

No. 21-1264

IN THE
United States Court of Appeals
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JAMES K. GOODPASTURE,

Defendant-Appellant.

On Appeal from the United States District Court
for the Southern District of Illinois, No. 07-CR-30185-SMY
The Honorable Staci M. Yandle, District Judge

BRIEF FOR APPELLEE UNITED STATES

STEVEN D. WEINHOEFT
United States Attorney

AMANDA A. ROBERTSON
Assistant United States Attorney
Office of the United States Attorney
402 W. Main St., Suite 2A
Benton, Illinois 62812
(618) 439-3808

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STATEMENT REGARDING ORAL ARGUMENT

The United States respectfully suggests that the issue presented in this case can be resolved on the record and that oral argument would not substantially benefit this Honorable Court.

JURISDICTIONAL STATEMENT

Defendant-Appellant James K. Goodpasture's ["defendant"] Jurisdictional Statement is complete and correct.

STATEMENT OF THE ISSUE

Whether the district court abused its discretion in imposing five special conditions of supervised release that were reasonably related to the defendant's offense, history and characteristics, the need for adequate deterrence, the need to protect the public from further crimes of the defendant, and the need to provide the defendant with treatment.

STATEMENT OF THE CASE

A. Factual Background

On June 13, 2007, the Jackson County Sheriff's Office received a complaint regarding an adult male having a 13-year-old boy masturbate into a plastic sandwich bag to sell sperm to a sperm bank. R. 40 at par. 42.¹ Officers then spoke with two minor victims, J.M. and M.M, who alleged that, on May 30, 2007, defendant asked them if they would masturbate into a plastic sandwich bag to sell to a sperm bank. According to the boys, defendant had demonstrated how to use a device to masturbate and ejaculate into a bag. *Id.* J.M. later used the device as defendant instructed. J.M. then saved the semen in a baggie, cleaned the device, and placed the baggie of semen in the freezer as defendant had instructed. *Id.* The next day, defendant twice requested that J.M. use the device and J.M. complied. *Id.* Defendant offered to ejaculate for J.M., but J.M. declined defendant's offer. *Id.* On June 1, 2007, defendant took J.M. to Wal-Mart, where defendant purchased a Play Station 2 game for J.M. Later that day, defendant requested that J.M. donate sperm again and J.M. complied. J.M. gave the baggie to defendant, who placed it in the freezer.

¹ References to documents in the Record on Appeal are designated herein as "R." followed by the appropriate number for the document (i.e. R. 1). References to appellant's brief are designated as "Appellant's Br. ___."

Also, the Government recognizes that the contents of PSRs are generally confidential. *See United States v. Kelly*, 314 F.3d 908, 913 (7th Cir. 2003). Where, however, an appellant challenges a district court's decision which is supported, in part, by the adopted findings of the PSR, it is appropriate to cite to relevant portions of the PSR as necessary to provide a factual background for the district court's decision and to address appellant's arguments on appeal. *Id.* (citing *United States v. Strache*, 202 F.3d 980, 987 (7th Cir. 2000)).

Defendant later told J.M. that the video game that defendant had given him was for the sperm donation. *Id.*

J.M. and M.M. told the officers that defendant was soliciting other kids to masturbate into plastic baggies and that defendant had told them that another male, 17-year-old L.B., had made over \$200 donating sperm. R. 40 at par. 43. L.B. admitted to officers that he donated sperm after being approached by defendant. L.B. stated that he slept over at defendant's residence and was awakened multiple times by defendant masturbating him. *Id.*

The same victims also told officers about defendant's showing off a firearm to them at his Cobden residence in Union County. R. 53 at 7. Based on the information provided by the boys, on June 14, 2007, officers executed search warrants at both defendant's Jackson County and Union County residences. R. 40 at para. 7-8, 43. At the Jackson County residence, officers located the device used by the boys, along with a container of lubricant, some sexually explicit magazines, and drug paraphernalia. *Id.* at par. 43. At the Union County residence, officers located a .22 caliber semi-automatic pistol and ammunition in a dresser located next to a bed. R. 40 at para. 7-8.

Defendant denied that he had solicited the boys. R. 40 at 43. Defendant later admitted that he had previously used the gun to shoot coyotes. *Id.* at 7.

On June 14, 2007, defendant was charged in Union County Circuit Court with Unlawful Possession of a Firearm by a Felon. R. 40 at 53. On July 3, 2007, defendant was

charged in Jackson County Circuit Court with Indecent Solicitation of a Child. R. 40 at par. 44.

B. Charging and Plea

On December 4, 2007, a Benton grand jury returned a one-count indictment charging defendant with Unlawful Possession of a Firearm by a Felon, in violation of Title 18, United States Code, § 922(g)(1). R.1. On June 18, 2008, defendant pled guilty to the one-count indictment. R. 24.

C. Sentencing

The Presentence Investigation Report (hereinafter "PSR") determined that defendant had amassed 16 criminal history points. R. 40 at par. 41. At the time defendant committed the instant offense, he had previously been convicted of: 1) Receiving Known Stolen Property; 2) Burglary; 3) Possession of a Controlled Substance; 4) Lewd Act Upon a Child; 5) Driving Under the Influence; 6) Burglary; 7) Driving Under the Influence; 8) Operating an Uninsured Vehicle; 9) Aggravated Criminal Sexual Abuse; 10) Failure to Register as a Sex Offender; 11) Aggravated Criminal Sexual Abuse; and 12) Driving While License Revoked. *Id.* at para. 28-38. The PSR also referenced numerous offenses that were either pending or had been dismissed, including offenses of: 1) Indecent Solicitation of a Child; 2) Theft; 3) Battery; 4) Tamper with Vehicle; 5) Grand Theft Property; 6) Possession of Concentrated Cannabis and Forge/Alter Vehicle Registration; 7) Battery; 8) Contributing to the Delinquency of a Minor; and 9) Battery. *Id.*

at para. 44-52. The PSR set forth multiple instances wherein defendant's criminal justice sentences were revoked, where defendant committed a new criminal offense while serving a court-imposed sentence, and where defendant was disciplined for rules violations while serving terms in the Illinois Department of Corrections. *Id.* at para 28-38.

The PSR found that defendant was a Base Offense Level 24. R. 40 at par. 16. However, the PSR further found that defendant qualified as an Armed Career Criminal, based on his prior convictions for: 1) a 1991 California felony conviction for Lewd Act Upon a Child; 2) a 1999 Illinois felony conviction for Aggravated Criminal Sexual Abuse; and 3) a 2000 Illinois conviction for Aggravated Criminal Sexual Abuse. *Id.* at para. 31, 36, 37. The Lewd Act Upon a Child offense involved defendant's sexual contact with an 11-year old child and involved more than one victim. *Id.* at par. 31. The 1999 Aggravated Criminal Sexual Abuse conviction involved defendant's sexual contact with a female under 13 years of age. *Id.* at par. 36. The 2000 Aggravated Criminal Sexual Abuse conviction involved defendant's sexual contact with a male under 13 years of age. *Id.* at 37. The Armed Career Criminal enhancement created an Offense Level 33. *Id.* at par. 24. With three-levels off for acceptance of responsibility, defendant was an Offense Level 31, Criminal History Category IV, with an applicable guideline range of 180-210 months. *Id.* at par. 75.

Defendant objected to the PSR's determination that the prior California Lewd Act Upon a Child conviction qualified as a violent felony. *See, e.g.,* R. 26, 31, 32, 33. The district

court overruled defendant's objection. R. 34, 35.

At the August 27, 2008, sentencing, the Government asserted that, in addition to the sexual offenses with minors, the defendant had now introduced firearms into the mix, that the firearm offense was associated with the pending Jackson County sex case, and that it was all part of defendant's grooming process with the young boys, asserting that

it's the same young boys that Defendant was having commit sex acts, the same young boys that Defendant would then buy Playstation video games for as payment, purported payment for the sperm. And it's the same young boys that Defendant would show off the firearm to. That's how the Government became aware of the firearm.

R. 53 at 7, 9.

The district court sentenced defendant to 180 months' imprisonment to be followed by eight years' supervised release. R. 39, 45.

D. The Initial Appeal

Defendant appealed the district court's Armed Career Criminal finding and sentence. On February 8, 2010, this Honorable Court reversed the judgment of the district court, finding that the California crime was not a "violent felony" for federal purposes.

United States v. Goodpasture, 595 F.3d 670 (7th Cir. 2010). The Court found that

[t]he district court is entitled to consider what Goodpasture actually did, and the relative ages (Goodpasture was 25 and the victim 11), when exercising discretion under 18 U.S.C. § 3553(a) and the Sentencing Guidelines.... But the 15-year minimum sentence for an armed career criminal does not apply.

Id. at 673.

E. Resentencing

The revised PSR, without the Armed Career Criminal classification, determined that defendant was an Offense Level 21, Criminal History Category VI, where the guideline range was 77 to 96 months. R. 64 at par. 74. Referencing the district court's consideration of a variance, the PSR set forth:

A conviction for lewd and lascivious conduct with a minor did not qualify as a predicate offense for armed career offender purposes; however, the Court can consider his actions with regard to 18 U.S.C. § 3553(a) factors. In that case, the defendant placed lotion on the bare legs of a eight-year old victim and then put his penis between the victim's legs at which time he would masturbate himself. A second victim was awakened by the defendant who had pulled his pants down and was apparently in contact with the 11-year-old victim's then erect penis. Whether a variance is appropriate is a matter for the Court to review.

Id. at par. 86.

At the April 9, 2010, resentencing hearing, the district court varied upward and imposed a sentence of 108 months. R. 65, 67. The district court found the following § 3553 factors supported the above-guideline sentence: 1) the nature and circumstances of the offense and the history and characteristics of the defendant; 2) the need to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; 3) to afford adequate deterrence to criminal conduct; and 4) to protect the public from further crimes of the defendant. R. 68 at 3. In further explanation for the above-guideline 108-month sentence, the district court stated that the "Criminal history under representing the seriousness of his crimes and convictions." *Id.* Defendant was

also ordered to serve a term of three years' supervised release. R. 65, 67.

F. Eastern District of North Carolina Civilly Commits Defendant as a Sexually Dangerous Person

On May 9, 2016, while defendant was serving his 108-month sentence, he was civilly committed as a sexually dangerous person, pursuant to 18 U.S.C. § 4248, in the Eastern District of North Carolina. *See* R. 71 at 6; R. 72, R. 73, R. 98 at 3. The North Carolina district court determined that defendant met the criteria for civil commitment in that he was engaged in or attempted to engage in sexually violent conduct or child molestation; he suffered from a serious mental illness, abnormality, or disorder; and as a result of which he would have serious difficulty in refraining from sexually violent conduct or child molestation if released. *Id.* More specifically, the North Carolina district court further found that defendant engaged in sexually violent conduct in the past, he suffered from pedophilic disorder (non-exclusive type) and antisocial personality disorder, and he committed three prior acts of sexual conduct while on some form of supervision. *Id.* The North Carolina district court considered the interaction of defendant's two mental health conditions and found that it made re-offense more likely. *Id.* The district court also considered a report from Dr. Dale Arnold which noted defendant's antisocial personality disorder "aggravates his risk of acting upon Pedophilic urges in that it impairs his ability to learn from experience or care about the consequences of his sexually abusive behavior upon others." *Id.*

Defendant appealed the North Carolina district court's sexually dangerous

classification and judgment. *United States v. James K. Goodpasture*; 16-6670 at Doc. 52. On September 8, 2017, the Fourth Circuit affirmed the judgment and concluded that the district court “did not clearly err in finding that defendant would have serious difficulty refraining from sexually violent conduct or child molestation if released from incarceration.” *Id.* 2.

G. Defendant Seeks and Agrees to Modification to the Terms of Supervised Release

Defendant’s civil attorney contacted the U.S. Probation Office and advised that he was going to seek defendant’s release. R. 71. On October 1, 2018, the United States Probation Office submitted a Request for Modifying the Conditions or Term of Supervision with Consent of the Offender (“Motion to Modify”), signed by defendant and his attorney, to the Honorable Staci M. Yandle.² *Id.* The Motion to Modify advised the district court of the above-stated information concerning defendant’s 2016 Eastern District of North Carolina commitment as a sexually dangerous person. *Id.* at 6. The district court was advised, *inter alia*, of the North Carolina district court’s findings that defendant would have serious difficulty refraining from sexually violent conduct or child molestation if released, that defendant had committed three prior acts of sexual conduct while on some form of supervision, that defendant’s antisocial personality disorder aggravated his risk of acting upon Pedophilic urges and impairs his ability to learn from

² On October 10, 2018, the case was reassigned to the Honorable Staci M. Yandle. R. 70.

experience or care about the consequences of his sexually abusive behavior upon others, and that the interaction of defendant's two mental health conditions made re-offense more likely. *Id.*

While the Motion to Modify advised the district court that defendant was currently in BOP custody for an indeterminate period of time, it also advised that defendant's attorney indicated his plan to seek defendant's release. R. 71 at 7. Because defendant's civil attorney was going to seek defendant's release, the United States Probation Office submitted defendant's Waiver of Hearing to Modify Conditions of Supervised Release to the district court. R. 71-1. Defendant and his attorney agreed to and signed the modifications. R. 71 at 7, R. 71-1. Those new conditions that defendant agreed to included, *inter alia*: 1) residing in a Residential Reentry Center for up to 180 days and abiding by all its rules and regulations; 2) that defendant's person, residence, real property, vehicle, computers, etc. would be subject to search by any U.S. Probation Officer, at a reasonable time and in a reasonable manner; 3) that defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or history of criminal conduct; 4) that defendant shall be monitored via location monitoring for 180 days; 5) that defendant shall be on home detention and restricted to his residence at all times except for certain exceptions, including employment and mental health treatment; 6) that defendant shall abstain from the use or possession of all alcoholic substances; and 7) that defendant is prohibited from activity in social media sites, internet chat rooms,

and internet forums. R. 71-1. On October 15, 2018, the district court issued the requested and agreed to modifications. R. 71 at 7.

H. Defendant's Civil Commitment Dismissed

On March 2, 2020, defendant's civil commitment was dismissed. R. 72 at 1.

During that proceeding, defendant "was evaluated by three experts; two of them believed that he was still dangerous and that he was a risk to the community; one did not." R. 108 at 41-42.

I. Defendant's Violations of Supervised Release

On March 31, 2020, defendant began his term of supervised release. *See* R. 72. Pursuant to the agreed upon terms of supervised release, defendant was placed on location monitoring and placed at the Southeast Missouri Behavior Health Residential Reentry Center in Farmington, Missouri. *Id.* On April 6, 2020, the U.S. Probation Office requested that defendant's 180-day location monitoring requirement be suspended until defendant was released from the reentry center. *Id.* This request was based on the probation officer's belief that defendant's contact with the community would be limited while he was residing at the residential reentry center. *Id.* On April 6, 2020, the district court granted the request. *Id.* at 2.

On April 15, 2020, the U.S. Probation notified the district court and requested that the location monitoring requirement be reimposed. R. 101-2; *see also* R. 108 at 53. This request was made because the probation officer learned from the residential reentry

center that defendant would be allowed movement from the facility. R. 101-2, R. 108 at 53. The probation officer advised the district court that “While I don’t like having LM days spent while someone is at an RRC facility and not in the community, I prefer to err[sic] on the side of caution and keep a close eye on Mr. Goodpasture’s whereabouts.” *Id.* On April 15, 2020, the district court reimposed the requirement and authorized installment of the location monitoring equipment. *Id.* On April 17, 2020, defendant signed the Location Monitoring Program-Participant Agreement. R. 101-1 at 2.

On August 19, 2020, defendant signed a Waiver of Hearing to Modify Conditions of Supervised Release requesting to continue residing at the residential reentry center. R. 73-1. The defendant and probation office requested the extended placement, as defendant’s initial 180-day placement was set to expire on September 26, 2020, and defendant had no other residence. R. 73. On August 21, 2020, the district court granted the requested modification. *Id.*

On November 16, 2020, a Petition for Warrant for Offender Under Supervision was filed (“Petition to Revoke”). R. 74. The Petition to Revoke asserted nine violations occurring between May 19, 2020, and November 10, 2020. *Id.* The Petition to Revoke asserted the following violations:

A. Defendant failed to abide by his location monitoring requirements on: May 19, 2020, May 20, 2020, July 16, 2020, August 31, 2020, and September 2, 2020;

B. Defendant failed to abide by the rules and regulations of the Residential Reentry Center on October 11, 2020, and November 10, 2020;

C. Defendant consumed alcohol and had a blood alcohol content of .038 on November 10, 2020;

D. On June 9, 2020, it was learned that defendant failed to comply with the requirements of his sex offender treatment program.

Id.

On November 19, 2020, defendant appeared before Magistrate Judge Reona J. Daly. R. 78. Defendant waived preliminary hearing and was ordered detained. *Id.*

The revocation hearing was held on January 14, 2021. R. 93, 108. The Sentencing Options, which included a Summary of Violation Conduct was admitted into evidence. R. 98, R. 108 at 15-17. The Summary of Violation Conduct set forth defendant's violations, as follows:

1. 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.

2. 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 May 21, 2020, Eastern District of Missouri Probation Officer Lindsey Wright contacted Mr. Goodpasture. Officer Wright verbally reprimanded Mr. Goodpasture for leaving the RRC without prior authorization and redirected him on the process of obtaining authorization through submission of home confinement schedules on a weekly basis. A three-way

staffing was held with Officer Wright, Mr. Goodpasture, and his case manager, Brianna Johnson, to ensure all parties were aware of the seriousness of Mr. Goodpasture leaving without the probation office's approval and the requirement of prior submission of the home confinement schedule. Mr. Goodpasture acknowledged the violation.

3. On June 7, 2020, a location monitoring 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 traveling to work; however, this was not placed on his LM schedule. A message was sent to the monitoring device instructing Mr. Goodpasture to contact his officer immediately, but he failed to do so. Multiple attempts to reach Mr. Goodpasture were unsuccessful.

4. On June 9, 2020, Officer Wright provided the Southern District of Illinois with a letter of noncompliance stating Mr. Goodpasture failed to begin participation in sex offender treatment. McGuire Counseling was unsuccessful in reaching Mr. Goodpasture. Mr. Goodpasture made prior statements that he did not need sex offender treatment although he admitted that he willfully agreed to have such conditions added to his supervision. Mr. Goodpasture was reinstructed on the importance of maintaining compliance with the location monitoring program.

5. 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.

6. 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.

7. 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. Mr. Goodpasture was verbally reprimanded and reinstructed on the conditions and rules of the location monitoring program and the responsibility of obtaining permission three days prior for all schedule changes.

8. On October 12, 2020, a critical incident report was received from the RRC. A random room inspection was conducted on Mr. Goodpasture's locker. The inspection uncovered two box cutter knives as well as an excessive amount of food. Mr. Goodpasture was verbally reprimanded. Mr. Goodpasture was also notified further noncompliance would result in a removal of his passes.

9. On November 10, 2020, Nick Vaughn, Director of the SEMO RRC notified Officer Wright of a critical incident report. Mr. Goodpasture failed a breathalyzer at 1:17 a.m. upon returning from work. Mr. Goodpasture's blood alcohol content level was 0.038. After fifteen minutes, at 1:32 a.m. another breathalyzer was conducted which revealed a blood alcohol content level of 0.035. Upon questioning Mr. Goodpasture about the incident, he laughed and stated he was drinking apple juice from a vending machine at work. Mr. Goodpasture informed Officer Wright he consumed approximately one-half gallon of apple juice while at work that night. Mr. Goodpasture was verbally reprimanded for consuming alcohol. Mr. Goodpasture was reminded he has a condition which states he is to abstain from alcohol throughout the entirety of his supervised release. Mr. Goodpasture continued to laugh regarding the violation throughout the telephone contact. Mr. Vaughn notified Officer Wright the RRC facility has a zero-tolerance alcohol policy and Mr. Goodpasture would be terminated from the facility.

On November 10, 2020, Mr. Goodpasture contacted the SDIL probation officer and stated he consumed apple juice from co-workers after work. He stated he did not think there was any alcohol in the apple juice. Mr. Goodpasture was informed he is responsible for whatever he puts in his body.

R. 98 at 3-5.

Defendant admitted to the violations. R. 93. Regarding sentencing recommendations, the Government recommended either 8 months' incarceration with 8 months' supervised release or 24 months' incarceration. R. 108 at 18. The Government outlined defendant's criminal history, including the 2007 sexual contact with juveniles that resulted in the instant firearm offense, and asserted that protection of the public was the most important § 3553 factor.

Defendant requested a sentence of time-served (a little less than two months) and to "continue him with a period of supervised release of two years," and halfway house placement until defendant was able to find a suitable residence. R. 108 at 22, 31. Defense counsel provided explanations for the violations and argued that, while it might be easier to send defendant back to prison, it was not the right thing to do. *Id.* at 23 -29

After defendant allocated, the district court stated:

THE COURT: Mr. Goodpasture. Mr. Goodpasture. Sir, do you understand what I have to do? I get it. I would love to be able to let you vent all the things that you are frustrated with. I'm not -- I'm not insensitive to them. But they're not what's relevant to my consideration, sir, which is, you have admitted to the violations. You are guilty of violations. There are certain factors then that I have to consider in order to impose an appropriate disposition in sentencing you in this case.

The things that you are articulating to me are complaints about the system, complaints about your supervision, complaints about Probation. To be honest with you --

Look, I -- this 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 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.

Id. at 39-43.

When the district court inquired of defendant as to whether he had had an opportunity to review the previously provided Proposed Conditions of Supervised Release with his attorney, defendant advised "I did not sign 'em and I'm not going to sign 'em." R. 108 at 44. After a break, defense counsel requested a short continuance to

review the conditions with defendant and file written objections. *Id.* at 47-49. The case was continued to January 20, 2021. *Id.* at 50.

On January 19, 2021, defendant filed his Objections to Special Conditions of Supervision (“Objections”). R. 91. Defendant objected to the following conditions: 1) remote alcohol testing and the requirement that he participate in treatment for alcohol dependence; 2) location monitoring; 3) third party notification; 4) search condition; and 5) computer and internet restrictions. *Id.*

On January 27, 2020, sentencing on the revocation was reconvened. R. 101, 108. Initially, defendant attempted to withdraw his admissions to the Petition to Revoke. R. 108 at 54-57. The district court denied defendant’s request. *Id.* at 57.

The district court then overruled defendant’s objections. The district court advised that it had re-reviewed the revocation documents and the PSR from the original conviction. R. 108 at 59. Regarding defendant’s objection to the imposition of the remote alcohol testing requirement and the requirement that defendant participate in treatment for alcohol dependence, the district court stated:

Again, I have reviewed his objections and the bases for his objections. 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.

Id. at 59-60.

While the district court was ruling on defendant's location monitoring objection, defendant disrupted the proceeding and the following statement and exchange took place:

Mr. Goodpasture next objects to the Special Condition regarding location monitoring. That objection is 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.

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

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

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

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

(Pause.)

All right. Thank you.

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.

Id. at 60 -61.

In overruling defendant's objection to the third-party notification condition, the district court stated:

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.

R. 108 at 61.

The district court overruled defendant's objection to the search requirement, finding that condition was warranted, reasonable, and necessary given defendant's prior history of possessing controlled substances and his consumption of alcohol during his current term of supervised release. R. 108 at 62.

Regarding defendant's objections to the proposed internet restrictions the district court stated:

[defendant] 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.

R. 108 at 62.

After the Court overruled defendant's objections, it inquired of defense counsel,

as follows:

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

MR. SCHULTZ: No, Your Honor.

R. 108 at 63.

Because defendant was unwilling to waive a formal reading of the conditions of supervised release, the district court read each of the conditions and condition explanations to defendant. R. 108 at 64-92.

While the district court was reading the conditions, defendant continued to disrupt the hearing. For example, when the district court was reading the location monitoring condition, defendant stated "I ain't doing that ." R. 108 at 80. When the district court was reading the work condition, the following exchange took place:

THE COURT: The defendant shall work regularly at a lawful occupation -

THE DEFENDANT: No.

THE COURT: -- unless excused by the probation officer for schooling, training, or other acceptable reasons.

THE DEFENDANT: I -- I don't know why we're wasting our time here, Your Honor. I -- I mean --

THE COURT: Because you asked me to waste our time.

THE DEFENDANT: This is -- this is a waste of time, Your Honor.

THE COURT: Mr. Goodpasture? You requested that I read these Conditions. I'm reading these Conditions.

THE DEFENDANT: And I have already -- and I have already told the attorney that I'm not going to abide by 'em because what you are doing to me is you're --

THE COURT: Mr. Goodpasture, I'm not going to -

THE DEFENDANT: -- you're -- this is not going to fucking work.

THE COURT: I'm reading this and I'm not trying to hear what you are saying.

THE DEFENDANT: I know. You didn't want to hear what I said when it -- when the monitoring was going on --

MR. SCHULTZ: Mr. Goodpasture --

THE DEFENDANT: -- for going to work and back.

THE COURT: Mr. Goodpasture, this is an official proceeding. If you don't want to participate, you can get up and leave. But I don't want to -

THE DEFENDANT: I want to hear -

THE COURT: -- otherwise -

THE DEFENDANT: -- I want to hear the rest of this dictatorship.

THE COURT: -- otherwise, you will not disrupt -- otherwise, you are not going to disrupt this proceeding. So, either you sit there and participate as you have a right to, or you can get up and leave.

THE DEFENDANT: Come on. Okay. We'll finish. We'll finish it out. I'm appealing it, so it don't matter.

THE COURT: Okay. You can appeal, but you're not appealing today.

THE DEFENDANT: Okay.

THE COURT: Either you sit there and listen and participate or you can leave. But, but you are not going to do what you are doing now.

THE DEFENDANT: Okay. Thank you. I'm -- I won't.

Id. at 81-83.

After the district court completed reading all of the conditions and condition explanations for supervised release, defendant again advised that he requested no further explanation regarding the sentence or the conditions of supervised release. R. 108 at 92. Written judgment was entered on February 10, 2021. R. 103. On February 10, 2021, defendant filed his timely Notice of Appeal. R. 102.

J. Current Status.

Defendant is incarcerated at Memphis-FCI and has a projected release date of November 15, 2021. See <https://www.bop.gov/inmateloc/> (last visited May 22, 2021).

SUMMARY OF ARGUMENT

When sentenced on his 2007 federal firearm offense, defendant had amassed 16 Criminal History Points. He had multiple prior convictions for sex offenses involving children, had failed to register as a sex offender, had two DUIs, and routinely violated the terms of his court-imposed sentences. In 2016, while serving his 108-month sentence in the instant offense, defendant was civilly committed as a sexually dangerous person.

Defendant's civil commitment was dismissed and he began his three-year term of supervised release in March 2020. Defendant committed numerous violations, including violating his location monitoring condition, drinking alcohol, possessing two box cutter knives at the residential reentry center, and failing to attend sex offender counseling. Defendant's supervised release was revoked and he was sentenced to 12-months' imprisonment to be followed by 24-months' of supervised release.

The district court did not abuse its discretion by imposing special conditions including: 1) remote alcohol testing and alcohol treatment; 2) location monitoring and home confinement; 3) third party risk notification; 4) a search condition; and 5) computer monitoring and social media restrictions. Most of the complained-of conditions are the same conditions that defendant sought and agreed to in 2018 -- when he was seeking release from his civil commitment. The conditions are appropriate and reasonably related to defendant's offense, history and characteristics; the need for adequate deterrence; and the need to protect the public from further crimes of the defendant.

ARGUMENT

I. The district court did not abuse its discretion in imposing five special conditions of supervised release that were reasonably related to the defendant's offense, history and characteristics, the need for adequate deterrence, the need to protect the public from further crimes of the defendant, and the need to provide the defendant with treatment.

A. Introduction

Defendant has been convicted of numerous prior sex offenses involving children. In addition, defendant's history involves numerous other criminal convictions and violations of court-imposed sentences. In 2016, while serving his 108-month sentence for the instant firearm offense, defendant was civilly committed as a sexually dangerous person. In 2018, in the hopes of being released from incarceration, defendant sought and agreed to multiple modifications of his future term of supervised release.

In March 2020 defendant was released from custody and began serving his three-year term of supervised release. Shortly thereafter, defendant committed his first location monitoring violation. Thereafter, defendant committed four more location monitor violations, got caught with two box cutter knives in his locker at the half-way house, and committed a use of alcohol violation. At his revocation hearing, defendant admitted to the violations and his term of supervised release as revoked.

Upon revocation, the district court sentenced defendant to 12-months' imprisonment to be followed by 24-months' of supervised release. The district court imposed five special conditions over defendant's objections. Those special conditions involved: 1) remote alcohol testing and alcohol treatment; 2) location monitoring and

home confinement; 3) third party risk notification; 4) a search condition; and 5) computer monitoring and social media restrictions. Many of the objected-to conditions were the same conditions that defendant sought and agreed to in 2018 -- when he was hoping to be released from his civil commitment.

On appeal, defendant asserts that the district court abused its discretion in imposing the complained-of conditions of supervised release. There was no abuse of discretion in this case.

B. Standard of Review

On appeal, this Court defers to the district court's decision to impose a special condition of supervised release and reviews the decision for abuse of discretion. *United States v. Paul*, 542 F.3d 596, 599 (7th Cir. 2008); *United States v. Schave*, 186 F.3d 839, 841 (7th Cir. 1999). A district court "abuses its discretion when it resolves a matter in a way that no reasonable jurist would, or when its decision strikes us as fundamentally wrong, arbitrary, or fanciful." *Paul*, 542 F.3d at 599.

C. Legal Standard

A district court must satisfy three requirements in imposing a discretionary condition of supervised release. 18 U.S.C. §§ 3553(a), 3583(c)-(d). First, the condition "must be reasonably related to (1) the defendant's offense, history and characteristics; (2) the need for adequate deterrence; (3) the need to protect the public from further crimes of the defendant; and (4) the need to provide the defendant with treatment." *United States v. Kappes*, 782 F.3d 828, 845 (7th Cir. 2015); 18 U.S.C. § 3583(d)(1). Such a condition also

“cannot involve a greater deprivation of liberty than is reasonably necessary to achieve the goal of deterrence, incapacitation, and rehabilitation.” *Id.*; 18 U.S.C. § 3583(d)(2). Lastly, the condition must be consistent with any relevant statements issued by the United States Sentencing Commission. *Id.*; 18 U.S.C. § 3583(d)(3).

“The judge need not address every factor ‘in checklist fashion, explicitly articulating its conclusions regarding each one.’ ” *Kappes*, 782 F.3d at 845, quoting *United States v. Shannon*, 518 F.3d 494, 496 (7th Cir. 2008). “The court may simply give an adequate statement of reasons, consistent with § 3553(a), for thinking the sentence it selects is appropriate.” *Shannon*, 518 F.3d at 496.

The point of supervised release is to rehabilitate persons discharged from prison and to assist their law-abiding return to society. *See United States v. Johnson*, 529 U.S. 53, 59, 120 S.Ct. 1114 (2000); *Kappes*, 782 F.3d at 836–37; *United States v. Neal*, 810 F.3d 512, 519 (7th Cir. 2016). Conditions of supervised release should facilitate an offender's transition back to ordinary life rather than stand as “a significant barrier into a full reentry into society.” *Neal*, 810 F.3d at 519 (citations omitted). Protection of the public from further crimes by the defendant is also an important goal of supervised release. *Id.*

To these ends, the law gives district courts flexibility and discretion to formulate a beneficial plan of supervised release. But “a judgeship does not come equipped with a crystal ball,” so predictions about appropriate conditions of supervised release are imperfect. *Kappes*, 782 F.3d at 838. The fact that a sentencing judge may reduce or modify terms of supervised release at any time, *see* 18 U.S.C. § 3583(e)(2), may lead the judge to

resolve uncertainties at the time of sentencing in favor of a long but reducible period. *Id.* at 846.

D. Argument

When imposing its sentence in this case, the district court noted that this was not a typical case and that you could not look at the violations of supervised release in a vacuum. R. 108 at 41. The district court found that defendant's history, including that, as recently as March 2020, two of three experts still believed defendant remained a sexually dangerous person - coupled with his criminal history and the nature of his supervised release violations, warranted the imposition of certain conditions of supervised release. The district court noted its concerns regarding defendant and his violations, stating:

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 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.**

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 do think it is the right decision to make.

Id. At 41-42 (emphasis added).

Regarding the reimposition of supervised release, the district court stated that:

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.

R. 108 at 43.

Prior to ruling on defendant's objections, the district court stated "I have re-reviewed the revocation-related filings in this case and I have re-reviewed the Presentence Investigation Report from the original conviction. The district court did not abuse its discretion in imposing the complained-of conditions in this case.

1. Remote Alcohol Testing and Participation in Treatment for Alcohol Dependence.

The district court ordered defendant to participate in a remote alcohol testing program for a period of 12 months and to participate in treatment for alcohol dependence.

R. 99 at 5; R. 108 at 59, 76. The district court supported the imposition of this condition by noting that

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.

Id. at 59-60.

The district court noted that it re-reviewed the PSR. In addition to the two convictions for Driving Under the Influence, the PSR also includes a prior conviction for Possession of a Controlled Substance and prior arrests for Possession of Concentrated Cannabis and Contributing to the Delinquency of a Minor. *See* R. 64 at para. 29, 47, 49, and 66. The PSR also noted that drug paraphernalia was located during the 2007 search warrant execution. R. 40 at Par. 43.

Importantly, defendant consumed alcohol in violation of his supervised release. Furthermore, according to the Summary of Violation Conduct, defendant was not forthright and provided contrary explanations for his .038 BAC reading. Initially, defendant laughed and stated that he was drinking apple juice from a vending machine at work. *See* R. 98 at 4. Defendant also laughed throughout his conversation with his Eastern District of Missouri probation officer and advised that he drank approximately one-half gallon of apple juice at work. *Id.* However, when defendant later spoke with his Southern District of Illinois probation officer, defendant changed his “vending machine at work” story and stated that he consumed apple juice from co-workers after work. *Id.* at 5.

Defendant’s history of drug and alcohol use and offenses, coupled with his recent

November 9, 2020, alcohol use and accompanying dishonesty supports the imposition of the condition requiring 12-month remote alcohol testing and alcohol treatment. *See, e.g. United States v. Speed*, 811 F.3d 854, 860 (7th Cir. 2016); *see also Paul*, 542 F.3d at 600 (finding no abuse of discretion in imposition of drug testing condition where defendant had a “history of alcohol abuse that resulted in three separate drunk driving convictions and an additional arrest for the same offense.”). The record sufficiently supports this condition and the district court did not abuse its discretion.

2. Location Monitoring

On May 19, 2020, only one month and two days after the location monitoring equipment was placed on defendant, he committed his first location monitoring violation. R. 74, 98, 101-1 at 2. Thereafter, defendant proceeded to commit four more location monitoring violations. R. 74, R. 98, R. 101-1, R. 108 at 9, 16. As he did in the district court, on appeal, defendant continues to provide excuses and explanations for his location monitoring violations. *See, e.g., Appellant’s Br.* at 6, 18-19. Clearly, the district court did not accept defendant’s excuses. Defendant admitted to the violations and the district court expressly found that defendant had not taken the requirement seriously. Defendant’s location monitoring violations were especially troubling in light of his history and his unaccountability. For instance, regarding the June 7, 2020, violation, the Summary of Violation Conduct notes that “[defendant] was observed via BI mapping traveling from the RRC to an unknown location. It was determined Mr. Goodpasture was traveling to work; however, this was not placed on his LM schedule. **A message was sent**

to the monitoring device instructing Mr. Goodpasture to contact his officer immediately, but he failed to do so. Multiple attempts to reach Mr. Goodpasture were unsuccessful.” R. 98 at 4 (emphasis added). Likewise, defendant’s excuse for his September 2, 2020, location monitoring violation was that he left work and “went to assist his boss’ son with moving.” *Id.* at 4. Purportedly, a person identified as defendant’s boss left a voicemail as to where defendant was going. *Id.*

That the district court found that defendant did not take his obligation to comply with the terms of supervised release seriously and that he disregarded the conditions is certainly reasonable and supported by the record. That the district court further found that defendant’s personal and criminal history warranted the reimposition of location monitoring and home confinement was also reasonable and appropriate. When re-imposing the location monitoring and home confinement, the following exchange took place:

THE COURT: Due to Mr. Goodpasture's lack of a 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 imposed: 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 DEFENDANT: I ain't doing that.

R. 108 at 79-80.

The district court went on to advise that the type of location monitoring utilized would be based on, but not limited to the following factors: Nature of the offender’s

instant offense, criminal history, identified victim in the community, and apparent risk to the community. R. 108 at 81.

It is interesting to note that the location monitoring and home confinement conditions that defendant complains about, after violating his supervised release, are the same conditions that he agreed to in 2018, when he hoped to get out of prison. In October 2018, while defendant was imprisoned on a civil commitment as a sexually dangerous person, defendant's attorney sought to modify defendant's his terms of supervised release and agreed to include location monitoring and home confinement. *See* R. 71 at 7; R. 71-1 a 3-4.

On appeal, defendant also asserts that the location monitoring is unnecessary during the 180 days that defendant is residing in a residential reentry center. Appellant's Br. at 20. However, as evidenced by defendant's multiple location monitoring violations *while residing at* the residential reentry center during his initial stint on supervised release, this claim is without merit. The district court did not abuse its discretion in re-imposing location monitoring and home confinement.

3. Third Party Notification

In October 2018, in the hopes of release from incarceration, defendant agreed to a third-party notification condition which provided that "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.” R. 71-1 at 3. On appeal, defendant now complains that, upon revocation, the district court imposed the exact same condition. R. 103 at 6. Additionally, defendant’s claim that his sex offenses and failure to register are over 20 years old, wholly ignores defendant’s 2007 sexual misconduct that led to the discovery of the charged firearm in this case.³

In overruling defendant’s objection to the third-party notification condition, the district court stated:

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.

R. 108 at 61.

Prior to imposing sentence, the district court noted that she had re-reviewed the PSR and the revocation documents. The PSR sets forth a long history of defendant’s unlawful sexual contact with children and violations of court-imposed sentences. Likewise, all three of his sex offense convictions occurred while defendant was on some form of supervision. R. 71 at 6. The third-party notification condition, which again, defendant agreed to in October 2018, is reasonably related to defendant’s history, deterrence, and most importantly, the need to protect the public from future crimes. The

³ In the district court and on appeal, defendant repeatedly erroneously claims that no state charges arose from defendant’s 2007 sexual misconduct wherein defendant was having minor boys masturbate and ejaculate into baggies. *See, e.g.* R. 64 at par. 52; R. 108 at 22; Appellant’s Br. at 6.

district court did not abuse its discretion.

4. Warrantless Search of Places and Things in Defendant's Control

The district court overruled defendant's objection to the search requirement, finding that condition was warranted, reasonable, and necessary given defendant's prior history of possessing controlled substances and his consumption of alcohol during his current term of supervised release. R. 108 at 62. While defendant claims that the search condition is "onerous" it is the exact same search condition he sought and agreed to, in October 2018, when he wanted to be released from incarceration. See R. 71-1 at 2. The search condition that defendant now complains of, which was imposed *after* he violated his terms of supervised release provides:

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.

Condition Explanation: All searches are to be conducted by the U.S. Probation Office with the assistance of law enforcement if deemed necessary. This condition does not authorize a law enforcement agency, outside the presence of the U.S. Probation Office, to initiate and conduct a search without a warrant. Searches are

generally conducted between the hours of 6:00 a.m. and 10:00 p.m. and can occur any day of the week. Depending on the circumstance and/or conduct of the defendant, searches may occur outside of the previously stated hours. For example, if the defendant works shift work and is unavailable during the stated hours, a search may occur at other times. Searches pursuant to this condition are based on reasonable suspicion meaning that the probation officer must have 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. If the defendant refuses to allow the probation office to execute a search, or obstructs a search, the defendant is in violation of this condition which may result in the Court being petitioned to revoke the defendant's supervision.

R. 99 at 7.

Defendant does not explain why, a condition that he sought, was deemed appropriate and agreed to in October 2018, is now “onerous,” in 2021, after defendant has failed in his initial term of supervised release

While the Sentencing Commission recommends that persons convicted of sex offenses against minors *always* be subject to a special condition permitting warrantless searches, U.S.S.G. § 5D1.3(d)(7), the Commission has also said that the same condition “may otherwise be appropriate in particular cases.” § 5D1.3(d); *see Neal*, 810 F.3d at 520-21. This is an appropriate case.

In the present case, one of defendant’s violations occurred when two box cutter knives were found in his personal property in a locker at the residential reentry center. R. 98 at 4. Similarly, in the instant offense, the charged firearm was located in a dresser by defendant’s bed. R. 40 at par. 8; R. 64 at par. 9. To the extent that defendant now believes that the complained-of search requirement is duplicative to the uncomplained-of condition allowing probation to seize items in plain view, that assertion fails. The

district court did not abuse its discretion in finding that defendant's history warranted the imposition of the search condition.

7. **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 Explanation: All searches are to be conducted by the U.S. Probation

Office with the assistance of law enforcement if deemed necessary. This condition does not authorize a law enforcement agency, outside the presence of the U.S. Probation Office, to initiate and conduct a search without a warrant. Searches are generally conducted between the hours of 6:00 a.m. and 10:00 p.m. and can occur any day of the week. Depending on the circumstance and/or conduct of the defendant, searches may occur outside of the previously stated hours. For example, if the defendant works shift work and is unavailable during the stated hours, a search may occur at other times. Searches pursuant to this condition are based on reasonable suspicion meaning that the probation officer must have 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. If the defendant refuses to allow the probation office to execute a search, or obstructs a search, the defendant is in violation of this condition which may result in the Court being petitioned to revoke the defendant's supervision.

The defendant shall permit the probation officer to have access to any personal computer and/or electronic device (e.g. cellular devices, tablets, gaming devices, etc.) capable of accessing the internet, World Wide Web, and electronic mail. The probation officer, and/or designee working at the direction of the probation officer, will conduct regular searches using software monitoring devices if determined to be necessary. Regular searches can consist of software being installed on the defendant's computer and/or electronic devices to continuously monitor the defendant's activity. The defendant's current employer, or any potential employer, must be advised of any and all computer-related restrictions imposed by the Court.

R. 99 at 7-8 (emphasis added).

In the condition justification, the district court states that it is relying not only on Defendant's criminal history and previous designation as a sexually dangerous person, but also his lack of sex offender treatment and "his most recent sex offender evaluation and subsequent recommendations." R. 108 at 88.

Additionally, the district court imposed a condition prohibiting defendant from activity in social media sites, internet chat rooms, and internet forums unless approved by the Court or probation officer. R. 99 at 9. This condition was justified "due to [defendant]'s previous convictions for Aggravated Criminal Sexual Abuse and Lewd Act

Upon a Child and his classification as a child sex offender. *Id.* Similar to the other special conditions to which defendant now complains, in October 2018, defendant agreed to conditions providing probation access to defendant's computers, electronic devices, e-mails, social media sites internet chatrooms and forums. *See* R. 71-1 at 2-3, 5. As set forth by the district court, these conditions were appropriate and there was no abuse of discretion. Nor are the conditions overbroad. *See United States v. Morgan*, 987 F.3d 627, 634 (7th Cir. 2021) (recognizing that judges generally impose computer search requirements on sex offenders who are required to register under the Sex Offender Registration and Notification Act.).

In this case, some of the contents of the 2016 Eastern District of North Carolina Order, which declared defendant a sexually dangerous person, are set forth throughout the revocation documents. *See, e.g.*, R. 71 at 6; R. 72, R. 73, R. 98 at 3. However, neither the 2020 EDNC Order which dismissed the case nor its contents are contained in this record. In fact, the only two facts from the 2020 Order that are contained in this record are: 1) that the civil case was dismissed on March 1, 2020; and 2) that two of the three experts still believed that defendant was a sexually dangerous person. R. 98 at 3; R. 108 at 41-42.

While the 2020 Order is contained nowhere in this record, on appeal, defendant repeatedly cites to the Order and quotes its contents in support of his arguments. *See, e.g.*, Appellant's Br. at 2 ("but a judge dismissed that case in 2000, finding ... 'his sex offenses were over 20 years ago, he had not suffered deviate 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.”); *Id.* at 14 (same); *Id.* at 19 (“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).”).

The Government respectfully asserts that defendant’s citation to and reliance on the North Carolina 2020 Order is inappropriate and that those portions of defendant’s brief should be stricken. If, however, this Honorable Court determines citation to and reliance on the Eastern District of North Carolina’s 2020 Order is appropriate, the Government would respectfully assert that that same district court’s extensive 2016 Order, is also appropriate for this Court’s review. See *United State v. Goodpasture*, 2016 WL 10677890 (May 10, 2016, EDNC).

This case differs from those wherein a district court is asked to impose terms of supervised release which will not come into effect for 20-25 years. Nor was this an

instance wherein the district court had to predict how a defendant might perform on supervised release 20-25 years in the future. Rather, this was an instance wherein the district court was fully aware of how defendant had just performed on a short stint of supervised release --- he had failed. Similarly, this was a defendant who was going to start his second term of supervised in less than one year.

The district court noted that this was not typical case and a review of the record and defendant's history certainly supports that statement. There is no question that, if defendant is going to be able to successfully reintegrate into society, he is going to need assistance. Of course, where defendant advised the court at the sentencing hearing that "I already told my attorney - I'm not going to obey" the terms of supervised release, that does not bode well for defendant's success. Nor does the fact that defendant feels that he does not need sex offender treatment. There is no question that the district court imposed conditions of supervised release that were based on defendant's history and characteristics. It's further clear that the district court imposed conditions that were aimed at both assisting and facilitating defendant's transition back to ordinary life and to protect the public from further crimes by the defendant.

The district court reviewed the PSR, the revocation documents, and defendant's most recent evaluation and recommendations prior to imposing sentence. The complained-of terms of supervised release were reasonable related to history of defendant, deterrence, and need to protect the public.

Finally, if this Court determines that the complained-of conditions of supervised

release should be vacated, the Government asserts that a remand for resentencing would be appropriate. *See, e.g., Kappes*, 782 F.3d at 867 (there “might properly be an interplay between prison time and the term and conditions of supervised release,” so that the resentencing on remand should not be limited to the term and conditions of supervised release, but the sentencing judge should be free to “alter the prison term and/or other conditions to ensure that the purposes of deterrence, rehabilitation, and protecting the public are appropriately furthered by the overall sentence.”); *United States v. Downs*, 784 F.3d 1180, 1182 (7th Cir.2015) (“Prison and fine, prison and restitution, and also prison and supervised release can as we've just noted be substitutes as well as complements. So if in this case on remand the judge narrows any of the conditions of supervised release or shortens their duration, he may wish to reexamine the prison sentence that he imposed....”); *United States v. Griffin*, 806 F.3d 890, 895 (7th Cir. 2015) (“if the judge chooses on remand to narrow or broaden the terms of supervision, he may also review and alter the terms of supervision as well.”).

CONCLUSION

For the foregoing reasons, the United States respectfully requests that this Court affirm the judgment of the district court.

Respectfully submitted,

STEVEN D. WEINHOEFT
United States Attorney

/s/ Amanda A. Robertson
AMANDA A. ROBERTSON
402 West Main Street, Suite 2A
Benton, IL 62812
Phone: (618) 439-3808
Fax: (618) 439-2401

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION,
TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS**

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B)(i), as modified by Circuit Rule 32(c), because this brief contains 11,647 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and Seventh Circuit Rule 32(b), and the type style requirements of Fed. R. App. P. 32(a)(6), because this brief has been prepared using Microsoft Word 2016, in 12-point Book Antiqua font, a proportionally spaced typeface.

Respectfully Submitted,

STEVEN D. WEINHOFET
United States Attorney

/s/ Amanda A. Robertson
AMANDA A. ROBERTSON
402 West Main Street, Suite 2A
Benton, IL 62812
Phone: (618) 439-3808
Fax: (618) 439-2401

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

UNITED STATES OF AMERICA,)	COURT OF APPEALS
)	NO. 21-1264
Plaintiff-Appellee,)	
)	Southern District of Illinois
vs.)	District Court No. 07-30185-SMY
)	
JAMES K. GOODPASTURE,)	Honorable Staci M. Yandle,
)	Judge Presiding
Defendant-Appellant.)	

CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2021, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing and by placing said copy in a postpaid envelope addressed to the following:

Todd Schultz
Assistant Federal Public Defender
650 Missouri Avenue, room G10A
East St. Louis, IL 62201

/s/ Amanda A. Robertson
AUSA