

CRIMINAL

Court: United States District Court, Southern District of Florida

Case Title: USA v. Beckett

Docket Number: 9:07CR80191

Expert(s): n/a

Mark the Correct Category	Crime Type	LBL2
	White Collar Crime	CRIM100
	Drugs	CRIM120
	DUI/DWI	CRIM140
	Immigration	CRIM160
	RICO	CRIM180
	Murder	CRIM200
	Burglary	CRIM220
	Robbery	CRIM240
	Illegal Possession of Guns/Firearms	CRIM260
X	Miscellaneous	CRIM300

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: CASE NO: 07-80191-CR-RYSKAMP/JOHNSON

UNITED STATES OF AMERICA,

vs.

TIMOTHY WAYNE BECKETT,

a/k/a "chelzzz420zzz"

a/k/a "2*cute*for*school"

a/k/a "yesurifnotcater"

Defendant.

**DEFENDANT BECKETT'S OBJECTIONS TO PSI AND REASONS FOR
DOWNWARD DEPARTURE AND OR VARIANCE OF HIS SENTENCE**

COMES NOW, the defendant, TIMOTHY BECKETT, by and through the undersigned attorney, and files his objections to the PSI, and his requests for a downward departure and or variance, and states as follows:

Legal Objections

Paragraph in PSI

Group One

28. Two level enhancement – Beckett objects to the proposed two level enhancement for material containing “prepubescent minor or minor who had not obtained the age of 12 years old”, pursuant to §2G2.2(b)(2). There was no evidence that the material upon which Beckett was indicted and from which the Government presented their case to the jury, fell within this category. Further, the jury was not asked to make a specific finding that the contraband material

consisted of these specific characteristics.

29. Seven level enhancement – Beckett objects to the proposed seven level enhancement for distribution of the material to a minor to persuade, induce, entice, coerce, or facilitate the travel of, the minor to engage in prohibited sexual conduct, pursuant to §2G2.2(b)(3)(e), as the government did not prove that this was the intention of the defendant in distributing the contraband material, nor was the jury asked to make such a specific finding. Further, this count of the Indictment alleged only simple possession, or attempted possession, and not distribution. Further, because conviction on this count of the Indictment involved simple possession or attempted possession, and not distribution, none of the enhancements pursuant to §2G2.2(b)(3) apply.

30. Four level enhancement - Beckett objects to the proposed four level enhancement for material “that portrays sadistic or masochistic conduct” pursuant to §2G2.2(b)(4), as the government did not prove that the material for which the defendant was convicted contained such material, nor was the jury asked to make such a specific finding.

31. Five level enhancement - Beckett objects to the proposed five level enhancement for having “engaged in a pattern of activity involving the sexual abuse or exploitation of a minor”, pursuant to §2G2.2(b)(5), as the government did not prove that Beckett “engaged in a pattern of activity” which included the sexual abuse or exploitation of a minor. Additionally, the jury was not asked to make this specific finding.

33. Five level enhancement – (even if correct, the PSI incorrectly reflects a 7

level increase, rather than the 5 level increase called for pursuant to this subsection) Beckett objects to the proposed five level enhancement because the offense involved “600 or more images”, pursuant to §2G2.2(b)(7)(d). The government failed to prove this, and the jury was never asked to make a specific finding of fact as to this enhancement.

As to all of the above enhancements, Beckett objects to each on the grounds that to be punished for the additional proscribed particularized conduct, he must have been charged in an Indictment, or have either pled guilty to such conduct or have been found guilty of the specific conduct at trial. See, Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004). He was not.

With these objections in mind, Beckett would calculate Group one as follows:

Base offense level: 18

§2G2.2(b)(6)(use of computer or computer service): +2

Adjusted offense level: 20

Group two

39. Two level enhancement - Beckett objects to the proposed two level enhancement pursuant to §2G2.1(b)(6), because the government failed to prove that the behavior as defined in this enhancement was for the purpose of “producing sexually explicit material”. Further, the jury was never asked to make a specific finding of fact as to this enhancement.

Beckett also objects to the enhancement on the grounds that to be punished for the additional proscribed particularized conduct, he must have been charged

in an Indictment, or have either pled guilty to such conduct or have been found guilty of the specific conduct at trial. See, Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004). He was not.

With the above objection in mind, Beckett would calculate Group two as follows:

Base offense level: 32

Adjusted offense level: 32

Group three

45. Two level enhancement - Beckett objects to the proposed two level enhancement pursuant to §2G2.1(b)(2)(A), because the government failed to prove that the offense included the involvement of a sexual act or conduct, and the jury was never asked to make a specific finding of fact as to this enhancement.

46. Two level enhancement - Beckett objects to the proposed two level enhancement pursuant to §2G2.1(b)(6), because the government failed to prove that the behavior as defined in this enhancement was for the purpose of “producing sexually explicit material”. Further, the jury was never asked to make a specific finding of fact as to this enhancement.

Beckett also objects to these enhancements on the grounds that to be punished for the additional proscribed particularized conduct, he must have been charged in an Indictment, or have either pled guilty to such conduct or have been found guilty of the specific conduct at trial. See, Apprendi v. New Jersey, 530

U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004). He was not.

With the above objection in mind, Beckett would calculate Group three as follows:

Base offense level: 32

Adjusted offense level: 32

Group four

52. Two level enhancement - Beckett objects to the proposed two level enhancement pursuant to §2G2.1(b)(2)(A), because the government failed to prove that the offense included the involvement of a sexual act or conduct, and the jury was never asked to make a specific finding of fact as to this enhancement.

53. Two level enhancement - Beckett objects to the proposed two level enhancement pursuant to §2G2.1(b)(6), because the government failed to prove that the behavior as defined in this enhancement was for the purpose of “producing sexually explicit material”. Further, the jury was never asked to make a specific finding of fact as to this enhancement.

Beckett also objects to these enhancements on the grounds that to be punished for the additional proscribed particularized conduct, he must have been charged in an Indictment, or have either pled guilty to such conduct or have been found guilty of the specific conduct at trial. See, Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004). He was not.

With the above objection in mind, Beckett would calculate Group four as follows:

Base offense level: 32

Adjusted offense level: 32

Group five

59. Two level enhancement - Beckett objects to the proposed two level enhancement pursuant to §2G1.3(g)(2), because the government failed to prove pursuant to (A) that the misrepresentation was done so a minor would engage in prohibited sexual conduct, or that (B) the defendant “unduly influenced” a minor to engage in prohibited sexual conduct. Additionally, the jury was never asked to make a specific finding of fact as to this enhancement.

60. Two level enhancement - Beckett objects to the proposed two level enhancement pursuant to §2G1.3(b)(3), because the government failed to prove that the use of the computer during the offense was for the purpose of a minor engaging in prohibited sexual conduct, or to encourage another person to engage in prohibited sexual conduct with a minor. Additionally, the jury was never asked to make a specific finding of fact as to this enhancement.

Beckett also objects to these enhancements on the grounds that to be punished for the additional proscribed particularized conduct, he must have been charged in an Indictment, or have either pled guilty to such conduct or have been found guilty of the specific conduct at trial. See, Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004). He was not.

With the above objections in mind, Beckett would calculate Group five as follows:

Base offense level: 32

Adjusted offense level: 32

73. As a result of the defendant's objections, Beckett would calculate the combined adjusted offense as **Combined adjusted offense level - 32**

74. Five level enhancement – Beckett objects to the Chapter Four enhancement of five levels, pursuant to 4B1.5(b)(1). Beckett argues that his convictions are not a “covered sex crime” as defined by this section. (See Application Notes, section 2; 18 U.S.C. 109A; 18 U.S.C. 110 (not including “possession of” per App. Notes); 18 U.S.C. 117; 18 U.S.C. 1591)

76. Based upon the above objections, and legal argument, Beckett objects to the proposed total offense level of 50, and would calculate his **total offense level to be 32**.

Sentencing options

114. The defendant objects to the proposed guidelines provision of Life, and calculates his guidelines provision as **121 to 151 months**. (Criminal history category 1, Offense level 32)

119. The defendant does not have the financial ability to pay a fine.

BECKETT'S MOTION FOR DEPARTURE AND OR VARIANCE

Beckett requests that the district court consider the below stated for purposes of downward departure and or mitigation through a variance of his sentence. After the Booker decision, sentencing now requires two steps. First, the district

court must correctly calculate the applicable sentencing range provided by the Sentencing Guidelines. United States v. McVay, 447 F.3d 1348, 1353 (11th Cir.2006). Second, ***the district court must determine a reasonable sentence*** by considering the sentencing range provided by the Guidelines and the § 3553(a) factors. Booker, 543 U.S. at 264, 125 S.Ct. at 767; United States v. Talley, 431 F.3d 784, 786 (11th Cir.2005). After correctly calculating the Guidelines range, the court should then turn to whether the circumstances of the particular case and the factors set forth in 18 U.S.C. § 3553, require a sentence within the advisory Guidelines range or allow a sentence outside that range. See, U.S. v. Marcus Williams, 435 F.3d 1350, 1352 (11th Cir. 2006) The 11th Circuit “recognizes a district court may vary from an advisory Guidelines range for case-specific, individualized applications of the § 3553(a) factors.” Williams, at 841. ***The defendant is requesting that the district court impose a sentence of no greater than fifteen (15) years in BOP, followed by up to life probation.***

1. Harshness of Proposed Sentence - the sentence range proposed by U.S. Probation, life, is too harsh relative to the crimes for which Beckett was convicted. Further, a life sentence substantially over-represents the seriousness of his criminal history, and the likelihood that he will commit other crimes. See, U.S.S.G, Section 4A1.3(b)(1). See, e.g., United States v. Williams, 435 F.3d 1350 (11th Cir. 2006)(90 months imprisonment was sufficient, but not greater than necessary to punish, deter, and rehabilitate defendant where he was considered a career offender and low end of guidelines was 188 months).

2. Beckett suffered from ADD as a child and other psychological health problems as a result of coming to realize he was homosexual – As will be more fully addressed by the defendant’s expert, Dr. Rapa, at sentencing, Beckett suffered significant psychological trauma as a child in coming to terms with the fact that he was homosexual. See, U.S. v. Pickering, 178 F.3d 1168, 1172 (11th Cir. 1999) Penry v. Lynaugh, 492 U.S. 302, 319, 109 S.Ct. 2934, 106 L.Ed.2d 256 (1989)(evidence about the defendant’s background is relevant because of the belief “long held by this society, that the defendants who commit criminal acts that are attributable to a disadvantaged background or to emotional or mental problems may be less culpable than defendants who have no such excuse.”)
3. Other: Dr. Rapa’s initial findings as of the time of this writing are that:
 - a. the defendant does not appear to evidence deviant sexual arousal;
 - b. the defendant does not appear to possess any sexual disorder or deviancy that would make him likely to be a continuing danger to society in a sexual manner, especially if in treatment and or therapy;
 - c. it appears that Beckett committed the charged acts not to intentionally inflict harm on the victims, but rather to satisfy his own curiosity regarding his homosexual thoughts, and to alleviate feelings of rejection and loneliness;
 - d. Beckett’s religious views and upbringing severely restricted his homosexual thoughts and urges, and greatly impacted and effected his behavior in this case;

- e. Beckett acknowledged to the Doctor an understanding of the opportunistic style of the sexual behavior exhibited in this case, and that such behavior was “totally wrong” and the person in this case “is not the person who Timothy Beckett is”;
- f. the thought distortions exhibited by Beckett in this case likely originate from his history of feelings of vulnerability, insecurity, low self-esteem, hyper-religiosity, and his own personal revulsion toward himself for being a homosexual.
- g. All of these issues could be addressed, treated, and potentially controlled through therapy, to the point where the defendant would not pose a continuing danger to the community. His age, lack of sophistication, and misunderstanding of being homosexual, are all factor that contributed to his behavior in this case, can be directly addressed through therapy, allowing the defendant to eventually, after being punished, to return to society and live and otherwise productive life.

While this Court must calculate and consult the guideline range, that range does **not** generate a **presumptively-reasonable** sentence. The Eleventh Circuit has held that “a district court may determine, on a case-by-case basis, the weight to give the Guidelines, so long as that determination is made with reference to the remaining section 3553(a) factors that the court must also consider in calculating the defendant’s sentence.” United States v. Hunt, 459 F.3d 1180, 1185 (11th Cir. 2006). The Court further held that “[w]hether, after consideration

of section 3553(a) in its entirety, the court finds the Guidelines to be compelling is a fact-specific judgment that we neither mandate nor foreclose.” Id.

Considering the factors set forth in 18 U.S.C. §3553(a), a sentence of 15 years (mandatory-minimum) followed by supervised release for up to the defendant’s natural life, is both a reasonable and appropriate one in this case.

Respectfully submitted,
/s/Jack A. Fleischman
FLEISCHMAN & FLEISCHMAN, P.A.
Jack A. Fleischman
2161 Palm Beach Lakes Blvd., Suite 403
West Palm Beach, Florida 33409
Phone 561-585-3666
Fax 561-471-8343
Fla. Bar No. 0714534
Email: fflaw@yahoo.com

Certificate of Service

I hereby certify that on the 6 day of January, 2009, I electronically filed the foregoing Objections to defendant’s PSI, with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on, Lothrop Morris, A.U.S.A (lothrop.morris@usdoj.gov), U.S. Attorney’s Office, West Palm Beach, FL; United States Probation, Supervising Probation Officer Virginia Cataldo, West Palm Beach, FL (via fax 561-655-1049)

/s/Jack A. Fleischman
Jack A. Fleischman

cc: Client

The Honorable J.T. "Tommy" Head

And

The Honorable Kim McMillan

Tennessee House of Representatives

CONGRATULATE

Timothy Wayne Beckett

upon your graduation from Kenwood High School. This noble achievement, the result of diligence, devotion, and dedication, is a major milestone in your life.

This is an expression of our confidence that you will continue to excel and achieve, that you will devote your life to the service of humanity, and that your life's work will make this world a better place in which to live.

In these endeavors, we offer you our BEST WISHES.

Given under our hands, this 29th day of May, 2004.

Kim McMillan
Kim McMillan

Kim McMillan



Tommy Head
J.T. "Tommy" Head

J.T. "Tommy" Head

The State of Tennessee

By the Honorable

Senator Rosalind Kurita

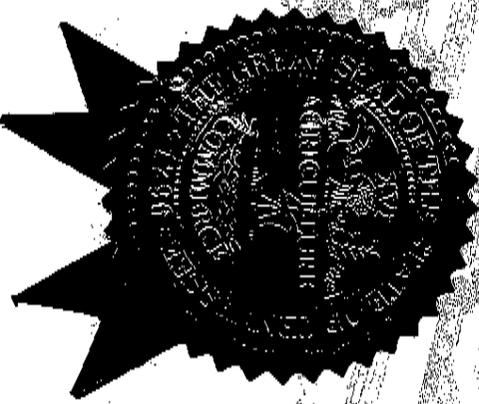
Greetings: Be it known that

Timothy Beckett

in recognition of academic achievement and accomplishment, is hereby
awarded this

Certificate of Congratulations

with Senator Kurita's sincere congratulations on the honor of graduating,
she extends to you best wishes on all of your future endeavors.


Rosalind Kurita

State Senator

Tennessee



SkillsUSA

V I C A

State Award

Presented to

Timothy Beckett

**FOR PARTICIPATING AT STATE
CONFERENCE**

Brandy Boyd
Tennessee Skills USA-VICA
President

Ralph Barnett
Assistant Commissioner
Vocational-Technical Education



Excelling In Education Fall 2003 Silver Card Recipient

This certifies that

Timothy Beckett

has successfully completed the requirements
for a Silver Card Recipient
in the Excelling in Education Program
for Kenwood High

Dick Rossetti

Dick Rossetti, Chairman
Clarksville Area Chamber of Commerce

Jill Nolan

Jill Nolan, Chairman
Vice Chair Workforce Development
Clarksville Area Chamber of Commerce



ROSALIND KURITA
SENATOR

MONTGOMERY, CHEATHAM
AND HOUSTON
COUNTIES 22ND SENATORIAL
DISTRICT

6 LEGISLATIVE PLAZA
NASHVILLE, TENNESSEE 37243-0022
TELEPHONE (615) 741-2374
TOLL FREE 800-449-8366 EXT. 12374

Senate Chamber
State of Tennessee

NASHVILLE

MEMBER OF COMMITTEES

VICE-CHAIR - STATE AND LOCAL
TRANSPORTATION
HEALTH
RULES
ETHICS

Dear Timothy,

Congratulations on having completed your senior year. I want to commend you on your achievement, and I want to encourage you to continue to develop your abilities. At this time of your life, I know you are thinking about your future and all of the decisions you need to make.

On a very sincere note, I want you to know and believe that you can do anything that you want to do in life. I want you to dare to dream, set high goals for yourself and work toward making your dreams become reality. The future of our communities and our country depends on you. You are our future and we need you to help find solutions to many of the problems we face in this country today.

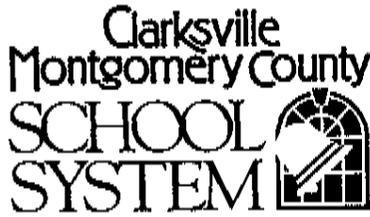
Again, congratulations on your success. I am proud to represent you in the State Senate, and if I can ever help you, please do not hesitate to call my office at (615) 741-2374 or toll free at 1-800-449-8366, extension 12374.

You are the future and you give us great hope!

Sincerely,



Rosalind Kurita
State Senator



Kenwood High School
251 East Pine Mountain Rd. Clarksville, Tennessee 37042
931-905-7900 Fax: 931-905-7906

Dear Sir or Madame:

It is with great pleasure that I write to recommend Timothy Wayne Beckett to you. I have been associated with Tim for his four years in high school. I had Tim in class and observed him in his other academic areas and extracurricular activities. Tim is a bright, dedicated and affable young man.

Tim is a very well rounded individual with skills in a variety of areas. Tim works very well with others and also as an individual on projects. Tim is a take charge person. Tim is finishing in the middle of his class and has a GPA of approximately 2.4.

Tim has volunteered a lot of his personal time to assist others with after school functions and all assemblies and pep rallies at the school. Tim runs the sound system for the school at all of these functions and also responsible for videotaping the majority of them. Tim is a very integral part of this school. It will be difficult to replace him after graduation and cannot be accomplished by one person.

Tim is the type of student that you can assign a project and know that it will be completed and in the most professional manner possible. Tim works part time as a disc jockey for several radio stations. Tim is a very personable individual.

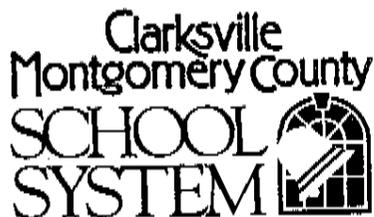
I recommend Timothy Wayne Beckett for enrollment in your institution. Tim would be a plus for any program and will excel with his maturity. If you have any questions or concerns in regards to Tim, please feel free to contact me at (931) 905-7900. Thank you for your attention.

Sincerely,

A handwritten signature in cursive script that reads "Franklin Wilson".

Franklin Wilson
Assistant Principal
Kenwood High School





Kenwood High School
251 East Pine Mountain Rd. Clarksville, Tennessee 37042
931-905-7900 Fax: 931-905-7906

January 16, 2004

To Whom it May Concern:

I am writing this letter on behalf of Tim Beckett, a senior at Kenwood High School. I have known Tim for four years, and have seen him grow and mature in the high school setting. He has earned many freedoms in this building that most students do not encounter due to our structured environment. He works on our sound equipment and video productions tirelessly and provides music for our pep rallies and other assemblies. The things he does for us are too numerous to list, but when his teacher/mentor is unavailable we always look to him.

I highly recommend Tim Beckett for your school. He is a very hard worker and willing to do what is asked of him and more. I am confident he will be successful in your program and in his career.

Sincerely,

A handwritten signature in cursive script that reads "Brett Burchwell".

Brett Burchwell, Asst. Principal

Accredited by
the Southern
Association of
Colleges and
Schools

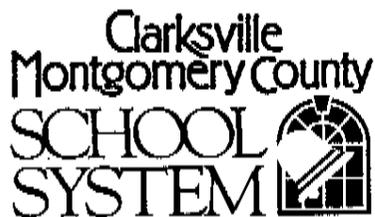


Jerry W. Taylor
Principal

Anna Neubauer
Assistant Principal

Frank Wilson
Assistant Principal

Brett Burchwell
Assistant Principal



Kenwood High School

251 East Pine Mountain Rd. Clarksville, Tennessee 37042
931-905-7900 Fax: 931-905-7906

January 16, 2004

To Whom It May Concern:

I have known Tim Beckett for the three years that I have been an assistant principal at Kenwood High School, and I take great pleasure in recommending him for admission to the International Academy of Design and Technology. Tim is a personable young man who works well with both peers and adults. His pleasant disposition and sense of humor make him enjoyable to associate with.

Tim is totally involved in every aspect of the filming and production of our school news program which is broadcast throughout the school weekly. His familiarity with the technology of broadcasting has made him an asset not only to the class but also to the entire school. Whenever the administration plans an assembly, we depend on Tim to set up all the sound and video equipment. Tim is also willing to use his free time on evenings and weekend to ensure that any school production is flawless. He has fallen in love with the art and technology of broadcasting.

Again, I highly recommend Tim for admission to your program.

Sincerely,

A handwritten signature in black ink, appearing to read "Anna Neubauer".

Anna Neubauer
Assistant Principal





The Palm Beach County Sheriff's Office
Chaplain of Corrections Division
Hereby presents this certificate of Completion

To

TIMOTHY BECKETT

For completing the Life Skills Program including the following classes:

- Anger Management
- AA/NA (Optional)
- Basic Life Principles
- HIV/Health Ed
- Parenting
- Psychology (SAAP)
- Search for Significance

Given This 8th Day of February, 2008

The department commends the above for taking steps that will hopefully
prepare him for a better life.


A. Eugene Thompson, Senior Chaplain


Date Signed 2/8, 2008