

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 23, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TIMOTHY D. LUKER,

Defendant - Appellant.

No. 26-3065
(D.C. Nos. 6:25-CV-01082-EFM and
6:24-CR-10027-EFM-1)
(D. Kan.)

ORDER

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

This case involves a conviction after a guilty plea for distributing child pornography. *See* 18 U.S.C. § 2252A(a)(2). The defendant, Mr. Timothy D. Luker, asked the district court for collateral relief through vacatur of his sentence. *See* 28 U.S.C. § 2255(a). The district court denied the request, and Mr. Luker wants to appeal.

To appeal, he needs a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B). The district court declined to grant a certificate, so Mr. Luker asks us for one. We can grant a certificate only if reasonable jurists could debate the correctness of the district court's ruling. *See Slack v. McDaniel*, 529 U.S. 473, 478 (2000). In our view, reasonable jurists couldn't debate the correctness of the ruling.

Whether to Grant a Certificate of Appealability

Ineffective Assistance of Counsel

Mr. Luker claims ineffective assistance of counsel. For this claim, Mr. Luker must prove that his legal representation was deficient and prejudicial. *Strickland v. Washington*, 466 U.S. 668, 687–89 (1984).

1. *Interstate Commerce*

Mr. Luker points out that distribution of child pornography is a federal crime only if the distribution

- involves the use of a “means or facility of interstate commerce” or
- affects interstate commerce.

18 U.S.C. § 2252A(a)(2)(A). For these requirements, the government points out that Mr. Luker distributed child pornography through the internet. Mr. Luker responds that his trial attorney should have argued that the internet doesn’t involve an instrumentality of interstate commerce. But “we have decided the Internet is an instrumentality of interstate commerce.” *United States v. Morgan*, 748 F.3d 1024, 1033 (10th Cir. 2014); *see also Utah Lighthouse Ministry v. Found. for Apologetic Info. & Research*, 527 F.3d 1045, 1046 (10th Cir. 2008) (stating that “the Internet is generally an instrumentality of interstate commerce”). And Mr. Luker doesn’t suggest how his trial attorney could have distinguished this decision.

Mr. Luker observes that we held in 2025 that automobiles aren't per se instrumentalities of interstate commerce for purposes of a federal kidnapping statute. *United States v. Chavarria*, 140 F.4th 1257, 1268 (10th Cir. 2025). Mr. Luker argues that this observation applies equally to the internet. But our observation about automobiles didn't exist until Mr. Luker had already been sentenced. So defense counsel couldn't have relied on this observation to contest the element of interstate commerce. *See Spears v. Mullin*, 343 F.3d 1215, 1250 (10th Cir. 2003) (holding that counsel wasn't ineffective for failing to anticipate an argument that blossomed from a new case developed after the defendant's trial). When Mr. Luker pleaded guilty, we had held that the internet was an instrumentality of interstate commerce; and no jurist could reasonably fault defense counsel for failing to conjure a way of distinguishing that holding. So we deny a certificate of appealability on this ground.

2. *Sharing of Images as Distribution*

Mr. Luker admits that he shared child pornography, but argues that he didn't "distribute" it absent a contribution to the production of any pornographic images. This argument lacks any support. We've defined *distribution* of child pornography as the transfer or dispersal to others. *United States v. Shaffer*, 472 F.3d 1219, 1223–24 (10th Cir. 2007). Given our definition of *distribution*, no jurist could reasonably credit Mr. Luker's

argument. So we decline to grant a certificate of appealability on this ground.

3. *Distribution for Profit*

Mr. Luker argues that he didn't try to profit when sharing child pornography. But the Supreme Court has held that people can "certainly 'distribute' child pornography without expecting payment in return." *United States v. Williams*, 553 U.S. 285, 295 (2008). Given that holding, no jurist could reasonably fault defense counsel for failing to rely on the absence of a profit motive. We thus decline to grant a certificate of appealability on this ground.

4. *Absence of Harm*

Mr. Luker also argues that he didn't harm any of the children who were exposed. But the Supreme Court has recognized that distribution of child pornography harms children by creating a permanent record of their exposure. *Paroline v. United States*, 572 U.S. 434, 440 (2014). Given the Supreme Court's recognition of harm from the distribution of child pornography, no reasonable jurist could fault defense counsel for failing to deny harm from the pornographic images. So we decline to grant a certificate of appealability on this ground.

5. *Amount of Restitution*

The district court ordered Mr. Luker to pay restitution of \$5000,¹ and he challenges the amount. Federal law requires that the restitution amount be at least \$3000, and the amount isn't subject to mathematical precision. *See* 18 U.S.C. § 2259(b)(2)(B) (at least \$3000); *Paroline*, 572 U.S. at 459 (not subject to mathematical precision).

Mr. Luker argues that his trial attorney was ineffective for failing to challenge the restitution amount. The district court rejected this argument, and Mr. Luker hasn't said how he could have successfully challenged the district court's estimate of the harm. After all, the statute itself created a floor of \$3000 for restitution and the court could reasonably estimate the harm to the child at \$5000. No jurist could legitimately debate the reasonableness of that estimate. We thus deny a certificate of appealability on this ground.

6. *Supervised Release*

Mr. Luker argues that his trial attorney should have argued that the term of supervised release had increased the sentence and impeded rehabilitation. But federal law required supervised release. 18 U.S.C. § 3583(K).

¹ Mr. Luker was ordered to pay a total of \$15,100: \$5,000 in restitution to one victim, an assessment of \$100 to the Crime Victims Fund, and an assessment of \$10,000 to the Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018.

Mr. Luker might conceivably argue that statutory supervised release is unconstitutional. But he doesn't mention the Constitution when discussing supervised release.² And Congress authorized supervised release to promote rehabilitation by helping offenders transition into their communities. *United States v. Johnson*, 529 U.S. 53, 59 (2000). Given Congress's determination, we deny a certificate of appealability on this ground.

7. *Registry of Sex Offenders*

Mr. Luker also challenges the requirement to register as a sex offender. But he doesn't say how he thinks the registry violated the Constitution. And we have rejected constitutional challenges to the registry based on the Due Process Clause, the Ex Post Facto Clause, the Commerce Clause, and the nondelegation doctrine. *United States v. Carel*, 668 F.3d 1211, 1214 (10th Cir. 2011). Given these decisions, no jurist could reasonably credit Mr. Luker's constitutional challenge. So we decline to grant a certificate of appealability on this ground.

² Mr. Luker suggests that he has challenged the constitutionality of supervised release. But he mentions the Constitution only when addressing the Double Jeopardy Clause, and the Supreme Court has "recognized that supervised release punishments arise from and are treated as part of the penalty for the initial offense." *United States v. Haymond*, 588 U.S. 634, 648 (2019).

Constitutionality of Requiring a Certificate of Appealability

Mr. Luker also argues that the constitutional protection of habeas corpus prevents courts from requiring a certificate of appealability. But the Constitution doesn't create a right to appeal the denial of collateral relief. *Abney v. United States*, 431 U.S. 651, 656 (1977). So the Constitution doesn't prevent Congress from requiring a certificate of appealability before a federal defendant can appeal the denial of collateral relief.

Disposition

Because Mr. Luker hasn't shown how reasonable jurists could reasonably credit any of his arguments, we decline to issue a certificate of appealability. Absent a certificate, we dismiss the appeal.

Entered for the Court

Robert E. Bacharach
Circuit Judge