

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

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| UNITED STATES OF AMERICA, |) | |
| Appellee, |) | |
| |) | |
| v. |) | No. 14-2037 |
| |) | |
| DONALD J. JONES, III, a/k/a “Don Juan,” |) | |
| Defendant-Appellant. |) | |

**APPELLEE-UNITED STATES’ MEMORANDUM
IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION**

Introduction

Because the district court (Smith, C.J.) adequately explained the contested sentence and did not abuse its discretion substantively, the Court should summarily affirm under First Circuit Local Rule 27(c).

Background

In 2012, a District of Rhode Island jury convicted defendant-appellant Donald J. Jones, III, of six crimes: (1) crossing state lines with the intent to engage in a sexual act with a person under the age of 12, 18 U.S.C. § 2241(c) (Count 1); (2) using a means of interstate commerce, namely the internet, in an attempt to induce a person under the age of 18 to engage in sexual activity that would constitute a crime under Rhode Island law, 18 U.S.C. § 2422(b) (Count 2); (3) traveling in

interstate commerce with the purpose of engaging in illicit sexual conduct with a person under the age of 18, 18 U.S.C. § 2423(b) (Count 3); (4) transporting child pornography in interstate commerce, 18 U.S.C. § 2252(a)(1) (Count 4); (5) possessing child pornography, 18 U.S.C. § 2252(a)(4)(B) (Count 5); and (6) committing the offenses alleged in Counts 1-3 while required to register as a sex offender, 18 U.S.C. § 2260A (Count 6). *United States v. Jones*, 748 F.3d 64, 65-68 (1st Cir. 2014).

The charges were based on Jones's conduct in traveling from New Jersey to have sex with an eight-year-old girl he expected to spend several days with in a Rhode Island hotel room, and on the elaborate preparations which led up to his journey. *Jones*, 748 F.3d at 65-68. This Court has already summarized many of the obscene and chilling details of the crimes. *Id.*

At the original sentencing held in 2013, the district court (Smith, C.J.) sentenced Jones to mandatory minimum life sentences on Counts 1 and 2. (A:43-46.)¹ It imposed sentences of 10, 20, 30 and 40 years on the remaining counts, the 10-year term to run consecutively with the

¹ The appendix is cited as "A:___."

sentences on the first three counts. (*Ibid.*) Thus, the overall prison term was “life plus 10 years.” *Jones*, 748 F.3d at 68.

In the initial direct appeal, this Court affirmed Jones’s convictions but vacated the two mandatory life sentences because the statutory criteria for them had not been met. *Jones*, 748 F.3d at 68-74. With the exception of the 10-year mandatory minimum sentence, it vacated the remaining sentences as well, just in case the district court wished to reassess those sentences in light of the changed circumstances. *Id.* at 74.

On remand, the Presentence Report noted (among other things) that: (1) Count 1 carried a mandatory minimum 30-year sentence (PSR ¶ 77); (2) Count 6 carried a consecutive mandatory minimum 10-year sentence (PSR ¶ 77); and (3) “the guideline range is 360 months to life, plus ten years consecutive for Count Six” (PSR ¶ 78; A:64-65). Thus, Jones faced a minimum overall sentence of 40 years in prison.

At a resentencing held on September 11, 2014, the district court sentenced Jones to concurrent 40-year terms on Counts 1 and 2 in lieu of the earlier life sentences, and reimposed the 20-, 30- and 40-year terms for the other counts that had been remanded for resentencing.

(A:74-75.) It then added the consecutive 10-year term that this Court had left undisturbed, for a total overall sentence of 50 years. (*Ibid.*) Jones filed a *pro se* notice of appeal (A:17,81) that appears to be timely under the so-called “mailbox rule” for filings by inmates. *See* Fed. R. App. P. 4(b)(1)(A)(i), 4(c)(1).

Argument

1. There was no plain procedural error

Jones argues for the first time that the district court committed procedural error by allegedly failing to provide an adequate explanation for imposing the within-guidelines sentence. (Br. 8-16.) He does not address the standard of review. Because the procedural claim was not raised below, review is for plain error. *See United States v. Castro-Caicedo*, 2014 WL 7331738, *9 (1st Cir. Dec. 24, 2014); *United States v. Ramos*, 763 F.3d 45, 56 (1st Cir.), *cert. denied*, 135 S. Ct. 305 (2014); *United States v. Lucena-Rivera*, 750 F.3d 43, 53-54 (1st Cir. 2014); *United States v. Rodríguez*, 731 F.3d 20, 25 (1st Cir. 2013), *cert. denied*, 134 S. Ct. 1329 (2014); *United States v. Batchu*, 724 F.3d 1, 12 (1st Cir.), *cert. denied*, 134 S. Ct. 663 (2013).

At the resentencing, the district court explicitly addressed several of the factors in 18 U.S.C. § 3553, and it adequately explained its sentencing decision, as discussed in greater detail below. (A:73-75.) Moreover, the court's own remarks leave no doubt that it considered and rejected the defense attorney's stated position that more than 40 years would be "overkill." (A:70,74.) Jones's nuanced parsing of the sentencing transcript (Br. 10-14) fails to uncover any error; still less does it establish a "plain" error.

In any event, this same record makes abundantly clear that there is no chance Jones would receive a lower sentence if the case were remanded for the district court to provide a lengthier explanation concerning why it chose a sentence of 50 years instead of the minimum of 40 years. (A:73-75.) Thus, there is no basis for reversal even if he can show a plain procedural error. *See, e.g., Rodríguez*, 731 F.3d at 25-28.

2. There was no substantive abuse of discretion

Jones also argues that his sentence is too long as a substantive matter. (Br. 16-25.) As he eventually recognizes (Br. 24), review is for an abuse of discretion. *See United States v. Rivera-González*, 2015 WL 234774, *2 (1st Cir. Jan. 20, 2015).

There was no such abuse here. The district court was justified in finding that Jones fully intended to have sex with the eight-year-old girl he expected to meet in the hotel room, that he was a hardened sexual predator, and that he posed an ongoing threat in light of his appalling offense conduct and his prior child sex conviction. (A:73-75.) This Court itself has recounted the horrific details of Jones's offenses of conviction, the many frightening remarks he has made indicating that he has victimized other children in the past and would do so again given the chance, as well as other evidence that led the Court to characterize him as a "predator." *Jones*, 748 F.3d at 65-68. If more were needed, the record reflects that Jones not only has a prior child sex conviction, but that he also has previous convictions for child pornography and failure-to-register offenses. (PSR ¶¶ 56-61.) Moreover, the instant child pornography offenses involved a staggering 5,812 images. (A:58.)

At least in combination, these factors amply supported the overall sentence of 50 years – a sentence that was ten years above the very minimum that could have been imposed and that was within the guideline range. The mere fact that the 40-year sentence that Jones desires could keep him in prison until he is roughly 90 years old,

whereas the 50-year sentence he received could keep him in prison until he is roughly 100 years old (excluding the reduction that inmates typically receive as “good time” credit), is not enough to make the 50-year sentence substantively unreasonable. Moreover, the fact that Jones’s intended victim in this case turned out not to be the real eight-year-old girl he fully expected to exploit says little or nothing about his penchant for committing child sex offenses and his potential danger as a reoffender.

In sum, the district court’s sentencing rationale was more than “plausible,” the individual sentences imposed were well within the “universe of reasonable sentences,” and the total sentence to be served was hardly “indefensible.” *Rivera-González*, 2015 WL 234774, *5-6.

Conclusion

For these reasons, the Court should summarily affirm pursuant to
Local Rule 27(c).

Respectfully submitted,

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Certificate of Service

I certify that on January 29, 2015, I electronically served a copy of
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