

NO. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2018

ORYAN YAZZIE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Respectfully submitted,

FEDERAL PUBLIC DEFENDER
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By: Margaret A. Katze
Attorney for Petitioner

SERVICE TO:

Solicitor General of the United States
Department of Justice
950 Pennsylvania Ave. NW, Room 5614
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March 15, 2019

NO. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2018

ORYAN YAZZIE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

QUESTION PRESENTED FOR REVIEW

Is a supervised release revocation sentence of a length more than double the top of the advisory Guideline range substantively unreasonable if the district court imposes it without addressing extensive evidence of the impact of the defendant's serious mental health conditions?

NO. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2018

ORYAN YAZZIE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

DECLARATION OF COUNSEL

Pursuant to Supreme Court Rule 29.2, I, Margaret A. Katze, Assistant Federal Public Defender for the District of New Mexico, declare under penalty of perjury that I am a member of the bar of this court and counsel for Petitioner Oryan Yazzie and that I caused to be mailed a copy of the petition for writ of certiorari to this court by first class mail, postage prepaid by depositing the original and ten copies in an envelope addressed to the Clerk of this Court, in the United States Post Office at 1135 Broadway Blvd. NE, Albuquerque, New Mexico, at approximately ____p.m. on the 15th day of March 2019.

Margaret A. Katze
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2018

ORYAN YAZZIE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE TENTH CIRCUIT**

Petitioner Oryan Yazzie respectfully requests a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit affirming his supervised release revocation sentence.

OPINION BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit, *United States v. Yazzie*, 10th Cir. No. 18-2039, affirming Mr. Yazzie’s sentence, was filed December 18, 2018. That opinion is attached as Appendix (“App.”) A to this petition. The district court Judgment in a Criminal Case is attached as App. B.

JURISDICTIONAL STATEMENT

The district court had jurisdiction of this case under 18 U.S.C. § 3231. The Tenth Circuit had jurisdiction of the appeal of the district court’s ruling pursuant to 28 U.S.C. § 1291. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

The Tenth Circuit entered its judgment affirming Mr. Yazzie’s sentence on December 18, 2018. Pursuant to Supreme Court Rule 13.1 and 13.3, this petition is timely if filed on or before March 18, 2019.

FEDERAL LAW AT ISSUE

In relevant part, 18 U.S.C. § 3553 provides:

(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 . . .

STATEMENT OF THE CASE AND FACTS

Mr. Yazzie's Supervised Release Violation.

The United States Probation Office filed a petition in the United States District Court for the District of New Mexico to revoke Oryan Yazzie's supervised release for failure to comply with the requirement that he reside in a residential reentry center. Mr. Yazzie did not contest his commission of the violation. After serving a 145-month sentence for kidnapping, he had begun serving a five-year term of supervised release. Prior to the revocation proceeding in this case, his supervised release had been revoked twice for failure to reside at a residential reentry center. He had been sentenced to terms of imprisonment of, respectively, four months and twelve months.

The Mental Health Evidence Presented to the District Court.

The district court held an initial sentencing hearing on Mr. Yazzie's supervised release revocation on December 6, 2017. It took note of the report of Dr. Mercedes Marshall, who conducted a psychological evaluation of Mr. Yazzie on January 10, 2017, pursuant to the district court's order in a prior supervised release revocation proceeding. Dr. Marshall concluded that Mr. Yazzie was "floridly psychotic" and posed a "very high risk of violence." She noted that he was actively seeking help and had expressed his willingness to comply with a prescribed mental health medication regimen. She recommended inpatient treatment and long term psychotropic medication, as well as substance abuse and mental health treatment once he was stabilized on medications. Dr. Marshall diagnosed a number of mental health disorders that she listed in her report,

including schizoaffective disorder, bipolar type, and alcohol and marijuana use disorders.

Dr. Marshall reported that Mr. Yazzie's mental health medication history included "various mood stabilizers, antipsychotics, antidepressants and anxiolytics to improve his functioning." She advised that "long term stabilization on psychotropic medications" would be critical for Mr. Yazzie, but that "his prognosis for compliance [with prescribed medications] is very poor." Dr. Marshall noted that when she saw Mr. Yazzie, he was "experiencing very disruptive auditory command hallucinations that would be very distressing to him." He was subject to severe depression and had made "at least two serious suicide attempts."

The district court decided to postpone imposition of Mr. Yazzie's sentence in order to obtain further information about the most effective available treatment for him. At a second hearing held March 13, 2018, probation officer Shawn Day testified that he had been unsuccessful in finding a suitable residential treatment program to meet Mr. Yazzie's needs. He recommended that the court impose a sentence of 24 months' incarceration, to be followed by 20 months of supervised release. The probation officer testified that "the right regimen of medications," combined with mental health treatment, would afford Mr. Yazzie the best opportunity to achieve mental health.

Mr. Yazzie's counsel called the court's attention to Mr. Yazzie's difficult background. When he was a baby, Mr. Yazzie's mother sold him; his grandmother found out and paid to get him back. As he grew up, Mr. Yazzie was not afforded the opportunity to develop critical social and emotional skills.

Mr. Yazzie's counsel acknowledged Mr. Yazzie's mental health issues and need for treatment. He pointed out the efforts Mr. Yazzie had made to turn his life around and obtain education and employment, as well as counseling and other mental health treatment. He requested that the court release Mr. Yazzie to a halfway house, where the staff would be equipped to assist Mr. Yazzie in obtaining appropriate treatment.

The government noted encouraging indications from Mr. Yazzie that he was ready to take the necessary steps to turn his life around. A sentence within the revocation imprisonment range of five to eleven months would be unlikely to resolve the issues confronting Mr. Yazzie and taking that default path might result in "giving up on finding the right pathway for him." The government agreed that Mr. Yazzie's sentence should provide a means for him to receive appropriate treatment.

Mr. Yazzie addressed the court and pleaded for help. He told the court of his strong motivation to do whatever was necessary to live a healthy life. The progress he had made in dealing with his mental health problems would be undermined by a new prison sentence; he begged the court not to send him back to prison.

The Sentence Imposed by the District Court.

The district court noted that under U.S.S.G. § 7B1.1, Mr. Yazzie's supervised release violation was classified as a Grade C violation. A Grade C violation, combined with a criminal history category III, gave rise to an applicable revocation range of five to eleven months. The court imposed the sentence recommended by the probation office, 24 months' imprisonment and a new supervised release term of 20 months. App. B.

The Court of Appeals' Ruling.

Mr. Yazzie argued on appeal that the district court imposed an unreasonably long term of imprisonment without considering the impact of his mental health condition on his violation of supervised release and without weighing his mental health in calculating his sentence. The court of appeals concluded that the district court based Mr. Yazzie's sentence on appropriate factors and there was "no indication that it gave insufficient weight" to his mental health. App. A at 6.

ARGUMENT FOR ALLOWANCE OF THE WRIT

This Court should grant certiorari in this case to address the need for district courts to weigh evidence of defendants' severe mental health conditions in fashioning appropriate supervised release revocation sentences.

This Court has explained that, in reviewing a sentence for substantive reasonableness, courts of appeals must weigh the totality of the circumstances, including the extent of any variance from the Guidelines range. *Gall v. United States*, 552 U.S. 38, 51 (2007). Sentencing courts must carefully consider the extent of any deviation from the Guidelines and provide justification "sufficiently compelling to support the degree of the variance." *Id.* at 50. It is "uncontroversial that a major departure should be supported by a more significant justification than a minor one." *Id.*

A presumption of reasonableness applies on review of Guidelines-range sentences. *Id.* at 51, including supervised release revocation sentences. *United States v. McBride*, 633 F.3d 1229, 1233 (10th Cir. 2011). Sentences outside the properly calculated Guidelines range are not presumed reasonable. *Gall*, 552 U.S. at 51. A non-Guidelines

sentence falls outside the range of reasonableness when the court’s justification is not “sufficiently compelling to support the degree of the variance.” *Id.* A substantively unreasonable sentence is illegal and must be set aside. *Id.*

As Mr. Yazzie argued in the Tenth Circuit, the supervised release revocation sentence imposed by the district court, which is more than double the top of the range called for by the U.S.S.G. § 7B1.4 Revocation Table, failed to take into account the extent to which his mental health condition contributed to his supervised release violation and diminished his culpability. He argued that because his mental health impairments made it particularly difficult for him to comply with his supervised release conditions, the lengthy sentence imposed by the district court was an inappropriate response to his violation.

The government did not dispute that the length of Mr. Yazzie’s sentence was disproportionate to the degree of his culpability for the violation. It pointed out that the district court imposed a lengthy sentence because of the danger Mr. Yazzie was believed to pose to the community. *Id.*

“ . . . [D]efendants who commit criminal acts that are attributable to a disadvantaged background, or to emotional and mental problems, may be less culpable than defendants who have no such excuse.” *Penry v. Lynaugh*, 492 U.S. 302, 319 (1989). Evidence of mental health problems can play a “crucial mitigating role” at sentencing. *Hooks v. Workman*, 689 F.3d 1148, 1202 (10th Cir. 2012). Because mental health impairments can make it more difficult for individuals to control their behavior and

comply with the law, lengthy sentences may not be an appropriate response to crimes in such cases. *United States v. Pinson*, 542 F.3d 822, 838 (10th Cir.), *cert. denied*, 555 U.S. 1059 (2008).

District courts are required by 18 U.S.C. § 3553(a) to consider a number of factors, including “the history and characteristics of the defendant.” § 3553(a)(1). They must weigh the need to protect the public from an individual who poses a threat of further crimes. § 3553(a)(2)(C). The district court imposed a sentence on Mr. Yazzie that protects the short-term safety of the community at the expense of long-term protection of the public, which the parties agreed would be best served by affording Mr. Yazzie effective mental health treatment. The government expressed concern to the district court that even a sentence within the five to eleven month revocation imprisonment range would hinder Mr. Yazzie from furthering the progress he had shown in addressing those issues. It pointed out that a sentence of that length might have the unfortunate result of “giving up on finding the right pathway for him.”

The district court disregarded the concerns expressed by both parties and imposed an unreasonably long sentence that is likely to have costly long term consequences for both Mr. Yazzie and the public. The court of appeals discounted Mr. Yazzie’s argument that the district court abused its discretion by imposing a sentence that did not take into account the totality of the circumstances, contrary to *Gall*, 552 U.S. at 51. The court of appeals upheld Mr. Yazzie’s lengthy sentence because it found “no indication that [the district court] gave insufficient weight” to his mental health. App. A at 6. District courts

are required to provide sufficient justification for substantial sentencing increases precisely because the record will seldom contain any such indication. Where the record shows that defendants suffer from mental health conditions that profoundly affect their behavior, adequate justification for substantial sentencing increases must include consideration of defendants' mental health.

While the district court cited relevant sentencing factors in explaining its sentence in this case, App. A at 6, it did not adequately take Mr. Yazzie's mental health into account and did not adequately consider the totality of the circumstances, contrary to this Court's well established sentencing jurisprudence. This Court should grant certiorari to address this important and recurring issue.

CONCLUSION

For the reasons stated above, Petitioner Oryan Yazzie requests that this Court grant his petition for writ of certiorari.

Respectfully submitted,

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Margaret A. Katze
Attorney for Petitioner

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

December 18, 2018

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ORYAN YAZZIE,

Defendant - Appellant.

No. 18-2039
(D.C. No. 1:04-CR-01688-MCA-1)
(D.N.M.)

ORDER AND JUDGMENT*

Before **BRISCOE, KELLY**, and **MORITZ**, Circuit Judges.

After Oryan Yazzie violated a condition of his supervised release, the district court imposed a 24-month prison sentence. Yazzie appeals, arguing his sentence is substantively unreasonable.¹ For the reasons discussed below, we disagree. Accordingly, we affirm.

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument wouldn't materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment isn't binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. But it may be cited for its persuasive value. *See* Fed. R. App. P. 32.1; 10th Cir. R. 32.1.

¹ Yazzie also initially challenged the district court's decision requiring Yazzie, "as a condition of his supervised release, to take all mental health medication prescribed by his treating physician and pay all or parts of the costs." *Aplt. Br.* 11. But after Yazzie filed his opening brief, the government (1) informed us that the parties had reached an agreement regarding proposed modifications to this condition

APPENDIX A

Background

After Yazzie pleaded guilty to kidnapping, the district court imposed a 12-year prison sentence and a five-year term of supervised release. As a condition of his supervised release, the district court ordered Yazzie to complete a program at a residential reentry center.

Yazzie began serving his supervised release on August 14, 2015. Over the next 23 months, Yazzie twice appeared before the district court to answer for violating the conditions of that release. On both occasions, the district court determined that Yazzie failed to complete the required residential reentry program. And on both occasions, the district court imposed a prison sentence, to be followed by supervised release.

Yazzie began serving his third term of supervised release on September 22, 2017. Less than three months later, Yazzie appeared before the district court for a third revocation hearing. The district court again concluded that Yazzie violated the terms of his supervised release by failing to complete the requisite reentry program. And it again sentenced Yazzie to prison. In doing so, the district court determined that—based on Yazzie’s criminal history category and the grade of his violation—the United States Sentencing Guidelines (the Guidelines), called for a sentence of 5 to 11

and (2) requested that we direct a limited remand to allow the district court to consider the proposed modifications. We granted the government’s request, and the district court subsequently modified the mental-health condition. Because the parties agree Yazzie’s challenge to that condition is now moot, we confine our discussion on appeal to Yazzie’s substantive-reasonableness argument.

months' imprisonment. *See* U.S.S.G. § 7B1.4. But in light of several factors, including Yazzie's prior revocations, the nature of his underlying offense, his "demanding and hostile attitude towards people in his community," and the district court's need to "protect[] the community," the district court instead sentenced him to 24 months in prison. R. vol. 3, 62. Yazzie appeals.

Analysis

On appeal, Yazzie argues that his 24-month prison sentence is substantively unreasonable. *See United States v. Walker*, 844 F.3d 1253, 1255 (10th Cir. 2017) ("Though district courts have broad discretion at sentencing, the sentence must be substantively reasonable."). Specifically, he asserts that this sentence (which he points out is "more than double the top of the [applicable Guidelines] range") is substantially longer than necessary to accomplish the goals of 18 U.S.C. § 3553(a). Aplt. Br. 27. And he contends that in imposing this "very lengthy sentence," the district court failed to "tak[e] into account the extent to which [] Yazzie's mental health condition contributed to his violation of supervised release conditions and diminished his culpability."² *Id.*

As an initial matter, we note that to the extent Yazzie argues the district court erred by failing to consider his mental health, he challenges the procedural

² In his reply brief, Yazzie also argues that his sentence is substantively unreasonable because it "will likely" hinder his progress in "achiev[ing] a state of good mental health." Rep. Br. 3. But because Yazzie raises this argument for the first time in his reply brief, we treat it as waived and decline to consider it. *See United States v. Beckstead*, 500 F.3d 1154, 1163 (10th Cir. 2007).

reasonableness of his sentence, not its substantive reasonableness. *See Gall v. United States*, 552 U.S. 38, 51 (2007) (distinguishing between procedural error and substantive error at sentencing). Moreover, Yazzie didn't raise this specific procedural-reasonableness argument below. Nor does he argue for plain-error review on appeal. Accordingly, we treat this procedural argument as waived and decline to consider it. *See United States v. DeRusse*, 859 F.3d 1232, 1236 n.1 (10th Cir. 2017) (finding procedural arguments waived based on appellant's "failure either to raise these specific objections below or to make an argument for plain[-]error review on appeal").

But to the extent Yazzie instead asserts that the length of his sentence is unreasonable in light of the relevant § 3553(a) factors—including his mental health—he challenges the substantive reasonableness of the sentence. *See United States v. Lente*, 647 F.3d 1021, 1031–32 (10th Cir. 2011) (“[Appellant’s] true challenge appears to be to the district court’s balancing of her background characteristics and her criminal history and the weight the court gave to those factors. This is a substantive, not procedural, challenge.”). And unlike a challenge to the procedural reasonableness of his sentence, Yazzie wasn’t required to object below to preserve this issue for appeal. *See United States v. Torres–Duenas*, 461 F.3d 1178, 1183 (10th Cir. 2006).

“We review the substantive reasonableness of a sentence for abuse of discretion.” *United States v. Chavez*, 723 F.3d 1226, 1233 (10th Cir. 2013). A district court abuses its discretion only if it imposes a sentence that “is arbitrary, capricious,

whimsical, or manifestly unreasonable.” *United States v. Durham*, 902 F.3d 1180, 1236 (10th Cir. 2018) (quoting *United States v. Munoz–Nava*, 524 F.3d 1137, 1146 (10th Cir. 2008)). Critically, because “there will be a range of possible outcomes the facts and law at issue can fairly support,” we will defer to the district court’s judgment “so long as it falls within the realm of . . . rationally available choices.” *Id.* (quoting *United States v. McComb*, 519 F.3d 1049, 1053 (10th Cir. 2007)).

In reviewing Yazzie’s substantive-reasonableness argument, we ask “whether the length of [his] sentence is reasonable given all the circumstances of the case in light of” the relevant § 3553(a) factors. *United States v. Singer*, 825 F.3d 1151, 1158 (10th Cir. 2016) (quoting *United States v. Craig*, 808 F.3d 1249, 1261 (10th Cir. 2015)); *see also* § 3583(e) (identifying § 3553 factors that court must consider when revoking term of supervised release and imposing prison sentence). These factors include, among other things, the nature and circumstances of the offense, the history and characteristics of the defendant, the need to adequately deter criminal conduct, the need to protect the public from further crimes by the defendant, and the need to provide the defendant with necessary medical care. *See* § 3583(e); § 3553(a)(1), (a)(2)(B)–(D).

Although sentences falling within the applicable Guidelines range are presumptively reasonable, *see United States v. McBride*, 633 F.3d 1229, 1233 (10th Cir. 2011), this presumption doesn’t apply here because Yazzie’s 24-month sentence exceeded the applicable Guidelines range of 5 to 11 months. But the fact that Yazzie’s sentence fell outside the Guidelines range doesn’t necessarily render that

sentence substantively unreasonable. *See Gall*, 552 U.S. at 51. Instead, it simply means we must “consider the extent of the deviation” and determine whether the district court’s proffered justifications for that deviation are “sufficiently compelling to support the degree of the variance.” *Id.* at 50.

We conclude that they are. Among the factors it considered in imposing a 24-month prison sentence, the district court cited (1) Yazzie’s prior violations; (2) the nature of his underlying offense; (3) his “demanding and hostile attitude towards people in his community”; and (4) the district court’s need to “protect[] the community.” R. vol. 3, 62. These factors are “sufficiently compelling to support” the sentence imposed. *Gall*, 552 U.S. at 50. In particular, Yazzie’s repeated violations of the conditions of his supervised release are a “breach of trust.” *United States v. Steele*, 603 F.3d 803, 805, 809 (10th Cir. 2010) (finding no abuse of discretion where district court imposed 18-month prison sentence, despite applicable Guidelines range of 4 to 10 months; noting that this was defendant’s “second breach of trust in a fairly short time” and that such “recidivism is generally a reason for increased sentencing severity”). Further, the record belies Yazzie’s argument that the court failed to consider his mental health, and we see no indication that it gave insufficient weight to that factor.

Under these circumstances, Yazzie’s sentence isn’t “arbitrary, capricious,

whimsical, or manifestly unreasonable.” *Durham*, 902 F.3d at 1236. Accordingly, we affirm.

Entered for the Court

Nancy L. Moritz
Circuit Judge

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
OFFICE OF THE CLERK**

Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
(303) 844-3157

Elisabeth A. Shumaker
Clerk of Court

December 18, 2018

Chris Wolpert
Chief Deputy Clerk

Mr. Brian Anthony Pori
Office of the Federal Public Defender
District of New Mexico
111 Lomas, NW, Suite 501
Albuquerque, NM 87102

RE: 18-2039, United States v. Yazzie
Dist/Ag docket: 1:04-CR-01688-MCA-1

Dear Counsel:

Attached is a copy of the order and judgment issued today in this matter. The court has entered judgment on the docket pursuant to Fed. R. App. P. Rule 36.

Pursuant to Fed. R. App. P. Rule 40, any petition for rehearing must be filed within 14 days after entry of judgment. Please note, however, that if the appeal is a civil case in which the United States or its officer or agency is a party, any petition for rehearing must be filed within 45 days after entry of judgment. Parties should consult both the Federal Rules and local rules of this court with regard to applicable standards and requirements. In particular, petitions for rehearing may not exceed 3900 words or 15 pages in length, and no answer is permitted unless the court enters an order requiring a response. If requesting rehearing en banc, the requesting party must file 6 paper copies with the clerk, in addition to satisfying all Electronic Case Filing requirements. *See* Fed. R. App. P. Rules 35 and 40, and 10th Cir. R.35 and 40 for further information governing petitions for rehearing.

Please contact this office if you have questions.

Sincerely,

A handwritten signature in cursive script that reads "Elisabeth A. Shumaker". The signature is written in black ink and has a long, horizontal flourish extending to the right.

Elisabeth A. Shumaker
Clerk of the Court

cc: Paige Messec
Paul H. Spiers

EAS/at

UNITED STATES DISTRICT COURT
District of New Mexico

UNITED STATES OF AMERICA

V.

Oryan Yazzie

Judgment in a Criminal Case

(For Revocation of Probation or Supervised Release)

Case Number: **1:04CR01688-001MCA**

USM Number: **26729-051**

Defendant's Attorney: **Brian Pori**

THE DEFENDANT:

- admitted guilty to violations of condition(s) **Special** of the term of supervision.
- was found in violation of condition(s) after denial of guilt.

The defendant is adjudicated guilty of these violations:

| <i>Violation Number</i> | <i>Nature of Violation</i> | <i>Violation Ended</i> |
|-------------------------|--|------------------------|
| Special Condition | The defendant failed to reside at and complete a program at a Residential Reentry Center approved by the probation officer for a period of six (6) months. | 10/24/2017 |

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984. The Court has considered the United States Sentencing Guidelines and, in arriving at the sentence for this Defendant, has taken account of the Guidelines and their sentencing goals. Specifically, the Court has considered the sentencing range determined by application of the Guidelines and believes that the sentence imposed fully reflects both the Guidelines and each of the factors embodied in 18 U.S.C. Section 3553(a). The Court also believes the sentence is reasonable, provides just punishment for the offense and satisfies the need to impose a sentence that is sufficient, but not greater than necessary to satisfy the statutory goals of sentencing.

- The defendant has not violated condition(s) and is discharged as to such violation(s) condition.

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.

4888
Last Four Digits of Defendant's Soc. Sec. No.

March 13, 2018
Date of Imposition of Judgment

1981
Defendant's Year of Birth

/s/ M. Christina Armijo
Signature of Judge

Albuquerque, NM
City and State of Defendant's Residence

Honorable M. Christina Armijo
Senior United States District Judge
Name and Title of Judge

March 15, 2018
Date

DEFENDANT: **Oryan Yazzie**
CASE NUMBER: **1:04CR01688-001MCA**

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: **24 months**.

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

A suitable Federal Medical Facility which has available resources to address the mental health needs of Defendant. The Court recommends the facility at Fort Worth, TX.

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 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: **Oryan Yazzie**
CASE NUMBER: **1:04CR01688-001MCA**

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: **20months** .

MANDATORY CONDITIONS

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

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

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.
14. The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any local, state, tribal, or federal registration agency in the jurisdiction in which he or she resides, works, or is a student. For initial registration purposes only, a sex offender shall also register in the jurisdiction in which convicted if such jurisdiction is different from the jurisdiction of residence;
15. The defendant shall waive his/her right of confidentiality and allow the treatment provider to release treatment records to the probation officer and sign all necessary releases to enable the probation officer to monitor the defendant's progress. The probation officer shall disclose the presentence report and/or any previous sex offender or mental health evaluations to the treatment provider;
16. The defendant shall submit to a search of person, property, house, residence, vehicles, documents, businesses, computers, and other electronic communications or data storage devices or media effects [as defined in 18 U.S.C. 1030(e)(1)], at any time, by a probation officer with reasonable suspicion concerning a violation of a condition of probation or supervised release, or unlawful conduct by the person, in the lawful discharge of the officer's supervision functions. The defendant shall inform any other occupants that the premises may be subject to searches pursuant to the condition. Failure to submit to a search may be grounds for revocation of supervision;
17. The defendant shall not have any direct or indirect contact or communication with the victim or his or her family, or go near or enter the premises where the victim or his or her family resides, is employed, attends school or treatment, except under circumstances approved in advance and in writing by the probation officer.

DEFENDANT: **Oryan Yazzie**
CASE NUMBER: **1:04CR01688-001MCA**

SPECIAL CONDITIONS OF SUPERVISION

You must not use or possess alcohol.

You must not knowingly purchase, possess, distribute, administer, or otherwise use any psychoactive substances (e.g., synthetic cannabinoids, synthetic cathinones, etc.) that impair your physical or mental functioning, whether or not intended for human consumption.

You must participate in a mental health treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program. You may be required to pay all, or a portion, of the costs of the program.

You must take all mental health medications that are prescribed by your treating physician. You may be required to pay all, or a portion, of the costs of the program.

You must reside in a residential reentry center for a term of 6 months. You must follow the rules and regulations of the center.

You must undergo a sex offense-specific assessment to determine the level of risk for sexual dangerousness, recidivism, and amenability to treatment and formulate treatment recommendations if treatment is necessary. You may be required to pay all, or a portion of the cost of the assessment.

If recommended in the sex offense-specific assessment, you must begin attending and participating in sex offender treatment consistent with the recommendations of the evaluation. You must follow the rules and regulations of that program. The probation officer, in conjunction with the treatment provider, will supervise your participation in the program (location, modality, duration, intensity, etc.). Furthermore, you must submit to clinical polygraph examinations, as directed by the probation officer and/or treatment provider. You may be required to pay a portion or all of the cost of the assessments and treatment.

You are prohibited from viewing or possessing any material that depicts sexually explicit conduct as defined in 18 U.S.C. 2256, including images, books, writings, drawings, video games, or videos depicting actual sexual intercourse. This also includes computer or computer-generated images or pictures, whether made or produced by electronic, mechanical, or other means. Should the sex offense-specific assessment determine this factor is not a risk, then this condition shall not be enforced.

You must not have direct contact with children under the age of 18 years without written approval of the treatment provider in conjunction with the probation officer. If you do have any direct contact with any child you know or reasonably should know to be under the age of 18 years, including your own children, without the permission of the probation officer in conjunction with the treatment provider, you must report this contact to the probation officer within 24 hours. Direct contact includes written communication, in-person communication, or physical contact. Direct contact does not include incidental contact during ordinary daily activities in public places.

You are restricted from engaging in an occupation where you have access to children without prior approval of the probation officer.

You must not volunteer for any activities in which you supervise children or adults with mental or physical disabilities.

You must participate in an outpatient substance abuse treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.). You may be required to pay all, or a portion, of the costs of the program.

You must submit to substance abuse testing to determine if you have used a prohibited substance. Testing may include urine testing, the wearing of a sweat patch, a remote alcohol testing system, an alcohol monitoring technology program, and/or any form of prohibited substance screening or testing. You must not attempt to obstruct or tamper with the testing methods. You may be required to pay all, or a portion, of the costs of the testing.

You must submit to a search of your person, property, residence, vehicle, papers, computers (as defined in 18 U.S.C. 1030(e)(1)), other electronic communications or data storage devices or media, or office under your control. The probation officer may conduct a search under this condition only when reasonable suspicion exists, in a reasonable manner and at a reasonable time, for the purpose of detecting illegal substances, alcohol, weapons, or pornographic materials or images . You must inform any residents or occupants that the premises may be subject to a search.

You must participate in and successfully complete a community-based program which provides education and training in anger management.

You must not communicate, or otherwise interact, with the victim listed in Case No.: F16-.3117; Tenth District Court of Nevada; either directly or through someone else without prior approval of the probation officer.

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. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature

Date
