

**IN THE UNITED STATES COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 11-00046-06-CR-W-ODS
)	
)	
TERRY W. THOMAS)	
)	
Defendant.)	

DEFENDANT'S SENTENCING MEMORANDUM

COMES NOW the Defendant, Terry W. Thomas, by and through his attorney, and hereby submits his Sentencing Memorandum in the above-captioned case.

I. PROCEDURAL BACKGROUND

1. On February 10, 2012 Mr. Thomas appeared before the Court, and pursuant to a written plea agreement, entered a plea of guilty to conspiracy to distribute more than 500 grams of a mixture or substance containing methamphetamine, a violation of 21 U.S.C. §§ 841 (a)(1), (b)(1)(A) and 846, and conspiracy to commit money laundering in violation of 18 U.S.C. §§ 1956 (a)(1)(A)(i).

2. The statutory range of punishment is not less than 10 years and not more than life imprisonment. According to the Pre-Sentence Report (PSR) the base offense level is 32. This base offense level, is likewise, the offense level the parties agreed to recommend in the written plea agreement.

3. The presumed sentencing range calculated in the PSR is 135-168 months based on a total offense level of 31, after a two-level increase for the conviction under 18 U.S.C. 1956,

and a three-level reduction for acceptance of responsibility. Neither party has objected to the guideline range.

II. UNRESLOVED ISSUES

Both counsel and defendant have received and reviewed the PSR and the defendant has previously indicated that there would be no objections to that report.

III. 3553 (a) FACTORS

In determining an appropriate sentence, a district court must begin the sentencing procedure by calculating the applicable guidelines range. *Gall v. United States*, 552 U.S. 38 (2007). The court is then required to consider all the factors set forth in 18 U.S.C. Section 3553(a) to determine whether they support the sentence requested by a party. If appealed, the district court's sentencing decision will be reviewed using the deferential abuse of discretion standard.

The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes for sentencing. To inform its decision, the court should consider the following factors:

(1) The nature and circumstances of the offense and the history and characteristics of the defendant;

(2) The need for the sentence to:

(A) Reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) To afford adequate deterrence to criminal conduct;

(C) To protect the public from further crimes of the defendant;

(D) To provide the defendant with needed educational or vocational training,

medical care, or other correctional treatment in the most effective manner;

(3) The kinds of sentence available;

(4) The kinds of sentence and sentencing range established for the applicable category of offense committed by the defendant, as set forth in the guidelines;

(5) Any pertinent policy statement;

(6) The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) The need to provide restitution to any victims of the offense.

18 U.S.C. Section 3553 (a) (1) - (7).

IV. ARGUMENT

Mr. Thomas is requesting the Court to impose a sentence of 120 months which is below the applicable guidelines range. It is Defendant's contention that there are appropriate Section 3553 (a) factors applicable to Mr. Thomas that make a sentence of 120 months "sufficient but not greater than necessary" to accomplish the purposes of sentencing.

In determining an appropriate sentence, the sentencing court must begin the sentencing procedure by calculating the applicable guideline range. *United States v. Roberson*, 517 F.3d 990-993 (8th Cir. 2008) (citing *Gall v. United States*, 552 U.S. 38, 48-49 (2007)). Secondly, the sentencing court should consider whether a departure or variance is appropriate. *Id.* citing *Gall*, 552 U.S. at 48-50; *United States v. Thundershield*, 474 F. 3d 503, 506-507 (8th Cir. 2007)). Lastly, the sentencing court should then consider all of the other factors enumerated in section 3553 (a) "to determine whether it should impose a sentence under the guidelines or, rather, a non-guidelines sentence." *United States v. Haack*, 403 F.3d 997, 1002-03 (8th Cir. 2005).

In the instant case, Defendant has agreed that the PSR is correct in stating that the

Guidelines range is 135-168 months. Therefore, Mr. Thomas submits that the issue for consideration is whether there are sufficient reasons for this Court to conclude that a sentence of 120 months, which is under the guidelines range, would be sufficient to accomplish the goals of sentencing.

1. Nature and circumstances of the offense and the history and characteristics of defendant.

At the time of sentencing, Mr. Thomas will be two weeks away from his 59th birthday. With Defendant's age in mind, his criminal history becomes fairly unique. With the exception of an un-scored municipal conviction in 1982 for disorderly conduct, Defendant's first criminal conviction came on September 22, 2005 at the age of 51. All of Defendant's convictions involve drug/paraphernalia possession offenses. It is clear that Mr. Thomas has struggled with drugs later in life.

Mr. Thomas first became involved with methamphetamine after the death of his wife, Kathryn Whitt, in 1996. Initially his methamphetamine usage was infrequent. However, leading up to the date of the conspiracy, Mr. Thomas was using methamphetamine daily. Defendant's primary purpose in participating in this conspiracy was to support his own drug habit.

According to the PSR as well as defendant's statements, Mr. Thomas participated for several months in the distribution of methamphetamine. Mr. Thomas would purchased dealer quantities of methamphetamine for resale and for his own personal use. Defendant first accepted responsibility for his involvement back in October 12, 2010, prior to being indicted in this case. Mr. Thomas admitted to receiving quantities of drugs from James Jacobs during that October 2010 statement given to Detective Roberts.

2. The need for a sentence imposed to reflect the seriousness of the

offense, to promote respect for the law, and to provide just punishment for the offense; to afford adequate deterrents to criminal conduct and to protect the public from further crimes of the defendant; and to provide the defendant with needed educational or vocational training; medical care, or other corrected treatment in the most effective manner.

Mr. Thomas submits that the 120 month sentence requested would satisfy all of the above factors. Of particular importance is for the sentence imposed to protect the public from further crimes of the defendant. Mr. Thomas will be approaching 59 years of age at the time of sentencing. Should this Court impose a 120 month sentence, Mr. Thomas will be nearing 70 years of age as of the time of his release. As a result of Defendant's advanced age, it is unlikely that upon the completion of his sentence he will pose a danger to the public.

The sentence imposed should also "afford adequate deterrence to criminal conduct." It is unlikely that a sentence of 135 months would be more of a deterrent to someone than a sentence of 120 months. Both sentences are significant periods of time to be in prison. While the difference between 120 months versus 135 is somewhat trivial for purposes of deterrence, for a man of Defendant's advanced age, fifteen (15) months is a significant portion of his remaining life expectancy.

A sentence of 120 months would also be sufficient to reflect the seriousness of the offense. Ten years is a significant punishment for a dealer/user who was not making a substantial living selling drugs but rather was primarily supporting his own serious drug habit.

Mr. Thomas certainly wishes he could change the past and never get involved with drugs for a variety of reasons. Whether the Court sentences Mr. Thomas to 120 months, or a sentence within the Guidelines, he will spend the vast majority, if not all, of his 60s in prison. Mr.

Thomas does hope, however, that he can survive his sentence and salvage some type of life beyond prison. Unfortunately, Mr. Thomas recognizes that it is unlikely that he will see his mother since she is advanced in age and currently in a nursing home for medical reasons. However, Mr. Thomas is hopeful that he will be able to see Dylan Cornett (age 21) and Dustin Stout (age 18) after completing his sentence. Dylan and Dustin the grandson's of Defendant's deceased wife Kathryn Whitt. After Kathryn passed away, Mr. Thomas helped raise Dylan and Dustin. Mr. Thomas has expressed deep remorse and shame for putting his family through this ordeal. He is ashamed of the example he has made for Dylan and Dustin but is hopeful that he can help steer them away from making the same mistakes.

As the Court is aware, a sentencing court has broad discretion in determining an appropriate sentence. Sentencing courts can vary from the advisory guideline range when it deems it appropriate. In fact, it can vary if it wishes simply because it disagrees with what the guideline calculations call for. *Kimbrough*, supra, 128 S. Ct. at 570. Whatever sentence this Court imposes is entitled to "highly deferential review" (should anyone call for such a review) by any appellate court and only would be disturbed if it is determined there is a "clear abuse of discretion." *United States v. Burns*, 577 F.3d 887, 894-95 (8th Cir. 2009).

IV. CONCLUSION

In summary, a 120 month sentence will provide all the protections necessary to comply with the purposes of sentencing but still allow defendant hope of having some time remaining to put together a life once released. Further, there are sufficient appropriate Section 3553 (a) factors in this case that warrant a below guideline sentence.

WHEREFORE, based on the foregoing, Defendant, Terry W. Thomas, requests that this Honorable Court impose a sentence consistent with the suggestions contained in the

Memorandum, and for further relief deemed proper by the Court.

Respectfully submitted,

/s/ David J. Guastello

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing memorandum was electronically filed this the 24th day of July, 2012 pursuant to the Electronic Case Filing System.

/s/ David J. Guastello
Attorney for Defendant