

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
 V.) Case No. 08-40007-FDS
)
 GREGG WOODWARD,)
)
 Defendant.)

GOVERNMENT’S RESPONSE TO DEFENDANT’S SENTENCING MEMORANDUM

On January 30, 2009, the defendant pled guilty to one count of possession of child pornography in violation of 18 U.S.C. § 2252(a)(4)(B). On the basis of that conduct, the defendant faces an advisory Guidelines sentence of 78-97 months. On the eve of September 16, 2009, the defendant filed a 26-page sentencing memorandum (“Defendant’s Memo”) recommending that this Court impose a non-guidelines sentence of 51 months imprisonment. As grounds for this recommendation, the defendant argues that: (1) the Guidelines governing child pornography offenses are bereft of empirical support and should be awarded little deference, and (2) a sentence of 51 months imprisonment is sufficient but not greater than necessary to achieve the goals of sentencing described at 18 U.S.C. § 3553(a).

Despite its length, the defendant’s analysis is incomplete – it fails to account sufficiently for the seriousness of the offense (a fact that is reflected in the Guidelines), the nature and circumstances of the offense, and the need to protect the public from further crimes of the defendant. See 18 U.S.C. § 3553(a)(1), (2). In light of these factors, the government

recommends a mid-range Guidelines sentence of 87 months imprisonment.¹

I. The Defendant's Sentence must Reflect the Seriousness of the Offense

Pursuant to 18 U.S.C. § 3553(a)(2)(A), a sentence must be sufficient but not greater than necessary to reflect the seriousness of the offense, promote respect for the law and provide just punishment for the offense. The possession of child pornography is a serious offense in its own right.² It causes extensive emotional harm to the children depicted in the images. As one victim in this case has described,

My name is []. I am 17 years old. I was sexually abused by my natural father [], when I was a little girl. Most of the abuse happened to me when I was between the ages of 10 and 11. The abuse started off just with fondling and molestation, but eventually escalated to oral sex and anal sex including bondage and a dildo. As my father did these things to me, he would often take pictures or video tape it. . . . Unfortunately my hurt doesn't end with my father. Early last year we discovered that he still had pornography of me on one of his old computer harddrive[s]. The thought crossed my mind then that he might have shared them, but I didn't take it too seriously. Then one day Detective Shepard called us saying that The Center for Missing and Exploited Children had called him after seeing me on Americas Most Wanted. They thought I might be the little girl in a series of pornography that they'd been trying to find for years. This series was the most prolific series of child pornography in the world. I thought, "No, it couldn't be me[]" but agreed to see it anyway. It was me. The breath was knocked out of me at the sight of the first image and I felt myself breaking again. When I was told how many people have viewed these images and videos I thought my pulse would stop. Thinking about all those sick perverts viewing my

¹ In the interests of efficiency, the government will not address each of the defendant's Guidelines arguments, but refers the Court to the government's response to similar arguments made in the case of United States v. Dale F. Poole, 07-40020-FDS. See Government's Response to Defendant's Sentencing Memorandum (Docket No. 39). To the extent the Court would like to hear additional argument in this regard, the government will be prepared to respond at the sentencing hearing on September 22, 2009.

² Although the defendant admits that it is a serious crime, he describes his behavior as passive – explaining, several times, that he has never abused a child. See Defendant's Memo at 5-6, 24. This characterization minimizes the seriousness of the offense, suggesting that it is a victimless crime when it is not.

body being ravished and hurt like that makes me feel like I was raped by each and every one of them. I was so young and so helpless feeling. It terrifies me that people enjoy viewing things like this. Every time I think about it, my whole body goes ice cold and my tears well up in my eyes. I can't even think about it most of the time. It hurts too much.

The United States Supreme Court recognized this harm decades ago, explaining that

. . . the materials produced are a permanent record of the children's participation and the harm to the child is exacerbated by their circulation . . . [P]ornography poses an even greater threat to the child victim than does sexual abuse or prostitution. Because the child's actions are reduced to a recording, the pornography may haunt him in future years, long after the original misdeed took place. A child who has posed for a camera must go through life knowing that the recording is circulating within the mass distribution system for child pornography.

United States v. Ferber, 458 U.S. 747, 759-60 and n.10 (1982) (internal quotations and citations omitted).

Aside from its emotional effects on the children involved, the possession of child pornography is intrinsically related to child sexual abuse. Individuals who possess child pornography, like the defendant, create the demand necessary to ensure continued production. See Osbourne v. Ohio, 495 U.S. 103, 109-11 (1990) (it is reasonable to conclude that there will be a decrease in the production of child pornography if the state penalizes those who possess and view the product); Ferber, 458 U.S. at 759-60 ("the distribution network for child pornography must be closed if the production of material which requires the sexual exploitation of children is to be effectively controlled"); see also Department of Justice Press Release, December 12, 2008, http://www.usdoj.gov/criminal/ceos/Press%20Release/JOINT_HAMMER_12-12-08.pdf. (discussing Operation Joint Hammer, a global investigation involving, among other things, a commercial child pornography website where the operator of the website commissioned the sexual abuse of children in order to create images for his customers). An increase in the

production of child pornography means an increase in child sexual assault.

In short, the defendant may not have “abused a child” in this case – but his actions contributed to the continued emotional, physical and sexual abuse of children across the globe.

II. The Nature and Circumstances of the Offense and the Need to Protect the Public Merit a Guidelines Sentence of 87 Months³

Pursuant to 18 U.S.C. § 3553(a) (1) and (2), a court “shall consider” the nature and circumstances of the offense and the need for the sentence imposed to protect the public from further crimes of the defendant. The nature and circumstances of this case suggest that the defendant is obsessed with child pornography to a degree that he cannot be deterred from committing future crimes and is a danger to the community.

The defendant pled guilty to the possession of hundreds of images of child pornography. Some of the images depicted very young children forced to engage in sexual intercourse with adult men. See PSR ¶11-12. The defendant paid to access web sites such as “the Sick Child Room” in order to view and possess images of child pornography. See PSR ¶ 9. Some of the children depicted in the defendant’s images are known children who have provided impact statements explaining the effect of the defendant’s conduct on their lives. During the time of his offense conduct, the defendant was a high school teacher, interacting with minors on a daily basis. See PSR ¶ 71.

On January 30, 2009, the defendant pled guilty to the possession of child pornography and was detained pending sentencing. While detained, the defendant continued to engage in conduct related to the possession of child pornography. Without access to the Internet, the

³ To the extent necessary, I will address additional factors under § 3553(a) at the sentencing hearing on September 22, 2009.

defendant began to write his own stories about the rape and torture of children. See PSR ¶ 14. The defendant illustrated those stories with graphic depictions of young girls being sexually tortured and mutilated by adults – often with the use of objects. See id. (and corresponding exhibits to the PSR). The defendant distributed some of his drawings to other inmates [REDACTED].

The defendant's conduct while incarcerated suggests two things: that he cannot (easily) be deterred from possessing child pornography, and that he is a danger to the community. The defendant has proved that he is unable to control his compulsions even in the most controlled environment. [REDACTED] Clearly, the defendant needs to be enrolled in the intensive treatment program for sexual offenders at FMC Devens. The depth and breadth of his obsession with child pornography suggest that a lengthy prison term there is appropriate – not only to reflect his conduct while detained but to ensure adequate time for rehabilitation and treatment so that he is not a danger to the public when he is released.

CONCLUSION

In light of the serious nature of the offense and the defendant's conduct in this case, the Court should sentence the defendant to a term of 87 months imprisonment – a sentence that reflects the factors set forth in 18 U.S.C. § 3553(a) and is sufficient but not greater than necessary to achieve the goals of sentencing therein.⁴

Respectfully submitted,

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By: /s/ Karin M. Bell
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Dated: September 23, 2009

⁴ The defendant suggests that his recommendation of 51 months could be construed as a "Guideline-based" sentence if the Court chooses not to impose the two-level enhancement for use of a computer or the two-level enhancement for images containing prepubescent minors. See Defendant's Memo at 26. Respectfully, this Court should not ignore these enhancements. It is true that some enhancements apply in most cases. The computer enhancement, enhancement for pre-pubescent minors, and the enhancement for number of images are perhaps the most common. But that doesn't mean, as the defendant argues, that these enhancements should be disregarded. To the contrary, the Sentencing Commission expected that certain enhancements would apply in most cases and adjusted the base offense levels to account for this. See Amendment 664, U.S.S.G. Supplement to App. C (November 1, 2008) ("The Commission determined that a base offense level of level 22 is appropriate for trafficking offenses because, when combined with several specific offense characteristics which are expected to apply in almost every case (e.g., use of a computer, material involving children under 12 years of age, number of images), the mandatory minimum of 60 months' imprisonment will be reached or exceeded in almost every case . . .").

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Karin M. Bell

Karin M. Bell

Assistant U.S. Attorney

Date: September 23, 2009