No. 19-3625

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DANIEL JAY BOWMAN,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

ORDER

Daniel Jay Bowman, a pro se federal prisoner, appeals a district court judgment denying his 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence. The court construes Bowman's notice of appeal as an application for a certificate of appealability ("COA"). *See* Fed. R. App. P. 22(b). He moves to proceed in forma pauperis on appeal.

In 2013, a federal grand jury indicted Bowman on one count of receipt or distribution of visual depictions of minors engaged in sexually explicit conduct, in violation of 18 U.S.C. § 2252A(a)(2); and one count of possession of child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B). In January 2014, Bowman pleaded guilty to the charged offenses. The district court varied downward from the advisory sentencing guidelines range of 210 to 240 months of imprisonment and sentenced Bowman to concurrent terms of 180 and 120 months in prison, to be followed by 10 years of supervised release. This court affirmed. *United States v. Bowman*, No. 14-3535 (6th Cir. May 28, 2015) (order).

In 2016, Bowman filed a § 2255 motion, arguing that trial counsel was ineffective in numerous respects. The government responded, and Bowman replied. Bowman also moved to amend his § 2255 motion, which the district court granted. In his § 2255 motion and amended § 2255 motion, Bowman argued that: (1) trial counsel was ineffective for failing to move to

suppress evidence seized during a search of his home because the search warrant was allegedly invalid in that it contained a "stamped" facsimile of the magistrate judge's signature, and the search warrant application did not contain a probable-cause affidavit; (2) trial counsel failed to engage in plea negotiations with the government, where negotiations allegedly could have resulted in conviction of a less serious charge or a lower, capped sentence; (3) trial counsel was ineffective for failing to challenge alleged procedural and substantive errors in Bowman's sentence because (a) his sentence exceeds the life expectancy of a sixty-two year-old man as determined by the Centers for Disease Control and Prevention ("CDC") and violates the Eighth Amendment and the rule set forth in *Miller v. Alabama*, 567 U.S. 460 (2012), and (b) the district court improperly enhanced his sentence based on allegedly "protected speech" contained in an email describing a "rape fantasy" of an eight-year-old boy, in violation of *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002); (4) appellate counsel pursued frivolous claims on direct appeal, instead of challenging trial counsel's alleged ineffectiveness; and (5) his guilty plea was invalid because trial counsel failed to enter plea negotiations and led Bowman to believe that he had no choice but to enter an open guilty plea.

The district court denied the § 2255 motion, concluding that: (1) trial counsel was not ineffective for failing to assert frivolous challenges to the search warrant; (2) Bowman had no constitutional right to enter plea negotiations and, even if counsel failed to initiate plea negotiations with the government, Bowman was not prejudiced because he did not establish that he could have successfully negotiated the dismissal of the more serious charge in count 1, and the government may have declined to recommend a one-level reduction for acceptance of responsibility had he not promptly pleaded guilty; (3) trial counsel was not ineffective for failing to challenge alleged procedural and substantive errors in Bowman's sentence; and (4) the plea colloquy belies Bowman's argument that his guilty plea was invalid, and counsel's alleged failure to initiate plea negotiations did not render his guilty plea unknowing or involuntary. Subsequently, the district court denied the amended § 2255 motion as being without merit. Bowman appealed.

A COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). When the district court's denial is based on the merits, "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Bowman has not met this burden.

Reasonable jurists would not debate the district court's determination that Bowman failed to establish that trial counsel's performance was deficient or that, absent counsel's alleged errors, he would not have pleaded guilty. *See Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Strickland v. Washington*, 466 U.S. 668, 687 (1984). First, the district court concluded that trial counsel was not ineffective for failing to assert a frivolous challenge to the issuance of the search warrant. Contrary to Bowman's argument, the search warrant application was accompanied by an affidavit of probable cause. In addition, the district court concluded that nothing in the record indicated that the magistrate judge did not intend to "approve the search warrant that bore her signature."

Next, the district court rejected Bowman's argument that trial counsel was ineffective for failing to challenge alleged procedural and substantive errors in his sentence. First, the district court concluded that there is no support for the contention that guidelines sentences for defendants convicted of distributing child pornography violate the Eighth Amendment. Second, the district court concluded that it properly considered the material contained in the email as a relevant sentencing factor because Bowman's description of the "rape fantasy" was written in "first-person narrative" and contained an "admission" that Bowman had raped a child. *See* 18 U.S.C. § 3553(a). Moreover, the district court concluded that, Bowman's reliance on *Free Speech Coalition* was unavailing because, even if the email constituted protected speech, the court's consideration of the email's content for sentencing purposes did not violate the prohibition on "criminalizing" protected speech. Finally, the district court determined that counsel *did* argue that Bowman's sentence exceeded his life expectancy, that the decision not to reference the CDC's requirements was not deficient, and that this court had rejected Bowman's appellate challenge to his sentence based on his life expectancy. *See Bowman*, No. 14-3535, slip op. at 3.

The district court also rejected Bowman's claim that trial counsel was ineffective for failing to initiate plea negotiations with the government. The district court noted that criminal defendants do not have a constitutional right to a plea bargain. *See Moss v. United States*, 323 F.3d 445, 453 (6th Cir. 2003). And even though Bowman maintained that he was not asserting such a claim, he continued to argue that counsel's failure to negotiate with the government resulted in a longer sentence than if he had obtained a plea agreement like other defendants who have been charged with similar offenses. In addition, the district court determined that the record did not support Bowman's contention that plea negotiations might have resulted in the dismissal of the more serious charge contained in count 1 because Bowman's criminal conduct would not have warranted such a dismissal. Finally, the district court noted that insisting on plea negotiations might have resulted in the government's failure to recommend a one-level reduction for acceptance of responsibility in the absence of Bowman's prompt decision to enter a guilty plea.

The district court rejected Bowman's claim that his guilty plea was invalid. A guilty plea is valid if it is entered knowingly, voluntarily, and intelligently. *Bousley v. United States*, 523 U.S. 614, 618 (1998); *United States v. Dixon*, 479 F.3d 431, 434 (6th Cir. 2007). Bowman argues that his plea was invalid because counsel failed to initiate plea negotiations and failed to advise Bowman that he had any other options than to enter an open guilty plea. He maintained that counsel did not even advise him of the purpose for being at the courthouse on the day he entered his guilty plea. In rejecting this claim, the district court determined that the guilty-plea transcript established that Bowman's plea was knowing and voluntary because Bowman agreed that he was entering a plea because he was guilty of the charged offenses; no one had threatened or coerced him to plead guilty; he understood the consequences of his guilty plea; and he had discussed his case with counsel and was satisfied with counsel's representation.

Finally, although the district court did not address Bowman's claim that appellate counsel was ineffective for failing to challenge trial counsel's alleged ineffectiveness on direct appeal, Bowman has not made a substantial showing that appellate counsel's performance prejudiced him. First, ineffective-assistance-of-counsel claims are more properly asserted in a § 2255 motion,

rather than on direct appeal. *See Massaro v. United States*, 538 U.S. 500, 504-05 (2003). Second, for the reasons expressed above, Bowman did not make a substantial showing that trial counsel was ineffective.

Accordingly, Bowman's application for a COA is **DENIED**, and his motion to proceed in forma pauperis is **DENIED** as moot.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

APPENDIX B

PEARSON, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DANIEL JAY BOWMAN,	)	
	)	CASE NO. 5:16CV162
Petitioner,	)	(5:13CR426)
	)	
v.	)	
	)	JUDGE BENITA Y. PEARSON
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	**ORDER OF DISMISSAL**

The Court, having filed its Memorandum of Opinion and Order, hereby dismisses the § 2255 petition with prejudice.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

May 30, 2019
Date

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge

PEARSON, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DANIEL JAY BOWMAN,	)	
	)	CASE NO. 5:16CV162
Petitioner,	)	(5:13CR426)
	)	
v.	)	
	)	JUDGE BENITA Y. PEARSON
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	**MEMORANDUM OF OPINION AND ORDER** [Resolving ECF Nos. 45, 51]
	)	

Before the Court is *pro se* Petitioner Daniel Jay Bowman's amended motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. ECF No. 45. The Government has responded. ECF No. 50. For the reasons discussed below, the motion is denied.

I. Background

In September 2013, Daniel Jay Bowman was indicted for (1) receipt and distribution of visual depictions of minors engaged in sexually explicit conduct, and (2) possession of child pornography. ECF No. 8. The Federal Public Defender's Office was appointed to represent him promptly after proceedings began. *Order*, 9/4/2013. In January 2014, Defendant pleaded guilty to the indictment without a plea agreement. *Minutes of Proceedings*, 1/24/2014.

At sentencing, the Court applied a base offense level of 22. It adjusted upward by two levels because the material involved prepubescent minors, USSG § 2G2(b)(2); five levels because Petitioner traded images with others, § 2G2.2(b)(3)(B); four levels because the material depicted sadistic and masochistic conduct, § 2G2.2(b)(4); two levels because the offense

involved a computer, § 2G2.2(b)(6); and five levels because Petitioner possessed more than 600 images, § 2G2.2(b)(7). ECF No. 32. He received a three-level reduction for acceptance of responsibility pursuant to § 3E1.1(a) and (b). His total offense level of 37 combined with his criminal history category of I to yield a suggested guidelines range of 210 to 262 months in prison, capped at a maximum term of 240 months by 18 U.S.C. § 2252(a)(2). The Court varied downward and sentenced Petitioner to a term of 180 months for Count One and 120 months for Count Two, the terms to be served concurrently. ECF No. 23; *see* ECF No. 32 at PageID#: 271.

Represented by appointed counsel, Petitioner appealed his sentence, and the sentence was affirmed. ECF No. 36. He subsequently filed this *pro se* motion to vacate, set aside, or correct his sentence. ECF No. 37. The Government responded, ECF No. 40, and Petitioner replied, ECF No. 41. Before his petition was decided, Petitioner filed an amended motion to more fully explain his position.[1] ECF Nos. 44, 45. The Government responded. ECF No. 50. For the reasons discussed below, Petitioner's motion is denied.

II. Standard of Review

Section 2255 of Title 28, United States Code, provides:

> A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may

[1] The Court's Memorandum of Opinion and Order (ECF No. 46), issued August 21, 2017, denying Petitioner's motion to vacate, did not account for Petitioner's amended motion at ECF No. 45. For that reason, the Court granted Petitioner's motion for reconsideration (ECF No. 47) as to the arguments that were raised in the amended-motion briefing that had not been raised in the initial brief. ECF No. 48.

move the court which imposed the sentence to vacate, set aside or correct the sentence.

In order to prevail upon a Section 2255 motion, the movant must allege as a basis for relief "(1) an error of constitutional magnitude; (2) a sentence imposed outside the statutory limits; or (3) an error of fact or law that was so fundamental as to render the entire proceeding invalid." *Mallett v. United States*, 334 F.3d 491, 496-97 (6th Cir. 2003) (quoting *Weinberger v. United States*, 268 F.3d 346, 351 (6th Cir. 2001)).

III. Analysis

A. Ineffective Assistance of Counsel

Ineffective assistance of counsel may be a proper basis for relief under 28 U.S.C. § 2255, provided that the petitioner can demonstrate counsel's ineffectiveness by a preponderance of the evidence. *Pough v. United States*, 442 F.3d 959, 964 (6th Cir. 2006); *McQueen v. United States*, 58 F. App'x. 73, 76 (6th Cir. 2003). To establish ineffective assistance of counsel, the petitioner must first demonstrate that counsel's performance was deficient. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). "This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* Next, the petitioner must show that counsel's deficient performance prejudiced the defense. *Id.* To satisfy the prejudice requirement of *Strickland*, a petitioner must show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694.

Petitioner advances three allegations of ineffective assistance of counsel, two with respect

to his trial counsel and one with respect to his appellate counsel.

1. Fourth Amendment: Validity of Search Warrant

Petitioner makes similar allegations of ineffective assistance with respect to his trial counsel and his appellate counsel. He posits that both attorneys failed to raise meritorious arguments about the validity of the search warrant from which much of the evidence against him was derived. Both may be discussed with the same observations.

Petitioner suggests that the search warrant was facially invalid because it was signed with the magistrate judge's stamped signature rather than a handwritten signature. ECF No. 45-1 at 404-09. There is no reason to believe that Magistrate Judge Burke did not indeed approve the search warrant that bore her signature, as she was constitutionally authorized to do. As the Court has already observed with respect to an earlier filing, "Petitioner does not provide a legally sound argument as to why the search warrant was invalid, or why his counsel should have filed a motion to suppress." ECF No. 46 at PageID#: 425. It is not unreasonable for counsel to decline to raise a frivolous argument. *Tremble v. Burt*, 497 F. App'x 536, 547 n.7 (6th Cir. 2012) (citing *Ludwig v. United States*, 162 F.3d 456, 459 (6th Cir. 1998)).

Additionally, to the extent Petitioner asserts that the search warrant was not supported by an affidavit (ECF No. 45-1 at PageID#: 413), he is mistaken. ECF No. 40-1 at PageID#: 354-69 (affidavit of FBI Special Agent Cristin L. McCaskill).

Petitioner's ineffective-assistance arguments pertaining to the validity of the search warrant are unfounded.

2. Declination to Engage in Plea Negotiations

(5:16cv162) (5:13cr426)

Petitioner also faults his trial counsel for declining to enter plea negotiations with the Government. He does not know for sure whether or not his counsel engaged in such discussions, but he infers a failure to do so based on his trial counsel's alleged silence on the topic. *See* ECF No. 45-1 at PageID#: 409. Despite Petitioner's sworn assurances at his change of plea hearing that he was satisfied with his counsel's representation, that he was award of the potential consequences of conviction, and that he had discussed possible strategies he might have chosen to employ at trial, ECF No. 31 at PageID#: 217-18, he now insists that his counsel failed him by supposedly declining to engage in plea negotiations with the Government.

A defendant in criminal proceedings has no constitutional right to a plea bargain. *Moss v. United States*, 323 F.3d 445, 453 (6th Cir. 2003). Petitioner insists that his argument does not suggest any such right, but if there is any distinction to be made, it is vanishingly small. In essence, Petitioner suggests that he was all but entitled to a plea negotiation with the Government because "[m]urders [*sic*] and terrorists . . . obtain [a] benefit from plea negotiations," and that "the VAST majority" of child pornography cases involved a negotiated plea agreement. ECF No. 45-1 at PageID#: 410. Given that prevalence, he posits, his counsel's supposed failure to pursue a plea agreement was objectively unreasonable, and if counsel had pursued such an agreement, there is a reasonable probability that the Government would have made an offer that he would have accepted and that would have been ultimately beneficial to him.

By contrast, Assistant United States Attorney Carol M. Skutnick, the prosecuting attorney in Petitioner's case, represents that "the dismissal of a distribution charge" (Count One) "would have been unprecedented for [her] or Mr. Sullivan, her Project Safe Childhood counterpart."

ECF No. 40 at PageID#: 340. The Government also represents, and the Court has observed, that "Bowman's conduct was exceptionally egregious on multiple levels," and "[n]othing about his fact pattern would have warranted the dismissal of count one, receipt and distribution of visual depictions of real minors engaged in sexually explicit conduct."[2] *Id.*

Given that a dismissal of Count One would have been unwarranted and unprecedented for AUSA Skutnick, it is exceedingly difficult to make the argument that trial counsel's purported failure to engage in plea negotiations was professionally unreasonable. It is also difficult or impossible to argue, given the "strong presumption" of reasonable practice, that counsel's supposed decision not to pursue plea negotiations was not simply a strategic decision. *See Strickland*, 466 U.S. at 689. As the Court observed at the sentencing hearing, Petitioner's prompt decision to plead guilty and accept responsibility provided the basis for a one-level reduction in his Sentencing Guidelines range calculation. ECF No. 32 at PageID#: 238-39. Such a reduction might have been opposed by the Government had Petitioner insisted on negotiating a plea agreement, particularly given the strength of the Government's case and the egregiousness of Defendant's conduct.

For the same reasons, even if Petitioner's trial counsel did fail to enter plea negotiations and even if that failure was professionally unreasonable, Petitioner cannot show that he was prejudiced. Even assuming Petitioner's counsel engaged in no plea discussions as Petitioner

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[2] The Government makes no such assertion about Count Two because it would be irrelevant. Petitioner's sentence on Count Two was lower than his sentence for Count One, and the sentences for each count are to be run concurrently. ECF No. 23. Even if the Government had dismissed Count Two in a plea agreement, it would not have reduced Petitioner's sentencing exposure.

alleges, there is no basis, either on the record or in the abstract, from which to infer that Petitioner would have been better off if his counsel had done so.

Petitioner's ineffective-assistance argument pertaining to plea negotiations is unfounded.

B. Guilty Plea: Knowing and Voluntary

Petitioner also posits that his plea was not knowing and voluntary and should therefore be voided. *See Bousley v. United States*, 523 U.S. 614, 618 (1998). To sustain a guilty plea on such a challenge, "[t]he record should reflect a full understanding of the direct consequences of a guilty plea so that the plea represents a voluntary and intelligent choice among alternatives." *Moore v. United States*, 61 F. App'x 947, 949 (6th Cir. 2003) (citations omitted).

At his change of plea hearing, Petitioner stated under oath that he was pleading guilty to both counts because he was guilty of both counts. ECF No. 31 at PageID#: 217. He swore that he was not threatened or coerced to enter a plea nor promised anything in exchange for his plea. *Id.* at PageID#: 213, 216-17. He acknowledged that a conviction would be attended by a loss of certain civil rights and that he would be required to register as a sex offender wherever he lived and worked. *Id.* at PageID#: 215-16. He confirmed that his plea guaranteed nothing about the sentence he might later receive, except to the extent that the sentence was limited by a statutory minimum and maximum. *Id.* at PageID#: 214-15. He confirmed that his plea, once entered, would be difficult to withdraw. *Id.* at PageID#: 215. He stated that he had fully informed his counsel about all the facts of his case and that they had discussed possible defenses that could be raised at trial and the consequences of a conviction. *Id.* at PageID#: 218. Still under oath, Petitioner confirmed that he was satisfied with his attorney's representation. *Id.*

(5:16cv162) (5:13cr426)

Without much explanation, Petitioner asserts that his trial counsel's supposed unwillingness to engage in plea negotiations rendered his guilty plea unknowing and involuntary. ECF No. 45-1 at PageID#: 413. To the extent that assertion is a restatement of the ineffective-assistance argument described above, it is denied for the same reasons. To the extent Petitioner makes a freestanding argument that his plea was not knowingly or voluntarily made, it is plainly belied by the plea colloquy, as discussed.

IV. Conclusion

For the reasons stated above, Petitioner Daniel Jay Bowman's Motion to Vacate Under 28 U.S.C. § 2255 is denied. Additionally, for lack of good cause shown, Petitioner's motion for discovery (ECF No. 51) is denied.

IT IS SO ORDERED.

May 30, 2019
Date

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge

APPENDIX C

AFFIDAVIT

I, Cristin L. McCaskill, a Special Agent (SA) with the Federal Bureau of Investigation (FBI), being duly sworn, depose and state as follows:

Introduction

1. I have been employed as a Special Agent of the FBI since March of 2010, and am currently assigned to the Cleveland Division, Akron Resident Agency. While employed by the FBI, I have investigated federal criminal violations related to high technology or cyber crime, child exploitation, and child pornography. I have gained experience through training at the FBI Academy in Quantico, Virginia and everyday work relating to conducting these types of investigations.

2. As a federal agent, I am authorized to investigate violations of United States laws and to execute warrants issued under the authority of the United States.

3. I am investigating the activities of the Internet account registered to Teresa Butner. As will be shown below, there is probable cause to believe that Daniel Jay Bowman, using the Internet accounts joey006@lavabit.com, joeyme06@gmail.com, and joeye14@gmail.com, has received, possessed, and distributed child pornography, in violation of 18 U.S.C. §§ 2252 and 2252A. I submit this application and affidavit in support of an arrest warrant authorizing the arrest of Daniel Jay Bowman, 527 E Highland Avenue, Apartment 3, Ravenna, Ohio 44266.

4. The statements in this affidavit are based in part on information provided by SA Daniel E. O'Donnell of the Violent Crimes Against Children Section, Major Case Coordination Unit of the FBI, located in Linthicum, Maryland, statements made by Investigative Support Specialist Kristen K. Mueller of the Innocent Images National Initiative Unit of the FBI in

coordination with the National Center for Missing and Exploited Children, and on my investigation of this matter.

5. In or around early January 2012 CyberTip report 1299337 was reported to the National Center for Missing and Exploited Children by United Online stating email address joeyme06@gmail.com sent an email containing a zip file of 20 images depicting child pornography to a United Online customer. Some of the images involved infants and toddlers. Based on the information provided in the CyberTip report, the following steps were taken to identify a subject associated with email address joeyme06@gmail.com:

a. On January 17, 2012, at 13:41 EST, Administrative Subpoena 00055560 attested copy was served upon United Online, via facsimile. United Online was requested to provide information regarding email address joeyme06@gmail.com

b. On January 26, 2012, Jeremy Tillery of United Online, 2 Executive Drive, Suite 820, Fort Lee, NJ 07024, provided information that United Online has a filter on all inbound and outbound emails. This filter captured email address joeyme06@gmail.com which sent an inbound email containing possible child pornographic image(s) to a United Online customer.

c. On January 17, 2012, at 14:23 EST, Administrative Subpoena 00055563 attested copy was served upon Google Inc., via facsimile. Google Inc. was requested to provide information regarding email address joeyme06@gmail.com.

d. On January 23, 2012, J. Stone of Google Inc., 1600 Amphitheater, Mountain View, CA 64043, responded via facsimile and provided the following information:

joeyme06@gmail.com

Name: Joey Summers

Email: joeyme06@gmail.com

Status: Enabled

Services: Docs, Gmail, Personalized homepage, Picasa, Spreadsheets, Talk, Toolbar, Youtube

Secondary Email: Dan06@neo.rr.com

Created on: 2011/10/22 at 00:15:47 UTC

IP: 24.165.196.194 (MaxMind Lookup = Road Runner) on 2011/10/22 at 00:15:47 UTC

Previous Email: dan06@neo.rr.com (changed on 2011/10/22 at 00:24:42 UTC)

IP: 24.165.196.194 (MaxMind Lookup = Road Runner), 2012/01/01, 12:27:29 PM UTC

e. On January 25, 2012, at 13:44 EST, Administrative Subpoena number 00056478 attested copy was served upon Time Warner Cable (Road Runner), via facsimile. Time Warner Cable (Road Runner) was requested to provide information regarding IP address 24.165.196.194, 2011/10/22, 00:15:47 UTC through 2012/01/01, 12:27:29 PM UTC. This IP address was provided in the Administrative subpoena number 00055563 return from Google for email address joeyme06@gmail.com.

f. On February 1, 2012, the Subpoena Compliance Team of Time Warner Cable (Road Runner), 13820 Sunrise Valley Drive, Herndon, VA 20171, responded via facsimile and provided the following information:

24.165.196.194, 2011/10/22, 00:15:47 UTC through 2012/01/01, 12:27:29 PM UTC

Name: Teresa Butner

Address: 527 E. Highland Avenue, Apt 3, Ravenna, Ohio 44266

Phone: (330) 217-5181

User Name: dan06@neo.rr.com

Length of Service: 3/19/2011 - present

6. On March 1, 2012, in an unrelated investigation, an Australian citizen (AUCIT) was arrested by the Queensland Police Service (QPS) in regards to a child pornography (CP) investigation in which AUCIT utilized the e-mail account, miua2011@hotmail.com, to distribute child pornography. Pursuant to the arrest, the QPS obtained access to this e-mail account and observed over 600 emails sent between AUCIT and numerous other individuals; the majority of which appeared to contain child pornography or depict an interest in CP. Some of these emails also contained discussions among the users about having direct access to children.

7. The QPS then requested information from multiple e-mail providers, including Yahoo!, Google, and Hotmail. The results provided by these e-mail providers revealed that approximately 111 unique e-mail accounts appeared to have been accessed from within the United States.

8. In approximately July 2012, while serving a Temporary Duty Assignment with the Australian Federal Police and the QPS, SA O'Donnell received electronic copies of correspondence sent between the approximate 111 United States based e-mail accounts and AUCIT.

9. Between July and September 2012, SA O'Donnell reviewed the contents of the aforementioned e-mail accounts, which included the e-mail account hereafter referred to as "A".

10. Analysis of "A" revealed e-mail conversation and multiple CP images sent from "A" to miua2011@hotmail.com (AUCIT) during the approximate time period of January 2012.

11. Due to the above, SA O'Donnell executed a search warrant on the appropriate E-Mail Provider in regards to "A".

12. Pursuant to the aforementioned search warrant, the E-Mail Provider of "A" provided all available content associated with "A". Among other things, a review of this content revealed the following:

a. Numerous e-mails containing child pornography were sent between "A" and other e-mail accounts in or around September 2012, which included the e-mail account hereafter referred to as "B."

13. Due to the above, SA O'Donnell executed a search warrant on the appropriate E-Mail Provider in regards to "B."

14. Pursuant to the aforementioned search warrant, the E-Mail Provider of "B" provided all available content associated with "B." A review of this content revealed the user of this account sent or received e-mails containing child pornography to/from over 75 different accounts, which included the e-mail account hereafter referred to as "C."

15. Due to the above, SA O'Donnell executed a search warrant on the appropriate E-Mail Provider in regards to "C" and identified the user of this account to be Scott Edward Rouse, a registered sex offender who was subsequently arrested by the Memphis Division of the FBI (Columbia RA), which obtained consent to assume his online identities.

16. A review of the accounts previously utilized by Rouse, including "C," revealed that both accounts appeared to have been utilized to send/receive child pornography to additional subjects, which included the e-mail account hereafter referred to as "D."

17. Due to the above, SA O'Donnell executed a search warrant on the appropriate E-Mail Provider in regards to "D."

18. Pursuant to the aforementioned search warrant, the E-Mail Provider of "D" provided all available content associated with "D." Among other things, a review of this content

revealed the user of this account sent or received e-mails containing child pornography to dozens of other accounts, including joey006@lavabit.com.

19. On or about 12/19/2012 at 8:15 PM, joey006@lavabit.com received an email from an individual using the name Jesus Garcia and email jesus083187@yahoo.com and the subject line "send more please". The email included the message, "I got more vids, please can I see more". The email included 4 jpg attachments of pre-teen males with exposed genitals and 2 additional files. One 2 minute and 26 second audio file was titled "!!New2010[MB]Black boy getting hard fucked(2'26).avi" . The second 16 second video file was titled "like-58649_boy_boy_boy.flv" and included a pre-teen male posing in front of the camera and exposing his genitals.

20. On or about 12/20/2012 at 6:56 AM, joey006@lavabit.com replied to "Jesus Garcia" at the previously identified email address under the same subject line. The email included the message, "Thanks for the vid and pic's...is that you in the pic's? Please use this e-mail to send back..it works a lot better then this one..Thanks...Joeye14@gmail.com I have many vids and pic's, hope to hear from you soon...:)" The email included 6 jpg attachments depicting the same prepubescent male laying on his back with exposed genitals. In 4 of the pictures, the boy is touching his own genitals and in 2 of the pictures, an unknown individual is touching the boy's exposed genitals. The email also included a video file titled "0132 Man cums in boys mouth.mp4". The 54 second video depicts a prepubescent male performing oral sex to ejaculation on a male depicted from the waist down wearing a condom.

21. On or about 12/20/2012 at 7:02 AM, joey006@lavabit.com replied to "Jesus Garcia" at the previously identified email address under the same subject line. The email included the message, "Yes I agree with you, older boys or men with little boys is a turn

on...Please use this e-mail to return e-mails Joeye14@gmail.com it works better...I will e-mail you from that e-mail...Ok? Thanks again..."

22. On or about 12:20/2012 at 11:34 AM, joey006@lavabit.com sends "Jesus Garcia" another email under the same subject line. The email included the message, "Are you getting my e-mails? Please use this e-mail to send back...Joeye14@gmail.com". The email included 2 video file attachments. The first video, approximately 1 minute, 45 seconds titled "Fuckdaddy.mp4" includes a prepubescent male nude, sitting on top of a nude adult male lying on a bed. The prepubescent male is facing the unknown male's feet with the unknown male's penis inserted into the prepubescent male's anus. The second video, approximately 39 seconds titled "Boy+man Mexican in Polanco 1.mp4" included an adult male, naked from the waist down wearing a condom while inserting his penis into the anus of an unknown likely juvenile nude from the waist down.

INVESTIGATION INTO joey006@lavabit.com

23. Between January 8, 2013 and January 18, 2013, approximately 24 e-mails were sent between "D" and joey006@lavabit.com. Twelve of these e-mails were sent by the user of joey006@lavabit.com, six of which contained attachments. A review of the attachments sent by the user of joey006@lavabit.com revealed they contained eleven images, two of which were identified as child pornography depicting prepubescent females. Many of these e-mails included attachments that contained CP and/or child erotica or contained text indicative of an interest in CP. Examples of these e-mails are as follows:

24. On Tuesday, January 8, 2013 at approximately 08:26:21 -0500, the user of the e-mail account joey006@lavabit.com, using the IP Address 24.165.217.36, sent an e-mail to "D"

entitled "Re: trade." Attached to the e-mail was one image. This image depicted a prepubescent girl's genitalia being exposed by an adult moving her pink and white underwear to the side.

25. On Wednesday, January 9, 2013 at approximately 05:33:50 -0500, the user of the e-mail account joey006@lavabit.com, using the IP Address 24.165.217.36, sent an e-mail to "D" entitled "Re: trade," stating "Ok, found this e-mail from you, sorry...and thanks for pic..." Attached to the e-mail was one image. This image depicted a prepubescent girl lying on her back on a blanket wearing a white t-shirt with an elephant on it and no pants or underwear with her legs spread open, exposing her genitalia.

26. On Wednesday, January 9, 2013 at approximately 07:33:53 -0500, the user of the e-mail account joey006@lavabit.com, using the IP Address 24.165.217.36, sent an e-mail to "D" entitled "Re: what happen," stating "There's more to this series if you like...please send more of hot little girl...Thanks...☺" Attached to the e-mail were six images. These images depicted a prepubescent girl in a variety of poses. Examples of these images are as follows:

a. An unidentified prepubescent girl wearing a purple t-shirt and white pants standing in a room while pulling down her pants with her left hand and putting her right hand inside her pants on or near her own genitalia.

b. An unidentified prepubescent girl wearing a purple t-shirt and white pants sitting on a chair while pulling down her pants with her left hand and putting her right hand inside her pants on or near her own genitalia.

c. An unidentified prepubescent girl wearing a purple t-shirt and white pants sitting on a chair while pulling down her pants with her left hand and putting her right index finger inside the top of her own genitalia.

d. An unidentified prepubescent girl wearing a purple t-shirt and white pants sitting down while pulling down her pants with her left hand and a closer view of her putting her right index finger inside the top of her own genitalia.

e. An unidentified prepubescent girl wearing a purple t-shirt and white pants sitting down while pulling down her pants with her left hand and an even closer view of her putting her right index finger inside the top of her own genitalia.

f. An unidentified prepubescent girl wearing a purple t-shirt and white pants lying upside down on the back of a couch with her head on the pillow seat pulling down her pants with both hands exposing her genitalia with her legs spread.

27. A review of source header details associated with e-mails sent by joey006@lavabit.com revealed they were sent from Internet Protocol (IP) addresses: 24.165.217.36 and 24.165.201.113.

28. An administrative subpoena was issued to Time Warner/Road Runner regarding the assignment of IP addresses 24.165.217.36 and 24.165.201.113 on the dates and times in question. Time Warner/Road Runner identified Teresa Butner, 527 E. Highland Ave, Apt 3, Ravenna, OH 44266-2441 as the account holder.

29. A search warrant was executed on the joey006@lavabit.com account on 03/28/2013. The results were provided by LAVABIT on 05/02/2013. No subscriber details were provided by LAVABIT. However, all of the e-mails sent by joey006@lavabit.com have the associated IP addresses contained within each e-mail's source header information, and the majority of those contained the two aforementioned IP addresses (24.165.217.36 and 24.165.201.113). However, an additional IP address of 71.79.169.170 was identified as being

utilized to send various e-mails in February and March 2013. A check of publicly available information revealed that this IP address belonged to Time Warner/Road Runner.

30. An administrative subpoena issued to Time Warner/Road Runner in regards to IP address 71.79.169.170 also identified Teresa Butner, 527 E. Highland Ave, Apt 3, Ravenna, OH 44266-2441 as the account holder.

31. A check of publicly available databases revealed that both Teresa Butner, DOB 03/22/1963, SSAN XXX-XX-1207 and Daniel Jay Bowman, DOB 05/03/1952, SSAN XXX-XX-0664 reside at 527 E. Highland Ave, Apt 3, Ravenna, Ohio. [The first five digits of all social security numbers have been intentionally redacted by affiant.] It should be noted that Teresa Butner and Daniel Bowman appear to be married as Teresa Butner's spouse's first name is Daniel, according to CLEAR, and Daniel Bowman's spouse's first name is Teresa.

32. Information provided by the Ohio Bureau of Motor Vehicles revealed that Daniel J Bowman, DOB 05/03/1952, SSAN XXX-XX-0664 resides at 527 E Highland Avenue, Apt 3, Ravenna, Ohio 44266. Teresa Butner, DOB 03/22/1963, SSAN XXX-XX-1207 is currently listed as residing at 527 E Highland Avenue, Apt 1, Ravenna, Ohio 44266. There are older records from the Ohio Bureau of Motor Vehicles indicating Daniel Bowman also previously resided in Apt 1. An interview with the former tenant of Apt 3, Chandra Fixel, confirmed that Teresa Butner and Daniel Bowman lived together in Apt 1 and moved into Apt 3 after Ms. Fixel left.

33. On 07/02/2013, physical surveillance of 527 E. Highland Avenue, Apartment 3, Ravenna, Ohio was conducted. The residence is described as a two-story building with six separate apartments. It should be noted that the names Butner and Bowman were both seen on the outside of the mailbox for Apartment 3.

34. On August 28, 2013 a search warrant was obtained for 527 E. Highland Avenue, Apt. #3, Ravenna, Ohio 44266. The search warrant was signed by U.S. Magistrate Judge Kathleen B. Burke.

35. On September 4, 2013 the search warrant was executed at the home of Daniel Jay Bowman at 527 E. Highland Avenue, Apt. #3, Ravenna, Ohio 44266. Daniel Jay Bowman was home at the time of the search and voluntarily agreed to speak with Special Agents (SAs) Chris Fassler and Cristin McCaskill. Bowman was advised that speaking with agents was voluntary and that he was free to leave at any time.

36. During his statement to SAs, Bowman provided a user e-mail address of Dan06@neo.rr.com, commenting that he uses the number "06" in his email address for the number on the jersey of the quarterback for his favorite football team, Jay Cutler with the Chicago Bears. It should be noted that this is the same secondary e-mail address that was provided for the aforementioned email address joeyme06@gmail.com, which was reported as exchanging images containing CP.

37. Bowman reported that only he and his wife, Teresa Butner, reside at 527 E. Highland Avenue, Apt. #3, Ravenna, Ohio 44266. He went on to state that his wife rarely uses the computer and doesn't utilize email.

38. Bowman reported that he has been employed by First Congregational Church in Ravenna, Ohio for approximately nine years. Thereafter, Bowman terminated the interview with the agents.

39. Special Agent (SA) Michael Gerfin confirmed that the Internet service at 527 E. Highland Avenue, Apt. #3, Ravenna, Ohio 44266 was utilized through a cable modem and was wired directly into the computer found inside the residence.

40. A preview of the hard drive of the computer found in the residence was conducted by SA Gerfin at the residence. Upon reviewing the files found on Bowman's hard drive, numerous videos and images were viewed depicting child pornography (CP). Eleven of the many file names that are indicative of CP are identified as follows :

a. Users/Dan/AppData/Local/Microsoft/Windows/Temporary Internet Files/Content.IE5/FT9UW1VP/Falko_girl_MOV00003_(8yo_sucks)

b. Users/Dan/AppData/Local/Microsoft/Windows/Temporary Internet Files/Content.IE5/FT9UW1VP/10_Year_Old_Slut

c. Users/Dan/AppData/Local/Microsoft/Windows/Temporary Internet Files/Content.IE5/FT9UW1VP/2_10yo_Boys_doggyfuck_on_Bed-VERY_Cute_mpeg4

d. Users/Dan/AppData/Local/Microsoft/Windows/Temporary Internet Files/Content.IE5/NYQ4II73/Pthc_2010_falko-video_5Yo_Old_Best_Cock_Sucker_In_The_World

e. Users/Dan/Downloads/R/Falko – (Sdpa) New Good (Pthc) Pedo 9 Yo Girl & Men.mp4

f. Users/Dan/Downloads/Boys V/12 yo Timmy fux.mpeg

g. Users/Dan/Downloads/Girls M/daddy_fingers_fucks_and_cums_on_4yo.mp4

h. Users/Dan/Downloads/Girls V/_10yr_grl_blowsx_dad_mom_helps_1_.mpg

i. Users/Dan/Downloads/Nice Guy/Tied Up Boy Sucks Daddy's Dick.mpg

j. Users/Dan/Downloads/0littletrade0/5Yo Cocksucker Opens Wide For Daddy's Thick Cock.mpg

k. Users/Dan/Downloads/lilje tumppi/boy riding and lubing dad and himself!.mpg