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8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF MARICOPA**

11 THE STATE OF ARIZONA,
12 *Plaintiff,*

13 v.

14 CHRISTOPHER RICHARD
15 BREILAND,
16 *Defendant.*

No. CR 2007-006276-001 DT [X]
No. CR 2007-007382-003 DT []
No. CR 2007-008392-001 DT []

STATE'S SENTENCING MEMORANDUM

Assigned to the Hon. Warren J. Granville
Calendar CRJ-18

17 The State of Arizona respectfully recommends the following sentences:

- 18 • CR 2007-006276-001 DT – Count 11: Mitigated term of 10 years in the
- 19 Arizona Department of Corrections.
- 20 • CR 2007-007382-003 DT – Count 6: Five years supervised probation to
- 21 begin upon Defendant's outright release from the Arizona Department
- 22 of Corrections.
- 23 • CR 2007-008392-001 DT – Count 1: Presumptive term of 17 years in
- 24 the Arizona Department of Corrections, consecutive to Count 11 of CR
- 25 2007-006276-001 DT.
- 26 • CR 2007-008392-001 DT – Count 2: Lifetime probation to begin upon
- Defendant's outright release from the Arizona Department of
- Corrections.

1 **I. Background**

2 These cases were investigated by the United States Postal Inspection
3 Service, which initially received a complaint that an individual – later identified
4 as the Defendant – used a stolen identity to open a mailbox at a private mailbox
5 business in Scottsdale. That initial complaint eventually led to the arrests of four
6 individuals and the charges in the three captioned cases. It should be noted that it
7 was the Defendant's flight from Inspectors investigating these crimes which led to
8 the car collision which spawned CR 2006-012794-001 DT.

9 The facts of each matter are as follows.

10 **A. CR 2007-006276-001 DT**

11 Victim James Meyer filed an identity theft complaint after he received
12 notices of debts totaling approximately \$50,000.00 in his name. Investigation
13 showed that the Arizona Motor Vehicle Division had mailed a duplicate of Meyer's
14 driver's license to a Scottsdale private mail service in late January, 2006 (near the
15 beginning of the period when Meyer's identity was taken). The Scottsdale
16 maildrop had been opened with fake drivers' licenses bearing the photographs of a
17 man and woman, later determined to be the Defendant and Co-Defendant Marie
18 Siegel.

19 Investigation of the use of Meyer's identity showed funds being distributed
20 to accounts opened in other identities. Most were from the Phoenix area, but one
21 was Deborah Bertleson of Pecos, Texas. Bertleson works at a prison there which
22 holds Arizona inmates. When interviewed, she recalled an inmate from Scottsdale
23 named Christopher Breiland. Inspectors pulled the photograph of the Defendant
24 from MVD, and matched the photograph on it to the photograph on the fake Meyer
25 driver's license used to open the Scottsdale maildrop.

1 The Defendant was (at the time) escaped from the Arizona Department of
2 Corrections, so his whereabouts were unknown. Inspectors located a home in
3 Scottsdale owned by his parents, and conducted surveillance. They observed the
4 Defendant leaving the home in a bronze Nissan Altima. Inspectors attempted to
5 follow the vehicle, but lost it in traffic.

6 Inspectors then spent twelve days going to various apartment complexes in
7 the area where the vehicle was last seen, attempting to locate the Defendant. A
8 property manager at the Villa Encanto Apartment Complex immediately identified
9 the Defendant as an associate of Siegel, one of their tenants. She believed that the
10 Defendant was staying with Siegel, even though he was not on the lease.
11 Inspectors obtained a photograph of Siegel from MVD, and matched her to the
12 female photograph from the Scottsdale maildrop. Inspectors also observed the
13 bronze Altima parked in the space reserved for Siegel's apartment. The Altima
14 bore a stolen license plate, but a check of the VIN showed that the vehicle belonged
15 to Siegel.

16 Inspectors obtained a search warrant for Siegel's apartment and executed it
17 on April 19, 2006. Inside they found computers, an identification printing machine
18 (used to make plastic drivers' licenses), notes of account numbers and personal
19 identifying information, and numerous checks, credit cards and documents bearing
20 the names of the other victims in the case. Siegel and the Defendant were arrested
21 inside.

22 The Defendant waived his *Miranda* rights and denied everything: he denied
23 Siegel was his girlfriend, denied knowledge of false documents, denied using the
24 computers in the apartment. When he was asked if inspectors would find
25 identification documents with his photo, he responded, "You'll know soon enough."
26

1 He specifically denied using James Meyer's identity. When shown surveillance
2 photographs clearly depicting him using the information during transactions at
3 stores and banks, he acknowledged that the pictures looked like him. He denied
4 using Deborah Bertleson's identity – when confronted with her direct contact with
5 him while in Texas, he responded, "I can't explain that."

6 Siegel waived her rights, and told inspectors that the Defendant was her
7 boyfriend and that he had been living with her for six months. She was aware
8 that he had absconded from DOC, and said she had harbored him because, "When
9 you care about someone, you try to be supportive." She admitted knowing that the
10 computers had been used to make identifications, and admitted that she had
11 permitted the Defendant to make an identification document with her picture.
12 She admitted using fake identification to open the Scottsdale maildrop. She
13 admitted opening Cingular accounts using Bertleson's information, and said that
14 the Defendant had told her that Bertleson was a friend. She said that the
15 Defendant and she had discussed so many stolen identities that she could not
16 readily recall discussing any other single identity with him. She admitted she
17 had been with the Defendant on two occasions when he had stolen mail, and that
18 this was his likely his method for gathering information. She admitted using false
19 identification to purchase the computers at Best Buy.

20 Inspectors located a printed page in the computer room that was a depiction
21 of young females (under 13 years old) engaged in sexually exploitative activities.
22 Analysis later showed the Defendant's fingerprint on this document. Inspectors
23 also found a handwritten list of websites that purport to show child pornography.
24 Analysis of the computers showed hundreds of deleted thumbnails of child
25 pornography, but very few stored images. Inspectors believe that the Defendants
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1 were deleting the pictures from the computer, and the discovered images were
2 remnants left behind in the deletion process. Given that the computers were
3 purchased new by the Defendants and stored in their apartment, it is unlikely that
4 anyone else put the depictions there. No Trojan horse programs or viruses were
5 found. Other files found on the computers indicate that they were used by the
6 Defendant.

7 Siegel admitted writing the names of two of the websites on the list, and was
8 able to point out the two lines which were in her handwriting. She admitted she
9 knew there was child pornography on the computers. Siegel explained that the
10 child pornography would just “pop up” on the screen, and she and the Defendant
11 would simply write down the address of the site so they could report it to police.
12 Siegel said they had no idea where the pop ups were coming from. Inspectors
13 familiar with the distribution of child pornography have never encountered pop-up
14 advertisements featuring child pornography, and state that it is highly unlikely
15 child pornography websites would advertise in such a manner given the nature of
16 child pornography.

17 Siegel then volunteered that two houseguests had used the computer – Wes
18 Clancy and Michael Demes, who knew the Defendant from his time in the
19 Department of Corrections. She indicated that both were into child pornography,
20 and that they might be responsible for the depictions. Handwriting analysis
21 showed that Clancy did not write on the list of sites, and Demes was apparently in
22 MCSO custody during the relevant period of time. When interviewed, Clancy
23 stated that Siegel was on the computer all the time, and that Clancy had observed
24 the Defendant frequently backing up files to disks and wiping the memory of the
25 computer. He denied any knowledge of child pornography on the computer.

1 The Defendant was returned to the Department of Corrections while the
2 Inspectors completed their investigation. The Defendant later sent the Inspectors
3 a letter, asking to be re-interviewed. At the start of the interview, the Defendant
4 offered to cooperate if the case was submitted to the US Attorney's Office (likely
5 due to the more lenient Federal penalties for child pornography). When told that
6 the case would be submitted to the State, he said he would exhaust as much of the
7 taxpayers money as possible by vigorously defending each count against him. He
8 attempted to exonerate Siegel of the identity theft charges, claiming that she had
9 been an unwitting participant in his scheme. When the conversation turned to the
10 child pornography, the Defendant ceased cooperating. He later provided
11 handwriting samples pursuant to a Court order, but analysis of his handwriting
12 was inconclusive, likely due to attempts by the Defendant to mask his true
13 handwriting on the court-ordered exemplar form.

14 Co-Defendant Siegel entered a guilty plea to a sex offense in connection with
15 her joint possession of the child pornography and the handwritten list of child
16 pornography websites. She also entered a guilty plea to Attempted Forgery
17 related to her identity theft activities. She was sentenced to 1.5 years in the
18 Arizona Department of Corrections for the Attempted Forgery, and 15 years
19 probation for the sex offense. She will have to register as a sex offender for the
20 rest of her life.

21 B. CR 2007-007382-003 DT

22 After the previous investigation was concluded, the Defendant was indicted
23 and a warrant was issued for his arrest. The Defendant had absconded from bond
24 in Pinal County, and his whereabouts were unknown at that time.

25 Inspectors found that he had applied to rent an apartment under the name
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1 Christopher Brown. Brown is an inmate in DOC until August 19, 2017, and was
2 in custody during the time that the apartment was rented. Inspectors found a
3 photo identification document presented by “Brown” that showed the Defendant’s
4 photo. They also found that the Defendant had opened a mailbox, had opened two
5 Wells Fargo bank accounts, obtained a valid Arizona driver’s license (on two
6 occasions), purchased a vehicle and purchased insurance – all in Brown’s name.

7 The vehicle, a 2003 Nissan Altima,¹ was purchased from Pinnacle Nissan
8 and financed through Fireside Thrift. After Inspectors contacted the dealer, the
9 dealer contacted the Defendant to request he come in for service on the vehicle.
10 On May 2, 2007, the Defendant appeared and was taken into custody along with a
11 passenger, co-Defendant Larue Smith. In the vehicle, agents found a number of
12 pieces of stolen mail, several Arizona driver’s licenses with Brown’s information,
13 profiles of victims and eleven grams of methamphetamine packaged for sale.

14 Victim Raquel Miller had previously contacted USPIS to report mail theft
15 and losses totaling \$5,794.00 on a Macy’s card. Surveillance showed a woman
16 matching Smith’s description standing with the Defendant at the counter during
17 one of the five transactions. When questioned, Smith initially denied ever
18 shopping with the Defendant, but when confronted stated that the Defendant
19 informed her that victim Miller was his mother and that Smith was purchasing a
20 present for her. Smith claimed that the Defendant provided all of the information
21 used during the transaction, as he can be seen on the tape talking to the clerk.
22 This is disputed by the counter clerk, who states that Smith recited all the
23 information from memory, and produced an Arizona driver’s license with the
24 victim’s information and Smith’s picture. The clerk stated that the Defendant only
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26 ¹ This is a different vehicle than the Altima used by the Defendant in the CR 2007-006276-001 DT matter.

1 talked to the clerk in an attempt to distract her while Smith was talking to the
2 Macy's credit department on the phone. The bogus Arizona driver's license with
3 Miller's information and Smith's photograph was found in the Altima at the time
4 of Smith's arrest, but she denied any knowledge of it. Also, Smith was wearing the
5 watch purchased in the transaction at the time of her arrest, despite her claims
6 that the watch was for the Defendant's mother.

7 Smith expressed concern about the Defendant's involvement in other
8 criminal activity, and gave officers consent to search her apartment where she said
9 the Defendant had stored a number of things. Items found in the apartment
10 include a computer, a photo identification printer and the box for the watch worn
11 by Smith.

12 The Defendant was interviewed and confessed that he stole Victim Brown's
13 information from DOC and public records. He claimed to have been victim Miller's
14 accountant, a claim debunked in a follow-up interview with Miller. The Defendant
15 claimed that the drugs found in the car did not belong to Smith, but denied
16 possessing them himself. He blamed his troubles on the drugs, and claimed he
17 was cursed. He denied stealing any cars, but admitted using Brown's info to
18 purchase the car. The Defendant was shown and recognized a counterfeit check
19 deposited in an account opened in victim Miller's name. He denied knowledge that
20 a (second) watch purchased by Smith with victim Miller's info was on his wrist at
21 the time of his arrest.

22 The Defendant also denied any knowledge of a second handwritten list of
23 child pornography websites found in his possession (similar to the list found in his
24 possession on April 19, 2006 and referenced in the facts of the previous case). A
25 laptop in his possession was unable to be immediately analyzed due to encryption
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1 (see CR 2007-008392-001 DT below).

2 Agents contacted a number of individuals whose email was found in the
3 Altima. Victim Deborah Broerman reported a \$13,125.00 charge on her VISA
4 card. Records show this was done through a credit card 'access check' deposited
5 into a Desert Schools Federal Credit Union account opened in the Defendant's
6 name. No surveillance was maintained of the deposit, however over the following
7 10 days, surveillance showed the Defendant systematically withdrawing all of the
8 deposited funds.

9 After the search of Smith's apartment, co-Defendant Heather Maestas called
10 inspectors to inquire about property taken from Smith's apartment. Inspectors
11 questioned her and learned that she had also deposited a check drawn on Victim
12 Miller's account. This check was given to her by the Defendant, who had already
13 forged Maestas' signature on it. Despite her knowledge that the Defendant was
14 involved in fraud and counterfeiting of checks, she admitted cashing the check for
15 him and gave him approximately \$13,000.00 in proceeds, keeping \$95.00 herself to
16 cover outstanding fees she owed her bank.

17 Inspectors submitted this case for prosecution with a lab report containing
18 analysis of drugs seized during the arrest of the Defendant in the previous case on
19 April 19, 2006. These drugs – methamphetamines – were possessed in an amount
20 below the threshold. The methamphetamine found in the Altima during the May
21 2, 2007 arrest was in six separate baggies, which combined weighed 10 ounces.

22 Co-Defendant Maestas entered a guilty plea to the reduced charge of
23 Attempted Theft, a class 6 Open offense. She was sentenced to three years of
24 probation.

25 Co-Defendant Smith is scheduled to be sentenced on May 27, 2009 before
26

1 Judge Brnovich.

2 C. CR 2007-008392-001 DT

3 At the time of the Defendant's arrest on May 2, 2007, agents found a laptop
4 computer in the Defendant's possession. Upon examination, agents discovered
5 that the computer's hard drive was encrypted. Using software, agents broke the
6 encryption and gained access to the hard drive. On it, agents found several
7 depictions of child sexual exploitation:

- 8 1) one picture of victims aged 7 and 9 from a Washington state case
- 9 2) one video (technology to morph child pornography videos does not exist
10 at this time) of a victim under age 15
- 11 3) one video of a female victim under the age of 14
- 12 4) one picture of a victim age 6 from a German case
- 13 5-7) three pictures of victim from Belgium who was age 9 and 10 when the
14 photographs were taken
- 15 8) one photo of a victim from Austria who was age 8 and 9 when the
16 photographs were taken

17 Also in the Defendant's possession at the time of his arrest was a second
18 handwritten list of child pornography websites. Handwriting on this list is similar
19 to that found on the first list, taken during the search of the Defendant's residence
20 on April 19, 2006. The possession of two separate lists at two separate times
21 shows that each individual list was intentionally created and possessed by the
22 Defendant.

23 II. Rebuttal of Defense Arguments for Mitigation

24 The State observes that the Defendant has filed a Sentencing Memorandum
25 dated May 5, 2009, which makes several arguments in support of mitigated
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1 sentences.

2 A. Age

3 First, it argued that the Defendant has reached an age where he is unlikely
4 to commit additional criminal activity. On the contrary, the Defendant has now
5 progressed from petty theft in his teenage years, to complex identity fraud and
6 sexual offenses. The Defendant's age would be mitigating if he were extremely
7 young, or if he was old and frail. This Defendant is in the prime of his life, and
8 will likely survive to see the end of his sentence. The Defendant has shown that –
9 with age – he progresses to greater criminal offenses. His age is not a mitigating
10 factor.

11 The Defendant argues that his substance abuse issues and mental health
12 issues are under control. The State sees no evidence that the Defendant's
13 substance abuse issues are under control. The Defendant, while escaped from
14 DOC, used methamphetamine and was under the influence of it when he was in
15 the car accident which resulted in the Maricopa County Attorney's case (CR 2006-
16 012794-001 DT). After subsequently absconding from Pinal County, the
17 Defendant went on another meth-fueled crime bender. Any value that the
18 Defendant's sobriety may have while he is in custody is vastly outweighed by his
19 past record on the outside.

20 B. Mental Health

21 The Defendant's memorandum argues that the Defendant possesses mental
22 health issues which diminished his capacity to understand the wrongfulness of his
23 actions. The State doubts the diagnosis, or at least the underlying cause of the
24 symptoms observed by the evaluating physicians.

25 The Defendant, facing a lengthy stay in the Department of Corrections, is
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1 understandably depressed. Just more than two years ago as the Defendant was
2 nearing his release from DOC, he chose to go on crime spree. Now, facing a prison
3 term that may encompass the rest of his life, the Defendant is understandably
4 depressed.

5 The Defense claims that the Defendant is suffering from Schizoaffective
6 Disorder, “a long standing mental health problem that had never before been
7 addressed.” Yet their supporting materials, provided to the State during
8 settlement negotiations, include multiple past examinations by experts in
9 Minnesota and Arizona which contain no diagnosis or symptoms similar to that
10 offered by the Defendant in his memorandum. They do contain a number of items
11 showing general antisocial behavior, but nothing that leads the State that this
12 case involves anything more than an occasionally-methamphetamine-using
13 Defendant depressed by his current circumstances. The State notes that the
14 Defendant, who would not have had easy access to methamphetamine or other
15 illegally drugs while in custody, did not manifest the symptoms of a diagnosable
16 disorder during his evaluations while he was in the Arizona Department of
17 Corrections.

18 The Defendant then argues a number of other non-statutory factors:

19 C. Genetic propensity toward mental illness

20 The diagnosis of a single family member (his brother) does not substitute for
21 a diagnosis of the Defendant.

22 D. Mental illness at the time of the crime

23 The Defendant’s mental illness, if any, was clearly secondary to his
24 methamphetamine abuse at the time of the offenses, according to the accounts
25 provided by witnesses.

1 E. Long Standing Substance Abuse Disorder / Addiction to Drugs and
2 Alcohol

3 While such factors may be relevant in the MCAO Aggravated Assault case,
4 the State does not recognize intoxication as a defense or mitigating factor to the
5 crime of fraud or the crime of child pornography possession.

6 F. Intoxication from Drugs and Alcohol at the Time of the Crime

7 As stated previously, the State does not recognize intoxication as a defense
8 or mitigating factor to the crime of fraud or the crime of child pornography
9 possession.

10 G. Family History of Drug/Alcohol Abuse

11 Documented abuse of alcohol by the Defendant's family, approximately
12 twenty years prior to the offense, bears little relevance to the crimes of fraud and
13 child pornography possession.

14 H. History of Family Tragedy

15 The Defendant claims that he feels responsible for the health problems of his
16 grandfather, mother and father. If his actions have had an effect on their health,
17 it is almost certainly because he keeps committing felonies and being sentenced to
18 prison. This is not a mitigating factor, but a fact of life: those who commit felonies
19 put a strain on their family members. The Defendant should receive no credit for
20 it.

21 I. Institutional Failure

22 The Defendant claims he never received adequate treatment for his
23 substance abuse or mental health condition. As argued previously, the State
24 reviewed a number of mental health evaluations of the Defendant, both from
25 Arizona and Minnesota, and he did not demonstrate the symptoms he now claims
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1 to have. It is difficult to blame the corrections system for failure to recognize un-
2 manifested symptoms. The State also finds it difficult to believe that the
3 Defendant, in his lengthy incarceration history, has never had the opportunity to
4 attend an Alcoholics Anonymous meeting, Narcotics Anonymous meeting, or any
5 other form of treatment. Such options are available to those who seek them out.
6 The State instead believes that the Defendant waited until he was released to
7 indulge his addiction.

8 J. Remorse

9 The State believes that remorse was late to arrive to the Defendant. This is
10 the same Defendant that promised investigators that he would exhaust as much of
11 the taxpayers' money as possible fighting these charges. He made that statement
12 while in custody, and while clean and sober. Only now when he is actually facing
13 punishment for those acts does he express what he calls remorse – something the
14 State regards as simply a re-labeled expression of self-pity.

15 The Defendant also cites his expression of concern for the children in the car
16 accident in CR 2006-012794-001 DT as an indication of his remorse. These would
17 be the same children whom the Defendant ran from at the time of the collision –
18 only after being chased as he fled from the scene of that collision was the
19 Defendant apprehended.

20 K. Loves and is Loved by Family and Friends

21 Family support may be a mitigating factor, but the State has observed little
22 family support the Defendant. The Defendant claims to have told them not to
23 come to court due to his embarrassment, and even indicates that he is unwilling to
24 discuss the child pornography offenses with his family – such that they express
25 doubt that he actually committed the offenses. The State questions their support,
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1 and wonders if they are simply being manipulated by the Defendant.

2 The State notes that Defendant's brother has attended court in support of
3 his girlfriend (Co-Defendant Maestas), but that co-Defendant has expressed regret
4 that the Defendant took advantage of her. There appears to be little love in that
5 relationship.

6 L. Risk Assessment Indicates Low Risk of Future Dangerousness

7 The State acknowledges the evaluation of Dr. Samuels, and his opinion as
8 outlined in the Defendant's deviation memorandum. Dr. Samuels states that the
9 Defendant's risk of recidivism is no higher than 19% over the next fifteen years.
10 The State would counter that the Defendant has already proven that he falls in
11 the 19% – he committed two separate child pornography offenses. The Defendant
12 had all of his child pornography seized after his first arrest, and then gathered
13 more before his second arrest. It is folly to argue that he won't re-offend: the
14 Defendant has already proven he will.

15 The Defendant also argues that, "There is significant doubt as to [whether] it
16 was Mr. Breiland who actually downloaded the images on his computer, as the
17 computer was accessible by others." This is irrelevant. The Defendant was
18 obviously present for the downloading of the child pornography, as he saw fit to
19 write down a ledger of his favorite child pornography websites. After that list and
20 his computer were seized by police, he somehow managed to get child pornography
21 on a second computer, and managed to assemble a second list of favorite child
22 pornography websites. No one would ever conclude that anyone other than the
23 Defendant collected the child pornography on those computers. To the extent the
24 Defendant wishes to make this an argument for mitigation, the State would
25 request that the Defendant instead seek to withdraw his plea and make his
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arguments at trial.

M. Good Prospect for Rehabilitation

The Defendant argues that if treated with psychotropic medication and kept away from illegal drugs, he is a good prospect for rehabilitation. Given the Defendant's past record of escape, the State wonders if the Defendant will even submit to supervision and treatment. He has shown no indication that he would at any point in his past.

III. State's Argument in Support of its Recommendation

The Defendant faced forty felony charges which could have resulted in a maximum of 701.25 years in the Arizona Department of Corrections. The State offered a plea bargain to avoid the expense of a trial, and to avoid the pain and inconvenience it would have caused to the victims.

That said, the arguments in favor of a lengthy prison sentence for the Defendant are compelling. The Defendant will be sentenced on seven felonies, bringing the Defendant to a total of fifteen felonies on his record. His eight previous convictions:

- 1) Hennepin County (Minnesota) case DC 93186. Convicted March 10, 1987, of Burglary in the 2nd Degree occurring January 23, 1987. Sentenced to three years probation.
- 2) Hennepin County (Minnesota) case DC 95697-1. Convicted May 25, 1988, of Assault in the 2nd degree occurring November 30, 1987. Sentenced to one year in the Minnesota Department of Corrections, followed by four years probation. Upon release, Defendant's probation was transferred to Maricopa County through the interstate compact.
- 3) Maricopa County case CR 90-02266. Convicted April 23, 1990, of

1 Armed Robbery, a class 2 felony occurring February 1, 1990.

2 Sentenced to seven years in the Arizona Department of Corrections.

3 He was paroled on December 28, 1993, and DOC records indicate he
4 earned his release on April 20, 1995.

5 4) Maricopa County case CR 97-14613. Convicted April 17, 1998, of
6 Forgery, a class 4 felony occurring April 15, 1997. Sentenced to three
7 years in the Arizona Department of Corrections.

8 5) Maricopa County case CR 97-04247. Convicted April 17, 1998, of
9 Misconduct Involving Weapons, a class 4 felony occurring April 15,
10 1997. Sentenced to three years in the Arizona Department of
11 Corrections.

12 6) Maricopa County case CR 97-14613. Convicted April 17, 1998, of
13 Theft, a class 3 felony occurring on September 1, 1997. Sentenced to
14 seven years in the Arizona Department of Corrections.

15 7) Maricopa County case CR 1997-092260. Convicted July 27, 1999, of
16 Theft, a class 3 felony occurring May 26, 1997. Sentenced to six-and-
17 one-half years in the Arizona Department of Corrections.

18 8) Pinal County case S-1100-CR-200601769. Convicted November 3,
19 2008, of Escape in the Second Degree, a class 5 felony. Sentenced to
20 four years the Arizona Department of Corrections. The sentencing
21 judge indicated that he would prefer that the term run concurrent to
22 any sentence for the pending matters before the Court today.

23 In his sentencing memorandum, the Defendant laments that he will be
24 unable to be reclassified as a lower risk inmate due to his escape conviction, and
25 that he will likely be uncomfortable in the maximum-security accommodations
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1 afforded to inmates. This is a direct consequence of the Defendant's choices, and is
2 not something that should be considered a mitigating factor.

3 The Defendant's choices put him here before the Court for sentencing. The
4 Defendant may lament his parents' failing health, but he should instead be
5 lamenting the impact he had on his numerous identity theft victims. He should
6 also be lamenting the abuse documented in the child pornography pictures he
7 possessed on two separate occasions. The Defendant's memorandum claims that
8 he "blames no one but himself" while arguing that, "There is significant doubt as to
9 [whether] it was Mr. Breiland who actually downloaded the images on his
10 computer, as the computer was accessible by others."

11 The Defendant is simply depressed about being caught, and is disappointed
12 that he is being brought to justice for his actions. The consequences for an eight-
13 time (now fifteen-time) felon should be severe.

14 The State has stipulated to a mitigated sentence in CR 2006-006276-001 DT,
15 and the plea agreement stipulates that the mitigating factor which supports that
16 finding is the Defendant's past history of mental illness. The State has been made
17 aware that the Adult Probation Department (APD) is requesting a presumptive
18 term for this offense. The State asks that the Court follow the terms of the plea
19 agreement.

20 The State has alleged only one aggravating factor in CR 2007-008392-001
21 DT – the Defendant's prior felony convictions within the previous ten years –
22 which is more than sufficient to balance the Defendant's claimed mitigation. As
23 such, the Court should order a presumptive term of seventeen years for Count 1.

24 The State has been made aware that APD objects to the concurrent grants of
25 probation in CR 2007-007382-003 DT and CR 2007-008392-001 DT (Count 2).

Specifically, APD is recommending a term in the Department of Corrections for CR 2007-007382-003 DT. The State believes that the concurrent grants of probation are important, as it will essentially allow two separate stints on probation. If the Defendant violates his probation upon release, he can be sent to prison for CR 2007-007382-003 DT, and still be on probation for CR 2007-008392-001 DT (Count 2) upon his release. Without the concurrent grants of probation, any revocation to DOC would mean that upon his release the Defendant would not be supervised by APD. The State asks that the Court follow the terms of the plea.

IV. Conclusion

There are two genuine issues for the Court to decide at sentencing relative to the length of sentence:

1) *Should the Court reject the plea agreements as recommended by APD?*

No, the Court should follow the terms of the plea agreements.

2) *Should the Court find mitigation and sentence the Defendant to 10 years on CR 2007-008392-001 DT (Count 1), for a total sentence of 20 years?*

No, the State believes that the Defendant's mitigation arguments ring hollow and that his prior felony record is sufficient to balance out the mitigating factors to support a presumptive sentence of 17 years on CR 2007-008392-001 DT (Count 1), for a total sentence of 27 years.

RESPECTFULLY SUBMITTED this 8th day of May, 2009.

TERRY GODDARD
ATTORNEY GENERAL

/s/ Todd C. Lawson
TODD C. LAWSON
Assistant Attorney General
Criminal Division

1 ORIGINAL of the foregoing filed
2 this 8th day of May, 2009, to:

3 Clerk of the Superior Court
4 201 West Jefferson Street
5 Phoenix, Arizona 85003-2208

6 COPY of the foregoing delivered
7 this 8th day of May, 2009, to:

8 The Honorable Warren J. Granville
9 Maricopa County Superior Court
10 201 West Jefferson Street
11 Phoenix, Arizona 85003-2208

12 COPY of the foregoing hand-delivered
13 this 8th day of May, 2009, to:

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25 PHX #459553-v1-sentencing_memorandum.DOC
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