

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT PALMER

State of Alaska,
Plaintiff,
vs.
Christopher Scott Delapp,
Defendant.

CASE NO: 3AN-10-05947CR

**JUDGMENT AND ORDER
OF COMMITMENT / PROBATION**

DOB: 07/20/1968 ATN: 112988097
DL/ID ST: 6242688 - AK APSIN: 6242688
 Commercial License

Defendant came before the court on October 24, 2011 with counsel, Wallace H Tetlow, and the District Attorney present, and has been convicted of:

<u>CTN</u>	<u>Offense</u>	<u>Date of Offense</u>	<u>DV Off. Per</u>
001:	AS11.61.127: Possess Child Pornography	03/16/2010	AS18.66.990 <input type="checkbox"/>

PLEA: Not Guilty Guilty No Contest TRIAL: Court Jury

SENTENCE

IT IS ORDERED that the defendant is hereby committed to the care and custody of the Commissioner of the Department of Corrections for the following period(s):
CTN: Period:
001: FOUR years with THIRTY TWO months suspended. Any unsuspended time is to be served by remanding on November 7, 2011 at 1:45 at the Anchorage Courthouse. Defendant is to be credited for time already served in this case.

Under AS 33.16.090(a)(2) and AS 12.55.115, the defendant is not eligible to be considered for discretionary parole until the defendant:
 has served the following term:
 has completed the following conditions:

POLICE TRAINING SURCHARGE: IT IS ORDERED that defendant pay to the court the following surcharge pursuant to AS 12.55.039 within 10 days:
CTN: Surcharge:
001: \$100

INITIAL JAIL SURCHARGE. Defendant was arrested and taken to a correctional facility or is being ordered to serve a term of imprisonment. Therefore, IT IS ORDERED that defendant immediately pay a correctional facilities surcharge of \$100 per case to the Department of Law Collections Unit, 1031 W. 4th Ave., Suite 200, Anchorage, AK 99501 AS 12.55.041(b)(1).

SUSPENDED JAIL SURCHARGE. Defendant is being placed on probation. Therefore, IT IS ORDERED that the defendant pay an additional \$100 correctional facility surcharge. This surcharge is suspended and must only be paid if defendant's probation is revoked and, in connection with the revocation, defendant is arrested and taken to a correctional facility or jail time is ordered served, AS 12.55.041(c).

IT IS FURTHER ORDERED that defendant is eligible for discretionary parole.

IT IS ORDERED that, after serving any term of incarceration imposed, the defendant is placed on probation for FIVE months years under the following conditions:

GENERAL CONDITIONS OF PROBATION:

1. Defendant shall comply with all direct court orders listed above by the deadlines stated.
2. Defendant shall report to the Department of Corrections Probation Office on the next business day following the date of sentencing, or, if time is to be served prior to probation, report to the Department of Corrections Probation Office on the next business day following release from an institution.
3. Defendant shall secure the prior written permission of a probation officer of the Department of Corrections before changing employment or residence or leaving the region of residence to which assigned.
4. Defendant shall make a reasonable effort to secure and maintain steady employment. Should defendant become unemployed, notify a probation officer of the Department of Corrections as soon as possible.
5. Defendant shall report in person between the first day and the tenth day of each month, or as otherwise directed, to defendant's assigned office of the Department of Corrections. Complete in full a written report when defendant's probation officer is out of the office to insure credit for that visit. Defendant may not report by mail unless defendant secures prior permission to do so from defendant's probation officer.
6. Defendant shall at no time have under defendant's control a concealed weapon, a firearm, or a switchblade or gravity knife.
7. Defendant shall not knowingly associate with a person who is on probation or parole or a person who has a record of a felony conviction unless prior written permission to do so has been granted by a probation officer of the Department of Corrections.
8. Defendant shall make a reasonable effort to support defendant's legal dependents.
9. Defendant shall not consume intoxicating liquor.
10. Defendant shall comply with all municipal, state and federal laws.
11. Defendant shall report all purchases, sales and trades of motor vehicles belonging to defendant, together with current motor vehicle license numbers for those vehicles, to defendant's probation officer.
12. If this conviction is for a sex offense as defined in AS 12.63.100, defendant shall submit to periodic polygraph examinations as directed by a probation officer of the Department of Corrections. AS 12.55.100(e).
13. Defendant shall abide by any special instructions given by the court or any of its duly authorized officers, including probation officers of the Department of Corrections.

SPECIAL CONDITIONS OF PROBATION

1. The defendant shall obtain a sex offender evaluation/risk assessment from a DOC approved sex offender treatment provider to determine the need for sex offender monitoring/counseling/treatment and follow all recommendations.
2. The defendant shall continue active participation and attendance in Alaska Department of Corrections approved sex offender programming to the probation officer's satisfaction. The probationer shall obtain prior permission of the probation officer before voluntarily discontinuing sex

offender programming. If released, removed or terminated from treatment (temporarily or permanently) for any reason, the probationer shall notify the probation officer on the next working day.

3. The defendant shall actively participate in Alaska DOC approved programming as directed by the probationer officer. The probationer shall sign and abide by all conditions of the treatment program, which will include regular periodic polygraph examinations and may include plethysmograph assessment, and physiological and/or psychological testing, as well as other methods of ongoing assessment.

4. The defendant shall sign releases of information to authorize the exchange of verbal and written information between the assessment provider, treatment provider, polygraph examiner and Alaska DOC staff members. Additionally, during the course of supervision and treatment, the probation officer shall authorize the exchange of information with other individuals who are identified by the probation officer as having an essential role in supervision and treatment in the community, including, but not limited to medical/mental health/psychiatric providers, substance abuse treatment providers, physiological assessment technicians, and clinicians providing treatment to victims and/or family members.

5. The defendant shall obtain and maintain verifiable full-time employment or engage in seasonal subsistence activities unless enrolled in a full-time educational program or a residential treatment program approved by the probation officer with proof of participation to be provided to the supervising probation officer. The defendant shall provide proof of income when requested by the probation officer.

6. The defendant shall not knowingly have any contact with a female person under sixteen (16) years old without permission of the probation officer.

7. The probationer shall not at any time possess, have on their person, have in their residence, or in their vehicle any sexually explicit material, which includes but is not limited to child erotica, sexually graphic anime, adult and/or child pornography, chat logs included. The prohibited materials cannot be in, but not limited to, books, videos, magazines, printed matter, computer disks or files, any encryption devices or computer mechanisms or other electronic devices that can hold this type of visual or audio material.

8. The probationer shall not enter any establishment whose primary business is the sale of sexually explicit material and shall not enter any establishment where nude dancing or posing is part of the entertainment. This includes, but is not limited to strip clubs, massage parlors, adult book stores, phone services and internet sites.

9. Upon the request or at the direction of a probation officer, submit to a search of his residence or any vehicle under his control, personal computer and/or any item which has internet connectivity (i.e., X-Box, cell phone, palm pilots, Blackberries) by a probation officer or other law enforcement officers for the presence of sexually explicit material. The probationer shall provide the probation officer any and all passwords used on the computer.

10. The probationer shall not open or maintain an account with any internet provider, and is expressly forbidden from accessing the internet from anyone else's account, whether a public, private or business account, without the prior written permission of the probation officer.

11. The defendant shall not reside in a dwelling in which a female minor under the age of (16) is residing or staying, without the prior written permission of the probation officer.

12. The probationer shall advise all members of the household in which he is residing of his criminal history, even when the residence is temporary. The probation officer may discuss the circumstances of the offender's criminal history with any household member.

13. The probationer shall not accept employment, educational programming, or engage in any volunteer community activity, to include subsistence activities where minors under sixteen (16) years of age are present without the prior written permission of the probation officer.

14. The probationer shall not knowingly associate with other felons unless they are in a treatment program together and have a specific assignment from the approved treatment provider that requires collaborative work.

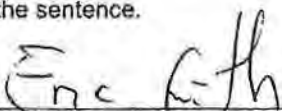
15. The probationer shall inform his employer and any person with whom he has dating relationship who has minor children or minor grandchildren of his sexual offending history.

16. Upon release from incarceration, register as a sex offender with the State of Alaska Department of Public Safety in accordance with the registration requirements under AS 12.63.010 and AS 12.63.020.

17. Submit to the collection of a buccal swab and taking of fingerprints for the purpose of creating a DNA identification system pursuant to AS 44.41.025 and AS 44.41.035.

- Any appearance or performance bond in this case:
 is exonerated when defendant reports to the jail to serve the sentence.

October 24, 2011
Effective Date


Superior Court Judge Eric Smith

NOTICE TO DEFENDANT

You are advised that according to the law, the court may at any time revoke your probation for cause or modify the terms or conditions of your probation. You are subject to arrest by a probation officer with or without a warrant if the officer has cause to believe that you have violated a condition of your probation. You are further advised that it is your responsibility to make your probation officer aware of your adherence to all conditions of probation set forth above.

Sentence Appeal. If you are ordered to serve more than two years in jail, you may appeal the sentence to the court of appeals on the ground that it is excessive. Your appeal must be filed within 30 days of the date of distribution stated below. If you are sentenced to serve two years or less in jail, you may seek review of your sentence by filing a petition for review in the supreme court. To do this, you must file a notice of intent to file a petition for sentence review within 10 days of the date of distribution stated below. See Appellate Rules 215 and 403(h) for more information on time limits, procedures and possible consequences of seeking review of your sentence.

- REGISTRATION REQUIREMENT.** Because you have been convicted of one of the offenses listed in AS 12.63.100, you must register as described in the attached form (CR-471, Sex Offender and Child Kidnapper Registration Requirements).

I certify that on _____ a copy of this judgment was sent to:

- District Atty
by mail other
- Defense Atty
by mail other
- Pro Per Defendant
by mail other
- DOC / Adult Probation

Judicial Assistant: _____

I certify that on _____ a copy of this judgment was sent to:

- District Atty _____ by mail other
- Defense Atty _____ by mail other
- Defendant by mail other
- Exhibit Clerk Adult Probation
- Police / AST DPS - Fingerprint Section
- Jail DMV - Juneau (lic. action)
- DPS - R&I - Anchorage
- VPSO/Village Council at _____
- Collections Unit (for cost of imprisonment/restitution)
- _____

Clerk: _____

WRIT OF EXECUTION

To Department of Law Collections Unit: You are commanded to satisfy the above restitution order, including interest and costs, by seizing the defendant's Alaska Permanent Fund Dividend. This writ terminates upon full payment of the restitution, including interest and costs. This writ does not become effective until the defendant fails to make any required payment.

I certify that a copy of this writ was sent to the Department of Law Collections Unit.

(SEAL)

_____/_____
Deputy Clerk / Date

In the Superior Court for the State of Alaska at Anchorage

Media No.: Courtroom 401

Judge: Eric Smith

Randy Olson

Trevor Stephens

Date: Monday, October 24, 2011

Clerk: MjCall

Plaintiff: State of Alaska vs.

Defendant's Name:
Christopher S. Delapp

Case No:
3AN-10-05947CR

DOB:
07/20/1968

Address:

Type of Proceedings: 3 Judge Panel

Counsel Present: Plaintiff: District Attorney: Marika Athens
Defendant: Wally Tetlow, Attorney

Defendant: Present/Not In-Custody

Bail Set/Continues:

Transport Order:

Other Court Orders:

Next Court Date(s) and Time(s):

Type of Hearing(s):

Location:

Summary of Proceedings: Ruling: 4 yrs Jail/16 Months to Serve/Remainder Suspended
5 yrs Probation
General Conditions Of Probation
Special Conditions w/modifications
\$ 100.00 Surcharge due in 10 days
\$200.\$100 Facility Charge
Forf. Items seized
Deft available for Discretionary Parole
Remand Nov. 28, 2011 at 1:45 PM in Superior Court

8:31:39 AM On record Court identifies case and parties
8:31:51 AM Judge Smith - Intro's Judges
8:32:05 AM Tetlow
- have Doctor Lazur is my witness and is not here
- can take up questions
-
8:32:35 AM Smith
- we have no questions
- We will go off record unit the doctor gets here
8:32:45 AM Tetlow
- I tried to call this morning

8:33:02 AM Off record

8:39:35 AM On record Court identifies case and parties

8:39:41 AM Witness Sworn/Affirmed:
Doctor Richard Lazur

8:40:08 AM Direct Examination by Tetlow

8:40:24 AM (I'm a lic. Psychologist

8:40:30 AM Witness Gives Educational Background

8:41:20 AM (have some connections w/Department of Corrections sex offender program
(sex advisor counsel makes sure treatment is reviewed in the State
(make recommendations to the program

8:42:14 AM (have treated 200 sex offenders
(3 to 5% are hands off offenders; using computer
(when comparing Delapp, compare him to hand off offenders
(started seeing him in2010

8:43:23 AM (he continues in weekly treatment; does the work; provides the assignments
(he is very engaged in treatment

8:43:51 AM (basically we talk about things going on w/him
(currently experiencing anxiety, depression over today's

8:44:29 AM (said he know that he knows that he should not have been doing that he was doing
(he's done all the homework assignment
(he doesn't have a lap top computer anymore; no access to child porn
(not interested in sex at this point

8:45:30 AM (he's a bit shy, isolated

8:45:39 AM (my goal is ...I'm doing this behavior and what are the alternatives
(believe if he continues that he will be successful in treatment
(he is not out there looking for children
(I don't see any of that w/him at all

8:46:55 AM (he was looking at for his own gratification
(he would go into chat room and get info
(he would download and use for own self pleasure

8:47:29 AM (nor was he distributing them;
(he got something he hung onto
(he hung onto it
(believe the will be successful in not looking at child porn in the future
(he got it and just hung on to
(don't think he will look at any porn in the future

8:48:41 AM (believe he "gets it"; he knows right/wrong
(there seems to be a detachment regarding porn
(my sense that he was somewhat detached; just looking at the images
(looking at them quickly; looking at the images
(then translating into his own mind for gratification

8:50:29 AM (these images contain real children; he now understands that
(recall he adapted female persona to get images such as Dad Daughter sex
(by his own admission he reported that to the police

(I reviewed the PSI
 (he went into chat rooms ...
 8:52:45 AM (most sex offenders never admit this
 (he has a conscience and it tells him what he should be doing
 (he spilled forth the info
 (if you think of even a normal population of sex offenders and have primary offenders...
 (if we have the normal scales; he is so far off scale; he is off the chart from what
 Would be a normal sex offender
 8:54:40 AM (he is engaged; takes part in treatment; talks about it
 8:54:58 AM (he admits that he has done these things
 (he looks at his past beliefs; looks at the whole picture
 (there is a sense of sham; he looks at himself as damaged goods
 (there is an internal sense of sham
 8:55:54 AM (he does not want to get a personal lap top
 (he got rid of his Facebook; his social media
 8:56:27 AM (he's out to met people; new relationships so he does not have to do this
 (he looks at how to make amends; he is doing assignments
 (letters to victims
 8:57:18 AM (there is no drugs/alcohol; he has a safety net
 (he's told his family about this
 8:57:40 AM (can only imagine how humiliating this is
 (everyone is aware of what is going on w/him
 (I don't see this as a spring board abuse
 (he got images that he found stimulating
 (he got treatment;
 8:58:37 AM (don't think this is a guy that is going to go out and ...
 (he does not stalk children
 (as far as what I've seen... he's not even in that league
 (he knows that he was not suppose to be looking at it
 (initially my thoughts are why are we even here
 (thought could have been taken care of by plea bargaining
 (he knows that he has done something wrong
 9:00:24 AM (the sentencing is to protect the indiv.
 (I don't the community as being damaged
 (he has learned his lesson
 (his daughter is here today
 9:01:19 AM (part of his treatment is to re-unify w/his dau.
 (w/bail conditions, he's not been able to communicate w/her
 (treatment plan is to continue meeting w/me on weekly basis
 (completing assignments; meeting w/...to make assignments are done
 (I will meet w/Probation Officer; as well as how do you make amends
 9:02:44 AM (maybe a year to complete; he's already been engaged a year
 9:03:14 AM Cross Examination by District Attorney
 (my experience is treating those that have hands on offenses
 (hands on offense is from those that are wiring, exposing themselves, to
 Have sex w/young children, infants, adults against their will
 9:04:22 AM (hands off is on computer offenses
 (the minority of my treatment is hands off
 (that is also a growing population
 (less serious
 9:05:48 AM (majority are Court ordered into treatment

(they normally don't say I have a problem
 (he came to me after he was charged
 9:08:17 AM (I think he was interview in July; came to me a few months later
 (agree that he admitted that he found child porn stimulating
 (he was masturbate to it
 9:07:35 AM (people being raped less serious then images of children being raped
 (think there is a horrendous factor to that
 (are you really engaging in the sex and the fantasy

 9:08:01 AM (or something that you are detached from
 (more of the latter for him
 (he also saved them onto ... drives
 9:08:35 AM (he saves everything; no different files for the ones he found more stimulating
 (turned to because of being bored, not in a relationship
 9:09:29 AM (most don't find child porn arousing
 (he admitted unlike others

 9:10:01 AM Redirect Examination by Tetlow
 (prior to seeing me he had evaluation by Dr. Drew Smith
 (sought a qualified treatment provider
 (understand that there was much more adult porn than child porn
 (he kept pay stubs from the Army 20 yrs ago; does not throw things away
 9:11:42 AM (he was also molested as a child

 9:12:19 AM Witness excused

 9:12:20 AM Tetlow
 - no other witnesses
 -
 9:12:29 AM District Attorney
 - no witnesses
 -
 9:12:34 AM Tetlow
 - Court's role is to determine if he has extra ordinary potential rehab
 - If Court finds that he does
 - The status says that the person being sentenced has to serve 4 yrs, the
 Court can lessen
 9:14:05 AM - we have presented proof that he is extra ..
 - he did not have only child porn solely
 - usually child porn is connected w/other ...like distribution
 - rare to be sentenced solely on child porn
 - one of the benefits of the panels is to look at the appellate decisions
 - that is difficult here; I think I found one decision
 9:15:55 AM - was a horrible case; he was from Oregon w/record
 - that deft received a 7 yr sentence
 - that is different than what we are looking at here
 9:16:39 AM - he has an education, work history
 - the amount of public disclosure is hard to do
 - based on that...this is only transgression in 40 some yrs of life
 - it's a private transgression
 9:17:33 AM - hard to talk about but necessary

- he's doing that and doing everything he can to address that
 - you read the facts and you can see how it would be a awful family dynamic
 - initially he was on bail conditions where he could not speak w/his dau.
 9:18:46 AM - went to Court and changed that
 - he abided by the condition as did his dau.
 9:19:10 AM - both are interested in re-unification
 - the plan in the future is to include the dau. In on treatment
 - the standard is fuzzy because of using terms of extra ordinary
 9:20:01 AM - first, does he understand the problem
 -
 9:20:13 AM - Second will if re-occur and treatment
 - He had divorced from his long term wife
 - He had a hard time re-adjusting; had hard time filling that part of his life
 - Are these things that can be corrected
 9:21:09 AM - Yes heard that from Dr. Smith and Dr. Lazur
 - Need not be incarcerated for the full presumptive term
 9:21:57 AM - He does not need to be incarcerated at all
 - Neither impulsive or youth; Kirby case
 9:22:28 AM - He has extra ordinary potential to re-hab
 - He has totat participation for treatment; which he sought out on his own
 - As opposed from being Court Ordered
 -
 9:23:18 AM Judge Smith - Questions
 9:23:29 AM - tone different from arrest and what said in police interview; minimized
 -
 9:23:50 AM Tetlow
 - just different terminology used
 - police are asking... how did you come to get them
 - focuses on that
 - had the police inquired... so you have been seeking out child porn...
 - if asked would have said what Dr. Lazur said
 - once you find the non-statutory midi-gator ... starting point is
 9:26:28 AM - when you have the a typical... one size does not fit all
 - that is what the 3 judge panel is all about
 - you exist because can fit all in one size fits all system
 - no one condones child porn; it is not a violent offense
 - when you look at case realistically... only had images...
 - he had no part of abuse, distribution of images
 9:28:29 AM - that kind of abuse happens
 -
 9:28:40 AM Judge Smith - Questions
 9:29:04 AM Tetlow
 - if you could do away w/images would the abuse stop; we know it would not
 - have sick people that distribute to others to see; don't have that here
 - he has been sexually abused which is horrible
 - the abuse is when ... is passed on
 9:30:55 AM - the person looking at the image does not to the harm of the children
 - society does not condone; how do we address
 - there are ways other than jail time
 - he has a conviction now; also has to reg. as a sex offender

9:32:26 AM - there will be conditions of probation; a penalty on him
 - on deterrence of others ...how does a sentence like this deter others
 - think it does have a big impact...when more private...deterrence is hard to hang your hat on

9:33:25 AM - drug sentences...has not deterred drug offenses
 - child porn is a private offense
 - I don't think that really is going to happen
 - On flip side... others will be deterred; different on the ...

9:34:37 AM - His potential for rehab will be harmed by jail time as was w/Kirby case
 9:35:02 AM - And State v Price
 - Needs to be taken into account
 - Can successfully address that won't damage his rehab
 -

9:35:51 AM Judge Smith - Questions Re: Special Conditions of Probation

9:36:19 AM Pause

9:36:29 AM Tetlow
 - condition # 1 is the...has already happened
 - Dr. Smith is a Department of Corrections supervisor of sex offenders
 - Lazur is also Department of Corrections approved
 - The case law allows the Court ...

9:38:08 AM - at the time I wrote I thought he would be taken away from his provider
 - # 2 - again there is the case law out there; SOA vs Lundy
 - Does not have to be Court approved
 - There was a concern there that I had...the requirement of active ...
 - That is problem sometimes...sometimes Probation Officer says
 Not doing well enough to me

9:39:51 AM - Should say to the treatment providers satisfaction; up to the Court
 - # 3 - my opposition is same as # 2
 - Opposed # 9 - not own any animal
 - Untrue allegations of the ex-wife; not an issue anymore

9:41:01 AM - # 16 - this is the...inform all persons that he has a significant relationship
 And will be approved by the ...

9:41:39 AM - The way it reads...it's subjective; does not say who he has to disclose to
 - Maybe we can craft that a little better; who that can be disclosed to
 - Does he need to make it to his employer? No evidence that he
 Accessed on work computer; he is a ...engineer; uses computers for
 Work purposes

9:43:08 AM - That needs to be better drafted

9:43:25 AM Judge Smith - Re: Special Conditions on # 6

9:43:47 AM Tetlow
 - I don't see the need for it; in candor, I believe that Dr. Smith that - that could be included
 -

9:44:25 AM District Attorney - Argues
 - the State request that the panel remand the case to Judge Span
 - has not shown that he is a unique deft.
 - he spent years accumulating; went into chat room and saying he was female
 - chose one that said Dad and Daughter sex

- 9:45:46 AM - only sought counseling after caught
- the issue is not whether he is going to be a hands on offender
- it should not be a benefit that he did not commit other felonies
- 9:46:39 AM - my case load is ...internet porn
- 9:46:55 AM - few appellate cases because most resolve themselves
- lack of cases due to different reasons
- 9:47:25 AM - the testimony of Lazur is helpful
- his comparison is lacking
- 9:47:43 AM - he primarily treats people that commit hands on offenses
- 9:48:00 AM - however the comparison should not be hands on offenders
- need to look at sample group that Lazur is looking out
- is it really accurate when looking at a crime by itself
- there is a difference in what he told police and Dr. Lazur
- makes sense w/time that he would rationalize a different way
- 9:49:29 AM - he never told the police about the adult porn
- he said he was looking for child porn
- 9:49:51 AM - adult porn easy to accumulate
- 9:50:08 AM - he went on....and said easier to get what he wanted if he were female
- kept in a mug in the bedroom
- he not only saved but he masturbated to it
- Dr. Lazur alternated his testimony a little bit ...
- 9:51:08 AM - Does not answer the question of why he found it arousing
- Tetlow argued that State gave Dr. Smith much weight
- That is true; however if Court is relying on Smith...has low to moderate for ...
- 9:52:32 AM - Request remand back to Judge Spaan
- He contributed to the distribution of child porn by requesting it
- He knew what it was and he saved it onto another thumb drive
- The harming includes the not knowing
- The children know that someone is looking at
- 9:54:18 AM - They know people are looking at it; we are, judges are
- Not fair to say that crime does not count
- They know people are looking at their images
- It's pretty easy to do press release; that can be remedied
- Crime like this is so private...just doing on the internet and no one knows...
- More important to get the word out; so can police themselves
- 9:55:53 AM - The deft recognized that this was a problem
- At one point he said he had a collections and knew it was wrong... got
- Rid of it and came back to it
- 9:56:32 AM - This was an on-going choice
- Think it is commendable that he sought treatment
- This deft has not spent one day in jail
- Community Work Service does not cut it
- 9:57:19 AM - Possession of child porn is a crime; society needs to know ...
- Becomes easier to discount because it is so private
- not something as a society that we are prepared to say
- there is no requirement that...
- can say that this is less severe but severe in it's own right
- request that you find that he does not have extra ordinary potential

9:59:16 AM Judge Smith

9:59:28 AM District Attorney

3AN-10-05947CR 10-24-11 Eric Smith

- I do it generally on # of images
 - Then additional susp. Time; min. of 2 yrs
 - Re: special condition # 1...has to follow all recommendations
 - # 2 - don't have any issues of him continuing but if Dr. Lazur retires...
 There could be a change in provider
 10:01:21 AM - not a way to insure treatment is being done w/o going through Probation Officer
 - # 9 - don't think in-appropriate
 - # 16 - rather want other adults he associates with knows; if they have children...
 - Appropriate to look at ...they should be aware of what is going on
 -

10:03:02 AM Judge Smith - Rebuttal

10:03:24 AM Tetlow
 - thumb drives were in his master bedroom; not out in open
 - no evidence here what so ever...that he ever specifically
 requested child porn
 10:04:19 AM - he went into chat rooms ...he went into ...w/intent of collecting
 as many as possible; not just child porn
 10:05:22 AM - the children depicted...not saying not a harm; we are saying
 does not count as much; that is a factor the Court has to consider
 10:06:03 AM - it's also addressing in comparison to other offenses
 - my point that there is not a lot of appellate cases is because
 so few for guidance
 10:06:44 AM - he did not realize...the evidence began possessing in 2005 then deleted
 - then started again in 2006; Klinkhart testified that no image the pre-dated 2006
 - he rationalized that these weren't real people
 - is addressing in treatment
 10:08:19 AM - Court can consider extra ordinary
 - Look at Kirby
 - Court found entitled to
 10:08:47 AM - The State argues not imposing jail means that it is okay to possess child porn
 - That is not true; jail time is not the only way to address this
 - If we are going to publicize then lets publicize all in this case
 - Here is a guy that has to register as a sex offender
 - Has to do what the Court says he has to do
 - There are other ways other than jail time to serve; does not send message..
 10:10:38 AM - Re: Bestiality – not a necessary condition
 -

10:10:59 AM Delapp
 - want to thank you for your time
 - I'm in treatment
 - I'm extremely embarrassed and humiliated
 - Hard to tell family and friends
 10:12:12 AM - again I'm very sorry; sorry for the victims
 - I did not treat the photo's w/respect that they should have been
 -

10:12:42 AM Tetlow - Continued Argue
 - the offer in this case was two
 -

10:13:20 AM Off record

11:12:12 AM On record Court identifies case and parties
 3AN-10-05947CR 10-24-11 Eric Smith

- 11:12:16 AM Judge Smith - Ruling
- we are all in agreement that he has an acceptable potential for rehab
 - it is not clear if he targeted child porn
 - agree that it is not likely to reoccur
 - he sought treatment immed.
- 11:13:34 AM
- found testimony of Dr. Lazur credible
 - we disagree is whether it is unjust to ... presumptive
 - we felt it would not be approp....found that he was off the bell curve
 - the data base was not a significant concern
- 11:15:12 AM
- does not make the crime less ...
 - don't think rehab is a problem
 - don't think he going to do this again
 - disagree w/Tetlow...every time this is looked at, the kids are victims
 - it's awful what is done to these kids;
- 11:16:33 AM
- we disagree w/Tetlow as far as deterrence; the word gets around
 - is relevant factor
 - we imposed a fair amount of suspended time
 - so approp to a
 - 4 yrs/16 months to serve
 - General conditions
 - Did not change 1, 2, 3
 - Did delete # 9
 - Added lang - w/o permission of the Probation Officer in 2 and 12
 - Re: # 16 - modified in recognition...thought real dangers here
 - Was use of computer at work; shall inform employer and Person in relationship with
- 11:19:30 AM Judge Stephens
- believe there is a great potential for rehab
 - think that safety net is significant
 - common to be employed in this crime
 - gives you reason to move forward
 - want to make a comment ...it's my concerns that the daughter, she needs to feel no blame; it's a crime because it's a crime
- 11:21:25 AM
- one of the reasons ...it is to deter the deft ...
 - it poisons and certainly w/o prof. counseling would damage his relationship w/his child/children
- 11:22:17 AM
- agree there is exceptional potential for rehab
 - that is why I ...from the presumptive sent.
 - He reached early and sought treatment
 - In my view it would not be unjust to use the presumptive sent.
 - I concur w/the probation
- 11:23:25 AM Judge Smith
- 5 yr period of probation
- 11:23:37 AM Judge Stephens
- he found on the internet, aroused, kept and used
 - satisfied that he can be treated; not necessary to be incarcerated on

full presumptive term

- 11:24:40 AM
- District Attorney did good cross in particular pages...
 - Tetlow did a good a job as he could
 - Satisfied that Dr has a good enough handle on it about rehab potential
 - Give weight to that potential; problem we has was how much weight
 - The normal offender would get two yrs
 - Coming to the 16 months to serve ...
 - The nature of the photo's...
 - These children were tortured and abused
- 11:26:49 AM
- Unless there is a connection between the torture and the abuse
- 11:27:12 AM
- Giving the weight necessary ...sent . is approp.
- 11:27:26 AM
- Sufficient suspended time

- 11:27:47 AM
- Judge Stephens
- because of the cyber nature...the word will go out
 - like wild fire to child porn internet community
 - that is a message we can not let go out
 - would be damaging to the community
 - that is part of my reason to expect...think it would wrong to bring down anymore

- 11:28:59 AM
- Tetlow
- presumptive 16 month term or not presumptive term

- 11:29:24 AM
- Judge Smith
- have not talked about that

11:29:31 AM **BEGIN BENCH CONFERENCE**

11:30:06 AM **END BENCH CONFERENCE**

- 11:30:08 AM
- Judge Smith
- District Attorney can address

- 11:30:28 AM
- District Attorney
- the 16 months ...
 - he gets good time anyway
 - don't think discretionary parole is appr

11:31:09 AM **BEGIN BENCH CONFERENCE**

11:31:34 AM **END BENCH CONFERENCE**

- 11:31:36 AM
- we will make him avail. For discretionary parole

- 11:32:25 AM
- Tetlow
- request remand set off for 30 days; will probably file an appeal

- 11:33:18 AM
- Judge Smith
- their...not on bail when sent.

- 11:34:01 AM
- District Attorney

- don't oppose the 30 days
-
11:34:10 AM Judge Smith
- it's the beginning of the bail statue
- 100.00 surcharge due in 10 days
- \$200/100 facility charge
- Remand Nov. 28, 2011 at 1:45 PM
- In Superior Court Arraignment's
- assume that Judge Spaan read the sex offender registration form to him at sentencing

11:36:18 AM Pause

11:37:49 AM Began Finger Printing on Record

11:38:51 AM End Finger Printing on Record

11:38:59 AM Judge Smith
- will get judgment out as soon as possible
-
11:39:12 AM District Attorney
- forf. Of items?

Jugde Smith
- do you oppose?
-
11:39:20 AM Tellow
- no oppose
-
11:39:34 AM Off record