

No. 21-1264

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

JAMES K. GOODPASTURE,
Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Illinois
The Honorable Staci M. Yandle, Presiding
Case No. 3:07-30185-SMY-1

Brief of Defendant-Appellant

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)	
v.)	3:07-30185-SMY-1
)	
JAMES K. GOODPASTURE,)	
)	
Defendant-Appellant.)	

DISCLOSURE STATEMENT

1. Defendant-Appellant's name is James K. Goodpasture (hereafter "Appellant Goodpasture" or "Appellant").
2. Appellant is not a corporation.
3. Assistant Federal Public Defender Todd M. Schultz, states he is the attorney for Appellant in this case. Only attorneys from the Federal Public Defender of the Southern District of Illinois are expected to appear for Appellant in this case.

Respectfully submitted,

s/ Todd Schultz

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JURISDICTIONAL STATEMENT

This is a direct appeal from the January 27, 2021 final revocation judgment and sentence by the United States District Court for the Southern District of Illinois, the Honorable Staci M. Yandle, presiding. (Docs.¹ 101, 103). On November 16, 2020, the jurisdiction of the United States District Court for the Southern District of Illinois was invoked when a petition to revoke Appellant's term of federal supervised release was filed in that court. (Doc. 74). 18 U.S.C. § 3583 gives the District Court jurisdiction over actions to revoke a defendant's term of federal supervised release.

On January 14 and January 27, 2021, the District Court held Appellant's final revocation hearing. On January 27, 2021,² the District Court imposed her final judgment revoking Appellant's supervised release and sentencing him to twelve months imprisonment, followed by 24 months supervised release. (Docs. 101, 103). On February 10, 2021, Appellant filed a Notice of Appeal from the January 27, 2021 final judgment. (Doc. 102). 28 U.S.C. § 1291, 18 U.S.C. § 3742, and Fed. R. App. P. 4(b) give the Seventh Circuit Court of Appeals appellate jurisdiction over this matter. The U.S. District Court for the Southern District of Illinois is located within the jurisdiction of the United States Court of Appeals for the Seventh Circuit pursuant to 28 U.S.C. § 41.

¹ "Doc." refers to documents for this case accessible via the case management/electronic case filing system of the United States District Court for the Southern District of Illinois.

² The District Court began pronouncing sentence on January 14, 2021, but continued the hearing to resolve potential objections to the supervised release portion of Appellant's sentence; these remaining issues were resolved at the January 27, 2021 hearing. (Rev. Tr. p. 51-52; 59); *see United States v. Sealed Defendant Juv. Male (4)*, 855 F.3d 769, 771 (7th Cir. 2017) ("A final decision is 'one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'"); *citing Gelboim v. Bank of Am. Corp.*, — U.S. —, 135 S.Ct. 897, 902, 190 L.Ed.2d 789 (2015) (*quoting Catlin v. United States*, 324 U.S. 229, 233 (1945)).

STATEMENT OF ISSUES

The District Court revoked Appellant's supervised release in his 2007 felon in possession case because he violated his location monitoring five times over seven months, but always related to his job or helping his boss. He also drank alcohol on one occasion despite a "no alcohol" condition, which a coworker shared with him in a juice drink, resulting in a blood alcohol level of 0.038.

Appellant had prior convictions for lewd act upon child (1991 age 28); aggravated sexual abuse x 2 (1999 age 37 and 2000 age 38); possession of a controlled substance (age 21), and driving under the influence x 2 (ages 31 and 35). He was civilly committed as a sexually dangerous person in 2016, but a judge dismissed that case in 2000, finding he was not sexually dangerous, his sex offenses were over 20 years ago, he had not suffered deviant tendencies for thirteen years, such tendencies are known to weaken with age, and he did not suffer from a disorder that would make it difficult for him to refrain from reoffending upon release.

Where Appellant will be 59 years old this year, were the five following supervised release terms sufficiently related to his history and characteristics and narrowly tailored, where Appellant is 1) prohibited from using alcohol and must comply with alcohol testing and treatment for twelve months, 2) subject to location monitoring amounting to home detention for 24 months, 3) required to notify third parties of risks based on his criminal history, despite that he already is prohibited from contact with anyone under age 18, 4) subject to warrantless searches of places and things under his control, based on his single instance of alcohol consumption during supervised release and his ancient DUIs, and 5) subject to monitoring and searches of all computer equipment, and internet devices to which he had access, as well as email and other accounts, and a prohibition against social media activity without the approval of his probation officer, despite no evidence Appellant ever used the internet or computer equipment for an inappropriate purpose?

STATEMENT OF THE CASE

Appellant appeals from the final judgment and sentence upon revocation of his federal supervised release. Appellant's underlying criminal case began on December 4, 2007, when Appellant was indicted on one count of being a felon in possession of a firearm. (Doc. 1). On June 18, 2008, Appellant pleaded guilty to that charge. (Doc. 24). On August 27, 2008, the District Court sentenced Appellant to 180 months imprisonment, and five years of supervised release. (Docs. 39, 45). However, his sentence was reversed on appeal, because the 15-year minimum armed career criminal sentence was erroneously applied. *United States v. Goodpasture*, 595 F.3d 670, 673 (7th Cir. 2010). On remand, Appellant was sentenced to 108 months imprisonment, followed by three years of supervised release. (Docs. 65, 67).

On October 15, 2018, prior to Appellant beginning his term of supervised release, a petition to Modify Appellant's conditions of supervised release was filed, along with a waiver of hearing, waiver of assistance of counsel, and Appellant's signed agreement to the proposed conditions. (Doc. 71-1). The additional conditions included, *inter alia*, six months in a residential reentry center, participation in sex offender treatment, a requirement that Appellant notify third parties of risks "that may be occasioned by" his criminal history, location monitoring, abstinence from use or possession of alcoholic beverages, and no activity on social media sites, internet chat rooms, and internet forums. *Id.*

On April 6, 2020, a "Sealed Report on Offender Under Supervision" was filed. The Report noted that Appellant was residing in a residential reentry center where his contact with the outside community was limited, and his activities and location were monitored by the facility staff. Therefore, location monitoring was not warranted at that time. Judge Yandle granted the request to

suspend location monitoring until Appellant returned to the community “so his transition can be more closely monitored.” (Doc. 72).

On August 21, 2020, a second modification of conditions with Appellant’s consent was filed. The document indicated supervision began on March 31, 2020. The modification required that Appellant reside in a residential reentry center for an additional term up to 180 days, after his first term of 180 days in a residential reentry center expired, because of Appellant’s difficulty finding a place to live. (Doc. 73).

On November 16, 2020, a petition to revoke Appellant’s supervised release was filed. (Doc. 74). The Petition alleged Appellant failed to abide by the rules of his residential reentry center on October 11, 2020 and November 10, 2020. It further alleged on five occasions, May 19, 2020, May 20, 2020, July 16, 2020, August 31, 2020, and September 2, 2020, Appellant failed to abide by location monitoring requirements. In addition, “[o]n November 10, 2020, [Appellant] consumed alcohol and had a blood alcohol content level of .038.” Lastly, the petition alleged that on June 9, 2020, Appellant “failed to comply with the requirements of his sex offender treatment program.” (Doc. 74).

On January 14, 2021, the District Court conducted the first day of Appellant’s two-day revocation hearing. Appellant admitted to the allegations in the petition, and agreed with the factual basis in the Probation Office’s Summary of Violation Conduct, and the District Court accepted his plea of guilty to the violations. (Rev. Tr. p. 15-17; Doc. 91-2).

Government Counsel argued for a sentence of eight months of imprisonment and eight months of supervised release, or 24 months imprisonment with no more supervised release. She noted that although the supervised release violations were all grade C, she believed Appellant was dangerous. Government Counsel focused on the details of Appellant’s state case that led to

discovery of Appellant's gun possession that was the basis of his 2007 felon in possession charge. She said Appellant had been recruiting 13 year-old boys to ejaculate into bags, using the pretense he was going to sell their semen. Appellant also had two prior convictions for aggravated criminal sexual abuse, with both victims under age 13, and a third conviction for lewd and lascivious conduct with a child under 13. Government Counsel also recounted Appellant had been declared to be a sexually dangerous person. (Rev. Tr. p. 18-20).

The Probation Office's Summary of Violation Conduct, produced in conjunction with its petition to revoke, asserted Appellant's civil commitment pursuant to 18 U.S.C. § 4248 occurred on May 9, 2016. However, on March 1, 2020, the North Carolina District Court that ordered Appellant civilly committed granted Appellant's motion to dismiss that commitment, finding he did not meet the requirements of the statute and would not be sexually dangerous if released.³ Appellant began serving his supervised release in the instant case on March 31, 2020. (Doc. 91-2).

Government Counsel continued, "So, you have a dangerous individual . . . part of the reason why we have the location monitoring and the sex offender treatment is because of the dangerousness." She also said Appellant's violations showed he was not taking his conditions of release seriously. She argued protection of the public was the most important goal, whether through 24 months of incarceration, or a successful period of supervised release where Appellant takes advantage of the treatment opportunities. (Rev. Tr. p. 20-21).

Defense Counsel argued for time served, just under two months, and a return to supervised release, residing in a halfway house until he finds a suitable residence. Defense Counsel emphasized Appellant's federal case was for felon in possession. He pointed out that, despite the allegations

³ The Order dismissing the civil commitment is Doc. 90, *United States v. Goodpasture*, 5:15-hc-02188-BO (EDNC Mar. 1, 2020).

regarding minors that led to the discovery of Appellant's gun possession, no state charges were filed regarding the minors, which was unusual for a defendant with prior sex offense convictions.

Defense Counsel noted individuals with Appellant's history are not usually given breaks, so the fact that no charges were filed "should cause one to question what exactly the facts and circumstances were" regarding that incident. Defense Counsel also pointed out Appellant's last sex offense conviction was in 2000. (Rev. Tr. p. 21-23).

Defense Counsel disputed Government Counsel's contention Appellant's violations show he did not take his conditions of release seriously. Appellant resided in a residential reentry center a little over seven months, from the time he was released. Most of Appellant's violations were electronic monitoring violations, and mostly related to finding and keeping his job. Regarding one of the violations, Appellant attended a work orientation on May 19, and had his first day of work the next day, with both trips in violation of his location monitoring, although Appellant's had permission to leave from his facility. Regarding another violation, July 16, 2020, Appellant was late returning to his facility because his transport van picked him up late. On August 31, 2020, he had to leave his facility 30 minutes early because his work transport was leaving early, resulting in another violation. Appellant's September 2, 2020 violation occurred when he left his work to help his boss's son with moving; although Appellant's boss left a voicemail with his probation officer regarding where he was going at Appellant's direction. Defense Counsel also pointed out there was reason to credit Appellant's statement that he did not know he was consuming alcohol in apple juice (blood alcohol .038) he was drinking with a coworker, because Appellant had been living at the residential reentry center for over six months, and knew he would have a Breathalyzer test when he returned that day. (Rev. Tr. p. 23-26).

Defense Counsel also explained Appellant's violation of the residential reentry center rules. He said Appellant and others who worked for a particular employer carried box cutters they used for their jobs. The reentry center policy initially required these individuals to leave their box cutters at the front desk when they were not at work. But, at some point, it appeared the policy changed, and staff was aware residents were keeping the box cutters in their backpacks. So, although Appellant admitted to the violation, the circumstances indicated Appellant was trying to work within the rules. Defense Counsel further noted Appellant had served a lengthy sentence before release, and had not used drugs or committed any violence during his supervision. Regarding the sex offender treatment violation, Defense Counsel noted that Appellant must have "righted the ship" or he would have had additional violations regarding this treatment. (Rev. Tr. p. 28-29).

Appellant told the District Court he was trying his best, but once anyone saw his record, it seems they did not want to help him. He said he could not control whether his work transportation was on time, but would leave a message with probation when they were late. He said when he did not make it to sex offender treatment on one occasion, it was because his facility lost the transportation request he had filled out, so he had no way to get to treatment. He said he made sure the facility followed through with his requests after that. He also said his probation officer would not let him get a smartphone, and that was the only kind of phone that could get reception in the warehouse where he worked, but he did provide her with his work number. (Rev. Tr. p. 32-35). The District Court interrupted Appellant at this point, explaining to him he had already pleaded guilty to the allegations. (Rev. Tr. p. 35-37).

Appellant continued,

I've been in prison for a long time. I've seen a lot and had a lot happen, and the farthest thing from my mind is going back to prison. I'm trying my best to do the right thing and I'm just stuck in a place that I don't want to be, you know? I want to get on my feet. I can't. The halfway house tried to get my birth certificate so I can get

a driver's license so I can drive myself to work, go get an apartment. I was all ready to do that. My people live in Missouri. They won't accept my probation there. I have to come back to Illinois. So, I can't get a place there. I can't get a driver's license. I can't even cash my check. I have my checks in my property now. I even have the stimulus check. I can't cash that neither because I don't have an ID, because Illinois won't give me my birth certificate. Without my birth certificate, I can't get a Social Security card. I can't do anything. I can't get on my feet. And I'm stuck in a state which I want to be in because I have family there, but I have to come back here. Probation said that they would let me work -- still work in Missouri, but I have to live over here. Now, if I have to live over here, how can I get a place? I need help and I can't get the help. Nobody wants to help me with my record. Even though my record is old, it doesn't matter. * * * I'm sorry, Your Honor. I consumed the alcohol. I did not do it purposely. It was in some apple juice. I was not aware that there was alcohol in it. If I did, I surely wouldn't have drank it and then went back to the halfway house. They test you every time you walk in the door; that would be foolish to waste away my whole life.

Everything I accomplished in the last seven months is sitting at the halfway house, which I don't even know if I still have it: my false teeth, my 4,000-dollar hearing aids, my eyes. Everything. I wouldn't have wasted away my life, especially on something like this. This is just—I'm sorry, Your Honor, but it happened. So, I did consume the alcohol, whatever goes in my body is—I should be aware of.

(Rev. Tr. p. 38-40).

The District Court explained her sentencing determination:

[T]his is certainly a difficult situation. And again, Mr. Goodpasture, I am not dismissive of the things that you are saying, or insensitive to them. I just want to make sure that you understand what's relevant to my consideration here. I also have a great degree of respect for Mr. Schultz. I always have. He is a vigorous advocate for his clients and I appreciate that. But I have to say this: The suggestion that the objective here -- which, as I understood Mr. Schultz's argument, is the objective of everyone involved, including the Court -- is to make sure that Mr. Goodpasture goes back to prison. And also, the suggestion that a decision that would send him back to prison is the easiest thing to do.

Frankly, I reject that and I'm almost offended by it. That is certainly not this Court's objective, nor am I looking for the easy way out. I'm looking to do the right thing based on the information that I have, the relevant information, and in consideration of the, of the objectives here. I agree that, typically, I wouldn't -- we wouldn't see a Petition for Revocation filed based solely on Class C violations, but this is not a typical case. And if you want to just look at them in a vacuum, I guess that's an easy conclusion to draw, is that that is a typical. But it's not in this case. When you have violations of location monitoring, violations associated with sex offender treatment, violations associated with the consumption of alcohol, for someone who has the criminal history of Mr. Goodpasture's, and in particular the nature and circumstances -- the total circumstances -- of his criminal history, Mr.

Goodpasture, yes, he was -- the underlying crime was felon in possession. There are nature and circumstances surrounding that crime that are relevant given his criminal history.

I'm not caught up on whether he was a career offender or not. But it is relevant that he was deemed to be a sexually dangerous offender under the applicable law, and he was released in March from that designation. I will note, however, that he was evaluated by three experts; two of them believed that he was still dangerous and that he 1 posed a risk to the community, one did not. And the judge, who I will not second-guess, released him. Again, I'm not second guessing the judge. But I'm not going to plant my head in the sand and act as if all of that information is irrelevant to my consideration, because it is.

And so, I guess I'm one of those people who is ludicrous, that Mr. Schultz spoke of. Because when I look at the total picture and all of the explanations and excuses, I do find that to a relevant extent Mr. Goodpasture did not take his obligation to comply with his Terms and Conditions of Supervised Release seriously. I am of the opinion that he disregarded them to some degree. And again, based on the total picture which includes his history and his criminal history -- his personal and criminal history, that poses a dangerous situation, one that needs deterrence and one that speaks for needing to protect the public from future crimes by Mr. Goodpasture. I do not come to that conclusion lightly. But I assure you, I did not come to that conclusion having already decided that my objective was to send Mr. Goodpasture back to prison or that that is the easy decision to make because it is not. But I do think it is the right decision to make. Again, in the interest of protecting the public, in the interest of deterrence, I believe that the disposition recommended and requested by Mr. Goodpasture's -- on Mr. Goodpasture's behalf would not be sufficient, would not address the goals of sentencing. At the same time, the recommendation by the Government as it relates to 24 months of incarceration with no additional supervised release would not be appropriate because of all the reasons that I have just stated. I do believe that supervised release is warranted to monitor Mr. Goodpasture's reintegration into the community on release, and that it would not be -- we would not be doing the most to protect the public should we not have him on supervised release again upon his release.

So, I believe the appropriate sentence in this case on revocation is 12 months' imprisonment and 24 months of supervised release. It is the judgment of this Court that defendant's supervised release shall be revoked and sentence shall be imposed as follows: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant James K. Goodpasture is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of 12 months. The Court will waive the cost of incarceration and supervision. Upon his release from imprisonment, this defendant shall be placed on supervised release for a term of 24 months.

In that regard, again, for all the reasons stated, supervised release is warranted to monitor, again, Mr. Goodpasture's reintegration into the community and his compliance with the Conditions of supervision, including all previous recommendations and requirements.

(Rev. Tr. p. 40-44).

The District Court then asked Appellant if he had a chance to review the proposed conditions of release with Defense Counsel. Appellant responded, “I did not sign ‘em and I’m not going to sign ‘em.” Appellant also said he did not review them, “They just sent me a paper today asking me to sign this—Probation papers, and it didn’t have any Conditions on the Probation paper.” Defense Counsel stated he had not specifically discussed the conditions with Appellant, but he had sent Appellant a packet with those conditions and talked to him after to that. Defense Counsel stated he knew Appellant objected to the condition regarding alcohol, and suggested a brief continuance for him to review all of the conditions with Appellant and summarize any objections, which the District Court granted. (Rev. Tr. p. 44-50).

On January 19, 2021, Defense Counsel filed objections to five of the proposed special conditions of supervised release. First, he objected to remote alcohol testing for 12 months and alcohol dependence treatment, the justification for which was Appellant’s two prior driving under the influence convictions, the most recent of which was more than twenty years old, and his single incident of returning to his residential reentry center with a blood alcohol level of .038. (Doc. 91).

Second, Defense Counsel objected to location monitoring, the form of which would be determined by his probation officer, for the entirety of his term of supervision, with restriction to his residence at all times except for employment; education; religious services; medical, substance abuse, or mental health treatment; attorney visits; court-ordered obligations; or other pre-approved activities. The justification for the proposed condition was listed as Appellant’s “lack of accountability” while on location monitoring, and his prior designation as a sexually dangerous person. (Doc. 91).

Third, Defense Counsel objected to a third-party notification condition, based on Appellant's prior sex offenses and violation of the Illinois sex offender registration act. The condition required him to "notify third parties of risks that may be occasioned by the defendant's criminal record or history of criminal conduct, whether or not resulting in criminal charges, and shall permit the probation officer to make such notification and to confirm the defendant's compliance with such notification requirement." Defense Counsel argued the condition lacked factual support, noting he was not objecting to proposed condition 10, which prohibits him having any contact with boys under age 18, and his prior offenses involved boys under age 18, and no evidence suggests Appellant posed a "reasonably foreseeable" risk of physical harm to anyone over⁴ age 18, such that he would act in a criminal or manner similar to related or past conduct. (Doc. 91).

Fourth, Defense Counsel objected to a warrantless search condition, "at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release," justified based on Appellant's history of possessing controlled substances (most recently marijuana in 2007) and also consuming alcohol during supervised release. Defense Counsel argued this basis was insufficient, and also pointed out Appellant already must allow his probation officer to visit him at home and seize contraband in plain view. (Doc. 91).

Fifth, Defense Counsel objected to a computer/internet monitoring program, allowing all electronic devices to which Appellant had access to be subject to random searches, and the installing of monitoring software. The condition also required Appellant to provide information about and passwords and access to email, social media accounts, and cloud storage accounts. Defense Counsel noted Appellant's crimes did not involve the internet, and were the conditions not narrowly tailored

⁴ In his pleading, Defense Counsel mistakenly referred to anyone "under" age 18, instead of "over."

to Appellant. Defense Counsel further pointed out proposed condition 10, which Appellant did not oppose, already prohibited Appellant from contacting any person under age 18, including by phone, text, or email. The conditions were also duplicative of state law registration requirements. (Doc. 91).

The District Court resumed the revocation hearing on January 27, 2021. She recounted previously accepting Appellant's admissions and finding him guilty of his supervised release violations. She also recounted, "I announced my sentence, or the sentence that I imposed or intended to impose which was 12 months' imprisonment followed by 24 months of supervised release." She noted Defense Counsel filed a motion to allow Appellant to withdraw his admissions to his electronic monitoring conditions, because the docket showed the District Court had suspended that condition on April 6, 2020. The District Court denied the motion, explaining Appellant was confined in the residential reentry center when she suspended that condition, but when Appellant began travelling outside the facility for employment, on April 15th, she reinstated it. Also, Appellant signed an agreement to the condition being reinstated, and the equipment was reinstalled on April 17, 2020. She noted none of Appellant's violations occurred between April 6 and April 15, 2020. Appellant's agreement to reinstatement of electronic monitoring did not appear on the electronic docket, and the District Court stated it would be made part of the record. (Rev. Tr. p. 50-54). The District Court acknowledged Appellant's objections to the proposed supervised release conditions, and overruled them:

I have re-reviewed the revocation-related filings in this case and I have re-reviewed the Presentence Investigation Report from the original conviction. And on that basis, and as stated in the justifications for the Conditions, I overruled the objection. I believe the Condition is warranted and appropriate given Mr. Goodpasture's history of substance abuse as listed in the Presentence Investigation Report, including his previous two convictions for Driving Under the Influence and the allegation in the Petition, which he has admitted, of consuming alcohol while in the residential reentry center.

Mr. Goodpasture next objects to the Special Condition regarding location monitoring. That objection is 5 overruled. And that is based on, again, Mr.

Goodpasture's lack of accountability while participating in the location monitoring program during his first term of supervised release, and that -- Mr. Goodpasture has indicated he has explanations, but he has admitted to the violations and the explanations, therefore, are weakened by the Court. And given his previous designation as a sexually dangerous person, and his criminal history, the following -- I mean -- that Condition is justified and warranted. * * * As I indicated, given his criminal history, his designation as a sexually dangerous person, and the violations regarding location monitoring, the condition is warranted and the objection is overruled.

Mr. Goodpasture next objects to the third party notification Condition. Again, that objection is overruled. Given Mr. Goodpasture's history of violating the Illinois Sex Offender Registration Act and his conviction for Aggravated Criminal Sexual Abuse, in the interests of deterrence and to protect the public from future crimes, the third party notification Condition this Court believes is warranted, reasonable and necessary.

Mr. Goodpasture next objects to the search condition which, again, this Court finds is warranted, reasonable, and necessary given Mr. Goodpasture's prior history of possessing controlled substances, his consumption of alcohol during his current term of supervised release. So, that objection is overruled.

Mr. Goodpasture next objects to proposed internet restrictions, and he points out that none of his previous convictions, sex offender -- for sexual offenses involves the internet. The Court will just point out that his criminal history or his prior sex offender offenses occurred at such time when access to the internet and internet-based sexual offenses were not prominent as they are today. So, due to Mr. Goodpasture's conviction for Aggravated Criminal Sexual Abuse and his previous designation as a sexually dangerous person, his lack of sex offender treatment, and his most recent sex offender evaluation and recommendations, I believe that the Condition is reasonable and is warranted and that objection is overruled.

So, with those rulings, the -- as I indicated, Mr. Goodpasture's supervised release -- or 24 months of supervised release will be subject to the previously-provided Conditions which I am imposing.

(Rev. Tr. p. 59-62).

Defense Counsel declined the District Court's invitation for him to ask for further explanation of the sentence or conditions of release. (Rev. Tr. p. 63). Hence, on January 27, 2021, the District Court entered a final judgment revoking Appellant's supervised release, and sentencing him to twelve months imprisonment, followed by 24 months of supervised release, along with the certain conditions of release, including the special conditions of release outlined above. Defense Counsel appealed the final judgment on February 10, 2021. (Docs. 101, 102, 103).

SUMMARY OF THE ARGUMENT

The District Court revoked Appellant's supervised release in his 2007 felon in possession case because he violated his location monitoring five times over seven months, but always related to his job or helping his boss. He also drank alcohol on one occasion despite a "no alcohol" condition, which a coworker shared with him in a juice drink, resulting in a blood alcohol level of 0.038.

Appellant had prior convictions for lewd act upon child (1991 age 28); aggravated sexual abuse x 2 (1999 age 37 and 2000 age 38); possession of a controlled substance (age 21), and driving under the influence x 2 (ages 31 and 35). He was civilly committed as a sexually dangerous person in 2016, but a judge dismissed that case in 2000, finding he was not sexually dangerous, his sex offenses were over 20 years ago, he had not suffered deviant tendencies for thirteen years, such tendencies are known to weaken with age, and he did not suffer from a disorder that would make it difficult for him to refrain from reoffending upon release.

Where Appellant will be 59 years old this year, the five following supervised release terms were insufficiently related to his history and characteristics and not narrowly tailored, where Appellant is 1) prohibited from using alcohol and must comply with alcohol testing and treatment for twelve months, 2) subject to location monitoring amounting to home detention for 24 months, 3) required to notify third parties of risks based on his criminal history, where he already is prohibited from contact with anyone under age 18, 4) subject to warrantless searches of places and things under his control, based only on his single instance of alcohol consumption during supervised release and his ancient DUIs, and 5) subject to monitoring and searches of all computer equipment, and internet devices to which he had access, as well as email and other accounts, and a prohibition against social media activity without the approval of his probation officer, where no evidence showed Appellant used the internet or computer equipment for an inappropriate purpose.

ARGUMENT

The District Court erred in imposing five special conditions of supervised release, which were not reasonably related or narrowly tailored to Appellant's history and characteristics and the goals of sentencing, given the severity of the restrictions

A. Standards of Review. Questions of law are reviewed de novo. *United States v. McClanahan*, 136 F.3d 1146, 1149 (7th Cir. 2011). Factual determinations are reviewed for clear error. *United States v. Porraz*, 943 F.3d 1099, 1102 (7th Cir. 2019). Sentences upon revocation of supervised release will be reversed based on unreasonableness only if they are “plainly unreasonable.” *United States v. Allgire*, 946 F.3d 365, 367 (7th Cir. 2019) (citation omitted). This Court reviews a district court's imposition of a special condition of supervised release for an abuse of discretion. *United States v. Sines*, 303 F.3d 793, 800 (7th Cir. 2002). When a condition is alleged to be unconstitutionally vague and overbroad, review is de novo. *United States v. Lee*, 795 F.3d 682, 685 (7th Cir. 2015).

B. Legal Standards. District courts should define a condition “in a way that ‘provides clear notice to [the defendant]’ (preferably through objective rather than subjective terms.)” *United States v. Kappes*, 782 F.3d 828, 848 (7th Cir. 2015) (citation omitted). “A condition of supervised release is unconstitutionally vague if it would not afford a person of reasonable intelligence with sufficient notice as to the conduct prohibited.” *United States v. Schave*, 186 F.3d 839, 843 (7th Cir. 1999); *see also United States v. Thompson*, 777 F.3d 368, 379 (7th Cir. 2015) (Third party notification condition impermissibly vague where it required defendant to “notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics,” without defining “personal history,” “characteristics” and “risks” to be disclosed); *United States v. Canfield*, 893 F.3d 491, 495 (7th Cir. 2018) (similar).

Supervised release conditions which are overbroad, such that they prohibit lawful or acceptable conduct, are also prohibited. *Thompson*, 777 F.3d at 380 (7th Cir. 2015) (“If you're 90

percent certain that purchasing girl-scout cookies from someone who rings your doorbell wouldn't violate a condition of supervised release, do you want to risk going back to prison because you may have guessed wrong? If out of caution therefore you decline to purchase the cookies, the sentencing guideline will deter lawful conduct, and thus be overbroad.”). Accordingly, conditions of release must be appropriately tailored to an individual defendant and must involve no greater deprivation of liberty than reasonably necessary to achieve the goals of deterrence, incapacitation, and rehabilitation. *Kappes*, 782 F.3d 838-39, 846.

Supervised release terms which are insufficiently justified by a defendant’s personal history and the realistic risks he poses during supervision are also impermissible. *United States v. Goodwin*, 717 F.3d 511, 521-522 (7th Cir. 2013) (A supervised release condition “must be reasonably related to (1) the defendant's offense, history and characteristics.”) (citation omitted); *see also Thompson*, 777 F.3d at 382 (“The judge should have explained the need for a 10–year term of supervised release to take effect when this defendant is in his 60s. How likely is the defendant to reenter the heroin trade, or engage in other criminal activity, at that age”).

The fact that a supervised release term may be modified does not justify leaving a vague or excessively broad or restrictive term in place. *Thompson*, 777 F.3d at 382 (“He has a long criminal record but all related it seems to dealing in heroin. He may be burned out by the time he's released from prison. To impose a 10–year term of supervised release to take effect in 22 to 25 years requires justification; and while the term can be modified at any time, a superior alternative might well be to impose at the outset a nominal term, with the understanding (contrary to the error by the district judge in *Thompson's* case) that it can be extended, if that seems needful, on the eve of the defendant's completion of his prison sentence.”).

C. Argument. The District Court erred in overruling Appellant's objection to five supervised release conditions, reproduced in that objection. (Doc. 91; Appx p. 28-37).

a. Remote alcohol testing and participation in treatment for alcohol dependence. The District Court ordered Appellant participate in drug testing and treatment for twelve months, including treatment, possibly residential, testing by urinalysis, and alcohol use monitoring determined by the probation officer. The District Court determined "the Condition is warranted and appropriate given Mr. Goodpasture's history of substance abuse as listed in the Presentence Investigation Report, including his previous two convictions for Driving Under the Influence and the allegation in the Petition, which he has admitted, of consuming alcohol while in the residential reentry center." (Rev. Tr. p. 59-60; 75-77).

Appellant's personal and criminal history fail to sufficiently justify this condition to protect the public. Appellant's driving under the influence convictions were in 1993 and 1997, when he was age 31 and 35. (Doc. 64 ¶ 31, 33). Appellant was detained in the underlying felon in possession case thirteen years later, in 2010, with no indication of excessive or illegal alcohol use, or alcohol use connected inappropriate conduct or criminal activity, in the interim. (Doc. 64). His DUI convictions in his thirties are now over twenty years old. Appellant will be 59 years-old this year.

It is true that seven months into his term of supervised release, Appellant drank alcohol on one occasion, in violation of his "no alcohol" condition--but only enough for a blood alcohol reading of 0.038, nowhere near intoxication. Stanford, Office of Alcohol Policy and Education, "What is BAC," (Explaining a blood alcohol reading of .01-.03 results in only a slight mood elevation and not other apparent effects; a reading of .04-.06 results in "Feeling of relaxation. Sensation of warmth. Minor impairment of reasoning and memory.") available at:

<https://alcohol.stanford.edu/alcohol-drug-info/buzz-buzz/what-bac> . As noted in Appellant's

objection, “the only other information regarding his alcohol use comes from Defendant’s mother. According to her, “[Defendant] drank beer at parties at their house but rarely became intoxicated. She did not feel that he ha[d] an alcohol problem.” (Doc. 64 ¶ 66).

This slim history regarding problems stemming from Appellant’s alcohol use fails to support a realistic inference Appellant needs treatment for alcohol abuse or needs other alcohol restrictions in order to promote rehabilitation, deterrence, or protection of the public. *See United States v. Rabseparian*, 231 F.3d 1257, 1262 (10th Cir. 2000) (“[A]n inference is only reasonable where there exists a probability that the conclusion flows from the proven facts,” and is unreasonable where it relies on “a degree of speculation and conjecture that renders its findings a guess or mere possibility.”). Thus, the condition lacks factual support.

b) Location monitoring. The District Court ordered Appellant to be subjected to location monitoring for the entirety of his 24-month term of supervision, due to his “lack of accountability” on supervision and previous designation as a sexually dangerous person. The condition requires Appellant to be restricted to his “residence at all times except for employment; education, religious services; medical, substance abuse, or mental health treatment; attorney visits; court-ordered obligations; or other pre-approved activities. In other words, home detention.” (Rev. Tr. p. 79-80).

The location monitoring condition severely restricts Appellant’s freedom and privacy, and is also of a substantial duration—two years. “[T]he more onerous the term [of supervised release], the greater the justification required—and ... a term can become onerous because of its duration as well as its content.” *Kappes*, 782 F.3d at 845-46 (citation omitted).

It is true Appellant pleaded guilty to violating his location monitoring on five occasions. He explained two of the violations as due to variations as to when his transportation to and from work left. Another two violations occurred near the beginning of his term when he went to a mandatory

orientation for a job on one day, and went to work on the next, without prior approval from his probation officer, although with permission from his residential reentry center. The last violation occurred when he went to help his boss by assisting his boss's son in a move, making sure probation was notified, but without prior approval.

As the District Court found, Appellant's guilty plea to the violations undermines any suggestion the violations were beyond Appellant's control. Still, four of Appellant's violations were related to Appellant working, and regarding the fifth, when he was helping his boss, he made sure his probation officer knew where he was, by having his boss leave the probation officer a message. Thus, although Appellant's violations show he failed to abide by the strict rules of location monitoring, he did not do so for any criminal or mischievous purpose. Far from it. His efforts at quickly finding a job, and maintaining a job for almost the entire time he was on supervision, furthered his progress toward successful reintegration into society and a productive, law-abiding life. In addition, except for these five occasions, at all other times during the seven months Appellant was travelling between his facility and work, he abided by the strict rules of his location monitoring and was accountable.

Regarding the District Court's other rationale for location monitoring, Appellant's prior designation as a sexually dangerous person, the District Court said she could not second-guess the judge who dismissed that case, but said, "I'm not going to plant my head in the sand and act as if all of that information is irrelevant to my consideration, because it is." The District Court characterized the North Carolina District Court's decision dismissing Appellant's sexually dangerous person case as basically that judge's choice of which experts to believe (Rev. Tr. p. 41-42). That characterization overlooks significant undisputed facts relied upon by the North Carolina judge in his well-reasoned opinion. The opinion emphasizes, *inter alia*, Appellant's current lack of any tendencies toward sexual

deviance, the absence of any signs for the past thirteen years that Appellant was exhibiting these types of tendencies, the fact that multiple decades have passed since Appellant's most recent offense involving a child, and the fact that inappropriate sexual impulses are known to weaken as an individual gets older. Ultimately, the North Carolina judge found, "In sum, the Court has considered the evidence and finds that [Appellant] has met his burden of proving that he would not be sexually dangerous to others if released." *United States v. Goodpasture*, 5:15-hc-02188-BO (EDNC Mar. 1, 2020).

In light of these findings, Appellant's historic designation as a sexually dangerous person, now dismissed, alone or combined with his location monitoring violations, is not convincing evidence of a current need for the onerous condition of location monitoring amounting to home detention for two years, in order to deter Appellant or protect the public.

Defense Counsel notes Appellant is also subject to the condition that he live in a halfway house for 180 days, where he will have no visitors, and his trips outside that facility will be closely regulated and his timely return monitored. (Rev. Tr. p. 79). Even if this Court deems location monitored is warranted by Appellant's history, these circumstances severely diminish any possible benefit from location monitoring during his first six months of supervised release. *See United States v. Goodwin*, 717 F.3d 511, 522 (7th Cir. 2013) (Supervised release conditions "cannot involve a greater deprivation of liberty than is reasonably necessary to achieve the goal of deterrence, incapacitation, and rehabilitation.") (citation omitted).

Further, the probation office can always petition the Court to expand Appellant's halfway house term, or add location monitoring, if Appellant's conduct during his first six months warrants that change. *See Thompson*, 777 F.3d at 382 ("[W]hile the term can be modified at any time, a superior alternative might well be to impose at the outset a nominal term, with the understanding (contrary to

the error by the district judge in Thompson's case) that it can be extended, if that seems needful, on the eve of the defendant's completion of his prison sentence.”).

c. Third party notification. Citing Appellant’s prior sex offender registration conviction (1999) and convictions for aggravated sexual abuse (1999, 2000) (Doc. 64 ¶ 35-36), and the goals of deterrence and protection of the public, the District Court ordered Appellant to “notify third parties of risks that may be occasioned by the defendant's criminal record or history of criminal conduct, whether or not resulting in criminal charges, and shall permit the probation officer to make such notification and to confirm the defendant's compliance with such notification requirement.” (Rev. Tr. p. 84).

Third-party risk is the reasonably foreseeable risk of physical or financial harm to a specifically identified third party or parties. "Reasonably foreseeable" means that the nature of the relationship between the defendant and the third party suggest the defendant may act in a criminal or unacceptable manner similar or related to past conduct. The risk must involve a specifically identified individual, not an undefined group, such as the general public, or to a broad class of individuals, such as all children in the neighborhood.

Parties at risk can be identified by the Court, the defendant, probation officer, counselor, or through other credible sources. Once a risk has been identified, notification of the potential risk is the responsibility of the defendant. Once notification has been made by the defendant, the probation officer will verify the defendant's compliance with the notification requirement. If the defendant does not agree with the identified risk, and opposes the notification to the third party, the matter will be presented to the Court to determine if disclosure is necessary.

(Rev. Tr. p. 85).

As discussed above, Appellant’s sex offenses and single failure to register offense are over twenty years old. A District Court in North Carolina, after extensive litigation on the subject, determined Appellant was not a sexually dangerous person, which contradicts the notion that it is reasonably foreseeable Appellant “may act in a criminal or unacceptable manner similar or related to past conduct” toward anyone. Moreover, as explained in Appellant’s objection,

Defendant's sex offenses involved boys under the age of 18. Proposed Condition 10, which Defendant does not oppose, essentially prohibits him from having any contact with boys under the age of 18. Thus, any third party that Defendant comes into contact with will, of necessity, be 18 years old. Otherwise, Defendant will be returning to prison again. There is no evidence that suggests Defendant poses a "reasonably foreseeable" risk of physical harm to any person [over] the age of 18, i.e., that he "[might] act in a criminal or unacceptable manner similar or related to past conduct."

(Doc. 91 p. 6). The District Court did impose proposed condition ten, prohibiting all intentional contact with individuals of the same age and gender as prior victims, except for in family gatherings or the presence of individuals approved by the Court or probation officer. (Rev. Tr. p. 91-92). Hence, there is no factual support to believe the condition will serve the goals of deterrence or protection of the public.

d. Warrantless search of places and things in Appellant's control. The District Court cited Appellant's history of possessing controlled substances and his consumption of alcohol during his term of supervised release to justify a highly onerous condition subjecting Appellant's "person, residence, real property, place of business, vehicle, and any other property under the defendant's control" to a warrantless search "at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a Condition of release." Reasonable suspicion is defined to mean "facts that are specific, clear, and easy to explain and result in a rational conclusion that the defendant is in possession of contraband or evidence of a violation of the condition of supervision." (Rev. Tr. p. 85-87).

The District Court's justification for this highly intrusive condition is patently inadequate. The only recent conduct cited was Appellant's consumption of a small amount of alcohol, in juice shared with him by a coworker, one time during his seven and a half months of supervised release. Appellant's two DUIs, cited by the District Court, occurred decades ago, with no evidence of ongoing alcohol abuse after that time; Appellant's possession of a controlled substance offense, also

cited, was even more remote in time, in 1983 when he was just 21 years old. (Doc. 64 ¶ 29, 31, 33). Plus, pursuant to another condition imposed by the District Court, Appellant already must allow his Probation Officer to visit him at his residence and seize any contraband observed in plain view. (Rev. Tr. p. 72-73).

Because the District Court's justification based on his alcohol and drug possession history is too weak to support an inference that a warrantless search condition is necessary to deter Appellant, the District Court erred in imposing it. *See United States v. Goodwin*, 717 F.3d 511, 521-522 (7th Cir. 2013) (A supervised release condition "must be reasonably related to (1) the defendant's offense, history and characteristics * * * [and] "cannot involve a greater deprivation of liberty than is reasonably necessary to achieve the goal of deterrence, incapacitation, and rehabilitation.") (citation omitted).

e. Computer monitoring and social media restrictions. In imposing cumbersome rules regarding all computers, networks, internet and media storage devices, and various types of accounts to which Appellant has access, the District Court cited Appellant's prior sex offenses, his previous designation as a sexually dangerous person, his lack of sex offender treatment, and his most recent sex offender evaluation and subsequent recommendations. The District Court also prohibited Appellant from social media activities except as approved by the Court or probation officer, citing Appellant's prior sex offenses and prior designation as a sexually dangerous person. (Rev. Tr. p. 87-91). She responded to Defense Counsel's objection that Appellant's prior offenses did not involve the internet, "[H]is criminal history or his prior sex offender offenses occurred at such time when access to the internet and internet-based sexual offenses were not prominent as they are today." (Rev. Tr. p. 62).

These restrictions require Appellant to cooperate to identify any devices and accounts falling within these categories, and cooperate to subject them to random searches, “configuration,” and installation of monitoring software and/or hardware. He must provide all log-in and password information for any accounts to which he has access to probation. He must pay for, or contribute to payment for implementation of these measures, and “inform all parties who access approved computers or similar electronic devices that the device or devices is subject to search and monitoring.” He also may possess “only one personal computer and/or internet capable device to facilitate the ability to effectively monitor internet-related activities.” (Rev. Tr. p. 87-91).

The above restrictions are overbroad and not reasonably related or narrowly tailored to Appellant’s personal history and § 3553(a) factors. None of Appellant’s prior crimes involved the internet. The District Court’s explanation that internet sex offenses were not as prevalent at the time of Appellant’s 1999 and 2000 as today does not support the conclusion that the increased prevalence in offenses committed today increases Appellant’s risk of reoffending if he has unmonitored use of internet communications and social media. Only speculation supports the notion that Appellant may not safely use unmonitored computer and internet devices and social media accounts, when he has no history of inappropriate conduct in connection with such use. *See United States v. Canfield*, 893 F.3d 491, 496 (7th Cir. 2018) (“But it is not sufficient to simply state that the condition would help Canfield in his rehabilitation. The district court needed to provide some rationale for why it believed it would be helpful.”).

Also, as discussed above, other credible information supports a low risk of reoffending. Appellant will be 59 years old this year, and, after extensive litigation, was determined to have had no deviant tendencies for many years, such that his sexually dangerous person designation was

dismissed. He is already prohibited from having any contact with individuals under the age of 18, making these onerous restrictions unnecessary, given Appellant's low risk of recidivism.

The restrictions also partially overlap state law sex offender registration requirements, making duplication unnecessary. In Illinois, Appellant must provide the following information when he registers:

a current photograph, current address, current place of employment, the sex offender's or sexual predator's telephone number, including cellular telephone number, the employer's telephone number, school attended, all e-mail addresses, instant messaging identities, chat room identities, and other Internet communications identities that the sex offender uses or plans to use, all Uniform Resource Locators (URLs) registered or used by the sex offender, all blogs and other Internet sites maintained by the sex offender or to which the sex offender has uploaded any content or posted any messages or information, extensions of the time period for registering as provided in this Article and, if an extension was granted, the reason why the extension was granted and the date the sex offender was notified of the extension.

730 ILCS 150/3(a).

The restrictions also are certain to prevent Appellant from lawful activity. They will limit his employment options where he must use any type of computer or media storage device, since not all employers will accept the U.S. Probation Office's monitoring, configuring, random searches, and installing software on their computers. Appellant will not be able to use public internet terminals or Wi-Fi without violating his restrictions, since it is unlikely the providers of these services would agree to the monitoring tactics required, or that arrangements for these could be made ahead of time. Appellant will have no opportunity for privacy in lawfully communicating with other adults over the internet, whether through social media or otherwise, and thus will be dissuaded from much of this activity. Limiting Appellant to one internet capable device will prevent him from owning both a smart phone, with the advantages of internet communications, directions, Google searches, reminders, his calendar, etc., while away from home, and also owning a home computer, where it is

easier to complete job applications and submit on-line taxes, etc. He will also have to limit his television and appliance purchases to those without internet capability.

Hence, the District Court erred in imposing the onerous computer and internet use conditions. The restrictions are not reasonably related to Appellant's criminal history and characteristics, and cannot reasonably be expected to serve the goals of deterrence or protection of the public. The conditions are also impermissibly overbroad, and certain to unnecessarily prevent Appellant from engaging in lawful conduct. *Goodwin*, 717 F.3d at 521-522 (7th Cir. 2013) (Supervised release conditions "must be reasonably related to (1) the defendant's offense, history and characteristics * * * [and] "cannot involve a greater deprivation of liberty than is reasonably necessary to achieve the goal of deterrence, incapacitation, and rehabilitation.") (citation omitted).

CONCLUSION

The District Court erred in imposing the above five conditions of supervised release which were not reasonably related to Appellant's personal history and characteristics, or a realistic and reasonable assessment of the risk he poses of reoffending; thus, the conditions may not be expected to serve the goal of deterrence or protection of the public. The internet and computer conditions also unnecessarily deter lawful conduct, making them impermissibly overbroad. Thus, Defense Counsel asks this Court to vacate the District Court's sentence, and remand for reimposition of conditions of supervised release, without the above conditions.

Respectfully Submitted,

s/Todd M. Schultz

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ATTORNEY FOR DEFENDANT-APPELLANT

ATTORNEY'S CERTIFICATE PURSUANT TO CIRCUIT RULE 30(d)

I have included all material required by Circuit Rule 30(a) and (b) in the Brief Appendix.

Respectfully submitted,

s/ Todd M. Schultz

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ATTORNEY FOR DEFENDANT-APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. Participants who are registered CM/ECF users will be served by the CM/ECF system.

s/ Todd M. Schultz
Todd M. Schultz

APPENDIX

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Defense Counsel’s Objection to Special Conditions of Supervision (Doc. 91)	Appendix 28

AO 245D (SDIL Rev. 10/19) Judgment in a Criminal Case for Revocation

UNITED STATES DISTRICT COURT
Southern District of Illinois

UNITED STATES OF AMERICA

v.

JAMES K. GOODPASTURE**JUDGMENT IN A CRIMINAL CASE**(for **Revocation** of Probation or Supervised Release)Case Number: **3:07-CR-30185-SMY-1**USM Number: **07422-025****TODD M. SCHULTZ**

Defendant's Attorney

THE DEFENDANT:

- ☒ admitted guilt to violation of condition(s) as listed below of the term of supervision.
☐ was found in violation of condition(s) after denial of guilt.

The defendant is adjudicated guilty of these violations:

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
Special	The defendant failed to abide by the rules and regulations of the Residential Reentry Center	10/11/2020

Violations continued on page 2

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s)
☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.
☐ The defendant has not violated condition(s) and is discharged as to such violation(s) condition.

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

Last Four Digits of Defendant's Soc. Sec.: 5278

Defendant's Year of Birth: 1962

January 27, 2021

Date of Imposition of Judgment



Signature of Judge

Staci M. Yandle, United States District Judge

Name and Title of Judge

City and State of Defendant's Residence:
Farmington, Missouri

Date Signed: February 10, 2021

DEFENDANT: JAMES K. GOODPASTURE

CASE NUMBER: 3:07-CR-30185-SMY-1

ADDITIONAL COUNTS OF CONVICTION

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Concluded</u>
Special (cont'd)	The defendant failed to abide by the rules and regulations of the Residential Reentry Center	11/10/2020
Special	The defendant failed to abide by location monitoring requirements	5/19/2020
	The defendant failed to abide by location monitoring requirements	5/20/2020
	The defendant failed to abide by location monitoring requirements	7/16/2020
	The defendant failed to abide by location monitoring requirements	8/31/2020
	The defendant failed to abide by location monitoring requirements	9/2/2020
Special	The defendant consumed alcohol and had a blood alcohol content level of .038	11/10/2020
Special	The defendant failed to comply with the requirements of his sex offender treatment program	6/9/2020

DEFENDANT: JAMES K. GOODPASTURE
CASE NUMBER: 3:07-CR-30185-SMY-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **12 months**

- ☐ The court makes the following recommendations to the Bureau of Prisons:
- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
- ☐ at _____ ☐ a.m. ☐ p.m. on
- ☐ as notified by the United States Marshal.
- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☐ before 2 p.m. on
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JAMES K. GOODPASTURE
CASE NUMBER: 3:07-CR-30185-SMY-1

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **24 months**

Other than exceptions noted on the record at sentencing, the Court adopts the proposed terms and conditions of supervision recommended by the U.S. Probation Office in its current form, including the explanations and justifications therefor.

MANDATORY CONDITIONS

The following conditions are authorized pursuant to 18 U.S.C. § 3583(d):

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance.

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the Court, not to exceed 52 tests in one year.

The defendant must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where the defendant resides, works, is a student, or was convicted of a qualifying offense.

ADMINISTRATIVE CONDITIONS

The following conditions of supervised release are administrative and applicable whenever supervised release is imposed, regardless of the substantive conditions that may also be imposed. These conditions are basic requirements essential to supervised release.

The defendant must report to the probation office in the district to which the defendant is released within seventy-two hours of release from the custody of the Bureau of Prisons.

The defendant shall not knowingly possess a firearm, ammunition, or destructive device. The defendant shall not knowingly possess a dangerous weapon unless approved by the Court.

The defendant shall not knowingly leave the judicial district without the permission of the Court or the probation officer.

The defendant shall report to the probation officer in a reasonable manner and frequency directed by the Court or probation officer.

The defendant shall respond to all inquiries of the probation officer and follow all reasonable instructions of the probation officer.

The defendant shall notify the probation officer prior to an expected change, or within seventy-two hours after an unexpected change, in residence or employment.

DEFENDANT: JAMES K. GOODPASTURE
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The defendant shall not knowingly meet, communicate, or otherwise interact with a person whom the defendant knows to be engaged, or planning to be engaged, in criminal activity.

The defendant shall permit a probation officer to visit the defendant at a reasonable time at home or at any other reasonable location and shall permit confiscation of any contraband observed in plain view of the probation officer.

The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.

SPECIAL CONDITIONS

Pursuant to the factors in 18 U.S.C. § 3553(a) and 18 U.S.C. § 3583(d), the following special conditions are ordered. While the Court imposes special conditions, pursuant to 18 U.S.C. § 3603(10), the probation officer shall perform any other duty that the Court may designate. The Court directs the probation officer to administer, monitor, and use all suitable methods consistent with the conditions specified by the Court and 18 U.S.C. § 3603 to aid persons on probation/supervised release. Although the probation officer administers the special conditions, final authority over all conditions rests with the Court.

The defendant shall abstain from the use and/or possession of all alcoholic beverages. The defendant shall not enter or patronize establishments where alcohol is the primary item of sale, such as bars, lounges, night clubs or liquor stores. The defendant shall submit to alcohol testing during the term of supervised release. The Court directs the probation officer to determine the type of alcohol testing which may include, but is not limited to, devices used to collect breath or urine samples. The number of alcohol tests shall not exceed 52 tests in a one-year period. The defendant must not attempt to obstruct or tamper with the testing methods.

The defendant shall participate in a remote alcohol testing program and comply with all requirements for a period of 12 months. During this period, the defendant shall pay for all or a portion of the costs associated with this program. Payments will be based on the defendant's ability to pay. The Court directs the probation officer to determine the type of alcohol monitoring technology, monitor the defendant's compliance with the program requirements, determine the copayment amount, and assist in the collection of copayments.

The defendant shall participate in treatment for narcotic addiction, drug dependence, or alcohol dependence, which includes urinalysis and/or other drug detection measures and which may require residence and/or participation in a residential treatment facility, or residential reentry center (halfway house). The number of drug tests shall not exceed 52 tests in a one-year period. Any participation will require complete abstinence from all alcoholic beverages and any other substances for the purpose of intoxication. The defendant shall pay for the costs associated with services rendered, based on a Court approved sliding fee scale and the defendant's ability to pay. The defendant's financial obligation shall never exceed the total cost of services rendered. The Court directs the probation officer to approve the treatment provider and, in consultation with a licensed practitioner, the frequency and duration of counseling sessions, and the duration of treatment, as well as monitor the defendant's participation, and assist in the collection of the defendant's copayment.

The defendant shall not knowingly visit or remain at places where controlled substances are illegally

DEFENDANT: JAMES K. GOODPASTURE
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sold, used, distributed, or administered.

The defendant shall reside in a Residential Reentry Center for 180 days and shall abide by all the rules and regulations of the facility. Subsistence payments are waived. The Court directs the probation officer to consult with the Bureau of Prisons to coordinate the Residential Reentry Center placement and monitor the defendant's compliance with the rules and regulations of the facility.

The defendant shall be monitored by a form of location monitoring indicated below for the entirety of his term of supervision and shall abide by all technology requirements. The participant shall pay all or a portion of the costs of participation in the location monitoring program based on the defendant's ability to pay.

You are restricted to your residence at all times except for employment; education; religious services; medical, substance abuse, or mental health treatment; attorney visits; court-ordered obligations; or other pre-approved activities. (Home Detention)

The Court directs the probation officer to determine the type of location monitoring technology utilized, approve any necessary schedule changes, monitor the defendant's compliance with the program requirements, determine a copayment amount, and assist in the collection of copayments.

The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.

The defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or history of criminal conduct, whether or not resulting in criminal charges, and shall permit the probation officer to make such notification and to confirm the defendant's compliance with such notification requirement.

The defendant's person, residence, real property, place of business, vehicle, and any other property under the defendant's control is subject to a search, conducted by any United States Probation Officer and other such law enforcement personnel as the probation officer may deem advisable and at the direction of the United States Probation Officer, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release, without a warrant. Failure to submit to such a search may be grounds for revocation. The defendant shall inform any other residents that the premises and other property under the defendant's control may be subject to a search pursuant to this condition.

The defendant shall cooperate with the U.S. Probation Office Computer and Internet Monitoring Program. Cooperation shall include, but is not limited to, identifying computer systems, internet capable devices, networks (routers/modems), and/or similar electronic devices (external hard drives, flash drives, etc.) to which the Defendant has access. All devices are subject to random inspection/search, configuration, and the installation of monitoring software and/or hardware. The defendant's financial obligation shall never exceed the total cost of services rendered. The defendant shall pay all or a portion of the costs of participation in the Computer and Internet Monitoring Program based on the defendant's ability to pay.

The defendant shall inform all parties who access approved computer(s) or similar electronic device(s) that the device(s) is subject to search and monitoring. The defendant may be limited to possessing only

DEFENDANT: JAMES K. GOODPASTURE

CASE NUMBER: 3:07-CR-30185-SMY-1

one personal computer and/or internet capable device to facilitate the ability to effectively monitor internet-related activities.

The defendant shall report any and all electronic communication service accounts utilized for user communications, dissemination, and/or storage of digital media files (i.e., audio, video, images, documents, device backups) to the U.S. Probation/Pretrial Services Office. This includes, but is not limited to, email accounts, social media accounts, and cloud storage accounts. The defendant shall provide each account identifier and password, and shall report the creation of new accounts. Changes in identifiers and/or passwords, transfer, suspension and/or deletion of any account shall be reported within five days of such action. The defendant shall permit the U.S. Probation/Pretrial Services Office to access and search any account(s).

The defendant shall participate in an approved sexual offender treatment program. If deemed necessary, the defendant shall submit to an approved, sexual-predator evaluation. The defendant shall abide by all rules, requirements, and conditions of the treatment program, including submission to polygraph examination to determine compliance with the conditions of supervision. The defendant shall remain in the program until successfully completed, or until such time as the defendant is released from the program by the Court and/or probation officer. The defendant shall pay for the costs associated with services rendered, based on a Court-approved sliding fee scale and the defendant's ability to pay. The defendant's financial obligation shall never exceed the total cost of services rendered. The Court directs the probation officer to approve the treatment provider and, in consultation with a licensed practitioner, the frequency and duration of counseling sessions, and the duration of treatment, as well as monitor the defendant's participation, and assist in the collection of the defendant's copayment.

The defendant is prohibited from activity in social media sites, internet chat rooms, and internet forums unless approved by the Court or probation officer.

The defendant shall not have any contact with persons under the age of 18 of the same gender as the victim(s) of the offense or prior offense(s), unless in the presence of a responsible adult who is aware of the nature of the defendant's background and instant offense and who has been approved by the Court or probation officer. Exceptions include unintentional contact while at place of employment, traveling, or during family gatherings.

U.S. Probation Office Use Only

A U.S. Probation Officer has read and explained the conditions ordered by the Court and has provided me with a complete copy of this Judgment. Further information regarding the conditions imposed by the Court can be obtained from the probation officer upon request.

Upon a finding of a violation of a condition(s) of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

Defendant's Signature _____

Date _____

U.S. Probation Officer _____

Date _____

1 UNITED STATES OF AMERICA
2 SOUTHERN DISTRICT OF ILLINOIS

3 UNITED STATES OF AMERICA,)
4)
5 Plaintiff,)
6 V.) No. 3:07-cr-30185-SMY-1
7 JAMES K. GOODPASTURE,)
8)
9 Defendant.)

10 TRANSCRIPT OF
11 SUPERVISED RELEASE REVOCATION
12 BEFORE THE HONORABLE STACI M. YANDLE
13 UNITED STATES DISTRICT JUDGE

14 January 14, 2021
15 and
16 January 27, 2021
17
18
19
20

21 REPORTED BY: Christine Dohack LaBuwi, RDR, CRR
22 Official Court Reporter
23 301 West Main Street
24 Benton, Illinois 62812
25 (618) 439-7725
Christine_Dohack@ilsd.uscourts.gov

Proceedings recorded by mechanical stenography, produced by
computer-aided transcription.

1 I still have it: My false teeth, my 4,000-dollar hearing
2 aids, my eyes. Everything. I wouldn't have wasted away my
3 life, especially on something like this.

4 This is just -- I'm sorry, Your Honor, but it
5 happened. So, I did consume the alcohol. Whatever goes in
6 my body is -- I should be aware of.

7 THE COURT: Is there anything else, Mr.
8 Goodpasture?

9 THE DEFENDANT: No, Your Honor. I'm sorry.

10 THE COURT: Look, I -- this is certainly a
11 difficult situation. And again, Mr. Goodpasture, I am not
12 dismissive of the things that you are saying, or
13 insensitive to them. I just want to make sure that you
14 understand what's relevant to my consideration here.

15 I also have a great degree of respect for Mr.
16 Schultz. I always have. He is a vigorous advocate for his
17 clients and I appreciate that. But I have to say this:
18 The suggestion that the objective here -- which, as I
19 understood Mr. Schultz's argument, is the objective of
20 everyone involved, including the Court -- is to make sure
21 that Mr. Goodpasture goes back to prison.

22 And also, the suggestion that a decision that would
23 send him back to prison is the easiest thing to do.
24 Frankly, I reject that and I'm almost offended by it. That
25 is certainly not this Court's objective, nor am I looking

1 for the easy way out. I'm looking to do the right thing
2 based on the information that I have, the relevant
3 information, and in consideration of the, of the objectives
4 here.

5 I agree that, typically, I wouldn't -- we wouldn't
6 see a Petition for Revocation filed based solely on Class C
7 violations, but this is not a typical case. And if you
8 want to just look at them in a vacuum, I guess that's an
9 easy conclusion to draw, is that that is a typical. But
10 it's not in this case.

11 when you have violations of location monitoring,
12 violations associated with sex offender treatment,
13 violations associated with the consumption of alcohol, for
14 someone who has the criminal history of Mr. Goodpasture's,
15 and in particular the nature and circumstances -- the total
16 circumstances -- of his criminal history, Mr. Goodpasture,
17 yes, he was -- the underlying crime was felon in
18 possession. There are nature and circumstances surrounding
19 that crime that are relevant given his criminal history.

20 I'm not caught up on whether he was a career
21 offender or not. But it is relevant that he was deemed to
22 be a sexually dangerous offender under the applicable law,
23 and he was released in March from that designation. I will
24 note, however, that he was evaluated by three experts; two
25 of them believed that he was still dangerous and that he

1 posed a risk to the community, one did not.

2 And the judge, who I will not second-guess,
3 released him. Again, I'm not second guessing the judge.
4 But I'm not going to plant my head in the sand and act as
5 if all of that information is irrelevant to my
6 consideration, because it is.

7 And so, I guess I'm one of those people who is
8 ludicrous, that Mr. Schultz spoke of. Because when I look
9 at the total picture and all of the explanations and
10 excuses, I do find that to a relevant extent Mr.
11 Goodpasture did not take his obligation to comply with his
12 Terms and Conditions of Supervised Release seriously. I am
13 of the opinion that he disregarded them to some degree.
14 And again, based on the total picture which includes his
15 history and his criminal history -- his personal and
16 criminal history, that poses a dangerous situation, one
17 that needs deterrence and one that speaks for needing to
18 protect the public from future crimes by Mr. Goodpasture.

19 I do not come to that conclusion lightly. But I
20 assure you, I did not come to that conclusion having
21 already decided that my objective was to send Mr.
22 Goodpasture back to prison or that that is the easy
23 decision to make because it is not. But I do think it is
24 the right decision to make.

25 Again, in the interest of protecting the public, in

1 the interest of deterrence, I believe that the disposition
2 recommended and requested by Mr. Goodpasture's -- on Mr.
3 Goodpasture's behalf would not be sufficient, would not
4 address the goals of sentencing.

5 At the same time, the recommendation by the
6 Government as it relates to 24 months of incarceration with
7 no additional supervised release would not be appropriate
8 because of all the reasons that I have just stated. I do
9 believe that supervised release is warranted to monitor Mr.
10 Goodpasture's reintegration into the community on release,
11 and that it would not be -- we would not be doing the most
12 to protect the public should we not have him on supervised
13 release again upon his release.

14 So, I believe the appropriate sentence in this case
15 on revocation is 12 months' imprisonment and 24 months of
16 supervised release.

17 It is the judgment of this Court that defendant's
18 supervised release shall be revoked and sentence shall be
19 imposed as follows:

20 Pursuant to the Sentencing Reform Act of 1984, it
21 is the judgment of the Court that the defendant James K.
22 Goodpasture is hereby committed to the custody of the
23 Bureau of Prisons to be imprisoned for a term of 12 months.

24 The Court will waive the cost of incarceration and
25 supervision.

1 Upon his release from imprisonment, this defendant
2 shall be placed on supervised release for a term of 24
3 months.

4 In that regard, again, for all the reasons stated,
5 supervised release is warranted to monitor, again, Mr.
6 Goodpasture's reintegration into the community and his
7 compliance with the Conditions of supervision, including
8 all previous recommendations and requirements.

9 Do we have a Waiver, Miss Hurst, of the Conditions?

10 COURTROOM DEPUTY: No, I do not.

11 THE COURT: Okay. Mr. Goodpasture, have you had an
12 opportunity to review the Proposed Conditions of Supervised
13 Release with your attorney?

14 THE DEFENDANT: I did not sign 'em and I'm not
15 going to sign 'em.

16 THE COURT: That was not my question, sir.

17 THE DEFENDANT: Oh. No, Your Honor --

18 THE COURT: My question was: Did you have a chance
19 to review them?

20 THE DEFENDANT: No, I didn't. They just sent me a
21 paper today asking me to sign this -- Probation papers, and
22 it didn't have any Conditions on the Probation paper.

23 THE COURT: Mr. Schultz, have you discussed the
24 Proposed Conditions of Supervised Release with Mr.
25 Goodpasture?

1 MR. SCHULTZ: Your Honor, I have not specifically
2 discussed those Conditions. What I did do is, I sent him
3 the violation packet which contains those Conditions and
4 talked to him subsequent to that. I did e-mail -- or I did
5 send to the jail today the standard waiver of the reading
6 of the Terms and Conditions and he was not willing to sign
7 that.

8 THE COURT: Okay. Well, then I will read to you,
9 Mr. Goodpasture, the Conditions of Supervised Release that
10 are being imposed. Hold on for a second here.

11 (Pause.)

12 Okay. We're going to take a break for about five
13 minutes. I need to bring up the Conditions actually in a
14 form that I can read. I cannot see them on my phone and I
15 cannot pull them up on my computer because I'm off of the
16 network.

17 So, if we can take a -- pause for five minutes, let
18 me get those Conditions. And because as I understand it,
19 Mr. Goodpasture, you do not waive your right to have me
20 read those Conditions. You want me to read those
21 Conditions; is that correct?

22 THE DEFENDANT: Yes. I would like to know what
23 I'm, I'm getting into before I sign something.

24 THE COURT: Well, you don't need to sign it. If I
25 read it, then I'm going to read -- basically, I'm going to

1 read you all the Conditions of Supervised Release that I am
2 imposing today. In other words --

3 THE DEFENDANT: Okay.

4 THE COURT: -- the Conditions that you will be
5 subject to, upon your release.

6 THE DEFENDANT: Yeah.

7 THE COURT: Okay? All right.

8 THE DEFENDANT: Can I talk to the attorney while
9 you are pausing?

10 THE COURT: Can you talk to who?

11 THE DEFENDANT: The attorney, while you are
12 pausing?

13 THE COURT: Sure.

14 THE DEFENDANT: Thank you.

15 THE COURT: Miss Hurst will put you in a breakout.
16 Give me one second here.

17 (Off the record.)

18 THE COURT: So, we now have Mr. Goodpasture and Mr.
19 Schultz back from the breakout room. We were -- I was
20 about to address the Conditions of Supervised Release.

21 And let me, first, make sure I have it clarified
22 for the record.

23 Mr. Schultz, were you and Mr. Goodpasture provided
24 with Probation's Recommended Conditions of Supervised
25 Release in advance of the hearing today?

1 MR. SCHULTZ: Yes, ma'am, we were.

2 THE COURT: Okay. First of all, does Mr.
3 Goodpasture have any objections to supervised release or
4 any of the Recommended Conditions?

5 MR. SCHULTZ: Your Honor, I know that he will
6 object to the Condition involving alcohol. And I guess,
7 out of respect for the Court's time, I did not anticipate
8 an issue with respect to Conditions prior to the hearing
9 today. While Mr. Goodpasture and I had talked about the
10 hearing and had -- I had provided him with the packet, we
11 had not gone into an in-depth discussion with respect to
12 the Terms and Conditions. And so, I mentioned that I know
13 he will object to the alcohol Condition.

14 My only question is, from the Court's perspective,
15 obviously, I'm prepared to proceed and make that objection
16 here today at the hearing. If the Court thinks it would be
17 a better use of time for me to seek a brief continuance of
18 this hearing such that I can go over those with him and lay
19 out in writing what those objections are, I'd be happy to
20 do that.

21 THE COURT: I guess my -- what I don't understand
22 is, we provide the Conditions in advance for purpose of
23 review and so these determinations can be made, and I'm a
24 little confused as to whether or not the Conditions were
25 provided in advance.

1 Do you need additional time now to decide whether
2 Mr. Goodpasture objects and what does he object to? I'm
3 not totally clear what's happening here.

4 THE DEFENDANT: Can I speak, Your Honor?

5 THE COURT: I'm addressing your -- you have
6 counsel, Mr. Goodpasture.

7 THE DEFENDANT: I'm sorry. Can I briefly state
8 real quick about anything I would object to?

9 THE COURT: Mr. Goodpasture, you have counsel. I'm
10 addressing your counsel, at this point.

11 So, Mr. Schultz, if you believe that additional
12 time, that you need additional time to really go over with
13 your client the conditions and to identify what conditions,
14 if any, he objects to, and the basis for his objection, and
15 that that would be more efficient of getting through these
16 conditions, is that what you are proposing?

17 MR. SCHULTZ: It is, Your Honor. That is what I am
18 proposing. And I apologize. In preparing for the hearing
19 today, in talking with Mr. Goodpasture on a number of
20 occasions, our major focus was, you know, the arguments we
21 would make to the court, how we would approach the
22 revocation hearing itself and, quite frankly, the
23 conditions were not something that we focused on. He did
24 have them prior to the hearing. I did as well. I had
25 reviewed them. But we had not discussed whether he would

1 object.

2 So, I think under these circumstances, if the Court
3 is willing, if I could have a brief continuance to address
4 these Conditions further in detail with him and find out
5 just what exactly he objects to, if in fact he objects to
6 any.

7 THE COURT: How much of a continuance do you need,
8 Mr. Schultz?

9 MR. SCHULTZ: Your Honor, if the Court had time,
10 sometime next week, I believe I can get in touch with St.
11 Clair County Jail and potentially talk with Mr. Goodpasture
12 as early as tomorrow, such that we'd be available sometime
13 next week to continue this hearing.

14 THE COURT: Okay. Hold on.

15 (Off the record.)

16 THE COURT: Counsel, are you available wednesday,
17 January 20th at 9:30? Miss Robertson?

18 MS. ROBERTSON: Judge, unfortunately, I have
19 another sentencing that I need to cover at 9:30 on
20 wednesday.

21 THE COURT: Okay.

22 MS. ROBERTSON: Well, Judge, I take that back. I
23 think probably that defendant's going to have to get new
24 counsel. If the imposition of the supervised release is
25 going to take less than a half-hour, because I have a

1 10:00, 9:30 would work for me.

2 THE COURT: I can't guarantee that because if there
3 are objections, we'll have to work through them.

4 MS. ROBERTSON: Sure.

5 THE COURT: And we don't know at this point.

6 That's okay. I'm not -- let's not do that.

7 MS. ROBERTSON: Okay.

8 THE COURT: How about -- what about wednesday at
9 3:15?

10 MS. ROBERTSON: That works for me, Your Honor.

11 THE COURT: Mr. Schultz?

12 MR. SCHULTZ: Your Honor, it works for me, as well.

13 THE COURT: Okay. I have a change of plea at 2:30
14 but, 3:15, we can -- I can continue the remainder of the
15 hearing and we can pick it up next wednesday, January 20th,
16 at 3:15 and address the Proposed Conditions of Supervised
17 Release. Okay?

18 MR. SCHULTZ: Thank you, Your Honor.

19 MS. ROBERTSON: Thank you.

20 THE COURT: Thank you.

21 (Court adjourned at 4:15 p.m.)

22 (Video conference proceedings resumed on 01/27/21
23 at 1:39 p.m.)

24 COURTROOM DEPUTY: The Court calls Case No.
25 07-CR-30185, *United States of America versus James K.*

1 *Goodpasture*. This matter is a continuance of the final
2 revocation of supervised release.

3 This hearing is connected via telephone for public
4 access. Those listening are observers only. They are not
5 allowed to speak or participate in the proceeding.
6 Recordings and broadcasting by radio, television, or other
7 means in connection with any judicial proceeding is
8 prohibited by federal and local rules.

9 would the parties please state your presence for
10 the record, beginning with Government?

11 MS. ROBERTSON: Good afternoon. The Government is
12 ready and represented by Assistant United States Attorney
13 Amanda Robertson.

14 THE COURT: Good afternoon, Miss Robertson.

15 MR. SCHULTZ: Todd Schultz, Assistant Public
16 Defender representing Mr. Goodpasture. We're ready to
17 proceed, Your Honor.

18 THE COURT: Good afternoon again, Mr. Schultz.

19 And good afternoon, Mr. Goodpasture.

20 Mr. Goodpasture's probation officer, Schuyler
21 Stephens, is also present on the video conference.

22 As Miss Hurst indicated, this is a continuation of
23 the final hearing on the -- for revocation of supervised
24 release for Mr. Goodpasture. I think it was two days ago,
25 we began the hearing. Mr. Goodpasture admitted to the

1 violations.

2 Accordingly, I adjudged him guilty of violating
3 those Terms and Conditions and I announced my sentence, or
4 the sentence that I imposed or intended to impose which was
5 12 months' imprisonment followed by 24 months of supervised
6 release.

7 The Proposed Conditions of Supervised Release had
8 been provided to defendant through counsel in advance of
9 the revocation hearing but Mr. Schultz indicated that he
10 had not had an opportunity to really review those
11 Conditions with Mr. Goodpasture at the time of the hearing.
12 As a result, and at Mr. Schultz's request, we recessed the
13 hearing to give Mr. Goodpasture, through his counsel, time
14 to review the proposed Conditions.

15 Thereafter, Mr. Schultz filed objections to certain
16 Special Conditions. That was filed on January 19th.
17 Again, wherein Mr. Goodpasture is objecting to certain of
18 the Special Conditions that this Court intends to impose.

19 I have reviewed those objections and I'm prepared
20 to rule on those objections. However -- or -- not however.
21 But I also want to address that, at about 11:15 today, Mr.
22 Schultz did file a motion requesting a continuance of this
23 hearing, which I denied.

24 The basis of the motion was that Mr. Schultz had
25 discovered on the docket that Mr. Goodpasture's electronic

1 monitoring order wasn't vacated, it was merely suspended.
2 And, of course, a record can be made at any time. So, we
3 would ask just for purposes of clarity of the record that
4 the Location Monitoring Participant Agreement signed by Mr.
5 Goodpasture on April 17th, 2020, we'd ask that that be made
6 a part of the record in this case.

7 THE COURT: And I would grant that and, in fact --
8 I will grant that.

9 MS. ROBERTSON: And if the Court is so inclined,
10 would the Court consider admitting the e-mail between
11 yourself and Probation where you approved the lifting of
12 the suspension?

13 THE COURT: I will admit that, as well. I didn't
14 mean to laugh. I'm just kinda --

15 MS. ROBERTSON: Thank you.

16 THE COURT: It's the cat behind your head, Miss
17 Robertson.

18 MS. ROBERTSON: Oh, my goodness.

19 THE COURT: That's okay.

20 MS. ROBERTSON: I apologize.

21 THE COURT: Oh, no, don't apologize. It just
22 caught me off guard. He or she --

23 MS. ROBERTSON: I didn't know it was there.

24 THE COURT: So, no, I think that's appropriate to
25 admit that on the record. So, that being said, again, I

1 had pronounced the sentence, including supervised release;
2 had indicated the supervised release would be subject to
3 the Conditions that were provided in advance; asked if Mr.
4 Goodpasture waived the reading of those Conditions.

5 And that's when Mr. Schultz indicated that he was
6 not in a position to waive and that he wished to have
7 additional time to review those Conditions with Mr.
8 Goodpasture, which I granted.

9 Mr. Goodpasture filed objections to certain
10 Conditions, which I will now address so that we can move
11 on.

12 Mr. Goodpasture first objects to the imposition of
13 the remote alcohol testing requirement, and the requirement
14 that he participate in treatment for alcohol dependence.

15 Again, I have reviewed his objections and the bases
16 for his objections. I have re-reviewed the
17 revocation-related filings in this case and I have
18 re-reviewed the Presentence Investigation Report from the
19 original conviction. And on that basis, and as stated in
20 the justifications for the Conditions, I overruled the
21 objection. I believe the Condition is warranted and
22 appropriate given Mr. Goodpasture's history of substance
23 abuse as listed in the Presentence Investigation Report,
24 including his previous two convictions for Driving Under
25 the Influence and the allegation in the Petition, which he

1 has admitted, of consuming alcohol while in the residential
2 reentry center.

3 Mr. Goodpasture next objects to the special
4 Condition regarding location monitoring. That objection is
5 overruled. And that is based on, again, Mr. Goodpasture's
6 lack of accountability while participating in the location
7 monitoring program during his first term of supervised
8 release, and that -- Mr. Goodpasture has indicated he has
9 explanations, but he has admitted to the violations and the
10 explanations, therefore, are weakened by the Court. And
11 given his previous designation as a sexually dangerous
12 person, and his criminal history, the following -- I mean
13 -- that Condition is justified and warranted.

14 I note for the record that Mr. Goodpasture has left
15 the video conference. I'm not sure what's going on.

16 THE DEFENDANT: No. I'm wondering where the
17 probation officer is. I'm looking for him. He's not
18 there. He wasn't there the whole first part either.

19 THE COURT: Mr. Goodpasture. Mr. Goodpasture.
20 This is a -- this is a proceeding, sir.

21 THE DEFENDANT: Yes.

22 THE COURT: The --

23 THE DEFENDANT: So, isn't everybody supposed to be
24 here?

25 THE COURT: Mr. Goodpasture? Mr. Stephens is on

1 the video conference.

2 THE DEFENDANT: I don't see him. I see a phone. I
3 don't see nobody there.

4 THE COURT: He is here.

5 THE DEFENDANT: He is there.

6 THE COURT: Mr. Goodpasture --

7 THE DEFENDANT: Are you there?

8 THE COURT: Mr. Goodpasture -- all right. You need
9 to stop disrupting the proceeding, sir.

10 (Pause.)

11 All right. Thank you.

12 As I indicated, given his criminal history, his
13 designation as a sexually dangerous person, and the
14 violations regarding location monitoring, the condition is
15 warranted and the objection is overruled.

16 Mr. Goodpasture next objects to the third party
17 notification Condition. Again, that objection is
18 overruled.

19 Given Mr. Goodpasture's history of violating the
20 Illinois Sex Offender Registration Act and his conviction
21 for Aggravated Criminal Sexual Abuse, in the interests of
22 deterrence and to protect the public from future crimes,
23 the third party notification Condition this Court believes
24 is warranted, reasonable and necessary.

25 Mr. Goodpasture next objects to the search

1 Condition which, again, this Court finds is warranted,
2 reasonable, and necessary given Mr. Goodpasture's prior
3 history of possessing controlled substances, his
4 consumption of alcohol during his current term of
5 supervised release. So, that objection is overruled.

6 Mr. Goodpasture next objects to proposed internet
7 restrictions, and he points out that none of his previous
8 convictions, sex offender -- for sexual offenses involves
9 the internet. The Court will just point out that his
10 criminal history or his prior sex offender offenses
11 occurred at such time when access to the internet and
12 internet-based sexual offenses were not prominent as they
13 are today.

14 So, due to Mr. Goodpasture's conviction for
15 Aggravated Criminal Sexual Abuse and his previous
16 designation as a sexually dangerous person, his lack of sex
17 offender treatment, and his most recent sex offender
18 evaluation and recommendations, I believe that the
19 Condition is reasonable and is warranted and that objection
20 is overruled.

21 So, with those rulings, the -- as I indicated, Mr.
22 Goodpasture's supervised release -- or 24 months of
23 supervised release will be subject to the
24 previously-provided Conditions which I am imposing.

25 Now, with that said, Miss Robertson, does the

1 Government request any further explanation regarding the
2 sentence or the Conditions of Supervised Release?

3 MS. ROBERTSON: We require no further justification
4 of them.

5 I would respectfully request -- well, I'm sure
6 you're going to make the same inquiry with Mr. Schultz,
7 whether he is satisfied with the record that the Court's
8 made on his objections at this point.

9 THE COURT: I'm sure he's not satisfied with the
10 rulings.

11 MS. ROBERTSON: With the record, Your Honor. Not
12 the rulings, the record.

13 THE COURT: Mr. Schultz, does the defendant request
14 any further explanation of the sentence or the Conditions
15 of Supervised Release?

16 MR. SCHULTZ: No, Your Honor.

17 THE COURT: All right. Mr. Goodpasture, sir, you
18 do have a right to appeal your sentence in this case --

19 MS. ROBERTSON: Your Honor? Your Honor? I -- Your
20 Honor, I apologize. I didn't know we were jumping forward
21 that far.

22 Regarding the reading of the right that Mr.
23 Goodpasture has for the Court to make oral pronouncement of
24 all the Conditions which he was unwilling to waive at this
25 point, a formal reading, I'm wondering if he is waiving a

UNITED STATES DISTRICT COURT
for the
Southern District of Illinois

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES K. PASTURE,

Defendant.

Case Number: 07-CR-30185-SMY
FILED UNDER SEAL

OBJECTION TO SPECIAL CONDITIONS OF SUPERVISION

COMES NOW the Defendant, James K. Goodpasture, by and through his attorney, Todd Schultz, Assistant Federal Public Defender for the Southern District of Illinois, and objects to the following proposed special conditions of supervised release:

- 1. Defendant objects to remote alcohol testing and the requirement that he participate in treatment for alcohol dependence.**

Condition Justification: Due to Mr. Goodpasture's history of substance abuse listed in the presentence report, his previous Driving Under the Influence convictions as well as consuming alcohol while in the Residential Reentry Center, the following conditions are recommended:

The defendant shall participate in a remote alcohol testing program and comply with all requirements for a period of 12 months. During this period, the defendant shall pay for all or a portion of the costs associated with this program. Payments will be based on the defendant's ability to pay. The Court directs the probation officer to determine the type of alcohol monitoring technology, monitor the defendant's compliance with the program requirements, determine the copayment amount, and assist in the collection of copayments.

The defendant shall participate in treatment for narcotic addiction, drug dependence, or alcohol dependence, which includes urinalysis and/or other drug detection measures and which may require residence and/or participation in a residential treatment facility, or residential reentry center (halfway house). The number of drug tests shall not exceed 52 tests in a one-year period. Any participation will require complete abstinence from all alcoholic beverages and any other substances for the purpose of intoxication. The defendant shall pay for the costs associated with services rendered, based on a Court approved sliding fee scale and the defendant's ability to pay. The defendant's financial obligation shall never exceed the total cost of services rendered. The Court directs the probation officer to approve the treatment provider and, in consultation with a licensed practitioner, the frequency and duration of counseling sessions, and the duration of treatment, as well as monitor the defendant's participation, and assist in the collection of the defendant's copayment.

Exhibit A, *Proposed Conditions of Supervised Release*, p. 5.

Back in 2018, before Defendant was released from prison, the Court did not believe that either Defendant's history of substance abuse or his previous DUI convictions warranted imposing these two conditions. This is not surprising for several reasons. His DUI convictions are ancient, the most recent of the two being more than twenty years old. The only other information regarding his alcohol use comes from Defendant's mother. According to her, "[Defendant] drank beer at parties at their house but rarely became intoxicated. She did not feel that he ha[d] an alcohol problem." See Doc. 64, *Presentence Report*, p. 15, ¶ 66. These intrusive conditions are not now warranted based upon a single incident where Defendant drank what he thought to be apple juice offered to him by a co-worker, not knowing the drink also contained alcohol, and did not become intoxicated (0.038 BAC). See Exhibit B, *Probation's Violation Conduct*

Summary, p. 4 of 5. The proposed conditions are not reasonably related to applicable § 3553(a) factors and unsupported by the factual record.

2. Defendant objects to proposed location monitoring condition.

Condition Justification: Due to Mr. Goodpasture's lack of accountability while participating in the Location Monitoring program on his first term of supervision as well as his previous designation as a sexually dangerous person, the following condition is recommended:

The defendant shall be monitored by a form of location monitoring indicated below for the entirety of his term of supervision and shall abide by all technology requirements. The participant shall pay all or a portion of the costs of participation in the location monitoring program based on the defendant's ability to pay.

You are restricted to your residence at all times except for employment; education; religious services; medical, substance abuse, or mental health treatment; attorney visits; court-ordered obligations; or other pre-approved activities. (Home Detention)

The Court directs the probation officer to determine the type of location monitoring technology utilized, approve any necessary schedule changes, monitor the defendant's compliance with the program requirements, determine a copayment amount, and assist in the collection of copayments.

Exhibit A, p. 6.

Defendant resided in a half-way house for the entire time of his supervised release, which was almost nine months. During this time, he incurred five violations related to his electronic monitoring. All five were work-related and largely out-of-his-control. Those violations are recounted by Probation in its Violation Conduct Summary as follows:

- On May 19, 2020, a location monitoring (LM) leave alert was received by an LM officer with the Eastern District of Missouri. Mr. Goodpasture was observed via BI mapping traveling from the RRC to an unknown location. It was determined Mr.

Goodpasture was offered a job at Proffer Produce in Park Hills, Missouri, and left the facility to attend orientation without prior approval.

- On May 20, 2020, a location monitoring leave alert was received by an LM officer with the Eastern District of Missouri. Mr. Goodpasture was once again observed traveling to Proffer Produce in Park Hills, Missouri. On both occasions, numerous attempts were made to contact Mr. Goodpasture. The RRC was notified of the second unauthorized leave and stated Mr. Goodpasture received permission from a member of their staff.
- On July 16, 2020, a location monitoring alert was received by an LM officer with the Eastern District of Missouri. Mr. Goodpasture failed to return to the RRC by his designated return time. Mr. Goodpasture reported the transport van was late picking him up. Mr. Goodpasture was informed he is responsible for ensuring he is on time with his location monitoring schedule. Mr. Goodpasture was verbally reprimanded.
- On August 31, 2020, a location monitoring alert was received by an LM officer with the Eastern District of Missouri. Mr. Goodpasture left the RRC prior to his scheduled leave time. Mr. Goodpasture stated he left for work early as the RRC transport van was leaving thirty minutes prior to his scheduled time out. Mr. Goodpasture was verbally reprimanded and reinstructed he needs to communicate with Officer Wright should he need to leave for work earlier than anticipated.
- On September 2, 2020, a location monitoring alert was received by an LM officer with the Eastern District of Missouri. Mr. Goodpasture's schedule required him to be at his employer, Proffer Produce. Mr. Goodpasture left his employment and went to assist his boss' son with moving. Mr. Goodpasture had his boss leave a voicemail with Officer Wright stating where he was going.

See Exhibit B, pp. 3 & 4 of 5.

On May 19, Defendant went to a mandatory orientation for his job. On May 20, Defendant had permission from the half-way house to go to work, just not permission from his probation officer. Without a driver's license, it's not clear what Defendant could have done differently on July 16 when the transport van picked him up late and again on August 31 when the transport van left early. On September 2, Defendant's boss instructed Defendant to help his son move and left a voicemail with Defendant's probation officer letting her know where Defendant was going.

Given the undisputed facts underlying these violations as recounted by Probation in its own Violation Conduct Summary, it strains credulity to suggest that Defendant lacked accountability with respect to his location monitoring, and that consequently, additional location monitoring is needed. During his next term of supervised release, Defendant will be required to reside in a half-way house for 180 days. If history is any guide, probably a lot longer as it's not easy for registrants to find another place that they can live, aside, of course, from prison. While at the half-way house, Defendant's comings and goings will be under a microscope. Thus, not only is this proposed condition not reasonably related to applicable § 3553(a) factors and unsupported by the factual record, it is also duplicative.

3. Defendant objects to third party notification condition.

Condition Justification: Due to Mr. Goodpasture's history of violating the Illinois Sex Offender Registration Act and his conviction for Aggravated Criminal Sexual Abuse and to afford adequate deterrence to further criminal conduct and to protect the public from further crimes, the following condition is recommended:

The defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or history of criminal conduct, whether or not resulting in criminal charges, and shall permit the probation officer to make such notification and to confirm the defendant's compliance with such notification requirement.

Exhibit A, pp. 6-7.

Defendant's sex offenses involved boys under the age of 18. Proposed Condition 10, which Defendant does not oppose, essentially prohibits him from having any contact with boys under the age of 18. Thus, any third party that Defendant comes into contact with will, of necessity, be 18 years old. Otherwise, Defendant will be returning to prison again. There is no evidence that suggests Defendant poses a "reasonably foreseeable" risk of physical harm to any person under the age of 18, i.e., that he "[might] act in a criminal or unacceptable manner similar or related to past conduct." Exhibit A, p. 7. Therefore, the proposed condition lacks factual support.

4. Defendant objects to search condition based upon stated justification.

Condition Justification: Due to Mr. Goodpasture's prior history of possessing controlled substances as well as his consumption of alcohol during his current term of supervised release, the following condition is recommended to afford adequate deterrence to further criminal conduct:

The defendant's person, residence, real property, place of business, vehicle, and any other property under the defendant's control is subject to a search, conducted by any United States Probation Officer and other such law enforcement personnel as the probation officer may deem advisable and at the direction of the United States Probation Officer, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release, without a warrant. Failure to submit to such a search may be grounds for revocation. The defendant shall inform any other residents that the premises and

other property under the defendant's control may be subject to a search pursuant to this condition.

Exhibit A, p. 7.

Defendant maintains that Probation's stated justification for this proposed condition is insufficient. Defendant's unknowing consumption of alcohol at work on one occasion cannot justify such a significant intrusion upon his right to privacy. Nor can the proposed condition be justified based upon Defendant's possession of marihuana as recently as 2007. Pursuant to an unopposed administrative condition, Probation already is able to visit Defendant at "home" and seize any contraband observed in plain view.

5. Defendant objects to proposed internet restrictions.

Condition Justification: Due to Mr. Goodpasture's conviction for Aggravated Criminal Sexual Abuse, his previous designation as a sexually dangerous person, his lack of sex offender treatment, his most recent sex offender evaluation and subsequent recommendations, the following conditions are recommended:

The defendant shall cooperate with the U.S. Probation Office Computer and Internet Monitoring Program. Cooperation shall include, but is not limited to, identifying computer systems, internet capable devices, networks (routers/modems), and/or similar electronic devices (external hard drives, flash drives, etc.) to which the Defendant has access. All devices are subject to random inspection/search, configuration, and the installation of monitoring software and/or hardware. The defendant's financial obligation shall never exceed the total cost of services rendered. The defendant shall pay all or a portion of the costs of participation in the Computer and Internet Monitoring Program based on the defendant's ability to pay. The defendant shall inform all parties who access approved computer(s) or similar electronic device(s) that the device(s) is subject to search and monitoring. The defendant may be limited to possessing only one personal computer and/or internet capable device to facilitate the ability to effectively monitor internet-related activities.

The defendant shall report any and all electronic communication service accounts utilized for user communications, dissemination, and/or storage of digital media files (i.e., audio, video, images, documents, device backups) to the U.S. Probation/Pretrial Services Office. This includes, but is not limited to, email accounts, social media accounts, and cloud storage accounts. The defendant shall provide each account identifier and password, and shall report the creation of new accounts. Changes in identifiers and/or passwords, transfer, suspension and/or deletion of any account shall be reported within five days of such action. The defendant shall permit the U.S. Probation/Pretrial Services Office to access and search any account(s).

Condition Justification: Due to Mr. Goodpasture's previous convictions for Aggravated Criminal Sexual Abuse and Lewd Act Upon a Child and his classification as a child sex offender, the following condition is recommended:

The defendant is prohibited from activity in social media sites, internet chat rooms, and internet forums unless approved by the Court or probation officer.

Exhibit A, pp. 7-9.

Defendant's crimes do not involve the internet. While such cookie-cutter conditions may generally be warranted for sex offenders whose offenses involved the use of the internet, it does not mean they are always warranted for every sex offender. Clearly, such conditions are not narrowly tailored to this Defendant, but instead represent an impermissible one-size fit all approach. Defendant objects to these conditions as the record in this case is devoid of any facts that would justify their imposition. These conditions are not reasonably related to the need to protect the public as Defendant has never used the internet to perpetrate a crime nor is there evidence, to undersigned counsel's knowledge, that he is likely to do so.

Proposed Condition 10, which is unopposed, already prohibits Defendant from contacting any person under the age of 18. This prohibition on contact includes using the telephone, text messaging, or email. Proposed Condition 10 is narrowly tailored to address the specific safety concerns posed by this Defendant. The blanket internet restrictions called for by these proposed special conditions, however, are not. They also are duplicative of state law registration requirements that Defendant must comply with. In Illinois, Defendant must provide the following information when he registers:

a current photograph, current address, current place of employment, the sex offender's or sexual predator's telephone number, including cellular telephone number, the employer's telephone number, school attended, all e-mail addresses, instant messaging identities, chat room identities, and other Internet communications identities that the sex offender uses or plans to use, all Uniform Resource Locators (URLs) registered or used by the sex offender, all blogs and other Internet sites maintained by the sex offender or to which the sex offender has uploaded any content or posted any messages or information, extensions of the time period for registering as provided in this Article and, if an extension was granted, the reason why the extension was granted and the date the sex offender was notified of the extension.

730 ILCS 150/3(a).

Respectfully submitted,

s/ Todd M. Schultz

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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2021, I electronically filed the foregoing with the Clerk of the Court for the Southern District of Illinois U.S. District Court by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Todd M. Schultz
TODD M. SCHULTZ