

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 11-14795
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT APRIL 25, 2012 JOHN LEY CLERK

D.C. Docket No. 8:09-cr-00140-RAL-TBM-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAMES JOSEPH MCANDREW,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida

(April 25, 2012)

Before BARKETT, PRYOR and BLACK, Circuit Judges.

PER CURIAM:

James Joseph McAndrew appeals his sentence of 720 months of imprisonment for knowingly possessing child pornography that was transported in interstate commerce, 18 U.S.C. § 2252A(a)(5)(B), and knowingly receiving child pornography that was transported in interstate commerce, id. § 2252A(a)(2). McAndrew argues that the government materially breached its written plea agreement to recommend a sentence within the advisory guideline range. See United States v. Johnson, 132 F.3d 628, 631 (11th Cir. 1998). The government confesses error. The government concedes that, at resentencing, it breached the plea agreement by asking the district court to sentence McAndrew above the guideline range to the maximum term of imprisonment. We vacate and remand this case for a new sentencing hearing before a different district court judge.

VACATED AND REMANDED.