IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

UNITED STATES OF AMERICA,	)	CASE NO. 5:10CR00027
	)	
	)	
v.	)	
	)	REPORT AND RECOMMENDATION
STANLEY H. CARLSON,	)	
	)	By: B. WAUGH CRIGLER
Defendant.	)	U.S. MAGISTRATE JUDGE

In accordance with the provisions of Title 28 U.S.C. § 636(b)(3), and upon the defendant's consent, this case was referred to the undersigned to conduct a plea hearing.

DEFENDANT'S RESPONSES TO RULE 11 INQUIRY

The Grand Jury has returned a single count Indictment charging defendant in Count One with being an individual required to register under the Sex Offender Registration and Notification Act (SORNA), and a sex offender as defined for purposes of the Sex Offender Registration and Notification Act by reason of a conviction under Federal law, and having traveled in interstate commerce, knowingly failed to register or update a registration as required by the Sex Offender Registration and Notification Act, in violation of Title 18, United States Code, Section 2250.

On October 8, 2010, a plea hearing was conducted before the undersigned, and the defendant entered a plea of guilty to Count One. At this hearing, the defendant was placed under oath and testified his full legal name is Stanley Harold Carlson, he was born on September 3, 1954, and he graduated from high school and received three years of post high school education. The defendant stated that he can read, write, and understand the English language. The defendant stated that he was fully aware of the nature of the charges against him and the consequence of pleading guilty to those charges. The defendant further testified that he was not under the influence of alcohol,

medicine, or any drug. The defendant stated that he had no other physical or mental condition which impaired his ability to understand the nature of the proceedings being held.

The defendant testified that he had received a copy of the Indictment pending against him and that he had fully discussed the charges therein, and his case in general, with his counsel. The defendant further testified that his counsel had explained the elements of the offense for which he was pleading guilty. The defendant stated that he was pleading guilty of his own free will because he was, in fact, guilty of the offense charged. The defendant also stated that no one had made any promises, assurances, or threats to him in an effort to induce his plea. The defendant testified that he understood that the offense with which he is charged in Count One is a felony and that, if his plea is accepted, he will be adjudged guilty of that offense. The defendant was informed that the maximum possible penalty for the offense with which he is charged in Count One is a term of ten years imprisonment and a fine of up to $250,000.

The defendant was informed that under the Sentencing Reform Act of 1984, the United States Sentencing Commission has issued guidelines for judges to follow in determining the sentence in a criminal case. The defendant was then informed that, in light of the United States Supreme Court's decision in *United States v. Booker*, 125 S.Ct. 738 (2005), the sentencing guidelines are no longer mandatory but that the sentencing judge may apply them in an advisory fashion in determining a reasonable sentence. The defendant testified that he and his counsel had discussed how the sentencing guidelines might apply in his case. The defendant also testified that he understood that the court would not be able to determine the applicable guideline range, for advisory purposes, until after a presentence report has been prepared and both parties have been given an opportunity to challenge the reported facts and application of the guidelines. He stated that he understood that the

eventual sentence imposed may be different from any estimate his attorney had given him and that the court has the authority to impose a sentence that is either higher or lower than that called for by the guidelines, so long as the sentence is not greater than the statutory maximum for the offense to which the defendant is pleading guilty. The defendant stated that he knew that parole had been abolished and that if he is sentenced to prison he will not be released on parole but on supervised release, a violation of which could result in additional incarceration.

The defendant testified that he understood that he had the right to a trial by a jury, in addition to the following rights, which will be waived or given up if his guilty plea is accepted:

1. The right to plead not guilty to any offense charged against him;
2. The right at trial to be presumed innocent and to force the government to prove his guilt beyond a reasonable doubt;
3. The right of assistance of counsel at trial and in any subsequent appeal;
4. The right to see, hear and cross-examine witnesses;
5. The right to call witnesses to testify in his own behalf and to the issuance of subpoenas or compulsory process to compel the attendance of witnesses;
6. The right to decline to testify unless he voluntarily elects to do so in his own defense;
7. The right to a unanimous guilty verdict; and
8. The right to appeal a guilty verdict.

The defendant also testified that he understood that if he is adjudged guilty of these charges, he may be deprived of valuable civil rights, such as the right to vote, the right to hold public office, the right to serve on a jury, and the right to possess a firearm.

The defendant stated that he was fully satisfied with the advice and representation given to him in this case by his counsel. The defendant also stated that he believed his counsel's representation had been effective. The defendant testified that he understood the possible consequences of his plea. The defendant asked the court to accept his plea of guilty to Count One of the Indictment.

THE GOVERNMENT'S EVIDENCE

The defendant waived his right to have the government's Factual Summary read in open court and had no objection to the Summary. The Factual Summary having been filed in open court, the evidence presented therein regarding the offense charged is as follows:

On July 20, 2001, the defendant pled guilty in the WDNY to a one-count information charging him with possession of child pornography, in violation of 18 U.S.C. § 2252(a)(4)(B). On October 5, 2001, the defendant was sentenced to the then statutory maximum prison term of 60 months and three years of supervised release.

Based on his federal child pornography conviction, the defendant became an individual required to register as a sex offender under the Sex Offender Registration and Notification Act (SORNA),[1] and was so required to register at all times relevant to the Indictment. Under SORNA, 42 U.S.C. § 16913(a), the defendant, as a sex offender, was required to register, and keep the registration current, in each jurisdiction where he resided, where he was an employee, and where he was a student. Under 42 U.S.C. § 16913(c), the defendant was required, not later than three business days after each change of name, residence, employment, or student status, to appear in person in at least one jurisdiction involved and inform that jurisdiction of all changes in the information required in the sex offender registry.

While the defendant had registered as a sex offender prior to the crime charged, his last submission before he committed the present offense was a change of address form submitted in New York in August 2009. When law enforcement officers in New York attempted to verify his address in

[1] A "sex offender" is an individual convicted of a "sex offense." 42 U.S.C. § 16911(1). The defendant's child pornography conviction qualifies as a "sex offense" under 42 U.S.C. §§ 16911(5)(A)(ii) and 16911(5))(A)(iii). Possession of child pornography constitutes a "specified offense against a minor" under 42 U.S.C. § 16911(7)(G).

May 2010, they were unable to locate him.

The defendant was located in Stuarts Draft, Virginia, on June 25, 2010. He was Mirandized and interviewed that day. The defendant told Virginia State Trooper Melody Parsons that he took a bus from New York to Tennessee and stayed in different places in Tennessee for two to three weeks. He then took a bus to Charlottesville, Virginia, and then a train to Staunton. He said he stayed at the Valley Mission in Staunton for two weeks and then rented a house in Stuarts Draft, Virginia with a female friend. He said he signed a lease about a month prior and also provided information about where he claimed to have been working. The defendant claimed he intended to register but did not have transportation.[2] He additionally claimed that he went to the old Augusta County Sheriff's Office to register, but couldn't register because the Sheriff's Office was no longer there. Trooper Parsons arrested the defendant on June 25, 2010 for failing to register as a sex offender in Virginia.

The case manager at the Mission provided information that Carlson arrived on April 14, 2010, and left on May 10 and stated that the defendant left with a particular woman (whom she identified). DUSM Doss interviewed the woman who stated that she and her daughter moved with the defendant to the Stuarts Draft house. The woman stated that she would have given the defendant a ride to the police department if he had so requested.[3] She did not know that the defendant was a sex offender.

A Valley Mission form, dated April 14, 2010, and signed by the defendant, set forth information that the defendant's date and place of last permanent address was on March 12, 2010, at a Tennessee address. The defendant checked the "No" box for the question on the registration form that asked if he was a registered sex offender.

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[2] The day he was found, he also said he wanted to register.

[3] A sex offender can generally appear at any police department in Virginia to register.

DUSM Doss also interviewed the owner of the Stuarts Draft house, who provided information confirming the above-referenced information including information regarding the defendant's lease. Finally, DUSM Doss interviewed the defendant's employer in May and June and he corroborated information regarding the defendant's presence in Virginia.

The defendant did not register as a sex offender or update a registration in Tennessee or Virginia prior to June 25, 2010. Because he has a prior qualifying Federal sex offense and he traveled in interstate commerce and failed to update his registration as required, the defendant has violated both prongs of 18 U.S.C. § 2250(a).

FINDINGS OF FACT

Based on the evidence presented at the plea hearing, the undersigned now submits the following formal findings of fact, conclusions and recommendations:

1. The defendant is fully competent and capable of entering an informed plea;
2. The defendant is aware of the nature of the charges and the consequences of his plea;
3. The defendant knowingly and voluntarily entered a plea of guilty to Count One of the Indictment; and
4. The evidence presents an independent basis in fact containing each of the essential elements of the offense to which the defendant is pleading guilty.

RECOMMENDED DISPOSITION

Based upon the above findings of fact, the undersigned RECOMMENDS that the court accept the defendant's plea of guilty to Count One. The undersigned further DIRECTS that a presentence

report be prepared. A sentencing hearing hereby is scheduled for January 4, 2011 at 11:00 a.m. before the presiding District Judge in Harrisonburg.

NOTICE TO PARTIES

Notice is hereby given to the parties of the provisions of 28 U.S.C. § 636(b)(1)(C): Within fourteen days after being served with a copy of this Report and Recommendation, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. The presiding District Judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made. The presiding District Judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the undersigned. The judge may also receive further evidence or recommit the matter to the undersigned with instructions.

Failure to file timely written objections to these proposed findings and recommendations within 14 days could waive appellate review. At the conclusion of the 14-day period, the Clerk is directed to transmit the record in this matter to the presiding United States District Judge.

The Clerk is hereby directed to send certified copies of this Report and Recommendation to all counsel of record.

ENTERED: _____
United States Magistrate Judge

_____
Date