



United States District Court  
District of Connecticut  
FILED AT BRIDGEMOORE

U.S. Department of Justice

United States Attorney  
District of Connecticut

September 27 2007  
John E. Borra, Clerk

*Philip D. Russell*  
Defendant

Connecticut Financial Center  
157 Church Street  
New Haven, Connecticut 06510

(203) 821-3700  
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September 27, 2007

Robert M. Casale, Esq.  
250 West Main Street  
Branford, Connecticut 06405

Thomas Williams, Esq.  
399 East Putnam Ave.  
Cos Cob, Connecticut 06807

Re: United States v. Philip D. Russell  
Criminal No. 3:07CR31(AHN)

Dear Messrs. Casale and Williams:

This letter confirms the plea agreement entered into between your client, Philip D. Russell (the "defendant"), and the United States Attorney's Office for the District of Connecticut (the "Government") concerning the referenced criminal case.

#### The Plea and Offense

Philip Russell agrees to waive his right to be indicted and to plead guilty to a single count substitute information charging him with misprision of a felony, in violation of 18 U.S.C. § 4. He understands that to be guilty of this offense the following essential elements of the offense must be satisfied:

1. The felony offense of possession of child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B) alleged in the Information was committed by someone other than the defendant;
2. The defendant had knowledge of the commission of the felony offense;
3. The defendant failed to notify a judge or relevant federal authorities about the commission of the offense; and
4. The defendant deliberately took some affirmative step to conceal the crime as described in the Information.

#### The Penalties

This offense carries a maximum penalty of three years' imprisonment and a \$250,000 fine. In addition, under 18 U.S.C. § 3583, the Court may impose a term of supervised release of not more than

one year to begin at the expiration of any term of imprisonment imposed. The defendant understands that, should he violate any condition of the supervised release during its term, he may be required to serve a further term of imprisonment of up to one year in prison with no credit for the time already spent on supervised release.

The defendant also is subject to the alternative fine provision of 18 U.S.C. § 3571. Under this section, the maximum fine that may be imposed on the defendant is the greatest of the following amounts: (1) twice the gross gain to the defendant resulting from the offense; (2) twice the gross loss resulting from the offense; or (3) \$250,000.

In addition, the defendant is obligated by 18 U.S.C. § 3013 to pay a special assessment of \$100 on each count of conviction. The defendant agrees to pay the special assessment to the Clerk of the Court on the day the guilty plea is accepted.

Finally, unless otherwise ordered, should the Court impose a fine of more than \$2,500 as part of the sentence, interest will be charged on the unpaid balance of a fine amount not paid within 15 days after the judgment date. 18 U.S.C. § 3612(f). Other penalties and fines may be assessed on the unpaid balance of a fine pursuant to 18 U.S.C. §§ 3572 (h), (i) and 3612(g).

### Restitution

In addition to the other penalties provided by law, the Court must also order that the defendant make restitution under 18 U.S.C. § 3663A. The scope and effect of the order of restitution are set forth in the attached Rider Concerning Restitution. Restitution is payable immediately unless ordered otherwise by the Court.

### Sentencing Guidelines

#### 1. Applicability

The defendant understands that, although application of the United States Sentencing Guidelines is not mandatory, they are advisory and the Court is required to consider any applicable Sentencing Guidelines as well as other factors enumerated in 18 U.S.C. § 3553(a) to tailor an appropriate sentence in this case. *See United States v. Booker*, 543 U.S. 220 (2005). The defendant expressly understands that the Sentencing Guideline determinations will be made by the Court, by a preponderance of the evidence, based upon input from the defendant, the Government, and the United States Probation Officer who prepares the presentence investigation report. The defendant further understands that he has no right to withdraw his guilty plea if his sentence or the Guideline application is other than he anticipated.

## 2. Acceptance of Responsibility

At this time, the Government agrees to recommend that the Court reduce by two levels the defendant's adjusted offense level under section 3E1.1(a) of the Sentencing Guidelines, based on the defendant's prompt recognition and affirmative acceptance of personal responsibility for the offense. This recommendation is conditioned upon the defendant's full, complete, and truthful disclosure to the Probation Office of information requested, of the circumstances surrounding his commission of the offense, and of his criminal history. This recommendation is further conditioned upon the defendant's submission to the Probation Office, prior to the date of sentencing, of a complete and truthful financial statement setting forth all assets, including but not limited to, cash deposits, securities, real estate, and other property owned by or held on behalf of the defendant in the defendant's own or any other name. The defendant expressly understands that the Court is not obligated to accept the Government's recommendation on the reduction.

The Government will not make this recommendation if the defendant engages in any acts which (1) indicate that the defendant has not terminated or withdrawn from criminal conduct or associations (U.S.S.G. § 3E1.1); (2) could provide a basis for an adjustment for obstructing or impeding the administration of justice (U.S.S.G. § 3C1.1); or (3) constitute a violation of any condition of release. Moreover, the Government will not make this recommendation if the defendant seeks to withdraw his plea of guilty. The defendant expressly understands that he may not withdraw his plea of guilty if, for the reasons explained above, the Government does not make this recommendation.

## 3. Factual Stipulation

Pursuant to section 6B1.4 of the Sentencing Guidelines, the defendant and the Government have entered into a stipulation which is attached to and made a part of this plea agreement. The defendant understands that this stipulation does not purport to set forth all of the relevant conduct and characteristics that may be considered by the Court for purposes of sentencing. The defendant expressly understands that this stipulation is not binding on the Court. The defendant also understands that the Government and the United States Probation Office are obligated to advise the Court of any additional relevant facts that subsequently come to their attention.

## 4. Guideline Calculation

The Government calculates the defendant's applicable Sentencing Guidelines as follows: The base offense level under U.S.S.G. § 2X4.1 is 11, which is 9 levels lower than the offense level total of 20 for the underlying offense of possession of child pornography (U.S.S.G. § 2G2.2(a)(1) - level 18) and a 2-level specific offense characteristic adjustment because the offense involved the use of a computer (U.S.S.G. § 2G2.2(b)(6)). Two levels are added under U.S.S.G. § 3B1.3 because the defendant used a position of trust in a manner that significantly facilitated the commission or concealment of the offense. Two levels are subtracted under U.S.S.G. § 3E1.1 for acceptance of responsibility, as noted above, resulting in a total offense level of 11.

Based on representation of the defendant and other information available to the Government at this time, the defendant's criminal history category is I. The Government reserves the right to recalculate the defendant's criminal history should it be inaccurate. At an offense level total 11 and criminal history category I, the defendant's Guideline range is 8 to 14 months' imprisonment (sentencing table) and fine range of \$2,000 to \$20,000 (U.S.S.G. § 5E1.2(c)(3)).

The Government agrees that it will not seek any adjustment not set forth herein or an upward departure from the sentencing range set forth above. The Government will present to the Court facts surrounding the commission of the offense and will leave to the Court's discretion the appropriate sentence to impose in this case. The defendant reserves his opportunity to seek a downward departure from the applicable Guidelines or seek a non-Guideline sentence.

The defendant expressly understands that the Court is not bound by the Guideline and fine ranges specified above. He also understands that the parties' calculations regarding his criminal history category are subject to final determination by the Court. The defendant further expressly understands that he will not be permitted to withdraw the guilty plea if the Court imposes a sentence outside of the Guideline and fines range set forth above or if the Court calculates his criminal history category to be a different level.

In the event the Probation Office or the Court contemplates any sentencing calculations different from those stipulated by the parties, the parties reserve the right to respond to any inquiries and make appropriate legal arguments regarding the proposed alternate calculations. Moreover, the Government expressly reserves the right to challenge or defend any sentencing determination in any post-sentencing proceeding.

5. Waiver of Right to Appeal  
or Collaterally Attack Sentence

The defendant acknowledges that under certain circumstances he is entitled to appeal his conviction and sentence. 18 U.S.C. § 3742. It is specifically agreed that the defendant will not appeal or collaterally attack in any proceeding, including but not limited to a motion under 28 U.S.C. §§ 2255 and/or 2241, the conviction or sentence of imprisonment imposed by the Court if that sentence does not exceed 14 months' imprisonment, a one-year period of supervision, and a \$20,000 fine, even if the Court reaches a sentencing range permitting such a sentence by a Guideline analysis different from that specified above. The defendant expressly acknowledges that he is waiving his appellate rights knowingly and intelligently. Similarly, the Government will not appeal a sentence imposed within or above its calculated Guideline ranges.

6. Information to the Court

It is expressly understood that the Government will discuss the facts of this case, including information regarding the defendant's background and character, 18 U.S.C. § 3661, with the United

States Probation Office and will provide the Probation Officer with access to its file, with the exception of grand jury material.

### Waiver of Rights

#### 1. Waiver of Right to Indictment

The defendant understands that he has the right to have the facts of the offense presented to a federal grand jury, consisting of between sixteen and twenty-three citizens, twelve of whom would have to find probable cause to believe that he committed the offenses set forth in the information before an indictment could be returned. The defendant expressly acknowledges that he is knowingly and intelligently waiving his right to be indicted on the offense.

#### 2. Waiver of Trial Rights and Consequences of Guilty Plea

The defendant understands that he has the right to be represented by an attorney at every stage of the proceeding and, if necessary, one will be appointed to represent him.

The defendant understands that he has the right to plead not guilty or to persist in that plea if it has already been made, the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against him, the right not to be compelled to incriminate himself, and the right to compulsory process for the attendance of witnesses to testify in his defense. The defendant understands that by pleading guilty he waives and gives up those rights and that, if the plea of guilty is accepted by the Court, there will not be a further trial of any kind.

The defendant understands that, if he pleads guilty, the Court may ask him questions about the offense to which he pleads guilty, and, if he answers those questions falsely under oath, on the record, and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or making false statements.

#### 3. Waiver of Statute of Limitations

The defendant understands and agrees that should the conviction following the defendant's plea of guilty pursuant to this plea agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this plea agreement (including any indictment or counts the Government has agreed to dismiss at sentencing pursuant to this plea agreement) may be commenced or reinstated against the defendant, notwithstanding the expiration of the statute of limitations between the signing of this plea agreement and the commencement or reinstatement of such prosecution. The defendant agrees to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date the plea agreement is signed.

#### 4. Waiver of Right To Post-Conviction DNA Testing of Physical Evidence

The defendant understands that the Government has various items of physical evidence in its possession in connection with this case that could be subjected to DNA testing. The defendant further understands that, following conviction in this case, he could file a motion with the Court to require DNA testing of physical evidence pursuant to 18 U.S.C. § 3600 and § 3600A in an attempt to prove his innocence. The defendant fully understands his right to have all the physical evidence in this case tested for DNA, has discussed this right with his counsel, and knowingly and voluntarily waives his right to have such DNA testing performed on the physical evidence in this case. The defendant fully understands that, because he is waiving this right, the physical evidence in this case will likely be destroyed or will otherwise be unavailable for DNA testing in the future.

#### Acknowledgment of Guilt and Voluntariness of Plea

The defendant acknowledges that he is entering into this agreement and is pleading guilty freely and voluntarily because he is guilty. The defendant further acknowledges that he is entering into this agreement without reliance upon any discussions between the Government and him (other than those described in the plea agreement letter), without promise of benefit of any kind (other than the concessions contained in the plea agreement letter), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges his understanding of the nature of the offense to which he is pleading guilty, including the penalties provided by law. The defendant also acknowledges his complete satisfaction with the representation and advice received from his undersigned attorney. The defendant and his undersigned counsel are unaware of any conflict of interest concerning counsel's representation of the defendant in this case.

#### Not a Prevailing Party

The defendant expressly acknowledges that he is not a "prevailing party" within the meaning of Public Law 105-119, section 617 ("the Hyde Amendment") with respect to the counts of conviction or any other count or charge that may be dismissed pursuant to this agreement. The defendant voluntarily, knowingly, and intelligently waives any rights he may have to seek reasonable attorney's fees and other litigation expenses under the Hyde Amendment.

#### Scope of Agreement

The defendant acknowledges and understands that this agreement is limited to the undersigned parties and cannot bind any other federal authority, or any state or local authority. The defendant acknowledges that no representations have been made to him with respect to any civil or administrative consequences that may result from the plea of guilty because such matters are solely within the province and discretion of the specific administrative or governmental entity involved. Finally, the defendant understands and acknowledges that this agreement has been reached without regard to any civil tax matters that may be pending or which may arise involving him.

Collateral Consequences

The defendant further understands that he will be adjudicated guilty of the offense to which he has pleaded guilty and may thereby be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to possess firearms. In addition, the defendant, as a practicing attorney, understands that there may be some consequences to him in the Courts and the state licensing entities where he is admitted to practice law. The defendant understands that pursuant to section 203(b) of the Justice For All Act, the Bureau of Prisons or the Probation Office will collect a DNA sample from the defendant for analysis and indexing. The defendant understands that the Government reserves the right to notify any state or federal agency by whom he is licensed, or with whom he does business, as well as his current or future employer of the fact of his conviction.

Satisfaction of Federal Criminal Liability

The defendant's guilty plea, if accepted by the Court, will satisfy any federal criminal liability of the defendant in the District of Connecticut as a result of his destroying a computer on or about October 9, 2006 that contained child pornography, which forms the basis of the substitute information and superseding indictment in this case. After sentencing, the Government will move to dismiss the two counts in the superseding indictment. He expressly understands and agrees that this agreement does not address any other federal criminal liability he may have in Connecticut or elsewhere.

Breach of Agreement

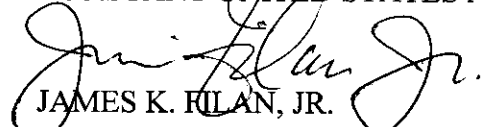
The defendant understands that if, before sentencing, he violates any term or condition of this agreement, engages in any criminal activity, or fails to appear for sentencing, the Government may deem all or part of this agreement null and void. Should the Government void this agreement, the defendant will not be permitted to withdraw his guilty plea.

This letter shall be presented to the Court, in open court, and filed in this case.


Very truly yours,

KEVIN J. O'CONNOR  
UNITED STATES ATTORNEY

  
PETER S. JONGBLOED  
ASSISTANT UNITED STATES ATTORNEY

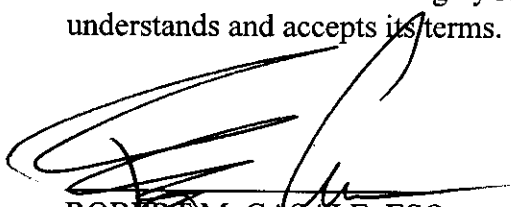
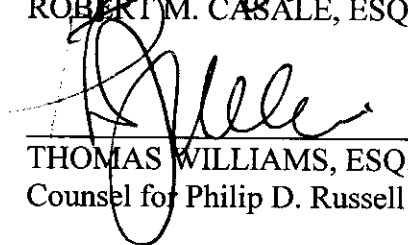
  
JAMES K. FILAN, JR.  
ASSISTANT UNITED STATES ATTORNEY

The defendant certifies that he has read this plea agreement letter (and any stipulations or attachments) or has had it read or translated to him, that he has had enough time to discuss it with his attorney, that his attorney has answered any questions he had about it, that it sets forth the entire agreement and understanding between him and the Government, and that he fully understands and accepts the terms thereof.

  
PHILIP D. RUSSELL  
The Defendant

9-27-2007  
Date

I have read or thoroughly reviewed the plea agreement letter to my client, who advises me that he understands and accepts its terms.

  
ROBERT M. CASALE, ESQ.  
  
THOMAS WILLIAMS, ESQ.  
Counsel for Philip D. Russell

9-27-07  
Date

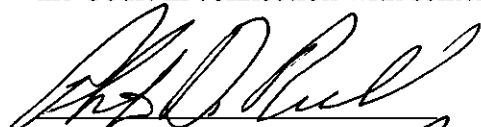
STIPULATION OF OFFENSE CONDUCT

The defendant, Philip D. Russell, and the Government stipulate and agree to the following offense conduct that gives rise to the defendant's agreement to plead guilty to the indictment/information:

1. The defendant is admitted to practice law in Connecticut, and practiced under the name "Philip Russell, L.L.C." at 66 Field Point Road, Greenwich, Connecticut. He specialized in criminal and civil litigation in state and federal courts.
2. Robert F. Tate, until October 9, 2006, had been the choirmaster and organist at a church in Greenwich, Connecticut (the "Church") for approximately 34 years.
3. For many years and up to and including on or about October 9, 2006, Tate knowingly possessed child pornography, as that term is defined in Title 18, United States Code, Section 2256(8)(A), in violation of Title 18, United States Code, Section 2252A(a)(5)(B), including photographs and images on his laptop computer that he had loaned to a church employee.
4. On or about October 7, 2006, a Church employee working in the choir program, who was using Tate's laptop computer on Church related work, discovered 300 or so images, including images of naked boys.
5. On or about October 8, 2006, Church officials sealed and wrapped Tate's laptop computer, treating it as evidence.
6. On or about October 9, 2006, Russell, as an attorney, represented the Church with respect to its employment of Tate given that Tate's laptop computer contained images of naked boys.
7. On or about October 9, 2006, Russell and two other Church officials met with Tate at the Church and confronted Tate about the images on his laptop computer. Tate acknowledged that the images on the laptop computer were his, that they were inappropriate, and that they were personal to him. Russell told Tate, words to the effect, that this is serious business, this is a federal crime that carries a minimum of five years in jail, and you need a lawyer. Russell then provided Tate with the name and telephone number of a criminal defense attorney. Tate said he would resign from the Church. Russell ultimately took possession of Tate's laptop computer.
8. On or about October 9, 2006, Russell, after learning that Tate's laptop computer contained child pornography, which is a felony offense in violation of Title 18, United States Code, Section 2252A(a)(5)(B), deliberately took an affirmative step to conceal the child pornography crime, in that he returned to his law office with Tate's laptop computer, took the laptop computer apart, and destroyed and concealed it.

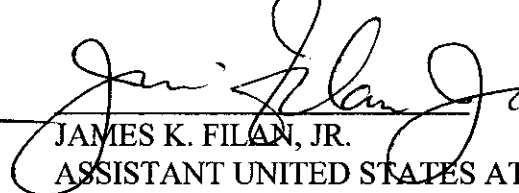
9. On or about October 9, 2006 and as soon as possible thereafter, Russell did not make known to a judge or other person in civil or military authority under the United States, such as the Federal Bureau of Investigation, Tate's commission of the child pornography crime.

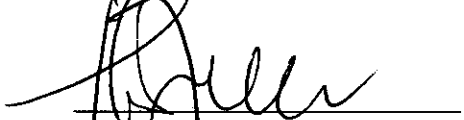
The written stipulation above is incorporated into the preceding plea agreement. It is understood, however, that the defendant and the Government reserve their right to present additional information to the Court in connection with sentencing.

  
\_\_\_\_\_  
PHILIP D. RUSSELL  
The Defendant

  
\_\_\_\_\_  
PETER S. JONGBLOED  
ASSISTANT UNITED STATES ATTORNEY

  
\_\_\_\_\_  
ROBERT M. CASALE, ESQ.

  
\_\_\_\_\_  
JAMES K. FILAN, JR.  
ASSISTANT UNITED STATES ATTORNEY

  
\_\_\_\_\_  
THOMAS WILLIAMS, ESQ.  
Counsel for Philip D. Russell

RIDER CONCERNING RESTITUTION

The Court shall order that the defendant make restitution under 18 U.S.C. §3663A.

1. If the offense resulted in damage to or loss or destruction of property of a victim of the offense, the order of restitution shall require the defendant to:

A. Return the property to the owner of the property or someone designated by the owner;  
or

B. If return of the property is impossible, impracticable, or inadequate, pay an amount equal to:

The greater of -

(I) the value of the property on the date of the damage, loss, or destruction; or

(II) the value of the property on the date of sentencing, less the value as of the date the property is returned.

2. In the case of an offense resulting in bodily injury to a victim --

A. Pay an amount equal to the costs of necessary medical and related professional services and devices related to physical, psychiatric, and psychological care; including non-medical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

B. Pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

C. Reimburse the victim for income lost by such victim as a result of such offense;

3. In the case of an offense resulting in bodily injury that results in the death of the victim, pay an amount equal to the cost of necessary funeral and related services; and

4. In any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense.

The order of restitution has the effect of a civil judgment against the defendant. In addition to the court-ordered restitution, the Court may order that the conditions of its order of restitution be made a

condition of probation or supervised release. Failure to make restitution as ordered may result in a revocation of probation, or a modification of the conditions of supervised release, or in the defendant being held in contempt under 18 U.S.C. § 3583(e). Failure to pay restitution may also result in the defendant's re-sentencing to any sentence which might originally have been imposed by the Court. See 18 U.S.C. § 3614. The Court may also order that the defendant give notice to any victim(s) of his offense under 18 U.S.C. § 3555.