

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

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 09-00296-06-CR-W-FJG
	)	
<b>NICHOLAS DONKERSLOOT,</b>	)	
	)	
Defendant.	)	

**GOVERNMENT’S RESPONSE TO DEFENDANT’S  
SENTENCING MEMORANDUM**

Comes now the United States of America, by Beth Phillips, United States Attorney, and Jeffrey Valenti, Assistant United States Attorney, both for the Western District of Missouri, and responds to Defendant’s Sentencing Memorandum. In support of this motion, the Government states:

**I. Background**

Defendant Donkersloot pled guilty on November 25, 2009, to distribution of a mixture or substance containing a detectable amount of methamphetamine, contrary to the provisions of Title 21 U.S.C. §§ 841(a)(1), (b)(1)(C). There is no statutory minimum term of imprisonment. Through the plea agreement, the defendant was allowed the ability to argue for any sentence within or below the properly determined guideline range. Sentencing is currently scheduled to commence on Wednesday, August 4, 2010, at 10:30 a.m.

## **II. Summary of the Government's Position**

Donkersloot, through defense counsel, has tendered a well-written, accurate statement of the law, which essentially concludes that this Court, because no mandatory minimum term of imprisonment is in place, may sentence him to any term of imprisonment that is reasonable, or to probation. The government would add that the defendant should be sentenced with the benefit of a downward departure as a result of having provided substantial assistance. While having no disagreement with defendant's recitation of the law, the government does believe that a minimum term of imprisonment is necessary in this case to promote respect for the law, provide just punishment, and to afford adequate deterrence to overall criminal conduct.

## **III. Argument**

### ***A. The Guidelines have been properly calculated***

Donkersloot argues that his criminal history category, though properly calculated, overstates the likelihood that he will re-offend, and that he should be liable for a guidelines credit of four levels because of his alleged minimal participation.

Mr. Donkersloot is a young man and in that short time has accrued some significant criminal history points that, he concedes, were the result of alcohol and drug use/abuse. Unfortunately, that same drug and alcohol use led to this federal case. Therefore, arguing that his criminal history category is overstated, or that it substantially overstates his

likelihood of re-offending, seems misplaced. Similarly, the defendant's argument that he receive a four-level reduction for being a minimal participant is inappropriate in this case.

Donkersloot's level of involvement in the instant offense was taken into consideration when he was allowed to plead guilty to a lesser included offense charging distribution of methamphetamine (a class C felony), rather than conspiracy to distribute more than 500 grams of methamphetamine (a class A felony). Throughout the prosecution of this offense, more than twenty defendants were charged and convicted. In each case, regardless of role in the conspiracy, the government did not seek upward adjustments for role in the offense; this despite some members being treasurers, vice presidents, and presidents within the clubs. The reason for this is that the corpus of the offense charged is the pooling of money by members to purchase, then distribute illegal controlled substances. Whether a defendant is the president of the club or a simple member, each provided money to the organization that was used in illegal drug distribution. Just like those defendants were not saddled with adjustments for their role in the organization, the defendant should not get the benefit of his. Instead, each participant is guilty of supplying money that purchased, then distributed methamphetamine, cocaine, and marijuana. Consequently, the government believes the guidelines have been properly calculated by United States Probation.

**B. *The sentence to be imposed***

While having no disagreement with the defendant's recitation of the law and the ultimate conclusion that this Court has the authority to sentence the defendant to a lesser period of time than otherwise calculated by the Guidelines, including probation, the government does believe that a minimum term of imprisonment is necessary in this case. Additionally, the government takes no issue with the defendant's many letters of support, or his allegation that he began his road to sobriety before being charged. Again, the government believes that these factors were taken into consideration when crafting a charge for the defendant to plead guilty to. Despite all of these issues, a crime such as committed by the defendant, requires a sentence that promotes respect for the law. The very organization that the defendant was a member of was, and is, considered an Outlaw Motorcycle Gang. This label was not created by law enforcement, but instead adopted by the clubs when they individually chose to flagrantly wear the 1% diamond patch. Membership in the organization does the exact opposite of promoting respect for the law, it promotes breaking it. When viewed in context with the need to provide a just punishment and to afford adequate deterrence to criminal conduct, it seems appropriate that a minimum term of imprisonment be imposed in this case.

#### **IV. Conclusion**

WHEREFORE, for the foregoing reasons, the Government requests that the Court exercise its discretion and impose a minimum term of imprisonment when sentencing the defendant.

Respectfully,

Beth Phillips  
United States Attorney

By */s/Jeffrey Valenti*

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was delivered to the CM-ECF system of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

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*/s/Jeffrey Valenti*  
Jeffrey Valenti  
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