

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA

v.

Case No. 8:07-cr-00514-SCF-TGW

WERNER BLOCH,

Defendant.

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SENTENCING MEMORANDUM

INTRODUCTION AND BACKGROUND

On July 16, 2007, the Defendant, WERNER BLOCH, was the subject of a search warrant executed by federal agents. As a result of that seizure, Mr. Bloch was indicted on December 11, 2007 in the United States Federal Court for the Middle District of Florida on charges of violating 18 U.S.C. § 2252(a)(2) and (b)(1), 18 U.S.C. § 2252(a)(4)(B) and (b)(2) and Forfeiture, 18 U.S.C. § 2253. Mr. Bloch appeared with counsel at his arraignment on December 20, 2007 and was released on a \$10,000.00 personal surety bond with strict pre-trial conditions. Mr. Bloch has been compliant with all of the conditions of his release while this matter has been pending. On March 14, 2008, he appeared before this Court for a Rule 11 hearing at which time Mr. Bloch entered a guilty plea to Count I of the Indictment. Mr. Bloch is prepared for sentencing scheduled for June 12, 2008.

Following the entry of Mr. Bloch's plea, a presentence investigation report was prepared by United States Probation Officer Beth Glover. Officer Glover determined the now advisory guideline range in this case at 210 to 240 months with consideration of enhancements and

acceptance of responsibility. However, Mr. Bloch objects to this range on a number of points as outlined below. Furthermore, with consideration of Mr. Bloch's lack of criminal record, family background, impeccable professional reputation and other circumstances relevant to this case, he is seeking further leniency from the Court. Mr. Bloch feels that when the Court considers the departure and variance factors pursuant to the guidelines together with the facts in this case, the Court can find a basis for departure below the advisory guidelines to a period of incarceration which satisfies all of the sentencing criteria.

PERSONAL HISTORY

Mr. Bloch was born in Guayaquil, Ecuador on December 17, 1966 and was 40 years old at the time of his indictment. Mr. Bloch was raised with two older brothers and an older sister and attended elementary and secondary schools in Ecuador until 1984 when he moved with his parents to Pinellas County, Florida. He graduated from Clearwater Central Catholic High School on May 31, 1986 and graduated from the University of South Florida on May 3, 1993, with a Bachelor of Arts Degree, majoring in mathematics education. During his high school and college years, Mr. Bloch provided tutoring to other students and upon graduation accepted a teaching position in St. Petersburg, Florida at Admiral Farragut Academy, a co-ed elementary and secondary school.

EMPLOYMENT

During his nearly 14 years at Admiral Farragut Academy, Mr. Bloch worked as a dormitory supervisor, mentor, tennis coach and mathematics teacher. By all accounts from colleagues, former students and parents as well as current and former faculty members, Mr. Bloch was a model teacher whose tenure can only be described as stellar and profoundly

productive. He was terminated from his position following the execution of the search warrant and, shortly thereafter, moved in with his mother at her residence in Palm Harbor, Florida. During the last 11 months Mr. Bloch has spent much of his time as a volunteer with the local soup kitchen sponsored by Religious Community Services, Inc. Obviously, the above facts of Mr. Bloch's life do not square with the disturbing offenses for which he has accepted responsibility. That acceptance was apparent from his initial comprehensive interview with federal agents during the search of his residence.

HEALTH

Mr. Bloch is in good physical health and has no apparent physical injuries or impairments. Mr. Bloch's psychological health is a different matter. Since July of 2007, Mr. Bloch has participated in frequent and intense individual therapy sessions with Robert Pensa, Ph.D. Following the closing of Dr. Pensa's practice, Mr. Bloch continued in frequent and comprehensive treatment with Robert Whitford, Ed.S. LMHC and was evaluated by Peter Bursten, Ph.D., each of whom has made a diagnosis and prognosis which provide insight into Mr. Bloch's remorse and acceptance of responsibility for his actions, and more importantly, both are of the opinion that Mr. Bloch is at low risk concerning future acts of sexual misbehavior. Mr. Bloch's therapy has been effective and positive as demonstrated by his ability over the last 11 months to control those impulses for which he now faces punishment.

POST-BOOKER ADVISORY GUIDELINES

The Court has the authority under the United States v. Booker, 125 S.Ct. 738 (2005), to consider the guidelines to be advisory and not mandatory in setting a defendant's sentence. If the sentence in this case were still computed solely under the guidelines as recommended in the

presentence investigation report, that sentence would be greater than necessary to comply with the purposes of sentencing where the court is no longer bound by the guidelines, but must consult them and take them into account when sentencing. Booker at 767. Accordingly, after nearly twenty (20) years during which sentencing discretion had been taken away, it is now within the discretion of the United States district courts to consider reasonable and supported discretionary factors as prescribed in 18 U.S.C. § 3553 (a). These factors, together with the now advisory guidelines, allow the courts to pronounce a sentence under the standard of "reasonableness."

It is for this Court to determine that reasonable point where a sentence should fall in any given case. Therefore, we would ask this Court not to preserve a de-facto mandatory guideline approach to sentencing by affording the guidelines a presumption of reasonableness in every case. This would circumvent Booker's substantive holding that the court consider the factors in 18 U.S.C. § 3553 (a).

That statute, otherwise known as the Sentencing Reform Act, requires courts to:

"impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph 2" which are "(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; and (D) to provide the defendant with needed educational or vocational training, medical care or other correctional treatment in the most effective manner."

The statute also further directs sentencing courts to consider:

"(1) the nature and the circumstances of the offense and the history and characteristics of the defendant; (3) the kinds of sentences available; (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense."

Using these new standards with consideration of the reasons described in the previous paragraphs, Mr. Bloch seeks this Court's consideration in pleading for a lesser sentence than that which has been established by the application of the pre-Booker guidelines range. The totality of the circumstances of Mr. Bloch's life must be considered in determining a reasonable and fair sentence. Mr. Bloch clearly recognizes the seriousness of the offense and the fact that this Court is required to impose a just punishment to protect the public from further offensive behavior and criminal activities. Mr. Bloch is not a criminal in the classic sense, but lived part of his life with an illusion of anonymity which was shattered on July 16, 2007. In that moment, Mr. Bloch forever damaged and tarnished his life, reputation and relationships.

Rehabilitation is the primary goal of punishment and Mr. Bloch has exhibited his determination to continue the intense therapy which has proven to be effective over the last eleven (11) months. Mr. Bloch will be deported to Ecuador upon his release and is determined to confront his mental health issues and re-establish some semblance of a life within the profound limitations resulting from his actions. Mr. Bloch respectfully requests the Court to consider the numerous character letters provided to the Court which demonstrate that he was otherwise a responsible and admired person in his public and professional life. Sentencing objectives have traditionally encompassed four basic concepts: (1) punishment; (2) deterrence; (3) restitution; and (4) rehabilitation. The question must be asked, how much prison time is enough to meet these objectives? An extraordinarily lengthy period of incarceration cannot serve any useful purpose other than to give greater weight to the basic concept of punishment and lesser weight to the concept of rehabilitation.

ACCEPTANCE OF RESPONSIBILITY

It is uncontroverted that Mr. Bloch accepted full responsibility for his actions beginning on July 16, 2007, the day that the search warrant was executed by federal agents. On that day and, after waiving his Miranda rights, Mr. Bloch participated in an extensive and informative interview with details of his unlawful involvement with his computer and the internet. Since that time and to date, Mr. Bloch has continued to demonstrate his acceptance of responsibility for his actions. He immediately sought the services of a therapist and participated in frequent sessions while this matter has been pending. In a recent interview with federal agents, Mr. Bloch again demonstrated his consistent acceptance of responsibility and remorse for his actions. For these reasons, Mr. Bloch would request that the Court grant the Government's motion pursuant to U.S.S.G. § 3E1.11(b).

COOPERATION AND SUBSTANTIAL ASSISTANCE

Almost immediately following his indictment, Mr Bloch, through his counsel, offered to provide assistance to the Government in a letter dated September 14, 2007. A brochure which pertained to child pornography which was received by Mr. Bloch through the mail was provided to federal agents. Following his Rule 11 hearing on March 14, 2008, Mr. Bloch, through his counsel, wrote to federal agents and once again offered to provide assistance. On May 9, 2008, Mr. Bloch and his counsel attended an extensive interview with federal agents for the purpose of offering cooperation and substantial assistance as prescribed in paragraph 9 of Mr. Bloch's plea agreement. At that time, Mr. Bloch provided information regarding other offenders and web sites previously unknown to the agents. On May 23, 2008, pursuant to the request of federal agents, Mr. Bloch provided an extensive list of relevant screen names, web sites and e-mails. Mr.

Bloch will continue to provide any requested assistance and cooperation prior to and after his sentencing. For these reasons, Mr. Bloch is requesting that the Court grant the Government's motion pursuant to U.S.S.G. § 5K1.1. (The motion was under consideration by the Government at the time that this memorandum was submitted.)

VARIANCE FACTORS PURSUANT TO 18 U.S.C. § 3553 (a)

Mr. Bloch is requesting that the Court impose a sentence below the applicable guideline range with consideration of the mandate that the Court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in 18 U.S.C. § 3553 (2) (1)-(7). Mr. Bloch is requesting the Court consider the following factors before imposing a sentence:

(1) The Court has been provided with the information pertaining to the circumstances of the offense as well as the history and characteristics of the Defendant. The numerous letters submitted on behalf of Mr. Bloch and the psychological opinions demonstrate Mr. Bloch is at once educated, considerate, contrite, respected, nonaggressive, non-confrontational, non-violent, depressed, anxious and compulsive.

(2) Mr. Bloch recognizes the seriousness of his offense and respectfully requests that the Court impose a just punishment including a reasonable and sufficient term of imprisonment to satisfy the need for deterrence and to protect the public. Mr. Bloch's conduct and behavior during the eleven (11) months since the execution of the search warrant has demonstrated his determination to refrain from the unlawful conduct for which he was indicted. He acknowledged his need for therapy and treatment early on and anticipates continuing therapy while in prison.

With consideration of Booker, supra. and U.S. v. Gall, 128 S.Ct. 597 (2007), the Court has the discretion to impose a reasoned sentence which includes a downward departure.

An additional factor which should be considered by the Court pertains to sentence disparity among defendants, both in the Middle District of Florida and elsewhere in the United States. In the last ten months, approximately six defendants have been sentenced in the Middle District of Florida on charges which involve conduct similar to that of Mr. Bloch. Only one of those defendants, Roger Stowell, Case No. 8:07-mj-01162-MAP, received a lengthy prison sentence of 17½ years for pleading guilty to two counts of possession of child pornography. The severity of Mr. Stowell's sentence was based upon the significant testimony of adult witnesses who, as children, were sexually abused by Mr. Stowell. This aggravating factor is absent in Mr. Bloch's case, a fact which is supported by many of the colleagues, parents, students and faculty members who had frequent contact with him during his fourteen years at Admiral Farragut Academy.

In the case of United States v. Smith, 2008 WL 1816564 (C.A.4.(S.C)), the defendant was convicted of possession of child pornography. The court sentenced the defendant to a 24-month sentence, well below the sentencing guideline range of 78 to 97 months. The court of appeals affirmed the sentence based upon the district court's statement of reasons for the departure:

"The district court simply counterbalanced the seriousness of the offense factor under § 3553(a) against its findings regarding Smith's personal characteristics namely his age, lack of criminal history, low risk of recidivism, and positive role in his family and his community. In particular, the district court stressed that defendant had no inappropriate contact with any child. Such an approach is consistent with the Gall Court's admonition that district courts should "consider every convicted person as an individual and every case as a unique study in the human failings that sometimes

mitigate, sometimes magnify, the crime and the punishment to ensue." Gall, 128 S.Ct. at 598 (internal quotation marks omitted)

The search of Smith's home yielded thousands of computer and video images of child pornography as well as 262 movies depicting child pornography yet the appellate court found that the defendant's 24-month sentence for possession of child pornography was not unreasonably lenient, although, the sentence was below the sentencing guidelines range of 78 or 97 months.

While we are aware that Smith was convicted of possession of child pornography and Mr. Bloch's conviction was for the receiving of child pornography, the case does demonstrate the ability of the court to consider similar factors in determining the reasonable basis for a downward departure.

In Gall v. United States, 128 S.Ct. 586 (2007), the court found:

"As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark. The Guidelines are not the only consideration, however. Accordingly, after giving both parties an opportunity to argue for whatever sentence they deem appropriate, the district judge should then consider all of the § 3553 (a) factors to determine whether they support the sentence requested by a party. In so doing, he may not presume that the Guidelines range is reasonable. See *id.*, at - - -, 127 S.Ct. 2456. He must make an individualized assessment based on the facts presented. If he decides that an outside-Guidelines sentence is warranted, he must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance."

In United States v. Cherry, 487 F.3d 366 (6th Cir. 2007), the defendant entered a guilty plea to four counts of distributing child pornography, nine counts of receiving child pornography, and one count of possessing child pornography. On appeal to the sixth circuit, the court found that a sentence of 120 months on these charges, which was 43% below the applicable sentencing guidelines range, was not unreasonable. As in Mr. Bloch's case, the applicable guidelines range

in Cherry prescribed a low end sentence of 210 months of imprisonment. However, the departure was found to be reasonable where the court stressed repeatedly the seriousness of the offenses, took into account kinds of sentences available, considered the defendant's willingness to get help in his progress and in counseling, and considered the defendant as an individual entitled to individualized sentencing below guidelines in accordance with 18 U.S.C.A. § 3553(a). The court went on to state:

"In discussing the seriousness of the crime, the district court clearly recognized that the crime is serious, that offenders like Cherry enable the production of child pornography, and that the seriousness of the crime reflected in the harshness with which Congress has chosen to treat it. The district court also noted the unfortunate coincidence of technology and latent desire, creating criminal conduct that never could have occurred ... and that people who are doing acts which we have deemed criminal would never have done them in different circumstances."

Certainly there are distinctions between Cherry and Mr. Bloch's situation; however, the comparisons are relevant and substantial in the application of the guiding principle of § 3553 (a) in that the court shall impose a sentence sufficient but not greater than necessary. We would ask the Court to consider how much time in prison is enough for a person who has never acted on his compulsions outside of the use of his computer, has otherwise contributed to society and has demonstrated his determination to continue with treatment.

With the understanding that Smith was fortunate enough to have the distribution count of his indictment dismissed, while entering a plea of guilty to the possession count, the enhancements above the base offense level and other salient factors are virtually identical.

In United States v. Baker, 445 F.3d 987, (7th Cir. 2006), the defendant pled guilty in the United States District Court for the Central District of Illinois to distributing child pornography. The chief judge of that court found that the advisory sentencing guidelines range of 108 to 135

months required a sufficient adjustment below the guidelines range to 87 months. The appellate court found the variance to be reasonable and appropriate, stating:

"District court's decision to impose 87 month sentence for defendant's offense of distributing child pornography, a term below the advisory guideline range of 108 to 135 months, was adequately explained and premised on the statutory sentencing factors, and thus could not be considered unreasonable; district court paid close attention to defendant's lack of criminal history, relatively young age, religious background, history of both employment and higher education, lack of previous imprisonment, and imposed special conditions designed to reduce risk of defendant becoming repeat offender. 18 U.S.C.A §§ 2252A(a)(1), 3553 (a)."

In United States v. Wachowiak, 496 F.3d, 744 (7th Cir. 2007), the appellate court reviewed the Government's appeal regarding the district court judge's perceived leniency in sentencing the defendant to 70 months for receiving child pornography while the advisory sentencing guidelines range was 121 to 151 months. The court found that this downward departure was not unreasonably lenient, stating:

"district court gave meaningful consideration to guidelines range, court acknowledged seriousness of offense and noted quantity and nature of images defendant possessed as aggravating circumstances, but court believed mitigating circumstances outweighed aggravating ones, defendant cooperated with Government, gave a detailed confession, expressed sincere remorse, and pleaded guilty in a timely fashion, and a sex offender counselor and a psychologist reported that defendant posed little risk of re-offending, was motivated to change, and was a good candidate for treatment. 18 U.S.C.A §3553 (a); U.S.S.G. §1B1.1 et. seq., 18 U.S.C.A."

In addition, and as additional reasons for affirming the sentence the appellate court stated:

"The judge nevertheless found that several factors mitigated the severity of Wachowiak's offense, specifically: (1) Wachowiak never enticed or had improper contact with any child; (2) he was extremely cooperative with the Government and gave a prompt and detailed confession; and (3) he never produced or purposely distributed any images (although he did "share" them through the file-sharing program). id."

In United States v. McBride, 511 F.3d 1293 (11th Cir. 2007), the defendant was convicted after a guilty plea for distributing child pornography. The district court judge sentenced the defendant to 84 months of imprisonment even though the advisory federal sentencing guidelines range was 151 to 181 months. The enhancements applied to McBride were identical to those in Mr. Bloch's case and, like Mr. Bloch, McBride's own experts diagnosed him as a pedophile. The same variance factors which we are requesting be considered in Mr. Bloch's case were found to be valid in McBride, including his desire to continue in and complete a sexual treatment program. McBride had the additional aggravating circumstance in that, as a juvenile and as an adult, he was involved in unlawful sexual behavior with prepubescent children.

CONCLUSION

We submit that Mr. Bloch's remorse and desire to continue intense therapy and treatment is genuine. He is as prepared as one can be under the circumstances to serve a reasonable sentence. He understood the serious nature of his behavior from the first moment when the federal agents executed the search warrant. He is not a classic criminal, psychopath or sociopath and is clearly a candidate for rehabilitation that began on July 16, 2007. He is not a predator and is at low risk to re-offend. It is disingenuous to suggest that Mr. Bloch can ever be made whole since he has permanently and negatively altered his life. After serving his sentence, he will be deported to Ecuador, where his sister resides, and will be forever barred from returning to the United States where his mother and brothers reside. Finally, we would urge the Court to be guided by the principles of Booker which allow for expanded discretion and the relevant precedent provided by the cases cited in this memorandum.

In conclusion, Mr. Bloch would suggest that he is an appropriate candidate for this Court's leniency and a departure below the advisory guidelines sentence range based upon the

totality of circumstances. Mr. Bloch would request that the Court recommend that his prison sentence be served at a facility offering the appropriate therapy. FCI Coleman would be preferred; however, it is our understanding that FCI Marianna is initiating a pilot program in this regard and would, therefore, be more appropriate.

I HEREBY CERTIFY that on June 26, 2008, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system and a copy was electronically sent to Jay L. Hoffer, Assistant United States Attorney.

Respectfully Submitted,

s/Daniel J. Grieco

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