

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No.
v.	)	
	)	Judge
JOHN DOE	)	

JOHN DOE’S SENTENCING MEMORANDUM

Defendant, JOHN DOE, by the FEDERAL DEFENDER PROGRAM and its attorney, JANE SMITH, respectfully requests that this Honorable Court impose a sentence of five years imprisonment, followed by a lengthy term of supervised release, with special conditions requiring sex offender, mental health, and substance abuse treatment as directed by the U.S. Probation Office, because such a sentence is reasonable in light of *Gall v. United States*, 552 U.S. 38 (2007), *Kimbrough v. United States*, 552 U.S. 85 (2007), and the sentencing factors set forth in 18 U.S.C. § 3553(a). In support of this request, Mr. Doe states as follows:

I. Sentencing Request

The presentence investigation report places Mr. Doe in criminal history category ____, with a resulting advisory guidelines range of _____ months. (PSR 22.) Mr. Doe’s count of conviction has a mandatory minimum sentence of five years imprisonment. (*Id.*)

Mr. Doe’s request for five years imprisonment is based on his personal and family history and characteristics, his low risk of recidivism, the need for the sentence imposed to provide him with sex offender, mental health, and substance abuse treatment, and the lack of a need to protect

the public from him. The proposed sentence is commensurate with an offense committed by a first-time child pornography offender at a low risk for becoming a repeat offender or committing a contact offense. The proposed sentence also considers that, as a consequence of his conviction, Mr. Doe has already been required to register as a sex offender for the rest of his life. 18 U.S.C. §§ 3563, 3583, and 4042(c). (PSR 17.)

II. Five Years Imprisonment Is Sufficient But Not Greater Than Necessary To Comply With The § 3553(a) Sentencing Factors

Inherent in the idea of a five-year mandatory minimum sentence for violating 18 U.S.C. § 2252(A)(a)(1) is a congressional recognition that there are certain cases for which the mandatory minimum sentence is sufficient punishment. Mr. Doe's is such a case. Five years in prison would be just punishment, promote respect for the law, and satisfy the other sentencing purposes of § 3553(a) far better than would a sentence suggested by the guidelines.

A. Mr. Doe's abusive childhood

[redacted]

B. Mr. Doe's family circumstances

[redacted]

C. Mr. Doe's mental health

[redacted]

D. Recidivism and future dangerousness

[redacted]

E. Mr. Doe's need for treatment

Another § 3553(a) sentencing consideration is the need to provide Mr. Doe with

correctional treatment in the most effective manner. 18 U.S.C. § 3553(a)(2)(D). Mr. Doe’s need to use internet pornography to cope with his depression and other disorders will greatly diminish, if not dissipate, if he is properly treated, further reducing the already low probability that he will commit another child pornography offense. According to research, treatment and supervision are the two best ways to ensure that a sex offender individual will not recidivate.¹

Dr. B found that Mr. Doe is “a good candidate” for sex offender specific treatment. (PE 13.) In addition, Mr. Doe personally is eager to address his problems through treatment. (MR 10.) He faithfully attended counseling sessions arranged by Pretrial Services while on bond. (PSR 18.) In his own words, he found the weekly sessions “support[ive]” and “helpful in understanding anxiety and what causes a person to do things that are not right.” His counselor noted that he was “fully engaged in his treatment” and “took his responsibilities in counseling very seriously.” (MR 12.)

But effective treatment for Mr. Doe, which he desperately desires and both he and society deserve, cannot happen while he is incarcerated. As Mr. A’s report explains, the Bureau of Prisons does not offer the type of integrated sex offender and mental health treatment that Mr. Doe truly requires. (MR 10-11.) A sentence of five years imprisonment will provide sufficient time for Mr. Doe to reflect on his offense, but allow him to receive within a reasonable amount of time treatment that he can only receive outside of prison.

Mr. Doe impresses upon the Court its duty to consider this critical factor. *See* 18 U.S.C. §3553(a) (the court “shall consider” the enumerated factors); *United States v. Wachowiak*, 412 F.

¹ *See, e.g.* Hanson R.K. and Morton Bourgon, R.K., *Predictors of Sexual Recidivism: An Updated Meta-Analysis, Public Safety and Emergency Preparedness Canada* (2004); Harris and Hanson, *Sex Offender Recidivism: A Simple Question* (2004).

Supp.2d 958 (E.D. Wisc. 2006), *aff'd*, 496 F.3d 744 (7th Cir. 2007) (affirming district judge's consideration of treatment available in the community versus in the Bureau of Prisons in case where guideline range for possession of child pornography was 120-151 months and district judge imposed 70 months). *See also United States v. Grossman*, 513 F.3d 592 (6th Cir. 2008) (sentence of 66 months imprisonment and 10 years supervised release for possession of child pornography where guideline range was 135-168 months proper in part because district court opted to protect society and deter criminal conduct "not through a longer term of imprisonment, but through extensive counseling and treatment and an extensive period of supervised release, which itself contains substantial limitations on an individual's freedom"); *United States v. Cherry*, 487 F.3d 366 (6th Cir. 2007) (sentence of 120 months for possession of child pornography where guideline range was 210-262 months proper in part because defendant wanted to continue counseling and treatment not available in prison).

Respectfully submitted,