

6/3/09

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

UNITED STATES OF AMERICA,

Case No.: 3:09-CR-022(WHR)

Plaintiff,

vs.

WILLIAM ARMSTRONG,

PLEA AGREEMENT

Defendant.

Now comes the United States Attorney's Office for the Southern District of Ohio ("USAO"), through the undersigned Special Assistant United States Attorney, the defendant, **WILLIAM ARMSTRONG** ("defendant"), individually and through his attorney, Assistant Federal Public Defender Thomas Anderson, (collectively, "the parties") and hereby enter into the following plea agreement.

PLEA

1. Defendant agrees to plead guilty to count two of the Indictment in this case, which charges a violation of 18 U.S.C. §§ 2252(a)(4) and (b)(2)(Possession of Child Pornography). Defendant admits that he is, in fact, guilty of the offenses charged in count two of the Indictment, and that the Statement of Facts, which is attached hereto as Exhibit A and incorporated herein by this reference as though set forth in full, is true and correct.

WAIVER OF TRIAL RIGHTS AND ACKNOWLEDGMENT OF RIGHT TO COUNSEL

2. Defendant understands that he has the following rights:

(a) to plead not guilty, or having already so pleaded, to persist in that plea;

(b) to a jury trial;

(c) to be represented by counsel – and, if necessary, have the Court appoint counsel if defendant cannot afford counsel – at trial;

(d) at trial, to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

Defendant further understands that if the Court accepts his guilty plea pursuant to this plea agreement, there will be no trial and he waives these trial rights. Defendant further understands that, despite his guilty plea, he retains the right to be represented by counsel -- and, if necessary, to have the Court appoint counsel if defendant cannot afford counsel -- at every other stage of the proceeding.

STATUTORY PENALTIES AND SENTENCING

3. Defendant further understands that:

(a) The statutory maximum sentence that the Court may impose for a violation of 18 U.S.C. §§ 2252(a)(4) and (b)(2) (count two) is: up to 10 years of imprisonment; at least 5 years up to a lifetime of supervised release; and a fine of up to \$250,000;

(b) there is no agreement as to what his sentence in this case will be, and that the Court will determine Defendant's sentence. Defendant further understands that in determining Defendant's sentence, the Court has an obligation to calculate the applicable United States Sentencing Guidelines ("Sentencing Guidelines" or "U.S.S.G.") range and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a). The parties reserve the right to offer evidence and argument regarding the Sentencing Guidelines (including, but not limited to, a Base Offense Level, specific offense characteristics, adjustments and departures) and the other sentencing factors set forth in 18 U.S.C. § 3553(a). Defendant further understands that the U.S. Probation Office ("USPO") will conduct a pre-sentence investigation and will provide a recommendation to the Court as to the applicable Sentencing Guidelines range; the USPO's recommendations do not bind the Court; any recommendations or agreements between the parties do not bind either the Court or the USPO; the Sentencing Guidelines are advisory, and the Court may impose a sentence up to the statutory maximum penalties;

(c) the Court has an obligation to impose a special assessment of \$100 and has the authority to order restitution;

(d) supervised release is a period of time following imprisonment during which defendant will be subject to various

restrictions and requirements. Defendant further understands that if he violates one or more of the conditions of any supervised release imposed, defendant may be returned to prison for all or part of the term of supervised release, which could result in defendant serving a total term of imprisonment greater than the statutory maximum term of imprisonment stated above;

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

DEFENDANT'S ADDITIONAL OBLIGATIONS

5. Defendant further agrees:

(a) to pay the \$100 mandatory special assessment at or before the time of sentencing;

(b) that he is not a prevailing party as these terms are used in the Hyde Amendment (set forth as a statutory note under 18 U.S.C. § 3006A), and defendant waives filing any suit or asserting any claim against the United States, including its agents and employees, arising out of or otherwise relating to this case, under this or any other provision;

(c) not to withdraw or seek to withdraw his guilty plea in this case or otherwise seek to have it set aside;

(d) that if he does not plead guilty pursuant to this plea agreement, if he withdraws or seeks to withdraw his guilty plea or otherwise seeks to have it set aside, or if his guilty plea is withdrawn or set aside for any other reason:

(1) defendant waives any protection afforded by Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, and U.S.S.G. § 1B1.8(a);

(2) this plea agreement, evidence of the guilty plea, as well as any statements made by defendant (i) in the course of plea discussions, (ii) in any proceeding under Rule 11 of the

Federal Rules of Criminal Procedure, and (iii) to any law enforcement authorities, will be admissible against defendant without limitation in any civil or criminal proceeding;

(3) defendant waives all defenses based on the statute of limitations and the Speedy Trial Act as to any charges that are not time-barred as of the date that defendant signs this plea agreement.

(e) to be truthful at all times with the United States Pretrial Services Office, the USPO, and the Court;

(f) to appear as ordered for all court appearances and otherwise comply with the Court's orders and judgment in this case;

(g) not to commit any crime, and that nothing in this plea agreement authorizes defendant to commit any crime.

FORFEITURE

6. The Defendant hereby agrees to the entry of an Order of Forfeiture to the United States, pursuant to 18 U.S.C. §2253(a)(1) and (3), of visual depictions described in 18 U.S.C. §2253, and all matter containing any such visual depiction which was produced, transported, mailed, shipped or received in violation of Chapter 110; any/or all property, real or personal used or intended to be used to commit or promote the commission of such offense, including, but not limited to:

- (1) One Gateway desktop computer, Serial Number XRB6631001663;
- (2) Lexar 265 mb drive;
- (3) Sandisk 2gb memory card
- (4) One Western Digital external hard drive, Serial Number WXE706794015;
- (5) Gateway Laptop Computer, Serial Number 3265C6101907.

The Defendant acknowledges that the above property belonged solely to him. The Defendant agrees to voluntarily surrender for forfeiture to the United States all of his right, title, and interest in any and all property constituting or derived from proceeds that were acquired as a result of the activities alleged in Count Two. The Defendant waives any and all challenges to the forfeiture of the above property, including but not limited to: waiving any deadlines the United States may have been required to meet in filing any forfeiture action; waiving the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing and incorporation of the forfeiture in the judgment; and waiving all constitutional and statutory challenges. Defendant understands that the forfeiture of assets is part of the sentence that may be imposed in this case and waives any failure by the court to advise him of this, pursuant to Rule 11 (b)(1)(J), at the time his guilty plea is accepted.

THE USAO'S ADDITIONAL OBLIGATIONS

7. If defendant complies fully with all of his obligations under this plea agreement, the USAO agrees:

- (a) not to file additional criminal charges against defendant for violations (including, but not limited to violations of 18 U.S.C. § 2252(a)(2)(b)) both occurring in the Southern District of Ohio during the

time period charged in count two of the Indictment and arising out of the facts set forth in the attached Statement of Facts;

(b) to the dismissal at the time of sentencing of (and, if necessary, to move to dismiss) count one of the Indictment. Defendant understands that the Court may consider uncharged conduct and dismissed charges in determining defendant's sentence.

NO OTHER AGREEMENTS

8. Except as set forth herein, there are no promises, understandings or agreements between the USAO and defendant or defendant's counsel. This agreement binds only the USAO and does not bind any other federal, state or local prosecuting authority.

DEFENDANT'S ACKNOWLEDGMENT

9. By signing below, defendant acknowledges that:

(a) he has carefully read and understands this plea agreement, and that he accepts this plea agreement because he is, in fact, guilty as charged;

(b) his guilty plea pursuant this plea agreement is knowing and voluntary, without duress or coercion, of his own free will, and not the result of any force, threats, or promises (other than the promises in this plea agreement);

(c) he has conferred with his attorney regarding this plea agreement and the facts and circumstances of this case, including the applicable law and potential defenses, and that he is fully satisfied with the representation, advice, and other assistance of his attorney in this case.


GREGORY G. LOCKHART
United States Attorney



LAURA CLEMMENS
Assistant United States Attorney
FOR: DAVID A. WILSON
Special Assistant United States Attorney

6/4/09


Date



WILLIAM ARMSTRONG
Defendant

6/4/09

Date



THOMAS ANDERSON
Assistant Federal Public Defender
Attorney for WILLIAM ARMSTRONG

6/4/09

Date

Exhibit A

Statement of Facts

On or about April 2, 2008, at or near 435 Linden Avenue, in Springfield, Ohio, within the Southern District of Ohio, the defendant, William Armstrong ("Armstrong"), knowingly possessed computer hard drives and computer disks that contained visual depictions of actual children under the age of 18 engaged in sexually explicit conduct, such depictions having been transported in interstate and foreign commerce. Such conduct included but was not limited to minors engaged in the lascivious exhibition of the genitals, and engaged in erotic nude posing with other children under the age of 18. These visual depictions include, but are not limited to, approximately four hundred and twelve (412) still images found on the hard drive of his computer, an external hard drive, and a CD which were located in his residence in Springfield, Ohio. The visual depictions included images of prepubescent minors engaged in the lascivious exhibition of their genitalia.

Armstrong used a Gateway desktop computer, Serial Number XRB6631001663, a Western Digital external hard drive, Serial Number WXE706794015, and Memorex CD-RW media to access and store images of children engaged in sexually explicit conduct.

Armstrong accessed these images by purchasing memberships to child pornography web sites such as "Angel Collection" and "Home Collection". Armstrong then stored these images on the Gateway Computer, the Western Digital hard drive, and the Memorex CD-RW.

Armstrong made the purchases to these websites with his CitiBank credit card.

By engaging in this type of activity, ~~Flora~~ ^{Armstrong (WTA)} was able to possess and store 412 picture files of minors engaged in sexually explicit conduct. These images include, but are not limited to,

TWA (LA)

files identified as: 054.jpg, 042.jpg, 066a.jpg, 090.jpg, and 097.jpg. At the time of this conduct, Armstrong was employed as a teacher at Springfield North High School. The internet which Armstrong used to gain access to these websites and store the explicit images and the credit card he used to purchase the membership to the websites are facilities of interstate and foreign commerce.

AGREED AND ACCEPTED:


WILLIAM ARMSTRONG
Defendant

6/4/09
Date