

STATE OF NEW YORK
SUPREME COURT - COUNTY OF ERIE

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

INDICTMENT

Defendant

MEMORANDUM OF LAW

**SUPREME COURT JUDGE
ERIE COUNTY
25 DELAWARE AVENUE
BUFFALO, NY 14202**

**ASSISTANT DISTRICT ATTORNEY
ERIE COUNTY
25 DELAWARE AVENUE
BUFFALO, NY 14202**

STATE OF NEW YORK
COUNTY COURT: COUNTY OF ERIE

THE PEOPLE OF THE STATE OF NEW YORK

vs.

MEMORANDUM OF LAW

██████████

Defendant

BACKGROUND OF THE CASE

In the instant case, Defendant ██████████ pled guilty to one count of Possession of Child Pornography Involving a Prepubescent Minor, in violation of 18 U.S.C. §§ 2252A(a)(5)(B) and 2252A(b)(2), on January 12, 2018. He was sentenced to 60 months in the Federal Bureau of Prisons, to be followed by 5 years of supervised release. Upon his release on April 15, 2022, Mr. ██████████ is now scheduled for a SORA hearing to determine his appropriate level on the Registry. Despite an extremely low scoring on the assessment instrument, categorizing him as a Level 1, the Board of Examiners of Sex Offenders (hereinafter “the Board”) has recommended an upward departure to Level 2 designation. This departure is not justified based on the facts of the underlying case or Mr. ██████████ current circumstances. Therefore, Defense Counsel strenuously objects to this recommendation and requests the Court adjudicate ██████████ a Level 1 offender as based on the assessment instrument.

Risk Assessment

In every case where a Defendant is going to be released from incarceration, the Board, by way of the Risk Assessment Instrument makes recommendations to what level a court should classify a convicted Sex offender. The Board uses this in every case such as this. Based on this instrument, Mr. ██████████ was scored 30 points based on the images he possessed depiction individuals under the age of 10. That is the single area wherein he received any points on the assessment instrument. The instrument lists

specific overrides that can qualify an individual for a higher designation. As this court is well aware, any departure from this recommendation should be the exception, rather than the rule.

The Examiner who wrote the report cites three factors when asking for an upward departure based on the Board's Scoring of Child Pornography Cases Position Statement. This statement has, notably, never been incorporated into the scoring of the assessment, despite being issued ten years previously. Notably, the statement was made with the Board's recognition that the current instrument disproportionately classifies individuals at a higher level in child pornography that is not actually warranted nor rooted in any evidence. Looking to this statement to justify an upward departure in the instant case is not only inappropriate, but it also directly undercuts the reasoning of the original document.

The documentation relied upon by the Board simply does not create a clear and convincing standard required for an upward departure.

██████████ Personal Circumstances

This Court must look at the individual to determine the appropriate designation. ██████████ accepted responsibility for his prurient behavior and served a five-year sentence based on his guilty plea. He is currently serving a five-year term of post-release supervision on top of that. During this time, were he to reoffend or fail to comply with the conditions of his release, he could be facing up to an additional ten years of incarceration based on the sentencing parameters of that plea.

During his time of incarceration, despite having no issues with the prison system itself, Mr. ██████████ faced many personal tragedies. He could not attend his only daughter's wedding to walk her down the aisle. His mother passed away from Covid complications and he was unable to speak to her and try to make amends for his behaviors due to a Covid related lockdown in his facility. His best friend also passed away during this time. He has only just started to repair his relationships with his family, who are offering support at this time, but he knows the tenuous nature of his position. He understands he

can never get these things back. [REDACTED] has fully seen the consequences of his actions and has every motivation not to reoffend.

Given the aforementioned reasons, Defense would argue there is no clear and convincing information for an upward departure from the risk assessment of Level one. I would ask the court to classify [REDACTED] on this basis.

Dated: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]