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Life Sentence for Possession of Child Pornography Spurs Debate Over Severity

By ERICA GOODE
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Does downloading child pornography from the Internet deserve the same criminal punishment as first-degree murder?

A circuit court judge in Florida clearly thinks so: On Thursday, he sentenced Daniel Enrique Guevara Vilca, a 26-year-old stockroom worker whose home computer was found to contain hundreds of pornographic images of children, to life in prison without the possibility of parole.

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But the severity of the justice meted out to Mr. Vilca, who had no previous criminal record, has led some criminal justice experts to question whether increasingly harsh penalties delivered in cases involving the viewing of pornography really fit the crime.

"To me, a failure to distinguish between people who look at these dirty pictures and people who commit contact offenses lacks the nuance and proportionality I think our law demands," said Douglas Berman, a law professor at Ohio State University, who highlighted Mr. Vilca's case on his blog, Sentencing and Law Policy.

Sexual offenses involving children enrage most Americans, and lawmakers have not hesitated to impose lengthy prison terms for offenders. In Florida, possession of child pornography is a third-degree felony, punishable by up to five years in prison. Mr. Vilca was charged with 454 counts of possession, each count representing one image found on the computer.

Steve Maresca, the assistant state attorney in the case, said that in his view, Mr. Vilca "received a sentence pursuant to the sentencing guidelines."

"Too many people just look at this as a victimless crime, and that's not true," he said. "These children are victimized, and when the images are shown over and over again, they're victimized over and over again."

But Lee Hollander, Mr. Vilca's lawyer, called the sentence ridiculous.

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“Daniel had nothing to do with the original victimization of these people; there is no evidence that he’s ever touched anybody improperly, adult or minor; and life in prison for looking at images, even child images, is beyond comprehension,” he said.

Mr. Hollander said Mr. Vilca had consistently said he did not know the images were on his computer. He refused a plea bargain of 20 years in prison, after which the state attorney increased the charges. The sentence will be appealed, Mr. Hollander said.

Troy K. Stabenow, an assistant federal public defender in Missouri’s Western District, noted that most people assume that someone who looks at child pornography is also a child molester or will become a child molester, a view often mirrored by judges.

But a growing body of scientific research shows that this is not the case, he said. Many passive viewers of child pornography never molest children, and not all child molesters have a penchant for pornography.

“I’m not suggesting that someone who looks at child pornography should just walk,” he said. “But we ought to punish people for what they do, not for our fear.”

State and federal laws, which generally increase penalties based on the number of pornographic images, reflect the idea that acquiring child pornography requires extensive time and effort and thus is a measure of a defendant’s involvement and interest. But with the rise of the Internet, it is possible to download hundreds of images in a matter of minutes, making the size of a stash a less than reliable indicator, Mr. Stabenow and other criminal justice experts said. It is now a rare case that does not involve the possession of hundreds, or even thousands, of images.

As a result, many federal judges have issued sentences lower than those called for by federal guidelines, which add months for multiple images and other aggravating factors. And even when such sentencing enhancements are enforced, the sentences — which can sometimes be 18 or 20 years — are often well below what Mr. Vilca received. The federal guidelines, for example, recommend a minimum of 57 to 71 months in prison for possession of 600 or more images of very young children.





Paul Cassell, a former federal judge who is now a law professor at the University of Utah, said there was no question that “consumers of child pornography drive the market for the production of child pornography, and without people to consume this stuff there wouldn’t be nearly as many children being sexually abused.”

Mr. Cassell is involved in efforts to get restitution for victims of child pornography, and has filed a petition in one case with the Supreme Court. But he said that while he was not familiar with Mr. Vilca’s case and did not know what other facts might be involved, “in the abstract, a life sentence for the crime of solely possessing child pornography would seem to be excessive.”

“A life sentence is what we give first-degree murderers,” he said, “and possession of child pornography is not the equivalent of first-degree murder.”

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