

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA

v.

RUSSELL TAYLOR

1:15-CR-165-TWP-MJD

Government's Sentencing Memorandum

The United States of America, by counsel, Josh J. Minkler, United States Attorney, and Steven DeBrotta, Senior Litigation Counsel, hereby submits its Sentencing Memorandum in advance of the hearing presently scheduled for December 10, 2015. For the reasons stated below, and the additional grounds the United States intends to present during the sentencing hearing, the Court should impose a sentence of 35 years of imprisonment, followed by a lifetime period of supervised release. Upon conviction, the Defendant faces a mandatory minimum sentence of 15 years of imprisonment, followed by supervised release for at least 5 additional years and up to the rest of his life. See 18 U.S.C. §§ 2251 and 2252(a)(2).¹

Introduction

Over a four year period, Defendant Russell Taylor ("Taylor") repeatedly engaged in criminal activity targeting children. He committed some criminal acts on his own, while doing others with a co-conspirator. His actions greatly impacted the lives of 12 children and their families. Some of the victims were

¹ The statutory maximum sentence for all counts added together and run consecutively would be 380 years, though the United States is not requesting a sentence beyond 35 years.

related to him. He denied them their vital and personal right to grow up free from sexual exploitation and interference by adults. He also trafficked in child pornography from the Internet involving still more children. Their names, stories, and experiences will never be known. They have been reduced to a terrible commodity for consumption by pedophiles. While doing these things, Taylor committed 13 serious federal crimes.

The United States' request for a 35 year sentence falls within an advisory range of 360 to life months provided by a total offense level of 42 at Criminal History Category I. This would be the correct application of the United Sentencing Guidelines to the facts of this case after the government files its motion pursuant to U.S.S.G. § 5K1.1 and if the Court grants the motion, which will be filed separately under seal. This advisory range includes consideration of all applicable facts, special offense characteristics, and sentencing enhancements, including the five (5) level increase for repeat and dangerous sex offenders involving minors in USSG § 4B1.5(b) and multiple count enhancements in Chapter Three. As the Court knows, the final advisory range is the starting point of the statutory sentencing analysis. 18 U.S.C. § 3553.

Part 1: Overview of Taylor's Case

Taylor's crimes are described in Counts 1-13 of the Information and the detailed agreed factual basis in the Plea Agreement. He has fully and timely accepted responsibility for these crimes and cooperated with the United States in the investigation of other person, thereby insuring that his many victims and their families receive a much quicker endpoint to their suffering than would be

the case if he contested his guilt at trial. In crimes against children cases, abating the ongoing harm to the victims is a paramount value. Because this case has received substantial public attention, and because a co-conspirator was a public figure, the victims' lives will never be the same and their right to privacy will never be fully protected. In some cases, this unrelenting pressure has caused substantial anguish to these victims, who simply want to be left alone and go on with their lives. A public trial would only have made this process of healing even more protracted and difficult, without changing the outcome.

This Sentencing Memorandum will provide details concerning Taylor's crimes and the results of the extensive federal, state, and local investigation of his conduct. Consideration of these facts is appropriate under the statutory sentencing factors in 18 U.S.C. § 3553, which include the nature and circumstances of the offense, the defendant's history and character, the need to promote respect for the law, and to provide just punishment.

First, as charged in Counts 1-12, on multiple occasions, Taylor secretly produced child pornography involving children in Indiana, and used it to fuel his sexual fantasies involving children. He also provided some of the material to Jared Fogle ("Fogle"). Secondly, as charged in Count 13, he conspired with Fogle to distribute and receive some of this homemade material as well as commercially produced files Taylor obtained through Internet sources.²

² Taylor had no involvement in Fogle's commercial sexual activity with prostituted minors.

A. Taylor's Homemade Child Pornography

The victims in the homemade videos and images had different ages when the material was produced. The youngest victim was 9 years old (Minor Victim 12), while the oldest was about 16 years old. All of the homemade images and videos included a lascivious exhibition of the genitals or pubic area of each victim. Additionally, some material included sexually explicit conduct of the victims. None of them were aware that they were being filmed. Rather, the videos and images were secretly produced using multiple hidden cameras Taylor set up in his residences and operated at various times between March 2011 and April 2015.

B. Commercial Child Pornography

The commercial child pornography was more sexually explicit, including actual or simulated sexual intercourse. Taylor obtained this material from Internet sources and it may be classified as commercial child pornography produced by other offenders, some of whom likely had a financial motivation. This child pornography is believed to have been produced in Eastern Europe by unknown persons based upon some labels in the images or videos. The unidentified victims in these images and videos were as young as approximately 6 years old. Their names are unknown and this material has been seen before in multiple cases. Fogle and Taylor did not produce any of this material, nor did they have any role in its commercial sale by the original producers.

C. Recovered Evidence

During the investigation, the commercial and homemade child pornography was first recovered during a search of Taylor's Indianapolis residence, where hundreds of videos were found in computer equipment, storage devices, cameras, and other media analyzed by the Cybercrime Section of the Indiana State Police ("ISP Cybercrime Section"). During the later search of Fogle's home, two images of child pornography were recovered from his cellular phone as part of a text message from Taylor to Fogle. This victim was 14 years old. Fogle received these images, but did not produce them.

D. The Indiana Investigation

The search of Taylor's residence resulted from information a concerned Indiana resident gave to the ISP Cybercrime Section. The Indiana resident told the ISP Cybercrime Section that the resident received text messages from Taylor discussing his sexual interest in children and bestiality. This information formed the basis of a state search warrant. Later, while serving the search warrant at Taylor's residence, child pornography was discovered. The resulting investigation of Taylor then addressed his collection of child pornography through further search warrants.

The Taylor investigation was expanded to include people associating with him. This included Fogle, whose criminal activity was initially discovered through text messages recovered from Taylor's cellular phones. The federal investigation of Taylor and Fogle in Indiana arose from this discovery.

E. Relationship between Fogle and Taylor

The conspiracy between Fogle and Taylor grew from their personal and business relationships. Fogle frequently traveled with Taylor, including trips to foreign countries. They met frequently because they both worked for, or on behalf of, Fogle's charitable foundation. Their communications included the extensive use of text messaging on cellular phones and email, in addition to meetings in person and through telephone calls. Through these contacts with Taylor, Fogle knew that the children depicted in the homemade images or videos were under the age of 18 years. He also knew of Taylor's family relationship or association with the victims, including in many instances, their actual names. In some cases, Fogle met the children during social events in Indiana with Taylor and his family. However, these meeting were social and did not include any sexual activity of any kind at any point.

F. Scope of Investigation

Over the course of the present investigation, the federal, state and local investigators in Indiana conducted multiple search warrants, analyzed seized computer data, and visually examined each and every one of the many images and videos recovered during the investigation. The purpose of this work was to locate and identify every one of the victims where possible. This was an exacting process that involved the careful consideration of the data in each file, together with any metadata, and the other evidence in the case. All of the email accounts of the relevant persons were examined. A fair estimate of the amount of data recovered and examined would be approximately 5.6 terabytes recovered

from the following various locations. The analysis took several weeks and led to the identification of 12 victims of the child pornography offense living in Indiana (Minor Victims 1 through 12).

Taylor is not shown in any of the secretly produced child pornography. However, during the investigation, Minor Victim 1 and Minor Victim 2 told the United States that Taylor provided them with alcohol and illegal drugs as part of an effort to seduce them. He also provided them with money on at least one occasion. He did this in order to engage in unlawful sexual activity with them when they were under the age of 16 years. These victims also reported that Taylor discussed sexual matters with them. This was not the only time this happened.

In December 2014 to January 2015, Taylor sent text messages to the 17 year old boyfriend of another Minor Victim to attempt to involve her in sexual activity with Taylor and others when she was 14 years old. Fortunately, these efforts were unsuccessful.

G. The Fogle and Taylor Conspiracy

By 2011 at the latest, Fogle learned through discussions with Taylor that Taylor was sexually attracted to children. Fogle knew that Taylor would obtain and view child pornography from the internet. Then, in March 2011, Fogle learned that Taylor was secretly filming Minor Victim 1 in Taylor's residence. The videos involving Minor Victim 1 included sexually explicit conduct produced inside that location. Minor Victim 1 was then a 14 year old girl working for Taylor at his residence.

In the years that followed, Taylor provided minors with drugs, alcohol, and occasionally money to induce them to engage in sex acts. Taylor also engaged in sexual acts with two of them when they were 14 years old. However, the child pornography recovered during the investigation does not show any sexual activity between Taylor and these victims. Fogle could have prevented this, even if he did not actively participate in Taylor's other sexual activities.

Fogle decided not to report his knowledge of Taylor's sexual exploitation of Minor Victim 1 to law enforcement officials, a decision giving Taylor the opportunity to sexually exploit Minor Victims 1 through 12 during the four years that followed. Fogle's decision was motivated by his desire to see the child pornography Taylor produced. Taylor stored this material on his computers or storage media. However, Fogle never met Minor Victim 1 in person.

Fogle essentially rationalized that Taylor was going to secretly produce more material involving the minors in his home anyway, so he might as well benefit from the production by seeing the results, which interested him. Fogle's decision and the many resulting later actions were the genesis of the conspiracy to distribute and receive child pornography.

On various occasions between March 2011 and February 2015, Taylor provided Fogle with child pornography images and videos through text messages and by providing him with a thumb drive containing files. Taylor would also provide Fogle with access to a computer containing child pornography. This activity formed the basis for their conspiracy to distribute and receive child

pornography with each other. Two of these files were found in Fogle's telephone, together with the actual first name of the Minor Victim depicted.

The United States has concluded that Fogle received access to the child pornography involving Minor Victims 1 through 8 (all of whom are female and at least 12 years old), but did not receive the material involving Minor Victims 9 through 12 (males and the youngest female). Taylor kept the rest of the material from Fogle. Nevertheless, Fogle could have prevented the sexual exploitation of all of these victims had he promptly reported what he knew about Taylor's criminal activities. Rather than doing this, he continued to obtain child pornography he received from Taylor, including some of the new material Taylor was producing involving later victims.

Part 2: Factors under 18 U.S.C. § 3553

The Court's reasoning in imposing a sentence must be guided by the sentencing considerations set forth in 18 U.S.C. § 3553(a). In pertinent part, these factors include: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed-- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant. Because the Sentencing Guidelines are now advisory, the Court must consider the § 3553 factors listed to determine the actual sentence.

The nature and circumstances of the offenses have been discussed in detail above. These facts form an accurate and reliable basis to understand his

true interests and activities, which show a longstanding and persistent pattern of behavior. They also provide a window to Taylor's history and character.

Beyond this he has no prior criminal convictions.

Congress, the Supreme Court, and the Sentencing Commission believe that general deterrence is a very important factor when considering an appropriate sentence. *See United States v. Ferber*, 458 U.S. 747, 760 (1982) ("The most expeditious if not the only practical method of law enforcement may be to dry up the market for [child pornography] by imposing severe criminal penalties on persons selling, advertising, or otherwise promoting the product"); *Osbourne v. Ohio*, 495 U.S. 102, 109-10 (1990) ("It is also surely reasonable for the State to conclude that it will decrease the production of child pornography if it penalizes those who possess and view the product, thereby decreasing demand"); *United States v. Goff*, 501 F.3d 250, 261 (3rd Cir. 2007) ("Deterring the production of child pornography and protecting the children who are victimized by it are factors that should have been given significant weight at sentencing."); *United States v. Barevich*, 445 F.3d 956, 959 (7th Cir. 2006) ("Transporting and receiving child pornography increases market demand. The greater concern under the Sentencing Guidelines is for the welfare of these exploited children. The avenue Congress has chosen to weaken the child pornography industry is to punish those who traffic in it."). In *United States v. Goldberg*, 491 F.3d 668, 672 (7th Cir. 2007), the Seventh Circuit opined that:

Young children were raped in order to enable the production of the pornography that the defendant both downloaded and uploaded - both consumed himself and disseminated to others. The greater

the customer demand for child pornography, the more that will be produced. Sentences influence behavior, or so at least Congress thought when in 18 U.S.C. § 3553(a) it made deterrence a statutory sentencing factor. The logic of deterrence suggests that the lighter the punishment for downloading and uploading child pornography, the greater the customer demand for it and so more will be produced.

Similarly, the Sixth Circuit reversed the district court when the district court failed to see any importance in general deterrence. *See United States v. Bistline*, 665 F.3d 758, 767 (6th Cir. 2012). The district court stated, “general deterrence ... will have little [if] anything to do with this particular case.” *Id.* The Sixth Circuit found the district court’s statement “inexplicable and in any event conflicts with our statement that ‘general deterrence is crucial in the child pornography context[.]’” *Id.* (citing *United States v. Camiscione*, 591 F.3d 823, 834 (6th Cir. 2010)).

Persons with a sexual attraction to young children may be difficult to deter, but these sentences matter. These offenders frequently communicate with each other online and they are concerned about law enforcement efforts. In many ways, the results of these cases help to deter and teach by example. Whatever the result in this matter, it will be closely watched by current and potential offenders who have not yet been identified.

Concerning the need for the sentence imposed to protect the public from further crimes of the defendant, Taylor has a long standing and persistent pattern of criminal activity involving both the production of child pornography and related sexual activity, as described above. While he began cooperating after his arrest, this does not erase the significance of his poor impulse control

and the number of his victims. In addition, he victims many members of his own family and their friends he knew well.

Conclusion

For the reasons stated, the United States will request the Court to impose a sentence of 35 years of imprisonment, followed by lifetime supervised release. Concerning restitution, to date, the United States has not received any request for restitution from Taylor, which is unsurprising given his very limited financial resources. Finally, the Court should order forfeiture all of the seized materials, and impose a \$1300 mandatory special assessment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2015, a copy of the foregoing Sentencing Memorandum was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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