

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

IN THE UNITED STATES DISTRICT COURT MAY 26 2010

FOR THE DISTRICT OF NEW MEXICO

MATTHEW J. DYKMAN

CLERK

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
JASON DYER,)
)
Defendant.)

Criminal No. *10-1512 BB*

PLEA AGREEMENT

Pursuant to Rule 11, Fed. R. Crim. P., the parties notify the Court of the following agreement between the United States Attorney for the District of New Mexico, the Defendant, **JASON DYER**, and the Defendant's counsel, Joe Romero Jr.:

REPRESENTATION BY COUNSEL

1. The Defendant understands the Defendant's right to be represented by an attorney and is so represented. The Defendant has thoroughly reviewed all aspects of this case with the Defendant's attorney and is fully satisfied with that attorney's legal representation.

RIGHTS OF THE DEFENDANT

2. The Defendant further understands the Defendant's rights:
 - a. to be charged by an Indictment, presented to a Grand Jury;
 - b. to plead not guilty, or having already so pleaded, to persist in that plea;
 - c. to have a trial by jury; and
 - d. at a trial:

- 1) to confront and cross-examine adverse witnesses,
- 2) to be protected from compelled self-incrimination,
- 3) to testify and present evidence on the Defendant's own behalf, and
- 4) to compel the attendance of witnesses for the defense.

WAIVER OF RIGHTS AND PLEA OF GUILTY

3. The Defendant agrees to waive these rights and plead guilty to an Information to be filed in this case charging, a violation of 18 U.S.C. §§ 2252(a)(4)(B), 2252(b)(2) and 2256: Possession of Matter Containing Visual Depictions of Minors Engaged in Sexually Explicit Conduct. The Defendant further agrees to admit to the criminal forfeiture charged in the information.

SENTENCING

4. The Defendant understands that the maximum penalty the Court can impose for a violation of 18 U.S.C. §§ 2252(a)(4)(B), 2252(b)(2) and 2256 is:
- a. Imprisonment for not more than ten (10) years;
 - b. a fine not to exceed \$250,000;
 - c. a lifetime term of supervised release. (If the defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the defendant's supervised release could be revoked--even on the last day of the term--and the defendant could then be returned to another period of incarceration and a new term of supervised release.);
 - d. a mandatory special penalty assessment of \$100.00; and
 - c. restitution as may be ordered by the Court.

5. The parties recognize that the federal sentencing guidelines are advisory, and that the Court is required to consider them in determining the sentence it imposes.

6. The United States hereby expressly reserves the right to make known to the Court and the United States Probation Office, for inclusion in the presentence report to be prepared under Rule 32, Fed. R. Crim. P., any information the United States believes may be helpful to the Court, including but not limited to information about any relevant conduct under U.S.S.G. § 1B1.3.

7. The Defendant fully understands the agreement included in this document determines the sentence in this case and whether the Court accepts the plea described herein and enters that agreed upon sentence, is solely in the discretion of the Court. Both parties understand that should the Court choose not to accept this plea agreement, as fully laid out in this document, the United States may withdraw from this plea agreement and proceed to trial on an Indictment in this case as solely within the discretion of the United States. It is expressly understood and agreed by and between the Defendant and the United States that:

a. The United States has made an agreement with the Defendant pursuant to Rule 11(c)(1)(c), FED. R. CRIM. P., that a specific sentence is agreed to in this plea agreement. The specific sentence shall be 46 months imprisonment on a violation of 18 U.S.C. §§ 2252(a)(4)(B), 2252(b)(2) and 2256: Possession of Matter Containing Visual Depictions of Minors Engaged in Sexually Explicit Conduct. Both parties agree that the Special Penalty Assessment is \$100 and the term of supervised release will be determined by the Court.

b. The United States and the Defendant agree that the nature and

circumstances of this crime warrant this plea agreement pursuant to Rule 11(c)(1)(c), FED. R. CRIM. P., and as provided for in the United States Sentencing Guideline §6B1.2(c).

c. Both the United States and the Defendant recognize that this agreement identifies a definite term of imprisonment as appropriate in this case. Both parties agree a Presentence report shall be prepared to determine Defendant's applicable criminal history category. Both parties agree that neither a request for an upward departure nor a request for downward departure is permitted by either of the parties. Should either party seek a departure from the agreed upon sentence, the other party may withdraw from the plea agreement and proceed with the case without regard to this agreement as it shall be null and void.

d. The United States and the Defendant understand that the above agreements and stipulations shall not be binding on the Court until such time as the Court may choose to accept this agreement.

FACTUAL BASIS

8. By my signature on this plea agreement, I, **JASON DYER**, am acknowledging that I am pleading guilty because I am in fact guilty of the offenses to which I am pleading guilty. I recognize and accept responsibility for my criminal conduct. Moreover, in pleading guilty, I acknowledge that if I chose to go to trial instead of entering this plea, the United States could prove facts sufficient to establish my guilt to the charges to which I am pleading guilty beyond a reasonable doubt. I admit the

following facts related to the charges against me, and declare under penalty of perjury that all facts are true and correct:

A. In September 2008, an undercover FBI Agent from Oklahoma downloaded child pornography using the Peer-to-Peer (P2P) file-sharing program of Limewire from an IP Address belonging to the residence located at 8422 Brook Street NE, Albuquerque, New Mexico 87113. FBI Agents obtained a search warrant to seize computers and external media from this residence. FBI Agents executed this search warrant on January 30, 2009 and seized multiple computers. One seized computer was a Hewlett Packard Computer, Model M7000, Serial Number MXK5350YVJ with Western Digital 250 GB Hard Drive, Model WD2500, Serial Number WCANK1137986 on the office floor.

B. I now know that a FBI CART Examiner analyzed the seized Hewlett Packard Computer, Model M7000, Serial Number MXK5350YVJ with Western Digital 250 GB Hard Drive, Model WD2500, Serial Number WCANK1137986. The examiner found child pornography images and videos. The forensic examiner also located an active Limewire program (a P2P file-sharing program on this computer) on this computer. The Western Digital Hard Drive, which contained visual depictions of minors engaged in sexually explicit conduct, on this computer is manufactured outside of the state of New Mexico.

C. I now know FBI agents sent the child pornography images to the National Center For Missing and Exploited Children (NCMEC). According to NCMEC, there were 5 known images from 4 difference series and 3 known videos from 3 different series on this computer. One such known image (which was downloaded by

the undercover agent in September 2008 and later found during the computer forensic examination in 2009) is a video depicting a pre-pubescent female tied in ropes, hanging from a ceiling, while an adult male fondles her breasts. The adult male then ties this same child to a board and puts his penis in her mouth.

D. In an interview with FBI Agents on April 21, 2009, with my lawyer present, I told FBI agents I am a truck driver and spend approximately two to three days a month in Albuquerque. I admitted my permanent residence is 8422 Brook Street NE, Albuquerque, New Mexico. I confirmed to agents the silver HP computer found on the office floor and seized from 8422 Brook Street NE, Albuquerque, New Mexico belonged to me and that I am the sole user of this computer. The other occupant of this residence, my father Leslie Dyer, never uses this computer.

9. By signing this agreement, I, **JASON DYER**, the Defendant admits all the foregoing facts and admits that there is a factual basis for each element of the crime(s) to which I will plead guilty. Specifically, I agree that on or about January 30, 2009, in the District of New Mexico, I unlawfully and knowingly possessed a matter which contained visual depictions that had been mailed, shipped, or transported in interstate or foreign commerce by means of a computer, the production of which involved the use of minors engaged in sexually explicit conduct and is of such conduct. I knew it was illegal for me to possess these images.

10. By signing this agreement, I admit that there is a factual basis for each element of the crime to which I will plead guilty. I recognize and accept responsibility for my criminal conduct. I agree the Court may rely on any of these facts, as well as

facts in the presentence report, to determine my sentence, including, but not limited to, the advisory guideline offense level.

STIPULATIONS

11. Except under circumstances where the Court, acting on its own, fails to accept this plea agreement, the Defendant agrees that, upon the Defendant's signing of this plea agreement, the facts that the Defendant has admitted under this plea agreement as set forth above, as well as any facts to which the Defendant admits in open court at the Defendant's plea hearing, shall be admissible against the Defendant under Federal Rule of Evidence 801(d)(2)(A) in any subsequent proceeding, including a criminal trial, and the Defendant expressly waives the Defendant's's rights under Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410 with regard to the facts the Defendant admits in conjunction with this plea agreement.

DEFENDANT'S ADDITIONAL OBLIGATIONS

12. The Defendant understands the Defendant's obligation to provide the United States Probation Office with truthful, accurate, and complete information. The Defendant represents that the Defendant has complied with and will continue to comply with this obligation.

13. If requested to do so by the United States Attorney's Office, the Defendant will submit a person financial statement under oath and/or submit to interviews by the United States Attorney's Office regarding the Defendant's capacity to satisfy any fines and/or restitution.

FORFEITURE

14. The Defendant agrees to forfeit, and hereby forfeits, whatever interest the Defendant may have in any asset derived from or used in the commission of the offenses in this case. The Defendant agrees to cooperate fully in helping the United States (a) to locate and identify any such assets and (b) to the extent possible, to obtain possession and/or ownership of all or part of any such assets. The Defendant further agrees to cooperate fully in helping the United States locate, identify, and obtain possession and/or ownership of any other assets about which the Defendant may have knowledge that were derived from or used in the commission of offenses committed by other persons.

15. The Defendant voluntarily and immediately agrees to forfeit to the United States all of the Defendant's right, title, and interest in the following assets and property, Hewlett Packard Computer, Model M7000, Serial Number MXK5350YVJ with Western Digital 250 GB Hard Drive, Model WD2500, Serial Number WCANK1137986.

16. The Defendant agrees to waive the right of notice to any forfeiture proceeding involving the above-described property.

17. The Defendant knowingly and voluntarily waives the right to a jury trial on the forfeiture of the above-described property. The Defendant knowingly and voluntarily waives all constitutional, legal, and equitable defenses to the forfeiture of said property in any proceeding. The Defendant agrees to waive any jeopardy defense or claim of double jeopardy, whether constitutional or statutory, and agrees to waive any claim or defense under the Eighth Amendment to the United States Constitution, including any

claim of excessive fine, to the forfeiture of said property by the United States, any State or its subdivisions.

SEX OFFENDER REGISTRATION AND NOTIFICATION

18. The Defendant agrees that the Defendant has been advised, and understands, that under the Sex Offender Registration and Notification Act, a federal law, the Defendant must register and keep the registration current in each of the following jurisdictions: where the Defendant resides; where the Defendant is an employee; and where the Defendant is a student. The Defendant agrees that the Defendant understands that the requirements for registration include providing the Defendant's name, the Defendant's residence, address, and the names and addresses of any places where the Defendant is or will be an employee or student, among other information. The Defendant agrees that the Defendant understands that the requirement to keep registration current includes informing at least one jurisdiction in which the Defendant resides, is an employee, or is a student not later than three business days after any change of the Defendant's name, residence, employment, or student status. The Defendant agrees that the Defendant has been advised, and understands, that failure to comply with these obligations subjects the Defendant to prosecution for failure to register under federal law, 18 U.S.C. § 2250, which is punishable by a fine or imprisonment, or both.

WAIVER OF APPEAL RIGHTS

19. The Defendant is aware that 28 U.S.C. § 1291 and 18 U.S.C. § 3742 afford a the Defendant the right to appeal a conviction and the sentence imposed. Acknowledging that, the Defendant knowingly waives the right to appeal the Defendant's convictions and any sentence imposed in conformity with this plea

agreement. In addition, the Defendant agrees to waive any collateral attack to the Defendant's conviction(s) pursuant to 28 U.S.C. § 2255, except on the issue of ineffective assistance of counsel.

UNITED STATES' AGREEMENT

20. Provided that the Defendant fulfills the Defendant's obligations as set out above, the United States agrees that the United States will not bring additional criminal charges against the Defendant arising out of the Defendant's conduct now known to the United States Attorney's Office for the District of New Mexico.

21. This agreement is limited to the United States Attorney's Office for the District of New Mexico and does not bind any other federal, state, or local agencies or prosecuting authorities.

DEFENDANT'S RIGHT TO WITHDRAW GUILTY PLEA

22. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), if the Court rejects this plea agreement, the Defendant shall have the right to withdraw the Defendant's plea of guilty.

VOLUNTARY PLEA

23. The Defendant agrees and represents that this plea of guilty is freely and voluntarily made and is not the result of force, threats, or promises (other than the promises set forth in this agreement). There have been no representations or promises from anyone as to what sentence the Court will impose. The Defendant represents that the Defendant is pleading guilty because the Defendant is in fact guilty, and for no other reason.

VIOLATION OF PLEA AGREEMENT

24. The Defendant agrees that if the Defendant violates any provision of this

agreement, the United States may declare this agreement null and void, and the Defendant will thereafter be subject to prosecution for any criminal violation, including but not limited to any crime(s) or offense(s) contained in or related to the charges in this case, as well as perjury, false statement, obstruction of justice, and any other crime committed by the Defendant during this prosecution.

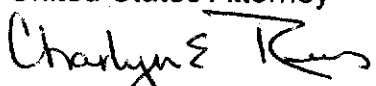
SPECIAL ASSESSMENT

25. At the time of sentencing, the Defendant will tender to the United States District Court, District of New Mexico, 333 Lomas Blvd. NW, Suite 270, Albuquerque, New Mexico 87102, a money order or certified check payable to the order of the **United States District Court** in the amount of \$100.00 in payment of the special penalty assessment described above.

ENTIRETY OF AGREEMENT

26. This document is a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties.

AGREED TO AND SIGNED this 10 day of May, 2010.

KENNETH J. GONZALES
United States Attorney

CHARLYN E. REES
Assistant United States Attorney
Post Office Box 607
Albuquerque, New Mexico 87102
(505) 346-7274

I have read this agreement and carefully reviewed every part of it with my attorney. I understand the agreement and voluntarily sign it.


JASON DYER
Defendant


JOE ROMERO JR.
Attorney for Defendant