THE COURT: So I'm having a problem understanding what

1 the problem is.

2 MS. BECKER: I'm asking the court to consider the fact
3 --

4 THE COURT: I know what you're asking, but what is the
5 problem with the change in the guidelines? The fact that they
6 have a suggested 30 months? 30 to 37 months?

7 MS. BECKER: Because that range was not in effect at
8 the time of sentencing, and that is the range under the 2015
9 guidelines that would apply if these guidelines were applicable.
10 The contention is the court is required under the law to give
11 great consideration to the guidelines, to weigh the guidelines
12 as -- very seriously as one of the factors in determining what's
13 the appropriate sentence. And that magnetic pull of the
14 guidelines has a detrimental effect in this case.

15 THE COURT: So in order to avoid any appellate problems
16 on this, I should give him more than 37 months if I want to,
17 right? So that way nobody could say that the guidelines pulled
18 me in their direction. If I give him 48 months, wouldn't have
19 anything to do with the guidelines, right?

20 MS. BECKER: I think the court always has the legal
21 bounds set forth by the statute as to the minimum and the
22 maximum. Our contention is simply that the guidelines do not
23 apply in this case, and my argument is for a sentence of 12
24 months and a day.

25 THE COURT: You know I'm just giving you a hard time

1 Ms. Becker. I'm trying to see --

2 MS. BECKER: That's your job, Your Honor.

3 THE COURT: -- how you'll come out of this. I'm trying
4 to see how you're coming out of this one. Because maybe I'm
5 just slow today and it's very likely because it's --
6 mid-afternoon is when I usually take my nap, and so I don't
7 really know. But it seems to me like there's no difference. I
8 mean, I could do whatever I wanted to do before and I can do
9 whatever -- I shouldn't say whatever I want to do, whatever I
10 think is fair before and whatever I think is fair now. And I
11 don't think it makes any difference and I don't see any problem
12 with them saying you know what, for this type of an offense,
13 this is a reasonable sentence. And if you go below it or above
14 it, you need to tell us why or you need to have a reason. I
15 don't see anything wrong with that. And so I don't think that
16 it's a problem with ex post facto. I'm prepared to accept the
17 risk that it is because I think that the guidelines are helpful.

18 You know, I started practicing as an Assistant US
19 Attorney when there were no guidelines, none. Judges could do
20 whatever they wanted and they did. And you went in there
21 sometimes and you didn't know what in the world they were going
22 to do. Especially Judge Choate, but that's neither here nor
23 there. You just didn't know. Then I was in private practice
24 when the guidelines came in and they were mandatory. And when I
25 became a judge they were mandatory. And you know what, it takes

1 a lot of stress off you. You say hey look, I'd really love to
2 help you out, but I can't. You're going to have to take seven
3 years because that's what they told me from Washington that you
4 got to do. Then when they took it away I thought oh, boy now
5 you got to justify it and it's me doing it.

6 I understand all of the ramifications of it. I just
7 don't see in this case how it makes any difference because I
8 think the act that he has been punished for in the state is a
9 horrible act. The original act that he was sentenced by Judge
10 Stafford, who is still around incidently, was a terrible thing.

11 I don't know what. I don't know what. I hear you, I'm
12 not sure that I agree with you. In fact, I don't think I do
13 agree with you. I don't think that it is a problem and I will
14 -- I looked at the guidelines so I can't like forget them,
15 because I don't work that way. Let me hear from the government
16 what you think is a fair sentence and then I'll get back to her.

17 See, one of the things they tell you in these is get an
18 agreement as to what the guidelines are. We're not going to get
19 an agreement in this case. You say what I said was the
20 guidelines are the guidelines; Ms. Becker says there are no
21 guidelines because they weren't in effect at the time. I'm not
22 sure it makes any difference so let me hear from you what you
23 feel is an appropriate sentence.

24 MR. BRADY: Well Your Honor, I mean, there is
25 mitigation in this case to the extent that he did come here, he

1 did, you know, plead true and -- to the violation and so he
2 should be given credit for that. And the government concedes
3 that.

4 It's still our position that the guidelines are
5 appropriate and they should be considered in this case. So we
6 believe a sentence of 30 months is appropriate.

7 As to whether or not 30 -- you know, Your Honor, I
8 can't say for sure if that is the precise, the most appropriate
9 sentence, but according to the guidelines, according to what
10 Congress and the Commission have determined, given all the
11 circumstances of this case, this 30 months is within the
12 appropriate range. And I do believe, Your Honor, that given the
13 nature of the underlying offense, the offense that's involved in
14 the violation of this case, the predominant concern is
15 protection of society from the offender. And if 30 more months
16 of him off the street satisfies that, then that's great.

17 But on top of that, additional supervision to ensure
18 that he conforms his conduct to what is expected of someone on
19 supervised release. So we do believe that 30 months is fair and
20 appropriate in this case and does satisfy all the sentencing
21 objectives, particularly protection of society from the
22 offender.

23 THE COURT: All right. Ms. Becker, I'll be happy to
24 hear from you and or the defendant.

25 MS. BECKER: Your Honor, I submit that a sentence of 12

1 months and a day is appropriate and sufficient, but not greater
2 than necessary to achieve the purposes of sentencing here. As
3 we've gone over, this violation is based on a state case.
4 Mr. Dean fled in the state case as he is admitting the violation
5 here. In the state case, he received a sentence of four years
6 which he did, plus five years of additional state probation
7 which he will do when he's released from this term of
8 imprisonment. He did that state time. He's 50 years old, and
9 four years of state time is not an easy sentence. That's four
10 years of hard time.

11 We recognize that the law provides that there may be
12 additional and there, in fact, shall be, according to the
13 guidelines, additional punishment for violations of supervised
14 release, even when they are based on the same conduct that's
15 already punished in the state case.

16 THE COURT: Because he did two things wrong. Once he
17 did the subject act, but secondly he violated his supervised
18 release. So, I mean, they're two separate offenses. I
19 understand that.

20 MS. BECKER: Yes, Your Honor. And for that reason,
21 we're asking for a sentence of 12 months and a day. I don't
22 believe an additional 30 months of imprisonment is necessary to
23 punish Mr. Dean, or to achieve the purposes of sentencing. It
24 is a serious violation. But at his age, given who he is and
25 what he's got facing him going forward, I believe 12 months and

1 a day is appropriate.

2 with respect to what he is facing going forward, I
3 would also like to point out for the court that Mr. Dean's
4 mother is present here today. This is the third time she's come
5 to court. This hearing has been reset a couple of times and
6 despite her age and infirmity, she has come to court diligently.

7 THE COURT: Thank you. Thank you for coming, ma'am.

8 MS. BECKER: Because she supports her son. And because
9 Mr. Dean is lucky enough to have that support, he's also going
10 to have a place to stay when he does get out, which not everyone
11 in his position is lucky to have.

12 So he will be on additional supervision already in the
13 state case, and I just believe given these circumstances, given
14 the significant amount of time he's already done in the state
15 case and then back here in federal custody, that a sentence of
16 12 months and a day is sufficient.

17 THE COURT: All right. Does the defendant wish to
18 address me?

19 THE DEFENDANT: Just say I think they forgot I also got
20 to go to a program called Kristi House.

21 THE COURT: What is that like a halfway house?

22 THE DEFENDANT: No, it's not a halfway house. It's to
23 do with the child I got in the state -- the child abuse. It's
24 to teach, you know, how they --

25 MS. BECKER: I believe he'll be attending additional

1 classes as part of his state supervision, and I would note that
2 in the time that Mr. Dean was in, he didn't squander that time
3 either. He took all the classes that were available to him. He
4 completed his GED while incarcerated and he's making all the
5 efforts that he can, given his circumstances, to put himself in
6 a good position for when he does get out.

7 THE COURT: Thank you, ma'am.

8 Anything further, sir?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: All right. The court has carefully
11 considered the statements of all the parties and the information
12 contained in the violation report. The court finds the
13 defendant has violated the terms and conditions of supervised
14 release and hereby revokes the term of supervised release.

15 Furthermore, the court has determined that a sentence
16 below what is now the guideline range is appropriate.

17 Pursuant to the Sentencing Reform Act of 1984, it is
18 the judgment of the court that the defendant, Steven Dean's,
19 term of supervised release is hereby revoked. He's committed
20 to the custody of the Bureau of Prisons for a term of 24 months.

21 Upon release from imprisonment, the defendant shall be
22 placed on a term of supervised release for a term of 36 months.
23 While on supervised release, the defendant shall not commit any
24 federal, state or local crime; shall be prohibited from
25 possessing a firearm or other dangerous device; shall not

1 possess a controlled substance. In addition, the defendant
2 shall comply with the standard conditions of supervised release
3 that have been adopted by this court. As a special condition of
4 supervised release, the defendant shall have no unsupervised
5 personal mail, telephone or computer contact with children or
6 minors or with -- and especially the victim.

7 The defendant shall participate in a sex offender
8 treatment program to include psychological testing and polygraph
9 examination. Participation may include inpatient/outpatient
10 treatment. The defendant will contribute to the cost of
11 services rendered, co-payment, based on ability to pay or
12 ability of third party payment.

13 The defendant shall submit to the US Probation Office
14 conducting periodic unannounced searches of the defendant's
15 person, property, house, residence, vehicles, papers, computers,
16 other electronic communication or data storage device or media,
17 including retrieval and copying of all data from the computers
18 and any internal or external peripherals and effects at any
19 time, with or without warrant, by any law enforcement or
20 probation office, with reasonable suspicion concerning unlawful
21 conduct or a violation of condition of probation or supervised
22 release. The search may include the retrieval and copying of
23 all data from the computer and any internal or external
24 peripherals to ensure compliance with other supervision
25 conditions and/or removal of such equipment for the purpose of

1 conducting a more thorough inspection, and to have installed on
2 the defendant's computers, at the defendant's expense, any
3 hardware or software systems to monitor the defendant's computer
4 use.

5 The total sentence: 24 months custody of the Bureau of
6 Prisons; upon release, 36 months supervised release with the
7 standard and special conditions as noted above.

8 Now that sentence has been imposed, does the defendant
9 or his counsel object to the court's finding of fact or the
10 manner in which sentence was pronounced?

11 MS. BECKER: Your Honor, to preserve his right to
12 appeal, should he choose to do so, I would renew the objection
13 regarding the application of the guidelines. I would also
14 object to the court's imposition of sex offender treatment
15 program and the computer search condition.

16 THE COURT: All right. Pursuant to Rule 32(j) of the
17 Rules of Criminal Procedure, you have the right to appeal the
18 conviction and sentence impose. Any notice of appeal must be
19 filed within ten days after the entry of the judgment being
20 entered in this case. If you're unable to pay the cost of an
21 appeal, you may apply for leave to appeal in forma pauperis.

22 MS. BECKER: Your Honor, may I ask the court to
23 recommend a placement in South Florida or as close as possible
24 so his family can visit?

25 THE COURT: I will recommend that the defendant be

1 incarcerated as close to South Florida as possible, commensurate
2 with his background and the offense of which he stands
3 convicted.

4 MS. BECKER: Thank you, Your Honor.

5 THE COURT: Thank you, Ms. Becker.

6 MR. BRADY: Thank you, Your Honor.

7 THE COURT: Thank you.

8 (PROCEEDINGS CONCLUDED)
* * * * *

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10 C E R T I F I C A T E
I certify that the foregoing is a correct transcript from the
11 record of proceedings in the above-entitled matter.

12 8-12-2016 /s/ Dawn M. Savino
Date DAWN M. SAVINO, RPR

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