

# PETITIONER'S APPENDIX

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

**SUMMARY ORDER**

**RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 12<sup>th</sup> day of April, two thousand twenty-one.

Present:

DEBRA ANN LIVINGSTON,  
*Chief Judge,*  
RICHARD C. WESLEY,  
SUSAN L. CARNEY  
*Circuit Judges,*

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UNITED STATES OF AMERICA,

*Appellee,*

v.

18-169

RAYMOND L. CRUM,

*Defendant-Appellant.*

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For Defendant-Appellant:

EDWARD S. ZAS, Federal Defenders of New York, Inc.,  
New York, N.Y.

For Appellee:

TIFFANY H. LEE, Assistant United States Attorney, *for*  
James P. Kennedy, United States Attorney for the  
Western District of New York, Buffalo, N.Y.

Appeal from a judgment of the United States District Court for the Western District of New York (Vilardo, *J.*).

**UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the judgment is **AFFIRMED**.

Raymond L. Crum appeals from a January 16, 2018, judgment of the Western District of New York (Vilardo, *J.*) sentencing him to a 120-month prison term on one count of knowing possession of child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B), and two 240-month prison terms on two counts of knowing receipt of child pornography, in violation of 18 U.S.C. § 2252A(a)(2)(A), all to run concurrently. Familiarity with the record is otherwise presumed. On appeal, Crum argues that the district court, by partially basing his sentence on his need for rehabilitation, violated the Sentencing Reform Act, 18 U.S.C. § 3582(a), as interpreted by *Tapia v. United States*, 564 U.S. 319 (2011). The Government responds that we may not entertain this claim because Crum waived his right to appeal as part of his plea agreement. We assume without deciding that Crum’s appeal waiver is unenforceable and conclude that the district court did not commit plain *Tapia* error in fashioning its sentence. Accordingly, we affirm.

Crum did not raise his objection below, so we review for plain error only. *United States v. Stevenson*, 834 F.3d 80, 83 (2d Cir. 2016). “A showing of plain error requires that: (1) there is an error; (2) the error is clear or obvious, rather than subject to reasonable dispute; (3) the error affected the appellant’s substantial rights, which in the ordinary case means it affected the outcome of the district court’s proceedings; and (4) the error seriously affects the fairness, integrity or public reputation of judicial proceedings.” *Id.* (internal quotation marks omitted).

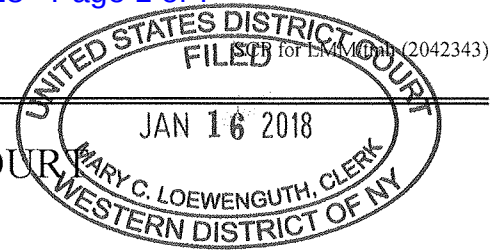
It is far from “clear or obvious” that the district court erred under *Tapia*. That case construed 18 U.S.C. § 3582(a) to “preclude[] federal courts from imposing or lengthening a prison

term in order to promote a criminal defendant’s rehabilitation.” *Tapia*, 564 U.S. at 321. There, the district court impermissibly “calculated the length of *Tapia*’s sentence to ensure that she receive certain rehabilitative services.” *Id.* at 334–35. To be sure, here, the district court stated at sentencing that “the nature and circumstances of the offense, the need for the sentence to reflect the seriousness of the offense, to promote respect for the law and to provide a fair punishment, the need for general deterrence and to protect the public from your crimes, *and* the very serious need that you have for medical and psychiatric treatment that will take a considerable amount of time . . . *all* led me to impose the maximum sentence that I could impose on each count.” App’x at 215 (emphases added). But moments earlier, the court suggested that its consideration of Crum’s poor health primarily informed its recommendation that he be placed at a Federal Medical Center, not the length of his sentence. *See id.* at 214–15 (“I am recommending that you be placed in a federal facility that has medical treatment available to you, also psychiatric treatment available to you. . . . I think that getting you into some sort of treatment program as quickly as we can is going to benefit you and is going to benefit everyone.”). Its later reference to his need for treatment should be read with this context in mind. Indeed, these statements appear to have been a direct response to Crum’s sentencing memorandum, in which he repeatedly raised his health problems and asked that the court consider them in making a placement recommendation. *See id.* at 164–65; *see also id.* at 173–74, 204. In any event, “a court may make a recommendation concerning the type of prison facility appropriate for the defendant; and in this calculus, the presence of a rehabilitation program may make one facility more appropriate than another.” *Tapia*, 564 U.S. at 334 (internal quotation marks omitted).

Under similar circumstances, district courts did not commit *Tapia* error by mentioning a defendant’s rehabilitative needs in sentencing colloquies. In *United States v. Gilliard*, 671 F.3d

255 (2d Cir. 2012), the district court remarked at sentencing that “it’s important . . . that you be sentenced in such a way that you are able to address [your substance abuse] problems,” and “that’s something, obviously, I take very, very seriously, and will, in fashioning my sentence.” *Id.* at 257 (internal quotation marks omitted). However, “the record [did] not suggest that the *length* of Gilliard’s sentence was based on the district court’s consideration of his rehabilitative needs.” *Id.* at 259 (emphasis in original). Instead, discussion of the defendant’s rehabilitative needs were “in the context of recommending to the BOP appropriate treatment programs he should receive while in custody[.]” *Id.* Likewise, in *United States v. Lifshitz*, 714 F.3d 146 (2d Cir. 2013), the district court stated that in determining a sentence, it “[took] . . . into account” factors including ensuring “that Mr. Lifshitz continues to get the type of medical care he is obviously in need of.” *Id.* at 148. We held this was not *Tapia* error because the court’s “primary considerations in sentencing . . . were promoting respect for the law and protecting the public from further crimes of this defendant.” *Id.* at 150 (internal quotation marks omitted). In light of the similarity between the facts of this case and those in *Gilliard* and *Lifshitz*, whether the district court erred is, at least, subject to “reasonable dispute.” *Stevenson*, 834 F.3d at 83. On plain error review, that is enough to foreclose relief. We have considered Crum’s remaining arguments and find them to be without merit. Accordingly, we affirm.

FOR THE COURT:  
Catherine O’Hagan Wolfe, Clerk



## UNITED STATES DISTRICT COURT

Western District Of New York

UNITED STATES OF AMERICA

v.

Raymond L Crum

## JUDGMENT IN A CRIMINAL CASE

Case Number: 1:17CR00128-001

USM Number: 26776-055

Brian P. Comerford

Defendant's Attorney

## THE DEFENDANT:

☒ pleaded guilty to counts 1, 2 and 3 of the Information☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §2252A(a)(5)(B), 18 U.S.C. §2252A(b)(2)	Possession of Child Pornography	08/05/15	1
18 U.S.C. §2252A(a)(2)(A), 18 U.S.C. §2252A(b)(1)	Receipt of Child Pornography	08/05/15	2 and 3

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_☒ Complaint 16-M-32 ☒ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

December 20, 2017

Date of Imposition of Judgment

Signature of Judge

Honorable Lawrence J. Vilardo, U.S. District Judge

Name and Title of Judge

1-15-18

Date

Judgment — Page 2 of 7

DEFENDANT: Raymond L Crum  
CASE NUMBER: 1:17CR00128-001

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 120 months on Count 1, 240 months on Count 2, and 240 months on Count 3 to run concurrently with each other

*The cost of incarceration fee is waived.*

- ☒ The court makes the following recommendations to the Bureau of Prisons:  
The defendant be placed at a facility that has medical and psychiatric treatment available.  
The defendant be placed at FMC Devens as expeditiously as possible.
- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
- ☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_.
- ☐ as notified by the United States Marshal.
- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☐ before 2 p.m. on \_\_\_\_\_.
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Raymond L Crum  
CASE NUMBER: 1:17CR00128-001

**SUPERVISED RELEASE**

Upon release from imprisonment, you will be on supervised release for a term of:

Life on each count to run concurrently

**MANDATORY CONDITIONS**

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
  - ☒ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☒ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.



DEFENDANT: Raymond L Crum  
CASE NUMBER: 1:17CR00128-001

### STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

### U.S. Probation Office Use Only

Upon a finding of a violation of probation or supervised release, I understand that this court may (1) revoke supervision, (2) extend the terms of supervision, and/or (3) modify the conditions of probation or supervised release. A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: [www.uscourts.gov](http://www.uscourts.gov).

Defendant's Signature \_\_\_\_\_

Date \_\_\_\_\_

U.S. Probation Officer's Signature \_\_\_\_\_

Date \_\_\_\_\_

DEFENDANT: Raymond L Crum  
CASE NUMBER: 1:17CR00128-001

### SPECIAL CONDITIONS OF SUPERVISION

The defendant shall not use or possess any computer, data storage device, or any internet capable device unless the defendant participates in the Computer and Internet Monitoring Program (CIMP), or unless authorized by the Court or the U.S. Probation Office. The defendant must provide the U.S. Probation Office advance notification of any computer(s), automated service(s), or connected device(s) that will be used during the term of supervision. The U.S. Probation Office is authorized to install any application as necessary to surveil all activity on computer(s) or connected device(s) owned or operated by the defendant. The defendant will be required to pay the cost of monitoring services (co-pay). The U.S. Probation Office shall be notified via electronic transmission of impermissible/suspicious activity or communications occurring on such computer or connected device, consistent with the computer monitoring policy in effect by the probation office. As triggered by impermissible/suspicious activity, the defendant shall consent to and cooperate with unannounced examinations of any computer equipment owned or used by the defendant. This examination shall include but is not limited to retrieval and copying of all data from the computer(s), connected device(s), storage media, and any internal or external peripherals, and may involve removal of such equipment for the purpose of conducting a more thorough inspection. Any such monitoring or examinations shall be designed to avoid, as much as possible, reading any privileged information or any private material that is not illegal or reasonably likely to lead to illegal material or evidence related to illegal activity.

The defendant must participate in a sex offense-specific treatment program and follow the rules and regulations of that program. The probation officer will supervise the defendant's participation in the program (provider, location, modality, duration, intensity, etc.). Any disputes regarding participation in such a program shall be subject to resolution by the court. The defendant is required to contribute to the cost of services rendered (co-payment).

The defendant shall not have deliberate contact with any child under 18 years of age, excluding his biological or adopted children, unless approved by the probation officer. The defendant shall not loiter within 100 feet of school yards, playgrounds, arcades or other places primarily used by children under the age of 18. The Probation Office has the discretion to authorize the defendant to pick up his children from school or other functions; however, authorization must be obtained in advance. Any refusal by the Probation Office to grant such an authorization is subject to resolution by the court.

In order to monitor the defendant's compliance with not buying or subscribing to online services that provide child pornography, the defendant shall provide the U.S. Probation Office with access to any requested personal and/or business financial information.

The defendant shall register with the state sex offender registration agency in any state where the defendant resides, is employed, carries on a vocation, or is a student, and shall provide proof of registration to the probation officer. The probation office is authorized to release the defendant's presentence report to the New York State Board of Examiners of Sex Offenders. Further disclosure to the county court and to the parties involved in the determination of the defendant's final classification level is also authorized.

The defendant shall submit to a search of his person, property, vehicle, place of residence or any other property under his control, based upon reasonable suspicion, and permit confiscation of any evidence or contraband discovered.

The defendant shall submit to truth verification testing, not to exceed twice in a calendar year, and an additional two re-tests per year, as needed. The defendant's supervision may include examinations using a polygraph, computerized voice stress analyzer, or other similar device to obtain information necessary for supervision, case monitoring, and treatment. The defendant shall answer the questions posed during the examination, subject to the defendant's right to challenge in a court of law the use of such statements as violations of the defendant's Fifth Amendment rights. In this regard, the defendant shall be deemed to have not waived the defendant's Fifth Amendment rights. The defendant is required to contribute to the cost of services rendered (co-payment).

The defendant is to submit to a mental health evaluation. If indicated by the evaluation, the defendant shall participate in mental health treatment, the details of such treatment to be approved by the U.S. Probation Office. The defendant is not to leave such treatment until discharge is agreed to by the U.S. Probation Office and the treating agency. While in treatment or taking psychotropic medication, the defendant shall abstain from the use of alcohol. The defendant is required to contribute to the cost of services rendered (co-payment in the amount to be determined by the U.S. Probation Office based on the ability to pay or availability of third party payment).

DEFENDANT: Raymond L Crum  
CASE NUMBER: 1:17CR00128-001

**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ 300	\$ 0	\$ 0	\$ 0

- ☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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**TOTALS** \$ \_\_\_\_\_ \$ \_\_\_\_\_

- ☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

\*\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Raymond L Crum  
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### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A** ☐ Lump sum payment of \$ \_\_\_\_\_ due immediately, balance due
- ☐ not later than \_\_\_\_\_, or
- ☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B** ☒ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☒ F below); or
- C** ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D** ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E** ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** ☒ Special instructions regarding the payment of criminal monetary penalties:
- The defendant shall pay a special assessment of \$100 on each count for a total of \$300, which shall be due immediately. If incarcerated, payment shall begin under the Bureau of Prisons Inmate Financial Responsibility Program. Payments shall be made to the Clerk, U.S. District Court (WD/NY), 2 Niagara Square, Buffalo, New York 14202.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☒ The defendant shall forfeit his interest in the property specifically set forth in Section VII of the Plea Agreement.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RAYMOND L. CRUM,

Defendant.

Case No. 1:17-cr-128  
(LJV)

December 20, 2017

**TRANSCRIPT OF SENTENCING  
BEFORE THE HONORABLE LAWRENCE J. VILARDO  
UNITED STATES DISTRICT JUDGE**

APPEARANCES:

JAMES P. KENNEDY, JR.  
UNITED STATES ATTORNEY  
BY: AARON J. MANGO, ESQ.  
Assistant United States Attorney  
Federal Centre  
138 Delaware Avenue  
Buffalo, New York 14202  
For the Plaintiff

OFFICE OF THE FEDERAL PUBLIC DEFENDER  
BY: BRIAN P. COMERFORD, ESQ.  
Assistant Federal Public Defender  
300 Pearl Street  
Suite 200  
Buffalo, New York 14202  
For the Defendant

PROBATION:

SHIRLEY C. PANDOLFE, USPO

DEPUTY CLERK:

ALLISON P. GIOIA, ESQ.

COURT REPORTER:

ANN M. SAWYER, RPR, CRR, NYRCR, NYACR  
Notary Public  
Robert H. Jackson Courthouse  
2 Niagara Square  
Buffalo, New York 14202  
Ann\_Sawyer@nywd.uscourts.gov

1 (Proceedings commenced at 12:40 p.m.)

2 THE CLERK: All rise. United States District Court  
3 for the Western District of New York is now in session, the  
4 Honorable Lawrence J. Vilaro presiding.

5 THE COURT: Please be seated.

6 MR. COMERFORD: Judge, is it okay if we're at the  
7 table?

8 THE COURT: Sure, yeah.

9 MR. COMERFORD: Thank you.

10 THE CLERK: 17-CR-128, United States of America  
11 versus Raymond L. Crum.

12 Assistant United States Attorney Aaron J. Mango  
13 appearing on behalf of the government.

14 Assistant Federal Public Defender Brian P. Comerford  
15 appearing with the defendant.

16 United States Probation Officer Shirley C. Pandolfe  
17 is also present.

18 This is the date set for sentencing.

19 THE COURT: Good afternoon, everyone.

20 MR. MANGO: Good afternoon, Your Honor.

21 MR. COMERFORD: Good afternoon.

22 THE COURT: So Mr. Crum is before the Court for  
23 sentencing on his previous pleas of guilty to Count 1 of the  
24 information, possession of child pornography in violation of  
25 Title 18, United States Code, Sections 2252A(a)(5)(B), and



1 Counts 2 and 3 of the information, receipt of child  
2 pornography in violation of Title 18, United States Code,  
3 Section 2252A(a) (2) (A) .

4 We'll begin with some questions that I have for the  
5 attorneys and for you, Mr. Crum, regarding the presentence  
6 investigation report. I'm then going to make sure that I've  
7 received and read everyone's sentencing-related submissions.  
8 After that, I will make some findings of fact and I will  
9 calculate the applicable sentencing guidelines range. And  
10 then before I state the sentence, I'm going to give the  
11 attorneys and you an opportunity to address me to support  
12 their requests for a non-guidelines sentence or to bring up  
13 anything else that they think is relevant to sentencing.

14 So are there any questions before we start from the  
15 government?

16 MR. MANGO: No, Judge.

17 THE COURT: Any questions from the defense?

18 MR. COMERFORD: No, Your Honor.

19 THE COURT: Okay. Mr. Comerford, have you had enough  
20 time to read the presentence report that was first prepared on  
21 October 30th, 2017, and then revised on December 15th, 2017  
22 and to review it with your client?

23 MR. COMERFORD: Yes, Judge.

24 THE COURT: And, Ms. Pandolfe, there were no further  
25 revisions or updates to the report after December 15th; is

1 that right?

2 USPO PANDOLFE: No, Judge.

3 THE COURT: Okay. Mr. Comerford, did you explain the  
4 contents of the report to Mr. Crum?

5 MR. COMERFORD: Yes, Judge.

6 THE COURT: Do you have any questions about his  
7 ability to understand the report?

8 MR. COMERFORD: No, Your Honor.

9 THE COURT: Mr. Crum, did you receive a copy of the  
10 presentence report that was prepared on October 30th and  
11 revised on December 15th, 2017?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: You did not receive it?

14 MR. COMERFORD: Judge, I -- we didn't want him to  
15 have a paper copy of it at the jail he was at in Virginia.  
16 But we have -- I've reviewed the material in there both over  
17 the phone and today in person. So he knows what's in there,  
18 but he doesn't have a physical paper copy of it.

19 THE COURT: Okay. Do you -- are you -- have you  
20 looked at a physical copy?

21 THE DEFENDANT: Just right here, Your Honor.

22 THE COURT: Today?

23 THE DEFENDANT: Yes.

24 THE COURT: Okay. Are you comfortable that you  
25 have -- that you understand everything in that report?



1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Okay. Do you understand everything in  
3 that report?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Do you need more time to look at the  
6 report?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: Do you need more time to talk to your  
9 lawyer about it?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: Okay. Did your attorney explain that  
12 report to you?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. And you understand the  
15 explanation?

16 THE DEFENDANT: Yes.

17 THE COURT: And you think you understand everything  
18 in it?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. Do you have any questions about it  
21 at all?

22 THE DEFENDANT: No, sir.

23 THE COURT: Okay. Mr. Comerford, do you want to  
24 contest or change anything in the report?

25 MR. COMERFORD: No, Your Honor.

1 THE COURT: And that includes both the facts and the  
2 guidelines calculation; is that right?

3 MR. COMERFORD: That's right, Judge.

4 THE COURT: Mr. Crum, do you want to contest or  
5 change anything in the report?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: And, Mr. Mango, does the government want  
8 to contest or change anything in the report?

9 MR. MANGO: No, thank you, Judge.

10 THE COURT: And that includes both the facts and the  
11 guidelines calculation; is that right?

12 MR. MANGO: Correct.

13 THE COURT: Okay. Mr. Comerford, I've received and  
14 reviewed the defendant's statement with respect to sentencing  
15 factors, the sentencing memorandum that you submitted on  
16 behalf of the defendant, and the following letters that were  
17 written on Mr. Crum's behalf:

18 First of all, a letter from him; a letter from Karen  
19 Crum, his wife; a letter from Patricia Groves, his  
20 sister-in-law; and a letter from Deborah Ridler-Page, a family  
21 friend.

22 Is that everything?

23 MR. COMERFORD: That is everything, Judge.

24 THE COURT: Is there anything else you would like to  
25 submit in writing today in connection with the sentencing?

1 MR. COMERFORD: No, Your Honor.

2 THE COURT: Mr. Mango, I've received the government's  
3 statement with respect to sentencing factors and the  
4 government's response to the defendant's sentencing  
5 memorandum. Is that everything?

6 MR. MANGO: Yes, Judge.

7 THE COURT: And is there anything else the government  
8 would like to submit in writing today?

9 MR. MANGO: No, Judge, thank you.

10 THE COURT: I previously accepted the defendant's  
11 pleas of guilty to Counts 1, 2 and 3 of the information,  
12 possession and receipt of child pornography. At that time I  
13 deferred acceptance of the plea agreement. I now accept the  
14 terms and conditions of the plea agreement that was signed on  
15 August 17th, 2017, and the judgement and the sentence will be  
16 consistent with it.

17 The defendant and the government have both filed  
18 statements with respect to sentencing factors that accept the  
19 United States Probation and Pretrial Services Office's  
20 presentence report. Based on the parties' submissions and  
21 based on the representations today in Court, the parties do  
22 not dispute the facts that are included in the presentence  
23 report.

24 I've also reviewed that report. Based on my review,  
25 on the parties' written submissions, and on the positions

1 taken on the record today, I adopt the facts in the report as  
2 my findings of fact and I incorporate them into the record.

3 I will now place the December 15th, 2017 presentence  
4 investigation report in the record under seal. If an appeal  
5 is filed, counsel on appeal will be permitted access to the  
6 sealed report except that counsel on appeal will not be  
7 permitted access to the recommends section.

8 So let's now turn to the sentencing guidelines which  
9 the Court must calculate and consider as an important part of  
10 its determination of a sentence. And I apologize to everybody  
11 in the courtroom for the very technical nature of what's about  
12 to follow, but the guidelines themselves and the reasons  
13 behind the guidelines make this a necessary step in the  
14 analysis.

15 Based on the parties' submissions and based on the  
16 representations today in court, there also are no disputes  
17 regarding the recommendations in the presentence report as to  
18 the applicable sections of the United States Sentencing  
19 Commission's advisory guidelines.

20 So in contrast to what the parties contemplated in  
21 the plea agreement, the presentence report concludes that  
22 under guidelines Section 3D1.2(d), Counts 1 through 3 all  
23 should be grouped because the offense level is determined  
24 largely on the basis of aggregate harm. The plea agreement  
25 contemplated that only Counts 1 and 2 would be grouped

1 together, but both parties as set forth in their respective  
2 statements with respect to sentencing factors and as set forth  
3 with respect to their statements on the record today agree  
4 with the presentence report's conclusion to group Counts 1, 2  
5 and 3 together, and I note that that conclusion actually works  
6 to the defendant's benefit.

7           The presentence investigation report calculates under  
8 the 2016 version of the guidelines manual that Sections  
9 2G2.1(a) and 2G2.2(c)(1) provide for a base offense level of  
10 32.

11           The presentence investigation report then recommends  
12 that the offense level be increased by two levels because a  
13 victim had attained the age of 12 but not the age of 16, and  
14 that's pursuant to sentencing guidelines Section 2G2.1(b)(1)(B).

15           32 plus 2 is 34, so that brings us to a 34.

16           Because the offense involved the commission of an  
17 actual sex act, the presentence investigation report  
18 recommends that the offense level be increased another two  
19 levels under sentencing guidelines Section 2G2.1(b)(2)(A).

20           34 plus 2 is 36.

21           And then the presentence report recommends that under  
22 Section 2G2.1(b)(4)(A), the offense level be increased by  
23 another four levels because the offense involved material that  
24 portrays sadistic or masochistic conduct or other depictions  
25 of violence.

1           36 plus 4 is 40, so that brings us to a 40.

2           The presentence investigation report then recommends  
3 that the offense level be increased by another two levels  
4 because the offense involved the use of a computer or an  
5 interactive computer service, and that is under  
6 Section 2G2.1(b) (6) (B) (1).

7           40 plus 2 is 42, and that brings us to a offense  
8 level of 42.

9           The presentence investigation report then recommends  
10 that the offense level be decreased by two levels under  
11 Section 3E1.1(a) of the guidelines because the defendant  
12 accepted responsibility for his conduct. And in its statement  
13 with respect to sentencing factors, the government has moved  
14 for an additional one-level decrease of the offense level  
15 under Section 3E1.1(b). I grant that motion by the  
16 government.

17           So based on this, the presentence investigation  
18 report calculates the total offense level to be 39. We were  
19 up to a 42, minus the three-level decrease under those two  
20 sections of the guidelines. That brings us to a 39.

21           The report then calculates the defendant's criminal  
22 history category as 1 based on a criminal history score of 0.

23           Based on my factual findings, I agree with the  
24 report's calculation of both the offense level and the  
25 criminal history category.

1           So with a total offense level of 39 and a criminal  
2 history category of 1, the presentence investigation report  
3 calculates the applicable guidelines range as follows:

4           A sentence of imprisonment of 262 to 327 months; a  
5 fine range of between \$25,000 and \$250,000; a period of  
6 supervised release of five years to life; and there's also a  
7 mandatory special assessment of \$100 that I must impose on  
8 each of the three counts for a total of \$300; and in addition,  
9 unless I find that you are indigent, Mr. Crum, I must impose  
10 an additional \$5,000 assessment per count pursuant to the  
11 Justice For Victims of Trafficking Act of 2015.

12           I agree with all those calculations in the  
13 presentence report.

14           Mr. Crum, under the United States Supreme Court's  
15 decision in United States versus Booker and the Second  
16 Circuit's decision in United States versus Crosby, this Court  
17 must consider the guidelines but it's not bound by them.

18           The Court also must consider the factors that are  
19 included in 18, United States Code, Section 3553(a), and those  
20 factors include: the nature and the circumstances of the  
21 offense; your history and your characteristics; the need for  
22 the sentence to reflect the seriousness of the offense, to  
23 promote respect for the law, and to provide a fair punishment  
24 to you; the need to deter others from committing crimes and to  
25 protect the public from your crimes; the need to provide you

1 with educational or vocational training or medical care in an  
2 attempt to rehabilitate you; the types of sentences that are  
3 available; any policy statements that the Sentencing  
4 Commission issues; sentences given to others who committed  
5 crimes similar to the one to which you pled guilty -- the ones  
6 to which you pled guilty; and the need for restitution to  
7 victims.

8 I plan to take those factors into account when I  
9 pronounce sentence, but before I do that I want to give  
10 counsel and you an opportunity to talk to me about anything  
11 you think is relevant to the sentence that I impose.

12 So we will start with the government. Mr. Mango, is  
13 there anything that the government would like to say?

14 MR. MANGO: Yes, Judge. I tried to capture it in my  
15 sentencing memorandum in my response. There doesn't appear  
16 yet to be an understanding at least by the government as to  
17 why the defendant committed this offense. In the interview  
18 with the probation department, he made a statement to the  
19 effect of at the time he committed the offense, he felt  
20 abandoned and stated that he had become involved in the  
21 offense because the victims were someone to talk to.

22 The government does not accept that explanation as to  
23 why you would engage in such egregious, sexually motivated  
24 communications with known minors, send them sex toys to fondle  
25 themselves with and take pictures of, and send back to him.



1 Why you would create audio clips and send them to victims of  
2 such a -- such a really just -- a really  
3 difficult-to-comprehend subject matter when you read the  
4 transcript of the audio clip and the audio clips, especially  
5 one of them where he's giving verbal instructions to the  
6 victims on what to do and how to do it.

7           So it's -- it's a case where the defense is asking  
8 for a five-year sentence, and in terms of the government's  
9 response, this, to the government, does not seem like the type  
10 of case that the absolute minimum that the defendant could  
11 serve is appropriate in this case. It's -- not when there's  
12 no true explanation, which the government has a view which is  
13 he's an online sexual child predator, that's the view we have  
14 to take based on this evidence and these facts. When you  
15 communicate the way he did with these victims, that's an  
16 inescapable conclusion. And five years is not appropriate in  
17 a case like that.

18           In a case like this, where we have three living minor  
19 victims who have to deal with this for the rest of their life,  
20 one of whom, through her mother, was able to provide the Court  
21 with some information. The other two couldn't -- couldn't do  
22 it. When the -- when the HSI agent reached out to them,  
23 they -- they wanted to -- to close this chapter and not, in a  
24 sense, pull the scar off the -- or, the -- the scab off the  
25 wound and open it up again.

1           Because I asked the HSI agent, why -- did you ask  
2           them why they can't submit a statement?

3           They don't want to even think about this anymore.

4           So, that -- that's what we tried to capture in our  
5           sentencing memo. I figured I'd add my comments, as well,  
6           Judge. Other than that, I have nothing else to add.

7           THE COURT: Okay. Let me ask, because I was just  
8           given before I came out here a copy of the victim impact  
9           statement which is referenced in the PSR about -- which I  
10          didn't have a copy of, and I assumed that you folks didn't  
11          either.

12          MR. MANGO: That's right.

13          THE COURT: Have you -- you received a copy now?

14          MR. MANGO: Yes, I've read it. It's consistent with  
15          the summary in the PSR. We did not receive that prior to  
16          today, as well, Your Honor.

17          THE COURT: I understand. But let me ask the  
18          defense, did you receive a copy of it?

19          MR. COMERFORD: We did, Judge, and reviewed it today  
20          in court.

21          THE COURT: And have had you had enough time to  
22          review it?

23          MR. COMERFORD: Yes, Judge.

24          THE COURT: Do you need any more time to review it or  
25          do you waive any objection to having gotten this today?

1 MR. COMERFORD: Yes, Judge.

2 THE COURT: Okay. I just want to make sure everybody  
3 is comfortable with the fact that they've had enough time to  
4 review this and have an opportunity now to say anything that  
5 they want about it, but I'll give you more time if you think  
6 you need more time, Mr. Comerford.

7 MR. COMERFORD: I don't think so, Judge. Mr. Crum  
8 wants to go forward today.

9 THE COURT: Okay. So let's do that then. Thank you.  
10 Okay. And there are no victims present today; is  
11 that right?

12 MR. MANGO: No, Judge.

13 THE COURT: All victims have been given notice of  
14 this though?

15 MR. MANGO: Yes. The victims that we knew about,  
16 because there are other young-appearing girls that were on his  
17 electronic devices that were unable to be identified.

18 THE COURT: Right. We've identified three?

19 MR. MANGO: Yes.

20 THE COURT: Those were the three that were  
21 interviewed?

22 MR. MANGO: Yes.

23 THE COURT: And we've given them notice?

24 MR. MANGO: Absolutely.

25 THE COURT: And we have the one victim impact

1 statement from the one young woman's parents?

2 MR. MANGO: Yes.

3 THE COURT: Has anyone requested restitution of any  
4 sort?

5 MR. MANGO: No, Judge.

6 THE COURT: Okay. So I'm not being asked to make any  
7 order of restitution?

8 MR. MANGO: No, we are not asking for that.

9 THE COURT: Okay. Mr. Comerford?

10 MR. COMERFORD: Thank you, Judge. And, Judge, I've  
11 spoken at length with Mr. Crum about, you know, trying to  
12 answer the question that Mr. Mango brings up. And I think the  
13 conclusion that I've come to is there is no good explanation  
14 that's going to -- there's no justification for this. There's  
15 no excuse for this, and he certainly understands that.

16 I think he is very remorseful for what he did. He  
17 understands that it was very wrong, that he caused a lot of  
18 harm both to these victims and then as a result of his  
19 criminal conduct both to his family now.

20 He expresses his remorse for that and apologizes both  
21 to the victims and to his family in his letter to the Court.  
22 And just in my talking with him over the course of the past  
23 couple years, he is I think truly sorry for those things.

24 As far as his family, Judge, he has a number of  
25 family members here who are supportive of him. In particular,

1 his sister's here, his wife is here, friends are here.

2 His wife is -- remains supportive of him. She speaks  
3 with him somewhat frequently and updates me very frequently as  
4 to his health situation. That's basically what -- what's the  
5 focus of my motion, Judge, just that he is in, I think as the  
6 Court's aware, very poor physical health.

7 Just in the last couple weeks he's -- he's been at  
8 Northeast Ohio now for about two weeks, he's brought locally  
9 for the purpose of this sentence. And he's been hospitalized  
10 at least twice in that time period where he's been there for a  
11 few days, and it's mainly just more cardiac issues and  
12 congestive heart failure. And these are all things are  
13 summarized both in the presentence report and in our memo.

14 I think, in speaking with Mr. Crum, the best -- the  
15 best outcome we can hope for at this time is a fair sentence,  
16 and he's prepared to accept whatever sentence the Court  
17 imposes. But also that -- we'd ask that the Court recommend  
18 he be designated to a federal medical center, specifically FMC  
19 Devens, that's the closest one so that his family can  
20 hopefully visit him. And if there's a way to recommend that  
21 that designation happen as expeditiously as possible. I  
22 spoke -- I've spoken with Rebecca Smith, the marshal locally,  
23 and with Ms. Pandolfe just about what needs to fall into place  
24 to get him designated. And I think everyone in this building  
25 is going to do whatever they need to do to make that happen,

1 because the marshals don't want him in their custody any  
2 longer than necessary and probation doesn't want to hold  
3 things up. So everyone's going to do what they need to do.  
4 But if the Court can somehow incorporate into its judgement  
5 recommendation that this happen as expeditiously as possible,  
6 that would be very helpful to Mr. Crum, because he's been --  
7 he's been in a county jail in Virginia now for a long period  
8 of time, and he's gotten some medical care there, he's gotten  
9 some in Ohio, he's -- I think all the back-and-forth trips and  
10 things like that have made things extremely difficult for him.  
11 And he needs to be in a facility where he can receive care and  
12 stay there and be there for however long his sentence is.

13 So we would ask that the Court impose a sentence that  
14 is sufficient but not greater than necessary, and that it  
15 recommend FMC Devens, and that he be designated as  
16 expeditiously as possible.

17 Thank you.

18 THE COURT: Does the government have a position on  
19 the request to recommend Devens?

20 MR. MANGO: Oh, no, Judge.

21 THE COURT: Okay.

22 MR. MANGO: We have no position on that.

23 THE COURT: Thank you.

24 Mr. Crum, is there anything you would like to say?

25 THE DEFENDANT: Not at this time, Your Honor.

1 THE COURT: Okay. Do either attorney know of any  
2 reason why sentence should not now be imposed?

3 MR. MANGO: No, Judge.

4 MR. COMERFORD: No, Your Honor.

5 THE COURT: Pursuant to the Sentencing Reform Act of  
6 1984 and the 2016 version of the sentencing guidelines, it's  
7 the judgement of the Court that the defendant, Raymond L.  
8 Crum, is hereby sentenced to 120 months imprisonment on  
9 Count 1, 240 months imprisonment on Count 2, 240 months  
10 imprisonment on Count 3, all terms of imprisonment to run  
11 concurrently.

12 Upon release, the defendant shall be placed on  
13 supervised release for life on each count, also to run  
14 concurrently.

15 After his release, the following conditions shall  
16 apply:

17 Within 72 hours of release from custody of the Bureau  
18 of Prisons, the defendant shall report in person to the  
19 probation office in the district to which the defendant is  
20 released unless his probation officer instructs him  
21 differently.

22 The defendant shall comply with the standard  
23 conditions of supervised release that are adopted by the  
24 Court.

25 The defendant shall not commit any crimes under

1 federal, state or local law.

2 The defendant shall not possess a firearm or any  
3 other dangerous device.

4 The defendant shall not possess a controlled  
5 substance except as prescribed by a physician.

6 Because the instant offense occurred after  
7 September 13th, 1994 and is not related to any illegal  
8 substance, and because the defendant does not appear to have  
9 any history of substance abuse, the mandatory requirement for  
10 drug testing is waived.

11 The defendant shall cooperate in the collection of a  
12 DNA sample as required by the Justice for All Act of 2004.

13 The defendant shall not use or possess any computer,  
14 data-storage device or internet-capable device unless the  
15 defendant participates in the computer and internet monitoring  
16 program, or unless authorized by the Court or the probation  
17 office.

18 The defendant must provide the U.S. Probation Office  
19 advanced notice of any computers, automated services or  
20 connected devices that will be used during the term of  
21 supervision. The probation office is authorized to install  
22 any application as necessary to surveil all activity or  
23 computers or connected devices owned or operated by the  
24 defendant.

25 The defendant will be required to pay the cost of



1 monitoring services in a co-pay. The probation office shall  
2 be notified via electronic transmission of any impermissible  
3 or suspicious activity or communications that occur on the  
4 computer or connected device consistent with the computer  
5 monitoring policy that is in effect in the probation office.

6 As triggered by any impermissible or suspicious  
7 activity, the defendant shall consent to and cooperate with  
8 unannounced examinations of any computer equipment owned or  
9 used by the defendant. The examination shall include but is  
10 not limited to retrieval and copying of all data from the  
11 computers, connected devices, storage media, and any internal  
12 or external peripherals, and it may involve removal of such  
13 equipment for the purpose of conducting a more thorough  
14 inspection.

15 Any such monitoring or examination shall be designed  
16 to avoid as much as possible reading any privileged  
17 information or any private material that is not illegal or  
18 reasonably likely to lead to illegal material or evidence  
19 related to illegal activity.

20 The defendant must participate in a sex offense  
21 specific treatment program and follow the rules and  
22 regulations of that program. The probation officer will  
23 supervise the defendant's participation in the program  
24 including the provider, the location, the modality, the  
25 duration, the intensity, and the like. And any disputes

1 regarding participation in the program will be subject to  
2 resolution by the Court. The defendant may be required to  
3 contribute to the cost of services rendered with a copayment.

4 The defendant shall not have deliberate contact with  
5 any child under 18 years of age except for his biological or  
6 adopted children unless approved by the probation officer.

7 The defendant shall not loiter within 100 feet of  
8 schoolyards, playgrounds, arcades, or other places primarily  
9 used by children under the age of 18.

10 The probation office may authorize the defendant to  
11 pick up his children from school or other such functions.  
12 Authorization must be obtained in advance, and any refusal by  
13 the probation office to grant such an authorization is subject  
14 to resolution by the Court.

15 To monitor the defendant's compliance with not buying  
16 or subscribing to online services that provide child  
17 pornography, the defendant shall provide the probation office  
18 with access to any requested personal or business financial  
19 information.

20 The defendant shall register with the state sex  
21 offender registration agency in any state where the defendant  
22 resides, is employed, carries on a vocation, or is a student,  
23 and shall provide proof of his registration to the probation  
24 officer.

25 The probation office is authorized to release the

1 defendant's presentence report to the New York State Board of  
2 Examiners of Sex Offenders and further disclosure to the  
3 county court and the parties involved in the determination of  
4 the defendant's final classification level is also authorized.  
5 And the defendant must update his information in the state sex  
6 offender registration agency as required by the rules of the  
7 registration, and I believe that that means informing them  
8 within -- I think it's 30 days or 60 days of any change of  
9 residence or work address or an education address.

10           The defendant shall submit to a search of his person,  
11 property, vehicle, place of residence, or any other property  
12 under his control, based on reasonable suspicion and shall  
13 permit confiscation of any evidence or contraband discovered.

14           The defendant shall submit to truth verification  
15 testing not to exceed twice in a calendar year, and an  
16 additional two retests per year as needed.

17           The defendant's supervision may include examinations  
18 using a polygraph, a computerized voice stress analyzer, or  
19 other similar device to obtain information necessary for his  
20 supervision, case monitoring and treatment.

21           The defendant shall answer questions posed during the  
22 examination subject to his right to challenge in a court of  
23 law the use of such statements as violations of his Fifth  
24 Amendment rights. And in this regard, the defendant shall be  
25 deemed not to have waived his Fifth Amendment rights. The

1 defendant may be required to contribute to the cost of  
2 services rendered with a copayment.

3           The defendant also is to submit to a mental health  
4 evaluation by a mental health professional. If, as a result  
5 of that evaluation, the mental health professional finds that  
6 treatment is indicated, the defendant shall participate in  
7 mental health treatment. The probation officer will supervise  
8 the participation in the program. The defendant is not to  
9 leave such treatment until completion of the program in the  
10 eyes of the treatment provider, but any disputes regarding  
11 whether treatment is indicated, whether treatment is complete  
12 or any other matter connected to treatment will be subject to  
13 resolution by the Court.

14           While in treatment or taking psychotropic medication,  
15 the defendant shall abstain from using alcohol. And the  
16 defendant, again, may be required to contribute to the cost of  
17 services rendered in a copayment.

18           The defendant shall pay to the United States a  
19 mandatory special assessment of \$300 that is due immediately.  
20 Payment shall be made to the Clerk, United States District  
21 Court, Attention Finance, United States Courthouse, 2 Niagara  
22 Square, Buffalo, New York 14202. If the special assessment is  
23 not paid when the defendant is incarcerated, payment of the  
24 special assessment shall begin under the Bureau of Prisons  
25 Inmate Financial Responsibility program.

1           And just to be explicit, that is a \$100 special  
2           assessment on each of the three counts to which the defendant  
3           pled guilty.

4           In determining the sentence, I've reviewed the  
5           circumstances of the case, I've reviewed the plea, I began my  
6           analysis with the guidelines, and I've also considered the  
7           arguments raised by counsel as to what the appropriate  
8           sentence should be.

9           I've considered the factors in 18, United States  
10          Code, Section 3553(a) which I stated earlier, and I won't  
11          repeat them.

12          Let me say first I'm not imposing a fine, I'm not  
13          imposing the costs of imprisonment or the costs of supervised  
14          release, and I'm not imposing the mandatory \$5,000 additional  
15          special assessment because I think you're indigent, I don't  
16          think you have the ability to make those payments, and also  
17          because of the -- what I think would be a disproportionate  
18          impact on your family members and on the folks who are here  
19          supporting you. I don't want to impact them any more than  
20          this sentence impacts them. And I recognize that it impacts  
21          them, and it bothers me that it impacts them. They're good  
22          people and they don't deserve this, but -- but, I'm not  
23          imposing the -- any fine or the additional special assessment  
24          or any other costs of imprisonment or supervised release  
25          because -- both because I don't think you can afford it and

1 because I think that it would have a disproportionate impact  
2 on them.

3 So, why did I impose the sentence that I did? There  
4 are some pretty strong reasons.

5 First of all, these are very serious offenses against  
6 children who ranged in age from 12 to 16. And I know that the  
7 12-year-old told you that she was 16, but you had a chance to  
8 see her in the -- in the photos, you knew she was a minor.  
9 And you engaged in the sort of conduct with -- with at least  
10 three children, and more, because we have photos of more, but  
11 three children that we could identify.

12 And you knew that the victims were vulnerable. You  
13 knew they were vulnerable first because of their age which  
14 makes them vulnerable by the very nature, but also Victim 1,  
15 for example, told you that she cut herself and, in her words,  
16 that she had a dark backstory. And when you talked to the  
17 investigators, you said that you knew that Victim 1 had  
18 emotional issues.

19 And I think that the acts themselves that you were  
20 involved in with them evidenced that they were vulnerable  
21 and -- and emotionally troubled. The acts involved  
22 sadomasochistic dominance, wearing collars, needing to get  
23 your permission to do things that kids do like hang out with  
24 their friends or -- or do normal things that kids do. They  
25 needed to get your permission.

1           You made it very clear in your communications with  
2           them that you expected a commitment from them in this  
3           dominant/submissive relationship, and you were successful in  
4           getting that commitment from at least three of the children.

5           So this is a pattern of conduct that had a very  
6           significant impact on the lives of at least three children, at  
7           least three children. And the impact statement that the  
8           mother of one of the three kids sent doesn't tell me anything  
9           that I wouldn't have expected otherwise, that -- that her  
10          child suffered greatly because of what occurred between you  
11          and her. And that's -- and that's very, very troubling, it's  
12          very troubling.

13          I recognize that you have some very serious mental  
14          issues that need treatment. And I am recommending --

15          If I can find my notes -- I can't, of course. Tell  
16          me again what the -- oh, I do have them.

17          I am recommending that you be placed in a federal  
18          facility that has medical treatment available to you, also  
19          psychiatric treatment available to you. I will specifically  
20          recommend FMC Devens, and I will also recommend that this  
21          designation be made as expeditiously as possible because --  
22          and not just because your lawyer thinks that it's necessary  
23          for you and might be the best thing for you; I think it's the  
24          best thing for everyone. I mean, I think that getting you in  
25          some sort of treatment program as quickly as we can is going

1 to benefit you and is going to benefit everyone. It's going  
2 to benefit society. And I think that you need that -- that --  
3 that -- that treatment because I think that what occurred here  
4 may very well be related to those psychiatric issues, and  
5 maybe even your physical issues that you suffer from.

6 The fact that this is your first offense, I think,  
7 has to be balanced against the pattern of conduct, and the  
8 pattern of really awful conduct that you engaged in here.

9 So -- so, I did not take that into account  
10 significantly because, I mean, is it your first offense, yes,  
11 but there's a pattern. There's at least three, and it went  
12 over a considerable period of time, and that's troubling.

13 So I think the nature and circumstances of the  
14 offense, the need for the sentence to reflect the seriousness  
15 of the offense, to promote respect for the law and to provide  
16 a fair punishment, the need for general deterrence and to  
17 protect the public from your crimes, and the very serious need  
18 that you have for medical and psychiatric treatment that will  
19 take a considerable amount of time, they all led me to impose  
20 the maximum sentence that I could impose on each count, and I  
21 did that. 240 months, 240 months and 120 months are the  
22 maximum sentences that can be imposed on each of the counts  
23 and I did, because I think that's what this matter deserves.

24 Now, I imposed all of them concurrently, and I didn't  
25 impose any term consecutively because I think that your age



1 and the psychiatric issues that I've raised and -- and  
2 referenced make that an appropriate sentence. I don't think  
3 that adding additional time, even though it's below the  
4 guidelines a bit, I don't think that adding additional time is  
5 necessary here. And I take seriously the obligation to impose  
6 a sentence that is sufficient but not greater than necessary,  
7 and I think that the sentence here is that.

8 I also read very carefully more than once the letters  
9 that were submitted on your behalf, and those letters say some  
10 nice things about you, and they say some nice things about the  
11 people who wrote the letters. They -- they make me feel a  
12 great deal of sympathy for the people in your family, but I  
13 feel sympathy even more so for the victims and for the  
14 victims' families.

15 You know, there are at least three kids out there who  
16 will never be the same because of what you did. And your  
17 lawyer says in his written submission there was no physical  
18 contact between you and them. I discount that, because there  
19 were sexual acts involved. And while it may not have been you  
20 touching them, your instructions to them and what you had them  
21 do, I don't think is much different, if different at all, from  
22 physical contact.

23 It's a sad situation. It's a sad situation for  
24 everyone. It's a sad situation for you and for your family,  
25 it's a sad situation for the victims and the victims'

1 family -- families, and -- and none of that is going to change  
2 based on any sentence that I impose.

3 But I've tried to fashion a sentence that I think  
4 takes into account all the factors under Section 3553(a),  
5 takes into account both you and your situation and the harm  
6 you did by committing the crimes that you did.

7 I've also imposed the maximum term of supervised  
8 release of life with special conditions, and that's intended  
9 to help you return to society after your incarceration, but  
10 even more importantly it's there to let the probation office  
11 monitor your activities to make sure you don't engage in  
12 further illegal activity after your release.

13 So based on the guidelines, based on the positions of  
14 the parties, based on my review of everything here and based  
15 on my careful consideration of the letters and the arguments  
16 of the lawyers and the presentence report and everything else  
17 that I've read, I think that the sentence imposed is  
18 sufficient but not greater than necessary to comply with the  
19 purposes of sentencing in 18, United States Code, Section  
20 3553(a) (2) .

21 Pursuant to Rule 32J1(b) of the Federal Rules of  
22 Criminal Procedure, the Court now advises you of your right to  
23 appeal, Mr. Crum.

24 You have a statutory right to appeal your sentence  
25 under certain circumstances, particularly if you think the

1 sentence is contrary to law. A defendant may waive those  
2 rights as part of a plea agreement.

3 As I think you recognize, you entered into a plea  
4 agreement in which you waived some of your rights to appeal,  
5 specifically your rights to appeal a sentence that falls  
6 within or is less than the guidelines range of imprisonment.

7 Waivers like these are generally enforceable. If you  
8 think the waiver is unenforceable for some reason, you can  
9 present that theory to an appellate court. If you want to  
10 attempt to appeal some issue that you believe survives your  
11 waiver, you must file a notice of appeal within 14 days.

12 If you're unable to pay for the cost of appeal within  
13 14 days, you can apply for leave to appeal in forma pauperis,  
14 that means leave to appeal without paying costs.

15 You have the right to be represented by counsel in  
16 any appeal. If you can't afford counsel, you have the right  
17 to have counsel appointed to represent you free of charge.

18 You have a motion, Mr. Mango?

19 MR. MANGO: Yes, Judge. We'd move to dismiss the  
20 criminal complaint 16-M-32, and we'd also ask for the  
21 forfeiture of the electronic devices included in the plea  
22 agreement to be included as part of the judgement.

23 THE COURT: Okay. The motion to dismiss the criminal  
24 complaint is granted. And I will issue a final order of  
25 forfeiture. You'll prepare that for me?

1 MR. MANGO: Yes, Judge.

2 THE COURT: Thank you. Anything from the defense?

3 MR. COMERFORD: No, we're all set, Judge. Thank you.

4 THE COURT: The statement of reasons shall be  
5 included in the judgement and shall be provided to the  
6 probation office, the United States Sentencing Commission and  
7 the Bureau of Prisons.

8 A complete copy of the presentence report shall be  
9 provided to the probation office, to the Sentencing Commission  
10 and to the Bureau of Prisons. Any other copies of the report  
11 and related materials will remain confidential.

12 And if an appeal is taken, as I said, counsel on  
13 appeal will have access to the report except for the  
14 recommendations section at the end of the report.

15 A judgement of the conviction should be prepared  
16 promptly on the form prescribed for judgments including  
17 sentences under the Sentencing Reform Act.

18 And the defendant is remanded to the custody of the  
19 United States marshals.

20 Thank you, all, very much. Thank you, folks, for  
21 coming, and I'm sorry for the impact that this is going have  
22 on you.

23 (Proceedings concluded at 1:20 p.m.)

24 \* \* \* \* \*

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## CERTIFICATION

I certify that the foregoing is a  
correct transcription of the proceedings  
recorded by me in this matter.

s/ Ann M. Sawyer

Ann M. Sawyer, RPR, CRR, NYRCR, NYACR  
Official Reporter  
U.S.D.C., W.D.N.Y.