

IN THE CIRCUIT COURT OF MISSISSIPPI COUNTY, ARKANSAS
CHICKASAWABA DISTRICT
CRIMINAL DIVISION

STATE OF ARKANSAS

PLAINTIFF

VS.

CASE NO. 47BCR-24-176

DAVID PAUL CROSS

DEFENDANT

SENTENCING MEMORANDUM IN SUPPORT OF UPWARD DEPARTURE

COMES NOW, the State of Arkansas, by and through Prosecuting Attorney Sonia F. Hagood, in support of her *Sentencing Memorandum in Support of Upward Departure* does state:

1. Defendant, David Paul Cross, is charged with over thirty (30) counts of *Distributing, Possessing or Viewing of Matter Depicting Sexually Explicit Conduct Involving a Child – First Offense* Ark. Code Ann. 5-27-602.
2. The Defendant proposes that he will plead guilty to nineteen (19) counts of the information on July 24, 2024. The Arkansas State Police investigated this case and found fifty-one (51) images/videos of child sexual assault material. However, there were nineteen (19) separate images/videos with the other thirty-two (32) images/videos being copies of the nineteen (19) images/videos that Defendant proposes to plead guilty to.

3. The Arkansas State Police has provided a written summary of the material the Defendant intends to plead guilty to. The State provides it to the Court in advance of the hearing as *State's Exhibit 1*.
4. A violation of Ark. Code Ann. 5-27-602 *Distributing, Possessing or Viewing of Matter Depicting Sexually Explicit Conduct Involving a Child – First Offense* is a Class C felony with a statutory punishment range of not less than 3 years and not more than 10 years on each count/violation of the statute. Despite the statutory punishment range, the Arkansas Sentencing Commission has classified this offense as an Offense Seriousness level of four (4). The Defendant has no known criminal history which places him in on Sentencing Grid as eligible for Community Corrections and/or Alternative Sanctions.
5. The Defendant's exposure at sentencing on this matter, should he plea to nineteen (19) counts of violating Ark. Code Ann. 5-27-602 *Distributing, Possessing or Viewing of Matter Depicting Sexually Explicit Conduct Involving a Child – First Offense* is 190 consecutive years in the Arkansas Department of Corrections.
6. The State argues, pursuant to Ark. Code Ann 16-90-804, *Departures from the Voluntary Presumptive Sentencing Range*, that Defendant must be given a significant departure from the Sentencing Grid for his egregious conduct in this case. A sentence of anything less than significant time in the Arkansas Department of Corrections would serve no purpose but to bolster individuals like the Defendant to continue the exploitation of children by watching their rapes on video.

7. Ark. Code Ann 16-90-804(d), *Departures from the Voluntary Presumptive Sentencing Range*, sets out a “nonexclusive” list of aggravating factors for the Court to consider when departing from the voluntary presumptive sentence range. Importantly, this Court must consider the Voluntary Presumptive Sentence, **but is not bound by it**. Therefore, this Court has authority to consider departure factors in order to appropriately sentence this Defendant outside the Voluntary Presumptive Sentence.
8. That State’s position at sentencing will be that the Voluntary Presumptive Sentence of Community Corrections or Alternative Sanctions results in a presumptive sentence is clearly too lenient in light of the purpose of sentencing on offender charged with this many counts of violating Ark. Code Ann. 5-27-602 *Distributing, Possessing or Viewing of Matter Depicting Sexually Explicit Conduct Involving a Child – First Offense*.
9. The State intends to present evidence to support an upward departure based on the following nonexclusive factors listed in Ark. Code Ann 16-90-804(d), *Departures from the Voluntary Presumptive Sentencing Range*.
 - a. “The offender’s conduct during the commission of the current offense manifested deliberate cruelty to the victim exhibited by degrading, gratuitous, vicious, torturous, and demeaning physical or verbal abuse, unusual pain, or violence in excess of that necessary to accomplish the criminal purpose.” Ark. Code Ann 16-90-804(d)(1).

- b. "The offender knew or reasonably should have known that the victim was particularly vulnerable or incapable of resistance due to extreme youth, advanced age, disability, or ill health." Ark. Code Ann. 16-90-804(d)(2).
- c. "The current offense was a sexual offense and was part of a pattern of criminal behavior with the same or different victims under eighteen (18) years of age manifested by multiple incidents over a prolonged period of time." Ark. Code Ann. 16-90-804(d)(6).
- d. "The inclusion of multiple offenses in calculating the voluntary presumptive sentence range under Ark. Code Ann. 16-90-803 results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter." Ark. Code Ann 16-90-804(d)(7).
- e. "The current offense was a violent or sexual offense committed in the victim's zone of privacy, including without limitation the victim's home or the curtilage of the victim's home." Ark. Code Ann 16-90-804(d)(9).
- f. "Any other compelling reason." Ark. Code Ann 16-90-804(d)(13). The State will present evidence of other compelling reasons to depart upward at the sentencing hearing on this matter.

SONIA F. HAGOOD,
PROSECUTING ATTORNEY



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CERTIFICATE OF SERVICE

I, Sonia F. Hagood, Prosecuting Attorney, does hereby certify that I have provided a copy of the foregoing pleading to the opposing Counsel, by electronic filing this 23rd day of July, 2024.

A handwritten signature in black ink, appearing to be 'S. Hagood', written over a horizontal line.

Prosecuting Attorney