

United States Court of Appeals
For the Eighth Circuit

No. 17-1226

United States of America

Plaintiff - Appellee

v.

Noah Thomas Zenor

Defendant - Appellant

Appeal from United States District Court
for the Southern District of Iowa - Des Moines

Submitted: January 8, 2018

Filed: February 2, 2018

[Unpublished]

Before WOLLMAN, COLLOTON, and BENTON, Circuit Judges.

PER CURIAM.

Noah T. Zenor pled guilty to possessing child pornography in violation of 18 U.S.C. § 2252(a)(4)(B). The district court¹ sentenced him to 120 months'

¹The Honorable Rebecca Goodgame Ebinger, United States District Judge for the Southern District of Iowa.

imprisonment. He appeals the sentence. Having jurisdiction under 28 U.S.C. § 1291, this court affirms.

Zenor argues the court procedurally erred in failing to consider the 18 U.S.C. § 3553(a) factors and “explain the reasons for its sentence.” “In reviewing a sentence for procedural error,” this court reviews “factual findings for clear error” and “application of the [G]uidelines de novo.” *United States v. Richart*, 662 F.3d 1037, 1045 (8th Cir. 2011). Where, as here, “a defendant fails to object timely to a procedural sentencing error, the error is forfeited and may only be reviewed for plain error.” *United States v. Hill*, 552 F.3d 686, 690 (8th Cir. 2009). “Under plain error review, the defendant must show: (1) an error; (2) that is plain; and (3) that affects substantial rights.” *Id.*, citing *Johnson v. United States*, 520 U.S. 461, 466-67 (1997). “Even if the defendant shows these three conditions are met,” this court “may exercise . . . discretion to correct a forfeited error only if it ‘seriously affects the fairness, integrity, or public reputation of judicial proceedings.’” *Id.*, quoting *Johnson*, 520 U.S. at 467.

The district court thoroughly considered the record including the presentence investigation report, the sentencing memoranda, the victim impact statements, medical records, and letters submitted on Zenor’s behalf. The court allowed him “to be heard as to the appropriate disposition” and listened to his lengthy request for a downward variance due to age, short duration of offense, small size of pornography collection, and low likelihood of recidivism. The court also considered the guidelines range (135 to 168 months), and the government’s request for a “substantial [downward] variance” to three years due to “the defendant’s relative youth.”

The court then discussed its obligation “to consider a number of factors before deciding on an appropriate sentence in every case that comes before it, and those factors are set forth in United States Code, Title 18, Section 3553(a).” It said:

In this case there are substantial mitigators. Those mitigators are the defendant's age. He's 20 years old now. He was 17 when this offense began. The defendant has no criminal history at all, and the defendant has behaved well on pretrial release, including engaging in treatment, having evaluations done at the behest of his counsel. I note that there were multiple evaluations done. I assume that the attorney concluded after looking at the first one that perhaps additional self-reflection was warranted because the defendant had not been completely truthful with the evaluator. The fact that he's participated in treatment, has not engaged in any additional criminal conduct and has abided by the terms of release are all factors favorable to the defendant.

There are substantial aggravators as well that the court has to consider under the rubric of 3553(a). . . . That includes the number of images. The number of images in this case as the prosecutor has pointed out that were counted for purposes of the guidelines were 61 images and 15 videos. That's a subset of the 1,294 images of evidentiary value and 47 videos that were discussed previously. . . .

In this case the court finds it probative that the defendant sought out videos. The presentence investigation report reflects that Mr. Zenor stated he would upload more pictures if another participant in the chat room would upload more child pornography videos. . . . Of the 16 child pornography images uploaded by Zenor, ten depicted images of children under the age of 10. So his exchange involved still pictures of children under the age of 10 for videos. That is an aggravating factor.

Additionally, the defendant admitted, as reflected in the presentence investigation report, that his collection at one time contained over—or approximately a thousand images of what he considered to be child pornography.

. . . .

Mr. Gaumer also discussed the fact that the offense conduct in this case also involved distribution and production. As I just discussed, the defendant sent still images to receive video images. He looked for

videos, and he disseminated images revictimizing the girls who were already depicted in those videos again by sharing—excuse me, in those images again by sharing them with someone else.

....

The prosecutor also discussed the fact that the production in this case involved asking for older juveniles to produce child porn in the nature of images of themselves naked to be sent via the Internet back. . . .

The nature of the images themselves are an aggravating factor accounted for in the guidelines. This is not a case of sexting. This is not a case of images of peer teens being shared amongst peer teens.

....

Children as young as three or four were being raped in these images. There were children being assaulted by multiple men simultaneously in these images. All of the images that were counted for purposes of the guidelines were prepubescent minors, individuals, girls under the age of 10.

This is not a case of misidentification. The presentence investigation report reflects that the forensic examination of the defendant's cell phone indicated that these images were saved under a folder labeled "Extremely Young," children younger than 10 being forced to perform oral sex on adult men. These are aggravating factors.

The court also noted that while it "may not talk about each one of the sentencing considerations individually as I discuss the factors weighing upon the court in determining the appropriate sentence in this case," it "considered each and every one of them whether or not they're read into the record here today." The record makes clear that the court considered the § 3553(a) factors in sentencing. *See United States v. Mannings*, 850 F.3d 404, 410 (8th Cir. 2017). The court committed no error, let alone plain error, in sentencing Zenor based on the § 3553(a) factors. *Id.* ("A district

court need not quote verbatim all of the factors listed in § 3553(a). The record must make clear that the court considered the [statutory factors] in sentencing, but a district court can generally demonstrate it did so by referring to some of those factors at sentencing.”) (internal citations omitted).

Zenor argues his sentence is substantively unreasonable “because the Court did not adequately consider nor properly weigh a number of mitigating factors including Zenor’s age, risk of recidivism, his medical condition and his treatment needs, among others.” This court reviews the substantive reasonableness of a district court’s sentence for “abuse of discretion.” *United States v. Harlan*, 815 F.3d 1100, 1107 (8th Cir. 2016). “[I]t will be the unusual case” when this court reverses “a district court sentence—whether within, above, or below the applicable Guidelines range—as substantively unreasonable.” *United States v. Feemster*, 572 F.3d 455, 464 (8th Cir. 2009) (en banc).²

The district court did not abuse its discretion in imposing a below-guidelines sentence. As evidenced above, the court thoroughly reviewed the record, considered all written and oral arguments made by the parties, and properly weighed all § 3553(a) factors in determining a sentence.

* * * * *

The judgment is affirmed.

²Zenor argues that this court’s application of the presumption of reasonableness standard to a below-guidelines sentence “denies defendants all meaningful review of their sentence as intended by Congress and the remedial decision in *Booker*.” This argument has no merit.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA

v.

Noah Thomas Zenor

JUDGMENT IN A CRIMINAL CASE

Case Number: 4:16-cr-00034-001

USM Number: 17409-030

Nicholas A. Sarcone

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) One of the Indictment filed on February 23, 2016.

☐ 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:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. § 2252(a)(4)(B)	Possession of Child Pornography	09/17/2015	One

☐ See additional count(s) on page 2

The defendant is sentenced as provided in pages 2 through 8 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) _____

☐ Count(s) _____ ☐ 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.

January 18, 2017

Date of Imposition of Judgment

Signature of Judge

Rebecca Goodgame Ebinger, U.S. District Judge

Name of Judge

Title of Judge

January 18, 2017

Date

DEFENDANT: Noah Thomas Zenor
CASE NUMBER: 4:16-cr-00034-001

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 as to Count One of the Indictment filed on February 23, 2016.

☒ The court makes the following recommendations to the Bureau of Prisons:

That the defendant be designated at a facility in close proximity to the state of Iowa and that he be able to participate in a culinary arts program within the Bureau of Prisons.

☒ 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 _____ 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 _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Noah Thomas Zenor
CASE NUMBER: 4:16-cr-00034-001

Judgment Page: 3 of 8

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
120 months as to Count One of the Indictment filed on March 23, 2016.

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 cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. ☒ 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)*
6. ☐ 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: Noah Thomas Zenor
CASE NUMBER: 4:16-cr-00034-001

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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

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. I understand additional information regarding these conditions is available at the www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: Noah Thomas Zenor
CASE NUMBER: 4:16-cr-00034-001

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SPECIAL CONDITIONS OF SUPERVISION

The defendant shall participate in a sex offender treatment program, to include psychological testing and a polygraph examination, as directed by the U.S. Probation Officer. The defendant shall also abide by all supplemental conditions of sex offender treatment, to include abstaining from alcohol. Participation may include inpatient/outpatient treatment, if deemed necessary by the treatment provider. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment. Sex offender assessments and treatment shall be conducted by therapists and polygraph examiners approved by the U.S. Probation Office, who shall release all reports to the U.S. Probation Office. The results of a polygraph examination will not be used for the purpose of revocation of supervised release. If disclosure is required by mandatory reporting laws, polygraph results will be reported to appropriate treatment personnel, law enforcement, and related agencies with the approval of the Court. If polygraph results reveal possible new criminal behavior, this will be reported to the appropriate law enforcement and related agencies after obtaining approval from the Court.

The defendant shall not have any contact (personal, electronic, mail, or otherwise) with any child under the age of 18, including in employment, without the prior approval of the U.S. Probation Officer. If contact is approved, the defendant must comply with any conditions or limitations on this contact, as set forth by the U.S. Probation Officer. Incidental contact in the course of daily commercial transactions is permissible.

The defendant shall not view or possess any form of sexually stimulating pornography, correspond with anyone in the business of providing such material, or enter adult entertainment venues where sexually stimulating pornography is the primary product(s) for purchase or viewing.

The defendant shall not possess or use a computer or any other device with an internal, external, or wireless modem, without the prior approval of the U.S. Probation Officer. If computer use is approved, the defendant shall submit to unannounced examinations of all computer equipment, the installation of monitoring hardware and software, and the possible removal of such equipment for a more thorough inspection. If computer use for employment purposes is approved by the U.S. Probation Officer, the defendant shall permit third party disclosure to any employer or potential employer concerning any computer-related restrictions that are imposed upon the defendant.

The defendant shall comply with all sex offender laws for the state in which he resides and shall register with the local sheriff's office within the applicable time frame.

The defendant shall pay restitution in an amount determined by the Court. The defendant shall cooperate with the U.S. Probation Officer in developing a monthly payment plan consistent with a schedule of allowable expenses provided by the U.S. Probation Office. The defendant may be required to participate in an IRS offset program which may include the garnishment of wages or seizure of all or part of any income tax refund to be applied toward the restitution balance. You may be required to participate in the Treasury Offset Program which would include the seizure of any government payment to be applied toward the restitution balance.

The defendant shall not apply for, solicit, or incur any further debt, included but not limited to loans, lines of credit, or credit card charges, either as a principal or cosigner, as an individual, or through any corporate entity, without first obtaining written permission from the U.S. Probation Officer.

The defendant shall provide complete access to financial information, including disclosure of all business and personal finances, to the U.S. Probation Officer.

DEFENDANT: Noah Thomas Zenor
CASE NUMBER: 4:16-cr-00034-001

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ADDITIONAL SPECIAL CONDITIONS OF SUPERVISION

The defendant shall submit to a search of his person, property, residence, adjacent structures, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), and other electronic communications or data storage devices or media, conducted by a U.S. Probation Officer. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other residents or occupants that the premises and/or vehicle may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of his release and/or that the area(s) or item(s) to be searched contain evidence of this violation or contain contraband. Any search must be conducted at a reasonable time and in a reasonable manner. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

DEFENDANT: Noah Thomas Zenor

CASE NUMBER: 4:16-cr-00034-001

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>
TOTALS	\$ 100.00	\$	\$	\$ 0.00

☒ The determination of restitution is deferred until 4/18/2017. 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>
TOTALS		\$0.00	\$0.00

☐ 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: Noah Thomas Zenor
CASE NUMBER: 4:16-cr-00034-001

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 \$ 100.00 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:
- All criminal monetary payments are to be made to the Clerk's Office, U.S. District Court, P.O. Box 9344, Des Moines, IA. 50306-9344.
- While on supervised release, you shall cooperate with the Probation Officer in developing a monthly payment plan consistent with a schedule of allowable expenses provided by the Probation Office.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of 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 the defendant's interest in the following property to the United States:

Samsung SM-G900V Galaxy S5 as outlined in the Preliminary Order of Forfeiture filed on September 1, 2016.

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) JVT assessment, and (8) costs, including cost of prosecution and court costs.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

----- -X
UNITED STATES OF AMERICA, :
 :
Plaintiff, : Criminal No. 4:16-34
 :
vs. :
 :
NOAH THOMAS ZENOR, : TRANSCRIPT OF SENTENCING
 :
Defendant. :
----- -X

First Floor, South Courtroom
United States Courthouse
123 East Walnut Street
Des Moines, Iowa 50309
Wednesday, January 18, 2017
1:42 p.m.

BEFORE: THE HONORABLE REBECCA GOODGAME EBINGER, Judge.

APPEARANCES:

For the Plaintiff: CRAIG P. GAUMER, ESQ.
Assistant U.S. Attorney
U.S. Courthouse Annex, Suite 286
110 East Court Avenue
Des Moines, Iowa 50309-3899

For the Defendant: NICK SARCONI, ESQ.
Stowers & Sarcone
West Glen Town Center
650 South Prairie View Drive
Suite 130
West Des Moines, Iowa 50266

Terri L. Martin, CSR, RPR, CRR
United States Court Reporter
Room 189, U.S. Courthouse
123 East Walnut Street
Des Moines, Iowa 50309

E X H I B I T S

DEFENDANT'S EXHIBIT NUMBERS:OFFEREDRECEIVED

A - Letters and medical documentation

7

8

P R O C E E D I N G S

(In open court, with defendant present.)

THE COURT: Thank you. Please be seated.

We're here in the matter of the United States of America versus Noah Thomas Zenor. This is Case No. 4:16-CR-34. This is the time and date set for sentencing in this matter. My name is Rebecca Goodgame Ebinger, and I'm the district court judge that's been assigned to preside over this matter.

Counsel, please identify themselves for purposes of the record.

MR. GAUMER: Craig Gaumer for the United States of America, Your Honor.

MR. SARCONI: Thank you, Your Honor.

Nick Sarcone on behalf of Mr. Zenor.

THE COURT: Thank you.

As counsel is aware, I like to start things on time, and I apologize for making the parties wait. I did not receive the letters on behalf of the defendant until moments before I was to come in here. I have now received those and I have now read those.

Mr. Sarcone, did you provide copies of those to the government?

MR. SARCONI: Yes. In fact, as those came in to me, they were provided to the government, yes.

THE COURT: Thank you.

1 Then we are prepared to begin.

2 Mr. Zenor, I'll begin with talking to you. Do you
3 recall appearing before Magistrate Judge Bremer on August 8th of
4 last year and entering a plea of guilty to one count of
5 possession of child pornography in violation of Title 18, United
6 States Code, Section 2252(a)(4)(B)?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And at that time you were advised that the
9 maximum potential penalty you could face for that crime was 20
10 years of incarceration.

11 Do you recall that?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And do you understand that you're here
14 today for purposes of being sentenced on your plea of guilty
15 that I accepted on report and recommendation of the magistrate
16 judge back on August 30th of last year?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Do you continue to acknowledge that you
19 are, in fact, guilty of the crime to which you pled guilty,
20 possession of child pornography?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Before I proceed with the hearing, I want
23 to make sure that you're able to fully participate here today.

24 Are you currently under the influence of alcohol?

25 THE DEFENDANT: No.

1 THE COURT: Are you under the influence of any illegal
2 substances?

3 THE DEFENDANT: No, Your Honor.

4 THE COURT: Are you taking any prescription
5 medications?

6 THE DEFENDANT: Yes.

7 THE COURT: And what medications are you taking, sir?
8 (Counsel conferring with defendant.)

9 THE DEFENDANT: I'm taking -- currently taking
10 Omeprazole, which is a nausea medicine to help with my Crohn's
11 Disease. I'm also taking a steroid for my intestines to help
12 strengthen them where the Crohn's has set in, and I also have a
13 nightly medicine called Trazodone, which is to help me with my
14 sleep.

15 THE COURT: And were all of those medications
16 prescribed to you by a medical professional with whom you have a
17 treating relationship?

18 THE DEFENDANT: Yes.

19 THE COURT: Are you taking all of those medications as
20 prescribed?

21 THE DEFENDANT: Yes.

22 THE COURT: It's a little bit of a different question.
23 Are there any medications that you have been prescribed that
24 you're not taking?

25 THE DEFENDANT: No.

1 THE COURT: Is there anything about your use of those
2 medications or the ailments that they are meant to treat that
3 would negatively affect your ability to understand these
4 proceedings here today?

5 THE DEFENDANT: No, Your Honor.

6 THE COURT: Are you suffering from any other mental or
7 physical ailment other than the ones we just discussed, your
8 asthma, your Crohn's Disease, and a difficulty sleeping, that
9 would negatively affect your ability to understand the
10 proceedings here today?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: The most important thing is that you
13 understand these proceedings, sir. If at any time during the
14 proceedings you don't understand something I say or you have a
15 question, would you please stop me and let me know?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Thank you.

18 Then the next thing to discuss are the materials that
19 the court has reviewed in anticipation of this hearing. I have
20 reviewed the presentence investigation report that was prepared
21 by the probation office. I should note that Priscilla Davidson
22 from the probation office is here with us in court. She is the
23 writer of the presentence investigation report.

24 I've reviewed that presentence investigation report.
25 I have reviewed the sentencing memoranda filed by the defense

1 with all of its attachments. I've reviewed the sentencing
2 memorandum submitted by the government. I reviewed the victim
3 impact statements that have been provided to the court, and I
4 have now reviewed the letters that were provided to me
5 immediately prior to this hearing.

6 Are there any other materials that the court should
7 have received at this time that I haven't mentioned, Mr. Gaumer?

8 MR. GAUMER: No, Your Honor.

9 THE COURT: Mr. Sarcone?

10 MR. SARCONE: No, Your Honor.

11 THE COURT: Thank you.

12 The materials provided immediately prior, in addition
13 to being letters, also include some medical documentation.

14 Mr. Sarcone, how did you wish to present those to the court?

15 MR. SARCONE: Your Honor, I would just offer those as
16 an exhibit for sentencing purposes. We could label it as
17 Defendant's Exhibit 1 if that's all right with the court.

18 THE COURT: Typically it would be A.

19 MR. SARCONE: Or A, that's fine.

20 (Defendant's Exhibit A was
21 offered in evidence.)

22 THE COURT: Mr. Gaumer?

23 MR. GAUMER: No objection.

24 THE COURT: Are you clear what's encompassed in
25 Exhibit A?

1 MR. GAUMER: I believe so, Your Honor. I think that
2 was my copy originally, so I'm fine with it.

3 THE COURT: Okay. Thank you.

4 Well, then the letters submitted on behalf of
5 Mr. Zenor and the medical reports submitted will be entered into
6 the record as Defendant's Exhibit A.

7 (Defendant's Exhibit A was
8 received in evidence.)

9 THE COURT: Let's talk then more specifically about
10 the presentence investigation report. I found one small error I
11 wanted to bring to the parties' attention to make sure that it
12 is, in fact, an error. That was in paragraph 12.

13 In paragraph 12 it recounts under the title or the
14 heading "September 17, 2015 Search Warrant," and then in the
15 body of that paragraph it says that the last time a child
16 pornography image was obtained was on September 7, 2015, two
17 hours prior to the execution of the search warrant. From that
18 context I believe that that is a typographical error, that it
19 should be September 17th.

20 Mr. Gaumer, do you agree with that?

21 MR. GAUMER: Yes, Your Honor.

22 THE COURT: Mr. Sarcone?

23 MR. SARCONI: Yes, Your Honor.

24 THE COURT: Then the judgment will reflect that
25 there's a correction to that paragraph on the presentence

1 investigation report.

2 Other than that factual correction, Mr. Gaumer, have
3 you had the opportunity to review the presentence investigation
4 report?

5 MR. GAUMER: Yes, I have, Your Honor.

6 THE COURT: And did you have any factual objections or
7 corrections to the report?

8 MR. GAUMER: No, I do not.

9 THE COURT: Thank you.

10 Mr. Sarcone, same questions to you. Have you had the
11 opportunity to review the presentence investigation report?

12 MR. SARCONE: Your Honor, I have, and I have reviewed
13 it with my client as well. We have no other factual corrections
14 other than what's set forth in our objection letter.

15 THE COURT: And the objection letter as reflected in
16 the presentence investigation report writer's response, it
17 appears to me that those objections have been addressed. Is
18 that your assessment as well?

19 MR. SARCONE: Yes, Your Honor.

20 THE COURT: Can you go over with the court how you
21 went over this document with your client?

22 MR. SARCONE: Yes, Your Honor. I believe that we sat,
23 I think at his kitchen table and went over the document
24 together.

25 THE COURT: Thank you.

1 Mr. Zenor, we've been talking about the presentence
2 investigation report. I understand you went over that with
3 Mr. Sarcone?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Do you agree with your attorney that there
6 are no additional objections to the facts that are contained in
7 this report?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: You have no corrections to make?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: Then let's talk about the sentencing
12 guideline calculation included in the presentence investigation
13 report. As we know, that is the starting point for determining
14 the appropriate sentence in this case. The defendant's criminal
15 history category is I. His adjusted offense level is 36.

16 Mr. Gaumer, does the government move for the third
17 level of acceptance of responsibility?

18 MR. GAUMER: Yes, Your Honor.

19 THE COURT: That motion is granted. Then the total
20 offense level is 33. Those calculations result in the following
21 advisory sentencing guideline range or ranges: 135 to 168
22 months of imprisonment, five years to life of supervised
23 release, and between 17,500 and 175,000 dollars in fine.

24 Does the United States have any objections to these
25 calculations?

1 MR. GAUMER: No, Your Honor. However, I would point
2 out -- this may become relevant later -- that there is a
3 guideline that talks about age being potentially a factor that
4 the court can consider under the guidelines for a departure, and
5 we do not seek that today. I just want to note it for the
6 record that that guideline exists and potential applicability
7 although we're not seeking that here today.

8 THE COURT: So you have no objection to the guideline
9 calculation as set forth in the presentence investigation
10 report?

11 MR. GAUMER: That's correct.

12 THE COURT: And the presentence investigation report
13 notes the guideline that you indicated, correct?

14 MR. GAUMER: I believe so, yes, Your Honor.

15 THE COURT: And no downward departure motion has been
16 filed?

17 MR. GAUMER: No, Your Honor.

18 THE COURT: Thank you.

19 Mr. Sarcone, do you have any objections on behalf of
20 the defendant to the calculations set forth in the presentence
21 report?

22 MR. SARCONI: No, Your Honor. We believe those
23 calculations are correct.

24 THE COURT: Thank you.

25 Then the court turns to the question of departures.

1 Having found that the parties agree that the guideline range
2 applicable to this offense is as set forth in the presentence
3 investigation report, Mr. Gaumer, I just talked with you about
4 this, you are not seeking a traditional departure, correct?

5 MR. GAUMER: That is correct, Your Honor.

6 THE COURT: And, Mr. Sarcone, as well?

7 MR. SARCONE: Your Honor, I think the court is
8 certainly free to use that as a basis for departure, although we
9 primarily argued in our brief that the court should grant a
10 variance.

11 THE COURT: And, in fact, there's been no downward
12 departure motion filed consistent with the local rules or
13 practice?

14 MR. SARCONE: That's correct, Your Honor.

15 THE COURT: Okay. Then we will turn to the issue at
16 hand, which is the determination of the appropriate disposition
17 of this case.

18 Does the United States wish to present any evidence in
19 support of its position?

20 MR. GAUMER: No, Your Honor.

21 THE COURT: Thank you.

22 Mr. Sarcone, does the defense wish to present any
23 evidence?

24 MR. SARCONE: Nothing other than what we just
25 previously offered, Your Honor.

1 THE COURT: Okay. I have been informed that there was
2 perhaps a video or a live witness. Are neither of those things
3 going to be presented today?

4 MR. SARCONI: Neither of those will be presented, Your
5 Honor.

6 THE COURT: Okay. Then I'll turn to positions of the
7 interested parties as to the appropriate disposition of this
8 case. The court mentioned previously that we have received
9 victim impact statements in this case. Under the applicable
10 statute, those impact statements will be considered by the
11 court.

12 Mr. Gaumer, I understand that you've received a copy
13 of those statements?

14 MR. GAUMER: That is correct, Your Honor.

15 THE COURT: I had a question about the information
16 contained in your sentencing memorandum as to the specific
17 dollar amounts of restitution sought by the various victims.

18 MR. GAUMER: Your Honor, I think we have an
19 understanding -- I think I understand the question and I think I
20 have a solution that would be agreeable to all parties. What I
21 did when I prepared the sentencing memorandum for the United
22 States is I went into the database that our office has on each
23 case that went into the folder that said victim statements. I
24 went through the electronic database, the electronic folder, and
25 I read those and I pulled that information out of various victim

1 impact statements or various letters that were provided to our
2 office either by the victims themselves or by advocates for the
3 victims, and then I tried to analyze it and put it into the
4 sentencing brief of the United States.

5 Your Honor, I haven't appeared before you previously,
6 certainly not in a child -- at all. I don't know how many child
7 pornography cases you have done. The question of how
8 restitution is to be calculated in child pornography cases can
9 be a confusing issue. The Supreme Court endeavored a few years
10 ago in United States versus Paroline to address the issue. From
11 my personal perspective, not speaking on behalf of the U.S.
12 Department of Justice, but I think the Supreme Court's case
13 might have made it even more confusing at times to try and
14 figure out how to calculate restitution in child pornography
15 because the standard is that we have to establish that there's
16 proximate cause between this case and the harm suffered by the
17 victims. Certainly when the victims have been notified that
18 Mr. Zenor was looking at child pornography with them, they were
19 troubled by that, bothered by that and perplexed by that,
20 perhaps not to the degree that the restitution requests that
21 they have made, but certainly that there was an impact.

22 So that's how I derived the information in there and
23 that's kind of the analysis I endeavored to go through.
24 Nevertheless, talking to the probation office before these
25 proceedings began here today, it seems that there may perhaps be

1 a disconnect between the information that I reviewed and the
2 information that was reviewed by the probation office.

3 THE COURT: And that the court has.

4 MR. GAUMER: And that the court has. So there's a
5 provision -- I don't have the specific citation, but I'm aware
6 of it. There's a provision in Title 18 that permits the court
7 to hold open the question of restitution for 90 days after the
8 sentencing hearing in any particular case.

9 My recommendation, my motion to the court would be to
10 avail itself of that authority and hold the question of
11 restitution open so that Ms. Davidson and defense counsel and I
12 can go through, make sure we have all the same information and
13 the court has the same information to see if we could resolve
14 the issue, and if not we could come back before the court and
15 make an appropriate presentation as to the restitution request
16 made by the appropriate victims.

17 THE COURT: My reading of the plea agreement indicates
18 that the defendant has agreed to pay appropriate restitution
19 ordered by the court; is that correct?

20 MR. GAUMER: That is correct. That is a standard
21 provision in our child pornography plea agreements. The
22 question isn't whether the defendant will pay. The question is
23 what he should pay to which victims, and that's what we need to
24 make sure we're all on the same page in analyzing.

25 THE COURT: And just to be clear, you have yet to

1 provide the court with any numbers other than those that were
2 put in your sentencing memorandum?

3 MR. GAUMER: That's correct.

4 THE COURT: Thank you.

5 Mr. Sarcone, we're talking about victim impact
6 statements, but that necessarily brings us to the topic of
7 restitution. What is your position on Mr. Gaumer's suggestion
8 that we hold open the issue?

9 MR. SARCONI: We're in agreement with the government
10 that we do that, Your Honor.

11 THE COURT: Thank you.

12 So the court will order that restitution be paid in an
13 amount to be determined within 90 days from the date of the
14 entry of today's judgment.

15 Any objection to proceeding in that way?

16 MR. GAUMER: No, Your Honor.

17 MR. SARCONI: No, Your Honor.

18 THE COURT: And, Mr. Gaumer, I would request that you
19 provide the court and counsel with any documentation that you
20 have as to the amounts requested as soon as you can so that we
21 can address that promptly.

22 MR. GAUMER: Absolutely, Your Honor. I've already
23 spoken with Ms. Davidson. We hope perhaps yet today to go back
24 to my office and compare materials that she has with what's in
25 our database and remedy any discrepancies and make sure that

1 information is provided to the defense and to the court.

2 THE COURT: Thank you.

3 So having addressed the issue of victim statements,
4 Mr. Gaumer, I don't believe there are any victims present here
5 today?

6 MR. GAUMER: That's correct, Your Honor.

7 THE COURT: Would you like to be heard as to the
8 appropriate disposition, Mr. Sarcone?

9 MR. SARCONI: Sure. Thank you.

10 Your Honor, in this case we would ask the court to
11 grant a downward variance. I think my sentencing brief sets
12 forth the reasons relatively adequately; but just to sort of
13 summarize what's contained therein, Mr. Zenor is a relatively
14 young man, began this offense as a juvenile. The duration of
15 the offense was relatively short due in large part to the fact
16 that I mean he was apprehended or caught, but it was a short
17 duration of the offense. The collection of child pornography as
18 compared to other offenders certainly I've seen in this court
19 was relatively small.

20 The enhancements that were applied, as the court is
21 aware from the defendant's sentencing memorandum, enhancements
22 generally are parsimony to separate more severe and culpable
23 offenders from others. The statistics show that these
24 enhancements are applied in almost every child pornography case
25 these days.

1 We've asked the court to consider a variance with the
2 guidelines on policy reasons, frankly, any other reasons the
3 court sees fit to disagree; but we have set that out in our
4 sentencing memorandum.

5 Also, the literature on this type of offender suggests
6 that the recidivism rate is very low. Mr. Zenor has been
7 evaluated by Dr. Cooper, Matthew Cooper, who previously worked
8 for the Iowa Department of Corrections. He was assessed as a
9 low risk by him. Much of his actions and behaviors are
10 explained within that report that I know the court has read.

11 Additionally, as the court can see behind us, there
12 are a multitude of family members and friends here that are
13 supporting Mr. Zenor. I'm sure the court is aware in this
14 business whenever you're dealing with a case involving child
15 pornography, talking about it with anyone just naturally gives
16 them the heebie-jeebies, so to speak, and Mr. Zenor has been
17 open and honest with his friends and family. He's been able to
18 rely on them, use them for support, use them to help him with
19 the things that he's learning in therapy and how to deal with
20 this particular issue that he has.

21 So, for all of those reasons and all of the reasons
22 contained within our sentencing memorandum, we think that the
23 government's recommendation in this case for a prison term of
24 three years and a supervised release term of 14 years is more
25 than adequate to address the provisions of sentencing and the

1 legal requirements the court is supposed to look at and, of
2 course, the laws contained within the court's -- or the
3 statute's sentencing provisions. And we think that certainly is
4 not greater than necessary to achieve the purposes of sentencing
5 contained within the United States Court.

6 Thank you.

7 THE COURT: Thank you, Mr. Sarcone.

8 And I appreciate the thoroughness of your briefing and
9 the fact that you attached the materials on which you relied in
10 your argument.

11 MR. SARCONI: Thank you.

12 THE COURT: Mr. Zenor, now is the time during the
13 hearing where you have the opportunity to speak. You don't have
14 to say anything; but if you would like to, the court will
15 consider it.

16 THE DEFENDANT: Your Honor, I would first just like to
17 note that what I've written down here is all in my words and
18 that I just needed it in front of me to help me speak.

19 I would like to start with a quick apology to Your
20 Honor and to the courtroom, but mainly I would like to say that
21 I'm sorry to my friends and to my family. I'm sorry for the
22 actions that took place. It was incredibly wrong and has not
23 only hurt myself deeply, but I've had to force my loved ones
24 into a situation which was unfair to them.

25 I was so scared that I would be judged by them and

1 that they would be disgusted by what I had done, but I was
2 shocked to see the understanding and forgiveness. They are all
3 very loving and very supportive of me, so I shouldn't have
4 expected anything less.

5 I also apologize to my girlfriend, Sidney. We have
6 been dating for two years now, and I had never told her about
7 what I was struggling with until the charges were brought forth.
8 I betrayed her and I lost her trust, and Sidney has been an
9 amazing girlfriend and has always supported me greatly. Though
10 she was initially shocked and hurt, she understood and helped me
11 through this with amazing love and understanding. I love her
12 very much, and I hope someday that I can spend the rest of my
13 life with her.

14 Everyone here has been very supportive of me and taken
15 very good care of me, and I'm very glad to have them all
16 watching over me.

17 About a year ago when the charges were brought to my
18 attention, I couldn't have been happier that I was caught. I
19 had been struggling with this addiction internally, knowing that
20 it was wrong. It had been causing me to be sick, to lose sleep
21 and to fall into a deep depression that left me wondering
22 whether my life was worth living. I knew how wrong my actions
23 were, but I could do nothing to stop myself. It was unfair to
24 myself and to those girls whose pictures that I had received. I
25 didn't even stop to think about how serious what I was doing

1 actually was. Several times I had uninstalled all the images
2 off my phone in hopes that they would disappear and that I would
3 move on, but sadly I kept getting into my temptation and
4 reinstall everything. My greatest hope is that I didn't cause
5 anyone else the pain that I was in. I started cutting about a
6 month before the charges were brought before me, hoping that it
7 would be an escape from all of the pain. All I accomplished was
8 worrying my parents and my loved ones, and I apologize for that
9 as well. Without my loved ones I would be so lost. So I thank
10 you everyone very much for helping me and understanding.

11 I have been attending therapy ever since the charges
12 were brought to my attention. In going to therapy I have
13 learned all of the possibilities of what my actions could have
14 and may have caused. All I could do was weep and apologize for
15 although I knew what I was doing was wrong, I never truly
16 thought about how much damage I could have and may have caused.
17 I used to pass it off saying that it was just a dumb part of my
18 life; but in my sessions with my therapist, he has helped me
19 come to realize that that wasn't the case. It was a part of my
20 life and a part of who I was, and I can now truly take full
21 responsibility for what I have done.

22 I have enjoyed my sessions and hope that they will be
23 able to be continued, whether it's right away or in a matter of
24 a few years. I have been shown different ways on how to deal
25 with the problems that I have been facing and problems that

1 could come up in the future. My plans are to keep my phone that
2 has no Internet connection as I continue through my therapy and
3 treatment. I also plan on staying very close with my counselors
4 so that they may help me if I start to struggle with this again.

5 After truly learning of the consequences of what I've
6 done, I can honestly say that it will never happen again. One
7 of the coping mechanisms that I've come to find very helpful
8 when temptations arise is simply to go out on a walk or run to
9 clear my mind. I have also been shown the importance of keeping
10 my faith strong and letting my loved ones in when I need their
11 help and support.

12 These past few months have been especially hard
13 because of my medical situation. In late fall I was diagnosed
14 with Crohn's Disease, and this disease has made it very hard to
15 eat a normal diet and caused my weight to drop up to 30 pounds
16 in a matter of weeks. It has been very uncomfortable and a
17 painful time going through my diagnosis and treatment. I had an
18 upper endoscope, along with a colonoscopy, where they found
19 ulcers, scarring and confirmation of Crohn's in my large
20 intestine in the area of my right abdomen. Sadly, we haven't
21 been able to perform an MRI to see if any other areas are
22 affected by the disease because the requirements have been too
23 hard for me.

24 We wanted to get the MRI done right after I had made
25 it to my maintenance level of my infusions, which I had just

1 reached on December 29th. Every day I have to take three sets
2 of medications to help with my nausea, pain, and to help with
3 strengthening my intestines where the Crohn's has set in. I
4 also take prescribed sleeping pills for the pain at night from
5 the Crohn's and for my depression that has kept me awake. I
6 have also had to go to my doctor four times in the past few
7 months to receive my infusions of Remicade and which I am put on
8 IV for two hours at a time.

9 These treatments have greatly helped with keeping my
10 body feeling healthy and making me able to continue a healthy
11 diet. The doctor has informed me that in order to maintain my
12 level of health, I must continue my infusions once every eight
13 weeks, with getting blood tests every three months, otherwise
14 the Crohn's may cause problems or may worsen my condition. I
15 can only hope that I'm able to continue my treatment as
16 regularly as prescribed.

17 I have high hopes for my future. I had been attending
18 culinary school for a year when this started, but I have been
19 taking a break because the stress from my charges made it too
20 hard to focus. I have since been working at Johnston Noodle Zoo
21 where I have two great bosses, Joe and Kara Meints. They have
22 showed me a lot and given me a great opportunity for experience
23 in the kitchen. I have learned many new recipes and been taught
24 to put in the orders for restocking our food and disposable
25 products within the restaurant, which I have had the

1 responsibility of doing on my own for about the past four months
2 now. I have also made what feels like a whole new family within
3 my work environment. My co-workers have all been very helpful
4 and very supportive of my future goals, and I'm glad to have
5 learned new things from each and every one of them.

6 Last week I talked to Joe and Kara about the charges
7 that I am facing. It was extremely difficult to do, but I was
8 relieved of how supportive and how understanding they were.
9 Every day they have been putting good thoughts my way and kept
10 my spirits high, and I'm very thankful to have worked under
11 them, and I hope to work for them and help them develop their
12 new restaurant in years to come. And I would also like to
13 apologize to them if I have to take a break, but I know they
14 understand and I know they will also be happy to have me back in
15 the future.

16 I have plans to continue my education in culinary arts
17 and business management as soon as I possibly can. I someday
18 hope to own a food truck or small diner or maybe even another
19 Noodle Zoo. Cooking has always brought me a great joy for a
20 couple of reasons. One is I like food like no other. I love
21 all the flavors and the science of how everything comes
22 together. I think it's truly amazing what all can be done and
23 what all is still left to discover. I also enjoy cooking
24 because a good meal can change anyone's day to a good one. I
25 love seeing people's satisfied faces when they enjoy a meal that

1 I have worked hard to prepare for them, and if they don't like
2 it, I'm here to learn what I can do to make it better.

3 For a large majority of my life, I've been in the
4 kitchen making simple things like pizza or pasta or cookies and
5 eagerly attempted the harder dishes, although they didn't always
6 come out great on the first try.

7 I spent a lot of my early life away on mission trips,
8 often to places where people have very little, with my church
9 and with my mother, and I have always made sure to plant myself
10 in the kitchen because of some the expressions of sincere and
11 pure joy in having a hearty meal that they normally might
12 struggle to get. I hope I can get back out in the field soon to
13 see the smiling faces of the people we get the privilege of
14 helping and taking care of and to talk with the friends that I
15 have waiting for me there.

16 Thank you, Your Honor.

17 THE COURT: Thank you, Mr. Zenor.

18 Mr. Gaumer, on behalf of the United States.

19 MR. GAUMER: Thank you, Your Honor.

20 The United States in its sentencing memorandum
21 discussed a joint recommendation that we would like to make to
22 the court for sentencing in this case, and that is a
23 recommendation that is a substantial variance from what is
24 contemplated by the sentencing guidelines. The guidelines
25 propose or recommend a sentence of between 135 and 168 months

1 imprisonment and a minimum of five years of supervised release,
2 up to a potential life term of supervised release.

3 Based on my experience in handling child pornography
4 cases in this district, Your Honor, the average term of
5 supervised release in the overwhelming majority of the cases is
6 around the neighborhood of ten years of supervised release.

7 So the United States has looked at all of the unique
8 factors of this particular case and tried to fashion a
9 recommendation to the court that it believes is sufficient but
10 not more than necessary to achieve the purposes of Title 18,
11 U.S. Code, 3553(a).

12 I've been doing child pornography cases, prosecuting
13 child pornography cases on and off since the early 1990s. It's
14 been pretty much my full-time job for the last five years. I
15 take child pornography cases very seriously. The United States
16 Department of Justice takes child pornography cases very, very
17 seriously. If this defendant were five, six years older at the
18 time of the offense, the United States might very well be in
19 here requesting that the court sentence the defendant to a
20 guideline sentence; but that is not what occurred in this case.
21 The defendant, I believe, was about 17 years old when he started
22 committing the offense. I think we apprehended him when he was
23 18. He's now I think 20 years old, if I did my math correctly.

24 We look at these cases, we look at the history and
25 characteristics of the defendant. That includes the age of the

1 defendant. We look at those factors not just here at
2 sentencing, the United States looked at those factors when we
3 decide whether or not to even prosecute this case, whether it
4 was one we should decline prosecuting, whether it was one we
5 should refer to the state to prosecute.

6 THE COURT: Do you also consider those factors in your
7 charging decisions, Mr. Gaumer?

8 MR. GAUMER: Absolutely, Your Honor, which is why the
9 defendant was only charged with possession of child pornography
10 though from the evidence, as reflected in the presentence
11 investigation report, he clearly distributed child pornography
12 as well, and there's a strong suggestion that he was involved
13 with the production of child pornography as well.

14 THE COURT: Do those offenses have higher penalties
15 associated with them, including mandatory minimums?

16 MR. GAUMER: The defendant, if he had been charged
17 with and convicted of distribution of child pornography, would
18 have faced a potential punishment of no less than five years
19 incarceration up to a maximum -- same maximum of 20 years, but
20 would have faced a mandatory minimum of five years. If the
21 defendant had been prosecuted for production of child
22 pornography or sexual exploitation of a child, he would have
23 faced a potential punishment of 15 years, no less than 15 years
24 in prison, up to a potential maximum of 30 years in prison.

25 When we looked at the evidence in this particular

1 case, Your Honor, as far as the production is concerned, the
2 defendant's acts in which he apparently produced child
3 pornography were of a teenage boy asking other teenagers a
4 little bit younger than him to make sexually explicit images of
5 themselves and, unfortunately, that's something we see more and
6 more in today's society. When we made our charging decision, we
7 did not think that was something that merited a case of someone
8 his age at the time of a mandatory minimum of 15 years in
9 federal prison.

10 Nevertheless, when we did look at what occurred in
11 this case, the United States decided that it was not a case that
12 we could ignore, it was not a case that merited referral to the
13 state, not a case that merited pretrial diversion, and it's not
14 a case that recommends the extraordinary recommendation, which
15 we're not going to make, of probation in this particular case.

16 And I'm referring to certain things in the presentence
17 investigation to the court, Your Honor, primarily on pages 4 and
18 5. If we look there, the defendant uploaded, he distributed,
19 that is, 16 images of child pornography. So he shared -- he
20 already had those. He shared those. He distributed those to
21 other people. Of those 16 images of child pornography that he
22 shared with somebody else, ten of them depicted children under
23 the age of 10. These are images -- and one, I believe, was of a
24 child who looks to be approximately four years old. These are
25 not just images in his total collection of children lasciviously

1 exhibiting their genitals. These are images and visual
2 depictions of children being sexually exploited and being
3 sexually assaulted.

4 Also on page 4 it talks about the quantity of images
5 that defendant had. He had 1,294 images of evidentiary value.
6 Now, what that means in the context of our child pornography
7 investigations is that when the forensic analyst went through
8 and looked at the images that were on the media that was seized
9 from the defendant pursuant to the search warrant, the 1,294
10 images appeared to be minors. They may not be child pornography
11 per se. They may be what we call other sexual exploitation or
12 sexual -- child erotica is the term we specifically use, so it
13 may not show their genitals but may show the child's breasts or
14 rear end or they could be totally naked and it would not totally
15 meet the definition of child pornography.

16 There were 47 videos that were found as well in the
17 defendant's collection.

18 Turning to page 5, we quantify what's in paragraph 16.
19 By my count, there were 20 known series of child pornography
20 that were involved in this particular case.

21 And it's for those reasons that the United States
22 doesn't believe we could dismiss this case, we could handle this
23 case in a less serious manner. We believe that a serious
24 sentence is appropriate in this particular case.

25 As I said before, the compelling factor that causes

1 the United States to make a recommendation of a non guideline
2 sentence and a substantial variance is the defendant's relative
3 youth, and it's our hope that with counseling and the support of
4 his family that after a term of incarceration of three years, he
5 will hopefully be deterred from engaging in this type of
6 behavior again, but we don't believe that type of deterrence is
7 sufficient. We believe the defendant requires monitoring of his
8 behavior to help him through sex offender treatment and to help
9 him resist the temptations he unquestionably will have.

10 He spoke here today about how he at times realized the
11 wrongfulness of what he was doing, he would delete the
12 applications that allowed him to collect child pornography, he
13 would delete his collections, and then he would be back at it
14 again. That history causes us grave concern, which is why we
15 recommend that he be on supervised release for a term of no less
16 than 14 years in order to help him with that.

17 The final thing I wanted to mention, Your Honor,
18 something that struck me from defendant's statement here
19 today -- and maybe I'm misinterpreting something; but as I sat
20 here and listened to him here today, I heard him apologize to
21 the court, I heard him apologize to his family, I heard him
22 apologize to his girlfriend, I heard him apologize to his
23 employer. I don't think I heard him apologize to the victims in
24 this particular case. Certainly he mentioned he realized that
25 what he did was wrong, but the reason it's wrong is because, as

1 the court is aware, that children were raped, children were
2 sexually assaulted, children were sexually exploited in these
3 videos and in these images, and what the defendant chose to do
4 is seek those type of images out and not only seek them out and
5 collect them but distribute them from other people -- or to
6 other people.

7 So I believe he gets it. I'm not quite sure if he
8 gets it enough the seriousness of what he did to other people by
9 this crime. This is not a victimless crime. It was a
10 four-year-old. There were other children as young as 10 who
11 were sexually abused, sexually exploited, sexually assaulted in
12 the images that the defendant chose to collect. He was repulsed
13 by them but he chose to collect them. And because of that, I
14 believe that the counseling that he would receive for the 14
15 years of supervised release would certainly be appropriate and
16 help him address a more comprehensive understanding of the
17 wrongfulness of his actions.

18 Therefore, Your Honor, based on the factors in
19 3553(a), looking at the age of the defendant, the support that
20 he has from his family, looking at the fact that he tried at
21 times to stop this conduct and then reengage, so he's been
22 struggling with it, and all of the other factors set forth in
23 the statute, the United States recommends a sentence of three
24 years imprisonment and 168 months or 14 years of supervised
25 release.

1 We weren't in a position to make that recommendation
2 in an 11(c)(1)(C) plea agreement. We had discussions about
3 that. It was my position in this particular case that I thought
4 it would be beneficial to have the presentence investigation
5 report done so we had more information upon which to rely on
6 prior to making a potential recommendation to this court. I
7 think that's been useful, and that is the recommendation of the
8 United States.

9 THE COURT: The court is required to consider a number
10 of factors before deciding on an appropriate sentence in every
11 case that comes before it, and those factors are set forth in
12 United States Code, Title 18, Section 3553(a). Those include
13 the defendant's history and characteristics, the nature and
14 circumstances of this crime, the need for the sentence imposed
15 to reflect the seriousness of the offense, to promote respect
16 for the law, to provide just punishment, to provide adequate
17 deterrence from future criminal conduct both by this defendant
18 and by others who may contemplate committing such an offense, to
19 protect the public and to provide the defendant with needed
20 educational training or other needs in the most effective
21 manner.

22 The sentencing guidelines must also be considered, and
23 we talked about those at the outset of this hearing.

24 The court must also consider the need to avoid
25 unwarranted sentencing disparities among defendants with similar

1 records who commit similar crimes, the need to provide
2 restitution to any victims of the offense, and we've already
3 talked about that as well.

4 I may not talk about each one of the sentencing
5 considerations individually as I discuss the factors weighing
6 upon the court in determining the appropriate sentence in this
7 case, but I have considered each and every one of them whether
8 or not they're read into the record here today.

9 Ultimately the sentence imposed must be sufficient but
10 not greater than necessary to serve the purposes of sentencing.
11 In this case there are substantial mitigators. Those mitigators
12 are the defendant's age. He's 20 years old now. He was 17 when
13 this offense began. The defendant has no criminal history at
14 all, and the defendant has behaved well on pretrial release,
15 including engaging in treatment, having evaluations done at the
16 behest of his counsel. I note that there were multiple
17 evaluations done. I assume that the attorney concluded after
18 looking at the first one that perhaps additional self-reflection
19 was warranted because the defendant had not been completely
20 truthful with the evaluator. The fact that he's participated in
21 treatment, has not engaged in any additional criminal conduct
22 and has abided by the terms of release are all factors favorable
23 to the defendant.

24 There are substantial aggravators as well that the
25 court has to consider under the rubric of 3553(a). Many of

1 these are accounted for under the guidelines that result in the
2 guideline sentence that is, of course, only advisory and a
3 starting point for this court. That includes the number of
4 images. The number of images in this case as the prosecutor has
5 pointed out that were counted for purposes of the guidelines
6 were 61 images and 15 videos. That's a subset of the 1,294
7 images of evidentiary value and 47 videos that were discussed
8 previously. The 15 videos count as 75 images apiece because of
9 the nature of the videos. This has been something that has been
10 critiqued in the guidelines by other courts and by academics and
11 was discussed in the defendant's sentencing memorandum.

12 In this case the court finds it probative that the
13 defendant sought out videos. The presentence investigation
14 report reflects that Mr. Zenor stated he would upload more
15 pictures if another participant in the chat room would upload
16 more child pornography videos. The person who he was chatting
17 with then did upload 16 videos, all of which appeared to contain
18 child pornography. Of the 16 child pornography images uploaded
19 by Zenor, ten depicted images of children under the age of 10.
20 So his exchange involved still pictures of children under the
21 age of 10 for videos. That is an aggravating factor.

22 Additionally, the defendant admitted, as reflected in
23 the presentence investigation report, that his collection at one
24 time contained over -- or approximately a thousand images of
25 what he considered to be child pornography.

1 The number of images is reflected in the calculation
2 of the guidelines. The number of victims is not. The images it
3 is argued -- was argued by defense counsel that the number of
4 images does not necessarily comport with a more serious crime or
5 more culpable defendant, but the number of images in this case
6 correlates with an increase in number of victims.

7 As the prosecutor pointed out, the presentence
8 investigation report in paragraph 16 shows approximately 20
9 identified victims, 20 different children depicted in those
10 images, children, not just images, but children. That's after
11 the previous paragraph talks about how difficult it is to
12 identify children who are victims of these offenses.

13 Mr. Gaumer also discussed the fact that the offense
14 conduct in this case also involved distribution and production.
15 As I just discussed, the defendant sent still images to receive
16 video images. He looked for videos, and he disseminated images
17 revictimizing the girls who were already depicted in those
18 videos again by sharing -- excuse me, in those images again by
19 sharing them with someone else.

20 The victim impact statements make clear how much that
21 dissemination affects them. I'm quoting from some of these
22 victim impact statements now.

23 One states, Passing them on is worse because people --
24 by people looking for them it creates a demand that jerks like
25 her father feel a need to fill.

1 Another one says, Every time someone else sees
2 pictures or videos of me it feels like they are the ones who
3 hurt me to begin with.

4 Another one says, To make matters worse, once the
5 pictures are posted on the Internet, they cannot be eliminated
6 from others that have them or wherever he posted them.

7 That distribution is an aggravating factor.

8 The prosecutor also discussed the fact that the
9 production in this case involved asking for older juveniles to
10 produce child porn in the nature of images of themselves naked
11 to be sent via the Internet back. And while that in and of
12 itself may be sexting or, unfortunately, all too common in our
13 modern society, that is under the federal statute production of
14 child pornography.

15 The nature of the images themselves are an aggravating
16 factor accounted for in the guidelines. This is not a case of
17 sexting. This is not a case of images of peer teens being
18 shared amongst peer teens.

19 It's difficult to talk about these images because of
20 their content, but it is necessary to fully and accurately
21 discuss the nature and circumstances of the offense that this
22 court has to consider in determining the appropriate sentence.

23 Children as young as three or four were being raped in
24 these images. There were children being assaulted by multiple
25 men simultaneously in these images. All of the images that were

1 counted for purposes of the guidelines were prepubescent minors,
2 individuals, girls under the age of 10.

3 This is not a case of misidentification. The
4 presentence investigation report reflects that the forensic
5 examination of the defendant's cell phone indicated that these
6 images were saved under a folder labeled "Extremely Young,"
7 children younger than 10 being forced to perform oral sex on
8 adult men. These are aggravating factors.

9 The guidelines account for these in increasing offense
10 level for sadistic or masochistic conduct or other depictions of
11 violence or, alternatively, which wasn't applied in this case,
12 based upon when an infant or toddler is involved in a case.

13 Other aggravators which in this case are potentially
14 more accurately reflected as a lack of mitigators are, unlike so
15 many defendants that we see in these types of cases, this
16 defendant was not a victim as a child. This defendant suffered
17 no physical, sexual abuse as a child. He clearly comes from a
18 loving and supportive family and has the support of his
19 environment and his friends, family and did as a child. He also
20 does not have any substance abuse issues.

21 The court has considered these and other factors in
22 determining the appropriate disposition in this case after
23 having considered the statements made here in court today and
24 those submitted in writing by the parties.

25 Counsel, do you know of any legal reason why the court

1 cannot enter judgment at this time?

2 MR. SARCONI: I do not, Your Honor.

3 MR. GAUMER: No, Your Honor.

4 THE COURT: Having considered all of the materials
5 submitted and based upon the court's review of the criteria set
6 forth in 18, United States Code, 3553 and the unique
7 circumstances of this case and for the reasons I have just
8 explained, it is the judgment of the court that the defendant
9 Noah Thomas Zenor is hereby sentenced to 120 months of
10 imprisonment.

11 That sentence is outside of the advisory guidelines
12 range and is imposed for the reasons that I previously stated.
13 This reflects a variance downward from the advisory guideline
14 range of three levels. This is the sentence that the court
15 finds to be sufficient but not greater than necessary to address
16 the essential sentencing considerations.

17 The court weighed the recommendation of the parties
18 and agrees that a variance from the advisory guideline range is
19 appropriate in this case. However, the court finds that the
20 extent of the variance advocated for by the parties is not
21 justified by these facts and is not warranted. As previously
22 stated, the sentence imposed is sufficient but not greater than
23 necessary to address the statutory sentencing considerations.

24 The court also imposes a term of 120 months of
25 supervised release immediately to follow the term of

1 incarceration with conditions that I will explain shortly.

2 No fine is imposed based upon the court's conclusion
3 that the defendant does not have the ability to pay a fine.

4 Restitution will be ordered in an amount to be
5 determined consistent with the record previously made. The
6 defendant agreed to pay restitution in his plea agreement. This
7 is a mandatory restitution case, and the order will come
8 consistent with evidence presented by the parties as to the
9 appropriate amount of restitution to be ordered for the victims
10 that have been identified and sought financial remuneration.

11 A \$100 special assessment on each count -- the single
12 count of conviction is due and immediately payable without
13 interest to the U.S. Clerk of Court for the Southern District of
14 Iowa.

15 Within 72 hours of release from the custody of the
16 Bureau of Prisons, the defendant shall report in person to the
17 probation office in the district to which he is released. While
18 on supervised release, the defendant shall not commit another
19 federal, state, or local crime, shall not possess a firearm or
20 other destructive device, shall not possess a controlled
21 substance.

22 The defendant shall abide by the standard conditions
23 of supervision of release as set forth by the United States
24 Sentencing Commission, plus the special conditions as set forth
25 in paragraphs 99 to 107 of the presentence investigation report

1 to which there was no objection filed.

2 Mr. Gaumer, what is the government's position on
3 detention pending -- well --

4 MR. GAUMER: Your Honor, I believe under law the
5 defendant needs to be detained pending the imposition of his
6 sentence and start his sentence unless the defense can prove
7 that there's clear evidence of extraordinary circumstances.

8 THE COURT: Thank you.

9 Mr. Sarcone.

10 MR. SARCONI: Your Honor, at this time we would be
11 asking the court to postpone the -- for lack of a better way to
12 put it, reporting date, Your Honor, presentation date. My
13 concern is primarily that Mr. Zenor will end up spending a
14 significant amount of time at the Polk County Jail where it's
15 unlikely that he would get to continue on the course of
16 treatment. He's due for another Remicade injection here within
17 the next couple of weeks. So our request would be that he at
18 least be able to remain out of custody until the court's turn in
19 date.

20 THE COURT: You acknowledge that the statute requires
21 extraordinary circumstances?

22 MR. SARCONI: Yes, I do, Your Honor.

23 THE COURT: Thank you.

24 The court denies the request for a subsequent release
25 date. The court is confident that the United States Marshal

1 Service will make sure that the defendant has the appropriate
2 medical attention both before he's transported and after he's
3 designated to a Bureau of Prisons facility.

4 Mr. Sarcone, do you have any requests as to
5 designation or any other programming that you would like the
6 court to order to be considered by the Bureau of Prisons during
7 Mr. Zenor's term of incarceration?

8 MR. SARCONE: I believe the only request we have, Your
9 Honor, is that he would be placed at a facility as close to Iowa
10 as possible that the Bureau of Prisons could manage.

11 THE COURT: And that is a recommendation only. The
12 court does not control where the Bureau of Prisons puts
13 individuals; but I can put in a recommendation to that effect.

14 I've heard both today and during the course of
15 reviewing the different materials that the defendant is
16 interested in the culinary arts. To the extent that the Bureau
17 of Prisons considers the court's recommendation, would you like
18 to put in that he be allowed to participate in that type of
19 training?

20 MR. SARCONE: Yes, Your Honor. That would be
21 perfectly fine.

22 Thank you.

23 THE COURT: Thank you.

24 So the judgment will reflect both a request for the
25 designation at a facility in close proximity to Iowa and for the

1 ability to participate in a culinary arts training program to
2 the extent that is available at his location.

3 There are no counts that need to be dismissed?

4 MR. GAUMER: There aren't, Your Honor. I apologize,
5 the court may very well have covered this matter, but I'm not
6 sure, but did we address the issue of forfeiture?

7 THE COURT: We have not. I understand by the plea
8 agreement and by the -- that the phone is to be forfeited; is
9 that correct?

10 MR. GAUMER: Yes, Your Honor.

11 THE COURT: Mr. Sarcone?

12 MR. SARCONI: No objection to that, Your Honor.

13 THE COURT: And the court will order forfeiture.

14 There wasn't a separate preliminary order provided,
15 was there?

16 MR. GAUMER: I will have to check, Your Honor.

17 THE COURT: I don't believe that I saw a preliminary
18 order of forfeiture, but with the defendant's consent and with
19 the record as it establishes, the court will order the
20 forfeiture of that phone.

21 That's the only thing to be forfeited, correct?

22 MR. GAUMER: I believe so, yes, Your Honor.

23 THE COURT: So the defendant is committed to the
24 custody of the Bureau of Prisons.

25 Mr. Zenor, you do have the right to appeal the

1 sentence that I've just imposed. In order to do that, you need
2 to file a written notice of appeal within 14 days of the entry
3 of this judgment.

4 Do you understand this time limit for filing a notice
5 of appeal?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Additionally, if you do not have the
8 ability to pay for an attorney, one can be appointed to you if
9 you qualify. If you have any questions about that, you can
10 direct that to Mr. Sarcone.

11 Do you have any questions at this time?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: Counsel, are there any other matters that
14 I failed to address?

15 MR. GAUMER: I don't believe so, Your Honor.

16 MR. SARCONI: No, Your Honor.

17 THE COURT: Anything further on behalf of the
18 government?

19 MR. GAUMER: No, Your Honor.

20 THE COURT: On behalf of the defense?

21 MR. SARCONI: No, Your Honor.

22 THE COURT: Mr. Zenor, I wish you the best moving
23 forward, sir.

24 That will conclude the hearing.

25 (Proceedings concluded at 2:45 p.m.)

C E R T I F I C A T E

I, the undersigned, a Certified Shorthand Reporter of the State of Iowa, do hereby certify that I acted as the official court reporter at the hearing in the above-entitled matter at the time and place indicated.

That I took in shorthand all of the proceedings had at the said time and place and that said shorthand notes were reduced to computer transcription under my direction and supervision, and that the foregoing computer transcription pages are a full and complete transcript of the shorthand notes so taken.

Dated at Des Moines, Iowa, this 2nd day of February, 2017.

/s/ Terri L. Martin
CERTIFIED SHORTHAND REPORTER

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,

Plaintiff,

v.

NOAH THOMAS ZENOR,

Defendant.

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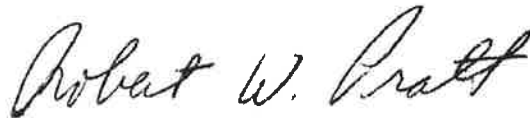
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ACCEPTANCE OF MAGISTRATE
JUDGE'S REPORT &
RECOMMENDATION REGARDING
DEFENDANT'S GUILTY PLEA

Pursuant to the provisions of 28 U.S.C. § 636(b)(1), the August 8, 2016 Report and Recommendation of the United States Magistrate Judge recommending that Defendant Zenor's guilty plea be accepted, to which there has been no timely objection, is adopted, and the Defendant's plea of guilty to Count One of the Indictment is now accepted.

IT IS SO ORDERED.

Dated this __30th__ day of August, 2016.



ROBERT W. PRATT, Judge
U.S. DISTRICT COURT

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CLERK OF DISTRICT COURT
SOUTHERN DISTRICT OF IOWAIN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,

v.

NOAH THOMAS ZENOR,

Defendant.

Criminal No. 4:16-cr-00034

INDICTMENT

18 U.S.C. § 2252(a)(4)(B)

18 U.S.C. § 2253

THE GRAND JURY CHARGES:**COUNT 1****(Possession of Child Pornography)**

On or about September 17, 2015, in the Southern District of Iowa, defendant NOAH THOMAS ZENOR did knowingly possess at least one matter which contains a visual depiction that had been shipped or transported using any means or facility of interstate or foreign commerce, or in or affecting interstate commerce, or which was produced using materials that had been mailed, or so shipped or transported by any means including by computer, the production of such visual depictions having involved the use of a minor engaging in sexually explicit conduct, as defined in Title 18, United States Code, Section 2256(2), including one or more visual depictions of a prepubescent minor and a minor who had not attained the age of 12 years, and said visual depictions being of the foregoing conduct.

This is a violation of Title 18, United States Code, Section 2252(a)(4)(B).

THE GRAND JURY FURTHER FINDS:

NOTICE OF FORFEITURE

If the defendant, NOAH THOMAS ZENOR is convicted of the offense alleged in Count 1 of this Indictment, the defendant shall forfeit to the United States his interest in the following property:

a. Any and all visual depictions of minors engaging in sexually explicit conduct, including any book, magazine, periodical, film, videotape, or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped or received in violation of Title 18, United States Code, Chapter 110.

b. Any property, real or personal, used or intended to be used to commit or to promote the commission of such offense.

This is pursuant to Title 18, United States Code, Section 2253.

A TRUE BILL.

/s/
FOREPERSON

Kevin E. VanderSchel
Acting United States Attorney

By: /s/ Craig Peyton Gaumer
Craig Peyton Gaumer
Assistant United States Attorney