

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 06-10196-01-WEB
)	
JUSTIN THOMAS DONECKER,)	
)	
Defendant.)	
_____)	

Memorandum and Order

This matter came before the court on the defendant's motion for a downward departure or for a variant sentence. Doc. 21. The court orally granted the motion in part at the sentencing hearing of April 2, 2007. This written memorandum will supplement the court's oral ruling.

The defendant pled guilty to one count of unlawful receipt of child pornography transported in interstate commerce, in violation of 18 U.S.C. § 2252(a)(2), and one count of criminal forfeiture of property under 18 U.S.C. § 2253. By law, the former offense carries a mandatory minimum punishment of 5 years' imprisonment and a maximum possible punishment of 20 years' imprisonment. The applicable sentencing range for this offense under the advisory federal sentencing guidelines is 108-135 months.

Defendant has submitted materials in support of his motion for a reduced sentence, including a report from the Prairie View, Inc. mental health treatment center where he has successfully participated in sex offender treatment. The report from Prairie View is highly positive. The court has considered that report, as well as the evidence of defendant's employment record and the lack of any significant prior criminal history. After considering the statutory factors in 18 U.S.C. §

3553(a), including the advisory guideline range of 108-135 months, the court concludes that a variant sentence of 72 months' imprisonment, together with a three-year term of supervised release with mandatory and special conditions, and a \$100 special assessment, is sufficient to provide for just punishment, to reflect the seriousness of the offense, to provide adequate deterrence, to protect the public from further crimes by the defendant, and to provide the defendant with appropriate treatment. As shown by the record of the April 2 sentencing hearing, the parties have no objection to the court's proposed variant sentence.

Conclusion.

Defendant's Motion for Departure or Variant Sentence (Doc. 21) is GRANTED IN PART. The court finds that a custodial sentence of 72 months' imprisonment on Count 1, followed by a three-year term of supervised release, together with the other terms and conditions of sentence imposed, represents a reasonable and appropriate sentence under the factors in 18 U.S.C. § 3553(a).

The Probation Officer in charge of this case shall see that a copy of this order is attached to any copy of the Presentence Report made available to the Bureau of Prisons.

IT IS SO ORDERED this 2nd Day of April, 2007, at Wichita, Ks.

s/Wesley E. Brown

Wesley E. Brown
U.S. Senior District Judge