

United States Court of Appeals for the Fifth Circuit

No. 24-20369
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 26, 2026

Thomas B. Plunkett, III
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CODY WAYNE BURKE,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:22-CR-162-1

Before DAVIS, RICHMAN, and OLDHAM, *Circuit Judges*.

PER CURIAM:*

Cody Wayne Burke pleaded guilty to one count of receiving child pornography and one count of possessing child pornography. He now appeals the restitution orders imposed by the court pursuant to 18 U.S.C. § 2259, and he additionally argues that his convictions and sentences for both possession and receipt of child pornography violate the Double Jeopardy Clause of the Fifth Amendment because possession of child pornography is

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

No. 24-20369

a lesser-included offense of receipt. He did not preserve either issue in the district court, so our review is for plain error. *See Puckett v. United States*, 556 U.S. 129, 135 (2009).

First, in light of the materials included with the presentence report adopted by the district court and the amounts awarded to the victims, Burke has not demonstrated that any error related to a proximate cause analysis affected his substantial rights. *See United States v. Teijeiro*, 79 F.4th 387, 395-96 (5th Cir. 2023). Second, Burke's multiplicity challenge fails because he has not demonstrated that the claimed error is clear or obvious. *See Puckett*, 556 U.S. at 135; *United States v. Evans*, 587 F.3d 667, 671 (5th Cir. 2009).

Accordingly, the judgment of the district court is AFFIRMED.