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A P P E N D I C E S

APPENDICES
26A63

**WILLIAM JOHN EASTERLING, Petitioner-Appellant, v. UNITED STATES OF AMERICA,
Respondent-Appellee.**

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

2025 U.S. App. LEXIS 33231; 2025 LX 595290

Nos. 24-2083/25-1016

December 18, 2025, Filed

Counsel {2025 U.S. App. LEXIS 1} For UNITED STATES OF AMERICA,
Respondent - Appellee: Alexis M. Sanford, Office of the U.S. Attorney for the Western
District of Michigan, Grand Rapids, MI.

WILLIAM JOHN EASTERLING, Petitioner - Appellant, Pro se,
Terre Haute, IN.

Judges: Before: BUSH, Circuit Judge.

Opinion

ORDER

In these consolidated appeals, **William John Easterling**, a federal prisoner proceeding pro se, appeals the district court's denial of his motions to reconsider the denial of his 28 U.S.C. § 2255 motion to vacate, set aside, or modify his sentence. Easterling has applied for a certificate of appealability (COA).

In June 2016, the Ottawa County Sheriff's Office began investigating Easterling after a report that he had purchased cigarettes for two minors and given a sex toy to a third. Based on facts uncovered during the investigation, detectives obtained a warrant to search Easterling's home. During the search, officers found a 1.5TB Seagate hard drive, manufactured in Thailand, that contained two videos of a boy, "Minor 1," recording himself masturbating in a room in Easterling's home. The videos were created in December 2015, when Minor 1 was 16 years old. Minor 1 told police that Easterling asked him to take these videos three or four times. Minor {2025 U.S. App. LEXIS 2} 1 would go into a bedroom in Easterling's basement by himself to film the videos with his cell phone, and then Easterling would "use[] his computer to transfer the video."

In March 2017, a second child, "Minor 2," reported to police that Easterling gave him a camera to make a video of himself using a sex toy. Like Minor 1, Minor 2 stated that, after Easterling gave him the camera, he went into a bedroom in Easterling's basement and recorded himself using the sex toy. That video, however, was not located during the investigation. Forensic analysis on a second hard drive uncovered explicit photos of Minor 2's twin brother taken in what appeared to be Easterling's home.

A grand jury charged Easterling with two counts of sexual exploitation of a child (counts 1 and 2), one count of attempted sexual exploitation of a child (count 3), and one count of possession of child pornography (count 4). Counts 1 and 2 concerned Minor 1, and count 3 concerned Minor 2. A jury convicted Easterling on all counts. The district court sentenced him to 1,080 months in prison. Easterling appealed his sentence, and this court affirmed. *United States v. Easterling*, 811 F. App'x 306, 308 (6th Cir. 2020).

In November 2020, Easterling filed a § 2255 motion in the district court. Over {2025 U.S. App. LEXIS

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3} the next two months, he filed "voluminous motions to supplement, to amend, to strike and to stay" that, according to the district court, "made a mess of the docket." The court dismissed the pending motions without prejudice and advised Easterling to file a new § 2255 motion incorporating all of his arguments and exhibits. Easterling did so in June 2021. Despite the court's previous directive, Easterling filed nine supplements to his motion, most of which the court rejected as untimely or as having been filed in bad faith.

Ultimately, the district court construed Easterling's amended § 2255 motion as raising 10 claims, only the first of which is relevant to this appeal. In that claim, Easterling challenged his count 3 conviction for attempted sexual exploitation of a child, under 18 U.S.C. § 2251(a) and (e). He argued that the application of § 2251(a) to his conduct is unconstitutional because his conduct had no nexus to interstate commerce and that appellate counsel was ineffective for failing to raise this claim on appeal. On August 27, 2024, the district court denied Easterling's motion, concluding that his claims lacked merit. The court declined to issue a COA.

In a motion deemed filed on September 20, 2024, Easterling sought {2025 U.S. App. LEXIS 4} reconsideration of the district court's decision and its denial of a COA. He also moved for an extension of time to file a motion under Federal Rule of Civil Procedure 59(e). With respect to his challenge to his conviction on count 3, Easterling, relying on *United States v. Buculei*, 262 F.3d 322 (4th Cir. 2001), argued that § 2251(a) is unconstitutional as applied to him because his conduct did not satisfy the statute's jurisdictional requirement, i.e., that the defendant know that the visual depictions at issue will be transported in interstate commerce. And he argued that the court erred by failing to instruct the jury on this jurisdictional element. On October 7, 2024, the court denied both motions, which it construed as having been brought under Rule 59(e). In case number 24-2083, Easterling appeals the October 7th order.

A third motion for reconsideration was docketed on October 4, 2024. On October 7th, Easterling filed a supplement to that motion, a motion to supplement his motion for reconsideration, and a motion for an order to show cause. On October 16, 2024, the district court denied all three motions, finding that they merely rehashed arguments that had already been considered and rejected. The October 16th order is another subject of appeal in case number 24-2083.

Case number 25-1016 {2025 U.S. App. LEXIS 5} is yet another appeal, involving Easterling's successive motions for reconsideration under Rule 59(e). The district court denied the first motion for reconsideration on November 22, 2024, finding that Easterling still failed to demonstrate a clear error of law, newly discovered evidence, an intervening change in controlling law, or manifest injustice. Easterling then moved for reconsideration of the November 22nd order. He continued to argue that the court committed clear error as to count 3 because the indictment and the jury instructions failed to include the jurisdictional element of the charge. The court denied the motion on December 18, 2024. In case number 25-1016, Easterling appeals the December 18th order.

Because Easterling filed his first motion for reconsideration within the 28-day period for filing a Rule 59(e) motion, his appeal from the denial of that motion brings up for review the underlying denial of his § 2255 motion. See *Bonner v. Metro. Life Ins.*, 621 F.3d 530, 532 (6th Cir. 2010). In his COA application, Easterling argues only that his conviction on count 3 is unconstitutional because the jurisdictional element of the offense was omitted from the indictment and the jury instructions and that appellate counsel was ineffective for failing to raise the {2025 U.S. App. LEXIS 6} issue on appeal. By failing to raise his other claims, Easterling has forfeited them. See *Jackson v. United States*, 45 F. App'x 382, 385 (6th Cir. 2002) (per curiam); *Elzy v. United States*, 205 F.3d 882, 886 (6th Cir. 2000).

To obtain a COA, a petitioner must make "a substantial showing of the denial of a constitutional

right." 28 U.S.C. § 2253(c)(2). To satisfy this standard, a petitioner must demonstrate "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Counts 1 and 2 of the indictment, which concerned Minor 1, charged Easterling with completed acts of sexual exploitation of a child. Both counts alleged that, "pursuant to the defendant's request or instruction, Minor 1, age 16, recorded a video of himself masturbating, and the defendant saved, reproduced, or possessed the video on materials including, but not limited to, a 1.5TB Seagate hard drive manufactured outside the state of Michigan." Count 3 concerned Minor 2, whom Easterling instructed to make a similar video. But because the video made by Minor 2 was not located during the investigation, the government charged this as an attempt offense. This count charged Easterling with "knowingly attempt[ing]{2025 U.S. App. LEXIS 7} to use, persuade, induce, and entice a minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct," in violation of § 2251(a) and (e). Specifically, it charged that Easterling "asked Minor 2, approximately age 13-15 years old, to record a video of himself masturbating."

In his § 2255 motion, Easterling argued that § 2251(a) does not apply to the conduct charged in count 3 because "[w]anting a video to be produced doesn't require any video actually being produced and thereby any materials being mailed, shipped or transported in or affecting commerce." Reasonable jurists could not disagree with the district court's rejection of this argument. The statute itself criminalizes attempts. 18 U.S.C. § 2251(e). Whether a recording was ever produced is of no moment. "[F]or the crime of coercing or enticing a minor, the focus 'always remains on the defendant's subjective intent because the statute is designed to protect children from the act of solicitation itself.'" *United States v. Cato*, No. 22-2116, 2024 WL 891603, at *6 (6th Cir. Mar. 1, 2024) (quoting *United States v. Roman*, 795 F.3d 511, 516 (6th Cir. 2015)).

In his first motion for reconsideration, Easterling attacked his conviction on count 3 from another angle. He argued that the indictment failed to allege and the court failed to instruct the jury on the jurisdictional{2025 U.S. App. LEXIS 8} element of the offense, i.e., that the defendant knew that the visual depiction would be transported in interstate commerce or knew that the materials used in the attempted production were transported in interstate commerce. The district court did not directly address this argument. And it appears that the indictment did, in fact, omit the interstate-commerce element in count 3. But Easterling cannot show that he was prejudiced by this omission because there was sufficient evidence produced at trial to satisfy the interstate-commerce element, and the jury was properly instructed on the elements of the offense. See *United States v. West*, 371 F. App'x 625, 630 (6th Cir. 2010) (explaining that, when a defendant does not challenge the sufficiency of an indictment until after conviction, he must show prejudice).

For counts 1 and 2, the jury was instructed as to all the elements of a completed § 2251(a) offense, including the interstate-commerce element. The jury was also instructed that they could find in the alternative that Easterling was guilty of attempted sexual exploitation of a minor. The court instructed that, to find that Easterling committed an attempt, the jury needed to find that he "intended to commit the crime of using a minor to engage in sexually{2025 U.S. App. LEXIS 9} explicit conduct to produce a visual depiction" and that he "did some overt act that was a substantial step towards committing the crime." For count 3, the court instructed the jury that the instructions were the same as the instructions it had given for the alternative attempted offense for counts 1 and 2. These instructions comported with § 2251(a) and the elements of attempted sexual exploitation of a child, which this court set forth in *United States v. Sims*, 708 F.3d 832, 835 (6th Cir. 2013): (1) the defendant intended to create child pornography, and (2) the defendant took a substantial step toward the creation of child pornography. And by referring back to the instructions for counts 1 and 2 when

instructing the jury on count 3, the district court adequately addressed the interstate-commerce element of count 3. Moreover, the parties stipulated that the two hard drives at issue were manufactured in Thailand. And as the district court explained, there was sufficient evidence for the jury to find that, as he did with the videos created by Minor 1, Easterling intended to transfer any video created by Minor 2 to those hard drives, providing the requisite nexus to interstate commerce. See *United States v. Lively*, 852 F.3d 549, 559-60 (6th Cir. 2017).

No reasonable jurist could debate the district court's {2025 U.S. App. LEXIS 10} rejection of Easterling's claim challenging the application of § 2251 to the conduct alleged in count 3 or the district court's denial of his motions to reconsider that ruling. Nor could reasonable jurists disagree with the district court's conclusion that appellate counsel was not ineffective for failing to raise this claim on appeal. See *Coley v. Bagley*, 706 F.3d 741, 752 (6th Cir. 2013) ("Omitting meritless arguments is neither professionally unreasonable nor prejudicial.").

For these reasons, Easterling's application for a COA and his motion for the appointment of counsel are **DENIED**.

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WILLIAM JOHN EASTERLING, Petitioner-Appellant, v. UNITED STATES OF AMERICA,
Respondent-Appellee.

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

2026 U.S. App. LEXIS 9905; 2026 LX 165541

Nos. 24-2083/25-1016

April 6, 2026, Filed

Editorial Information: Prior History

Easterling v. United States, 2026 U.S. App. LEXIS 4040 (Feb. 9, 2026) Easterling v. United States, 2025 U.S. App. LEXIS 33231 (Dec. 18, 2025)

Counsel {2026 U.S. App. LEXIS 1} For UNITED STATES OF AMERICA,
Respondent - Appellee: Alexis M. Sanford, Office of the U.S. Attorney for the Western
District of Michigan, Grand Rapids, MI.

WILLIAM JOHN EASTERLING, Petitioner - Appellant, Pro se,
Terre Haute, IN.

For UNITED STATES OF AMERICA, Respondent - Appellee:
Alexis M. Sanford, Office of the U.S. Attorney, Grand Rapids, MI.

Judges: Before: BATCHELDER, GILMAN, and THAPAR, Circuit Judges.

Opinion

ORDER

William John Easterling, a federal prisoner, petitions the court to rehear en banc its order denying his application for a certificate of appealability (COA). He has also filed a motion for recusal and to vacate the order denying his COA application, a motion to reconsider the court's February 9, 2026, order denying his motion for the appointment of counsel, a motion for a limited remand, and "a motion for leave to file errata," which is essentially a motion to amend his petition for rehearing. Easterling's petition has been referred to this panel, on which the original deciding judge does not sit, for an initial determination on the merits of the petition for rehearing.

First, we **GRANT** Easterling's errata motion and **DENY** his motions for recusal and to vacate the order denying his COA {2026 U.S. App. LEXIS 2} application, for reconsideration, and to remand. Easterling's motion for recusal and to vacate essentially offers another argument for rehearing. He argues that the order denying his COA application should be vacated because the deciding judge's "impartiality might reasonably be questioned" based on certain public statements he made in the past. But Easterling has not shown that the judge held a personal belief or bias that would have rendered him unable to rule impartially on the issues presented in Easterling's COA application.

Second, upon careful consideration, the panel concludes that the original deciding judge did not misapprehend or overlook any point of law or fact in issuing the order and, accordingly, declines to rehear the matter. Fed. R. App. P. 40(b)(1)(A).

The Clerk shall now refer the matter to all of the active members of the court for further proceedings on the suggestion for en banc rehearing.

No. 24-2083/25-1016

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Apr 20, 2026

KELLY L. STEPHENS, Clerk

PKT 34

WILLIAM JOHN EASTERLING,

Petitioner-Appellant,

V.

UNITED STATES OF AMERICA,

Respondent-Appellee.

ORDER

BEFORE: BATCHELDER, GILMAN, and THAPAR, Circuit Judges.

Upon consideration of the appellant's motion for leave to file a supplemental brief in support of the petition for rehearing en banc,

It is ORDERED the motion is GRANTED. The supplemental brief was filed on this date.

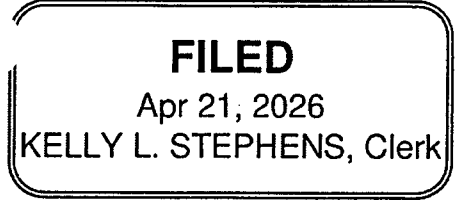
ENTERED BY ORDER OF THE COURT

Kelly L. Stephens
Kelly L. Stephens, Clerk

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Nos. 24-2083/25-1016

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

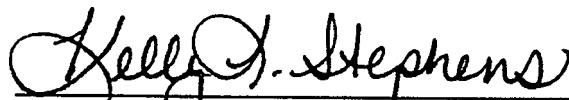


WILLIAM JOHN EASTERLING,	)	
	)	
Petitioner-Appellant,	)	
	)	
v.	)	<u>ORDER</u>
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent-Appellee.	)	

Before: BATCHELDER, GILMAN, and THAPAR, Circuit Judges.

William John Easterling petitions for rehearing en banc of this court's order entered December 18, 2025, denying his application for a certificate of appealability. The petition was initially referred to this panel, on which the original deciding judge does not sit. After review of the petition, this panel issued an order announcing its conclusion that the original application was properly denied. The petition was then circulated to all active members of the court, none of whom requested a vote on the suggestion for an en banc rehearing. Pursuant to established court procedures, the panel now denies the petition for rehearing en banc.

ENTERED BY ORDER OF THE COURT



Kelly L. Stephens, Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM JOHN EASTERLING,

Defendant-Movant,

Case No. 1:20-cv-1124

v.

Honorable Paul L. Maloney

UNITED STATES OF AMERICA,

Plaintiff-Respondent.

OPINION AND ORDER

Currently pending before the Court is Defendant William John Easterling ("Defendant")'s *pro se* second amended motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. (ECF No. 30.) Defendant has also filed numerous supplements (ECF Nos. 37, 38, 39, 40, 41, 42, 43, 44, 65) to his amended § 2255 motion. Also before the Court is Defendant's motion for an extension of time (ECF No. 61) to file a reply. For the reasons set forth below, the Court will grant Defendant's motion for an extension of time but deny his amended § 2255 motion.

I. Background

On February 27, 2018, a grand jury returned an Indictment charging Defendant with: (1) two counts of sexual exploitation and attempted exploitation of a child, in violation of 18 U.S.C. § 2251(a) and (e); (2) one count of attempted sexual exploitation of a child, in violation of 18 U.S.C. § 2251(a) and (e); and (3) one count of possession of child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B) and (b)(2). *See* Indictment, *United States v. Easterling*, No. 1:18-cr-45 (W.D. Mich.) (ECF No. 1).

Prior to trial, the government filed a motion in limine regarding the admission of *res gestae* and/or Rule 404(b)(2) evidence. *See* Mot., *id.* (ECF No. 36). Specifically, the government sought to “admit evidence of the defendant’s grooming activity.” *Id.*, PageID.84. Defendant’s counsel filed a response opposing the government’s motion. *See* Resp., *id.* (ECF No. 39). In an order entered on September 4, 2018, the Court granted the government’s motion. *See* Ord., *id.* (ECF No. 53).

Following a two-day jury trial held on September 5 and 6, 2018, Defendant was found guilty on all four counts set forth in the Indictment. *See* Jury Verdict, *id.* (ECF No. 56). On January 14, 2019, the Court sentenced Defendant to an aggregate sentence of 90 years’ incarceration, followed by a total of 10 years’ supervised release. *See* J., *id.* (ECF No. 75). The Court also imposed a special assessment of \$400.00, plus a \$5,000.00 assessment under the Justice for Victims of Trafficking Act of 2015 (JVTA). *See id.*, PageID.354.

Defendant subsequently appealed. On appeal, Defendant “[did] not challenge the validity of his convictions but contend[ed] that the district court erred in ordering the \$5,000 assessment and imposing the 90-year prison sentence.” *See United States v. Easterling*, 811 F. App’x 306, 308 (6th Cir. 2020). Specifically, Defendant argued that “the lengthy prison sentence [was] substantively unreasonable and that the JVTA assessment should not have been imposed upon him in the absence of a finding that he was not indigent.” *Id.* The United States Court of Appeals for the Sixth Circuit affirmed Defendant’s sentences and the imposition of the JVTA assessment on April 28, 2020. *See id.*

Defendant initiated § 2255 proceedings by filing his initial § 2255 motion on November 19, 2020. (ECF No. 1.) In an order (ECF No. 3) entered on November 20, 2020, the Court directed the government to respond to the motion within 60 days. Before the government filed its response,

Defendant filed an amended § 2255 motion on December 3, 2020. (ECF No. 6.) Shortly thereafter, the government moved for an extension of time (ECF No. 7) to file a response, which the Court granted in an order (ECF No. 9) entered on January 6, 2021.

During the two months following entry of the Court's January 6, 2021, order, Defendant filed numerous documents, including motions to stay, a supplement to his amended § 2255 motion, motions to amend, and a motion to strike. (ECF Nos. 10, 12, 13, 15, 16, 17, 21, 23, 24, 25, 27, 28, 29.) Meanwhile, Defendant's former counsel, Assistant Federal Public Defender Helen Nieuwenhuis, filed an affidavit addressing Defendant's claims of ineffective assistance. (ECF Nos. 19, 20.)

In an order (ECF No. 26) entered on March 11, 2021, the Court noted that Defendant's voluminous filings had "made a mess of the docket." (*Id.*, PageID.144.) The Court noted that it was exercising its "inherent authority to manage and control its docket" and dismissed without prejudice Defendant's first amended § 2255 motion, which resulted in the majority of his other pending motions being moot. (*Id.*) The Court warned Defendant that "piecemeal litigation is frowned upon." (*Id.*, PageID.149.) The Court directed Defendant "to include all of the arguments and claims he wants to raise in a single habeas petition and should file the petition before the one-year deadline expires." (*Id.*)

Defendant filed his second amended § 2255 motion on June 7, 2021. (ECF No. 30.) That motion is the operative § 2255 motion before this Court. In an order (ECF No. 31) entered on June 14, 2021, the Court directed the government to file a response to the motion within 60 days. The Court subsequently granted the government's motion for an extension of time to respond. (ECF Nos. 32, 34.)

Before the government filed its response, and despite the Court's warning that piecemeal litigation is frowned upon and that his amended § 2255 motion should include all arguments and claims he wanted to raise, Defendant filed nine supplements to his second amended § 2255 motion. (ECF Nos. 37, 38, 39, 40, 41, 42, 43, 44, 65.) The government filed its response to the second amended § 2255 motion on October 12, 2021. (ECF No. 45.) After receiving an extension of time to do so (ECF Nos. 48, 49), Defendant filed his reply (ECF No. 59) on May 19, 2022.

Four months later, Defendant filed an errata, noting that his initial reply was missing arguments and exhibits and was meant to serve as a "placeholder pending interrogatories, appointment of counsel, jurisdiction[,] and other rulings." (ECF No. 60, PageID.536.) Defendant requested that his initial reply be substituted with the corrected reply that he attached to his errata (ECF No. 60-1). A month after that filing, Defendant filed a motion seeking an extension of time to amend his reply. (ECF No. 61.) The Court concludes that Defendant has shown good cause for amending his reply and will grant his motion (ECF No. 61). Defendant's corrected reply (ECF No. 60-1) is deemed timely filed, and the Court will direct the Clerk to docket the corrected reply as a separate docket entry in this case. The Court will consider the corrected reply when addressing Defendant's grounds for relief below.

II. Legal Standards

A. Section 2255 Proceedings in General

A federal prisoner who moves to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 must show that the sentence was imposed in violation of the Constitution or laws of the United States, that the court was without jurisdiction to impose such sentence, that the sentence was in excess of the maximum authorized by law, or that it is otherwise subject to collateral attack. 28 U.S.C. § 2255(a). To prevail on a § 2255 motion, the movant must demonstrate "the existence of an error of constitutional magnitude which had a substantial and injurious effect

or influence on the guilty plea or the jury's verdict." *Humphress v. United States*, 398 F.3d 855, 858 (6th Cir. 2005) (quoting *Griffin v. United States*, 330 F.3d 733, 736 (6th Cir. 2003)). Non-constitutional errors generally are outside the scope of § 2255 relief, and they should afford collateral relief only when they create a "fundamental defect which inherently results in a complete miscarriage of justice, or, an error so egregious that it amounts to a violation of due process." See *Watson v. United States*, 165 F.3d 486, 488 (6th Cir. 1999).

B. Procedural Default

A claim not raised on direct review of a federal criminal conviction is procedurally defaulted and may not be raised on collateral review absent a showing of either (1) cause and prejudice, or (2) actual innocence. See *Massaro v. United States*, 538 U.S. 500, 504, 2003); *Bousley v. United States*, 523 U.S. 614, 621–22 (1998). An ineffective assistance of counsel claim, however, is not subject to the procedural default rule. See *Massaro*, 538 U.S. at 504. Claims of ineffective assistance of counsel "are more properly available in a post-conviction proceeding under 28 U.S.C. § 2255, after the parties have had the opportunity to develop an adequate record on the issue from which the reviewing court is capable of arriving at an informed decision." *United States v. Williams*, 612 F.3d 500, 508 (6th Cir. 2010) (citation omitted).

C. Ineffective Assistance of Counsel

In *Strickland v. Washington*, 466 U.S. 668 (1984), the Supreme Court established a two-prong test by which to evaluate claims of ineffective assistance of counsel. To establish a claim of ineffective assistance of counsel, the defendant must prove: (1) that counsel's performance fell below an objective standard of reasonableness; and (2) that counsel's deficient performance prejudiced the defendant resulting in an unreliable or fundamentally unfair outcome. *Id.* at 687. A court considering a claim of ineffective assistance must "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 689.

The defendant bears the burden of overcoming the presumption that the challenged action might be considered sound trial strategy. *Id.* (citing *Michel v. Louisiana*, 350 U.S. 91, 101 (1955)); *see also Nagi v. United States*, 90 F.3d 130, 135 (6th Cir. 1996) (holding that counsel's strategic decisions were hard to attack). The Court must determine whether, in light of the circumstances as they existed at the time of counsel's actions, "the identified acts or omissions were outside the wide range of professionally competent assistance." *Strickland*, 466 U.S. at 690. Even if a court determines that counsel's performance was outside that range, the defendant is not entitled to relief if counsel's error had no effect on the judgment. *Id.* at 691.

D. Evidentiary Hearing

The Court must hold an evidentiary hearing to determine the issues and make findings of fact and conclusions of law "[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." 28 U.S.C. § 2255(b). No hearing is required if Defendant's allegations "cannot be accepted as true because they are contradicted by the record, inherently incredible, or conclusions rather than statements of fact." *Arredondo v. United States*, 178 F.3d 778, 782 (6th Cir. 1999) (quotation omitted).

III. Discussion

A. Discerning Defendant's Grounds for Relief

As set forth *supra*, Defendant filed a second amended § 2255 motion (ECF No. 30) in accordance with the Court's March 11, 2021, order. Defendant asserts the following grounds for relief in that motion:

- I. Applied challenge to reach of [18 U.S.C. §] 2251(a)(e) to [D]efendant's conduct. Ineffective Assistance of . . . Appellant FPD Counsel for failure to adequately represent [D]efendant by asserting applied challenge to his conviction for attempt crime charged in Count 3 of the [I]ndictment.
- II. Sufficiency of Evidence Claim. No overt act. Due Process Violation. 5th Amendment violation. Ineffective Assistance of Counsel.

- III. Applied Challenge: 8th Amendment Cruel and Unusual Punishment. Ineffective Assistance of Counsel.
- IV. Res Gestae 404(b)/No Limiting Instruction. Ineffective Assistance of Counsel.
- V. 5th Amendment Due Process Violation: Unreliable Hearsay is Considered at Sentencing. Ineffective Assistance of Counsel
- VI. Applied Challenge to L.V. Counts 1 and 2. Ineffective Assistance of Counsel.
- VII. 5th Amendment Due Process: Failure of Trial Court to provide Competency Evaluation. Ineffective Assistance of Counsel.
- VIII. Sixth Amendment Right to Trial by Jury Violation. Ineffective Assistance of Counsel.
- IX. Officer qualified as expert without first being qualified under *Daubert*. Ineffective Assistance of Counsel.

(2nd Am. § 2255 Mot., ECF No. 30, PageID.167–233.)

Defendant, however, has flouted the Court’s directive in that order that he “include all of the arguments and claims he wants to raise in a single habeas petition.” (ECF No. 26, PageID.149.) Despite the Court warning Defendant that “piecemeal litigation is frowned upon,” Defendant has filed nine supplements (ECF Nos. 37, 38, 39, 40, 41, 42, 43, 44, 65) setting forth additional proposed grounds for relief.

Amendment and supplementation of § 2255 motions is governed by Rule 15 of the Federal Rules of Civil Procedure. *See Oleson v. United States*, 27 F. App’x 566, 568 (6th Cir. 2001) (explaining that an application for a writ of habeas corpus “may be amended or supplemented as provided in the rules of procedure applicable to civil actions”). Defendant, however, misunderstands the provisions of Rule 15. In his supplements, he avers that he can supplement his § 2255 motion “as needed” given that the government received an extension of time to respond to the second amended § 2255 motion. That suggestion, however, is erroneous.

Rule 15(a)(1) provides that a party may amend a pleading **once** as a matter of course no later than the earlier of the two following periods: (1) 21 days after service; or (2) 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f). *See* Fed. R. Civ. P. 15(a)(1)(A)-(B). “In all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” *See id.*, 15(a)(2). In evaluating the interests of justice, the Court should consider several factors, including “undue delay in filing, lack of notice to the opposing party, bad faith by the moving party, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party, and futility of amendment[.]” *Coe v. Bell*, 161 F.3d 320, 341 (6th Cir. 1998) (quoting *Brooks v. Celeste*, 39 F.3d 125, 130 (6th Cir. 1994)). Moreover, “[o]n motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented.” *See* Fed. R. Civ. P. 15(d).

Any attempt to raise a new claim for relief in a Rule 15 motion to amend or supplement is subject to the one-year statute of limitations set forth in § 2255(f). *See Howard v. United States*, 533 F.3d 472, 475 (6th Cir. 2008). Under § 2255(f), a one-year limitations period applies to § 2255 motions, and that period starts to run from the latest of the following:

- (1) the date on which the judgment of conviction becomes final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2255(f). The Sixth Circuit affirmed Defendant's sentences on April 28, 2020. *See Easterling*, 811 F. App'x at 308. Defendant did not petition the United States Supreme Court for a writ of certiorari. Defendant's limitations period, therefore, did not begin until the time for petitioning the Supreme Court for a writ of certiorari expired. *See Sanchez-Castellano v. United States*, 358 F.3d 424, 426 (6th Cir. 2004). Here, that period expired 150 days after April 28, 2020, or on Friday, September 25, 2020. *See Rules of the Supreme Court of the United States-Miscellaneous Order addressing the Extension of Filing Deadlines [COVID-19]*, 334 F.R.D. 801 (2020) (extending the period to file a petition for certiorari from 90 days to 150 days for petitions due on or after March 19, 2020); *Miscellaneous Order Rescinding COVID-19 Orders*, 338 F.R.D. 801 (2021) (rescinding the extension for orders denying discretionary review issued on or after July 19, 2021). Thus, Defendant's one-year limitations period under § 2255(f)(1) began on Saturday, September 26, 2020, and expired on Monday, September 27, 2021. *See Fed. R. Civ. P. 6(a)(1)(C)* (noting that when the last day of a period stated in days falls on a Saturday, Sunday, or legal holiday, the "period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday").

When considering the dates on which Defendant signed all of his supplements, all but one (the last one) were filed within the one-year limitations period. *See Brand v. Motley*, 526 F.3d 921, 925 (6th Cir. 2008); *see also Cook v. Stegall*, 295 F.3d 517, 521 (6th Cir. 2002). The Court will address whether Defendant can proceed upon those supplements below. His final supplement—ECF No. 44—is dated October 4, 2021, and was received by the Court on October 12, 2021. In that supplement, Defendant seeks to assert a claim that he was wholly abandoned by appellate counsel. (ECF No. 44, PageID.288.) Amendment or supplementation of a § 2255 motion will be denied "where it is filed after [the limitations] period expires unless the proposed amendment

relates back to the date of the original pleading within the meaning of Rule 15(c)[(1)].” See *Howard v. United States*, 533 F.3d 472, 475–76 (6th Cir. 2008). Rule 15 states that an amendment to a complaint relates back to the original complaint when it “asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading[.]” Fed. R. Civ. P. 15(c)(1)(B). “The key words are ‘conduct, transaction, or occurrence,’ which mean that an original motion and a supplemental motion must ‘state claims that are tied to a common core of operative facts.’” *Mayle v. Felix*, 545 U.S. 644, 656, 664 (2005) (footnote omitted). An amended motion does not relate back to an original motion “when it asserts a new ground for relief supported by facts that differ in both time and type from those the original pleading set forth.” *Id.* at 650.

Although Defendant raises ineffective assistance of appellate counsel claims in his second amended § 2255 motion (ECF No. 30), his final supplement raises a new claim, having no traceable relationship back to the claims raised in that motion. “[A] petitioner does not satisfy the Rule 15 ‘relation back’ standard merely by raising some type of ineffective assistance in the original petition, and then amending the petition to assert another ineffective assistance claim based upon an entirely distinct type of attorney misfeasance.” *Watkins v. Deangelo-Kipp*, 854 F.3d 846, 850 (6th Cir. 2017); see also *United States v. Thomas*, 221 F.3d 430, 436 (3d Cir. 2000) (“[A] party cannot amend a § 2255 petition to add a completely new claim after the statute of limitations has expired.”). Accordingly, the proposed additional claim in Defendant’s final supplement (ECF No. 44) is foreclosed by § 2255(f)’s one-year limitations period, and the Court will not consider the merits of that proposed claim.

As noted above, all of Defendant’s other proposed supplements fall within the one-year limitations period set forth by § 2255(f)(1). The Court received Defendant’s first supplement on

June 17, 2021, just three days after the Court directed the government to respond to the second amended § 2255 motion. (ECF No. 65) Because Defendant filed his first supplement within 21 days of service of the second amended § 2255 motion, *see* Fed. R. Civ. P. 15(a)(1)(A), the Court will consider the additional claim considered in the first supplement.

For all other timely proposed supplements (ECF Nos. 37, 38, 39, 40, 41, 42, 43), however, Defendant needed to file motions seeking leave to add new claims. *See* Fed. R. Civ. P. 15(a)(1) and (2). Defendant, however, did not do so. As noted above, while the Court should freely give leave to amend when justice so requires, *see id.*, 15(a)(2), the Court must consider several factors, including “undue delay in filing, lack of notice to the opposing party, bad faith by the moving party, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party, and futility of amendment[.]” *Coe*, 161 F.3d at 341 (quoting *Brooks*, 39 F.3d at 130). Upon review of the record, the Court concludes that Defendant has acted in bad faith by filing these numerous supplements in flagrant disregard of the Court’s directive to file one amended § 2255 motion raising all arguments and claims for relief. The Court warned Defendant that piecemeal litigation is frowned upon, and yet Defendant continued to engage in such litigation. Defendant gives no reason in these various supplements why he did not assert these claims in his second amended § 2255 motion. Moreover, these supplements were filed two months after Defendant filed his second amended § 2255 motion. Certainly, this is a situation where a finding of bad faith applies to preclude consideration of the myriad claims set forth in these supplements.

In light of the foregoing discussion, the Court deems the following grounds for relief to be the grounds that are properly before the Court and, therefore can be considered on the merits:

- I. Applied challenge to reach of [18 U.S.C. §] 2251(a)(e) to [D]efendant’s conduct. Ineffective Assistance of . . . Appellant FPD Counsel for failure to adequately represent [D]efendant by asserting applied challenge to his conviction for attempt crime charged in Count 3 of the [I]ndictment.

- II. Sufficiency of Evidence Claim. No overt act. Due Process Violation. 5th Amendment violation. Ineffective Assistance of Counsel.
- III. Applied Challenge: 8th Amendment Cruel and Unusual Punishment. Ineffective Assistance of Counsel.
- IV. Res Gestae 404(b)/No Limiting Instruction. Ineffective Assistance of Counsel.
- V. 5th Amendment Due Process Violation: Unreliable Hearsay is Considered at Sentencing. Ineffective Assistance of Counsel
- VI. Applied Challenge to L.V. Counts 1 and 2. Ineffective Assistance of Counsel.
- VII. 5th Amendment Due Process: Failure of Trial Court to provide Competency Evaluation. Ineffective Assistance of Counsel.
- VIII. Sixth Amendment Right to Trial by Jury Violation. Ineffective Assistance of Counsel.
- IX. Officer qualified as expert without first being qualified under *Daubert*. Ineffective Assistance of Counsel.
- X. The sentence imposed does not meet the objectives of Congress set forth in 18 U.S.C. § 3553(a), and related ineffective assistance of counsel.

(2nd Am. § 2255 Mot., ECF No. 30, PageID.167–233; ECF No. 65, PageID.624.)

B. Ground I—Applied Challenge to § 2251

As his first ground for relief, Defendant raises an applied challenge—or, more accurately, an as-applied challenge—to 18 U.S.C. § 2251(a) and (e). (2nd Am. § 2255 Mot., ECF No. 30, PageID.167.) Specifically, Defendant contends that the “[C]ommerce [C]lause does not give Congress the authority to regulate [D]efendant’s conduct where there is no nexus to commerce.” (*Id.*) Defendant specifically refers to Count 3 of the Indictment, which charged him with attempted sexual exploitation of a child premised upon Minor 2’s testimony that Defendant asked Minor 2 to record himself masturbating. (*Id.*) According to Defendant, the *mens rea* has no connection to commerce because wanting a recording to be produced does not require the production of any video, and, therefore, no materials affecting commerce were mailed, shipped, or transported. (*Id.*)

Defendant also faults counsel for failing to raise this as-applied challenge to Count 3. (*Id.*, PageID.169.)

The Court agrees with the government that Defendant's challenge wholly lacks merit. In 2010, the Sixth Circuit noted that "in analyzing the as-applied constitutionality of child-pornography laws, the Supreme Court's analysis in [*Gonzales v. Raich*, 545 U.S. 1 (2005),] is controlling." *United States v. Bowers*, 594 F.3d 522, 527 (6th Cir. 2010). In *Raich*, the Supreme Court emphasized that "case law firmly establishes Congress' power to regulate purely local activities that are part of an economic 'class of activities' that have a substantial effect on interstate commerce." *Raich*, 545 U.S. at 17 (citations omitted). Relying upon *Raich*, the Sixth Circuit noted that "there is no question that Congress has a legitimate basis for attempting to regulate the interstate market in child pornography and that the statutes Bowers challenges [18 U.S.C. §§ 2251(a), 2252(a)(4)(B)] are part of a larger comprehensive scheme to regulate that illicit interstate market." *Bowers*, 594 F.3d at 528. As the Sixth Circuit has stated, "Congress has a rational basis for believing that homegrown child pornography can feed the national market and stimulate demand." *United States v. Chambers*, 441 F.3d 438, 455 (6th Cir. 2006) (quoting *United States v. Gann*, 160 F. App'x 466, 472 (6th Cir. 2005)).

Section 2251 "plainly proscribes not only the manufacture of child pornography, but also the inchoate crimes of attempt and conspiracy." *United States v. Raney*, 342 F.3d 551, 561 (7th Cir. 2003); *cf. United States v. Cato*, No. 22-2116, 2024 WL 891603, at *6 (6th Cir. Mar. 1, 2024) (rejecting defendant's argument that he did not engage in sexual exploitation because his niece never responded to his request for nude pictures, noting that under the defendant's logic, "unsuccessful attempts to sexually exploit children . . . would no longer be criminal"). For example, in *United States v. Buculei*, 262 F.3d 322 (4th Cir. 2001), the Fourth Circuit affirmed the

defendant's conviction under § 2251(a) even though he was ultimately "unsuccessful in his attempt to actually produce a visual depiction of sexually explicit conduct." *Buculei*, 262 F.3d at 328.

In light of the foregoing, it is apparent that Defendant's as-applied challenge to the constitutionality of § 2251(a) lacks merit. It follows, therefore, that counsel was not ineffective for failing to raise such a challenge, whether before this Court or on direct appeal. *See United States v. Martin*, 45 F. App'x 378, 381 (6th Cir. 2002) (noting that counsel cannot be deemed ineffective for failing to raise "wholly meritless claims"); *see also Ludwig v. United States*, 162 F.3d 456, 459 (6th Cir. 1998) ("Counsel was not required to raise meritless arguments in order to avoid a charge of ineffective assistance of counsel."). Defendant, therefore, is not entitled to relief with respect to ground I.

C. Ground II—Sufficiency of the Evidence

Next, Defendant raises a sufficiency of the evidence claim. (2nd Am. § 2255 Mot., ECF No. 30, PageID.176.) He contends that there was insufficient evidence presented to convict him of Count 3—attempted sexual exploitation of a minor—because no video or "bot" was ever found in Defendant's home. (*Id.*) Defendant contends that the presence of cameras and bots is not enough to establish attempt and does not suffice as an overt act. (*Id.*) He argues that he was not present when A.D. made the video, and that A.D.'s testimony was uncorroborated. (*Id.*) Defendant further avers that counsel was ineffective for failing to raise this argument in a Rule 29 motion for acquittal after the government rested its case. (*Id.*, PageID.178.)

To find Defendant guilty of Count 3, the jury had to conclude that Defendant "specifically intended to create child pornography . . . and that he took a substantial step toward the creation of child pornography." *United States v. Sims*, 708 F.3d 832, 835 (6th Cir. 2013) (citing 18 U.S.C. § 2251(a)). To prove intent, the jury may consider "a broad range of context facts," including "the

defendant's objective conduct, taken as [a] whole." *United States v. Vanderwal*, 533 F. App'x 498, 502 (6th Cir. 2013) (quoting *United States v. Pennell*, 737 F.2d 521, 525 (6th Cir. 1984)).

As an initial matter, Defendant's argument that A.D.'s testimony was uncorroborated and, therefore, automatically insufficient is unavailing. "The testimony of the prosecuting witness, if believed by the jury, is sufficient to support a verdict of guilty." See *United States v. Terry*, 362 F.2d 914, 916 (6th Cir. 1966). At trial, A.D. testified that when he was at Defendant's house, he got cigarettes from Defendant, and that he also sometimes drank mixed drinks. See Trial Tr., *United States v. Easterling*, No. 1:18-cr-45 (W.D. Mich.) (ECF No. 81, PageID.714). A.D. testified further that Defendant would leave items at a drop spot for him. *Id.*, PageID.715. Those items included cigarettes, tobacco, and a bong. *Id.* A.D. testified that Defendant told him that there were sex toys in the bathroom at Defendant's house, and that you had to use a ladder to reach them because they were hidden in the ceiling of the basement bathroom. *Id.*, PageID.717. Defendant told A.D. that he could use the toys. *Id.*, PageID.718. A.D. testified that he used the toys more than once, and that he watched pornography with Defendant. *Id.*, PageID.719. A.D. indicated that he made a video using a sex toy because he wanted to drive the truck, and that Defendant had told him that in order to drive the truck, he had to make a video. *Id.*, PageID.720. After A.D. was done with the camera that he used to make the video, he gave it to Defendant. *Id.*, PageID.721. He noted that the camera was kept in a filing cabinet next to the computer in Defendant's basement office area. *Id.*

In light of this testimony, there was sufficient evidence to convict Defendant on Count 3, attempted exploitation of a minor. It does not matter that Defendant was not present when A.D. made the video, that A.D.'s testimony was not corroborated, and that the video in question was never located. The contextual evidence—the hidden sex toys, the fact that Defendant told A.D.

that he could use the toys, and that Defendant told A.D. that he could drive the truck only if he made a video—is sufficient to support the jury’s determination that Defendant intended to create child pornography and took substantial steps toward that goal. For counsel to argue otherwise, particularly in a Rule 29 motion for acquittal, would have been meritless. *See Martin*, 45 F. App’x at 378; *see also Ludwig*, 162 F.3d at 459. Defendant, therefore, is not entitled to relief with respect to ground II.

D. Ground III—Sentence Violates Eighth Amendment

As his third ground for relief, Defendant suggests that his sentence violates the Eighth Amendment’s prohibition against cruel and unusual punishment. (2nd Am. § 2255 Mot., ECF No. 30, PageID.186.) Essentially, Defendant argues that his sentence amounts to a life sentence, which should not be imposed upon “[n]on-violent first[-]time offenders with no criminal history.” (*Id.*) Defendants asserts further that counsel was ineffective for failing to raise this argument. (*Id.*, PageID.187.)

The United States Constitution, particularly the Eighth Amendment, does not require strict proportionality between a crime and its punishment. *Harmelin v. Michigan*, 501 U.S. 957, 965 (1991); *United States v. Marks*, 209 F.3d 577, 583 (6th Cir. 2000). “Consequently, only an extreme disparity between crime and sentence offends the Eighth Amendment.” *Marks*, 209 F.3d at 583; *see also Lockyer v. Andrade*, 538 U.S. 63, 77 (2003) (discussing that gross disproportionality principle applies only in the extraordinary case); *Ewing v. California*, 538 U.S. 11, 36 (2003) (holding that principle applies only in “the rare case in which a threshold comparison of the crime committed and the sentence imposed leads to an inference of gross disproportionality” (quoting *Rummel v. Estelle*, 445 U.S. 263, 285 (1980))). A sentence that falls within the maximum penalty authorized by statute “generally does not constitute ‘cruel and unusual punishment.’” *Austin v. Jackson*, 213 F.3d 298, 302 (6th Cir. 2000) (quoting *United States v. Organek*, 65 F.3d 60, 62 (6th

Cir. 1995)). Ordinarily, “[f]ederal courts will not engage in a proportionality analysis except in cases where the penalty imposed is death or life in prison without possibility of parole.” *United States v. Thomas*, 49 F.3d 253, 261 (6th Cir. 1995).

As noted *supra*, the Court sentenced Defendant to an aggregate sentence of 90 years. Given Defendant’s age, he is correct that such a sentence essentially amounts to a life sentence. However, the Court did not impose the death penalty, nor did it impose life without parole. Defendant’s presentence investigation report (PSR) indicates that Counts 1-3 each carried a statutory minimum of 15 years and a statutory maximum of 30 years, whereas Count 4 carried a statutory maximum of 10 years. *See* PSR, *United States v. Easterling*, No. 1:18-cr-45 (W.D. Mich.) (ECF No. 65, PageID.313). While Defendant’s guidelines range called for life imprisonment, the statutorily authorized maximum sentences for Counts 1-3 were less than that, so Defendant’s guidelines range called for 1,200 months of incarceration given the Court’s authority to impose those sentences consecutively. *See id.* The Court varied downward and sentenced Defendant to a total of 1,080 months, or 90 years. *See J., id.* (ECF No. 75, PageID.350). Given that Defendant’s sentences fell within the maximum penalty authorized by statute, his Eighth Amendment argument lacks merit. *See Austin*, 213 F.3d at 302 (quoting *Organek*, 65 F.3d at 62). It therefore follows that counsel was not ineffective for failing to raise this argument to either this Court or the Sixth Circuit. *See Martin*, 45 F. App’x at 378; *see also Ludwig*, 162 F.3d at 459. Defendant, therefore, is not entitled to relief with respect to ground III.

E. Ground IV—Res Gestae/404(b) Evidence and Limiting Instruction

As his fourth ground for relief, Petitioner challenges “the erroneously admitted *res gestae*/and or 404(b) evidence of grooming in the instant case.” (2nd Am. § 2255 Mot., ECF No. 30, PageID.190.) Defendant states that he relies upon all arguments raised by defense counsel prior to trial, and that the Court “did not understand the facts pertaining to the [government’s] use of *res*

gestae/404(b) evidence.” (*Id.*) Defendant focuses his challenge on the admission of such evidence with respect to Count 3, reiterating his arguments that “no sex bots were every found and no video pertaining to Count 3,” and that A.D.’s testimony was not corroborated. (*Id.*) Defendant contends that after the Court concluded that the *res gestae*/404(b) evidence was admissible, the Court agreed with defense counsel’s motion to provide a limiting instruction, but that none was given at trial. (*Id.*, PageID.191.) Defendant faults counsel for failing to object to the absence of such an instruction at trial, and also faults appellate counsel for not challenging the admission of the evidence on direct appeal. (*Id.*, PageID.193.)

As noted above, prior to trial, the government filed a motion in limine regarding the admission of *res gestae* and/or Rule 404(b)(2) evidence. *See Mot., United States v. Easterling*, No. 1:18-cr-45 (W.D. Mich.) (ECF No. 36). Specifically, the government sought to “admit evidence of the defendant’s grooming activity.” *Id.*, PageID.84. Defendant’s counsel filed a response opposing the government’s motion. *See Resp., id.* (ECF No. 39).

The Court addressed the government’s motion at the final pretrial conference held on August 22, 2018. *See Final Pretrial Tr., id.* (ECF No. 118). At that conference, the government argued that the evidence of grooming was *res gestae* evidence that was “inextricably intertwined” with the charges against Defendant. *Id.*, PageID.1015. The government argued that this case involved an implied, if not express, “quid pro quo between this defendant and these young men saying here are privileges that I give you, here are things that I give you, and things I let you do. How about you do something for me.” *Id.* The government noted that the victim in Count 3 “specifically said he made that video because he thought if he did that, he would get to drive the defendant’s truck.” *Id.* The government argued further that if the Court was not persuaded that the

evidence was *res gestae* evidence, it should come in under Federal Rule of Evidence 404(b) “to prove motive, opportunity, intent, and absence of mistake.” *Id.*, PageID.1016.

In response, attorney Nieuwenhuis argued that the evidence in question was not *res gestae* evidence because it was not needed “to complete the story of the charged offense,” and that it fell more into the category of 404(b) evidence. *Id.*, PageID.1017. Counsel argued further that the evidence did not fall into the categories allowed under Rule 404(b). *Id.*

The Court concluded that if the evidence was not admitted, “the conduct of the minor goes unexplained and would become part of the totality of the picture here, which usually means that it comes in under as part of the *res gestae* of the offense, setting aside the 404(b) argument at the moment.” *Id.*, PageID.1020. Ultimately, the Court granted the government’s motion in limine on the theory that the evidence would be allowed “under the *res gestae* rule.” *Id.*, PageID.1022. The Court memorialized that decision in a written order granting the government’s motion entered on September 4, 2018. *See Ord., id.* (ECF No. 53).

Res gestae evidence, otherwise referred to as background evidence, “lays outside” the ambit of Federal Rule of Evidence 404(b). *See United States v. Johnson*, 95 F.4th 404, 417 (6th Cir. 2024). Despite that exception, a party cannot “evade 404(b) by introducing any and all other act evidence.” *United States v. Clay*, 667 F.3d 689, 697 (6th Cir. 2012) (internal citations omitted). For evidence to qualify as *res gestae* evidence, it must be “inextricably intertwined with the charged offense.” *United States v. Churn*, 800 F.3d 768, 779 (6th Cir. 2015) (internal quotation marks omitted). It “may include evidence that is a prelude to the charged offense, is directly probative of the charged offense, arises from the same events as the charged offense, forms an integral part of the witness’s testimony, or completes the story of the charged offense.” *Id.* (citation omitted).

In light of the foregoing authority, the Court sees no need to revisit its decision that the “grooming” evidence in question qualified as *res gestae* evidence because it was “inextricably intertwined with the charged offense” and “complete[d] the story.” The “grooming” evidence provided context for the jury “to understand the background, the relationship, the gifts and privileges that [Defendant] gave to these boys, because it helps the jury understand both [Defendant’s] motive and intent, why he did these things for these kids, and then why the children did what they did in exchange.” See Final Pretrial Tr., *United States v. Easterling*, No. 1:18-cr-45 (W.D. Mich.) (ECF No. 118, PageID.1016).

Defendant also faults the Court for agreeing to provide a limiting instruction, but then failing to do so at trial. Nowhere during the final pretrial hearing did the Court expressly indicate that it would provide a limiting instruction. The only mention of a limiting instruction occurred when attorney Nieuwenhuis asks to be “given a chance to kind of tweak the limiting instruction to the jury as to the very specific purpose that allegedly this information would be coming in” for. See *id.*, PageID.1019. That argument, however, was in regard to if the Court admitted the “grooming” evidence as 404(b) evidence.

Even if evidence qualifies as *res gestae* evidence, the Court must also ensure that the “probative value of the evidence was not substantially outweighed by the danger of unfair prejudice pursuant to Federal Rule of Evidence 403.” *Churn*, 800 F.3d at 779. During final jury instructions, the Court instructed the jury that “a defendant’s state of mind can be proved indirectly from the surrounding circumstances. This includes things like what the defendant said, what the defendant did, how the defendant acted, and any other facts or circumstances in evidence that show what was in the defendant’s mind.” See Trial Tr. *United States v. Easterling*, No. 1:18-cr-45 (W.D. Mich.) (ECF No. 81, PageID.794). The Court also provided the following instruction:

You have heard the testimony that the defendant committed crimes and acts other than the ones charged in the Indictment. If you find the defendant did those crimes and acts, remember that the defendant is on trial here only for sexual exploitation of a minor, not for the other acts. Do not return a guilty verdict unless the government provides the crimes charged in the Indictment beyond a reasonable doubt.

Id., PageID.802–803. The Court, therefore, did provide a limiting instruction regarding the “grooming” evidence to the jury. Defendant does not explain how the instruction noted above was deficient or how counsel was deficient for not requesting a different instruction. “Counsel cannot be ineffective for failing to object to what was properly done.” *United States v. Sanders*, 404 F.3d 980, 986 (6th Cir. 2005).

For the foregoing reasons, Defendant is not entitled to relief with respect to ground IV.

F. Ground V—Hearsay at Sentencing

In ground V, Defendant asserts that his Fifth Amendment due process rights were violated by the consideration of “unreliable hearsay” at sentencing. (2nd Am. § 2255 Mot., ECF No. 30, PageID.200.) Specifically, Defendant contends that his PSR contained information “about [Defendant] fondling victim witness LV at a tender age and this purportedly occurred for a 2-year period of time.” (*Id.*) Defendant suggests that the preponderance of the evidence did not suggest that this occurred, especially because Detective Tamminga testified that none of the boys disclosed that Defendant had ever touched them inappropriately. (*Id.*) Defendant argues further that “reliance on unadjudicated evidence” violates his “presumption of innocence,” and that counsel was ineffective for failing to challenge the use of this hearsay information at sentencing. (*Id.*, PageID.200–201.)

As an initial matter, any assertion by Defendant that consideration of hearsay is not permitted at sentencing is mistaken. The Sixth Circuit has recognized a “long-settled rule of law that [the] Confrontation Clause permits the admission of testimonial hearsay evidence at

sentencing proceedings.” *United States v. Turner*, No. 23-1700, 2024 WL 2240376, at *9 (6th Cir. May 17, 2024) (quoting *United States v. Katzopoulos*, 437 F.3d 569, 576 (6th Cir. 2006)). Courts “have broad discretion at sentencing to consider any ‘information’ about the defendant’s ‘background, character, and conduct’ that they find helpful for choosing the sentence.” *United States v. O’Lear*, 90 F.4th 519, 539 (6th Cir. 2024) (quoting 18 U.S.C. § 3661). Thus, a district court may “consider hearsay as long as it meets a relatively modest ‘reliability’ bar—even though the defendant cannot cross-examine the hearsay declarant.” *Id.* (citing *United States v. Armstrong*, 920 F.3d 395, 398 (6th Cir. 2019)).

Moreover, “judicial fact-finding by the preponderance of the evidence is permissible at sentencing.” *Turner*, 2024 WL 2240376, at *9 (citing *United States v. Sexton*, 512 F.3d 326, 330 (6th Cir. 2008)). “So long as the trial court appreciates that the Guidelines are simply advisory, not binding, it is well-established that the preponderance standard does not violate [*United States v. Booker*, 543 U.S. 220 (2005)].” *Id.*

During an interview, Minor 1 (L.V.) “disclosed beginning around when he was 13, [Defendant] would touch or fondle him. Minor 1 recounted this happened for the first time when Minor 1 was sleeping and occurred when they would watch movies together.” See PSR, *United States v. Easterling*, No. 1:18-cr-45 (W.D. Mich.) (ECF No. 65, PageID.294). Minor 1 stated this “conduct continued and occurred almost every time he went to the Easterling home for a two-year period of time.” *Id.* This information, however, was not used to compute Defendant’s sentencing guidelines range. *Id.*, PageID.297–300. Moreover, a review of the sentencing transcript indicates that it was not mentioned at all by the Court in stating its reasons for imposing the sentence that it did. See Sentencing Tr., *id.* (ECF No. 80, PageID.435–440.)

In light of the foregoing, Defendant has not shown that the Court violated his constitutional rights in any way by the inclusion of the statements noted above in Defendant's PSR. Moreover, Defendant has not demonstrated that the outcome of his sentencing would have been different had counsel objected to the inclusion of that information in the PSR. *See Martin*, 45 F. App'x at 378; *see also Ludwig*, 162 F.3d at 459. Accordingly, Defendant is not entitled to relief with respect to ground V.

G. Ground VI—Challenge to Counts 1 and 2

As his sixth ground for relief, Defendant contends that he could not have been convicted of Counts 1 and 2 of the Indictment, which charged him with sexual exploitation and attempted exploitation of a minor, because 18 U.S.C. § 2251(a) requires "production" and Defendant did not "direct[] or produce[] anything." (2nd Am. § 2255 Mot., ECF No. 30, PageID.221.) Defendant suggests that the minor in question, L.V., testified "he was habitually making 'jerk videos' which are videos in private of him masturbating." (*Id.*) Defendant claims that given this testimony, "[n]o direction or instruction was necessary given [L.V.'s] predisposition and propensity to make such videos." (*Id.*) Defendant suggests that his "asking" conduct is not reached by § 2251(a). (*Id.*) Finally, Defendant faults counsel for not asserting this argument. (*Id.*, PageID.222.)

Like Defendant's challenge to § 2251(a) in his first ground for relief, this challenge is also wholly without merit. An individual violates § 2251(a) if he or she "employs, uses, persuades, induces, entices, or coerces any minor to engage in . . . any sexually explicit conduct for the purpose of producing any visual depiction of such conduct." *See United States v. Frei*, 995 F.3d 561, 566 (6th Cir. 2021) (quoting 18 U.S.C. § 2251(a)). At trial, L.V. testified that he made the videos because Defendant asked him to do so. *See Trial Tr., United States v. Easterling*, No. 1:18-cr-45 (W.D. Mich.) (ECF No. 81, PageID.643). Simply asking a minor to make such a video is sufficient to conclude that an individual has violated § 2251(a). *See United States v. Ogden*, 685

F.3d 600, 604 (6th Cir. 2012) (upholding the defendant's conviction under § 2251(a) because "the victim produced sexually explicit images of herself after [the defendant] asked her to do so").

In light of the foregoing, Defendant's challenge to Counts 1 and 2 lacks merit. Accordingly, counsel was not ineffective for failing to raise this challenge before this Court or on direct appeal. *See Martin*, 45 F. App'x at 381; *Ludwig*, 162 F.3d at 459. Defendant, therefore, is not entitled to relief with respect to ground VI.

H. Ground VII—Competency Evaluation

Next, Defendant suggests that the Court erred by not ordering a competency evaluation, and that trial counsel was ineffective for failing to request such an evaluation. (2nd Am. § 2255 Mot., ECF No. 30, PageID224.) Defendant avers that prior to trial, counsel and her investigator "observed persistent recurring irrational behavior" by Defendant. (*Id.*) Defendant argues there "is no dispute [that he] was suffering from psychological issues." (*Id.*, PageID.225.)

"To be competent to stand trial or proceed to sentencing, a criminal defendant must possess (1) a 'sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding,' and (2) 'a rational as well as factual understanding of the proceedings against him.'" *United States v. Dubrule*, 822 F.3d 866, 875 (6th Cir. 2016) (quoting *Dusky v. United States*, 362 U.S. 402 (1960)). The Sixth Circuit has noted that "even if [the defendant is] mentally ill, '[i]t does not follow that because a person is mentally ill he is not competent to stand trial.'" *United States v. Davis*, 93 F.3d 1286, 1290 (6th Cir. 1996) (quoting *Newfield v. United States*, 565 F.2d 203, 206 (2d Cir. 1977)). "[T]he bar for incompetency is high." *United States v. Miller*, 531 F.3d 340, 350 (6th Cir. 2008). "[C]ounsel's failure to request the trial court to order a hearing or evaluation on the issue of the defendant's competency' might render counsel's performance objectively unreasonable, 'provided there are sufficient indicia of incompetence to give objectively

reasonable counsel reason to doubt the defendant's competency.” *Dubrule*, 822 F.3d at 881 (quoting *Jermyn v. Horn*, 266 F.3d 257, 283 (3d Cir. 2001)).

Defendant has included a declaration in support of this ground in which he states that during his pretrial detention at the Newaygo County Jail, he “suffered from severe medical neglect.” (2nd Am. § 2255 Mot., ECF No. 30, PageID.226.) He avers that he suffered “mental fog,” as well as anxiety and severe depression. (*Id.*) Defendant states that he was “not capable of meaningfully helping his defense team due to the cumulative [e]ffects of over 1 year of medical neglect, mother passing away, severe depression and anxiety caused by unmonitored sudden pharmaceutical changes along with unstable glucose control.” (*Id.*)

Attorney Helen Nieuwenhuis has addressed Defendant's claim of ineffective assistance in her affidavit. (ECF No. 20.) She avers that during her representation of Defendant, she “did discuss the possibility of having a mental health evaluation, but [Defendant] was not interested in having an evaluation done.” (*Id.*, PageID.121, ¶ 6.) Attorney Nieuwenhuis was able to discuss “the case, potential witnesses, police reports, etc.” with Defendant prior to trial. (*Id.*) Defendant “was able to draft pages of questions he wanted [counsel] to use on cross-examination. The questions corresponded to copies of reports from his case, some of which were valid.” (*Id.*) Although it was clear to counsel that Defendant “ha[d] some psychological issues,” she was able to confer with him about “his case, possible defenses, and the very significant potential penalties he faced if convicted.” (*Id.*, PageID.122.) Moreover, counsel notes that in Defendant's PSR, Defendant denied having ever been diagnosed with a mental or emotional disorder. (*Id.*) Overall, attorney Nieuwenhuis states that “although [Defendant] had mental health challenges, [she] did not specifically move for a competency hearing as [Defendant] was able to converse with [her] was

able to assist in his defense, and [she] believe[s] [he] understood what was happening at his trial and sentencing.” (*Id.*, PageID.122–123, ¶ 7.)

Given the foregoing, Defendant has not demonstrated that there were “sufficient indicia of incompetence” such that the trial court erred in not *sua sponte* ordering a competency hearing and that counsel was deficient for not requesting such a hearing. Defendant’s mental illness does not equate to a conclusion that he was incompetent. *See Davis*, 93 F.3d at 1290. Moreover, attorney Nieuwenhuis’s affidavit counters Defendant’s conclusory statement that he was unable to “meaningfully help[]” his defense team. Furthermore, Defendant fails to show that he was prejudiced by the decision not to request a competency hearing, as he does not show a reasonable probability that the result of his trial would have been different. *See Strickland*, 466 U.S. at 694. Defendant, therefore, is not entitled to relief with respect to ground VII.

I. Ground VIII—Violation of Sixth Amendment Right to Trial by Jury

Next, Defendant faults the Court for enhancing his minimum and maximum statutory sentencing exposure by judge-found facts that were not found by a jury. (2nd Am. § 2255 Mot., ECF No. 30, PageID.229.) According to Defendant, this violated the Sixth Amendment. (*Id.*) Specifically, Defendant takes issue with various sentencing enhancements that were imposed under the sentencing guidelines because those enhancements were not determined by the jury and essentially raised the minimum statutory sentence that he faced. (*Id.*, PageID.230.) He also faults appellate counsel for not raising this issue. (*Id.*, PageID.231.)

In 2000, the Supreme Court held that “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” *See Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000). Subsequently, the Court applied the rule set forth in *Apprendi* to a state sentencing-guideline scheme under which the maximum penalty could be increased by judicial fact-finding.

The *Blakely* Court held that the state guideline scheme violated the Sixth and Fourteenth Amendments, reiterating the rule that any fact that increases the maximum sentence must be “admitted by the defendant or proved to a jury beyond a reasonable doubt.” See *United States v. Booker*, 543 U.S. 220, 232 (2005) (citing *Blakely v. Washington*, 542 U.S. 296, 303 (2004)). In 2013, the Court extended *Blakely* and *Apprendi* to apply to mandatory minimum sentences. Specifically, the Court concluded that “any fact that, by law, increases the penalty for a crime . . . must be submitted to the jury and found beyond a reasonable doubt.” *Alleyne v. United States*, 570 U.S. 99, 103 (2013).

Defendant is mistaken that the various enhancements impacted the statutory maximum or minimum sentence that he faced. As discussed *supra* in Part III.D, Counts 1-3 each carried a statutory minimum of 15 years and a statutory maximum of 30 years, whereas Count 4 carried a statutory maximum of 10 years. See PSR, *United States v. Easterling*, No. 1:18-cr-45 (W.D. Mich.) (ECF No. 65, PageID.313). At sentencing, the Court noted the following:

The Court’s Probation Office has scored this case at Offense Level 44, Criminal History category 1, which would ordinarily result in a guideline range of life, however because the statutory maximum sentence is on Counts 1 through 3 is 30 years and Count 4 is ten years, the guideline range is 1,200 months because the courts may run consecutive pursuant to [the] guidelines provision[s].”

See Sentencing Tr., *id.* (ECF No. 80, PageID.406). The Court ultimately sentenced Defendant to an aggregate sentence of 1,080 months, or 90 years. See J., *id.* (ECF No. 75, PageID.350). Specifically, the Court imposed three consecutive terms of 360 months for Counts 1 through 3, and 120 months, to be served concurrently with the terms imposed for Counts 1 through 3, for Count 4. See *Sentencing Tr.*, *id.* (ECF no. 80, PageID.440).

In light of the foregoing, Defendant was not sentenced based on the federal sentencing guidelines. Instead, Defendant was sentenced based upon the statutory maximums of 10 and 30 years because his guidelines called for a greater period of incarceration than called for under the

statutory maximums. By finding Defendant guilty of sexual exploitation, attempted sexual exploitation, and possession of child pornography, the jury found all facts necessary for the Court to impose that sentence upon Defendant.

In any event, because the guidelines enhancements that Defendant challenges did not impact the statutory minimum and maximums that he faced, no Sixth Amendment violation occurred. Thus, it follows that appellate counsel was not ineffective for not raising Defendant's Sixth Amendment argument on direct appeal. *See Martin*, 45 F. App'x at 381; *Ludwig*, 162 F.3d at 459. Defendant, therefore, is not entitled to relief with respect to ground VIII.

J. Ground IX—Expert Testimony without *Daubert* Hearing

In his ninth ground for relief, Defendant takes issue with the fact that Detective Tamminga was allowed to testify as an expert regarding sexual exploitation of children even though there was no determination by the Court that he could testify as an expert. (2nd Am. § 2255 Mot., ECF No. 30, PageID.232.) Defendant contends that the Court should have first held a *Daubert* hearing and that counsel was ineffective for both failing to object to the lack of a hearing and failing to object to Detective Tamminga's expert testimony. (*Id.*, PageID.232–33.)

In *Daubert*, the Supreme Court concluded that trial judges must ensure that admitted expert testimony is both relevant and reliable. *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 589 (1999). “The focus . . . must be solely on principles and methodology, not on the conclusions that they generate.” *Id.* at 594. The Court identified several factors for consideration when evaluating scientific expert testimony, including: “the testability of the expert's hypotheses (whether they can be or have been tested, whether the expert's methodology has been subjected to peer review, the rate of error associated with the methodology, and whether the methodology is generally accepted within the scientific community.” *Pride v. BIC Corp.*, 218 F.3d 566, 577 (6th Cir. 2000) (citing *Daubert*, 509 U.S. at 593–94).

Daubert hearings focus on proposed expert testimony to be offered under Rule 702 of the Federal Rules of Evidence. *See* Fed. R. Evid. 702. The Rules of Evidence, however, also allow for the admission of lay opinion testimony. *See* Fed. R. Evid. 701. Such testimony is admissible if it is: “(a) rationally based on the witness’s perception; (b) helpful to clearly understand[] the witness’s testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.” *See id.*

Here, there is nothing in the record that suggests that the government relied upon Detective Tamminga as an expert witness. Detective Tamminga was personally involved in the investigation into Defendant’s activities. He testified that he primarily handles cases involving sexual exploitation of children, and, because of that, he has received special training regarding the handling of such cases. *See* Trial Tr., *United States v. Easterling*, No. 1:18-cr-45 (W.D. Mich.) (ECF No. 81, PageID.727–728). When asked, Defendant Tamminga also provided a definition of grooming behavior. *See id.*, PageID.730–731. He noted that certain actions testified to by the victims qualified as grooming behaviors. *See id.*, PageID.732.

As an initial matter, despite Defendant’s belief, the Supreme Court has never held that a *Daubert* hearing is required before any witness can be qualified as an expert. Moreover, the case law is unclear as to whether testimony regarding grooming activity, such as the testimony provided by Detective Tamminga, qualifies as lay or expert testimony. Some courts have concluded that such testimony is specialized knowledge to be provided by expert witnesses. *See, e.g., United States v. Batton*, 602 F.3d 1191, 1202 (10th Cir. 2010); *United States v. Romero*, 189 F.3d 576, 584 (7th Cir. 1999). Other courts have held that testimony regarding grooming behaviors is common knowledge such that it does not require specialized expertise. *See, e.g., United States v. Lewis*, 762 F. App’x 786, 797 (11th Cir. 2019), *judgment vacated on other grounds by Lewis v.*

United States, 140 S. Ct. 613 (2019); *United States v. Chambers*, 642 F.3d 588, 593 (7th Cir. 2011).

Whether Detective Tamminga's testimony is expert or lay opinion testimony, however, is not dispositive. Defendant vaguely suggests that the "emphasis on the detective's training and experience . . . likely signaled the Jury that the detective was particularly qualified to offer his responses." (2nd Am. § 2255 Mot., ECF No. 30, PageID.232.) Defendant does not explain, and the Court does not discern, how he would have prevailed at a *Daubert* hearing challenging the reliability of Detective Tamminga's testimony. "The bottom line is that courts . . . routinely allow this type of testimony from law enforcement officers with expertise in this area." *Roy v. United States*, Nos. 19-14102-CV-MOORE/MAYNARD, 12-14022-CR-MOORE, 2021 WL 2269825, at *9 (S.D. Fla. Mar. 2, 2021), *Report and Recommendation adopted by Roy v. United States*, 2021 WL 1975206 (S.D. Fla. May 17, 2021). Counsel, accordingly, cannot be ineffective for failing to raise meritless objections to the admissibility of Detective Tamminga's testimony. *See Martin*, 45 F. App'x at 381; *Ludwig*, 162 F.3d at 459. Defendant, therefore, is not entitled to relief with respect to ground IX.

K. Ground X—Sentence Does Not Meet Congress' Objectives

In ground X, Defendant contends that the sentence imposed "does not meet the objectives of Congress set forth in 18 U.S.C. [§] 3553(a)." (ECF No. 65, PageID.624.) According to Defendant, the Court did not consider "that sex offenses are unique and treated unlike other offenses." (*Id.*) Defendant postures that he will be subject to "indefinite commitment at Butner after his sentence is completed." (*Id.*) He avers that because the Court determined that he was a sexually repeat offender, he "already would be certified for civil commitment and treatment." (*Id.*)

Defendant also argues that once he is released, he will be subject to lifetime supervised release and registration requirements, will be subject to lie-detector tests and treatment, and cannot

be around minors. (*Id.*) He suggests that he will “always have to wear GPS monitoring and there would be restrictions on where he goes.” (*Id.*) Defendant faults counsel for not raising these issues at sentencing. (*Id.*, PageID.625.) Overall, Defendant suggests that “a sentence of 15 years would have adequately served the objectives of 3553(a).” (*Id.*, PageID.626.)

Under § 3553(a), a district court must consider the following facts when imposing a sentence:

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed--
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant; and
 - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established for--
 - (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines--
 - (i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and
 - (ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or
 - (B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy

statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement--

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

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

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

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

18 U.S.C. § 3553(a) (footnote omitted).

At sentencing, the Court explicitly noted several of the factors set forth above. *See* Sentencing Tr., *United States v. Easterling*, No. 1:18-cr-45 (W.D. Mich.) (ECF No. 79, PageID.395). The Court “fully recognize[d] [that] [D]efendant has no prior criminal history. He is an educated person. He has an employment record of some significant note.” *Id.*, PageID.396. However, the Court noted that it was apparent from the victims statements that the minors were dealing with “a significant amount of pain.” *Id.* Moreover, Defendant’s crimes had had “significant impact on the family units of the young people.” *Id.*

The Court noted further that Defendant had violated the trust the minors’ families placed on him because of their involvement with the Big Brothers/Big Sisters program. *Id.*, PageID.397. The Court faulted Defendant for not understanding “the victimization that he imposed on these minors,” and that it was imperative to protect the public from further similar instances. *Id.* Overall, the Court concluded that a “very significant sentence” was necessary “to promote respect for laws of the United States; reflect the seriousness of the actual offense behavior here; and to provide just

punishment for the offense.” *Id.*, PageID.398. The Court recognized that the 90-year sentence was “one that [Defendant] ordinarily would not survive” because of his age, but that such a sentence was appropriate upon consideration of the § 3553(a) factors. *Id.*, PageID.399.

The arguments Defendant raises in ground X are solely based upon speculation. Contrary to Defendant’s argument, he would not be automatically civilly committed upon expiration of his sentence. An individual may be civilly committed only if a court finds by clear and convincing evidence that he is “sexually dangerous.” 18 U.S.C. § 4248(d). A person is “sexually dangerous” if he or she “is sexually dangerous to others,” that is, he or she “suffers from a serious mental illness, abnormality, or disorder *as a result of which* he would have serious difficulty in refraining from sexually violent conduct or child molestation if released.” 18 U.S.C. § 4247(a)(5)–(6) (emphasis added). “In other words, to be civilly committed, there must be a causal connection between an individual’s mental illness and his behavior.” *See United States v. Starko*, 735 F.3d 989, 993 (7th Cir. 2013). No such finding has been made with respect to Defendant. Moreover, any assumption that the availability of civil commitment “shift[s] the responsibility for protecting the public from district courts at sentencing to the Department of Justice at the time a prisoner is released” is misplaced. *See United States v. Jeffries*, 615 F.3d 909, 911 (8th Cir. 2010).

Additionally, Defendant is incorrect that he would be subject to lifetime supervised release. The Court imposed a 10-year term of supervised release upon Defendant should he be released from custody. *See J., United States v. Easterling*, No. 1:18-cr-45 (W.D. Mich.) (ECF No. 75). While on supervised release, all contact with minors must be pre-approved by the Probation Office. *See Sentencing Tr., id.* (ECF No. 79, PageID.400). Defendant would be subject to sex offender registration requirements, but nowhere did the Court indicate that he would be subject to continuous GPS monitoring.

In sum, Defendant does not show that the Court did not consider the objectives set forth in § 3553(a) when imposing Defendant's sentence. Moreover, given that the arguments Defendant raises in ground X are either based upon speculation or are clearly erroneous, counsel cannot be faulted for failing to raise those arguments on Defendant's behalf at sentencing. *See Martin*, 45 F. App'x at 381; *Ludwig*, 162 F.3d at 459. Defendant, therefore, is not entitled to relief with respect to ground X.

In sum, the record before the Court supports the conclusion that all of Defendant's claims for relief are meritless. Accordingly, there is no need for the Court to conduct an evidentiary hearing, and Defendant's second amended § 2255 motion (ECF No. 30) will be denied.

IV. Certificate of Appealability

Under 28 U.S.C. § 2253(c)(1)(B), the Court must determine whether a certificate of appealability should be granted. A certificate should issue if Defendant has demonstrated a "substantial showing of a denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

The Sixth Circuit Court of Appeals has disapproved issuance of blanket denials of a certificate of appealability. *Murphy v. Ohio*, 263 F.3d 466, 467 (6th Cir. 2001) (per curiam). Rather, the district court must "engage in a reasoned assessment of each claim" to determine whether a certificate is warranted. *Id.* Each issue must be considered under the standards set forth by the Supreme Court in *Slack v. McDaniel*, 529 U.S. 473 (2000). *Murphy*, 263 F.3d at 467. Consequently, this Court has examined Defendant's claims under the *Slack* standard. Under *Slack*, 529 U.S. at 484, to warrant a grant of the certificate, "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Id.* "A petitioner satisfies this standard by demonstrating that . . . jurists of reason could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). In applying this standard, the Court may not conduct a

full merits review, but must limit its examination to a threshold inquiry into the underlying merit of Defendant's claims. *Id.*

The Court finds that reasonable jurists could not conclude that this Court's dismissal of Defendant's claims was debatable or wrong. Therefore, the Court will deny Defendant a certificate of appealability. Moreover, although Defendant has failed to demonstrate that he is in custody in violation of the Constitution and has failed to make a substantial showing of the denial of a constitutional right, the Court does not conclude that any issue Defendant might raise on appeal would be frivolous. *Coppedge v. United States*, 369 U.S. 438, 445 (1962).

V. Conclusion

For the foregoing reasons, Defendant's second amended § 2255 motion (ECF No. 30) lacks merit. Accordingly,

IT IS ORDERED that Defendant's second amended motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (ECF No. 30) is **DENIED**.

IT IS FURTHER ORDERED that Defendant's motion for an extension of time (ECF No. 61) to file a corrected reply is **GRANTED**, and the Clerk is directed to file Defendant's corrected reply (ECF No. 60-1) as a separate docket entry in this case.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

A separate judgment will follow. *See Gillis v. United States*, 729 F.3d 641, 643 (6th Cir. 2013) (requiring a separate judgment in habeas proceedings).

Dated: August 27, 2024

/s/ Paul L. Maloney

Paul L. Maloney
United States District Judge