

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

19 CR 521 (PKC)

5 PETER BRIGHT,

6 Defendant.

Sentence (by video)

7 -----x  
8 New York, N.Y.  
9 November 4, 2020  
11:25 a.m.

10 Before:

11 HON. P. KEVIN CASTEL,

12 District Judge

13 APPEARANCES

14 AUDREY STRAUSS

15 Acting United States Attorney for the  
Southern District of New York

16 BY: ALEXANDER LI

TIMOTHY HOWARD

17 MICHAEL MAIMIN

Assistant United States Attorneys

18 FEDERAL DEFENDERS OF NEW YORK, INC.

19 Attorneys for Defendant

20 BY: AMY GALLICCHIO

ZAWADI BAHARANYI

1 THE COURT: This is United States of America v. Peter  
2 Bright. Appearance for the government.

3 MR. LI: Good morning, your Honor, Alexander Li for  
4 the government on the video conference. With me by telephone  
5 is AUSA Timothy Howard and Michael Maimin.

6 THE COURT: Good morning to you all.  
7 For the defendant.

8 MR. LI: Ms. Gallicchio, I cannot hear you.

9 THE COURT: Have you dialed in? Click the reconnect  
10 audio and perhaps dial in.

11 Appearing for the defendant.

12 MS. GALLICCHIO: Good morning, your Honor, the Federal  
13 Defenders by Amy Gallicchio for Mr. Peter Bright. Also by  
14 telephone in attendance is Zawadi Baharanyi.

15 THE COURT: Good morning to you both.

16 Mr. Bright, can you see me?

17 THE DEFENDANT: Yes, I can.

18 THE COURT: Mr. Bright, I guess that also means you  
19 can hear me, is that correct?

20 THE DEFENDANT: That's correct, yes.

21 THE COURT: Ms. Gallicchio, this is a video proceeding  
22 in which I can see the prosecutor, I can see you, I can see  
23 Mr. Bright and Mr. Bright, I understand, can see me.

24 Can you tell me whether Mr. Bright consents to do this  
25 sentencing remotely? I want to state for the record, from the

1 Court's perspective, there is no burden to me in doing it in a  
2 courtroom. In fact, I have a sentencing on in courtroom 11D  
3 this afternoon. So if for any reason Mr. Bright would prefer  
4 to do this in person, I can easily accommodate that and  
5 accommodate that quickly.

6 Let me hear from you, Ms. Gallicchio.

7 MS. GALLICCHIO: Yes. Thank you, your Honor.

8 First of all, I seem to have lost the Court's video  
9 feed. I don't know if I'm the only one. I see two videos of  
10 Mr. Bright and one of Mr. Li.

11 THE COURT: Mr. Li, can you see me?

12 MR. LI: Yes, your Honor, I can see you. You're at  
13 the bottom of my screen. So I don't know if Ms. Gallicchio is  
14 seeing this the same way I am, but I see one row of three  
15 screens. I see myself, the defendant, Ms. Gallicchio, and then  
16 in a lower row I see your Honor. But I do see your Honor.

17 THE COURT: Mr. Bright, can you see me?

18 THE DEFENDANT: Yes, I can.

19 THE COURT: Thank you.

20 I'm happy to wait, Ms. Gallicchio, if you want to log  
21 out and log back in. That's fine with me. I certainly can see  
22 you, but I would be happy to wait if you want to log out and do  
23 it over again.

24 MS. GALLICCHIO: That's OK, your Honor. It's fine.  
25 For some reason I have two videos of Mr. Bright instead -- it

1 does say judge under the caption, but it's a picture of  
2 Mr. Bright. I am prepared to proceed, your Honor. I can hear  
3 you clearly.

4 In response to the Court's question, I did have  
5 extensive conversations with Mr. Bright by telephone and in  
6 video conference with respect to his right to be present in  
7 court in person with me by his side at the time of sentencing,  
8 after consultation with me, and he has indicated that he  
9 consented to and preferred to proceed by way of video.

10 THE COURT: Is that correct, Mr. Bright?

11 THE DEFENDANT: Yes, it is.

12 THE COURT: With regard to sentencing materials,  
13 Ms. Gallicchio and Mr. Li, the question will be whether I have  
14 everything I should have. I have a presentence report,  
15 recommendation, and addendum, revised by probation on September  
16 22, 2020. I have a sentencing memorandum from Mr. Bright which  
17 annexes letters from his parents, from each of his two sisters,  
18 and a report from Meg Kaplan, Ph.D. The sentencing memorandum  
19 exists in both the redacted and in an unredacted form. I also  
20 have a letter from the government, dated October 30, 2020. And  
21 I have a letter from Inner City Press in which Inner City Press  
22 seeks access to the redacted portion of the defendant's  
23 sentencing submission, including Exhibit A thereof.

24 Do I have everything I should have on the subject of  
25 sentencing, Ms. Gallicchio?

1 MS. GALLICCHIO: Yes, your Honor, you do.

2 THE COURT: Mr. Li.

3 MR. LI: Yes, you do, your Honor.

4 I would ask, however, that before we proceed to the  
5 substance of the sentencing that the Court make the CARES Act  
6 findings with respect to the defendant's remote appearance and  
7 that defense counsel states the basis of those findings for the  
8 record.

9 THE COURT: What specifically are you seeking me to  
10 find?

11 MR. LI: Yes, your Honor.

12 That under the CARES Act a felony sentencing can  
13 proceed remotely by telephone or video conference only if the  
14 Court finds specifically that the sentencing cannot be delayed  
15 without serious harm to the interests of justice. I believe  
16 Ms. Gallicchio, based on our conversation, we have discussed  
17 specific reasons why the defense believes that finding can be  
18 made, and I would ask that Ms. Gallicchio state those reasons  
19 on the record and the Court make the findings before we  
20 proceed.

21 THE COURT: Ms. Gallicchio.

22 MS. GALLICCHIO: Yes, your Honor. Thank you.

23 Your Honor, Mr. Bright has been incarcerated obviously  
24 now for 18 months, and he has been incarcerated at the MCC  
25 under extreme restrictive conditions, not only currently, due

1 to the pandemic. But also prior to that, as the Court is well  
2 aware, the conditions at the MCC are restrictive under normal  
3 circumstances.

4 He has not had access to, at least during the  
5 pandemic, the necessary mental health treatment that he did  
6 actually receive prior to the pandemic. And so we believe that  
7 though we understand restrictions will be in place not only at  
8 the MCC but at other institutions, we believe that the MCC's  
9 ability to receive the necessary mental health treatment is  
10 more restrictive than it would be at any other facility.  
11 Therefore, the interests of justice would be that he be  
12 sentenced as soon as possible so that he could be relocated to  
13 a facility where hopefully he will receive better medical  
14 treatment.

15 THE COURT: I appreciate that. But as I pointed out  
16 before Mr. Li raised this issue, I'm doing a sentencing this  
17 afternoon in courtroom 11D. I could have sentenced Mr. Bright  
18 in courtroom 11D at this hour. I am in the courthouse, as you  
19 can see, or maybe you can't see, but I'm here. I have a plea  
20 on and a sentence on. So help me out here.

21 MS. GALLICCHIO: Sure. Your Honor, I'm sorry to cut  
22 you off. Since I can't see you, sometimes it's not clear to me  
23 when you are finished speaking, so I apologize.

24 Your Honor, Mr. Bright does continue to have concerns  
25 over the coronavirus, which is obviously still a concern

1 particularly for inmates and it is a concern in New York. I  
2 understand that there are precautions in place, of course, in  
3 the courthouse, but I think that the dangers are increased for  
4 those that are traveling from the jail by way of U.S. Marshals  
5 into the courthouse, where they are in custody, potentially are  
6 at greater risk than those of us entering through the front  
7 door of contracting the coronavirus, those who come in and out  
8 of the courthouse, new arrestees, etc.

9           Additionally, your Honor, even though I understand the  
10 quarantines technically are not supposed to take place  
11 following a visit to the courthouse, I understand that they are  
12 still continuing on a certain basis. That, additionally, is a  
13 difficulty that we would like to avoid happening. It is  
14 incredibly restricted, punishing, isolating, and, therefore, it  
15 was for that reason, those reasons, your Honor, that Mr. Bright  
16 wished to proceed by way of video.

17           THE COURT: Thank you.

18           Mr. Li, do you agree that the defendant has made out a  
19 basis for an interest in justice in such a finding?

20           MR. LI: I do, your Honor. And specifically I would  
21 note that although the Court is available today to sentence the  
22 defendant in person, I think defense counsel has stated, and I  
23 think that's correct, there would be a delay in getting him  
24 into the courtroom due to the current coronavirus protocols,  
25 and that defense counsel has stated a basis to avoid that delay

1 in order to avoid serious harm to the interests of justice,  
2 specifically his need for treatment at a permanent facility.

3 THE COURT: I find that the interests of justice are  
4 served by proceeding remotely today and not delaying this  
5 sentencing further. I will note, in addition, I adopt the  
6 reasons stated by both Ms. Gallicchio and, further, I will say  
7 that having someone appear in a courtroom does require advanced  
8 requests, and they cannot always be honored. I cannot say that  
9 I could have had two defendants in my courtroom today. I only  
10 know that I have one in my courtroom today. That's the most I  
11 could say.

12 Based on my review of the PSR, Mr. Bright appears to  
13 be in a risk category because of his apparent body mass index  
14 and, therefore, his concerns about being in the courtroom are  
15 founded in fact. So I find that it is in the interests of  
16 justice to proceed telephonically and by video transmission and  
17 not to do it in the courtroom or delay it further.

18 Now, with regard to the Inner City Press application,  
19 I have filed the application or caused it to be filed on the  
20 docket. I am going to direct the parties to submit a letter  
21 brief to be filed on ECF by noon on November 6.

22 And to help out here, the case that I think both the  
23 government and the defendant should take a look at is Judge  
24 Koeltl's decision in *United States v. Melissa King*, which is  
25 2012 WL 2196674 in which Judge Koeltl indicated that a



1 sentencing submission, including one discussing the defendant's  
2 medical conditions and the like, should be produced, but that  
3 redactions would be appropriate for information regarding third  
4 parties, such as discussions of the medical or mental situation  
5 relating to parents or siblings or spouse. I would ask for  
6 that by noon on Friday. That's where we are on that.

7 Ms. Gallicchio, has Mr. Bright read, reviewed, and  
8 discussed with you the presentence report, recommendation, and  
9 addendum?

10 MS. GALLICCHIO: Your Honor, I have reviewed it with  
11 him and read it to him. I have not provided him with a copy of  
12 it because of the obvious risks.

13 THE COURT: Does the defendant have any objections to  
14 the facts set forth in the presentence report?

15 MS. GALLICCHIO: Your Honor, other than what we have  
16 already noted in the presentence report -- obviously, we  
17 dispute his guilt -- aside from that, no.

18 THE COURT: Does the defendant have any objections to  
19 the guideline range set forth in the presentence report?

20 MS. GALLICCHIO: No, your Honor. As we indicated, we  
21 believe that the Department of Probation has accurately  
22 calculated the guidelines.

23 THE COURT: I have a point to raise about the  
24 guidelines, and I'm always open to being educated. But I'm  
25 looking at the grouping of offenses section of the PSR and

specifically the two-level enhancement in paragraph 38. But my review of the guidelines indicate that grouping of offenses only occurs where there are offenses to be grouped.

Mr. Bright, correct me if I'm wrong, was indicted and convicted in a single-count indictment. And under the guidelines the grouping can relate to either a single charging information, indictment or information, as well as some other related indictment or information of which the defendant is being sentenced. All I know is of one single count. And I don't see where the grouping of offenses is appropriate because I only know of one offense.

Help me out here, Ms. Gallicchio or Mr. Li.

MR. LI: Your Honor, I refer the Court specifically to guideline 2G1.3(d). And specifically subsection (d)(1) states: If the offense involved more than one minor, chapter 3, part D: Multiple counts shall be applied as if the persuasion, enticement, coercion, travel or transportation to engage in a commercial sex act or prohibited sexual conduct of each victim had been contained in a separate count of conviction. I believe that is the basis.

THE COURT: The guidelines section is?

MR. LI: Section 2G1.3(d)(1).

THE COURT: I'm reading it and I must say, I never encountered it before. It's labeled special instruction. If the defense involved more than one minor, chapter 3, part D:

1 Multiple counts shall be applied as if the persuasion,  
2 enticement, coercion, travel, or transportation to engage in a  
3 commercial sex act or prohibited sexual conduct of each victim  
4 had been contained in a separate count of conviction.

5 It appears that that is properly calculated under  
6 grouping of offense principles.

7 Any basis to challenge that, Ms. Gallicchio?

8 MS. GALLICCHIO: No, your Honor. Unfortunately, that  
9 section speaks for itself.

10 THE COURT: Thank you.

11 Does the government have any objections to the facts  
12 set forth in the presentence report?

13 MR. LI: No, your Honor.

14 THE COURT: Any objections to the guideline  
15 calculation?

16 I know you take the position that Mr. Bright's  
17 testimony at trial warrants an obstruction enhancement. I have  
18 read your argument and specifically read the case law under it.  
19 And the case which I think you rely on most heavily, I think  
20 it's *Davis*. And that was a case in which the denial -- I have  
21 it wrong. It's *Bonds*, 933 F.2d 152. That was a case where the  
22 defendant claimed that he did not know that the currency was  
23 counterfeit, an objectively viable fact, and, of course, it  
24 could be that the falsity of that testimony could be proven by,  
25 for example, the statement by the defendant that he knew it was

1 counterfeit, or some such thing of that. I am not so sure that  
2 the statements that you reference are of the type that would  
3 enable the Court to form a firm and abiding belief that they  
4 were perjurious.

5 Do you want to add anything to your papers in that  
6 regard?

7 MR. LI: Yes, your Honor.

8 I think in the case of *Bonds* that the Court  
9 referenced, the Second Circuit specifically emphasized the  
10 knowing elements, that is, the intent element. And in the  
11 *Bonds* case the defendant denied that he knew, that is, he  
12 denied the intent element. And what the Court held was that by  
13 finding that the defendant Bonds was guilty of knowingly, and  
14 the Court emphasized the word knowingly, distributing  
15 counterfeit money, the Court necessarily determined that  
16 Mr. Bonds knew that the money he distributed was counterfeit.

17 THE COURT: That argument was subsequently rejected by  
18 the circuit in a case, it was an appeal from a decision by  
19 Judge Leval sitting in the district court, and they said that  
20 judges are not to automatically apply the obstruction  
21 enhancement. It's not like, well, the statement is  
22 inconsistent with the trial testimony. Therefore, the  
23 obstruction enhancement applies. The circumstantial has  
24 rejected that line of reasoning.

25 MR. LI: I am not certain the case the Court is

1 referring to. To my knowledge, *Bonds* has not been overruled.  
2 And I do think that the line of cases reflecting that if the  
3 testimony of the defendant is inconsistent with an element that  
4 the jury must find in order to convict the defendant, then, by  
5 a necessary inference, the jury must have found that the  
6 defendant committed perjury in denying that element. That is  
7 essentially the principal set forth in the *Bonds* case. And I'm  
8 not aware of that principle being overruled in the Second  
9 Circuit.

10 THE COURT: I think I can help you with that.

11 I mixed up the case. It may not have been an appeal  
12 from a Judge Leval -- no. It was. Actually, it was. My  
13 recollection happens to be correct. The Court said *Johnson's*  
14 reading of *Bonds* are similarly deficient. And the Court goes  
15 on to say: I am not saying that they modified bonds, but  
16 district judges -- if the argument that the defendant was  
17 urging, district judges would be substantially deprived of fact  
18 finding power, even when the judge has observed the witness at  
19 trial and holds a firm and abiding belief that a witness has  
20 lied on the witness stand. Specifically, the guidelines were  
21 not intended to turn sentencing judges entirely into sentencing  
22 automatons devoid of fact-finding powers, and we refuse to read  
23 them as such.

24 I read the law of the circuit as not ever compelling  
25 the application of the obstruction, regardless of judge's

1 observations. That's where I stand on that.

2 Let me hear from Ms. Gallicchio.

3 MS. GALLICCHIO: Your Honor, not surprisingly, I would  
4 agree with the Court. As we have already indicated in our  
5 submission, and I think even in *Bonds*, your Honor, the Court  
6 does hold that certainly -- this holding shouldn't be  
7 interpreted as authorizing a sentencing Judge to impose  
8 obstruction of justice whenever defendant has testified in his  
9 own behalf. I think the facts of *Bonds*, as the Court has  
10 already indicated, really are distinguishable from the type of  
11 testimony that we have here.

12 THE COURT: Without any further delay, I find that the  
13 enhancement is not warranted, and I decline to impose it.

14 Other than that, does the government have any  
15 objections to the guideline calculation set forth in the  
16 presentence report?

17 MR. LI: No, your Honor.

18 THE COURT: I find that the defendant is at total  
19 offense level 40, criminal history category I. The guideline  
20 range is 292 to 365 months. And I will give Ms. Gallicchio the  
21 opportunity to speak.

22 MS. GALLICCHIO: Thank you, your Honor.

23 I do also want to address, and perhaps maybe after we  
24 make our statements, the question of the fine and the question  
25 of the assessment.

1 I will begin with my argument with respect to  
2 sentencing, your Honor. Obviously, we have asked the Court to  
3 consider a sentence of 10 years, which is the mandatory minimum  
4 that the Court must impose. It is our position that the  
5 guidelines themselves, the guideline range that the Court has  
6 found of 292 to 365 months, is excessive. It's shockingly  
7 unreasonable and, as we have indicated, unworthy of deference.  
8 Honestly, it doesn't really seem to be that there is really  
9 much dispute about that. The Department of Probation is  
10 clearly of the opinion, of that same opinion, by recommending a  
11 sentence of 120 months.

12 If I may, even the government, though they don't  
13 recommend a number of months, they don't suggest that the  
14 guideline range is appropriate.

15 THE COURT: I noticed that, Ms. Gallicchio. The  
16 silence on that point was deafening.

17 MS. GALLICCHIO: Right.

18 We suggest that the Court seek guidance from the  
19 sentencing practices in the district, which is why we provided  
20 the Court with a sampling of cases that were in some regard  
21 similar to the scenario that Mr. Bright was convicted of.  
22 Obviously, it's hard to compare cases. But this is what we  
23 thought were good examples for the Court. And the vast  
24 majority of similarly situated defendants were sentenced only  
25 to the mandatory minimum.

1           And I do recognize that in most of the examples  
2 provided to the Court, they were guilty pleas. However, I  
3 think that can be balanced against or compensated by the fact  
4 that the underlying conduct in those cases that we provided as  
5 examples are actually, I think in most of them, more egregious  
6 than that with which Mr. Bright was convicted of, including  
7 cases where sexual conduct or contact actually took place.

8           So we ask the Court to look to sentences in this  
9 district below guideline range. Of course, our guideline range  
10 is much more excessive than those others. But based on the  
11 nature of the underlying conduct, I think it's a fair  
12 comparison to make.

13           Regardless, your Honor, a sentence in the guideline  
14 range, whether it be, as the government has suggested, the 30  
15 years to life, but as the Court has found, 292 to 365, is  
16 certainly unreasonable, unwarranted, and irrational,  
17 considering the other factors, considering 3553(a) factors.

18           Ten years, your Honor, is not a slap on the wrist.  
19 It's an extreme sentence, even for the most hardened criminal.  
20 And it's even more extreme and punishing for someone with no  
21 prior record, like Mr. Bright, and someone like him, who  
22 suffers from mental illness, and who, because of the offense of  
23 conviction, will have a much more difficult and dangerous than  
24 most.

25           Furthermore, your Honor, Mr. Bright is thousands of



1 miles away from his family and faces the real possibility that  
2 he will never see his elderly father again, who is 83 years  
3 old. Certainly, this will be experienced as much more  
4 punishing.

5 Of course, Mr. Bright has already experienced extreme  
6 punishment during his 18 months at the MCC, as I've already  
7 indicated. Despite the fact that pretrial detention is not  
8 supposed to punish under normal times at the MCC, the  
9 conditions are substandard and notoriously dangerous,  
10 unsanitary, rat infested, and punitive. But even more so now  
11 that the pandemic has gripped the nation, its punishing nature  
12 of the pretrial conditions of confinement have certainly  
13 increased significantly.

14 As the Court is well aware, I know I'm not the first  
15 person who has made this argument to the Court, since March, at  
16 least, there has been a perpetual lockdown. And now, including  
17 today, it is for 22 hours a day and that's on a good day. It's  
18 extremely debilitating and dehumanizing to be locked in a cell  
19 for that amount of time every day for months on end. In  
20 addition, there is the constant fear of contracting the deadly  
21 virus that exacts a price on a person's mental health,  
22 including Mr. Bright's.

23 The courts in this district, as the Court is aware,  
24 and I know the Court has routinely taken this factor into  
25 serious consideration when imposing sentence, and we are asking

1 your Honor to do the same in this case.

2 Your Honor, I would just like to also move on to this  
3 case, the facts in this case, which don't contain the  
4 aggregating factors that are commonly found in cases of this  
5 type.

6 As the Court is well aware, there was no child  
7 pornography found in this case, sent in this case, none  
8 possessed, none produced, none traded. There was no online  
9 activity that incites children or teenagers. There is no  
10 online activity at all seeking minors. And there is no  
11 evidence of prior sexual contact with children.

12 Which leads me to Mr. Dr. Kaplan's report, which I  
13 won't revisit in detail, but just to point out that, after a  
14 battery of tests, Dr. Kaplan did not believe that there was any  
15 hint of pedophilic or deviant sexual behavior. She noted  
16 Mr. Bright normal, not at all ill, and specifically that he was  
17 not a pedophile.

18 Additionally, Mr. Bright's counselor, who he was  
19 seeing about a year before he was arrested on this case, is in  
20 complete agreement with that assessment and believes, as he  
21 found, he meets no criteria for pedophilia.

22 I think those are factors important for the Court's  
23 consideration and certainly do provide mitigation in support of  
24 the sentence substantially below the guidelines range; if not,  
25 a sentence of the mandatory minimum.

1           Lastly, your Honor, I would like to point to certainly  
2     the history and characteristics of Mr. Bright and specifically  
3     the letters of support that his family has provided to the  
4     Court, which has provided a vivid picture of his childhood and  
5     his struggles in life and particularly his struggle with  
6     depression. He does have a lifelong history of severe  
7     depression, is diagnosed with major depressive disorder for  
8     which he sought treatment in the community from a therapist,  
9     and is on medication.

10           He has struggled with his depression during his  
11    incarceration and certainly will continue to do so. He has had  
12    to adjust a new form of medication because the medication that  
13    he was accustomed to is not one in which the BOP provides, and  
14    he has certainly not received the degree and type of treatment  
15    necessary to manage his illness.

16           And while hopefully things will be better in a state  
17    facility, it never can be as good as what he actually requires  
18    and would receive in the community.

19           His family, your Honor, is a hundred percent  
20    supportive of Mr. Bright. As I'm sure your Honor saw, his  
21    family traveled from the UK to attend his sentencing  
22    proceeding. But their distance certainly will make his time in  
23    prison even more challenging.

24           In sum, your Honor, considering all of the factors  
25    discussed today and in our submission, we ask the Court to

1 impose a sentence of no more than the ten-year mandatory  
2 minimum.

3 THE COURT: Thank you, Ms. Gallicchio.

4 Mr. Bright, this is your opportunity to speak, to  
5 bring to my attention any facts or circumstances that you  
6 believe I should take account of in passing sentence upon you  
7 today. If there is anything you wish to say, this is the time  
8 to say it.

9 THE DEFENDANT: I have some specific things to say  
10 just because I'm sure the prosecutor will make certain claims  
11 that I would be lying to Dr. Kaplan and lying to my therapist.  
12 I didn't lie to them. Lying to my therapist in particular, who  
13 I was paying a lot of money for, or my insurance company was,  
14 would be entirely counterproductive. I know if they get a hold  
15 of my therapist, they deal with people with various sexual  
16 issues, including people that identified themselves to him as  
17 pedophiles. If I was such a person, he would be someone who  
18 would be safe to make an acknowledgement as part of his  
19 experience and his expertise to talk to such people. I didn't  
20 identify myself as such because I am not. I don't know. And I  
21 was not lying to my therapist over the course of a year.

22 THE COURT: Thank you very much.

23 Ms. Gallicchio, you had something else you wanted to  
24 say with regard to a fine.

25 MS. GALLICCHIO: Yes, your Honor. Thank you.

1 I know that the Department of Probation has  
2 recommended a fine of \$50,000 and the assessment pursuant to  
3 the Justice for Victims of Trafficking Act. That's a \$5,000  
4 assessment. And it's our position, your Honor, that my client  
5 does not have the ability to pay either the fine or the  
6 assessment. And I know the Court must make a finding of  
7 indigency if that is the case.

8 I think that what the Department of Probation has  
9 looked to are Mr. Bright's pensions that he has in the UK. I  
10 believe they are in the presentence report on page 13 in which  
11 he has two pensions in the UK. He has about \$138 in the bank.  
12 And then he has in the United States a \$17,000 401(k) with  
13 Condé Nast.

14 Your Honor, it's my understanding of the law in the  
15 UK, based on my research, that pensions are not available to  
16 someone until they reach the age of 55, and so he does not have  
17 access to that money. Currently he does not have the ability  
18 to pay a fine or an assessment. And with respect to his  
19 401(k), early withdrawal would at least have, I suspect, about  
20 a 20 percent withholding, leaving him with very little assets,  
21 your Honor.

22 And so I would submit to the Court that a fine is not  
23 appropriate, that Mr. Bright is, for all intents and purposes,  
24 indigent. His family is not here. They are in the UK. His  
25 assets are in the UK. And, therefore, he does not have the

1 ability to pay.

2 THE COURT: Thank you.

3 MS. GALLICCHIO: Thank you.

4 THE COURT: Mr. Li, this is the government's  
5 opportunity to speak.

6 MR. LI: Thank you, your Honor. I know the Court is  
7 very well familiar of the facts from having tried the case  
8 twice. It's not my intention to summarize the trial or  
9 sentencing submission. Instead, I'd like to just take a few  
10 minutes to respond to a few points that Ms. Gallicchio has very  
11 capably made.

12 I think the thrust of what Ms. Gallicchio said is that  
13 the defendant is not really a danger to the community. And she  
14 points to a few things. First, she points to the offense  
15 conduct, which -- I'll just sort of characterize her remarks  
16 here, but I think the sense of it is, it's not as bad as it  
17 could have been, that there are other cases in which other  
18 defendants have been convicted of worse conduct.

19 I'd like to point out a few things. One, the cases  
20 that the defense cites in their submission largely involve  
21 teenagers. The age of the children here were seven and nine.  
22 I do think that is a very important difference. It is  
23 different to attempt to engage in sexual activity with a  
24 prepubescent child who really has no ability to resist, as  
25 opposed to try to engage in sexual activity with a teenager. I

1 do think that it's different in culpability and that does  
2 require a different level of condemnation and deterrence.

3 I also take issue with this notion that the conduct  
4 wasn't so bad. And I don't think Ms. Gallicchio really  
5 explicitly said this, but I think there was sort of an  
6 underlying current that because this was a sting operation,  
7 maybe he would have done differently if it were not a sting  
8 operation because, for example, he didn't have postings online  
9 that were explicitly looking for children.

10 I really don't agree with that. Sting operations are  
11 incredibly important because the whole purpose of them is to  
12 deter and prevent somebody from engaging in sexual activity  
13 when they do have that opportunity. The defendant in this case  
14 took some pretty incredible steps once he found out, by his own  
15 admission, that the children in this case were real.

16 After he saw the photographs, after he saw the  
17 photographs, he responded enthusiastically. He sent a  
18 photograph of his penis. Later on he told the purported  
19 mother, the FBI agent, that he was incredibly horny. He met  
20 her. He showed her his STD test in person, and he brought four  
21 condoms, and he tried to walk to the kid's home.

22 Yes, it was a sting operating, but we had every reason  
23 to believe that had the defendant been confronted with a real  
24 seven-year-old and a real nine-year-old, he would have done  
25 exactly the same thing. That's why he is here today and that's

1 why his conduct, it's so important to condemn it and to deter  
2 it.

3 Now, Ms. Gallicchio has also pointed to the reports of  
4 a psychologist and the defendant's psychotherapist who had been  
5 treating him for some time. I have every comfort that these  
6 doctors evaluated him in good faith based on the information  
7 that they had.

8 I do think that it's really difficult, really  
9 impossible to square the ultimate conclusion that he is not a  
10 pedophile with a verdict of the jury and the jury's implicit  
11 finding that the defendant was not truthful when he testified  
12 that he did not intend to have sex with the children in this  
13 case.

14 I realize the Court has made its determination that  
15 the defendant did not obstruct justice, and I understand the  
16 Court's ruling, but, at a minimum, the defendant's testimony  
17 was inconsistent with the verdict of the jury and with the  
18 theory of the defense, that the defense put in this jury charge  
19 before the jury, and there is every reason to believe that the  
20 defendant gave the same information to his treating doctors  
21 that he gave to the jury.

22 And I realize the defendant has said just now that he  
23 has paid a lot of money for a psychotherapist and why would he  
24 lie to his psychotherapist. I don't think that having a sexual  
25 attraction to children is a thing that most people are proud of



1 or that they would casually admit, certainly not to a jury, but  
2 also not to a doctor, and I do think there is a reason to  
3 believe that the defendant would not have been totally candid  
4 with his doctors about something like that.

5 Unless the Court has any further questions, I don't  
6 have anything further for the Court. Thank you.

7 THE COURT: This is the Court's statement of reasons  
8 for the sentence to be imposed on Peter Bright.

9 In sentencing Mr. Bright I have considered all the  
10 materials which I referenced at the outset of this proceeding.  
11 I have considered very thoughtful observations of  
12 Ms. Gallicchio and those of Mr. Li, both in writing and also  
13 orally today. I've considered Mr. Bright's statement. I have  
14 considered the joint letter from his parents and the letter  
15 from each of his two sisters. I have considered Dr. Meg  
16 Kaplan's report. And I have considered each of the factors  
17 under Section 3553(a). I need not recount all I have  
18 considered, but I have considered them all.

19 With regard to the defense conduct, the government is  
20 quite correct, I did preside at two trials. I am thoroughly  
21 familiar with the testimony. I will say that while perhaps  
22 raised in the postverdict motions or not raised in the  
23 postverdict motions, I believe that the jury correctly found  
24 the defendant guilty by proof beyond a reasonable doubt. The  
25 fact that I did not impose the obstruction-of-justice

enhancement does not mean that I believe the defendant's trial testimony, and certainly the jury rejected it.

There are technical elements of perjury that would be required for the obstruction enhancement, and I decline to impose those, but that does not mean that I believe the defendant's trial testimony. I did not believe it. And the trial testimony of Mr. Bright was utterly inconsistent with the ultimate finding of the jury as to his intent in committing the crime.

The fact of the matter is that Mr. Bright testified that he initially entered the KinkD site with an intent to engage in role play and role play with adults posing as children or pretending to be children. And this Court, over the objections of the government, allowed an expert to testify on the subject of what is role play.

But the testimony of Mr. Bright was, there came a point in time when it dawned on him that this was likely a real person with real children who he was offering up for sexual contact and that he decided that he would act as, if you will, a private citizen to capture this pedophile mother. That's what the jury found was not true. That was not his intent.

His intent was to take it as far as he could in enticing, encouraging, and engaging in sexual activity with these two young children and that's supported by how he reacted, the text messages he sent, once he formed the belief

1 that the mother was offering up real children.

2           The crime of enticing or attempting to entice a minor  
3 to engage in illegal sexual activity is of the utmost  
4 seriousness in our society. We individually as parents,  
5 grandparents, and collectively as a society view the protection  
6 of children as one of the highest obligations of a society, and  
7 in this respect Mr. Bright's conduct transgressed.

8           It's very difficult to compare two different crimes,  
9 but certainly relative to mere possession of child pornography,  
10 this is a much more serious circumstance because there was a  
11 real danger that had this been other than a sting operation  
12 that real children could have been sexually molested and likely  
13 their lives ruined. So there is a need for just punishment.  
14 There is a need to protect the public from further crimes of  
15 this defendant which incarceration accomplishes. There is also  
16 a need to deter others. Knowing that there is a long prison  
17 sentence associated with it discourages others from engaging in  
18 similar conduct.

19           I have considered the sentencing guidelines policy  
20 statements and official commentary of the United States  
21 Sentencing Commission. I have considered it in an advisory  
22 manner and recognize I'm not obligated to sentence within the  
23 guidelines. I recognize that I have variance discretion.

24           I also have considered the submission of  
25 Ms. Gallicchio and the defense with regard to sentencings in

1 other cases with either greater aggravating factors or what the  
2 defense views as similar mitigating or similar lack of  
3 aggravating factors, and I acknowledge the need to avoid  
4 unwarranted sentence disparities.

5           Considering all of the foregoing, I intend to sentence  
6 the defendant to 144 months' imprisonment, seven years'  
7 supervised release. I waive the fine based on limited assets,  
8 limited earning ability, impose the \$100 special assessment and  
9 impose the \$5,000 JVTa assessment. I find that the defendant  
10 is not indigent to the point that he is unable to pay that  
11 \$5,100. The foregoing is, in my view, sufficient but not  
12 greater than necessary to achieve the purposes of Section  
13 3553(a).

14           Does the defendant or his counsel have any objections  
15 to the Court's proposed sentence or the statement of reasons  
16 for that sentence?

17           Ms. Gallicchio.

18           MS. GALLICCHIO: No, your Honor.

19           THE COURT: Same question for the government.

20           MR. LI: No, your Honor.

21           THE COURT: Peter Bright, it is the judgment of this  
22 Court that you are hereby remanded to the custody of the United  
23 States Bureau of Prisons to be imprisoned for 144 months.

24           Following release from imprisonment you shall be  
25 placed on supervised release for seven years with the following

1 terms and conditions: You must not commit another federal,  
2 state, or local crime. You must not unlawfully possess a  
3 controlled substance. You must refrain from any unlawful use  
4 of a controlled substance. You must submit to one drug test  
5 within 15 days of release from imprisonment and at least two  
6 periodic drug tests thereafter. You must cooperate in the  
7 collection of DNA as directed. You must comply with the  
8 requirements of the Sex Offender Registration and Notification  
9 Act as directed by probation, the Bureau of Prisons, or any  
10 state sex offender registration agency in which you reside,  
11 work, are a student, or were convicted of an offense, of a  
12 covered offense.

13           You must comply with the standard conditions of  
14 supervision, which are set forth in conditions 1 through 12 on  
15 pages 23 and 24 of your presentence report recommendations  
16 section, with the following special conditions: You shall  
17 submit your person and any property, residence, vehicle,  
18 papers, computer, or other electronic communication data  
19 storage devices, cloud storage, or media and effects to a  
20 search by any probation officer and, if needed, with the  
21 assistance of any law enforcement. The search is to be  
22 conducted when there is reasonable suspicion concerning a  
23 violation of a condition of supervision or unlawful conduct by  
24 the person being supervised. Failure to submit may be grounds  
25 for revocation. You shall warn any other occupants that the

premises may be subject to search pursuant to this condition. Any search shall be conducted at a reasonable time and in a reasonable manner.

You shall permit probation to install any application or software that allows it to survey and/or monitor all activity on any computer, automated service, or connected devices that you will use during the term of supervision and that can access the Internet. These are collectively referred to as the devices. And the probation office is authorized to install such applications or software. Tampering with or circumventing the monitoring capabilities is prohibited.

To ensure compliance, you must allow the probation officer to conduct initial and periodic unannounced examinations of any devices that are subject to monitoring. You must notify any other people who used the devices that they are subject to examination pursuant to this condition. You must provide probation advanced notice of planned use of any device and will not use any devices without approval until compatibility, i.e., software operating system, e-mail browser, e-mail, web browser is determined and installation is completed. Applications for your devices shall be approved by probation once the probation office ensures compatibility with the surveillance monitoring application or software.

Websites, chat rooms, messaging, and social networking sites shall be accessed via the device, web browser, unless

otherwise authorized. You will not create or access any Internet service provider or encounter other online services using someone else's account, name, designation, or alias. You will not utilize any peer-to-peer and/or file-sharing applications without the prior approval of your probation officer. The use of any devices in the course of employment will be subject to monitoring or restriction as permitted by the employer.

You shall undergo a sex-offense-specific evaluation and participate in an outpatient sex offender treatment and/or outpatient mental health treatment program approved by probation. You shall abide by all rules, requirements, and conditions of the sex offender treatment program, including submission to polygraph testing and refraining from accessing websites, chat rooms, instant messaging, or social networking sites to the extent that the sex offender treatment and/or mental health treatment program determines that such access would be detrimental to your ongoing treatment.

You will not view, access, possess, and/or download any pornography involving adults unless approved by the sex-offender-specific treatment provider. You must waive your right of confidentiality and any records from mental health assessment and treatment imposed as a consequence of this judgment to allow probation to review the course of treatment and progress with the treatment provider. You must contribute

1 to the cost of services rendered based on your ability to pay  
2 and the availability of third-party payments.

3           The Court authorizes the release of available  
4 psychological and psychiatric evaluations and reports,  
5 including the PSR, to the sex offender treatment provider  
6 and/or mental health treatment provider. You must not have  
7 deliberate contact with any child under 18 years of age unless  
8 approved by probation. You must not loiter within 100 feet of  
9 places regularly frequented by children under the age of 18,  
10 such as school yards, playgrounds, and arcades. You must not  
11 view and/or access any web profile abusers under the age of 18.  
12 This includes, but is not limited to, social networking  
13 websites, community portals, chat rooms, or other online  
14 environment, audio visual or messaging, etc., which allows for  
15 real-time interaction with other users without prior approval  
16 from your probation officer.

17           You are restricted from viewing, accessing,  
18 possessing, and/or downloading any sexually explicit material  
19 involving minors, including those created via the method of  
20 morphing or other image creation format. You will not view or  
21 possess any visual depiction, including any photograph, film,  
22 video, picture or computer generated image or picture, whether  
23 made or produced by electronic mechanical or other means of  
24 sexually explicit conduct by a minor under the age of 18.

25           You will inform the probation office prior to



1 accessing any websites within the following categories: Adult,  
2 alternative lifestyles, chat and social networks, dating and  
3 personals, download media downloads, free hosting, gambling,  
4 hacking, and Warez, illegal activities, kids and teens,  
5 lingerie, park domains, sex education, weapon related, web  
6 mail, and XXX for the first time and will not access any such  
7 websites until such access is approved by the probation office.  
8 The probation office must approve within three business days  
9 any such access unless the volume of that request makes that  
10 impractical, in which case probation may seek the Court's  
11 approval for more time.

12           You will not access any websites, chat rooms, instant  
13 messaging, or social networking sites where your criminal  
14 history, including this conviction, would render such access in  
15 violation of the terms of service of that website, chat room,  
16 instant messaging, or social networking site.

17           If the probation officer determines, based on your  
18 criminal record, personal history or characteristics, that you  
19 pose a risk to another person, including an organization, the  
20 probation officer, with the prior approval of the Court, may  
21 require you to notify the person about the risk, and you must  
22 comply with that instruction. The probation officer may  
23 contact the person and confirm that you have notified the  
24 person about the risk. You must provide the probation officer  
25 with access to any requested financial information. You must

not incur new charges or open additional lines of credit without the approval of the probation officer, unless you are in compliance with the installment payment schedule.

It is further ordered that you must pay to the United States a special assessment of \$100, which shall be due immediately. You are subject to the provisions of the Justice for Victims of Trafficking Act of 2015. The Court assesses \$5,000 upon you under that act. The fine is payable within 90 days of the judgment in this case.

As noted, the special assessment is due immediately. Any other fine is deemed waived. If the defendant is engaged in a BOP non-UNICOR program, the defendant must pay \$25 per quarter towards the criminal financial penalties. However, if the defendant participates in the BOP's UNICOR program, as a grade 1 through 4, the defendant must pay 50 percent of your monthly UNICOR earnings towards the criminal financial penalties consistent with BOP regulations.

Is the government seeking forfeiture?

MR. LI: The government is not seeking any monetary forfeiture. There is forfeiture of the two devices. I can provide the IMEI number for the devices. These are the two phones on the defendant's person at the time of his arrest.

THE COURT: The defendant shall forfeit to the United States any and all property, real and personal, constituting or derived from proceeds obtained, directly or indirectly, as a

1 result of the offense and any and all property, real and  
2 personal, that was used or intended to be used to commit or  
3 facilitate the commission of said offense, including, but not  
4 limited to, two cell phones that were found on the person of  
5 the defendant at or about the time of his arrest.

6 Mr. Bright, you have the right to appeal the sentence  
7 I have imposed on you. If you cannot afford the cost of an  
8 appeal, you may apply for leave to appeal as a poor person.  
9 The time limits for filing a notice of appeal are brief and  
10 they are strictly enforced. If you request, the clerk of court  
11 will prepare and file a notice of appeal on your behalf  
12 immediately.

13 Do you understand that?

14 THE DEFENDANT: I do, yes.

15 THE COURT: Anything further from the government?

16 MR. LI: No, your Honor.

17 THE COURT: Anything further from the defendant?

18 MS. GALLICCHIO: Your Honor, I just want to get  
19 clarification again with respect to the letter brief the Court  
20 wishes us to file by noon on the 6th.

21 THE COURT: Yes. You will find on the ECF filing in  
22 this case a letter, dated November 2, 2020, from Inner City  
23 Press, Mr. Lee. And essentially the parties should show cause  
24 why I ought not grant that request. And I've told you about  
25 the *King* case decided by Judge Koeltl and, of course, this

request relates to both the defendant's sentencing submission and also the report of Dr. Kaplan.

Now, it may well be, reading the *King* case, that following *King* it may be there is information about third persons which would not usually be considered material or may not have been material here. So you can take whatever position you want and an alternative position, if you are going to order it, that the following redactions be made. That you would have to spell out with specificity.

MS. GALLICCHIO: Understood.

THE COURT: Anything further from the defendant?

MS. GALLICCHIO: No, your Honor. Nothing further.

THE COURT: Anything further from the government?

MR. LI: No. Thank you, your Honor.

THE COURT: Mr. Bright, I wish you and your family peace, good health, and I wish you a long life, and I hope that you will engage in self reflection and continue on the path of endeavoring to maintain good mental health as well as physical health.

We are adjourned. Thank you, all.

(Adjourned)