

UNITED STATES COURT OF APPEALS September 10, 2021

TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PHILIP ANDRA GRIGSBY,

Defendant - Appellant.

No. 21-3014
(D.C. No. 6:12-CR-10174-JTM-1)
(D. Kan.)

ORDER AND JUDGMENT*

Before **BACHARACH, MURPHY, and CARSON**, Circuit Judges.

In 2012, Appellant Philip Andra Grigsby pleaded guilty to eight counts of sexual exploitation of a minor, one count of possessing child pornography, and one count of being a felon in possession of a firearm. *United States v. Grigsby*, 749 F.3d 908, 909 (10th Cir. 2014). In addition to receiving a sentence of 260 years' imprisonment, Grigsby was ordered to pay restitution to the victim and her mother. *United States v. Grigsby*, 630 F. Appx. 838, 839 (10th Cir. 2015).

*This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

On January 8, 2021, Grigsby filed a motion with the district court seeking modification of the restitution order. Specifically, he sought an order requiring that restitution payments owed to the victim now be made directly to the victim, who has reached the age of majority. The district court struck Grigsby's motion, concluding he lacked standing. In the instant appeal, Grigsby challenges the district court's judgment, asserting that (1) he and the victim are being denied due process and (2) the victim is being denied her right to restitution.

There was no reversible error in the district court's disposition of Grigsby's motion. "Article III standing requires the plaintiff to have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Baker v. USD 229 Blue Valley*, 979 F.3d 866, 871 (10th Cir. 2020) (quotation omitted). Grigsby has not met these requirements. To the contrary, the bulk of his opening brief focuses on the rights of the victim, not his own rights. He concedes the victim is entitled to restitution and wholly fails to explain how the granting of his motion would provide him with relief from any injury in fact.

Grigsby attempts to remedy this failure in his reply brief by asserting his due process rights are being violated because the restitution payments are not being made directly to the person to whom he owes the obligation. This argument is unavailing because Grigsby fails to identify the source of any alleged right he

has to make restitution payments directly to the victim when she reaches the age of majority.¹ To the extent Grigsby argues his standing to protect the rights of the victim flows from the Fourteenth Amendment's right to familial association, his briefing is deficient and he has failed to direct this court to any precedent holding a parent has such rights with respect to a competent adult child.

For the first time on appeal, Grigsby also argues the district court was biased against him. Because Grigsby did not request that the district court judge recuse himself, we review the question of whether his due process rights were violated because of judicial bias only for plain error. *See United States v. Nickl*, 427 F.3d 1286, 1297–98 (10th Cir. 2005). Grigsby supports his assertion of error by arguing the district court incorrectly adjudicated his claims. Because adverse rulings “do not in themselves support a bias charge,” Grigsby has failed to show error. *Id.* at 1298.

Grigsby also alleges for the first time on appeal that the Assistant United States Attorney engaged in prosecutorial misconduct during this appeal. Even assuming a prosecutorial misconduct claim can be raised in a matter like the one before this court, we have reviewed the entire appellate record and can find no support for Grigsby's allegations.

¹No such right flows from the Child Pornography Restitution statute. *See* 18 U.S.C. § 2259.

The judgment of the district court striking Grigsby's motion is **affirmed**.
Grigsby's motion to proceed *in forma pauperis* on appeal is **granted**.

ENTERED FOR THE COURT

Michael R. Murphy
Circuit Judge