

United States Court of Appeals
For the Eighth Circuit

No. 24-2585

Joseph San Paolo

Movant - Appellant

v.

United States of America

Respondent - Appellee

Appeal from United States District Court
for the Western District of Missouri - Springfield

Submitted: July 22, 2026

Filed: September 1, 2026

[Unpublished]

Before L.R. SMITH, KELLY, and GRASZ, Circuit Judges.

PER CURIAM.

In 2023, Joseph San Paolo pleaded guilty to two counts of attempted possession of child pornography, after he used a tablet to secretly make video recordings of a minor as she stepped into and got out of a shower in his bathroom. He was sentenced to an aggregate prison term of 140 months, and his direct appeal

was dismissed on the government’s motion pursuant to the waiver included in his plea agreement.

San Paolo then filed a 28 U.S.C. § 2255 motion, which the district court¹ denied, and he argues through appointed counsel on appeal that the district court abused its discretion for failing to conduct an evidentiary hearing before resolving his claims concerning whether the images he possessed constituted child pornography, whether he intended to possess images containing lascivious exhibitions, and whether he was properly advised by trial counsel to plead guilty, even though the images he possessed depicted mere nudity. Because San Paolo’s plea proceedings included his acknowledgment that he understood the terms of the written plea agreement, which included a stipulation that he “secretly filmed Jane Doe, a minor, on two separate occasions, in an attempt to possess visual depictions of the child while engaged in sexually explicit conduct,” and that the materials used to produce the depictions had been transported in interstate commerce, we conclude that an adequate factual basis for an attempt conviction was established, whether or not the images he possessed depicted child pornography. See 18 U.S.C. § 2252(a)(4)(B) (possession of child pornography offense); United States v. Johnson, 639 F.3d 433, 439-41 (8th Cir. 2011) (reinstating jury verdict finding defendant guilty of attempted sexual exploitation of children under 18 U.S.C. § 2251 after he secretly videotaped minor girls weighing themselves while nude; defendant’s success in attaining criminal objective is not necessary for attempt conviction). DeRoo v. United States, 223 F.3d 919, 925 (8th Cir. 2000) (defendant faces heavy burden to establish ineffective assistance, or that reasonable probability exists, but for counsel’s errors, he would not have pleaded guilty and would have proceeded to trial).

Accordingly, we affirm the judgment of the district court.

¹The Honorable Stephen R. Bough, United States District Judge for the Western District of Missouri.