Appendix

A

FILED
United States Court of Appeals
Tenth Circuit

November 13, 2020

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. LOGAN VIQUESNEY, Defendant - Appellant.	No. 20-3145 (D.C. Nos. 2:18-CV-02152-JAR & 2:16-CR-20060-JAR-1) (D. Kan.)

ORDER DENYING CERTIFICATE OF APPEALABILITY

Before **PHILLIPS**, **MURPHY**, and **McHUGH**, Circuit Judges.

This matter is before the court on Logan Viquesney's pro se request for a certificate of appealability ("COA"). He seeks a COA so he can appeal the denial of his 28 U.S.C. § 2255 motion. *See* 28 U.S.C. § 2253(c)(1)(B) (providing no appeal is allowed from a "final order in a proceeding under section 2255" unless the movant first obtains a COA). Viquesney also seeks permission to proceed on appeal in forma pauperis ("IFP"). This court **grants** Viquesney's request to proceed on appeal IFP. Because, however, he has not "made a substantial showing of the denial of a constitutional right," *id.* § 2253(c)(2), this court **denies** his request for a COA and **dismisses** this appeal.

Viquesney pleaded guilty, in the United States District Court for the District of Kansas, to one count of Transportation of a Minor with Intent to Engage in Criminal Sexual Activity. *See* 18 U.S.C. §§ 2423(a), 2426. Viquesney did not file a direct appeal but, instead, filed the instant, timely § 2255 motion. In his motion, Viquesney asserted his trial counsel was ineffective in failing to move to dismiss the indictment because, according to Viquesney, the necessary element of illegal sexual activity was not satisfied as a sixteen-year-old is capable of consent in Kansas.

In a well-stated and thoroughly researched Order, the district court denied Viquesney's request for collateral relief because Viquesney's counsel did not perform deficiently in failing to contest the indictment. In so concluding, the district court ruled that § 2423 sets out a continuing offense and any such continuing offense against the United States that took place in multiple districts may be prosecuted in any district in which the offense started, continued, or concluded. Viquesney's offense continued across multiple states and concluded in Kansas. The record here makes clear that, at a minimum, Viquesney's sexual activity with the victim was in violation of Illinois law. *See United States v. Cole*, 262 F.3d 704, 708–09 (8th Cir. 2001) (holding a defendant was properly indicted in Arkansas state court under § 2423(a) where the criminal sexual activity element was fulfilled by violation of Florida statute criminalizing sexual

activity with a person less than 16 years of age). Venue was proper in Kansas pursuant to the terms of 18 U.S.C. § 3237.[1]

Viquesney seeks a COA so he can appeal the district court's resolution of his § 2255 motion. The granting of a COA is a jurisdictional prerequisite to an appeal from the denial of a § 2255 motion. *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). To be entitled to a COA, Viquesney must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). That is, he must demonstrate "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Id.* (quotations omitted). In evaluating whether Viquesney has satisfied this burden, we undertake "a preliminary, though not definitive, consideration of the [legal] framework" applicable to each of her claims. *Id.* at 338. Although he need not demonstrate his appeal will succeed to be entitled to a COA, he must "prove something more than the absence of frivolity or the existence of mere good faith." *Id.*

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[1]Although the district court concluded it was beyond doubt trial counsel's performance was not deficient, it also went on to conclude in the alternative that, under the unique facts of this case, Viquesney failed to demonstrate prejudice. Although this court has no reason to doubt the correctness of the district court's analysis in this regard, we need not further explore the matter given the undoubtable correctness of the district court's performance determination.

Having undertaken a review of Viquesney's appellate filings, the district court's Order, and the entire record before this court pursuant to the framework set out by the Supreme Court in *Miller-El*, we conclude Viquesney is not entitled to a COA. In so concluding, this court has nothing to add to the district court's cogent Order. Accordingly Viquesney's request for a COA is **DENIED** and this appeal is **DISMISSED**.

ENTERED FOR THE COURT

Michael R. Murphy
Circuit Judge

Appendix

B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA, **Plaintiff,** **v.** **LOGAN VIQUESNEY,** **Defendant.**	**Case No. 16-CR-20060-JAR-1**

MEMORANDUM AND ORDER

This matter is before the Court on Petitioner Logan Viquesney's Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255. (Doc. 46). In his motion, Petitioner seeks relief on grounds that he was denied effective assistance of counsel. The Government has responded, and Petitioner has replied.[1] Petitioner subsequently moved to dismiss the indictment and to compel judgment in his favor. (Docs. 53, 54). After careful review of the record and arguments presented, the Court **denies** Petitioner's § 2255 motion and motion to dismiss indictment without further evidentiary hearing.

I. Factual and Procedural Background

Petitioner and S.L., a sixteen-year-old juvenile at the time of the incident giving rise to this case, met in 2014 through a mutual friend in Grain Valley, Missouri. The two maintained contact for a short period, then reconnected in the summer of 2016 when S.L. was residing with extended family in Dumphries, Virginia. S.L. reached out to Petitioner, expressed that she was lonely and wanted to leave, and agreed to Petitioner's request to visit her in Dumphries.

[1] Doc. 50; Doc. 51. The Court does not consider any arguments Petitioner raises for the first time in his reply brief. *See United States v. Mora*, 293 F.3d 1213, 1216 (10th Cir. 2002).

Petitioner departed from his home in Kansas City, Kansas on May 29, 2016, and arrived in Dumphries on May 30, 2016. Petitioner met S.L. at the address she provided, and S.L. got in Petitioner's vehicle with clothing she had packed. The two traveled first to Baltimore, Maryland, then toward the Midwest, stopping several times to rest and sleep. During one stop at a Relax Inn in East St. Louis, Illinois, on May 31, 2016, Petitioner and S.L. engaged in vaginal intercourse. Afterward, the pair continued traveling west.

Lenexa, Kansas, law enforcement and the FBI, with cooperation of S.L.'s family, Petitioner's mother, and Petitioner's ex-roommate, located and intercepted Petitioner and S.L. while parked in a parking lot in Kansas City, Kansas, and arrested Petitioner without incident. FBI lab results identified the presence of Petitioner's semen on S.L.'s vaginal opening, labia, chest, and abdomen.

Prior to this incident, Petitioner became a registered sex offender following a 2014 conviction for Aggravated Indecent Solicitation of a Minor; the victim in that case was twelve years old.

On May 31, 2017 in the District of Kansas, Petitioner pled guilty to Count I of a one count indictment: Transportation of a Minor with Intent to Engage in Criminal Sexual Activity in violation of 18 U.S.C. § 2423(a) and § 2426. On September 12, 2017, Petitioner was sentenced to term of 180 months' imprisonment followed by supervised release for a term of 20 years. Defendant did not appeal his sentence.

Petitioner timely filed this § 2255 motion on April 12, 2018, and requests the Court vacate and expunge his conviction.[2]

[2] 28 U.S.C. § 2255, ¶ 6(1), provides that a defendant has one year from the date his judgment of conviction became final to file his § 2255 motion.

II. Legal Standards

A. Section 2255

Under § 2255(a):

> A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

According to Rule 4(b) of the Rules Governing § 2255 Proceedings for the United States District Courts:

> The judge who receives the motion must promptly examine it. If it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief, the judge must dismiss the motion....

An evidentiary hearing must be held on a § 2255 motion "unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief."[3] Because Petitioner appears *pro se*, his pleadings are to be construed liberally and not to the standard applied to an attorney's pleadings.[4] If a petitioner's motion can be reasonably read to state a valid claim on which he could prevail, the court should do so despite a failure to cite proper legal authority or follow normal pleading requirements.[5] However, it is not "the proper function of the district court to assume the role of advocate for the *pro se* litigant."[6] For that reason, the court

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[3] 28 U.S.C. § 2255(b).

[4] *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

[5] *Id.*

[6] *Id.*

shall not supply additional factual allegations to round out a petitioner's claims or construct a legal theory on his behalf.[7]

B. Ineffective Assistance of Counsel

The Sixth Amendment guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right…to have the Assistance of Counsel for his defence."[8] A successful claim of ineffective assistance of counsel must meet the two-pronged test set forth in *Strickland v. Washington*.[9] First, a defendant must show that his counsel's performance was deficient in that it "fell below an objective standard of reasonableness."[10] To meet the first prong, a defendant must demonstrate that the omissions of his counsel fell "outside the wide range of professionally competent assistance."[11] This standard is "highly demanding."[12] Strategic or tactical decisions on the part of counsel are presumed correct, unless they were "completely unreasonable, not merely wrong, so that [they] bear no relationship to a possible defense strategy."[13] In all events, judicial scrutiny of the adequacy of attorney performance must be strongly deferential: "A court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance."[14] Moreover, the reasonableness of the challenged conduct

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[7] *See Whitney v. New Mexico*, 113 F.3d 1170, 1173–74 (10th Cir. 1997).

[8] U.S. Const. amend. VI; *Kansas v. Ventris*, 556 U.S. 586, 590 (2009).

[9] 466 U.S. 668 (1984).

[10] *Id.* at 669.

[11] *Id.* at 690.

[12] *Kimmelman v. Morrison*, 477 U.S. 365, 382 (1986).

[13] *Fox v. Ward*, 200 F.3d 1286, 1296 (10th Cir. 2000) (quoting *Hatch v. Oklahoma*, 58 F.3d 1447, 1459 (10th Cir. 1995)) (internal quotations omitted).

[14] *Strickland*, 466 U.S. at 689.

must be evaluated from counsel's perspective at the time of the alleged error; "every effort should be made to 'eliminate the distorting effects of hindsight.'"[15]

Second, a defendant must also show that his counsel's deficient performance actually prejudiced his defense.[16] To prevail on this prong, a defendant "must show that there is a reasonable probability that, but for his counsel's unprofessional errors, the result of the proceeding would have been different."[17] "A reasonable probability is a probability sufficient to undermine confidence in the outcome."[18] This, in turn, requires the court to focus on "the question whether counsel's deficient performance render[ed] the result of the trial unreliable or the proceeding fundamentally unfair."[19] A defendant must demonstrate both *Strickland* prongs to establish a claim of ineffective assistance of counsel, and a failure to prove either one is dispositive.[20]

III. Discussion

As a preliminary matter, the Tenth Circuit has "repeatedly held that a motion to dismiss an indictment … must be filed before final judgment; after that time a pleading challenging the adequacy of an indictment is properly deemed a § 2255 motion."[21] Accordingly, Petitioner's

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[15] *Edens v. Hannigan*, 87 F.3d 1109, 1114 (10th Cir. 1996) (quoting *Strickland*, 466 U.S. at 689).

[16] *Strickland*, 466 U.S. at 687.

[17] *Id.* at 694.

[18] *Id.*

[19] *Lockhart v. Fretwell*, 506 U.S. 364, 372 (1993).

[20] *Smith v. Robbins*, 528 U.S. 259, 286 n. 14 (2000) (quoting *Strickland*, 466 U.S. at 697) ("The performance component need not be addressed first. 'If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed.'"); *see also Romano v. Gibson*, 239 F.3d 1156, 1181 (10th Cir. 2001) ("This court can affirm the denial of habeas relief on whichever *Strickland* prong is the easier to resolve.").

[21] *United States v. Preciado-Quinonez*, 53 F. App'x 6, 7 (10th Cir. 2002).

Motion to Dismiss Indictment is construed as a claim under § 2255 in addition to his Motion to Vacate under § 2255.

Petitioner argues that an element of the crime for which he was convicted is not met, and he therefore received ineffective assistance of counsel when his attorney did not move to dismiss the indictment as charged. Specifically, Petitioner argues the element of 18 U.S.C. § 2423(a) that requires a defendant have intent to "engage in prostitution or any sexual activity for which any person can be charged with a criminal offense" is not met because Kansas has no statutes criminalizing sexual intercourse with an individual sixteen years of age and a sixteen-year-old is capable of consent in Kansas.

The Government argues Petitioner's motion should be denied because § 2423(a) is a continuing offense, and any offense against the United States that took place in multiple districts may be prosecuted in any district in which the offense started, continued, or concluded. Because Petitioner's conduct is punishable under Missouri and Illinois law, the Government argues each element of § 2423(a) is met and Petitioner was rightfully prosecuted in the District of Kansas. The Court agrees.

Petitioner's ineffective assistance of counsel claim fails because he cannot show deficient representation under *Strickland* when each element of § 2423(a) is satisfied, and his counsel demonstrated professional competence by not moving to dismiss the indictment. A defendant is guilty under § 2423(a) when he

> knowingly transports an individual who has not attained the age of 18 years in interstate or foreign commerce, or in any commonwealth, territory or possession of the United States, with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense.

Petitioner does not contest that he transported S.L. in interstate commerce, that S.L. was under the age of eighteen at the time of transportation, or that he traveled with the intent to engage in sexual activity with S.L. He only argues this conduct is not an offense with which he can be charged in Kansas.

Although Petitioner's sexual activity is not chargeable in the State of Kansas, it is in Illinois.[22] Section 2423 is a continuing offense that triggers venue statute 18 U.S.C. § 3237(a), which provides "any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed." Because Petitioner's offense continued across multiple states and concluded in Kansas, it was rightfully prosecuted in the District of Kansas. It does not destroy venue in Kansas that all elements of the crime were met prior to Petitioner and S.L.'s arrival in Kansas because the offense is deemed committed "over the whole area through which force propelled by an offender operates."[23]

Finally, that Petitioner's conduct is violative of Illinois but not Kansas law does not prevent him from fulfilling the § 2423(a) element that requires a defendant to have intent to

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[22] Under Illinois law, "[a] person commits criminal sexual abuse if that person commits an act of sexual penetration or sexual conduct with a victim who is at least 13 years of age but under 17 years of age and the person is less than 5 years older than the victim." 720 Ill. Comp. Stat. Ann. 5/11-1.50 (West 2011). The Government also argues Petitioner's conduct is chargeable under Mo. Ann. Stat. § 566.068 (West 2020) which provides "[a] person commits the offense of child molestation in the second degree if he or she…[b]eing more than four years older than a child who is less than seventeen years of age, subjects the child to sexual contact and the offense is an *aggravated sexual offense*." (emphasis added). It is not clear from the stipulated facts of Petitioner's plea agreement whether his conduct was an "aggravated sexual offense" under Missouri law and therefore not clear whether he could be charged under § 566.068. *See* Chapter 566 and 568 Definitions, Mo. Ann. Stat. § 566.010(1) (West 2020). Because Petitioner may be charged under Illinois law, however, the Court's analysis remains unchanged.

[23] *United States v. Thomas*, No. 91-4061, 1993 WL 53600 *1 at *8 (10th Cir. Feb. 23, 1993) (citing *United States v. Johnson*, 323 U.S. 273, 275 (1944)); *see also United States v. Lukashov*, 694 F.3d 1107, 1122 (9th Cir. 2012) (finding the "continuing offense of sexual abuse of a minor continued until [the minor] was safely home"); *id.* at 1121 (citing *United States v. Lopez*, 484 F.3d 1186, 1192 (9th Cir. 2007) (en banc)) (finding a continuing offense "does not terminate merely because all of the elements are met").

"engage in [] any sexual activity for which any person can be charged."[24] Venue is proper under § 3237(a) "in any district from, through, or into which" the victim was transported," and is not limited in the context of § 2423(a) to the district where the sexual activity occurred.[25] Thus, Petitioner's conduct satisfied the chargeable conduct element because Petitioner can be charged with violation of 720 Ill. Comp. Stat. Ann. 5/11-1.50. Accordingly, Petitioner's indictment was not faulty, and Petitioner's assistance of counsel was not ineffective when his attorney did not move to dismiss the indictment.

Even if Petitioner were able to meet the first *Strickland* prong, he has made no showing that his counsel's actions or inactions prejudiced his defense. To prevail on the prejudice prong of *Strickland* in the context of a guilty plea, the defendant must show that there is "a 'reasonable probability' that [he] 'would not have pleaded guilty and would have insisted on going to trial' but for counsel's errors."[26] The Court must make a holistic inquiry into all factual circumstances surrounding the plea to determine whether the petitioner would have proceeded to trial.[27] Mere allegations that the petitioner would have insisted on going to trial, although necessary, are insufficient.[28] "Proof of prejudice requires a petitioner to show that 'a decision to reject the plea bargain would have been rational under the circumstances.'"[29] To determine rationality, courts

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[24] *See United States v. Cole*, 262 F.3d 704, 708–09 (8th Cir. 2001) (finding defendant properly indicted in Arkansas Court under § 2423(a) where criminal sexual activity element was fulfilled by violation of Florida statute criminalizing sexual activity with a person less than 16 years of age).

[25] *Clinton v. United States*, 293 F.2d 47, 47–48 (10th Cir. 1961); *see United States v. Vonneida*, 601 F. App'x 38, 41 (2d Cir. 2015) (finding § 2423(a) is an intent crime and conviction under it is sustainable even if no criminal sexual activity actually occurred); *see also United States v. Lawrence*, 187 F.3d 638 (Table), 1999 WL 5513558 at *4 (6th Cir. July 19, 1999) (same).

[26] *Heard v. Addison*, 728 F.3d 1170, 1175–76 (10th Cir. 2013) (quoting *Hill v. Lockhart*, 474 U.S. 52, 59 (1985)).

[27] *Id.* at 1183.

[28] *Id.* at 1184.

[29] *Id.* (quoting *Padilla v. Kentucky*, 559 U.S. 356, 372 (2010)).

assess "objective facts specific to a petitioner, such as age, the length of the sentence he faced under the terms of the plea deal, the prospect of minimizing exposure to other charged counts, and so on."[30] The Tenth Circuit "remain[s] suspicious of bald, post hoc and unsupported statements that a defendant would have changed his plea absent counsel's errors."[31]

Petitioner alleges no facts to support a reasonable probability that but for counsel's failure to move to dismiss the indictment, the results of the plea proceeding would have been different.[32] He does not dispute the detailed, agreed-upon facts in his plea agreement, but argues only that he cannot be charged under § 2423(a) in the District of Kansas.[33] In exchange for his guilty plea, Petitioner received an agreed-upon sentence of 180 months' imprisonment, much lower than the Guideline range of 235 to 293 months calculated by the United States Probation Office in the Presentence Investigation Report.[34] Thus, even if Petitioner had argued he would have rejected the plea agreement but for counsel's alleged errors, he could not demonstrate that doing so would have been rational under the circumstances.[35] Accordingly, Petitioner's claims fail to satisfy either *Strickland* prong, and he is not entitled to relief.

IV. Certificate of Appealability

Under Rule 11 of the Rules Governing Section 2255 Proceedings, courts must issue or deny a certificate of appealability when entering a final order adverse to the applicant.[36] A certificate of appealability may issue only if the applicant has made a substantial showing of the

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[30] *Id.* at 1183.

[31] *Id.* at 1184.

[32] *See United States v. Young*, 206 F. App'x 779, 785 (10th Cir. 2006).

[33] *See* Doc. 34 at 1–4.

[34] *See* Doc. 38 ¶¶ 45–56, 98 (based on Total Offense Level of 34, Criminal History category V).

[35] *See Padilla*, 559 U.S. at 372.

[36] The denial of a § 2255 motion is not appealable unless a circuit justice or a district judge issues a certificate of appealability. Fed. R. App. P. 22(b)(1); 28 U.S.C. § 2253(c)(1).

denial of a constitutional right.[37] To satisfy this standard, the movant must demonstrate that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong."[38] For reasons stated above, the Court finds Petitioner has not satisfied this standard and denies a certificate of appealability for its ruling on his § 2255 motion.

IT IS THEREFORE ORDERED BY THE COURT that Petitioner's Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255 (Doc. 46) and Motion to Dismiss Indictment (Doc. 53) are **denied** without evidentiary hearing. Petitioner is also denied a certificate of appealability.

IT IS FURTHER ORDERED that Petitioner's Motion to Compel (Doc. 54) is **denied as moot.**

IT IS SO ORDERED.

Dated: June 29, 2020

S/ Julie A. Robinson
JULIE A. ROBINSON
CHIEF UNITED STATES DISTRICT JUDGE

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[37] 28 U.S.C. § 2253(c)(2).

[38] *Saiz v. Ortiz*, 392 F.3d 1166, 1171 n.3 (10th Cir. 2004) (quoting *Tennard v. Dretke*, 542 U.S. 274, 282 (2004)).

UNITED STATES DISTRICT COURT

District of Kansas
(KANSAS CITY DOCKET)

UNITED STATES OF AMERICA,

Plaintiff,

v. **Case No.** 16-20060-JAR-JPO

LOGAN VIQUESNEY,

Defendant.

INDICTMENT

THE GRAND JURY CHARGES:

COUNT 1

On or about June 1, 2016, in the District of Kansas, the defendant,

LOGAN VIQUESNEY,

knowingly transported S.L., an individual who has not attained the age of 18 years, in interstate commerce, with intent that the individual engage in sexual activity for which any person can be charged with a criminal offense, in violation of Title 18, United States Code, Section 2423(a) and 2426.

A TRUE BILL.

June 29, 2016
DATE

s/Foreperson
FOREPERSON OF THE GRAND JURY

s/Thomas E. Beall
THOMAS E. BEALL
Acting United States Attorney
District of Kansas
444 S.E. Quincy, Suite 290
Topeka, Kansas 66683
(785) 295-2850
(785) 295-2853 Facsimile
Ks. S. Ct. No. 19929
Thomas.Beall@usdoj.gov

It is requested that the trial be held in Kansas City, Kansas

PENALTIES

Count One: 18 U.S.C. § 2423(a).

Not less than 10 years nor more than life imprisonment
Not more than a $250,000 fine
Not less than 5 years and not more than life of supervised release
$100 special crime victims fund assessment

If the defendant has a conviction for a prior sex offense, the sentence shall be twice the term of imprisonment otherwise provided.

§ 2426. Repeat offenders

(a) Maximum term of imprisonment. The maximum term of imprisonment for a violation of this chapter [18 USCS §§ 2421 et seq.] after a prior sex offense conviction shall be 3 times the term of imprisonment otherwise provided by this chapter [18 USCS §§ 2421 et seq.], unless section 3559(e) [18 USCS § 3559(e)] applies.

(b) Definitions. In this section—

(1) the term "prior sex offense conviction" means a conviction for an offense—

(A) under this chapter, chapter 109A, chapter 110, or section 1591 [18 USCS §§ 2421 et seq., 2241 et seq., 2251 et seq., or 1591]; or

(B) under State law for an offense consisting of conduct that would have been an offense under a chapter referred to in subparagraph (A) if the conduct had occurred within the special maritime and territorial jurisdiction of the United States; and

(2) the term "State" means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

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28080031

AO 245B (Rev. 11/16 - D/KS 02/17) Judgment in a Criminal Case
Sheet 1

United States District Court
District of Kansas

UNITED STATES OF AMERICA
v.
Logan Viquesney

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:16CR20060 - 001
USM Number: 28080-031
Defendant's Attorney: Tim Burdick

THE DEFENDANT:

☒ pleaded guilty to count: 1 of the Indictment.
☐ pleaded nolo contendere to count(s) ___ which was accepted by the court.
☐ was found guilty on count(s) ___ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §§ 2423(a) and 2426	Transportation of a Minor With the Intent to Engage in Criminal Sexual Activity, a Class A Felony	06/01/2016	1

The defendant is sentenced as provided in pages 1 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) ___.

☐ Count(s) ___ is dismissed on the motion of the United States.

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

09/12/2017
Date of Imposition of Judgment

s/Julie A. Robinson
Signature of Judge

Honorable Julie A. Robinson, Chief U.S. District Judge
Name & Title of Judge

9/12/2017
Date

DEFENDANT: Logan Viquesney
CASE NUMBER: 2:16CR20060 - 001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 180 months.

☒ The Court makes the following recommendations to the Bureau of Prisons: that the defendant be considered designation to MCFP Springfield to facilitate family visits and to provide care for the following medical conditions: On August 23, 2017, the defendant completed an exam which resulted in the following impressions:

1. No significant disc bulge or herniation. No spinal canal stenosis.
2. Mild facet arthrosis in the lower lumbar spine most pronounced at L4-5 resulting in mild bilateral neural foraminal stenosis at L4-5. No high-grade neural foraminal stenosis.
3. No acute osseous abnormality.

☒ 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 ___ on ___.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Officer.

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 U.S. Marshal

DEFENDANT: Logan Viquesney
CASE NUMBER: 2:16CR20060 - 001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of 20 years

MANDATORY CONDITIONS

1. You must not commit another federal, state, or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

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

4. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(Check if applicable.)*
5. ☒ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(Check if applicable.)*
6. ☐ You must participate in an approved program for domestic violence. *(Check if applicable.)*

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.

DEFENDANT: Logan Viquesney
CASE NUMBER: 2:16CR20060 - 001

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

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

Defendant's Signature _____ Date _____

DEFENDANT: Logan Viquesney
CASE NUMBER: 2:16CR20060 - 001

SPECIAL CONDITIONS OF SUPERVISION

1. You must have no contact with any person under the age of 18 except: (1) in the presence of an adult who is aware of the nature of your background and offense(s), and who has been approved by the U.S. Probation Office; (2) in the course of normal commercial business; or (3) in other cases of unintentional and incidental contact.

2. You must not communicate, or otherwise interact, with the victim identified in the instant matter or any victim identified in Johnson County District Court, docket number 14CR02359, either directly or through someone else, without first obtaining the permission of the U.S. Probation Officer.

3. You must allow the U.S. Probation Officer to install computer monitoring software on any computer (as defined in 18 U.S.C. § 1030(e)(1)) you use.

4. As directed by the U.S. Probation Officer, you must cooperate with and abide by the policies of the United States Probation Office's Computer and Internet Monitoring Program which includes restrictions related to: computer and Internet usage, possession and use of electronic, cellular, gaming, and Internet appliance devices; possession and use of computer hardware and software, encryption hardware or software, and accessing certain types of web sites to include: social networking, chat rooms, and those depicting sexually explicit conduct or pornographic material. You will also be subject to computer monitoring; and will provide the United States Probation Office with a complete inventory of all electronic and Internet capable devices, user account information as well as password(s).

5. You must neither possess nor have under your control any material that depicts sexually explicit conduct involving adults or minor[s], child pornography, or visual depictions of minor[s] engaged in sexually explicit conduct, all as defined in 18 U.S.C. § 2256.

6. You must submit your person, house, residence, vehicle(s), papers, business or place of employment and any property under your control to a search, conducted by the United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. You must warn any other residents that the premises may be subject to searches pursuant to this condition.

7. You must obtain a current psychosexual and/or mental health evaluation, and, if recommended by any such evaluation, and as directed by the U.S. Probation Officer, successfully participate in a mental health treatment program and/or sex offender treatment program. If referred to a sex offender treatment program, you must abide by all program rules, requirements, and conditions of the sex offender treatment program, which may include polygraph, and visual reaction testing as approved by the Probation Office to assess your risk level and determine if you are in compliance with the conditions of supervision. When submitting to any polygraph examination, you retain your 5th Amendment rights. You must contribute toward the cost, to the extent you are financially able to do so, as directed by the U.S. Probation Officer.

DEFENDANT: Logan Viquesney
CASE NUMBER: 2:16CR20060 - 001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments set forth in this Judgment.

	Assessment	JVTA Assessment*	Fine	Restitution
Totals:	$100	Ct. 1: $5,000	None	Not applicable

☐ The determination of restitution is deferred until ___. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage
Totals:	$	$	

☐ Restitution amount ordered pursuant to plea agreement $___.

☐ The defendant shall pay interest on any fine or restitution of more than $2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options set forth in this Judgment may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

☐ the interest requirement is waived for the ☐ fine and/or ☐ restitution.

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

*Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
**Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Logan Viquesney
CASE NUMBER: 2:16CR20060 - 001

SCHEDULE OF PAYMENTS

Criminal monetary penalties are due immediately. Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows, but this schedule in no way abrogates or modifies the government's ability to use any lawful means at any time to satisfy any remaining criminal monetary penalty balance, even if the defendant is in full compliance with the payment schedule:

A ☐ Lump sum payment of $___ due immediately, balance due
☐ not later than ___, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☒ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☒ F below); or

C ☐ Payment in monthly installments of not less than 5% of the defendant's monthly gross household income over a period of ___ years to commence ___ days after the date of this judgment; or

D ☐ Payment of not less than 10% of the funds deposited each month into the inmate's trust fund account and monthly installments of not less than 5% of the defendant's monthly gross household income over a period of ____ years, to commence ___ days after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within ____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☒ Special instructions regarding the payment of criminal monetary penalties: **Note: the court suspends collection of the $5,000 JVTA until thirty (30) days after the term of supervised release commences.**

If restitution is ordered, the Clerk, U.S. District Court, may hold and accumulate restitution payments, without distribution, until the amount accumulated is such that the minimum distribution to any restitution victim will not be less than $25.

Payments should be made to Clerk, U.S. District Court, U.S. Courthouse - Room 204, 401 N. Market, Wichita, Kansas 67202.

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

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

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount and corresponding payee, if appropriate.

Case Number **Defendant and Co-Defendant Names** **(including defendant number)**	**Total Amount**	**Joint and Several Amount**	**Corresponding Payee, if appropriate**

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States. Payments against any money judgment ordered as part of a forfeiture order should be made payable to the United States of America, c/o United States Attorney, Attn: Asset Forfeiture Unit, 1200 Epic Center, 301 N. Main, Wichita, Kansas 67202.

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

Amendment 5 Criminal actions—Provisions concerning—Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

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Amendment 6 Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

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West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 720. Criminal Offenses
Criminal Code
Act 5. Criminal Code of 2012 (Refs & Annos)
Title III. Specific Offenses
Part B. Offenses Directed Against the Person
Article 11. Sex Offenses (Refs & Annos)
Subdivision 5. Major Sex Offenses

720 ILCS 5/11-1.50
Formerly cited as IL ST CH 38 ¶ 12-15; 720 ILCS 5/12-15

5/11-1.50. Criminal sexual abuse

Effective: July 1, 2011

Currentness

§ 11-1.50. Criminal sexual abuse.

(a) A person commits criminal sexual abuse if that person:

(1) commits an act of sexual conduct by the use of force or threat of force; or

(2) commits an act of sexual conduct and knows that the victim is unable to understand the nature of the act or is unable to give knowing consent.

(b) A person commits criminal sexual abuse if that person is under 17 years of age and commits an act of sexual penetration or sexual conduct with a victim who is at least 9 years of age but under 17 years of age.

(c) A person commits criminal sexual abuse if that person commits an act of sexual penetration or sexual conduct with a victim who is at least 13 years of age but under 17 years of age and the person is less than 5 years older than the victim.

(d) Sentence. Criminal sexual abuse for a violation of subsection (b) or (c) of this Section is a Class A misdemeanor. Criminal sexual abuse for a violation of paragraph (1) or (2) of subsection (a) of this Section is a Class 4 felony. A second or

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subsequent conviction for a violation of subsection (a) of this Section is a Class 2 felony. For purposes of this Section it is a second or subsequent conviction if the accused has at any time been convicted under this Section or under any similar statute of this State or any other state for any offense involving sexual abuse or sexual assault that is substantially equivalent to or more serious than the sexual abuse prohibited under this Section.

Credits

Laws 1961, p. 1983, § 12-15, added by P.A. 83-1067, § 1, eff. July 1, 1984. Amended by P.A. 83-1117, § 1, eff. July 1, 1984; P.A. 85-651, § 1, eff. Jan. 1, 1988; P.A. 91-389, § 5, eff. Jan. 1, 2000. Renumbered and amended as § 11-1.50 by P.A. 96-1551, Art. 2, § 5, eff. July 1, 2011.

Formerly Ill.Rev.Stat.1991, ch. 38, ¶ 12-15.

Notes of Decisions (1086)

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Current through P.A. 99-641 of the 2016 Reg. Sess.

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Appendix

C

FILED
United States Court of Appeals
Tenth Circuit

January 14, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. LOGAN VIQUESNEY, Defendant - Appellant.	No. 20-3145 (D.C. No. 2:18-CV-02152-JAR) (D. Kan.)

ORDER

Before **PHILLIPS**, **MURPHY**, and **McHUGH**, Circuit Judges.

Appellant's petition for rehearing is denied.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk