

**United States District Court
Western District of Arkansas
Texarkana Division**

United States of America,)	
)	
Plaintiff,)	No. 4:18CR-40028-001
)	
v.)	
)	
Aaron Lloyd Mitchell,)	
)	
Defendant.)	

Defendant's Sentencing Memorandum

There is a strength, a power even, in understanding brokenness, because embracing our brokenness creates a need and desire for mercy, and perhaps a corresponding need to show mercy. When you experience mercy, you learn things that are hard to learn otherwise. You see things you can't otherwise see; you hear things you can't otherwise hear. You begin to recognize the humanity that resides in each of us.

Bryan Stevenson

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Aaron Lloyd Mitchell respectfully asks for a 210-month sentence, followed by supervised release for the remainder of his life. Here is why:

First, 210 months is within the correct advisory Guideline Range.

Mr. Mitchell has objected to the Presentence Investigation Report ("PSR") herein both in its initial and final forms. If the objections affecting the Guideline Range are sustained a sentence of 210 months is within the advisory Guideline Range and presumptively reasonable.

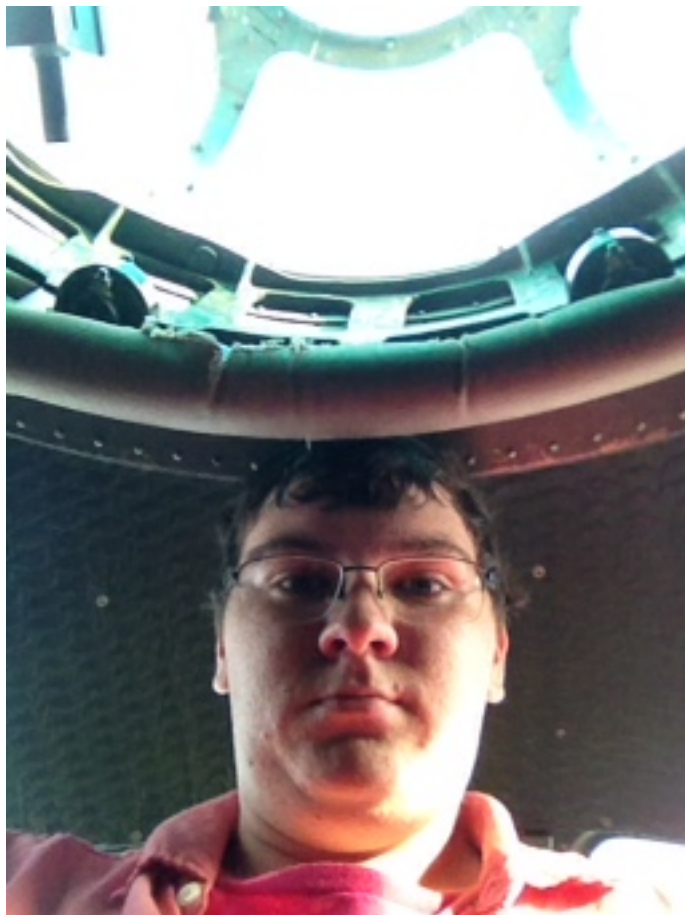
Second, Aaron is a young man who became lost, but he is not hopeless.

Mr. Mitchell had been focused and driven. He was pursuing a career. He was in a relationship with an age mate. This all changed with an injury while in military service.

Aaron grew up in a traditional home with his mother, father and older sister. He was happy but beset by attention deficit disorder ("ADD"), a neurological disorder. His mother, a nurse, was concerned about symptoms she saw in her son and sought treatment for ADD. That disorder was treated pharmacologically from the age of 6 to try and provide focus to his young developing brain. Mr. Mitchell's brain was treated with stimulant medication for that disorder off and on for years.

Aaron's mom was further concerned about his development when she believed he was being bullied in school. Aaron's mother was so concerned about bullying that she pulled Aaron from school to protect him. That protection led him to isolated development within a home school program.

Homeschooling also left Aaron substantially less active than most teenagers. Aaron was deconditioned to the point that he was significantly overweight. This was Aaron, isolated and inactive.



Aaron's parents divorced and his home schooling transitioned to tutoring via Christian academy tutoring service but he remained mostly isolated from peers. Aaron returned to public school as an upperclassman but he had a goal. He discovered something that motivated him. Gave him a purpose. A direction. Aaron returned to public school with a goal, to be a soldier.

He worked hard to overcome insecurity, timidity, and being overweight after those several years of homeschooling and isolation. But Aaron was motivated. Motivated to shake the weight; to stand tall; to find the fitness he would need to become a

soldier. Aaron achieved that goal as he enlisted in the Arkansas Army National Guard.



He graduated boot camp as a proud American. He stood with a sense of purpose. He obeyed orders; respected the authority of his superiors; wore his uniform with pride. He trained hard to be the best soldier.



That strong soldier was laid low by a back injury while training. He was medically discharged, broken in body and spirit. His direction and purpose was reduced to nothing by the word "discharged."

That back injury was treated before and after his military discharge with hydrocodone. Because of the prolific prescribing of this opiate to manage the pain, his back injury was complicated by an addiction to prescription opiates. He struggled with addiction as he left the service. He turned from opiates to other drugs to try and deal with the symptoms of withdrawal as well as the pain.

He returned home to Ashdown to try and again find the direction he had as a soldier, but he struggled. Struggled with addiction; with employment; with personal relationships; and with having few close friends.

Aaron pursued a woman nine years his senior. He moved in with this older woman and her daughter a few months later. They tried to develop a normal household routine. She would work while Aaron stumbled through his days, looking for work during the day and getting high at night.

When Aaron was alone, he would spend time online browsing the internet. Eventually, his browsing led to Tumblr, a microblogging website. A website where persons from around the world could post things they found interesting and chat with others.

Some of the Tumblr pages Aaron visited contained pornographic images accompanying the messages shared by different visitors to the site. Aaron would look at the posts. He would comment on some. He would chat and interact with other users.

Initially, the pornography he found involved adults, but as he clicked from page to page and link to link, his browsing changed from simple curiosity to an unhealthy transfixion with the shocking images displayed. That shock at the content drew him in as the images became more and more profane. He knew he shouldn't be viewing them, but he continued to gawk. Eventually, the images included the involvement of children. Along with these images of children in sexual situations were Tumblr users posting and chatting about the images and the conduct they contained.

Aaron began commenting and chatting with these other persons. They were encouraging, accepting, and normalizing. Aaron, trying to fit in, told them about his living situation and he was encouraged, repeatedly, to take photos of the young girls living in the house he shared and to bring those images to the group.

The sexually immature, unguided outcast, seeking inclusion, pushed aside what he knew was wrong to meet the encouragement of these invisible instigating friends, and he caved. He knew he should be protecting these kids; kids that he cared about. Still the danger and wrongness excited him, and Aaron took photos of these children. He then brought those images back to those invisible "friends" and posted them to a Tumblr blog. Those posts were quickly found by NCMEC, and this investigation and arrest promptly followed.

Aaron is profoundly ashamed and shocked by his conduct. The extent of his remorse cannot be overstated. When confronted by FBI agents with one of the photos Aaron immediately acknowledged that he had taken the pictures. When asked why he took the pictures, he gave the same response that we see from so many immature young men, "I don't know, sir."

That phrase, “I don’t know,” is the hallmark of the limitations on executive function that brain science continues to demonstrate pervades young men into their twenties. See *Miller v. Alabama*, 567 U.S. 460. Mr. Mitchell is not a juvenile, as defined under the law, but the transient rashness, proclivity for risk, and inability to assess consequences described in *Miller* and cited to studies therein are well established. *Id* at 471-473. Just as the juvenile in *Miller*, Mr. Mitchell maintains the prospect that as the years go by deficiencies will be reformed. *Id* at 472.

All of the circumstances surrounding Mr. Mitchell: his rise from an isolated teen to a proud soldier; the loss of direction when injured during military service; the drug addiction following that service related injury; his profound remorse; his youthful lack of executive function, all point to a young man who became lost but is not hopeless. When hope remains, mercy should follow. A merciful sentence is 210 months with a life of supervision to follow.

Third, a sentence of 210 months satisfies the purposes of sentencing articulated in 18 U.S.C. 3553.

On the date of his arrest, Mr. Mitchell had been alive for about 256 months. A sentence of 210 months satisfies the need for a sentence to address the factors set forth in 18 U.S.C. 3553(a) particularly the heart of that statute in subparagraph (2). 210 months reflects the seriousness of the offense. 210 months promotes respect for the law. 210 months provides a just punishment for the offense that is consistent with the parsimony principal.

Any sentence of confinement will require Mr. Mitchell to engage in a sex offender treatment program. This therapeutic component, combined with a lifetime of

supervision, insures that this young man entering the correctional system is educated and reformed. When he leaves the BOP, more than a decade and a half later, there will be careful monitoring and supervision, to make sure that the public remains safe and the remainder of Aaron's life is lawful and productive.

Fourth, this case is not the most serious amongst production of child pornography cases.

Creating images of sexually explicit conduct involving children is a repugnant offense. But, as with every category of crime—even the production of child pornography—there is a spectrum of conduct. If every offense was the same, there would be no need for a range of punishments, either as set by statute or by a set of advisory Guidelines. There would be a single punishment. In recognition that each offense—even if the conviction was under the same statute—is different, punishments are different. Mr. Mitchell's crime, while deserving of a lengthy prison sentence, is by no means the most egregious form of production of child pornography.

In the instant case, the child was asleep when the images were made; the images did not portray sadistic or masochistic conduct or other depictions of violence. This fact alone sets Mr. Mitchell's conduct apart from much more serious versions of this offense. A substantial portion of child pornography involves conscious minors, actively engaged in forced reciprocal sex acts with adults. In some instances, there are multiple children involved with multiple adults. In others, simulated or actual physical pain of various degrees is depicted.

The images Mr. Mitchell created, while clearly illegal, are not as graphic as many, do not depict the use of physical force, and do not depict pain. They are

clearly different in kind from more egregious depictions and, consequently, are not as serious as those in other production cases which would warrant a more severe punishment.

If the Court sustains Mr. Mitchell's objections to the PSR a sentence of 210 months is within the Guideline Range, and imposition of such a sentence acknowledges the gradations of conduct encompassing convictions for the offense of conviction.

If the Court overrules Mr. Mitchell's objections to the PSR, the Court should vary downward to 210 months because USSG §2G2.1 fails to distinguish between the least and most culpable offenders, and for the reasons set forth herein a variance is appropriate. Imposition of the statutory maximum sentence on the facts in this case would send the message that his conduct is the worst of the worst, and that is not the case.

Fifth, the Guideline Range as calculated in the final PSR fails to acknowledge Mr. Mitchell's remorse and acceptance of responsibility.

As calculated in the final PSR, the Total Adjusted Offense Level before acceptance is 47. With acceptance of responsibility, the probation office recommends a reduction for acceptance of responsibility as set forth in USSG §3E1.1. Consistent with the plea agreement, the Government will be moving for an additional one level reduction under the same section. (Final PSR ¶¶ 60 & 61). The effect of those recommendations nets a Total Offense Level of 44 which is still treated as a 43, and the recommendation for a reduction is meaningless. The Guidelines fail to adequately acknowledge that on very serious cases acceptance of

responsibility must still matter and that remorse demonstrates a first step on the path to reformation and return to a lawful life.

For all of these reasons, the Defendant prays that he be sentenced to a term of 210 months in the BOP followed by a lifetime of supervision.

Respectfully Submitted,

BRUCE D. EDDY
FEDERAL PUBLIC DEFENDER
WESTERN DISTRICT OF ARKANSAS

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court using the CM/ECF System, which will treat the document as restricted, as well as providing a copy via email to Mr. Benjamin Wulff, Assistant United States Attorney and Ms. Tammy Albritton, United States Probation Officer.

/s/ Matthew Hill
Matthew Hill