

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

| | | |
|--------------------------|---|------------------------|
| UNITED STATES OF AMERICA |) | |
| |) | |
| v. |) | |
| |) | Criminal No. 3:15CR095 |
| ZEBULON RESOLVE WENDT, |) | |
| |) | |
| Defendant. |) | |

POSITION OF THE UNITED STATES WITH RESPECT TO SENTENCING

The United States of America, by and through its undersigned counsel, hereby submits its position with respect to sentencing factors. The United States concurs with the probation officer's determination that the defendant's Total Offense Level is 35 and that his Criminal History Category is I. *See* Presentence Report ("PSR"), Worksheet D. The defendant's applicable guideline range is 180 to 210 months. *Id.* Pursuant to the factors contained in 18 U.S.C. § 3553(a) and for the reasons set forth below, the United States respectfully recommends that the defendant receive a sentence within the guideline range of 180 to 210 months. Such a sentence would be sufficient, but not greater than necessary, to satisfy the factors set forth in 18 U.S.C. § 3553(a) and accomplish the goals of sentencing.

I. Background

A search warrant was executed on the defendant's residence on April 23, 2015, at which time the defendant was arrested and charged with Distribution of Child Pornography, in violation of 18 U.S.C. § 2252A(a)(2). PSR ¶ 1. On May 19, 2015, the grand jury returned an Indictment charging the defendant with one count of Distribution of Child Pornography and one count of Possession of Child Pornography. PSR ¶ 3. A Superseding Indictment was subsequently returned

on July 7, 2015, charging the defendant with six counts of Production of Child Pornography, in violation of 18 U.S.C. § 2251(a). PSR ¶ 5. On October 14, 2015, the defendant pled guilty, pursuant to a written plea agreement, to Count Five of the Superseding Indictment, Production of Child Pornography, in violation of 18 U.S.C. § 2251(a). PSR ¶ 7. The defendant will next appear before the Court for sentencing on January 14, 2016.

II. Position on Sentencing

A. Nature and Circumstances of the Offense

Beginning in at least 2012, the defendant produced dozens of sexually explicit videos and images of his now 17-year-old female neighbor and uploaded these images to his user account page for distribution on a file-sharing website, www.imgsrc.ru (“IMGSRC”). PSR ¶¶ 16-26. The defendant created these images by positioning a camera under his victim’s bed and directing her to pose naked in front of the camera. Although the defendant arranged these images into password-protected “photo albums” on his IMGSRC account page, he encouraged other IMGSRC users to contact him for the password to view the images. PSR ¶ 18. The defendant gained access to this minor female by developing a friendly relationship with her parents, eventually serving as a frequent babysitter for the victim and her younger brother. PSR ¶ 16.

Forensic examination of the defendant’s computer equipment revealed that the defendant had taken dozens of sexually explicit videos of his 17-year-old neighbor over the course of several years and saved these videos to his computer’s hard drive. *Id.* Also discovered on the defendant’s hard drive was a folder labeled “Tributes,” which contained 27 images of other men masturbating to the images of the minor female that the defendant had uploaded to IMGSRC. *Id.*

The defendant took advantage of his personal relationship with a neighboring family to groom and exploit their 17-year-old daughter when they left her in the defendant’s care. Not

only did he produce sexually explicit images of the victim, but he also shared these images with his Internet followers and collected “tribute” images of these other individuals consuming his product. Because of the defendant’s actions, these images cannot be contained and will continue to be shared across the Internet. Although the physical abuse and manipulation may have ended, the defendant’s victim will continue to be exploited for the rest of her life as these images are redistributed. A sentence within the restricted guidelines range of 180 to 210 months adequately accounts for the circumstances of the instant offense and the nature of the harm done to the victim and to society.

B. History and Characteristics of the Defendant

The defendant is 34 years old and has no history of criminal activity. PSR ¶¶ 51-55, 79. The defendant served in the Navy and, up until his arrest on the present charges, was employed by Chesterfield County in various capacities, including as a school bus driver. PSR ¶ 76-78. The defendant has a history mental health concerns and self-harm tendencies, but has been provided treatment and therapy throughout his life. PSR ¶¶ 85-90. The defendant has no history of substance abuse, and there is no indication that substance use contributed to the offense conduct. PSR ¶¶ 91-92. A guidelines sentence would take into account the defendant’s lack of criminal history while acknowledging the severity of this first criminal offense.

C. Factors Set Forth in 18 U.S.C. § 3553(a)(2)

1. Seriousness of the Offense; Provide Adequate Punishment

The defendant’s predatory conduct is extremely concerning and calls for significant punishment. The defendant exploited the trust of his friends and neighbors to prey upon their young daughter for years, amassing a collection of dozens of sexual explicit videos and images of her under the guise of babysitting and mentoring. Not content with this localized abuse, the

defendant then uploaded these images to the Internet and encouraged his online followers to consume his product, allowing these images to be perpetually redistributed across the Internet. This 17-year-old girl will have to live the rest of her life knowing that images of her sexual exploitation at the defendant's hands are available for anyone to see and share. A sentence within the guidelines range of 180-210 months will account for the seriousness of, and provide an appropriate punishment for, the defendant's conduct.

2. Need to Deter Future Criminal Conduct

A significant prison sentence would deter future criminal conduct by the defendant by preventing the defendant physical access to children, child exploitation material, and the tools used to produce and distribute such material. Additionally, a sentence of 180 to 210 months would allow the defendant adequate opportunity to reflect on the seriousness of his crime and the consequences of recidivism.

3. Need to Protect Public from Defendant's Future Criminal Conduct

The defendant was able to maintain a secret, predatory relationship with his 17-year-old neighbor for several years before ultimately being detected by law enforcement because of his online activities. During this time, he produced sexually explicit videos with this minor female in her own bedroom, all while maintaining the trust and friendship of his victim and her family. The defendant was essentially able to hide in plain sight, even obtaining employment as a county school bus driver. The defendant's conduct is heinous, and his ability to conceal his deviant behavior is alarming. A sentence within the guidelines range will protect the victim in the instant case from further exploitation at the defendant's hands and will ensure that the defendant cannot reach new victims.

4. Need to Provide Treatment to Defendant

Considering the information provided by the PSR, it is clear that the defendant has a need for mental health and sex offender treatment. *See* PSR ¶¶ 85-90. Accordingly, the United States respectfully requests that the Court recommend that the Bureau of Prisons provide the defendant with whatever mental health services and sex offender treatment are available and determined to be appropriate.

D. Kinds of Sentences Available and Unwarranted Sentencing Disparities

In assessing the kinds of sentences available, the Court must consider the calculated guideline range and the statutory sentencing range. The statutorily prescribed mandatory minimum sentence for the instant offense is 15 years, and the statutory maximum sentence is 30 years. A sentence of 180 to 210 months would account for the appropriate sentences available to the Court and would avoid any unwarranted sentence disparities.

III. Conclusion

For the reasons stated above, the United States submits that a sentence of 180 to 210 months is sufficient, but not greater than necessary, to achieve the factors set forth in 18 U.S.C. § 3553(a).

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of December 2015, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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