



U.S. Department of Justice

United States Attorney
District of New Jersey

970 Broad Street, Suite 700
Newark, NJ 07102

973/645-2700

ANS/PL AGR
2010R01136

June 13, 2012

Carol Gillen, Esq.
Assistant Federal Public Defender
1002 Broad Street
Newark, NJ 07102

Re: Plea Agreement with Michael West

Dear Ms. Gillen: 12-CR-332(CCC)

This letter sets forth the plea agreement between your client, MICHAEL WEST ("WEST"), and the United States Attorney for the District of New Jersey ("this Office"). This offer will remain open until June 22, 2012, and if a guilty plea consistent with this agreement is not entered in federal court on or before that date, this offer will expire.

Charge

Conditioned on the understandings specified below, this Office will accept a guilty plea from WEST to both counts of the Indictment, Criminal No. 12-332, which charges him with distributing child pornography, in violation of 18 U.S.C. § 2252A(a)(2)(A) and possessing child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B). If WEST enters a guilty plea and is sentenced on these charges, and otherwise fully complies with all of the terms of this agreement, this Office will not initiate any further criminal charges against WEST for possession, receipt or distribution of child pornography for the period of August 27, 2010 through October 19, 2010. However, in the event that a guilty plea in this matter is not entered for any reason or the judgment of conviction entered as a result of this guilty plea does not remain in full force and effect, defendant agrees that any dismissed charges and any other charges that are not time-barred by the applicable statute of limitations on the date this agreement is signed by WEST may be commenced against him, notwithstanding the expiration of the limitations period after WEST signs the agreement.

Sentencing

The violation of 18 U.S.C. § 2252A(a)(2)(A) to which WEST agrees to plead guilty carries a statutory mandatory minimum prison sentence of 5 years, a maximum prison sentence of 20 years, and a statutory maximum fine equal to the greatest of: (1) \$250,000; (2) twice the gross amount of any pecuniary gain that any persons derived from the offense; or (3) twice the gross amount of any pecuniary loss sustained by any victims of the offense. Pursuant to 18 U.S.C. § 2252A(b)(1), if the Court determines that WEST has a prior conviction under Chapters 71, 109A, 110, or 117, or under section 1591 of title 18, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, or sex trafficking of children, the violation of 18 U.S.C. § 2252A(a)(2)(A) to which WEST agrees to plead carries a mandatory minimum sentence of 15 years and a statutory maximum prison sentence of 40 years.

The violation of 18 U.S.C. § 2252A(a)(5)(B) to which WEST agrees to plead guilty carries a maximum prison sentence of 10 years, and a statutory maximum fine equal to the greatest of: (1) \$250,000; (2) twice the gross amount of any pecuniary gain that any persons derived from the offense; or (3) twice the gross amount of any pecuniary loss sustained by any victims of the offense. Pursuant to 18 U.S.C. § 2252A(b)(1), if the Court determines that WEST has a prior conviction under Chapters 71, 109A, 110, or 117, or under section 1591 of title 18, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, or sex trafficking of children, the violation of 18 U.S.C. § 2252A(a)(5)(B) to which WEST agrees to plead carries a mandatory minimum sentence of 10 years and a statutory maximum prison sentence of 20 years.

The sentence to be imposed upon WEST is within the sole discretion of the sentencing judge, subject to the provisions of the Sentencing Reform Act, 18 U.S.C. § 3551-3742, and the sentencing judge's consideration of the United States Sentencing Guidelines. The United States Sentencing Guidelines are advisory, not mandatory. The sentencing judge may impose any reasonable sentence up to and including the statutory maximum

term of imprisonment and the maximum statutory fine. This Office cannot and does not make any representation or promise as to what guideline range may be found by the sentencing judge, or as to what sentence WEST ultimately will receive.

Further, in addition to imposing any other penalty on WEST, the sentencing judge: (1) will order WEST to pay an assessment of \$100 pursuant to 18 U.S.C. § 3013, which assessment must be paid by the date of sentencing; (2) must order WEST to pay restitution pursuant to 18 U.S.C. § 2259(a); (3) may order WEST, pursuant to 18 U.S.C. § 3555, to give notice to any victims of his offense; (4) must order forfeiture pursuant to 18 U.S.C. § 2253; and (5) pursuant to 18 U.S.C. § 3583, must require WEST to serve a term of supervised release of at least 5 years and up to a maximum term of life on supervised release, which will begin at the expiration of any term of imprisonment imposed. Should WEST be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, WEST may be sentenced to not more than 2 years' imprisonment in addition to any prison term previously imposed, regardless of the statutory maximum term of imprisonment set forth above and without credit for time previously served on post-release supervision, and may be sentenced to an additional term of supervised release. However, pursuant to 18 U.S.C. § 3583(k), should WEST be placed on a term of supervised release and WEST subsequently commits an offense while on release in violation of chapters 109A, 110, or 117, or section 1201 or 1591 of the United States Code, for which imprisonment for a term longer than 1 year can be imposed, WEST must be sentenced to at least 5 years' imprisonment in addition to any prison term previously imposed, regardless of the statutory maximum term of imprisonment set forth above and without credit for time previously served on post-release supervision, and may be sentenced to an additional term of supervised release. In addition, WEST must, pursuant to the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. 109-248, §§ 113-115, 120 Stat. 587, 593-95 (July 27, 2006), comply with any applicable sex offender registration requirement in New Jersey, and in each jurisdiction where WEST resides, is employed, or is a student.

In addition, WEST agrees to forfeit to the United States all computer and computer accessories seized by agents on or about October 19, 2010, including: (1) one Compaq Presario computer tower, Model: 6000/6400NX, Serial Number: KR30308488; (2) one HP/Compaq laptop computer, Model: nx6100, Serial Number: CNU6040GCL; (3) one Seagate Free Agent External USB hard drive, Serial Number: 2GE601NB; (4) all visual depictions described in Sections 2251, 2251A, 2252, 2252A, 2252B, and 2260 of Title 18 of

the United States Code, and all books, magazines, periodicals, films, videotapes, and other matter which contain any such visual depiction, which was produced, transported, mailed, shipped, or received in violation of Title 18 of the United States Code; (5) all property, real and personal, constituting or traceable to gross profits or other proceeds obtained from the offense charged in the Information; and (6) all property, real and personal, used or intended to be used to commit or to promote the commission of the offense charged in the Information and all property traceable to such property. See 18 U.S.C. § 2253.

Adam Walsh Child Protection and Safety Act

WEST has been advised, and understands, that under the Sex Offender Registration and Notification Act, a federal law, he must register and keep the registration current in each of the following jurisdictions: where WEST resides; where he is an employee; and where he is a student. WEST understands that the requirements for registration include providing his name, his residence address, and the names and addresses of any places where he is or will be an employee or a student, among other information. WEST further understands that the requirement to keep the registration current includes informing at least one jurisdiction in which he resides, is an employee, or is a student not later than three business days after any change of his name, residence, employment, or student status. WEST has been advised, and understands, that failure to comply with these obligations subjects him to prosecution for failure to register under federal law, 18 U.S.C. § 2250, which carries a statutory maximum prison sentence of 10 years and a statutory maximum fine equal to the greatest of: (1) \$250,000; (2) twice the gross amount of any pecuniary gain that any persons derived from the offense; or (3) twice the gross amount of any pecuniary loss sustained by any victims of the offense.

Registration Consequences

WEST understands that his guilty plea to the charged offense will likely result in a requirement that he register as a sex offender under federal and state law, and he will be subject to the registration law's requirements and penalties. The defendant wants and agrees to plead guilty to the charged offense regardless of any registration consequences of that plea. The defendant understands that he is bound by his guilty plea regardless of any registration consequences of the plea. Accordingly, the defendant waives any and all challenges to his guilty plea and to his sentence based on any registration consequences, and agrees not to seek to withdraw his guilty plea,

or to file a direct appeal or any kind of collateral attack challenging his guilty plea, conviction, or sentence, based on any registration consequences of his guilty plea.

Rights of This Office Regarding Sentencing

Except as otherwise provided in this agreement, this Office reserves its right to take any position with respect to the appropriate sentence to be imposed on WEST by the sentencing judge, to correct any misstatements relating to the sentencing proceedings, and to provide the sentencing judge and the United States Probation Office all law and information relevant to sentencing, favorable or otherwise. In addition, this Office may inform the sentencing judge and the United States Probation Office of: (1) this agreement; and (2) the full nature and extent of WEST's activities and relevant conduct with respect to this case.

Stipulations

This Office and WEST agree to stipulate at sentencing to the statements set forth in the attached Schedule A, which hereby is made a part of this plea agreement. This agreement to stipulate, however, cannot and does not bind the sentencing judge, who may make independent factual findings and may reject any or all of the stipulations entered into by the parties. To the extent that the parties do not stipulate to a particular fact or legal conclusion, each reserves the right to argue the existence of and the effect of any such fact or conclusion upon the sentence. Moreover, this agreement to stipulate on the part of this Office is based on the information and evidence that this Office possesses as of the date of this agreement. Thus, if this Office obtains or receives additional evidence or information prior to sentencing that it determines to be credible and to be materially in conflict with any stipulation in the attached Schedule A, this Office shall not be bound by any such stipulation. A determination that any stipulation is not binding shall not release either this Office or WEST from any other portion of this agreement, including any other stipulation. If the sentencing court rejects a stipulation, both parties reserve the right to argue on appeal or at post-sentencing proceedings that the sentencing court was within its discretion and authority to do so. These stipulations do not restrict the Government's right to respond to questions from the Court and to correct misinformation that has been provided to the Court.

Waiver of Appeal and Post-Sentencing Rights

As set forth in Schedule A, this Office and WEST waive certain rights to file an appeal, collateral attack, writ, or motion after sentencing, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255.

Immigration Consequences

The defendant understands that, if he is not a citizen of the United States, his guilty plea to the charged offense may result in him being subject to immigration proceedings and removed from the United States by making him deportable, excludable, or inadmissible, or ending his naturalization. The defendant understands that the immigration consequences of this plea will be imposed in a separate proceeding before the immigration authorities. The defendant wants and agrees to plead guilty to the charged offense regardless of any immigration consequences of this plea, even if this plea will cause his removal from the United States. The defendant understands that he is bound by his guilty plea regardless of any immigration consequences of the plea. Accordingly, the defendant waives any and all challenges to his guilty plea and to his sentence based on any immigration consequences, and agrees not to seek to withdraw his guilty plea, or to file a direct appeal or any kind of collateral attack challenging his guilty plea, conviction, or sentence, based on any immigration consequences of his guilty plea.

Other Provisions

This agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities. However, this Office will bring this agreement to the attention of other prosecuting offices, if requested to do so.

This agreement was reached without regard to any civil or administrative matters that may be pending or commenced in the future against WEST. This agreement does not prohibit the United States, any agency thereof (including the Internal Revenue Service), or any third party from initiating or prosecuting any civil or administrative proceeding against WEST.

No Other Promises

This agreement constitutes the plea agreement between WEST and this Office and supersedes any previous agreements

between them. No additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.

Very truly yours,

PAUL J. FISHMAN
United States Attorney



By: Adam N. Subervi
Assistant U.S. Attorney

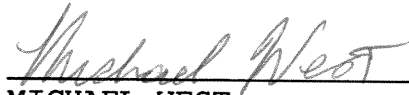
APPROVED:



Andrew Carey
Chief
Narcotics/OCDETF Unit

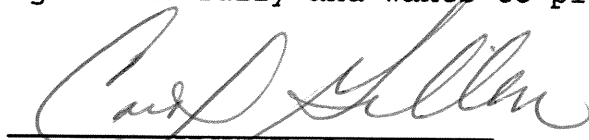
I have received this letter from my attorney, Carol Gillen, Esq. I have read it. My attorney and I have discussed it and all of its provisions, including those addressing the charge, sentencing, stipulations, waiver, immigration consequences, and registration consequences. I understand this letter fully. I hereby accept its terms and conditions and acknowledge that it constitutes the plea agreement between the parties. I understand that no additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties. I want to plead guilty pursuant to this plea agreement.

AGREED AND ACCEPTED:


MICHAEL WEST

Date: 6-15-12

I have discussed with my client this plea agreement and all of its provisions, including those addressing the charge, sentencing, stipulations, waiver, immigration consequences, and registration consequences. My client understands this plea agreement fully and wants to plead guilty pursuant to it.


CAROL GILLEN, Esq.

Date: June 15, 2012

Plea Agreement With MICHAEL WEST

Schedule A

1. This Office and MICHAEL WEST ("WEST") recognize that the United States Sentencing Guidelines are not binding upon the Court. This Office and WEST nevertheless agree to the stipulations set forth herein, and agree that the Court should sentence WEST within the Guidelines range that results from the total Guidelines offense level set forth below. This Office and WEST further agree that neither party will argue for the imposition of a sentence outside the Guidelines range that results from the agreed total Guidelines offense level.

2. The version of the United States Sentencing Guidelines effective November 1, 2011 applies in this case.

Count One: Distributing Child Pornography

3. The applicable guideline for the violation of 18 U.S.C. § 2252A(a)(2)(A) is U.S.S.G. § 2G2.2(a)(2). This guideline carries a Base Offense Level of 22.

4. Specific Offense Characteristic 2G2.2(b)(2) applies because the material involved a prepubescent minor who had not attained the age of 12 years. This Specific Offense Characteristic results in an increase of 2 levels.

5. Specific Offense Characteristic 2G2.2(b)(6) applies because the offense involved the use of a computer. This Specific Offense Characteristic results in an increase of 2 levels.

6. Specific Offense Characteristic 2G2.2(b)(7)(D) applies because WEST's offense involved 600 or more images. This Specific Offense Characteristic results in an increase of 5 levels.

7. The total offense level for Count One is 31.

Count Two: Possessing Child Pornography

8. The applicable guideline for the violation of 18 U.S.C. § 2252A(a)(5)(B) is U.S.S.G. § 2G2.2(a)(1). This guideline carries a Base Offense Level of 18.

9. Specific Offense Characteristic 2G2.2(b)(2) applies because the material involved a prepubescent minor who had not attained the age of 12 years. This Specific Offense Characteristic results in an increase of 2 levels.

10. Specific Offense Characteristic 2G2.2(b)(6) applies because the offense involved the use of a computer. This Specific Offense Characteristic results in an increase of 2 levels.

11. Specific Offense Characteristic 2G2.2(b)(7)(D) applies because WEST's offense involved 600 or more images. This Specific Offense Characteristic results in an increase of 5 levels.

12. The total offense level for Count Two is 27.

Multiple Counts Adjustment

13. Pursuant to U.S.S.G. § 3D1.2, Counts One and Two group together.

14. Pursuant to U.S.S.G. § 3D1.3(a), the combined offense level applicable to Counts One and Two is that of the most serious of the counts comprising the Group. Accordingly, the combined offense level is 31.

15. As of the date of this letter, WEST has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the offense charged. Therefore, a downward adjustment of 2 levels for acceptance of responsibility is appropriate if WEST's acceptance of responsibility continues through the date of sentencing. See U.S.S.G. § 3E1.1(a).

16. As of the date of this letter, WEST has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently. If WEST enters a plea pursuant to this agreement and qualifies for a 2-point reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a), and if in addition WEST's offense level under the Guidelines prior to the operation of § 3E1.1(a) is 16 or greater, WEST will be entitled to a further 1-point reduction in his offense level pursuant to U.S.S.G. § 3E1.1(b).

17. In accordance with the above, the parties agree that the total Guidelines offense level applicable to WEST is 28 (the "agreed total Guidelines offense level").

18. The parties agree not to seek or argue for any upward or downward departure, adjustment or variance not set forth herein. The parties further agree that a sentence within

the Guidelines range that results from the agreed total Guidelines offense level of 28 is reasonable.

19. WEST knows that he has and, except as noted below in this paragraph, voluntarily waives, the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255, which challenges the sentence imposed by the sentencing court if that sentence falls within or below the Guidelines range that results from the agreed total Guidelines offense level of 28. This Office will not file any appeal, motion or writ which challenges the sentence imposed by the sentencing court if that sentence falls within or above the Guidelines range that results from the agreed total Guidelines offense level of 28. The parties reserve any right they may have under 18 U.S.C. § 3742 to appeal the sentencing court's determination of the criminal history category. The provisions of this paragraph are binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, if the sentencing court accepts a stipulation, both parties waive the right to file an appeal, collateral attack, writ, or motion claiming that the sentencing court erred in doing so.

20. Both parties reserve the right to oppose or move to dismiss any appeal, collateral attack, writ, or motion barred by the preceding paragraph and to file or to oppose any appeal, collateral attack, writ or motion not barred by the preceding paragraph.