

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

HARRISON NORRIS, JR.,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

BRIEF FOR THE UNITED STATES AS APPELLEE

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UNITED STATES v. HARRISON NORRIS, JR., No. 10-15901

**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

Counsel hereby certifies that, in addition to those persons listed in appellant's Certificate of Interested Persons and Corporate Disclosure Statement, the following may have an interest in the outcome of this appeal:

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STATEMENT REGARDING ORAL ARGUMENT

The government believes the briefs adequately address the facts and legal issues on appeal and that oral argument is not necessary. Should the Court schedule oral argument, the government requests the opportunity to participate in oral argument.

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JURISDICTIONAL STATEMENT

This is an appeal from a district court's final judgment in a criminal case.

The district court had jurisdiction under 18 U.S.C. 3231. The court entered final judgment against defendant on December 15, 2010 (R. 518),¹ and defendant filed a

¹ Citations to "R. __" refer to documents, by number, in the district court record. Citations to "Norris Br. __" refer to pages in defendant Norris's opening brief. Citations to "Tr. __" refer to pages in the consecutively-paginated trial transcript.

timely notice of appeal on December 21, 2010 (R. 523). This Court has jurisdiction under 28 U.S.C. 1291.

STATEMENT OF THE ISSUE

Whether the district court's decision to sentence defendant to 35 years' imprisonment, which was below defendant's Guidelines-recommended sentence of life imprisonment, was procedurally or substantively unreasonable.

STATEMENT OF THE CASE

On June 13, 2006, a federal grand jury returned a second superseding indictment against Harrison Norris, Jr. (a.k.a. "Hardbody Harrison") charging him with 28 counts of violating federal law in connection with his forcing and attempting to force multiple young women to engage in prostitution in and around Atlanta, Georgia, from 2004 through early 2006. R. 156.

Norris was charged with (1) conspiracy in violation of 18 U.S.C. 371 (Count 1)²; (2) holding five young women in a condition of peonage in violation of 18 U.S.C. 1581(a) (Counts 2-6); (3) obtaining the forced labor and services of six young women in violation of 18 U.S.C. 1589(1) (Counts 7-12); (4) trafficking of six young women for purposes of peonage and forced labor in violation of 18 U.S.C. 1590 (Counts 13-18); (5) trafficking of six young women for commercial

² The indictment named two co-conspirators, Aimee Allen and Cedric Jackson. R. 156 at 1-16. Both Allen and Jackson pleaded guilty to conspiracy.

sex acts in violation of 18 U.S.C. 1591(a) (Counts 19-24); (6) tampering with witnesses in violation of 18 U.S.C. 1512(b)(3) (Counts 25-27); and (7) obstructing a peonage investigation in violation of 18 U.S.C. 1581(b) (Count 28). R. 156.

Norris's trial commenced on November 5, 2007, before the Honorable Jack T. Camp and lasted nine days. Norris chose to represent himself at trial and relied periodically on the help of stand-by counsel appointed by the district court. On November 21, 2007, the jury returned a verdict of guilty on 24 of the 28 counts in the indictment; the jury acquitted Norris on the four counts related to alleged victim TW. Tr. 2348-2352; R. 322. The jury further found that 14 of the offenses of which Norris was convicted included aggravated sexual assault or attempt to commit aggravated sexual assault. Tr. 2348-2351; R. 322.

The United States Probation Office for the Northern District of Georgia prepared an initial presentence investigation report on February 20, 2008. See unnumbered docket entry, *United States v. Harrison Norris, Jr.*, 1:05cr479 (N.D. Ga. Apr. 16, 2008). Norris did not file written objections to the initial report; the probation office prepared a final report on March 25, 2008. See unnumbered docket entry, *United States v. Harrison Norris, Jr.*, 1:05cr479 (N.D. Ga. Apr. 16, 2008). Norris's recommended advisory Guidelines sentencing range was life imprisonment. See unnumbered docket entry, *United States v. Harrison Norris, Jr.*, 1:05cr479 (N.D. Ga. Apr. 16, 2008).

On April 1, 2008, the district court sentenced Norris to life in prison.³ R. 371; R. 372.

Norris timely appealed his convictions and sentence. R. 376. After briefing and oral argument, this Court affirmed Norris's convictions, but remanded the case for re-sentencing because Norris's general sentence was deemed *per se* illegal. R. 449.

The parties appeared for a resentencing hearing on June 22, 2010. R. 462; R. 474. The district court, rather than resentencing Norris, ordered additional briefing. R. 474. On October 15, 2010, the case was reassigned to the Honorable J. Owen Forrester. R. 504. Judge Forrester held a sentencing hearing on December 2, 2010, R. 515; see also R. 548, and sentenced Norris to 25 years' imprisonment on Counts 2-3, 5-8, 10-14, 16-20, 22-24, five years' imprisonment on Count 1 (to run concurrently), and ten years' imprisonment on Counts 25-28 (to run consecutively to the other terms' of imprisonment), for a total term of imprisonment of 35 years, R. 518.

Norris filed a timely appeal on December 21, 2010. R. 523. He is currently within the custody of the Federal Bureau of Prisons.

³ The district court sentenced Norris to a "general" sentence of life imprisonment.

STATEMENT OF FACTS

1. *Offense Conduct*

Harrison Norris, Jr. is a former professional wrestler who lived in Cartersville, Georgia. Tr. 786, 1206, 1222-1223, 1966. As detailed below, the evidence presented to the jury established that Norris forced young women to engage in prostitution, to dance with men at night clubs, and to perform various forms of labor around his house, all for his benefit. In order to induce compliance from his victims and to keep them from leaving him, Norris employed force, threats of force, and the imposition of monetary debts. Norris ran his operation through a military-style hierarchy. Tr. 211, 216-217, 240, 351-352, 646. Several women lived with Norris voluntarily and assisted him in his scheme. Norris referred to those women as his “team leaders” or “bottom bitches.” Tr. 181, 211, 274, 339, 349, 399, 449, 554, 570-572, 588, 1216. The team leaders carefully monitored the victims – whom Norris referred to as “soldiers” – and enforced Norris’s rules by means including violence and threats of violence. Tr. 186, 211, 213, 274, 365, 432, 455, 585, 588, 646-648, 671, 677, 763, 766. Aimee Allen, one of Norris’s indicted co-conspirators, testified that she helped Norris “recruit” young women – some of whom were poor, homeless, and/or addicted to drugs – through force and false pretenses, knowing that they would be forced to engage in

prostitution. Tr. 420-421. Another team leader confirmed that some women were forced to engage in prostitution. Tr. 606.

a. Norris's Victims

Norris was convicted of victimizing five young women, all of whom testified at trial. Norris gained control of his victims through various means. For example, Norris used physical force and intimidation to gain control of NH, whom he met at a gas station in Atlanta. Tr. 159-163. Norris approached NH, put his arm around her and walked her over to his truck. Tr. 163-164. NH tried to back up when Norris opened the door of the truck, but entered the truck because she felt she had no choice. Tr. 163-169. Norris gained control of KR after Norris's co-conspirator – a pimp named Cedric Jackson – “gave” KR to Norris. Tr. 318-338. When KR asked to leave, Norris told KR she had to pay back money she owed to Norris by working for him. Tr. 337-338. Norris gained control of victims ST, DM, and LM by promising to train them to be wrestlers and later using physical force and intimidation to prevent them from leaving him. Tr. 779-786, 791, 864-867, 1042-1049, 1076, 1080, 1084-1086.

b. Norris's Treatment Of His Victims

Once Norris had his victims at his house, he exercised total control over them by, *e.g.*, confiscating their identification documents, giving them new names, choosing what they wore, and dictating what they ate and when they slept. Tr.

170, 180, 195-197, 211, 236-239, 342-344, 349-350, 365-370, 449, 583, 669, 876-880, 1061-1066, 1813-1814. His victims consistently testified that they were never permitted to be alone while living with Norris because he made sure that either he or one of his team leaders was always with them. Tr. 186, 342-343, 874-877, 1051, 1061-1063, 1066-1067, 1812-1814. On the few occasions when Norris allowed one of his victims to use the telephone, either he or one of his team leaders was present, listening to the call. Tr. 189, 562-563, 566, 669, 1061-1063, 1813. NH testified that the doors in Norris's house were locked and could not be opened from the inside without a key, which she did not have. Tr. 182, 1437, 1440.

Norris forced his victims to engage in various acts, including prostitution, dancing for money, and performing various tasks in and around his two houses. Norris was able to make his victims perform such acts by using force, threats of force, and monetary debts he alleged they owed to him. Norris's victims testified that he subjected them to physical violence, sexual violence, threats of violence, and violence at the hands of his team leaders when the victims did not do what he wanted. Tr. 182-194, 216, 318-320, 340-341, 352-353, 803-804, 808-809, 878-880, 908-909, 916, 919-921, 1056-1059, 1076-1078. Four of Norris's victims testified that he forced them to have sex with him. Tr. 182-184, 189-192 (NH); 319-320, 352-353 (KR); 878-880, 908-909, 916-921 (ST); 1076-1078 (DM). Two of his victims testified that he physically assaulted them by head-butting or

pushing them. Tr. 804, 823 (LM); 919 (ST). Four of Norris's victims testified that he "pinned" them by pushing military rank insignia pins into their flesh until they bled. Tr. 216 (NH); 352 (KR), 808-809 (LM); 1072-1074 (DM). Two of Norris's victims testified that they were physically or sexually assaulted by Norris's team leaders either on his orders or in front of him. Tr. 190-191 (NH); 804-807, 824 (LM). The victims also testified that they observed Norris inflict violence on other women and feared that he would harm them if they disobeyed him. Tr. 212-216, 354-356, 383, 416-417, 889-892, 1078. Two victims testified they witnessed Norris "trade" two women to another pimp, Norris told them other pimps physically mistreated the women with them, and they feared Norris would trade them to another pimp if they disobeyed him. Tr. 898-899, 902-903, 1080-1083. After one of Norris's victims escaped, Norris told other women that he would kill the woman who escaped if he ever found her. Tr. 193-194, 384, 417.

Norris took the women to so-called "Mexican clubs" where they danced with male customers in exchange for money. Tr. 203-206, 233, 370-374, 430-431, 621-627, 793, 868-869, 1052-1055. The women consistently testified that Norris required them to turn over to him all of the money they made. Tr. 431, 623, 793-795, 869. On many occasions, Norris arranged for the women to engage in sexual activity with men in exchange for money, whether they wanted to or not. Tr. 354, 376-379, 385, 415-416, 432, 623-624, 795-799, 893-895, 900-901, 972, 1041-

1042, 1052-1059. Norris negotiated the price for those encounters, arranged for the location, and provided the women with condoms. Tr. 207-208, 237-238, 291, 376, 454, 624, 629-630, 798, 895. DM testified about one occasion on which Norris took her to a man's apartment and ordered her to have sex with him. Tr. 1056-1058. When DM refused, Norris brought in two team leaders who ordered her to have sex with the man while Norris stood there with his hand balled in a fist. Tr. 1055-1056. DM testified that she was afraid Norris would hurt her, and consequently had sex with the man although she did not want to. Tr. 1057-1058. The women testified that Norris transported them to locations in North Carolina and northern Georgia where they had to engage in prostitution as well. Tr. 345-348, 629, 885-886, 893, 1058-1060.

In addition, all of Norris's victims testified that he forced them to engage in what he called a "cut party." At the cut parties, Norris forced the women to engage in sexual activity with multiple men and sometimes with other women. Tr. 211-212, 215-216, 376-379, 618-619, 801-808, 823-824, 887-889, 1078-1080. Norris and his team leaders told the women that the purpose of the cut party was for Norris to judge the women's "skill" at performing various sex acts so that he would know how much to charge men for their services. Tr. 427, 801. Norris's victims testified that they did not know what a cut party was until they arrived, that they told Norris and his team leaders they did not want to participate, and that

Norris and the team leaders told them they had no choice. Tr. 210-212, 216, 233, 267, 309-311, 314-315 (NH); 376-379 (KR); 801-808, 823-824 (LM); 886-889 (ST); 1078-1080 (DM). Some of the women initially refused to participate and Norris responded with physical violence by head-butting them, threatening to throw them through a wall or out the window, or forcing other women to rape them with dildos. Tr. 212-216, 381-383, 416-417, 428-429, 803-808, 823-824. KR testified that there were eight men at her cut party, that it lasted for five hours, and that she was in pain and acquired an infection as a result of being forced to participate. Tr. 378-379. LM testified that her cut party lasted 12 to 14 hours and described the ordeal as “torture.” Tr. 808.

Norris also forced the women to perform various acts of labor at his properties in Cartersville, including landscaping, cutting down trees, moving concrete, and laying sod. Tr. 217-220, 356-359, 680, 1068-1069. Norris assigned tasks to the women in the house by listing them on a “duty roster” he kept on his refrigerator. Tr. 217-219, 356-359, 682-684, 878-880, 916-917, 1068-1069. Each woman was required to perform all of the tasks assigned to her on the duty roster, and none of the women was paid for her labor. Tr. 217-219, 359, 684, 917, 1068-1069, 1075. If a woman did not complete the work assigned to her, the tasks were added to the list of tasks she was required to perform on the following day. Tr.

218-219, 439-440. Each woman could be assigned up to 40 or 50 tasks on a duty roster. Tr. 682-683.

Norris also coerced his victims by imposing an elaborate system of debts on the women and telling the women they could not leave him until they paid off their debts. Tr. 220-221, 338, 434-441, 459, 661, 816, 901, 925-926, 973, 1084-1086.

Norris collected all of the money the women were forced to earn, and kept it locked in a safe in his bedroom closet. Tr. 205, 224-226, 374, 431, 631, 679, 907, 971, 1060-1061, 1072. He automatically took 50% of the money for himself. Tr. 431, 434, 630-633, 644, 679, 760-761, 774-775, 1060. From the remaining money, he deducted amounts for things such as rent, food, and utilities. Tr. 226, 374, 630-633, 679, 760, 774. He also deducted amounts to pay for the women's having their nails done and for the clothes they wore to the clubs – although he required them to have their nails done whether they wanted to or not and told them what to wear to the clubs. Tr. 633, 675, 907.

In addition, Norris imposed a system of “fines” on the women, whereby he charged the women “points” – which translated to monetary amounts – when he determined that they violated his house rules. Tr. 220-226, 359-361, 871-876, 1071-1072. Norris fined the women for such alleged infractions as talking back, not performing a task up to his standards, or wearing something he did not like. Tr. 224, 809. Norris was the sole arbiter of when a woman violated a rule and how

much she had to pay for an infraction. Tr. 359-361, 1439-1441. He also fined the women if they failed to meet the “quota” he set for how much money they were required to make through dancing and prostitution. Tr. 196-199, 206, 209, 273, 290, 628, 644-645, 808-809.

c. How Norris’s Victims Escaped

Because Norris did not allow his victims to leave voluntarily, each victim had to escape from him. NH and KR were able to escape from Norris’s control while shopping at a store with Norris, his team leaders, and another victim, TW.⁴ Tr. 228-231, 385-386. TW ran out of the store and notified the police that she was being held against her will, Tr. 76-77, 127, 386; when the police interviewed NH and KR, they asked to be taken into custody so that they could get away from Norris and the rest of the group, Tr. 80-81, 85-86, 230-231, 386-387.

ST and DM escaped after ST used a razor blade to cut out a window screen in Norris’s bathroom while her team leader was asleep. Tr. 925-930. ST ran through the woods for two miles before she was able to contact the police. Tr. 926-930. The police returned to Norris’s residence and removed DM. Tr. 930-934, 1091-1092.

⁴ TW did not testify at Norris’s trial; Norris was acquitted on those charges relating to his treatment of TW.

LM escaped by literally running away from the team leaders who had taken her, without Norris, to a Wal-Mart. Tr. 810-812. LM waited until all of the team leaders but one had stepped inside the store, and then ran away from them through the parking lot to a hotel. Tr. 811-812.⁵

2. *Norris's Original Sentence*

The United States Probation Office prepared a presentence investigation report (PSR) on February 20, 2008.⁶ The PSR calculated Norris's combined adjusted offense level at 48.⁷ Given Norris's criminal history category of I, Norris's recommended Guidelines range corresponded to life imprisonment. Norris did not file any timely objections to the PSR. See R. 474 at 16-17.

On April 1, 2008, the district court sentenced Norris to life imprisonment. R. 371; R. 372. The court, however, entered a general sentence, which this Court has defined as "an undivided sentence for more than one count that does not

⁵ Norris was convicted on four counts of witness tampering and obstruction after convincing his team leaders to lie to law enforcement investigators and to lie under oath in federal court. Tr. 696-700, 996-1010.

⁶ The Probation Office prepared a revised report on March 25, 2008.

⁷ Norris's counts of conviction involving the same victim were grouped together under United States Sentencing Guideline § 3D1.2(b); his counts of conviction involving different victims were divided into five separate groups. Groups 1 and 2 resulted in total offense levels of 44; groups 3, 4 and 5 resulted in total offense levels of 40. Norris's combined adjusted offense level of 48 represents the highest total offense level increased by 4, to account for the multiple groups, or units.

exceed the maximum possible aggregate sentence for all the counts but does exceed the maximum allowable sentence on one of the counts.” *United States v. Woodard*, 938 F.2d 1255, 1256 (11th Cir. 1991), cert. denied, 502 U.S. 1109, 112 S. Ct. 1210 (1992). Such a sentence is “*per se* illegal.” *Ibid.* For that reason, this Court remanded the case for resentencing after affirming Norris’s convictions. R. 449.

3. *Norris’s Resentencing*

The district court held a resentencing hearing on June 22, 2010. R. 462; see also R. 474. Rather than resentence Norris at that time, the district court instead ordered the parties to file supplemental briefs on “other cases involving similar conduct and the sentences that were imposed.” R. 474 at 14.

After the parties filed their respective briefs, the case was reassigned to Judge J. Owen Forrester. R. 504. Judge Forrester held a sentencing hearing on December 2, 2010. R. 515; R. 548.⁸ Judge Forrester explained to Norris at the start of the hearing that his Guidelines-recommended sentence remained life imprisonment, but that based on consideration of the factors set forth in 18 U.S.C. 3553, the court may impose a sentence less than that recommended by the Guidelines. R. 548 at 3.

⁸ The sentencing transcript indicates that Judge Forrester was familiar with the parties’ briefs. R. 548 at 7-8, 31.

Counsel for Norris argued for a sentence below the recommended Guidelines range of life imprisonment. Specifically, counsel argued that to avoid unwarranted sentencing disparities between Norris and other defendants found guilty of similar (but not exactly the same) conduct, the court would need to sentence Norris to less than life imprisonment. R. 548 at 7-13. Counsel pointed out that defendants in other cases involving minor victims received anywhere from 15 to 40 years' imprisonment, and that based on the sentences imposed in those cases, Norris deserved a "reasonable sentence" of less than life imprisonment. R. 548 at 13.

Norris also addressed the court. Norris primarily contested the jury's verdict and challenged the facts supporting his convictions. See, *e.g.*, R. 548 at 14-23, 38-39.

The government argued that Norris's initial sentence of life imprisonment was reasonable. The government explained that, given the seriousness of Norris's offenses and the number of victims involved, the court would have to depart six offense levels to reach a recommended sentence of less than life imprisonment. R. 548 at 24. The government noted that each trafficking offense involved aggravated sexual abuse, and outlined the physical force, verbal threats, debt structure, and the pattern of humiliation and degradation Norris used to prey upon his vulnerable victims. R. 548 at 25-28. The government also explained the elaborate cover-up

Norris designed in his attempt to avoid responsibility for his crimes. R. 548 at 29. The government distinguished Norris's crimes from those the defense relied upon to argue for a lower sentence; the government explained that those cases involved either fewer victims, different charges, guilty pleas, or convictions prior to the passage of the Trafficking Victims Protection Act, 22 U.S.C. 7101, *et seq.* R. 548 at 30-31. Finally, the government identified cases in which the defendants were sentenced to 50 years' imprisonment after accepting responsibility and pleading guilty to trafficking just two victims. R. 548 at 33-34. For all of the reasons set forth in 18 U.S.C. 3553(a), the government requested a sentence of life imprisonment. R. 548 at 33-34.

The district court sentenced Norris to a total of 35 years' imprisonment: 25 years for the trafficking-related convictions; 5 years on the conspiracy conviction (to run concurrently); and 10 years for the obstruction convictions (to run consecutively to the other sentences). R. 548 at 53. The court began by noting the need to avoid unwarranted sentencing disparities in sentencing. The court identified the difference between those defendants who pleaded guilty and Norris, who did not. R. 548 at 40. But the court also recognized that Norris was the only defendant to have received a life sentence for conduct of this nature. R. 548 at 40. The court, however, extensively reviewed the violent nature of Norris's conduct as compared to defendants in other prostitution-related cases. R. 548 at 41-51.

The court then discussed the nature of the charges and the seriousness of the offenses. See 18 U.S.C. 3553(a)(1) & (2)(A). In doing so, the court explained:

Some years ago I got interested in my family history and I started doing research. My family has been in the south for awhile. I started running into a lot of information about slavery, which was all very interesting to me. I don't want to pretend that I am an expert on that subject, but I will observe that, based on what I read and what I saw, perhaps the majority of the slaves in Georgia in 1850 had more freedom than these women did. That is why this is a terrible crime. Because freedom is one of the most precious things a secular society can give its members.

We say that our country exists to give us life, liberty, and the pursuit of happiness, well there is liberty and freedom again. Pursuit of happiness also includes personal dignity. And I can't think of many things that are more demeaning than forcing anyone to participate in prostitution, sex. That is why rape has always been one of the most serious crimes in our society. And I hope our society is becoming alert enough to not distinguish between rape and what pimps are doing to the women they control.

R. 548 at 51-52. The court characterized the offense of obstruction as “an assault against a very important institution of this country.” R. 548 at 52.

The court noted that Norris did not have a criminal history, and explained that the court was unaware of “anything unique about [Norris] that warrants a particularly stiff sentence other than what he did.” R. 548 at 52-53. Finally, the court expressed hope that “a sentence in this case would have some deterring effect.” R. 548 at 53.

In arriving at a total sentence of 35 years' imprisonment, the court explained that its calculation was not “arbitrar[y].” R. 548 at 53. The court explained that

the sentence of 25 years' imprisonment on the trafficking counts resulted from comparing "garden-variety pimp prostitute federal case[s]," which generally result in sentences of 20 years' imprisonment, and similar cases involving a more violent nature, which generally result in sentences of 30 years' imprisonment. R. 548 at 53. The court also explained that it sentenced Norris to ten years' imprisonment on the obstruction count "to make a point of the fact" that such offenses "affect * * * the judicial function of the United States and it is separately a very, very serious crime." R. 548 at 54.

SUMMARY OF ARGUMENT

The district court did not err in sentencing Norris. The district court's sentence is procedurally reasonable. Norris's argument that the PSR contained incomplete facts is irrelevant, as Norris failed to file a timely objection to the PSR. Moreover, the district court made clear that Norris's sentence would be based on both the facts contained in the PSR and the facts presented at the sentencing hearing. The district court gave defense counsel – and Norris – ample opportunity to present facts at the hearing relevant to its sentencing decision.

The district court's sentence is also substantively reasonable. The district court addressed the statutory factors before imposing a below-Guidelines sentence, and fully explained the basis for its sentence. Norris's 35-year sentence, which is below the Guidelines-recommended sentence of life imprisonment, does not lie

outside the range of reasonable sentences dictated by the facts of the case, and should therefore be upheld.

ARGUMENT

DEFENDANT’S BELOW-GUIDELINES SENTENCE IS PROCEDURALLY AND SUBSTANTIVELY REASONABLE

A. Standard Of Review

This Court reviews a defendant’s sentence for procedural and substantive reasonableness under an abuse of discretion standard. *United States v. Villarreal*, 613 F.3d 1344, 1357 (11th Cir. 2010); see also *Gall v. United States*, 552 U.S. 38, 51, 128 S. Ct. 586, 597 (2007). Where, as here, a defendant fails to object to the procedural reasonableness of a sentence below, this Court reviews for plain error. *United States v. Machado-Gonzalez*, 391 F. App’x 842, 845 (11th Cir. 2010). A defendant can establish plain error if he shows that there was an (1) error, (2) that is plain and (3) that affects substantial rights. If a defendant can show all three conditions, this Court may notice the forfeited error, but only if the error “seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *United States v. Turner*, 474 F.3d 1265, 1276 (11th Cir. 2007).

B. Discussion

The district court did not abuse its discretion in sentencing Norris because the sentence imposed was both procedurally and substantively reasonable. In determining procedural reasonableness, this Court must “ensure that the district

court committed no significant procedural error.” *United States v. Saac*, 632 F.3d 1203, 1212 (11th Cir. 2011), petition for cert. pending, No. 10-10382 (filed May 4, 2011). A sentence based on clearly erroneous facts may be procedurally unreasonable. *Ibid.*

After considering a sentence’s procedural reasonableness, this Court considers a “sentence’s ‘substantive reasonableness’ under the totality of the circumstances, including ‘the extent of any variance from the Guidelines range.’” *Saac*, 632 F.3d at 1212 (quoting *Gall*, 552 U.S. at 51, 128 S. Ct. at 597). This Court’s “substantive review of sentences is deferential,” *United States v. Irej*, 612 F.3d 1160, 1165 (11th Cir. 2010) (en banc), cert. denied, 131 S. Ct. 1813 (2011), and this Court will vacate a district court’s sentence only if this Court determines, “after giving a full measure of deference to the sentencing judge, that the sentence imposed truly is unreasonable,” *id.* at 1191.

Norris argues (Norris Br. 17-18) that the district court erred procedurally and substantively when sentencing him to 35 years’ imprisonment because his sentence was “based on an erroneous interpretation of the facts established at trial.” Specifically, Norris argues (Norris Br. 18-19) that the district court came to a factual conclusion that Norris’s victims “were treated worse than Nineteenth century African-American slaves” because certain factual information was not included in Norris’s presentence investigation report. Norris counters that trial

testimony demonstrated that many of his victims “frequented public establishments,” and went to “fast food restaurants, hair and nail salons, and casinos in a variety of cities.” Norris Br. 18. This procedural error, Norris argues (Norris Br. 19), resulted in a substantively unreasonable sentence.

Norris’s arguments fail. First, Norris failed to object to the procedural reasonableness of his sentence before the district court. Under these circumstances, this Court’s review is for plain error. *Machado-Gonzalez*, 391 F. App’x at 845. As we explain below, the district court did not err, procedurally or otherwise, in sentencing Norris. In any event, Norris cannot establish that a procedural sentencing error affected his substantial rights, or that his sentence affected the fairness, integrity, or public reputation of judicial proceedings, as he was ultimately sentenced well below his recommended advisory Guidelines range.

Second, any argument based on factual omissions in the PSR should be rejected, as Norris never entered a timely objection to the PSR. R. 474 at 16. Following Norris’s conviction, the probation office prepared an initial PSR. Neither Norris nor his counsel submitted objections to the report, so the probation office submitted a revised PSR based upon objections the government submitted. Norris was originally sentenced based upon that PSR.

Following this Court’s remand for resentencing, Norris’s defense counsel filed a sentencing memorandum on June 17, 2010. R. 458. In it, Norris’s counsel

noted that Norris “still maintains his innocence and disputes the factual summaries contained in the [original] Presentence Report.”⁹ R. 458 at 3 n.2. Counsel stated her intent to “file objections to these summaries to protect the record if future appellate review is sought.” R. 458 at 3 n.2. At Norris’s June 22, 2010, re-sentencing hearing before Judge Camp, the government asked the court whether it would consider any of Norris’s objections to the PSR, and argued that they should be rejected as untimely. R. 474 at 16. The court responded: “I would agree with that. And at the time I don’t think there were any objections to the PSR. That is what my copy shows. So no.” R. 474 at 16. Later in the proceeding, after the court ordered additional briefing on the issue of possible disparity between Norris’s sentence and that of others convicted of similar conduct, the court explained that “the conduct is going to be largely what was described in the presentence report, because there was no objection to it, and I adopted those facts for the basis of the sentencing.” R. 474 at 17.

At Norris’s re-sentencing before Judge Forrester, Norris again attempted to challenge the PSR. R. 548 at 5. The court reminded Norris that the PSR was not subject to challenge at that point in the proceedings. R. 548 at 5. The district court stated:

⁹ A second PSR was not prepared.

Let me say it to you in a short form. The only thing before this Court is for me to determine what sentence there is. You had a right to appeal and you did appeal. And everything that you raised and everything that you could have raised is over. There weren't any appeals that affect the calculation of your guidelines. So that is not before the Court.

R. 548 at 5. Because Norris never filed a timely objection to the facts set forth in his PSR, any argument he now makes (Norris Br. 18-19) based upon incomplete or inaccurate facts in the PSR should be rejected.

In any event, the district court's sentencing decision was not based solely upon the facts in the PSR. The court informed Norris at the start of the hearing that the court would base its decision on the PSR, *as well as* the representations from counsel and arguments from Norris. R. 548 at 2-6. The district court explained that the court was familiar with the PSR, but what was important to the court's ultimate decision were any factors under 18 U.S.C. 3553(a) that would warrant a sentence below life imprisonment. R. 548 at 3-6.¹⁰

Third, the district court's reference to the treatment of nineteenth century slaves does not suggest the court "select[ed] a sentence based on clearly erroneous facts." *Gall*, 552 U.S. at 51, 128 S. Ct. at 597. The district court's observation about the treatment of nineteenth century slaves was simply that – an observation;

¹⁰ The context of this initial discussion was to inform Norris of his right to proceed without counsel, as well as the obvious benefits of proceeding *with* counsel. Norris ultimately decided to have counsel represent him at the sentencing hearing.

it was certainly not the reason the court selected the sentence it did. Rather, the district court heard from the parties at length about what sentence would be appropriate given the nature of Norris's offenses and the sentences defendants convicted of similar offenses had received. The district court also heard from Norris directly. Norris, however, spent much of his time challenging the facts supporting his convictions, including the physical restrictions on the victims and the conditions in which they lived. The court explained to Norris that the purpose of the hearing was not to determine Norris's guilt or innocence, but to determine an appropriate sentence. R. 548 at 39.

The district court then informed counsel that what would guide and inform its sentencing decision would be a comparison of evidence of Norris's physical abuse against his victims with evidence of physical abuse in other, similar cases. R. 548 at 40-41, 47-49; see also *id.* at 49 ("What I am trying to separate out is that which goes with the territory, which is sex with [the] pimp, sex with the johns, sex at parties. I am not saying that is good, but I am trying to find out, in terms of the character of this man, whether in addition to that there is gratuitous, physical violence."). Counsel for both parties, and even Norris, thus focused their arguments to that end. See R. 548 at 41-49. And it is evident from the sentencing transcript that the court selected a sentence based on such a comparison to avoid an unwarranted sentencing disparity between Norris's sentence and those of

defendants convicted of similar offenses. See R. 548 at 53 (explaining that Norris's 25-year sentence on each of the trafficking offenses was "not arbitrarily arrived at," because the sentence fell between the 20-year sentences often imposed for "garden-variety" prostitution cases, and the 30-year sentences imposed in cases involving more gratuitous violence).

Fourth, the advisory-Guidelines sentence for each of Norris's 19 trafficking convictions was life imprisonment. And Norris was, in fact, initially sentenced to life imprisonment – a sentence the government maintains was substantively reasonable. See *United States v. Gonzalez*, 550 F.3d 1319, 1324 (11th Cir. 2008) (this Court "ordinarily expect[s] a sentence within the Guidelines range to be reasonable, and the appellant has the burden of establishing the sentence is unreasonable in light of the record and the § 3553(a) factors"). The district court, however, following an exhaustive hearing on the facts of the case, sentenced Norris to just 25 years' imprisonment on those 19 trafficking counts. Nothing in the sentencing transcript suggests that Norris and his counsel were anything less than effective in conveying to the district court those facts that would warrant a below-Guidelines sentence.

Finally, Norris's argument that the district court's procedural error resulted in a substantively unreasonable sentence is simply without merit. As noted above, the district court's sentence was procedurally sound. In any event, this Court will

vacate a sentence as substantively unreasonable only if the Court is “left with the definite and firm conviction that the district court committed a clear error of judgment in weighing the § 3553(a) factors by arriving at a sentence that lies outside the range of reasonable sentences dictated by the facts of the case.” *United States v. Pugh*, 515 F.3d 1179, 1191 (11th Cir. 2008) (citations omitted). Norris does not argue that the district court erred in weighing the Section 3553(a) factors, nor could he. The district court thoroughly discussed many of the statutory factors, including the nature and circumstances of the offense, the history and characteristics of the defendant, the need for the sentence to afford adequate deterrence, and the need to avoid unwarranted sentencing disparities. *United States v. Talley*, 431 F.3d 784, 786 (11th Cir. 2005) (“[W]hen the district court considers the factors of section 3553(a), it need not discuss each of them.”).

Nor did the district court reach a sentence that lies “outside the range of reasonable sentences dictated by the facts of the case.” *Pugh*, 515 F.3d at 1191. The district court, in fact, reached a sentence that fell well *below* the sentence recommended by the Guidelines. Moreover, for his trafficking offenses, the court reached a sentence within the range of sentences given to defendants convicted of similar offenses that Norris’s counsel presented at the hearing. Norris’s below-Guidelines sentence of 35 years’ imprisonment, imposed for his 19 human trafficking convictions (each involving aggravated sexual abuse, as found by the

jury), four obstruction convictions, and single conspiracy conviction, was substantively reasonable.

CONCLUSION

For the reasons stated, this Court should affirm defendant's sentence.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify, pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), that the attached BRIEF FOR THE UNITED STATES AS APPELLEE:

(1) complies with Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 6181 words; and

(2) complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Word 2007, in 14-point Times New Roman font.

s/Angela M. Miller
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Dated: May 17, 2011

CERTIFICATE OF SERVICE

I certify that on May 17, 2011, I electronically filed the foregoing BRIEF FOR THE UNITED STATES AS APPELLEE with the Clerk of the Court using the EDF system.

I certify that on May 17, 2011, the original and six copies of the BRIEF FOR THE UNITED STATES AS APPELLEE were served by overnight mail, postage prepaid, on the Clerk of the Court for the 11th Circuit Court of Appeals. I also certify that one copy of the foregoing brief was served by overnight mail, postage prepaid, on the following:

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