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3 UNITED STATES DISTRICT COURT
4 SOUTHERN DISTRICT OF FLORIDA
5 Case No. 06-14033-CR-MOORE/LYNCH (s)

6 UNITED STATES OF AMERICA,)
7)
8 Plaintiff,)
9 v.)
10 NORMAN ALLAN LAVOIE,)
11 Defendant.)

12 **DEFENDANT'S SENTENCING MEMORANDUM**

13 **I**
14 **BACKGROUND**

15 Originally arrested on state charges, this defendant was
16 indicted by a federal grand jury and arrested by federal
17 authorities on July 7, 2006. He entered a guilty plea on December
18 4, 2006 to the one-count Superseding Information charging him with
19 receipt of child pornography, in violation of 18 U.S.C. § 2252
20 (a)(2). There is a written Plea Agreement in the case wherein the
21 United States and the defendant jointly recommend that the Court
22 impose a sentence within the advisory guideline range. This
23 Memorandum is intended to present reasons for the Court to follow
24 this joint recommendation.

25 **II**
FACTORS UNDER U.S.C. § 3553(a)

26 Prior to the recent Supreme Court decision in United States v.
27 Booker, 125 S. Ct. 738 (2005), the Federal Sentencing Guidelines
28

1 were mandatory in nature, based on the instructions set forth in 18
2 U.S.C. §3553(b). Although departures below the guideline range
3 were permissible in some instances, in practice, departures, with
4 the exception of departures for Substantial Assistance [see
5 U.S.S.G. §5K1.1], were rare and were expected to be rare. The
6 remedial portion of the Booker decision, however, excised §3553(b)
7 from the United States Code, thus rendering the guidelines just one
8 of the factors to be considered in formulating a just and
9 appropriate sentence that is "sufficient, but not greater than
10 necessary, to comply with the purposes of sentencing set forth in
11 paragraph (a)(2)" . 18 U.S.C. 3553 (a) states:

12 **a) Factors to be considered in imposing a sentence.**--The
13 court shall impose a sentence sufficient, but not greater
14 than necessary, to comply with the purposes set forth in
15 paragraph (2) of this subsection. The court, in determining
16 the particular sentence to be imposed, shall consider--

17 **(1)** the nature and circumstances of the offense and the
18 history and characteristics of the defendant;

19 **(2)** the need for the sentence imposed--

20 **(A)** to reflect the seriousness of the offense, to promote
21 respect for the law, and to provide just punishment for the
22 offense;

23 **(B)** to afford adequate deterrence to criminal conduct;

24 **(C)** to protect the public from further crimes of the
25 defendant; and

26 **(D)** to provide the defendant with needed educational or
27 vocational training, medical care, or other correctional
28 treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range
established for--

(A) the applicable category of offense committed by the
applicable category of defendant as set forth in the
guidelines...

1 (5) any pertinent policy statement

2 (6) the need to avoid unwarranted sentence disparities among
3 defendants with similar records who have been found guilty
4 of similar conduct.

5 It is the defendant's position that a sentence at the low
6 end of the advisory guideline range, to wit, imprisonment for 135
7 months, is "sufficient, but not greater than necessary, to comply
8 with the purposes of sentencing". This argument is based on the
9 evidence that has been presented in the PSR about the defendant's
10 mental and emotional history and condition (paragraphs 51 through
11 54) along with the psychological evaluation of Edward S.
12 Sczechowicz, Ph.D., which is attached hereto. From the totality
13 of the circumstances it would appear that this defendant has been
14 suffering from severe mental and emotional problems for many
15 years, essentially untreated. While a lengthy prison sentence is
16 certainly in order, some consideration should be paid to the root
17 causes of defendant's behavior with an eye toward some form of
18 treatment. The defendant will be asking the Court for a judicial
19 recommendation to the Bureau of Prisons that he be considered for
20 placement in the Sexual Addiction Program at FCI Butner (North
21 Carolina).

22
23 Furthermore, based upon the defendant's long history of
24 alcohol abuse (see PSR paragraph 55), he requests a judicial
25 recommendation that he be allowed to participate in the 500 hour
26 RDAP program offered by the Federal Bureau of Prisons.
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III
LETTERS OF RECOMMENDATION

Attached for the Court's consideration are letters from the
defendant's parents, as well as friends and members of his church.

_____ Respectfully submitted,

CRIMINAL DEFENSE ASSOCIATES

By /s/ Alan Baum

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1 SERVICE

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3 I HEREBY CERTIFY that on this 28th day of February, 2007, I electronically filed the
4 foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing
5 document is being served on all counsel of record identified on the attached Service List in the
6 manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF
7 or in some other authorized manner for those counsel or parties who are not authorized to
8 receive electronically Notices of Electronic Filing.
9

10 s/ Bruce Alter _____/

11 BRUCE ALTER
12

13 SERVICE LIST

14 **Case No. 06-14044-CR-Moore**

15 **United States District Court, Southern District of Florida**

16 Diana Acosta, Asst. U.S. Attorney

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