

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 13-CR-30215-DRH
)	
JOHNATHON HITCH,)	
)	
Defendant.)	

**DEFENDANT'S MOTION FOR VARIANCE AND
SENTENCING MEMORANDUM**

I. Introduction

In the specter of “fair deals” the one entered between Defendant Jonathon Hitch (Jonathon) and the Government could not be fairer.

If this Honorable Court follows the Plea Agreement and sentences Jonathon to between 3 and 5 years in the Bureau of Prisons, it will give Jonathon the opportunity to have a “normal” adulthood.

The undersigned has been before this Honorable Court so often in the past 25 years and is so comfortable with its rationale and thinking that he has no qualms requesting a 3 year sentence knowing full well that the Government will request a 5 year sentence.

II. Jonathon Hitch

St. Ignatius Loyola said that the strength of love is greater than the strength of fear. Here, Jonathon is scared at the prospect of spending any time whatsoever in jail. But that fear will eventually dissipate and Jonathon will once again have to face his demons. The true goal of any sentencing is to ensure that the Defendant repents and does not commit any further criminal offenses. Fear can only go so far to achieve that objective.

What will “save” Jonathon from allowing his demons to overpower him is the mutual love he and his mother Jennifer have for each other. Jonathon’s actions have greatly hurt his Mom psychologically and emotionally. Jonathon has to harness that “love” so as to ensure that he does not hurt his Mom any further when he is released from prison. Succinctly, Jonathon will have to be the “man” of his family.

There is a very fine line between an overbearing mother and one who loves her child unconditionally. Jonathon’s mother, Jennifer oftentimes crossed that line into being an “enabler” for Jonathon’s bad acts.

When Jonathon and his mother first came into the undersigned’s office on November 3, 2012, the police had just searched the Hitch residence and found child pornography on Jonathon’s computer. Jennifer was apoplectic. Jonathon was uncaring about what had happened and looked like a vagabond. He wore pants which hung halfway down his bottom and wore a baseball hat which was askew on his head. He refused to remove the baseball hat when the undersigned requested him to do so. On November 3, 2012, Jonathon Hitch was a Justin Bieber wannabe.

His appearance was magnificent compared to his disposition. In a word, on November 3, 2012, Jonathon was a “jackass.” Jonathon was dismissive to the undersigned. Jonathon treated his Mom like garbage. He was disrespectful, belligerent and rude to her. Because of Jonathon’s demeanor, the undersigned came very close to simply telling the Hitches that he was too busy to take Jonathon’s case.

The undersigned requested that Jennifer leave the office and showed Jonathon where he was in the Advisory Guidelines. Jonathon was not going to receive probation. He was going to prison, possibly for a very long time. The undersigned told Jonathon exactly what he thought of him and his behavior. A dull bulb went on in Jonathon’s head. He looked and acted scared. He began behaving like a 21 year old kid.

The Hitches returned a few weeks later and Jonathon’s demeanor had changed. It had improved to the point where it was bearable to speak to him. He did not interrupt his mother. He held the door for her. He wore a belt. He did not wear a baseball hat. His

questions were those of someone scared of going to prison. Jonathon wanted to know if probation could be requested and the undersigned definitively indicated that probation was *not* an option. The power of “fear” was starting to take over.

The undersigned met with the Hitches about once a month, even before Jonathon was charged because the undersigned wanted to get to know Jonathon better.

In all candor, the transformation of Jonathon has been remarkable. Since April, the undersigned has met with Jonathon on a weekly basis to prepare for sentencing. The undersigned enjoys meeting with Jonathon and has come to respect him. Jonathon is scared of going to prison, but the “fear” that he exhibited in the beginning has been replaced by sorrow for what he has put his Mom through and the love he has for her. The power of love has overtaken the power of fear.

On April 7, 2014 Jonathon and his Mom met with the undersigned to discuss the Presentence Investigation Report. This was the first time that the “true” impact of what he had done hit Jonathon, and that his actions would have real repercussions. Jonathon, with tears in his eyes, apologized to his Mom and told her he would make it up to her. Jennifer said she did not care what Jonathon had done and that she would always be there for him.

When there was still a military draft, individuals like Jonathon Hitch would be drafted into the military, where after a few years, they generally would leave as mature individuals. Unfortunately, Jonathon’s maturity will come behind bars, but ultimately the positive impact of hopefully 3 years away will be the same as if he had been drafted. Jonathon has done wrong in the eyes of everyone, but fortunately his relative youth means that he in fact can right this wrong.

III. Jennifer Hitch

As was stated above, Jennifer Hitch oftentimes crosses the line from unconditional love to enabler. She has an excuse for each and every transgression Jonathon has ever done. She is Jonathon’s #1 cheerleader, but also the one who refused to allow Jonathon to be held accountable for his transgressions.

In the beginning, Jonathon “bought” into the victim mentality. But, over time Jonathon has matured and while going through the PSR told his Mom that he ultimately was responsible for what he had done and needed to be punished. Jennifer Hitch’s life revolves around protecting her children. She is a “mother bear” in every sense of the word. Early on, Jennifer had to protect her children from their abusive father.

Ultimately, when Jonathon was 13 Jennifer filed for divorce. This was a particularly difficult divorce not just emotionally, but financially for Jennifer and her kids. Like too many men, Jonathon’s father played the “money game” with Jennifer. He provided for his children only when the foot of a Madison County Judge was about to be placed on his throat. This caused Jennifer and her kids to move in with Jonathon’s grandma, Kathy Gray. Kathy had a one room efficiency apartment and the 4 of them slept in this one room for nearly a year.

Probably because of how much she had to protect her children, Jennifer has never been able to fully let Jonathon “go” so that he could become “independent.” In all candor, Jennifer created the Jonathon Hitch who appeared in the undersigned’s office on November 3, 2012. She also created the nice young man that Jonathon has become.

IV. Marijuana Addiction

Before discussing the 3553 factors, Jonathon’s addiction to marijuana needs to be addressed because it permeated practically every aspect of Jonathon’s life.

Jonathon is 22 years old and is a criminal history category III. It honestly takes some doing for someone at such a young age to be this far along criminally. The Government knew this criminal history when it agreed to request no greater than 5 years. Similarly, the undersigned knew the criminal history when he agreed not to request a sentence of probation, a year and a day or 2 years.

At one time the undersigned tried to be “progressive” regarding marijuana crimes. He would tell prosecutors “it’s just dope.” This “progressive” thinking changed dramatically due to *U.S.A. v. Most* as well as the undersigned’s 15 year old son who recently said marijuana should be legalized because “it’s just like cigarettes.”

About 10 or 15 years ago, the undersigned represented George Most who appeared for a run of the mill sentencing before this Honorable Court. The courtroom was filled with high school students. George Most asked to speak to the kids. Most discussed that in high school he was in the “cool” group and that he was an outstanding athlete. He was eloquent regarding how promising his future would have been had he not began using illegal drugs, specifically cocaine.

This Honorable Court asked Most what was the first illegal drug he used. Most said marijuana. This Honorable Court then discussed what a “gateway drug” was to the high school students. Marijuana is *the* gateway drug. A kid uses marijuana and the world doesn’t end, so eventually harder drugs are used.

The marijuana being pushed and used in 2014 is not the same marijuana Hippies smoked in the 1960’s. The potency of marijuana grown today is exceptionally high compared to even 15 or 20 years ago. There are articles, seemingly weekly, about horrific crimes being committed in Colorado and Washington due to people being “high” from using marijuana legally.

Quite simply, Jonathon is addicted to marijuana. This is borne out by Paragraphs 53-58 of the PSR. As is often the case, in order to support his addiction, Jonathon sold marijuana to other users. It is a miracle that Jonathon’s marijuana addiction did not morph into him using other illegal drugs like heroin, which would have been a death sentence.

Hopefully, whatever sentence this Honorable Court imposes contain a component which requires some sort of substance abuse counseling as part of Jonathon’s term of supervised release.

V. 18 U.S.C. Section 3553

A. New Department of Justice Policy

Subsequent to the parties agreeing to a Plea Agreement calling for a 3-5 year sentence, the Department of Justice adopted many of the arguments the undersigned has made in previous child pornography cases.

The undersigned routinely argued that *all* child pornography cases are “garden variety.”¹ If an individual is charged with a child pornography related crime, certain 2G2.2 enhancements will be automatically applied in every case. The undersigned argued that the reason for this is that unlike other Guidelines which are empirically driven, child pornography Guidelines are driven by Congressional dictates.

Jonathon has received an enhancement totaling 8 points due to “garden variety” enhancements for viewing prepubescent minors (paragraph 18), using a computer to commit the crime (paragraph 21) and viewing sadistic or masochistic conduct (paragraph 20).

These enhancements were wrought by a Congress intent on punishing the worse purveyors of child pornography. Unfortunately, ensnared in their noose are individuals like Jonathon whose downloads did not even reach the “magical” 600 threshold for this enhancement to be applied.

The undersigned assumes that the Government will be consistent in this child pornography case by agreeing to a variance and follow the Department of Justice’s new policy as it did in cases like *Hicks* and *U.S.A. v. Jimenez*, 13-CR-30115 MJR.

Subtracting 8 points from a Total Offense Level of 29 would result in a Total Offense Level of 21, which when combined with a Criminal History Category of III results in an Advisory Guideline sentence of 46-57 months. Hopefully, it will be a “chip shot” to convince this Honorable Court to vary from what should essentially be an agreed to Advisory Guideline range of 46-57 months to a 36 month sentence.

B. 3553(a) Considerations

Because there are no objections to the Presentence Investigation Report this Honorable Court can apply enhancements or downward variances where it finds such

¹ In *U.S.A. v. Hicks*, 11-CR-30207-DRH, the undersigned filed a detailed Sentencing Memorandum (document 124) setting out his position regarding the “garden variety” enhancements contained in Hicks’ PSR. The arguments made in *Hicks* would be identical here, and in the interests of judicial economy, the undersigned incorporates by reference those same arguments and rationale in requesting a variance.

adjustments appropriate based on Jonathon's relevant individual characteristics or other § 3553(a) factors.

The §3553(a) sentencing considerations include:

- (1) The nature and circumstances of the offense and the history and characteristics of the Defendant;
- (2) the need for the sentence imposed-
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the Defendant; and
 - (D) to provide the Defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) the kinds of sentences available;
- (4) the advisory guideline range;
- (5) any pertinent policy statements issued by the Sentencing Commission;
- (6) the need to avoid any unwarranted sentencing disparities; and
- (7) the need to provide restitution to any victims of the offense.

18 U.S.C. § 3553(a) (2) also mandates the court to punish parsimoniously, that is, to impose a punishment "sufficient, but not greater than necessary" to accomplish the goals of sentencing.

1. Nature/Circumstances of Offense & Jonathon's Characteristics

Jonathon Hitch has amassed a total of 5 criminal history points. This is at least the 5th time Jonathon has been charged with a crime, which due to this Honorable Court's knowledge of incremental federal sentencing, might not bode well for Jonathon.

Contrary to how it will appear, the undersigned does not want it both ways. Jonathon's youth should inure to his benefit for purposes of a variance. Likewise, it should hurt him for purposes of the ultimate sentence this Honorable Court imposes.

Had Jonathon been a "normal" 21 year old when he appeared in the undersigned's office, with no criminal history the undersigned would have argued for a sentence of a year and a day. Jonathon's criminal history is only one component of 3553 and when all of the factors are weighed equally, hopefully this Honorable Court will realize that

requesting a 3 year sentence for someone with no violent criminal history is a significant punishment.

While Jonathon's 2011 conviction for possessing a stolen vehicle causes the most concern, more troubling is the fact that Jonathon was incapable of completing 18 months of probation.

There is no doubt that 2011 conviction is the "elephant in the room." By focusing on the "worst" of Jonathon's crimes, it is easy to overlook his charges and convictions related to marijuana sale/use are just as readily apparent. Jonathon is a young man with a serious addiction to marijuana and it appears that his addiction led directly to the majority of his criminal history points. As part of Jonathon's sentence, this Honorable Court can ensure that he receives treatment and use the resources of the U.S. Probation Office to help Jonathon with his addiction.

While the "elephant in the room" might be Jonathon's criminal history, equally imposing for purposes of sentencing is his youth. Jonathon has virtually his entire life ahead of him to be a productive member of society. A 3 year sentence as opposed to a 4 or 5 year sentence will get the message across to Jonathon that he must comport with societal norms and will meet all of the 3553 requirements.

2. Other Characteristics of Jonathon

The "bad side" of criminal defendants is easy to show. For obvious reasons, it is much more difficult when representing a 22 year old to show something positive they have done. Letters in support are hard to come by for individuals charged with child pornography crimes because the Defendant is an automatic leper as soon as the charges are issued.

Michael Wartick was Jonathon's guidance counselor through high school. His letter (Exhibit A) is worth 100 of the run of the mill letters of support routinely provided to this Honorable Court before sentencing.

Mr. Wartick talks about a young man who for 3 years was a "good kid" but who during the summer of his junior year got hooked up with the wrong crowd and began the

slow morph into the “Justin Bieber” wannabe who appeared in the undersigned’s office on November 3, 2012.

Most importantly, Mr. Wartick’s letter, along with Michelle Hommert’s letter (Exhibit B) shows a young man with a conscience. These letters show a young man concerned about the impact his actions have had and are having on his loved ones. Hopefully, these 2 letters will counter-balance, to the extent possible the deleterious impact Jonathon’s criminal record will have.

These letters show that while Jonathon might not have a bright future, it is considerably less blurred than it would have been had he not been charged with this crime. This case has *forced* Jonathon to stop allowing his mother to make excuses for him. It has forced him to accept responsibility for his actions. It has forced him to grow up and be a man.

a. Deadbeat Dad

Kids spell “love” “t-i-m-e.” The undersigned is incapable of understanding “deadbeat” Dad’s. Being a father is easy --- you only have to spend time with your offspring. Yet, this seemingly easy task is a chore to father’s like Jonathon’s Dad. In reality, he abandoned his wife and two children. Jonathon bore the brunt of this. Just as things with Jonathon’s parents were at their lowest point, Jonathon ended his Sophomore year. It should come as no shock to anyone that this is when his “trouble” started.

Jonathon has no contact with his father. What kind of a man has nothing to do with his 22 year old son facing federal prison? It is sickening that Jonathon’s mother and grandmother make up his “support group.”

Jonathon told the undersigned that he wished his Dad would help his Mom more with “this case,” but understands that this is not in his Dad’s DNA. What is remarkable about Jonathon is that he has allowed this case to be his “wake up call.” Jonathon realized that he needed to change so that his Mom would have a “man” to help the family. The slothfulness he exhibited in November of 2012 has dissipated and Jonathon is willing to take on whatever task is necessary to improve himself so that he can help his family.

3. Recidivism/Future Harm Against Children

Fear is the rub in child pornography cases. Jonathon never harmed a child but it is difficult to not think about what *might* happen. The idea is that a child pornographer will cross the line into child molestation.

Realistically, child pornography is on the outer frontier of crimes. It is a crime little understood even by “experts” or “normal” people.

Here, Jonathon was barely out of high school when he began viewing child pornography which in the scheme of things is better than a 70 year old man viewing child pornography.

Safeguards can be attached to Jonathon’s supervised release to ensure that he does not view child pornography again.

4. Just Punishment

There is no doubt that Jonathon’s behavior was abhorrent; young children are victimized to create this material, and crimes like Jonathon’s may perpetuate the market for child pornography.

Once Jonathon is sentenced he will be sent to the Bureau of Prisons, where he will *not* be eligible for sentence reduction programs and post-conviction motions available to many federal offenders. Thus, the typical child pornography Defendant like Jonathon must serve almost his entire sentence. In practical terms, this means that a variance to 3 years for child pornography is actually more severe than a 3 year sentence for a similarly-situated drug offender. For example a typical drug conspiracy offender, sentenced to sixty months in prison, will often be able to provide assistance in investigating or prosecuting another person and, hence, will be eligible for a Rule 35 motion to reduce his sentence from sixty to forty months. Fed. R. Crim. P. 35(b). In addition, treatment programs are generally available to federal drug offenders, allowing them to further reduce their sentences by an additional twelve months – resulting in a twenty-eight month sentence. Thus, by serving 85% of the twenty-eight month sentence, the typical drug offender sentenced to sixty months would actually serve just under twenty-four months.

5. *Specific Deterrence*

Finally, it is worth noting that, as a convicted child pornography offender, Jonathon is ineligible for a Federal Prison Camp. While Jonathon's Bureau of Prisons security classification otherwise might qualify him for a Federal Prison Camp, his child pornography conviction ensures that the *best situation* for which he can hope is serving his sentence in a low security facility. It is the undersigned's experience that a child pornographer will be sent to a medium security prison, where every day of his sentence Jean Paul will have to look over his shoulder because he will be a *target*. By serving his time in a low security or medium security prison rather than a Federal Prison Camp, Jonathon's time in prison will undoubtedly be harsher, thereby increasing the effect of specific deterrence on the Defendant.

Accordingly, Jonathon urges the Court to consider the relatively higher severity of a sentence served in a low security facility when it crafts a sentence pursuant to the goals of § 3553(a).

V. Conclusion

Jonathon is requesting a variance to 3 years. This sentence meets all of the requirements of 3553(a) and is both fair and just. A 3 year sentence will also recognize the man that Jonathon has become.

JOHNATHON HITCH

STOBBS LAW OFFICES

BY:

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CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2014 a copy of the attached *Motion For Variance & Sentencing Memorandum* was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

Ms. Angela Scott
Assistant U.S. Attorney
Nine Executive Drive
Fairview Heights, Illinois 62208

STOBBS LAW OFFICES

/s/John D. Stobbs, II
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HIGHLAND COMMUNITY UNIT SCHOOL DISTRICT NO. 5
HIGHLAND HIGH SCHOOL-12760 TROXLER AVENUE-HIGHLAND, ILLINOIS 62249
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KAREN GAUEN, Ed.D
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MICHAEL S. BUTTON
SUPERINTENDENT OF SCHOOLS
DEREK A. HACKE
ASSISTANT SUPERINTENDENT - INSTRUCTION
TIMOTHY C. BAIR
BUSINESS MANAGER

2/18/2014

To Whom It May Concern,

I am writing on behalf of Johnathon Hitch and would like to speak about his time as a student at Highland High School (HHS). I was Johnathon's guidance counselor for his four years at HHS. During Johnathon's first three years at HHS he was rarely in trouble and was always considered a kind and respectful student. Though Johnathon's grades were not always the best, he never failed a class in those first three years. Whenever he did struggle academically, Johnathon's mother, Jennifer, would always contact the school and myself to see if there was anything that could be done to keep him on track. She was regularly involved in his academic progress and always made positive contact with the counselors and teachers.

During the summer proceeding Johnathon's senior year, Jennifer informed me that Johnathon was going through some problems outside of school. She informed me that Johnathon's girlfriend had broken up with him and he had a falling out with one of his best male friends. Johnathon began hanging out with a crowd of friends that was accepting of him but that was also a bad influence on him. As a result, Johnathon did not have a strong social support group going into senior year. Jennifer made sure that the counselors and administrators were aware of this and asked that we try to keep an eye on him.

Though Johnathon's grades and attendance remained mostly on par with his first three years of high school, Johnathon did have some discipline problems in school during his senior year. When any discipline problem would arise, Jennifer was in contact with the school and myself to try to correct any negative behaviors by Johnathon. Also during his senior year, Johnathon was involved in our Cooperative Education (Co-op) program where students would take classes in the morning and leave school early to work at a job. Johnathon had some problems during Co-op, and Jennifer worked closely with myself and Dr. Baker (the Co-op teacher) to setup a plan to successfully get him through. As a result, Johnathon completed the Co-op program successfully.

He did fail one class during the 2nd semester of his senior year (Psychology), but he earned above and beyond the number of credits necessary to graduate at Highland High School. In my time dealing with Johnathon at HHS, he was always very respectful to me and honest about what he was doing right and what he was doing wrong. After his graduation, I lost touch with Johnathon, but I have kept in contact with Jennifer, because her younger daughter is currently enrolled at HHS.

Michael Wartick

A handwritten signature in black ink, appearing to read 'Michael Wartick', is written over the typed name.

Director of Guidance
Highland High School
12760 Troxler Ave
Highland, IL 62249
618-654-7131
mwartick@highlandcusd5.org



Chestnut Health Systems

March 20, 2014

Johnathon Hitch
12023 State Rt. 140
Alhambra, IL 62001

To Whom It May Concern:

Johnathon M. Hitch has been attending substance abuse counseling services with this clinician at Chestnut Health Systems since October 4, 2013. Since that time, Mr. Hitch has been consistent in attending individual sessions as recommended (one hour individual session, once per week). The client has made progress in addressing goals related to his physical health, mental health, substance use, employment, finances, and leisure.

Mr. Hitch reports that he has a strong bond with his family, including his mother, grandmother, and sister. His mother regularly contacts the agency to advocate on behalf of her son. The client has vocalized that he is concerned for the financial state of his family, and he would like to remain in the community for as long as possible in order to financially contribute to his household.

The client identified that he has maintained steady employment for nearly 3 years, and continues to receive additional responsibilities and promotions at work. The client plans to maintain employment as long as possible prior to his sentencing.

If you have any additional questions in regards to the client's participation in treatment services, I can be contacted at Chestnut Health Systems at (618) 877-4420.

Sincerely;

A handwritten signature in black ink, appearing to read "Michelle M. Hommert", written in a cursive style.

Michelle M. Hommert, MSW, CADC, LCSW

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