

IN THE SUPREME COURT OF THE UNITED STATES
October Term 2025

CASE NO: _____

PHILLIP TIMOTHY HOWARD,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITIONER'S APPENDIX
TO THE PETITION FOR A WRIT OF CERTIORARI

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Appendix to the Petition
Documents attached

United States v. Howard, Opinion of Eleventh Circuit ***1-18***

Order Denying Petition for Rehearing ***19-20***

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Order Appointing Undersigned for Appeal ***22***

Final Judgment, Northern District of Florida ***23-30***

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-13871
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PHILLIP TIMOTHY HOWARD,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 4:22-cr-00043-AW-MAL-1

No. 24-10042
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

/

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Opinion of the Court

23-13871

versus

PHILLIP T. HOWARD,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 4:22-cr-00043-AW-MAL-1

Before NEWSOM, ABUDU, and ANDERSON, Circuit Judges.

PER CURIAM:

Phillip Howard appeals both his conviction and sentence resulting from his guilty plea to racketeering in violation of 18 U.S.C. § 1962(c). He argues that his guilty plea was invalid because it was not supported by a sufficient factual basis and because it was not knowing and voluntary. He further argues that his 168-months' imprisonment sentence is both procedurally and substantively unreasonable. He asserts that the district court improperly calculated his sentence because it used relevant conduct to which he did not plead guilty and inaccurate calculations of actual loss to determine his offense level. Howard also argues that the district court erred in imposing restitution in an amount equal to actual loss, and that it erred in imposing a forfeiture money judgment in the amount of \$10,651,941.40. For the reasons we'll explain below, we **AFFIRM** the district court on all grounds.

The facts of the case are known to the parties, and we repeat them here only as necessary to decide the case.

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I

A

When, as here, a defendant fails to challenge the validity of a guilty plea in the district court, we review for plain error. *United States v. Puentes-Hurtado*, 794 F.3d 1278, 1285 (11th Cir. 2015). The defendant bears the burden of showing “that (1) there is an error; (2) the error is clear or obvious, rather than subject to reasonable dispute; (3) the error affected [his] substantial rights; and (4) the error seriously affects the fairness, integrity or public reputation of judicial proceedings.” *United States v. Hill*, 119 F.4th 862, 866 (11th Cir. 2024) (quotation omitted).

A district court must determine that there is a factual basis for a guilty plea before accepting it. Fed. R. Crim. P. 11(b)(3). Whether the facts were sufficient to support the plea depends upon “whether the trial court was presented with evidence from which it could reasonably find that the defendant was guilty.” *United States v. Frye*, 402 F.3d 1123, 1128 (11th Cir. 2005) (quotation omitted). There need not be “uncontroverted evidence of guilt.” *United States v. Owen*, 858 F.2d 1514, 1516–17 (11th Cir. 1988).

Generally, an error that affects substantial rights is one that is “prejudicial,” in that it “affected the outcome of the district court proceedings.” *United States v. Olano*, 507 U.S. 725, 734 (1993). A defendant who seeks to reverse “his conviction after a guilty plea, on the ground that the district court committed plain error under Rule 11 must show a reasonable probability that, but for the error, he would not have entered the plea.” *United States v. Dominguez*

Benitez, 542 U.S. 74, 83 (2004). “A variance from the requirements of [Rule 11] is harmless error if it does not affect substantial rights.” *Id.* at 80 (quoting Fed. R. Crim. P. 11(h)).

To establish that a defendant has committed a RICO violation under 18 U.S.C. § 1962(c), the government must prove: “(1) the existence of an enterprise; (2) that the enterprise affected interstate commerce; (3) that the defendants were employed by or associated with the enterprise; (4) that the defendants participated, either directly or indirectly, in the conduct of the affairs of the enterprise; and (5) that the defendants participated through a pattern of racketeering activity.” *United States v. Starrett*, 55 F.3d 1525, 1541 (11th Cir. 1995) (footnote omitted). A “pattern of racketeering activity” refers to at least two acts of racketeering activity within the span of ten years. *Id.*

Wire fraud in violation of 18 U.S.C. § 1343 qualifies as a “racketeering activity.” 18 U.S.C. § 1961(1)(B). To convict a defendant for wire fraud, the government must prove that he (1) intentionally participated in a scheme to defraud and (2) utilized interstate mails or wires in furtherance of that scheme. *United States v. Maxwell*, 579 F.3d 1282, 1299 (11th Cir. 2009). “A scheme to defraud requires proof of a material misrepresentation, or the omission or concealment of a material fact calculated to deceive another out of money or property.” *Id.* And “[a] misrepresentation is material if it has a natural tendency to influence, or [is] capable of influencing, the decision maker to whom it is addressed.” *Id.* (quotation marks omitted).

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Here, the statement of facts attached to Howard's plea agreement contains facts sufficient for the district court to "reasonably find that the defendant was guilty." *Frye*, 402 F.3d at 1128. He has admitted to the following: being the founder and president of Howard & Associates and The Cambridge Entities; hiring as investment manager and then actively concealing the past of D.W.R., a convicted felon barred by the SEC from engaging in investment work; convincing former NFL players to invest over \$4 million with The Cambridge Entities; and misrepresenting the nature of clients' investments and returns. The district court, considering these facts, found that the plea had a sufficient factual basis. We hold that the district court did not commit plain error in accepting the plea.

B

The Due Process Clause requires that a guilty plea be knowing and voluntary. *McCarthy v. United States*, 394 U.S. 459, 466 (1969). To determine whether the waiver is knowing and voluntary, a district court accepting a plea of guilty must comply with the three "core objectives" of Rule 11 by ensuring that: (1) the guilty plea is free from coercion; (2) the defendant understands the nature of the charges; and (3) the defendant understands the consequences of his plea. *United States v. Presendieu*, 880 F.3d 1228, 1238 (11th Cir. 2018). To comply with the first core principle, Rule 11(b)(2) requires the court to ensure that the plea did not result from force, threats, or promises not included in the plea agreement. Fed. R. Crim. P. 11(b)(2). Whether the court has complied with the second core principle depends on a variety of factors,

including the complexity of the offense and the defendant's intelligence and education. *Presendieu*, 880 F.3d at 1238. To comply with the third core principle, the district court must inform the defendant of the rights that he gives up by pleading guilty, the court's authority to impose certain punishments, and the possibility of a perjury prosecution for false statements during the plea colloquy. *United States v. Moriarty*, 429 F.3d 1012, 1019 (11th Cir. 2005); see also Fed. R. Crim. P. 11(b)(1). The district court must address the defendant personally to ensure he understands the nature of the charges and the potential consequences of a guilty plea. *United States v. Lewis*, 115 F.3d 1531, 1535 (11th Cir. 1997); Fed. R. Crim. P. 11(b)(1).

Howard's plea was knowing and voluntary. He signed a written plea agreement that explicitly detailed the conduct to which he was admitting and the rights he was waiving. At Howard's change-of-plea hearing, the court addressed him personally to ensure that he understood his rights, the rights he would be waiving by pleading guilty, and the nature of the charge. Howard thereupon affirmed his understanding and confirmed that he had "just signed" the plea bargain "[i]n the courtroom" after having "seen a copy of it." He moreover affirmatively stated multiple times that he was guilty of the conduct outlined in the statement of facts. The most he could say for himself was that he did not intend for the victims "not to have money at the end of their investment." However, that is irrelevant here given his concession that "I did not inform them, and I had a duty to do that and I didn't do that." After clarifying one last time that Howard wanted to plead guilty, the

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district court judge finally noted that Howard understood the consequences and was “well-presented by counsel here” before accepting his guilty plea. We find no constitutional defect here.

II

A

We review the procedural reasonableness of a sentence for abuse of discretion. *United States v. Barrington*, 648 F.3d 1178, 1194 (11th Cir. 2011). The district court abuses its discretion if it applies an incorrect legal standard, follows improper procedures in determining the sentence, or makes clearly erroneous factual findings. *Id.* We review a district court’s interpretation of the Sentencing Guidelines de novo, and its determination of the loss amount for clear error. *Maxwell*, 579 F.3d at 1305.

However, when a party fails to make specific objections at sentencing after being given an opportunity to do so by the district court, challenges to the sentence on appeal will be reviewed only for plain error. *United States v. Ramirez-Flores*, 743 F.3d 816, 821 (11th Cir. 2014). To preserve an objection, a defendant “must raise that point in such clear and simple language that the trial court may not misunderstand it.” *Id.* (quotation marks omitted). Additionally, if a defendant fails to adequately brief an issue on appeal, it is considered abandoned. *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998). This includes mere “passing reference[s]” made in the initial brief. *United States v. Brown*, 125 F.4th 1043, 1054 (11th Cir. 2025).

A district court must consult the Sentencing Guidelines and take them into account when determining a defendant's sentence. *United States v. Booker*, 543 U.S. 220, 264 (2005). The Sentencing Guidelines allow the consideration of relevant conduct to determine the guideline range. U.S.S.G. § 1B1.3(b). Under the 2024 and 2025 Guidelines, “[r]elevant conduct does not include conduct for which the defendant was criminally charged and acquitted in federal court, unless such conduct also establishes, in whole or in part, the instant offense of conviction.” *Id.* § 1B1.3(c).

When calculating the guideline range, a district court may rely on factual findings based on facts admitted during a defendant's guilty plea, undisputed statements in the presentence investigation report (“PSI”), or evidence presented during the sentencing hearing. *United States v. Matthews*, 3 F.4th 1286, 1289 (11th Cir. 2021). Undisputed statements in a defendant's PSI are deemed admitted. Fed. R. Crim. P. 32(i)(3)(A); *United States v. Beckles*, 565 F.3d 832, 844 (11th Cir. 2009). If a defendant challenges one of the factual bases of his sentence, the government has the burden of proving the disputed fact by a preponderance of the evidence. *United States v. Aguilar-Ibarra*, 740 F.3d 587, 592 (11th Cir. 2014).

The government also has the burden of proving loss amounts attributed to the defendant by a preponderance of the evidence. *United States v. Cavallo*, 790 F.3d 1202, 1232 (11th Cir. 2015). And “a sentencing court need only make a reasonable estimate of the loss, given the available information.” *Id.* (quotation omitted). “The court, however, cannot merely speculate as to the proper

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amount of loss, and, if the amount suggested by the government is contested, the government must support its estimate with reliable and specific evidence.” *United States v. Yeager*, 331 F.3d 1216, 1224 (11th Cir. 2003) (citation modified). Additionally, all relevant conduct may be considered in determining the loss amount if the government can prove the conduct by a preponderance of the evidence. *United States v. Hamaker*, 455 F.3d 1316, 1336 (11th Cir. 2006); *see also Cavallo*, 790 F.3d at 1233-34. And the district court may hold all participants in a conspiracy responsible for the losses resulting from the reasonably foreseeable acts of co-conspirators in furtherance of the conspiracy. *United States v. Hunter*, 323 F.3d 1314, 1319 (11th Cir. 2003). A district court should deduct any losses returned to the victims when calculating the total loss amount for sentencing purposes, but any error in failing to do so is harmless where the deduction would not alter the threshold amount level for triggering the upward adjustment. *See, e.g., United States v. Woodard*, 459 F.3d 1078, 1087 (11th Cir. 2006).

First, Howard contends that it was erroneous for the district court, relying on the presentence report, to consider as “relevant conduct” actions beyond those conceded in his guilty plea. He argues this violates his rights under both the Fifth and Sixth Amendments, as well as U.S.S.G. § 1B1.3(b). As he did not object to the consideration of this “relevant conduct” at sentencing, we review for plain error.

The district court did not err. As for the constitutional claims, we have repeatedly rejected this sort of argument in the

past. *See, e.g., United States v. Chau*, 426 F.3d 1318, 1323 (11th Cir. 2005) (“As we have explained, all nine justices [in *Booker*] agreed that the use of extra-verdict enhancements in an advisory guidelines system is not unconstitutional.” (citation modified)). As for the guidelines claim, even assuming the 2024 amendment to the Guidelines applies to this case, § 1B1.3(c) only bars “conduct for which the defendant was criminally charged *and acquitted* in federal court.” U.S.S.G. § 1B1.3(c) (emphasis added). There was no acquittal here, and therefore no error.

Second, Howard contends that the district court erroneously calculated the loss amount. The district court found that Howard was responsible for approximately \$12.6 million in actual loss. Howard doesn’t dispute this figure as a starting point for the calculations, but rather contends that the district court should have credited other things (*e.g.*, loans made, value of other fund investments, the value of litigation claims) against this loss to reduce it. Since Howard objected below, we review for clear error. *See Maxwell*, 579 F.3d at 1305.

The district court did not clearly err in calculating the loss amount. Commentary to the Sentencing Guidelines delineates situations in which credits must be applied against losses. This includes the “money returned, and the fair market value of the property returned and the services rendered,” before the offense was detected. U.S.S.G. § 2B1.1 cmt. 3(D)(i). “In a case involving a fraudulent investment scheme . . . loss shall not be reduced by the money or the value of the property transferred to any individual

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investor in the scheme in excess of that investor's principal investment." *Id.* § 2B1.1 cmt. 3(E)(iv).

The losses here can be broken down into four categories: (1) Losses to investors (former NFL players) associated with The Cambridge Entities; (2) Losses to Preferred Capital (a third-party lender); (3) Losses to Virage Capital (a litigation lender); and (4) Losses to a retired university professor (a real estate investor).

Howard contends that he's entitled to credits in the first three categories. He first claims the district court should have granted him credits in the first category for money paid out to victims including loan balances, medical and travel costs, and the value of the fund's investment in a startup. However, loans granted are not the same thing as money given out—with loans there's an expectation of a return with interest. These loans are also an entirely separate financial transaction from the funds fraudulently raised from investors, and therefore cannot be credited against one another. U.S.S.G. § 2B1.1 cmt. (3)(E)(iv). As for the medical and travel costs, money spent in a fraudulent scheme doesn't become legitimate simply because legitimate businesses incur these expenses. *United States v. Campbell*, 765 F.3d 1291, 1305 (11th Cir. 2014). As these costs helped "perpetuat[e] the scheme," they should not be credited against the loss amount. *Id.* at 1306. Further, the district court did not act unreasonably in determining the value of equity interest in the startup as \$0 in light of unsubstantiated sales projections and the absence of any marketable product.

As for the second category, Howard claims that losses to Preferred Capital should be offset by the value of the outstanding principal of the loans, at least for the players who had already received settlements from the NFL. However, the district court did not act unreasonably in valuing these loans at \$0. These were high-risk loans and the practical chance of getting anything off these loans, informed by the testimony of Preferred Capital's General Counsel and lead underwriter, was close to zero.

Howard contends that the third category of losses should be offset by the collateral of these loans: the value of the attorneys' fees owed to Howard from the NFL and tobacco settlements. The district court, however, did not clearly err in valuing this collateral at \$0. There are a number of practical and legal difficulties with recovering the fees, implicating questions of Howard's disbarment and general misdeeds, as well as plaintiffs changing counsel in the tobacco litigation. It is therefore reasonable to value this collateral at \$0.

Howard also argues more generally that he was not the proximate cause of the losses suffered by those within these same three categories. He points to the "complex medical/legal process that derailed [the] NFL claims" as an intervening event. However, we find the district court did not err. Howard's ability to raise money in the first place stemmed from misrepresentations he made about his own operations and the underlying NFL claims. The fact that the some NFL settlement claims came later than expected, and some not at all, doesn't break this causal chain.

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Complex medical and legal processes are reasonably foreseeable parts of pursuing settlement. See *United States v. Stein*, 846 F.3d 1135, 1154–55 (11th Cir. 2017).

B

We also apply “the familiar abuse-of-discretion standard” when reviewing the substantive reasonableness of a sentence. *Gall v. United States*, 552 U.S. 38, 46 (2007). This standard is a deferential one, and “it is only the rare sentence that will be substantively unreasonable.” *United States v. McQueen*, 727 F.3d 1144, 1156 (11th Cir. 2013). “The party challenging the sentence bears the burden of establishing that the sentence is unreasonable in light of both the record and the 3553(a) factors.” *United States v. Witt*, 43 F.4th 1188, 1198 (11th Cir. 2022).

For a sentence to be substantively reasonable, the district court must impose a “sentence sufficient, but not greater than necessary, to comply with the purposes set forth” in § 3553(a)(2), which are the need for the sentence to reflect the seriousness of the offense, promote respect for law, provide just punishment, afford adequate deterrence, protect the public, and provide the defendant with needed correctional treatment. 18 U.S.C. § 3553(a)(2). The district court must also consider: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the types of sentences that are available; (3) the appropriate types of sentences and sentencing range established by the sentencing guidelines; (4) policy statements by the Sentencing Commission; (5) the need to avoid sentencing disparities between similarly

situated defendants; and (6) the need to provide restitution. *Id.* § 3553(a)(1), (3)-(7).

We consider “the totality of the circumstances” when determining the substantive reasonableness of a sentence. *United States v. Pugh*, 515 F.3d 1179, 1191 (11th Cir. 2008) (quoting *Gall*, 552 U.S. at 51). We also “appreciate the institutional advantage that district courts have in applying and weighing the Section 3553(a) factors in individual cases,” but “the district court’s choice of sentence is not unfettered.” *Id.* at 1190–91. Although district courts are required to consider all the factors enumerated in § 3553(a), they need not weigh all factors equally. *United States v. Grushko*, 50 F.4th 1, 19 (11th Cir. 2022). A court “may give greater weight to some factors over others or even attach great weight to a single factor—a decision that is within its sound discretion.” *Id.* Further, a “district court does not need to discuss or state each factor explicitly.” *United States v. Gonzalez*, 550 F.3d 1319, 1324 (11th Cir. 2008). We do not take a court’s failure to discuss certain mitigating evidence to mean “that the court erroneously ignored or failed to consider this evidence in determining” a sentence. *United States v. Amedeo*, 487 F.3d 823, 833 (11th Cir. 2007) (quotation marks omitted).

There are a range of reasonable sentences for a given offense. *See United States v. Irey*, 612 F.3d 1160, 1190 (11th Cir. 2010) (en banc). We will vacate a sentence “if, but only if, we ‘are left with the definite and firm conviction that the district court committed a clear error of judgment in weighing the § 3553(a) factors by arriving at a sentence that lies outside the range of reasonable

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sentences dictated by the facts of the case.” *Id.* (quoting *Pugh*, 515 F.3d at 1191). We may find that a district court has abused its discretion when it “unjustifiably relies on any single § 3553(a) factor, fails to consider pertinent § 3553(a) factors, bases the sentence on impermissible factors, or selects the sentence arbitrarily.” *Grushko*, 50 F.4th at 19. But “[a] sentence that suffers from one of these symptoms is not *per se* unreasonable.” *Id.* Instead, it is subject to review based on “the totality of the circumstances to determine the sentence’s reasonableness.” *Id.*

“We ordinarily expect a sentence within the guidelines range to be reasonable.” *United States v. Dorsey*, 554 F.3d 958, 962 (11th Cir. 2009). Further, “[a] sentence well below the statutory maximum indicates reasonableness.” *United States v. Thomas*, 108 F.4th 1351, 1357 (11th Cir. 2024).

We find Howard’s sentence to be substantively reasonable. He argues that he should have received a below-guideline sentence because of mitigating factors like his age, lack of criminal history, and intent to repay all victims. However, the district court did not abuse its discretion in concluding that the seriousness of the fraud, the need for just punishment, and the need for general and specific deterrence outweighed these mitigation factors. Additionally, the sentence of 168 months is well below the statutory maximum of 210 months, indicating reasonableness.

III

We review the legality of a restitution order *de novo*, while we review the sentencing court’s determination of restitution

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value for abuse of discretion. *United States v. Robertson*, 493 F.3d 1322, 1330 (11th Cir. 2007). The factual findings underlying the restitution order are reviewed for clear error. *Id.*

Two principles underpin the awarding of restitution: (1) the purpose of restitution is to make victims whole to the greatest extent possible, rather than to punish the defendant; and (2) the calculation of restitution is not an exact science. *United States v. Martin*, 803 F.3d 581, 594–95 (11th Cir. 2015). The government may thus “provide a reasonable estimate” of the amount owed. *Id.* at 595. A restitution award “must be based on the amount of loss actually caused by the defendant’s conduct.” *United States v. Foster*, 878 F.3d 1297, 1307 (11th Cir. 2018) (quotation omitted).

The method for calculating actual loss, when calculating the loss amount applicable to a defendant under the Guidelines, is “largely the same as the method for establishing actual loss to identifiable victims.” *Stein*, 846 F.3d at 1153 (quotation marks omitted). Consequently, “[i]n most cases, the amount of actual loss under the guidelines will be the same as the restitution figure.” *Id.*

Here, the district court did not clearly err in its calculation of the restitution value. The government proved by a preponderance of the evidence that the actual loss amount resulting from Howard’s conduct was \$12,641,941.06—the amount of the actual loss. The same rationale for denying credits against that loss there applies with equal force here.

IV

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When reviewing a forfeiture judgment, we review a district court's findings of fact for clear error and its conclusions of law de novo. *United States v. Esformes*, 60 F.4th 621, 631–32 (11th Cir. 2023).

Forfeiture is part of the criminal penalty against a defendant convicted of RICO charges under 18 U.S.C. § 1962. 18 U.S.C. § 1963(a)(3). Section 1963 provides that an individual convicted of such charges must “forfeit to the United States . . . any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity.” *Id.* The government bears the burden of proving by a preponderance of the evidence the elements of criminal forfeiture. *United States v. Dicter*, 198 F.3d 1284, 1289 (11th Cir. 1999).

Here, the district court committed no error in entering a forfeiture money judgment of \$10,651,941.40. Howard was in fact convicted of RICO charges under 18 U.S.C. § 1962. The district court's estimate of property derived from racketeering is also reasonable. The government presented the testimony of IRS investigator Justin Wisnakas below, who, by tracing Howard's financial transactions, arrived at this \$10.6 million figure. The district court did not clearly err in crediting this testimony.

V

In sum, we hold that that the district court did not err in accepting Howard's guilty plea and determining that it was made knowingly and voluntarily. It also did not commit any procedural

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or substantive errors at sentencing. Finally, its calculation of and imposition of restitution and forfeiture were reasonable.

AFFIRMED.

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-13871

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PHILLIP TIMOTHY HOWARD,

Defendant- Appellant.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 4:22-cr-00043-AW-MAL-1

No. 24-10042

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PHILLIP T. HOWARD,

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Order of the Court

23-13871

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 4:22-cr-00043-AW-MAL-1

Before NEWSOM, ABUDU, and ANDERSON, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by Appellant Phillip
T. Howard is DENIED.

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

UNITED STATES OF AMERICA

vs.

Case No. 4:22cr43-MW

PHILLIP TIMOTHY HOWARD,

Defendant.

ORDER APPOINTING FEDERAL PUBLIC DEFENDER

Defendant has shown by sworn evidence that he qualifies for appointment of counsel. Accordingly, it is **ORDERED** that JOSEPH F. DEBELDER, Federal Public Defender, 227 N. Bronough Street, Room 4200, Tallahassee, Florida 32301, (850) 942-8818, is appointed to represent this defendant. If a Criminal Justice Act (CJA) panel attorney is selected by the Public Defender as Defendant's attorney, this order authorizes payment of the CJA attorney for work on behalf of Defendant from the time that attorney was contacted by the Public Defender to take the case and agreed to take the case, even though that work predated this order.

DONE AND ORDERED on December 1, 2022.

s/ Charles A. Stampelos
CHARLES A. STAMPELOS
UNITED STATES MAGISTRATE JUDGE

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

UNITED STATES OF AMERICA

v.

Case No. 4:22-cr-43-AW-MAL

PHILLIP TIMOTHY HOWARD,

Defendant.

_____ /

ORDER SUBSTITUTING COUNSEL

Federal Public Defender Joseph DeBelder and Assistant Federal Public Defender Janese Caruthers seek leave to withdraw. ECF No. 111. The motion is GRANTED. These attorneys are relieved of further responsibility in this case.

The court now appoints CJA Panel Attorney Sheryl Lowenthal as substitute counsel.

SO ORDERED on November 30, 2023.

s/ Allen Winsor

United States District Judge

UNITED STATES DISTRICT COURT

Northern District of Florida

UNITED STATES OF AMERICA

v.

PHILLIP TIMOTHY HOWARD

JUDGMENT IN A CRIMINAL CASE

Case Number: 4:22CR00043-001

USM Number: 34036-510

Janese Caruthers (AFPD) & Joseph DeBelder (FPD)
Defendant's Attorney

THE DEFENDANT:

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

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 1962(c)	Racketeering	1/18/2018	One

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.☐ The defendant has been found not guilty on count(s) _____☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

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

11/6/2023

Date of Imposition of Judgment

s/ Allen Winsor

Signature of Judge

Allen Winsor, United States District Judge

Name and Title of Judge

11/14/2023

Date

DEFENDANT: PHILLIP TIMOTHY HOWARD
CASE NUMBER: 4:22CR00043-001

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
one hundred sixty-eight (168) months.

☒ The court makes the following recommendations to the Bureau of Prisons:
that the defendant be designated to an institution near Leon County, Florida.

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

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

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

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

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

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DEFENDANT: PHILLIP TIMOTHY HOWARD
CASE NUMBER: 4:22CR00043-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:
three (3) 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 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 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.

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DEFENDANT: PHILLIP TIMOTHY HOWARD

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

Defendant's Signature _____

Date _____

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ADDITIONAL SUPERVISED RELEASE TERMS

1. The defendant must submit his person, property, house, 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, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. The defendant must warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of his supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.
2. The defendant must provide the probation officer with access to any requested financial information and report the source and amount of personal income and financial assets to the supervising probation officer as directed. The probation office may share financial information with the U.S. Attorney's Office.
3. The defendant will not incur new credit charges or open additional lines of credit without the approval of the probation officer unless he has satisfied his restitution obligation.
4. The defendant will not transfer or dispose of any asset, or his interest in any asset, without the prior approval of the probation officer unless he has satisfied his restitution obligation.
5. The defendant shall make restitution in the amount of \$12,641,941.40 to the Clerk of the Court for distribution to the victims in monthly installments of an amount to be determined by the Court to commence within one month after his release from custody or within one month of the sentencing date.
6. Restitution payments shall be made in care of the U.S. District Clerk's Office, Attn.: Financial Section, 111 North Adams Street, Tallahassee, Florida, 32301, and shall be disbursed by the Clerk's Office. The victims' addresses are to be maintained confidentially by the U.S. District Clerk's Office.

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CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 100.00	\$ 12,641,941.40	\$	\$	\$

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

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

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, 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.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
1. B.C.		\$343,761.51	
2. B.J.		\$36,431.18	
3. C.F.		\$117,800.00	
4. C.C.		\$110,000.00	
5. C.C.		\$102,561.00	
6. C.F.		\$779,061.95	
7. D.A.		\$436,950.00	
8. D.B.		\$69,990.00	
9. E.F.		\$29,278.82	
10. E.G.		\$129,324.62	
TOTALS	\$ 0.00	\$ 12,641,941.40	

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

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

☒ the interest requirement is waived for the ☐ fine ☒ restitution.

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

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

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

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

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ADDITIONAL RESTITUTION PAYEES

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
11. J.H.		\$676,886.00	
12. K.R.		\$335,937.00	
13. L.W.		\$386,453.14	
14. S.I.		\$45,000.00	
15. T.V.		\$112,500.00	
16. T.J.		\$76,907.44	
17. T.P.		\$25,000.00	
18. W.W.		\$391,049.98	
19. W.F.		\$153,247.00	
20. K.B. c/o M.B.		\$14,974.34	
21. L.K.		\$131,500.00	
22. S.B.		\$9,608.71	
23. Preferred Capital		\$1,990,000.00	
24. Virage Capital Managementg LP		\$5,749,308.34	
25. J.I.E.		\$388,410.37	

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

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SCHEDULE OF PAYMENTS

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

- A ☒ Lump sum payment of \$ 12,642,041.40 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 equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of 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

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

There shall be a money judgment entered against Defendant in an amount to be determined at a subsequent hearing. (See Nov. 14, 2023 order.)

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

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