

DEC 05 2014

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>JONATHAN MICHAEL SUDDUTH, AKA Trent,</p> <p>Defendant - Appellant.</p>	<p>No. 12-50116</p> <p>D.C. No. 2:09-cr-00068-VAP-11 Central District of California, Los Angeles</p> <p>MEMORANDUM*</p>
<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>RYAN HAWTHORNE,</p> <p>Defendant - Appellant.</p>	<p>No. 12-50451</p> <p>D.C. No. 2:11-cr-00706-VAP-1 Central District of California, Los Angeles</p>
<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>RYAN HAWTHORNE, AKA Pic,</p> <p>Defendant - Appellant.</p>	<p>No. 12-50452</p> <p>D.C. No. 2:09-cr-00068-VAP-6 Central District of California, Los Angeles</p>

Appeal from the United States District Court
for the Central District of California
Virginia A. Phillips, District Judge, Presiding

Submitted November 19, 2014**
Pasadena, California

Before: W. FLETCHER and BYBEE, Circuit Judges, and SINGLETON, Senior District Judge.***

In connection with his participation on a child pornography message board, Jonathan Sudduth pled guilty to conspiracy to advertise child pornography. As part of his plea agreement, Sudduth expressly waived his right to appeal his conviction and the calculation and terms of his sentence. Because Sudduth does not contest that his appellate waiver was knowingly and voluntarily made, the waiver bars Sudduth's appeal of the district court's denial of his motions to withdraw his plea and to substitute counsel, and it bars his appeal of the calculation and reasonableness of his 22-year sentence. *See United States v. Harris*, 628 F.3d

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2)*.

*** The Honorable James K. Singleton, Senior United States District Judge for the District of Alaska, sitting by designation.

1203, 1205 (9th Cir. 2011); *United States v. Rahman*, 642 F.3d 1257, 1259 (9th Cir. 2011).

Sudduth also frames in constitutional terms challenges to his sentence on disparity grounds and to the breadth of the supervised release conditions. While this Court has jurisdiction to consider claims of constitutional error notwithstanding the existence of an appellate waiver, *United States v. Odachyan*, 749 F.3d 798, 801 (9th Cir. 2014), the district court did not err here. The district court had good reasons to treat Sudduth differently from other participants in the crimes. *See United States v. Carter*, 560 F.3d 1107, 1121 (9th Cir. 2009). Sudduth possessed approximately 7,000 images, some of which involved sadistic overtones, and admitted that he had sexually abused two minor children. Moreover, Sudduth did not provide useful information regarding other victims or targets and eventually stopped cooperating with the government. Accordingly, we dismiss Sudduth's appeal.

Sudduth's co-defendant, Ryan Hawthorne, appeals the district court's contribution order on the basis that the court failed to make the requisite finding under 18 U.S.C. § 3006A(f) that "funds are available for payment from or on behalf of a person furnished representation." However, the court ordered Hawthorne to contribute up to \$2,500 to the expense of his appointed attorney "in

light of the fact that [Hawthorne] apparently has resources since the resources were available for the private retention of two experts whose report was just submitted to the Court.” Likewise, the court stated that its “finding” with regard to the contribution order was “based on the fact that [Hawthorne] . . . had the resources to retain private experts.” Furthermore, Hawthorne did not object to the contribution order. Accordingly, the unchallenged record indicates that Hawthorne was capable of paying counsel’s fees.

**Sudduth’s appeal, filed under Docket No. 12-50116, is DISMISSED.
Hawthorne’s contribution order, appealed under Docket Nos. 12-50451 and
12-50452, is AFFIRMED.**