UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

APPEAL NO. 17-3537

UNITED STATES OF AMERICA
Appellee
v.
BRANDEN HOLENA
Appellant

APPEAL FROM A FINAL JUDGEMENT OF SENTENCE OF THE
UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA
CRIMINAL NO. 3:CR-07-169 (Brann, J.)

BRIEF OF APPELLEE

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STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

The United States District Court for the Middle District of Pennsylvania had subject matter jurisdiction of this criminal case pursuant to 18 U.S.C. § 3231. This Court has appellate jurisdiction pursuant to 28 U.S.C. § 1291, and 18 U.S.C. § 3742 (a).

STATEMENT OF ISSUE AND STANDARD OF REVIEW

Issue:

I. Whether the district court's reimposition of a lifetime of supervised release on a child sex offender's second violation of supervised release conditions was procedurally and substantively unreasonable?

II. Whether the district court's restrictions on the defendant's access and use of computers and electronic devices were reasonable?

Standard of Review:

This Court reviews the imposition of special conditions of supervised release under a deferential abuse of discretion standard. United States v. Lee, 315 F.3d 206, 210 (3d Cir. 2003).

STATEMENT OF THE CASE

On April 25, 2007, Branden Holena was arrested by special agents of the Federal Bureau of Investigation on the charge of using a means of interstate commerce to knowingly attempt to persuade, entice, and induce a minor to engage in sexual acts for which any person can be charged with a crime, in violation of 18 U.S.C. Section 2422(b). (PSR ¶ 1). Holena was subsequently indicted by a grand jury on that charge. (PSR ¶ 4).

On March 10, 2008, Holena pleaded guilty to the indictment. (PSR ¶ 7). The court sentenced Holena to 120 months in prison (the statutory mandatory minimum sentence) to be followed by supervised release for life. (App. 27-30). Holena did not object to or appeal the sentence, including the imposition of lifetime supervised release and special conditions of supervised release related to computer restrictions.

On April 1, 2016, Holena admitted to violating conditions of his supervised release. Specifically, he admitted to violating the conditions that he not possess or use a computer without the approval of the probation office, that he comply with the Computer Monitoring

Filtering Participant Agreement, and that he have no direct contact with a minor without the approval of the probation office. (App. 50-52). The court, after considering the nature of the violations imposed a nine-month prison sentence and placed Holena on lifetime supervision. (App. 57). The court also imposed the condition that Holena must truthfully answer all inquiries by the probation office and follow probation's instructions, and special conditions related to computer access and use. (App. 58-59).

On November 6, 2017, after a hearing, the district court found that Holena had for a second time violated conditions of his supervised release. (App. 176-177). The court imposed a sentence of nine months in prison to be followed by a lifetime of supervised release. (App. 188). The court imposed special conditions of supervised release, including the following:

"Mr. Holena must allow the probation officer to install computer monitoring software on any computer. . ."

"Mr. Holena must not possess or use computers . . . or other electronic communications or data storage devices or media."

"Mr. Holena must not access the Internet except for reasons approved in advance by the probation officer."

". . . Mr. Holena must allow the probation officer to conduct initial and periodic unannounced searches of any computers . . . subject to monitoring."

(App. 190-192). Counsel for Holena noted objections to lifetime supervision and to prohibition of all computer access. (App. 193).

A timely Notice of Appeal was filed.

STATEMENT OF FACTS

On April 9, 2007, an FBI Task Force Officer, acting in an undercover capacity, entered an online chat room portraying himself as a 14-year-old male who resided in Pennsylvania. A person with the screen name "Krazyape26186," later identified as Branden Holena, initiated a conversation with the undercover officer. From that date until April 24, 2007, Holena chatted with the undercover officer (posing as a 14-year-old boy) four times. Holena discussed having anal and oral sex with the boy, and noted that he (Holena) could go to prison for doing this. Holena told the undercover officer: "it is fine that u are only 14 as long as u aren't going to call the police afterwards . . ." (PSR ¶ 9).

Holena also discussed and made plans to meet with the boy to engage in various sexual acts, including oral and anal sex and "rimming" (which is the act of licking the rectum of another person). Holena used graphic language to describe the sex acts he would perform on the boy. (PSR ¶ 10).

Holena also told the undercover officer that he would travel to meet with him and described in graphic, sexually-explicit language the

sex acts they would engage in, including oral sex and anal sex. (PSR ¶ 11). Holena made arrangements with the undercover officer to meet him at a park in Nanticoke on April 25, 2007. (PSR ¶ 12). On April 25, 2007, Holena arrived at the park in Nanticoke and was arrested by FBI agents. In a subsequent interview, Holena admitted to chatting online with a 14-year-old boy and discussing oral and anal sex with the boy. Holena told agents that he would have had oral and anal sex with the boy, and he was aware that his actions were illegal. (PSR ¶ 13).

Following his arrest, Holena wrote a letter to his mother asking her to have his younger brother, age 15, "confess" to what Holena did so Holena would not have to go to prison. (PSR ¶ 16).

On April 25, 2007, Branden Holena was arrested for using a means of interstate commerce to knowingly attempt to persuade, entice, and induce a minor to engage in sexual acts for which any person can be charged with a crime, in violation of 18 U.S.C. Section 2422(b). (PSR ¶ 1). Holena was later indicted by a grand jury on the same charge. (PSR ¶ 4).

On March 10, 2008, Holena pleaded guilty to the indictment. (PSR

¶ 7). At sentencing on June 2, 2008, the government requested the court to impose lifetime supervised release based on the nature of the defendant's conduct. (App. 26-27). The court indicated that it reviewed the pre-sentence report and other relevant matters (App. 25), noted that the defendant was a "manipulative young man" (App. 27), and sentenced Holena to 120 months in prison (the statutory mandatory minimum sentence) to be followed by supervised release for life. (App. 27-30). Holena did not object to or appeal the sentence, including the imposition of lifetime supervised release. The court imposed special conditions of supervised release, including that Holena not use a computer with access to any online computer service without the prior written approval of the probation office, that he comply with the terms and conditions of the Computer Monitoring Filtering Participant Agreement, and that he not have contact with any minor except in the presence of an adult and approved by the probation office. (App. 28-29).

On April 1, 2016, Holena admitted to violating conditions of his supervised release. Specifically, he admitted to violating the conditions that he not possess or use a computer without the approval of the

probation office, that he comply with the Computer Monitoring Filtering Participant Agreement, and that he have no direct contact with a minor without the approval of the probation office. (App. 50-52). During that proceeding, the government noted the serious nature of the underlying offense—communicating online with a person he believed was a 14-year-old child and attempting to meet the child for sex. (App. 54). The government further noted that Holena's violations were committed shortly after he was released from prison and related to the type of devises he used to commit the underlying offense. (App. 54-55). The government asked the court to impose a prison sentence and place him again on supervised release for life. (App. 54).

The court, after considering the nature of the violations and listening to the arguments of counsel, imposed a nine-month prison sentence and again placed Holena on lifetime supervision. (App. 57). The court also imposed the condition that Holena must truthfully answer all inquiries by the probation office and follow probation's instructions, and special conditions, including compliance with the Computer Monitoring Filtering Participant Agreement, and restricting

Holena to using only computers with access to the internet that have the appropriate monitoring and filtering programs installed on the devices. (App. 58-59).

On November 6, 2017, after a hearing, the district court found that Holena had for a second time violated conditions of his supervised release. Specifically, the court found that Holena was not truthful and did not follow the instructions of the probation office, and did not comply with the Computer Monitoring Filtering Participant Agreement. (App. 176-177). The court imposed a sentence of nine months in prison to be followed by a lifetime of supervised release. (App. 188). The court imposed special conditions of supervised release, including the following:

"Mr. Holena must allow the probation officer to install computer monitoring software on any computer. . ."

"Mr. Holena must not possess or use computers . . . or other electronic communications or data storage devices or media."

"Mr. Holena must not access the Internet except for reasons approved in advance by the probation officer."

". . . Mr. Holena must allow the probation officer to conduct initial and periodic unannounced searches of any computers . . . subject to monitoring."

(App. 190-192). Counsel for Holena noted objections to lifetime supervision and to prohibition of all computer access. (App. 193).

At the hearing, the court noted its reasons for imposing the sentence:

> In determining Mr. Holena's sentence I have considered all the relevant 3553(a) factors as they apply to this case. I have considered with some specificity the nature and circumstances of the offense and history and characteristics of this defendant. While on supervised release after a term of ten years imprisonment [for] the crime of using a facility or means of interstate commerce to entice, persuade and induce a minor to engage in sexual activity, Mr. Holena used both an on-line computer service without the approval of his probation officer and subsequently lied to his probation officer about using the on-line services. Mr. Holena, I think you are a deceptive person. And I witnessed some of that today.

(App. 184-185). The court further noted that Holena's adjustment to supervision was poor. (App. 185). The court further noted that it had considered the kinds of sentences available to the court. (App. 187).

When Holena's counsel noted her objections to lifetime supervision and the computer access provisions, the court expressly overruled them. The court noted the repeated violations of supervised release, demonstrating that Holena has not acted in good faith in attempting to

comply with the conditions. (App. 193-194). The court noted that Holena is a registered sex offender and required considerable restrictions on his conduct. (App. 194). "Society has a right to think that its children can be safe from predators, and you are deemed a predator . . . so the conditions on your existence are restrictive," the court explained. (App. 194). The court further noted that Holena's repeated failure to comply with the restrictions was worrisome and justified the reasonable restrictions. (App. 194). This appeal followed.

STATEMENT OF RELATED CASES AND PROCEEDINGS

Counsel for the United States is not aware of any case or proceeding contemplated or pending before this court or any other court or agency, state or federal, which is in any way related to the instant case.

SUMMARY OF ARGUMENT

The district court's reimposition of lifetime supervised release for a convicted online sex offender who used computers and the internet to attempt to entice a 14-year-old child for illegal sexual purposes, and who twice violated special conditions of supervised release regarding unapproved association with minors and computer use and access, was reasonable and does not involve a greater deprivation of liberty than is necessary in this case.

The district court's imposition of special conditions related to computer use and access, when viewed as a whole, were reasonable.

ARGUMENT

I. The District Court's Reimposition of Lifetime Supervised Release for a Child Sex Offender's Second Supervised Release Violation Was Not Procedurally or Substantively Unreasonable.

The defendant claims that the court's reimposition of lifetime supervised release for his multiple and repeated supervised release violations was procedurally unreasonable because the district court did not provide an adequate basis for lifetime supervised release. This claim is belied by the record at sentencing.

The defendant bears the burden of demonstrating that the sentence was procedurally unreasonable. United States v. Tomko, 562 F.3d 558, 567 (3d Cir. 2009). This court must ensure that the district court committed no significant procedural error, "such as failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence." Gall v. United States, 552

U.S. 38, 51 (2007); United States v. Repella, 2014 WL 1259574 *2 (3d Cir. 2014) (not precedential).

While a district court must consider the relevant § 3553(a) factors and the policy statements under Chapter 7 of the Sentencing Guidelines when imposing a sentence for a violation of the conditions of supervised release, a revocation sentence is imposed "primarily to sanction the defendant's breach of trust, while taking into account, to a limited degree, the seriousness of the underlying violation and the criminal history of the violator." United States v. Bungar, 478 F.3d 540, 544 (3d Cir. 2007); United States v. Dees, 467 F.3d 847, 853 (3d Cir. 2006); United States v. Delgado, 478 Fed. Appx. 732, 2012 WL 2478365 (3d Cir. 2012) (not precedential). A district court when imposing a sentence for violating conditions of supervised release, "need not make explicit findings as to each of the § 3553(a) factors if the record makes clear that the court took the factors into account in sentencing . . ." United States v. Merced, 603 F.3d 203, 215 (3d Cir. 2010); United States v. Sinkler, 2014 WL 643968 *4 (3d Cir. 2014) (not precedential).

As this Court has noted before, "[a] sentencing judge is given wide

discretion in imposing supervised release." United States v. Crandon, 173 F.3d 122, 127 (3d Cir.1999). A court "may order *any* appropriate condition to the extent it (1) is reasonably related to certain factors, including (a) the nature and circumstances of the offense *and the history and characteristics* of the defendant, (b) deterring further criminal conduct by the defendant, or (c) protecting the public from further criminal conduct by the defendant; and (2) involves no greater deprivation of liberty than is reasonably necessary for the purposes of deterrence and protection of the public. Id. (emphasis added) (citing 18 U.S.C. §§ 3583(d), 3553(a)). "[T]he courts of appeals have consistently required district courts to set forth factual findings to justify special probation conditions." United States v. Warren, 186 F.3d 358, 362 (3d Cir.1999). However, "if the district court fails to set forth its findings and justifications," "the record below must contain evidence that would support the imposition of a special condition." Id. at 366-67. "[A] district court should engage in an inquiry which results in findings on the record to justify that condition, and to indicate how that condition meets the statutory purposes of probation." Id. at 367. "We will affirm

only if the district court has made such findings, or we can determine from the record a sufficient evidentiary basis for the [condition]." Id. A district court may adopt the factual findings in a pre-sentencing report in order to provide a sufficient record for review on appeal. *See, e.g.,* United States v. Hallman, 23 F.3d 821, 827-28 (3d Cir.1994); United States v. Landry, 116 Fed. Appx. 403, 406 (3d Cir. 2004)(not precedential).

The Sentencing Guidelines policy statement in U.S.S.G. Section 5D1.2, expressly provides that if the offense of conviction is a sex offense, "the statutory maximum term of supervised release is recommended." The statutory maximum supervised release term for Holena's offense of conviction is life. 18 U.S.C. Section 3583(k). "[T]his policy statement, which reflects the judgment of Congress and the Sentencing Commission that a lifetime term of supervised release is appropriate for sex offenders in order to protect the public. *See* H.R. Rep. 107-807, 2003 WL 131168 (discussing lifetime supervised release for sexual offenders)." United States v. Daniels, 541 F.3d 915, 923 (9th Cir. 2008).

This Court has repeatedly upheld the imposition of lifetime supervision for child sex offenders such as Holena. United States v. Underwood, 507 Fed. Appx. 223, 229–31 (3d Cir. 2012)(not precedential)("A lifetime term of supervised release is reasonable in view of the nature of Underwood's crime, his acknowledged interest in child pornography, the nature of the materials he possessed, his addictive traits, and the pertinent policy statement recommending the maximum period of supervised release for this type of offense"); United States v. Alander, 331 Fed. Appx. 913 (3d Cir. 2009)(not precedential)(lifetime supervised release for defendant who possessed child pornography and twice violated conditions of supervised release by using a computer with internet access without the approval of his probation officer was reasonable and necessary to protect society); United States v. Kuchler, 285 Fed. Appx. 866 (3d Cir. 2008)(not precedential)(lifetime supervised release for defendant convicted of receipt of child pornography was reasonable); United States v. Proctor, 281 Fed. Appx. 72, 73 (3d Cir. 2008)(not precedential)(affirming lifetime supervised release for child pornography offender).

Other Courts have likewise upheld life terms of supervised release for sex offenders who attempted to entice minors for sexual activity and, in some instances, repeatedly violated conditions of supervised release, including conditions related to access and use of computers and being deceptive with probation officers. United States v. James, 792 F.3d 962 (8th Cir. 2015); United States v. Everhart, 562 Fed. Appx. 937, 942 (11th Cir. 2014)(not precedential); United States v. Cassesse, 685 F.3d 186, 192-93 (2d Cir. 2012), as amended (July 25, 2012). See also United States v. Daniels, supra; United States v. Apodaca, 641 F.3d 1077 (9th Cir. 2011)(affirming lifetime supervised release term for defendant who possessed child pornography); United States v. Presto, 498 F.3d 415 (6th Cir. 2007); United States v. Hayes, 445 F.3d 536, 537 (2d Cir. 2006); United States v. Carpenter, 647 Fed. Appx. 397 (5th Cir.)(not precedential), cert. denied, 137 S. Ct. 237, 196 L. Ed. 2d 182 (2016); United States v. Orta, 559 Fed. Appx. 397 (5th Cir. 2014)(not precedential); United States v. Young, 502 Fed. Appx. 726, 729 (10th Cir. 2012)(not precedential); United States v. Hayes, 404 Fed. Appx. 753 (4th Cir. 2010)(not precedential); United States v. Brinda, 321 Fed.

Appx. 464 (6th Cir. 2009)(not precedential).

Here, the term of supervised release relates to the serious nature of the underlying offense—using a computer and the internet to attempt to entice a minor for sex. It further relates to the history and characteristics of Holena, who has violated his conditions of supervised release on two occasions and who has been found "deceptive" and manipulative" by two district court judges. It also relates to deterring further criminal activity by Holena and protecting the public from a sexual predator. Finally, it involves no greater deprivation of liberty than is reasonable necessary to protect the public and deter criminal conduct. United States v. Crandon, 173 F.3d at 127.

Contrary to the defendant's claim, the district court provided more than an adequate basis for reimposing lifetime supervised release as part of Holena's sentence. As noted above, at the supervised release violation hearing the court noted its reasons for imposing the sentence:

> In determining Mr. Holena's sentence I have considered all the relevant 3553(a) factors as they apply to this case. I have considered with some specificity the nature and circumstances of the offense and history and characteristics of this defendant. While on supervised release after a term of ten years imprisonment [for] the crime of using a facility or

> means of interstate commerce to entice, persuade and induce a minor to engage in sexual activity, Mr Holena used both an on-line computer service without the approval of his probation officer and subsequently lied to his probation officer about using the on-line services. Mr Holena, I think you are a deceptive person. And I witnessed some of that today.

(App. 184-185). The court explained that it observed Holena's attempts to coach and influence a witness who testified at the hearing by nodding and mouthing words. (App. 185). The court further found that Holena's adjustment to supervision was poor. (App. 185). The court also noted that it had considered the kinds of sentences available to the court. (App. 187).

When Holena's counsel noted her objections to lifetime supervision and the computer access and use provisions, the court overruled them, noting Holena's repeated violations of supervised release which demonstrated that Holena has not acted in good faith in attempting to comply with the conditions previously imposed. (App. 193-194). The court noted that Holena is a registered sex offender and required considerable restrictions on his conduct. (App. 194). "Society has a right to think that its children can be safe from predators, and you are

deemed a predator . . . so the conditions on your existence are restrictive," the court explained. (App. 194). The court further characterized Holena's repeated failure to comply with the restrictions as "worrisome" and opined that Holena's repeated violations justified the reasonable restrictions imposed. (App. 194).

The lifetime term of supervised release imposed in this case was both procedurally and substantively reasonable.

II. The District Court's Supervised Release Conditions Relating to the Defendant's Computer Access and Use Were Reasonable.

This Court has identified four factors for assessing whether a supervised release condition is overbroad: (1) the scope of the condition with respect to substantive breadth; (2) the scope of the condition with respect to its duration; (3) the severity of the defendant's criminal conduct and the facts underlying the conviction, particularly whether he used a computer or the internet to solicit or personally endanger children; and (4) the interplay between prison time and the term of

supervised release, meaning that the proportion of a supervised release restriction to the total period of restriction, including prison time, is relevant. United States v. Albertson, 645 F.3d 191, 197–98 (3d Cir. 2011).

After finding that Holena violated conditions of his supervised release in that he was not truthful and did not follow the instructions of the probation office, and did not comply with the Computer Monitoring Filtering Participant Agreement, the court imposed special conditions of supervised release on Holena, including the following:

> "Mr. Holena must allow the probation officer to install computer monitoring software on any computer. . ."
>
> "Mr. Holena must not possess or use computers . . . or other electronic communications or data storage devices or media."
>
> "Mr. Holena must not access the Internet except for reasons approved in advance by the probation officer."
>
> ". . . Mr Holena must allow the probation officer to conduct initial and periodic unannounced searches of any computers . . . subject to monitoring."

(App. 190-192). In all, there are 13 special conditions of supervision, including those noted above, that are set forth in the Judgment form. (App. 8).

Holena contends that the court's statement that he "must not possess or use computers . . . or other electronic communications or data storage devise or media," which is set forth as special condition number 11 on the Judgment form, enacted a lifetime prohibition on possessing and using computers and other electronic devices, and is therefore overbroad. As the defendant notes in his brief, that special condition is inconsistent with several other special conditions that allow the defendant computer access and use with certain restrictions. For example, special condition number 4 directs the defendant to submit his computers and other electronic communications or data storage devices or media to a search conducted by the probation officer. Special condition number 7 directs the defendant to allow the probation officer to install computer monitoring software on any computer he uses. Special condition number 12 directs the defendant not to access the internet except for reasons approved in advance by the probation officer. Finally, Special condition number 13 directs the defendant to allow the probation officer to search any of the defendant's computers to ensure that monitoring software is properly installed and that the

defendant is not attempting to circumvent the monitoring of his computers. (App. 8).

A lifetime ban on computer access and use is not per se unreasonable. As this Court noted in Albertson, "a complete ban on the use of a computer and internet will rarely be sufficiently tailored to the [Section] 3553(a) factors." 645 F.3d at 197 (emphasis added). Restrictions on computer and internet use "share[ ] a nexus to the goals of deterrence and protection of the public." United States v. Thielemann, 575 F.3d 265, 279 (3d Cir. 2009). But any such restrictions, this Court has explained, "must be appropriately tailored and impose no greater restriction on [the defendant's] liberty than necessary." United States v. Voelker, 489 F.3d 139, 150 (3d Cir. 2007). In Albertson, this Court suggested that a complete ban on internet access, "except with prior approval of probation, may be permissibly imposed" under the right circumstances, particularly where, as here, a defendant used the internet as a direct instrument of physical harm. 645 F.3d at 197-198. This Court has recognized that lengthier and more onerous restrictions are permissible for defendants like Holena

who used computers and the internet to directly exploit children. United States v. Crandon, 173 F.3d 122 (3d Cir.1999); United States v. Landry, 116 Fed. Appx. 403, 406–07 (3d Cir. 2004)(not precedential); United States v. Harding, 57 Fed. Appx. 506, 507–08 (3d Cir. 2003)(not precedential).

In Voelker, this Court struck down a lifetime ban on use of a computer and access to the internet. But the Court distinguished Voelker from defendants, like Holena, who used computers and the internet to seek out, communicate with, and travel to meet minors for sexual exploitation. 489 F.3d at 144-45. Moreover, Holena twice violated the conditions of his supervised release related to use of a computer and access to the internet without approval of the probation office. He has thus demonstrated an inability or unwillingness to abide by limited restrictions on computer use and internet access. Under such circumstances, a lifetime ban on computer use and internet access may be reasonable.

It is possible based on a consideration of all of the special conditions imposed by the district court related to computer access and

use, that the court did not intend an outright ban on computer and internet access for life. Instead, consistent with the other special conditions set forth at the hearing and contained in the Judgment form, the court may have intended to make the defendant's access and use of computers and the internet subject to prior approval by the probation office. The government hesitates to discern the district court's intention, though in a similar case this Court did so. United States v. Underwood, 507 Fed. Appx. 223, 229–31 (3d Cir. 2012)(not precedential).[1]

[1] "The actual language used in formally imposing the sentence supports the conclusion that the District Court intended to establish an internet monitoring restriction, not a total ban. The District Court stated:"

> You shall submit to an initial inspection by the U.S. Probation Office, and to any unannounced examination during supervision of your computer equipment for a period of five years. This includes, but is not limited to, personal computers, personal digital assistants, entertainment consoles, cellular telephones and/or electronic media devices which [are] owned or accessed by you. You shall allow the installation on your computer of any hardware or software [systems] which monitors computer use. You shall pay the cost of the computer monitoring program. You shall abide by the standard conditions of computer monitoring. Any dispute as to the applicability of this condition shall be decided by the court.

It is thus evident that the District Court did not intend to impose a complete ban on use of the internet . . ." Id.

If this Court, however, deems the district court's supervised release provisions related to computer use and internet access as too contradictory to discern the court's intent, the government suggests that a limited remand to the district court on this issue alone would be appropriate.

CONCLUSION

For all of the reasons stated above, the United States of America respectfully requests that this Honorable Court affirm the judgment of sentence imposed by the district court.

Respectfully submitted,

Date: March 27, 2018

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CERTIFICATE OF BAR MEMBERSHIP

I hereby certify that I am a member in good standing of the bar of the United States Court of Appeals for the Third Circuit.

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RULE 32 CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Federal Appellate Rule ofProcedure 32 (a)(7)(c), that this brief contains no more than 14,000 words. Specifically, excluding this Certificate of Service, this brief contains 5,551 words.

/s/ Francis P. Sempa
FRANCIS P. SEMPA
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IDENTICAL PDF & HARD COPY CERTIFICATE

The undersigned hereby certifies that the PDF file and Hard copies of this brief are identical.

/s/ Francis P. Sempa
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This e-mail and the attached brief has been automatically scanned during preparation and upon sending by the following virus detection programs: Office Protect/Inoculan, ScanMail, and Viruswall, and no viruses were detected.

/s/ Francis P. Sempa
FRANCIS P. SEMPA
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers.

That on March 27, 2018, she served copies of the attached:

BRIEF OF APPELLEE

By e-filing as well as by placing one (1) copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Scranton, Pennsylvania:

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