

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

IN THE UNITED STATES DISTRICT COURT

MAY - 5 2010

FOR THE DISTRICT OF NEW MEXICO

MATTHEW J. DYKMAN
CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM CLYDE PUMPHREY,

Defendant.

CRIMINAL NO. 09-CR-1746 JH

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, **WILLIAM CLYDE PUMPHREY**, and the Defendant's counsel, Stephen McCue.

REPRESENTATION BY COUNSEL

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

RIGHTS OF THE DEFENDANT

2. The Defendant further understands his rights:
- a. to plead not guilty;
 - b. to have a trial by jury; and
 - c. at trial:
 - 1) to confront and cross-examine 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 hereby agrees to waive these rights and to plead guilty to **Count 2** of an Indictment Criminal No. 09-1746, charging violation of 18 U.S.C. §§ 2252(a)(2), 2252(b)(1) and 2256, that being Receipt of Visual Depictions of Minors Engaged in Sexually Explicit Conduct. The Defendant further agrees to admit to the criminal forfeiture charged in the Indictment in Criminal Cause No. 09-1746. **Counts 1, 3, 4, 5 and 6** of the Indictment in Criminal Cause No. 09-1746 shall be dismissed at the time of sentencing

SENTENCING

4. The Defendant understands that the maximum penalty the Court can impose for a violation of 18 U.S.C. §§ 2252(a)(2), 2252(b)(1) and 2256 is:

- a. Imprisonment of not less than five (5) years and not more than twenty (20) years;
- b. up to a \$250,000 fine;
- c. up to a lifetime 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.); and
- d. a mandatory special penalty assessment of \$100.00.

5. The parties recognize that the United States Sentencing Guidelines are advisory, and that the Court is required to consider them in determining the sentence it imposes.

6. The United States reserves the right to make known to the Court and the United States Pretrial Services and Probation Office, for inclusion in the presentence report to be prepared pursuant to Federal Rule of Criminal Procedure 32, any information that 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 that 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 the Indictment in these cases previously filed with the Court as solely within the discretion of the United States. It is expressly understand and agreed by and between the Defendant and the Untied 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. This specific sentence shall be for a total of 10 years imprisonment on Count 2 which the Defendant pleads guilty to under this agreement. Both parties agree that the Special Penalty Assessment is \$100 per convicted Count, that restitution may be ordered by the Court, and that the terms 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 in the United States Sentencing Guideline § 6B1.1(c).

c. Both the United States and the Defendant recognize that this agreement

identifies a definite term of imprisonment for Count 2 as appropriate in this cases. 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 a downward departure or variance 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 signing this plea agreement, I, the Defendant am acknowledging that I am pleading guilty because I am in fact guilty of the offense 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 the facts are true and correct:

a. That on or about March 17 - 22, 2007, in the District of New Mexico, I unlawfully and knowingly received a visual depiction of a minor engaged in sexually explicit conduct, which had been mailed and shipped and transported in interstate commerce, and which contained materials which had been mailed and shipped and transported by any means, including a

computer, the production of which involved the use of a minor engaging in sexually explicit conduct and the image was of such conduct.

b. I know now that my prior landlord and employer told SA Adkins that after I was arrested in 2007, I called him from jail and told him to destroy the computers and computer disks in my Albuquerque apartment because they would be looking for it. My employer also told SA Adkins that I told him the computer disks were encrypted and there was no way they could break the code. My previous landlord/employer told SA Adkins he had my unused computers in his custody. I now know that on August 6, 2008, SA Adkins acquired a search warrant for the computers in my previous landlord/employer's possession. The seized computers included a Gateway E-440 CPU, Serial Number 0020616132 and a Dell Dimension 8200 CPU, Serial Number 50BNF11, with Maxtor 40 GB Hard Drive, Serial Number 662206536417.

c. I now know that a forensic examination of the Gateway E-440 CPU, Serial Number 0020616132 revealed the computer did not operate. A forensic examination of the Dell Dimension 8200 CPU, Serial Number 50BNF11, with Maxtor 40 GB Hard Drive, Serial Number 662206536417 revealed hundreds of images of encrypted child pornography. The computer forensic examination further revealed that I received these images between March 17 and 22, 2007 by downloading them from a newsgroup on the Internet.

d. I now know that agents sent the images to the National Center for Missing and Exploited Children (NCMEC) to identify known children. According to NCMEC, there were 804 known child pornography images from 79 different series and 18 video files of child pornography from 4 different series in this case.

e. I know that one known child pornography image found on the Dell Dimension

8200, Serial Number 50NF11, which I received by downloading from an Internet newsgroup between March 17-22, 2007 was a file titled "1174479867027.jpg." This is a known image from the "LilaJacke" series and depicts a young prepubescent female child with her hands around a penis. The female child is sitting on top of the male with her genitalia near the male's face.

f. I now know that FBI SA Adkins determined that I utilized Comcast, as my Internet Service Provider, to download the child pornography images. Comcast's servers are located outside of New Mexico. Thus, all received child pornography images traveled interstate before I received such images.

9. By signing this plea agreement, I, the Defendant am acknowledging that I am pleading guilty because I am in fact guilty of the offense to which I am pleading guilty. I, the Defendant, recognize and accept responsibility for my criminal conduct. In exchange for the United States entering this agreement, the Defendant agrees, that upon the Defendant's signing of this 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 hearing, including a criminal trial, and the Defendant expressly waives the Defendant'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. 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 previous facts related to the charges against me, and declare under penalty of perjury that all the facts are true and correct. I agree that

the Court may rely on any of these facts, as well as facts in the presentence report, to determine the my sentence, including, but not limited to the advisory guideline offense level.

STIPULATIONS

10. Except under circumstances where the Court, acting on its own, fails to accept this plea agreement, the Defendant agrees that, upon 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 rights under Federal Rules of Criminal Procedure 11(f) and Federal Rule of Evidence 410 with regard to the facts Defendant admits in conjunction with the plea agreement.

DEFENDANT'S OBLIGATIONS

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

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

13. The Defendant voluntarily and immediately agrees to forfeit any interest and hereby forfeits any interest in the following items:

- a. The Dell Dimension 8200 CPU, Serial Number 50BNF11, with Maxtor 40 GB Hard Drive, Serial Number 662206536417;
- b. Gateway E-440 CPU, Serial Number 0020616132; and

c. 42 seized computer disks.

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

15. 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 of 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

16. 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

17. Defendant is aware that 28 U.S.C. § 1291 and 18 U.S.C. § 3742 afford a Defendant the right to appeal a conviction and the sentence imposed. Acknowledging that, Defendant knowingly waives the right to appeal Defendant's convictions and any sentence within the applicable guideline range imposed in conformity with this plea agreement. In addition, Defendant agrees to waive any collateral attack to Defendant's conviction(s) pursuant to 28 U.S.C. § 2255, except on the issue of ineffective assistance of counsel.

UNITED STATES' AGREEMENT

18. Provided that the Defendant fulfills his obligations as set out above, the United States agrees that:

a. The United States will move at the time of sentencing to dismiss **Counts 1, 3, 4, 5 and 6** of the Indictment.

b. The United States will not bring additional charges against the Defendant arising out of the facts forming the bases of the present Indictment in this case.

19. This plea 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. The Defendant understands this plea agreement does not contemplate any resolution or sentence of criminal charges that may be brought for similar conduct by the United States Attorney's Office, District of Utah. Thus, the Defendant understands this plea agreement related only to pending criminal charges, in this case, for his conduct in the District of New Mexico.

DEFENDANT'S RIGHT TO WITHDRAW GUILTY PLEA

20. 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

21. The Defendant agrees and represents that his plea of guilty is freely and voluntarily made and not the result of force, threats or promises apart from those set forth in this plea 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

22. The Defendant understands and agrees that if the Defendant violates any provision of this plea agreement, the United States may declare this plea 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 filed 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


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

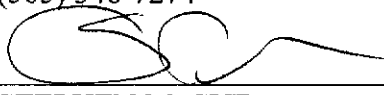
ENTIRETY OF AGREEMENT

24. 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 5th day of May, 2010.

KENNETH J. GONZALES
United States Attorney


CHARLYNE E. REES
Assistant United States Attorney
P.O. Box 607
Albuquerque, New Mexico 87102
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STEPHEN McCUE
Attorney for Defendant

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


WILLIAM CLYDE PUMPHREY
Defendant