

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

MEMORANDUM and ORDER

02-CR-150-S-01

v.

JOHN D. OHLINGER,

Defendant.

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Presently pending before the Court in the above entitled matter is a limited remand from the United States Court of Appeals for the Seventh Circuit to determine whether this Court would impose defendant's original sentence had the sentencing guidelines been merely advisory. In U.S. v. Paladino, 401 F. 3d 471, 484 (7<sup>th</sup> Cir. 2005), the Court advised as follows:

Upon reaching its decision (with or without a hearing) whether to resentence, the District Court should either place on the record a decision not to resentence with an appropriate explanation," *United States v. Crosby, supra*, 397 F. 3d at 1920, or inform this Court of its desire to resentence the defendant.

The Court has considered the views of counsel and the advisory sentencing guidelines as well as the reasons for its original sentence and determined that it would impose the same sentence.

As justification for its original sentence the Court considered the following facts:

In October 2001, the defendant posted a message on an internet club site indicating that he was a pedophile who was interested in sharing experiences and travel with a female pedophile. In February 2002, an undercover investigator, posing as a single female with a ten-year-old daughter, struck up an internet relationship with him. The defendant sent the undercover officer an e-mail with an attached depiction of child pornography. The defendant later traveled to Racine, Wisconsin to meet the woman and her daughter and was arrested on Racine County charges. A federal search warrant was executed at defendant's residence in Eau Claire, Wisconsin on February 22, 2002. Investigators seized two computers and various storage media which contained hundreds of images of child pornography.

Included in the pornography, among other things, was a message posted October 13, 2001 which read, "I truely do love sex with kids. But I also truely love sex with adult women too.once in a great while I've been fortunate to enjoy the taste of a childs. . . Its so special and erotic. Thats why I seek an adult female that has experience it too and would like to have a man that knows what its really all about." (sic)

The Yahoo! member profile said the member's real name was John, he was a 53-year-old married male from Eau Claire, Wisconsin and his occupation was "trucker?pedophile." His favorite quote was "naturally bald . . . tastes best."

On February 17, 2002 the defendant wrote to the undercover officer, "We went to Manilla in my first cruise and I was introduced to very young girls that were hookers", "the youngest was probably around 8 or 9" and "whose little girls tasted so sweet and had been trained to give fantastic . . ."

Also found in the pornography were pictures which depicted bondage, bestiality and simulated rape. Nine depicted children in bondage, two depicted sadistic conduct and one depicted what appeared to be the simulated rape of a minor female. The defendant's storage disks also contained a Motion Pictures Experts Group ("MPEG") folder with 19 MPEG movie clips. One shows a female child being forced to perform oral sex on an adult male. The female is crying, "No, no, no".

The defendant is a 57-year-old man who was first arrested for child molestation over 25 years ago. He was convicted of two felony offenses relating to sexual abuse of children. One other case was dismissed because the 14-year-old who would become his wife refused to testify. Yet another case was dismissed but read into the record at sentencing in cases unrelated to sexual abuse. His internet site and internet communications reflect he is still extremely interested in sex with children. His job as an over-the-road trucker was an accident waiting to happen.

The advisory guideline range for imprisonment is 262 to 327 months. The Court has considered the nature and circumstances of the offense, the history and characteristics of defendant, the

purpose for imposing the sentence as well as the sentencing range established by the advisory guidelines. As the defendant concedes, now that the guidelines are advisory there appears to be much less of a basis to argue against upward departures unless the resulting sentence is not reasonable.

This sentence is reasonable. It was reasonable at the original sentencing given the seriousness of the defendant's conduct, the despicable nature of the offense and the relevant conduct, the tremendous danger defendant poses to the community and his criminal history suggesting deviant sexual conduct in the past, present and future. He will continue to engage in sexual conduct with children in the future.

Defendant argues that his character and positive history can also now be considered by the Court as mitigating factors. Defendant asserts these mitigating factors include his age and the fact he was sexually and physically abused as child by his step-father for several years.

Considering all these factors, the significant sentence previously imposed will be imposed again. The Court believes it is necessary to protect the community from further criminality on the part of the defendant for as long as possible, the law permitting. Incapacitation of the defendant is absolutely necessary to protect children from this pedophile whose vile and sexual despicable conduct will continue.

For the above reasons this Court advises the United States Court of Appeals for the Seventh Circuit that it will not resentence defendant John D. Ohlinger.

Entered this 19<sup>th</sup> day of April, 2005.

BY THE COURT:

/s/

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JOHN C. SHABAZ  
District Judge