

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA

Plaintiff,

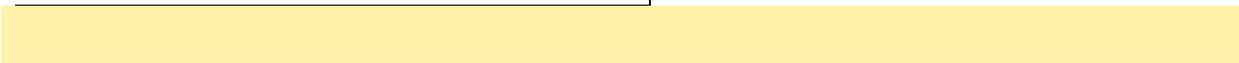
v.

**GLENN BOSWORTH,**

Defendant.

Case No. 2:13-cv-08352 ODW

**ORDER GRANTING  
RECONSIDERATION AND  
DENYING PLAINTIFF'S MOTION  
TO VACATE JUDGMENT AND  
SENTENCE AND WITHDRAW  
PLEA, PURSUANT TO 28 USC 2255**



**I. MOTION FOR RECONSIDERATION**

On April 8, 2014, this court entered an Order Denying Bosworth's Motion to Vacate the Judgment and Sentence on the basis that the motion was untimely. Thereafter, Bosworth filed a Motion for Reconsideration asserting that under the holding of *Clay vs. United States*, 537 U.S. 522 (2003) his motion was filed well within one year of the Supreme Court's denial of his writ of certiorari. The Court finds he is correct and grants the Motion for Reconsideration and withdraws its earlier order denying the Motion to Vacate on untimeliness grounds. Having considered the Motion on its merits, the motion to vacate the judgment and withdraw the plea of guilty is DENIED. The motion to vacate the sentence is provisionally GRANTED. Provided certain conditions are met, Bosworth's sentence will be vacated and he will be resentenced..

1 **II. PROCEDURAL HISTORY**

2 On February 20, 2009 Plaintiff plead guilty to Count 1 of the Information, charging  
3 him with violation of 18 USC §2422(b) Use of a facility of Interstate Commerce To Induce  
4 a Minor To Engage in Criminal Sexual Activity. After no fewer than nine continuances, on  
5 October 22, 2010 Petitioner was sentenced to nine years in prison with 20 years of  
6 supervision to follow. U.S. Probation had recommended the mandatory minimum  
7 sentence of 10 years imprisonment. The conviction and sentence were affirmed by the Ninth  
8 Circuit on February 22, 2012 [105].

9 On October 31, 2013 Defendant filed the instant motion to vacate his conviction and  
10 sentence and to allow withdrawal of his previously entered guilty plea, pursuant to 28  
11 U.S.C. §2255. For the reasons discussed in the following pages, the motion is DENIED in  
12 part.

13 **III.FACTUAL SUMMARY**

14 From November 28 until the date of his arrest on December 17, 2008, Defendant,  
15 who used the screen name SeekingMissRight, engaged in a series of internet  
16 communications with an undercover agent, who he believed to be the mother of a 12 year  
17 old girl. The purpose of those communications, from the first day, was to induce the young  
18 girl's mother to permit the Defendant to have sex with her child. Specifically, beginning on  
19 November 28, 2008 defendant, by way of instant messaging, initiated a conversation with an  
20 undercover FBI agent, operating from a Los Angeles based computer, in a chat room  
21 entitled Special Interests – Open Minded Parent. During this initial conversation, defendant  
22 told the FBI agent, whose screen name referenced status as a mother, that he was looking  
23 for an “openminded mother” who would allow her daughter to experience sex with an older  
24 man, noting that teen boys lacked the requisite sexual experience to properly treat a young  
25 girl. Defendant further asked whether the purported daughter, who was identified as nearly  
26  
27  
28

1 13 years of age, was "developing" and asked her bra size. He then sent a picture of himself  
2 and asked the mother to show the picture to her daughter and to in turn send him a picture  
3 of the daughter .

4 In subsequent internet communications, defendant continued to discuss with the  
5 mother how he wanted to meet to have sex with her daughter, claiming that he had two past  
6 sexual experiences with minors and reiterated his belief that there were lots of women who  
7 want their daughters to learn about sex from experienced adult males rather than teen boys.  
8

9 In addition, during one of these communications, he sent a picture of a nude male, which he  
10 represented as a picture of himself ..

11 As the discussions progressed, defendant arranged a December 9, 2008 meeting  
12 with the mother at an Orange county mall so that they each could develop a comfort level  
13 with the other before proceeding with the sexual encounter. During this meeting, in which  
14 a female FBI agent assumed the role of the mother, the mother advised defendant that her  
15 daughter was actually 12 years old, but would be turning 13 in the immediate future. During  
16 the ensuing conversation, defendant again made reference to a past sexual experience he  
17 had with a young child and further informed the mother that he had child pornography back  
18 at this house. In the course of this meeting, the two agreed to meet at a hotel in the  
19 immediate future for purposes of him having sex with the child ..  
20  
21  
22

23 On December 9, 2008, defendant initiated another chat with the mother, and  
24 then after requesting the daughter's screen name, he chatted with the daughter as well.  
25 During the conversation with the daughter, defendant informed her that her mother wanted  
26 her "to have a safe lover who will be good to you" and further asked if she had talked to her  
27 mom about the conversations that he had been having with her regarding future sex. Later,  
28

1 when chatting again with the mother, defendant noted his opinion that the daughter seemed  
2 interested in having sex and asked the mother for a new picture of the daughter, asking if  
3 the daughter would send him a topless photo of herself.

4 The following day, defendant and the mother resumed their internet  
5 communication, with defendant discussing at length and in graphic detail the type of sex he  
6 intended to have with the daughter and advised the mother that he would show the daughter  
7 pictures of child pornography "to show her that other girls enjoy sex."

8  
9 Over the course of the next several days, defendant and the mother had multiple  
10 internet communications in which they agreed that the sexual encounter would take place  
11 on December 18, 2008 in a Long Beach hotel. Defendant indicated that he would bring the  
12 laptop containing the child pornography, overnight clothing, lotion, and a small vibrator.  
13

14 Defendant was arrested after he arrived at the hotel. The laptop he was  
15 carrying contained several pictures of child pornography. He brought with him overnight  
16 clothing, lubricant, condoms, pills that claim to enhance penis size, gifts for the daughter,  
17 and a small vibrator.  
18

#### 19 **IV. RELIEF SOUGHT**

20 Defendant seeks to withdraw his plea of guilty on the basis of the occurrence of a  
21 number of claimed errors, the cumulative effect of which, he argues, has resulted in a  
22 miscarriage of justice.  
23

24 1. Defendant Bosworth Seeks an Evidentiary hearing into claims of ineffective  
25 assistance of counsel. Specifically, he complains of counsels'

26 a. Failure to obtain and review material discovery;

27 b. Failure to file suppression motion regarding statements made by Defendant in  
28

1 violation of *Miranda*.

2 c. Failing to challenge alleged prior related acts of sexual activities with minors.

3 d. Failure to object to violation of Defendant's Sixth Amendment right to an open

4 and public sentencing hearing.

5 e. Failure to conduct investigation into Defendant's claims of factual innocence.

6  
7 2. The Court Abused its Discretion in Excluding Family Members from Sentencing  
8 Hearing.

9 3. Government Allegedly Altered Audio Recordings.

## 10 V. DISCUSSION

11 First, it is important to note that there is no claim by Bosworth that his guilty plea was  
12 involuntary. In fact, he signed a statement within the plea agreement that he understood the  
13 terms of the agreement and voluntarily agreed to those terms. (Plea Agrmt p. 15:7-8) He  
14 further attested to the fact that "No one has threatened or forced me in any way to enter into  
15 this agreement." Second, he makes a number of complaints against his counsel, yet he  
16 raised none of those complaints at any hearing before the court. In fact, as part of the plea  
17 agreement, he expressly states or subscribed to the statement: "Finally, I am satisfied with  
18 the representation of my attorney in this matter." (Id. at p. 15:15-17.)

19  
20  
21 Third, he complains about an allegedly altered audio recording of his interviews by  
22 the authorities. These are interviews and recordings of which the court was completely  
23 unaware and therefore played no role in the court's sentencing decision. If in fact the  
24 recordings were not authentic they would have been suppressed. However, since those  
25 recordings were not part of the information before the court in any event Bosworth cannot  
26 complain of any prejudicial impact. It is axiomatic that a sentencing judge cannot be  
27  
28

1 influenced by facts of which he is unaware.

2 With regard to Bosworth's complaint of his attorney's failure to investigate "alleged  
3 prior related acts of sexual activities" he discounts the fact that it was he who raised the  
4 issue of his prior experiences. During a conversation about when a girl began showing an  
5 interest in sexual matters he mentioned a four year old climbing into bed with him. (Chat  
6 transcript at p. 30.) In any event he appears to be criticizing his lawyer for not attempting to  
7 prove that he had never had any such encounters. That is simply not realistic. Precisely  
8 how would they attempt to prove he had never done something? In any event, his  
9 sentence was not enhanced because of anything extraneous to the instant offense.  
10

11 His criticism of his attorney's failure to conduct an investigation of his claim of factual  
12 innocence is wholly without merit. His lawyers indicated that they had read the transcripts  
13 and found nothing mitigating. The court shares that view. Those transcripts demonstrate in  
14 shocking detail what his intentions were with respect to this, albeit fictitious, 12 year old girl.  
15 He then traveled from San Diego to a hotel in Long Beach with various sex toys, just as he  
16 said he would, for the purpose of executing his detailed plan to have sex with this young girl.  
17 That was the evidence presented to the court. That is what he admitted to in his plea  
18 agreement and orally to the court and that was the basis for the imposition of the sentence.  
19

20 Bosworth's remaining claim of error was the court's strong recommendation that his  
21 daughter not attend the sentencing hearing where she could have been exposed to things  
22 about her father that she would have found unsettling to say the least. It may well have  
23 altered their relationship irreparably.  
24

25  
26 **A. Habeas Relief Is Not Warranted on Bosworth's Claim of Ineffective Assistance**  
27 **of Counsel.**

28 **1. Applicable Law**

1 Under *Strickland v. Washington*, 466 U.S. 668, 687 (1984) a petitioner claiming  
2 ineffective assistance of counsel must show that counsel's performance was deficient and  
3 that the deficiency prejudiced his defense. "Deficient performance" means unreasonable  
4 representation falling below professional norms prevailing at the time of trial." Id. at 688-689.  
5 To show deficient performance, a petitioner must overcome a "strong presumption" that his  
6 lawyer "rendered adequate assistance and made all significant decisions in the exercise of  
7 reasonable professional judgment." Id. at 690. The court must determine whether "in light  
8 of all the circumstances, the identified acts or omissions were outside the wide range of  
9 professionally competent assistance." Id.  
10

11 In order to meet his burden of showing the distinctive kind of "prejudice" required by  
12 *Strickland*, a petitioner must affirmatively "show that there is a reasonable probability that,  
13 but for counsel's unprofessional errors, the result of the proceeding would have been  
14 different. A reasonable probability is a probability sufficient to undermine confidence in the  
15 outcome." Id. at p. 694, see also, *Harrington v. Richter* 562 U.S. \_\_\_\_ (2011) "The question  
16 is whether an attorney's representation amounted to incompetence under prevailing  
17 professional norms, not whether it deviated from best practice or most common custom."  
18

19 Here, one need not speculate whether absent counsel's alleged deficient  
20 performance the result of the proceeding would have been different. It would not. In light  
21 of the evidence presented to the Court, which evidence was Bosworth's own on-line  
22 writings, the accuracy of which has not been challenged, in addition to his plea of guilty,  
23 each element of the offense was conclusively established.  
24

25  
26 **2. It Was Bosworth Himself, Not His Attorney, Who Made the Tactical**  
27 **Decision Which Prejudiced Him.**  
28

1 If there was a single event which adversely impacted Bosworth at the time of his  
2 sentencing, it was the transcripts. Bosworth, in his statement to the court stated: "I did try to  
3 turn my affections towards the agent who was the mother, and she encouraged me to go  
4 back to talking about the daughter. I was told to bring the things that I brought."

5  
6 [Transcript of sentencing hearing, September 13, 2010, Doc 87, p. 18:19-21.]

7 Mr. Bosworth indicated that he had a copy of the transcript of the AOL chats. The  
8 Court asked whether defendant wished to proceed with sentencing, or continue the  
9 sentencing to permit the court to review the AOL chat transcript in order to verify defendant's  
10 assertion that he had been the victim of government entrapment. His lawyer, after  
11 conferring with Bosworth, asked to continue the matter. But for his personal request that  
12 the court review the transcripts of his chat with the undercover FBI agent, the court would  
13 have been unaware of the contents of those chats and was prepared to proceed with  
14 sentencing on the basis of the Information, the PSR and the Plea Agreement. Of all the  
15 things that affected the outcome of the proceedings, the single most important was the  
16 transcript. Bosworth cannot lay that at the feet of his attorney. What wasn't captured in the  
17 transcript of the hearing was the colloquy between he and his attorney who was attempting  
18 to dissuade him from insisting that the court procure those transcripts and read them. The  
19 attorney had read the transcript and knew that his assertion of government misconduct  
20 would not be borne out, but Bosworth rejected his attorneys advice. That was his undoing,  
21  
22  
23

24 **3. Bosworth's Remaining Claims of Ineffective Assistance**  
25 **Deal with Matters Irrelevant to the Court's Sentencing Determination.**

26 The allegations of altered audio recordings is a non-issue. The audio recording was  
27 not material to the hearing. Indeed, the court first learned of the existence of the audio  
28

1 recording long after the sentencing. The only items the court relied upon in determining the  
2 18 USC 3553(a) factors pertinent to the sentence, were the Information, the Plea Agreement,  
3 the PSR, letters submitted on behalf of the defendant and the transcript of the AOL chats.  
4 Moreover, the “evidence” of tampering raises more questions than it answers. The audio  
5 forensic expert does not state that portions of conversations have been cut out of the audio  
6 recording. Bosworth states in his declaration attached as Exhibit A to the Motion, that he  
7 “believe[s] the missing portions would show that [he] expressed flirtatious interest in the adult  
8 FBI agent, to which she rebuffed [his] advances and directed [him] to her daughter.” ¶ 9 of  
9 Bosworth Decl.]. This is not a new claim by Bosworth and it is only partially true, but false in  
10 the most material respect. He did make several advances toward the “mother” all of which  
11 were rebuffed. But not once does the transcript reflect that she in any way directed his  
12 attention, then, toward the daughter. In point of fact, Bosworth asked the bra size of the  
13 fictitious child more times than he hit on the mother.  
14

15  
16 It should also be pointed out that both before and after December 9, 2008, the alleged  
17 date of the recorded conversation between Bosworth and the “mother” the transcript contains  
18 absolutely no evidence to support his claim that the agent diverted his attention toward the  
19 “child.” Yet, he advances the claim that the sole piece of that evidence is contained on a  
20 missing segment of the audio, sandwiched between November 28 through December 13,  
21 2008. But even this claim is not definitive. He only states that he “believes” the “missing  
22 portions would show” this to be true.  
23  
24

25 The same holds true with the claim that counsel was deficient in not seeking to  
26 suppress this evidence. The fact of the matter is this evidence was never presented to the  
27 court, so it was in fact suppressed. The court was never apprised of the existence of the  
28

1 recordings or of the contents of those recordings, therefore they were not a factor in the  
2 court's sentencing decision.

3           Similarly, the claim that counsel should have interviewed a particular women to  
4 disprove Bosworth's own claims to have had a sexual encounter with the woman's daughter  
5 carries little or no weight. Such encounters rarely take place in the presence of a parent and  
6 her lack of knowledge of such an encounter does not disprove that they in fact occurred. It  
7 also fails to address the possibility of such an encounter with another child. But most  
8 importantly, he expressly admitted having had two past sexual experiences with minors in the  
9 Statement of Stipulated Facts attached as Exhibit A to the Plea Agreement. In the Plea  
10 Agreement, neither of these two children are identified.

11  
12           Of course, Bosworth attempts to minimize the damage caused by his own admissions,  
13 claiming it was only "shock talk" to get the attention of others on the internet. He claims that  
14 people won't pay any attention to you unless you engage in shocking talk. It is curious that  
15 he continued his so-called "shock talk" even after he had the "mother's" attention and she  
16 wasn't similarly engaged in such talk, yet she held his attention.  
17  
18

19           The most specious claim of all is the claim that counsel's performance reached the  
20 level of incompetence due to his failure to investigate his claim of factual innocence.  
21 Specifically, Bosworth contends that he is innocent of the crime charged because the  
22 evidence disclosed that he "tried to turn his affection towards the adult FBI agent, however  
23 the agent kept directing his attention back to her daughter." Secondly, "it was the FBI agent  
24 who insisted that he bring her 'daughter' the 'gifts' that he brought"; and thirdly "he only  
25 wished to meet and talk." He concludes by offering that if these allegations were found to be  
26 true, it would have amounted to a "potential entrapment defense."  
27  
28

1 In point of fact, these issues were all presented in the transcript. Apparently  
2 Bosworth is of the view that because the topics were raised, he is entitled to interpret them to  
3 his best advantage. The court evaluated the transcripts and reached its own conclusions.  
4 Taken in isolation Bosworth's assertions contain a grain of truth. Within the context of the  
5 chats as a whole, the Court finds these assertions completely lacking in merit. They will be  
6 discussed in turn.  
7

8 **a. The Government Did Not Attempt to Deflect Bosworth's Attentions From**  
9 **the Mother to the Daughter.**

10 On the Profile page of the purported "mother's" AIM account appears the  
11 following statement: "Hi all, I'm a hard working mom residing in Long Beach. I'm doing my  
12 best to raise two beautiful daughters (5- Ayssa and 13 - Jessica). **I'm currently in a**  
13 **relationship with another woman.** My ex is long long gone. . long story (lol)" (Emphasis  
14 added) One might reasonably conclude that the highlighted language was to dissuade  
15 would-be male suitors. During the first ten minutes of Bosworth's on line chat with the  
16 mother he asks "are you married . . . have daughters? She indicates that she is divorced,  
17 with a girl friend of several years, and provides the ages of her daughters, 5 and 13. He  
18 asks if she is a lesbian to which she answers in the affirmative and indicates that she is  
19 very happy with her girlfriend. He asks if the daughters prefer men or women to which the  
20 mother replied that they are too young to know. He asks:  
21

22  
23 Bosworth: "Do you and gf ever need a male?"

24 Mother: "no." ( A few moments later mother asks) "what are your interests?"

25 Bosworth: "the 13 yr old will soon have sex tho. Honestly? Looking for an open-minded  
26 mother."  
27

28 Mother: "well . . . I may not be good for you because I already have a gf."

1 Bosworth: "yes, I know . . . and you seem to not want any cock."

2 Mother ; "no . . . sorry."

3 Note, at this point she did not reference the daughter at all. He brought up the  
4 daughter by the following:

5 Bosworth: "What will you do for daughter when she wants a guy?"

6 Mother: I'd be supportive.

7 Bosworth: "would you prefer she learn with a teen boy or a man?"

8 Mother: "It doesn't matter. What do you think?"

9  
10 Bosworth: "Older men would teach her right . Teen will likely essentially rape her. Men go  
11 slow. They appreciate a lover. Boys don't have a clue at this point. She developing?"

12 Mother: She is petite.

13 Bosworth: "I like petite . . height, weight?"

14 Mother: "13 years old is about 5 feet."

15 Bosworth: "cute . . sexy"

16  
17 A few moments later he asks for a picture as well as her bra size. Later still he started a  
18 conversation which one might consider as "hitting on" the mother, but contrary to his  
19 assertion, the mother did not redirect his attention toward the daughter. Quite the opposite.

20 It began when he sends a picture of himself and asks the mother if she liked it. She said it  
21 was "nice" and again reminded him that she has a girlfriend. He then asks "Did you show  
22 daughter?" She responds "no . . do you want me to?" He says "well . . . its up to you . .

23 . if you think she is ready." "I'm not pressing . . just asking." Later he asks for the  
24 daughter's picture. Mother asks "what type of picture do you want?" To which he responds,

25 "What type do you have . . . honestly . . . to make me comfortable the more risqué the  
26  
27  
28

1 better." After they exchanged views on the legality of showing pictures of children having  
2 sex he asked "do you have nudes of her?" Each and every time he attempted to show  
3 interest in the mother, he was rebuffed. But at no time, not once, did the mother redirect  
4 the conversation back to the daughter. His assertions to the contrary are simply not true.

5 In any event, this part of the chat continued in this vein for another 22 minutes when  
6 he asks "are you ok with me spending the night in her room on a regular basis if we do hit it  
7 off?" Eight minutes later they signed off. On December 12 he writes "Would love to see  
8 more revealing picture of her" "Would she pose for a topless picture for me?"  
9

10 At no point during this exchange did the "mother" attempt to divert his attention to  
11 the daughter. It is true that several times he tried to interest the mother in a sexual  
12 encounter. with him, but she either ignored the advance or reminded him that she wasn't  
13 interested in men. On December 13 he told the mother: "I wake up harder than hell . . .  
14 since we met . . . thinking about Jessica." Mother asks what he was thinking about, to  
15 which he replied, "just waking up I pull the other pillow over on top of me . . . imagine it's  
16 her." The conversation explicitly speaks for itself. The object of his desire was made clear  
17 from the outset. That is not to say that he was interested in the child exclusively, but the  
18 assertion that the government directed him to the daughter is flatly false.  
19  
20

21 **b. Bosworth Attempts to Equate "Gifts" with Sexually Explicit Material**  
22 **and Paraphernalia.**

23 It is true that the mother asked about gifts for the girls. On December 13 after  
24 Bosworth painted a vivid word picture of how he saw the evening of "the event" unfolding,  
25 including showing the daughter pictures on the laptop he intended to bring, the mother  
26 asked "will you bring Jessica and Alyssa gifts . . something small . . . when we meet?"  
27 Earlier, after Bosworth had spoken with the fictitious daughter, the mother commented,  
28

1 "she seemed really happy that you were planning on taking her to the mall to do some  
2 shopping" to which he replied, "girls like to shop" "buy her a cute outfit." Mother: "thanks,  
3 that would be nice." However, it was he who suggested taking Jessica shopping on  
4 November 28, the day the chats began. "Be nice to take her shopping, to the movies,  
5 maybe to Disneyland." Those are gifts. However, he arrived at the hotel with a laptop  
6 containing child pornography, overnight clothing, lubricant, a small vibrator, condoms, pills  
7 that claim to enhance penis size and gifts for the daughter. (See Statement of Stipulated  
8 Facts in Plea Agreement.). None of those items could be considered appropriate "gifts" for  
9 a 12 year old girl. Instead, they clearly manifested the purpose of his drive up from San  
10 Diego.  
11  
12

13 **c. The Evidence Clearly Established That The Purpose of Bosworth's Trip**  
14 **From San Diego to Long Beach Was Not Just To Talk.**

15 Bosworth is critical of his attorneys for their failure to conduct a sufficient investigation  
16 into his factual innocence. Quite possibly the attorneys read the transcript and concluded  
17 that nothing could mitigate, much less undo, the harm caused by Bosworth's own words and  
18 actions. Perhaps they realized that nowhere within the transcript was there any indication  
19 by Mr. Bosworth that he intended just to have a conversation with the 12 year old.  
20

21 On the evening of December 12, 2008 Bosworth and the mother discussed the  
22 outcome of a chat Bosworth had with Jessica and what they should tell Jessica before the  
23 time came.

24 Mother: How was the chat?

25 Bosworth: Good. Kinda lifeless, but good.

26 Mother: Why do you say lifeless?  
27  
28

1 Bosworth: Well it was tame. Christmas tree, animals, general stuff. Finally I talked about  
2 sex.

3 If Bosworth's motives were somehow in doubt, he certainly cleared that up on  
4 December 13, 2008 in a chat with the mother as he was making sure the mother knew  
5 exactly what was in store for her daughter and just how intimate their "talk" would be.

6  
7 Bosworth: So you really want a man to take her to bed then?

8 Mother: Yes.

9 Bosworth: Kiss her, feel her, take her top off, then bra, then suck her nipples.. You are  
10 ready for that?

11  
12 Mother: Yes.

13 Bosworth: Slide his hand to her panties?

14 Mother: Ok.

15  
16 Bosworth: Slip under her panties and slip his fingers in to get her wet and feel her clit while  
17 French kissing her?

18 Mother: Yes.

19 Bosworth: Have her reach for my cock and unbuckle my belt?

20 Mother: Ok.

21  
22 Bosworth: Just trying to paint the picture for you.

23 Mother: Thanks. I was wondering how it was all going to happen.

24 Bosworth: Because the reality is that there will be a point of no return.

25  
26 Thereafter, there are over three more pages of lurid graphic details of how Bosworth  
27 envisioned the "talk" going. And so as to gauge just how penetrating he could permit his  
28 vocabulary to become, he inquired of the mother whether she "want[ed] her hymen broken."

1 Mother: It would wouldn't it?

2 Bosworth: Up to you.

3 Mother: Did you tell Jessica of these things last night?

4 Bosworth: No. Was tame.

5 Mother: Why did you decide not to?

6 Mother: ok

7 Bosworth: First chat. Nervous.

8 Mother: She was nervous?

9 Bosworth: I was.

10 Mother: oh. lol

11 Bosworth: I just don't want to go to jail.

12 Mother: I don't want to either.

13  
14  
15 It is difficult to reconcile his concern about going to jail with his intention to only  
16 meet the girl to "talk". It is doubtful that any "mother" reading his chats would conclude that  
17 Bosworth had anything in mind other than having illegal sex with a minor. The real issue  
18 here is, where is there any hint that this rendezvous was for innocent purposes? How could  
19 his lawyers have read this and concluded that further investigation was warranted to unearth  
20 further evidence that he was innocent? Investigation into what?

21  
22 In order to properly evaluate Bosworth's claim of ineffective assistance of counsel,  
23 the court must determine whether "in light of all the circumstances, the identified acts or  
24 omissions were outside the wide range of professionally competent assistance." However,  
25 here, there are no "identified omissions" other than the alleged failure of the defense  
26 attorneys to make a reasonable investigation into Bosworth's claims of actual innocence.  
27  
28

1 Bosworth does not offer any insight into what that investigation might have been expected to  
2 disclose which would have been helpful to him. In other words, he fails to show the  
3 prejudicial impact of his attorneys' alleged deficient performance. Critically, he fails now to  
4 advise the court of what that further investigation would have disclosed. If there was no  
5 mitigating evidence to be found, the failure to find it cannot be considered incompetent..  
6

#### 7 **4. The Semi-closed Sentencing Hearing Was Not an Abuse of Discretion**

8 This should fall under the heading, "be careful what you ask for." Bosworth seeks a  
9 resentencing so that his family – by which the court assumes includes his daughter – can  
10 attend. At the time of the sentencing hearing, everyone in the courtroom who had  
11 knowledge of what was in the transcripts of the chats understood why Bosworth's daughter,  
12 primarily, should not be in the courtroom while matters of her father's conduct, intentions  
13 and fantasies regarding minor girls was being discussed. For example,  
14

15 Mother: Is it bad that I'm considering this?  
16

17 Bosworth: Not at all . . . I think it is very good approach to parenting

18 Mother: Thanks.

19 Bosworth: A frustrated girl will do nothing but cause you problems. A sexually satisfied girl  
20 will be better in school and at home.  
21

22 Mother: Yes. True.

23 Bosworth: My daughter should have been fucked since she was about 12.

24 Mother: How old is your daughter?

25 Bosworth: Didn't get it till 18. I could tell when she started fucking. She became more of a  
26 person. She is 28 now. (Transcript at p.11.)  
27

28 . . . .

1 Bosworth: A whole lot of parents are getting into this. Moms fuck sons. Dads daughters.  
2 Moms of daughters let the new dad, step dad fuck her girls. The kids seem to act better  
3 after sex. I know some families swap kids. (Transcript at p. 14.)

4 . . . .

5 Bosworth: And what about her bra size?

6  
7 Mother: She is small. I'm not sure if I should say, unless you really need to know..

8 Bosworth: Just curious. My wife was an A –cup. Got implants. C-cup. I was fine with the  
9 A-cup. C-cup was fun. But really, was fine with A-cup. Some men like small tits on a  
10 woman. It's like having a 12 year old.

11 Mother: Well, she is an A-cup.

12  
13 Bosworth: I have told all the women I have been with who are small that men like young  
14 girls. And being with a small woman is like being with a 12 year old. Literally tell them that,  
15 and they understand.

16 Mother: I see.

17  
18 Bosworth: I have had women call me daddy out of the blue.

19 Mother:: I see. Did you like that?

20 Bosworth: I think women understand a man's desire to fuck his own daughter or very young

21 Mother: I see.

22  
23 Bosworth: My cock would get harder when they call me daddy. (Transcript at p. 29.)

24 It is not the court's place to preserve family relationships, or to protect the illusions of  
25 a daughter that her father is a noble and honorable man. Moreover, there is sufficient Ninth  
26 Circuit authority that the exclusion of family members and friends or any part of them during  
27 a sentencing hearing, no matter how brief, and even with the apparent agreement of  
28

1 defense counsel, has Sixth Amendment implications. The Court will then issue an order to  
2 ameliorate those Sixth Amendment concerns.

### 3 4 **V.CONCLUSION**

5 The court finds no merit in the majority of Bosworth's claims of error or alleged  
6 deficiencies in the performance of his attorneys and therefore rejects his petition for  
7 habeas relief. The court also finds no justification presented to warrant withdrawal of his  
8 guilty plea. Bosworth has not demonstrated that his plea was involuntarily made. Nor  
9 does it appear that refusal to permit withdrawal of his plea of guilty would be a manifest  
10 injustice. Merely being unhappy with one's sentence is not legal justification for  
11 withdrawal of a voluntary, fully informed guilty plea entered after defendant was afforded  
12 full due process protections. See *Pinedo v. United States*, 347 F.2d 142, 148 (1965)  
13

14  
15 However, to the extent Bosworth desires a fully open sentencing hearing, his  
16 request is provisionally **granted**. It was the Court's misplaced concern that Bosworth's  
17 daughter be spared hearing, in his own words, the unspeakable depravity of her father  
18 arranging for a sexual encounter with a 12 year old girl. It was the court's hope that  
19 whatever heroic images she still had of her father not be sullied. But as Bosworth  
20 appropriately reminds the court, that is not the role of this institution. That is his  
21 responsibility. Consequently, a new sentencing hearing will be scheduled at a time  
22 convenient to counsel and Bosworth's family members and anyone else he wishes to  
23 have in attendance.  
24

25  
26 At that hearing, the current sentence will be vacated and a new sentencing  
27 hearing will be held during which the court will consider anew all relevant conduct and  
28 any other information relevant to the 18 USC 3553(a) factors.

1 The court will also consider anew whether there was sufficient justification not to impose  
2 the mandatory minimum sentence. Bosworth will then be resentenced.

3 Bosworth's counsel will notify the court of several proposed dates for  
4 resentencing. If the court does not hear from Bosworth's counsel in 60 days of the date  
5 of this Order, the Court will assume that the request has been withdrawn.  
6

7  
8 **IT IS SO ORDERED.**

9 **April 28, 2014**



---

10  
11 **OTIS D. WRIGHT, II**  
12 **UNITED STATES DISTRICT JUDGE**  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28