

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

UNITED STATES OF AMERICA,)
Plaintiff,)
)
VS.) NO. 09-00157-10-CR-W-SOW
)
MINDY LYNN MORRIS,)
Defendant.)

DEFENDANT’S SENTENCING MEMORANDUM

Comes now defendant, Mindy L. Morris, through counsel, Cynthia M. Dodge, and respectfully submits for the Court’s consideration a Sentencing Memorandum pursuant to United States v. Booker, 125 S.Ct. 738, (2005) and 18 U.S.C. §3553 factors. Mindy’s sentencing is presently scheduled for September 8, 2010.

Requested Sentence for Probation

Notwithstanding the presentence report guideline offense level, Mindy is uniquely suitable to receive probation in this case because of: 1) her history and characteristics; 2) the nature and circumstances of her offense; and 3) her cooperation with law enforcement.

Legal Standard

As this Court is well aware, Booker authorizes an imposition of sentence below the guideline range. United States v. Booker, 125 S.Ct. 738, (2005). 18 U.S.C. §3553 requires the Court impose a sentence that is “sufficient, but not greater than necessary, to comply with the purposes” of sentencing. 18 U.S.C. §3553 outlines what “purpose” means and includes a litany of factors the Court must consider before imposing a final sentence. Those purposes include: the need to reflect the seriousness of the offense, to promote respect for the law, to provide just

punishment, to afford adequate deterrence, to protect the public from further crimes of the defendant, and to provide the defendant with necessary education and treatment. Id.

Importantly, the kinds of sentences available, the nature and circumstances of the offense *and* the history and characteristics of the defendant *shall* be considered. §3553(a)(1) (emphasis added).

Notably Booker called attention to the Sentencing Reform Act stating "[no] limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence." Booker, 125 S.Ct. at 760 (quoting 18 U.S.C. § 3661). Soon courts will be required to consider factors which the United States Sentencing Guidelines historically discounted, such as a defendant's: family ties and responsibilities (§5H1.6), physical condition, including drug or alcohol dependence or abuse (§5H1.4), and mental and emotional conditions (§5H1.3).¹

Mindy Morris' situation supports the very reason why Congress mandates and the Supreme Court upholds a complete review of the factors pursuant to 18 U.S.C. §3553: to promote justice. See, Gall v. United States, 552 U.S. 38, 49 (2007); 28 U.S.C. § 991(b)(1)(B), and 18 U.S.C. § 3553(a)(2)(A). An exhaustive review of all the relevant factors set forth will clearly assure this sentencing court that Mindy Morris deserves probation with the appropriate conditions.

History and Characteristics Support Probation Sentence

Mindy Morris is a 32 year-old woman who is a single mother of three beautiful children—two teenagers, Jordan and Abigail, and Emily who is just seven years old. But Mindy has experienced her share of life's difficulties. There are a number of reasons that lend significant contribution to Mindy's drug abuse.

¹ See, United States Sentencing Guideline 2010 Amendment; specific offender characteristics, effective November 1, 2010.

Specifically:

- child sexual abuse by her stepfather;
- her dad's drug and alcohol abuse and suicide when Mindy was 11;
- her own suicide attempt by drug overdose;
- her unexpected tragic loss of her three-month-old baby from Sudden Infant Death Syndrome;
- her physical and mental abuse by her husband, Dennis Morris, a drug and alcohol abuser;
- her husband's incarceration, inter alia, for domestic assault and violating an order of protection against Mindy and their children.² His expected release from state custody is an imminent safety concern for Mindy and her children;
- her bouts of major depression and dysthymic disorder³ and hospitalization because of these stated reasons; and
- her suffering from sarcoidosis disease.

As is the case with many sexually-abused children, the odds of adult criminal conduct increased substantially for Mindy.⁴ Although these reasons are not sufficient in and of themselves to grant probation or time served, they do provide a basis for understanding Mindy's desire to escape into her methamphetamine abyss.

² See, State of Missouri v. Dennis L. Morris, 0516-CR08143-01 and 0616-CR04120-01.

³ The main symptom of dysthymia is low, dark, or sad mood nearly every day for at least two years. The symptoms are less severe than in patients with major depression, but people with this condition can still struggle with feelings of hopelessness; insomnia or hypersomnia; low energy or fatigue; low self-esteem; poor appetite or overeating; and/or poor concentration. Dysthymia is a chronic condition that lasts many years. Though some people completely recover, others continue to have some symptoms, even with treatment. Some people need to continue taking medication and undergoing therapy. U.S. National Library of Medicine.

⁴ "Children who are abused or neglected are more likely to become criminal offenders as adults. A National Institute of Justice study found "that childhood abuse increased the odds of future delinquency and adult criminality overall by 40 percent."" (Widom, 1992).

Probation Favored for Physical Condition Issues

Mindy suffers from sarcoidosis disease. PSI at 41. She was first diagnosed with the disease in 2001 and has needed hospitalization or medical care many times since her diagnosis. PSI at 41-42. Sarcoidosis is “a disease that results from a specific type of inflammation of tissues of the body. It can appear in almost any body organ, but it starts most often in the lungs or lymph nodes”.⁵ It is unknown what causes sarcoidosis. Id. Corticosteroid drugs, such as prednisone, remain the primary medication to treat for inflammation and granuloma formations. Id.

Mindy and her children receive disability from Social Security based on the severity of her sarcoidosis. PSI at 45. Although her disease had made it difficult for to maintain steady employment, if granted probation, Mindy has every desire to educate herself in an effort to counsel others who struggle with drug and alcohol addictions. She has demonstrated this desire through her advancement to Resident Manager at Hillcrest Transitional Living. Id.

Mindy has successfully completed drug and counseling since her clean date of June 17, 2008. PSI at 45. Noteworthy is her continued success at remaining clean since June 2008, one year before the charge period ends in the instant case. PSI at 4 and 44. Mindy has no ties to her past conduct or the people she associated with at the time of her transgressions. She has moved forward and is hopeful to counsel others who are in need of her support.

Past Transgressions Involve No Weapons, No Violence and No Felony Convictions = Probation Sentence

According to the Presentence Report, Mindy’s criminal history category is II, which reflects a total of two (2) points for a misdemeanor she committed in October 2007. PSI at 35. The majority of her cases are traffic infractions. Admittedly Mindy committed some minor

⁵ Shiel, William C. MD, FACP, FACR and National Institutes of Health. “Sarcoidosis.” Medicine Net. Inc. <<http://www.medicinenet.com/sarcoidosis/article.htm>> (August 29, 2010).

crimes, but it is important to observe the timeframe; while heavily abusing methamphetamine and the circumstances that led her there. PSI at 34-39 & 44. Most importantly, none of Mindy's criminal conduct involves weapons or crimes of violence and this will be Mindy's first felony conviction. PSI at 34-39. Additionally, she has made her court appearances and accepted responsibility. Id. Mindy's past transgressions clearly do not justify the guideline sentence in the instant case.

Nature and Circumstances of Offense Including Minor Role and Lack of Criminal Livelihood Warrants Probation

Given the statistical data regarding Mindy's history and characteristics, it is no surprise that she was an addict. The real surprise is how her methamphetamine addiction only lasted a total of 22 months. She first tried meth in July 2006 upon the offering of a "friend" and she was immediately hooked. PSI at 44. This was the same time period when she and her husband separated. PSI at 40. Like most drug addicts, her addiction grew and the desire to escape deepened. In April 2007, Children's Division took custody of her children. PSI at 41. But on June 17, 2008, Mindy quit her methamphetamine addiction and began turning her life around. PSI at 4 and 44. By January 2009, she won back custody of her kids. PSI at 41.

Probation Considerations for Confidential Informant Who Risks Danger to Self

Approximately in April of 2007, while the Jackson County Drug Task Force was conducting a drug investigation, they made contact with Mindy. Realizing that Mindy was a meth addict, the Task Force saw an opportunity to possibly use Mindy as a confidential informant (CI) against Harley Harvey (co-defendant). Mindy had never heard or met Mr. Harvey before becoming a CI in the instant case.

In exchange for Mindy's cooperation with law enforcement, she would not face charges for possession, and the Task Force would provide her the opportunity to enter drug rehabilitation

to address her addiction once she had completed her assigned task with Mr. Harvey. In order to be a CI, Mindy met with several different federal and state law enforcement agents. PSI at 10. The case agents: created a “story” for Mindy to tell Harvey, recorded her phone contact with him, and set up a meeting with Mr. Harvey in an effort to purchase drugs from him. During Mindy’s first meeting with Mr. Harvey he threatened that if he ever found out she was a “snitch” he would kill her. Id.

For almost two weeks of risking personal danger, Mindy cooperated with the case agents to get evidence against Mr. Harvey. PSI at 10-11. She was successful in providing the case agents with valuable information regarding Mr. Harvey’s involvement with illegal drugs, including her purchase of methamphetamine from Mr. Harvey. Id.

Around this same time, Mindy provided additional but nonrelated information regarding the recurrent ATM robberies in the area. Mindy’s information proved to be so substantial that she received the reward monies that were being offered by Crime Stoppers TIPS hotline. Her information led to the arrest and prosecution of those offenders.

After completing her CI work, she honored her agreement and started drug rehab in late May 2007 but left the facility approximately three days later. Unfortunately at this time, Mindy was unable to stop her addiction and returned to Mr. Harvey to obtain more drugs.

On June 13, 2007, Mindy was arrested after leaving Mr. Harvey’s warehouse. Notwithstanding that she had methamphetamine in her possession, she cooperated with law enforcement and gave a complete statement regarding her involvement with Harley Harvey and what she knew about their drug transactions. PSI at 12. The day after arresting Mindy, police executed a search warrant on Mr. Harvey’s warehouse, obtained in large part from detailed information that Mindy provided. PSI at 12-13. Mindy gave the case agents substantial

information including the whereabouts of \$38,880 that was hidden in Mr. Harvey's warehouse and said location was unbeknownst to the agents. Mindy told the agents what she knew from Harvey that involved two other coconspirators. PSI at 12. Although at that time Mindy could not provide names, her information supported the investigation. Id.

One month later, Mindy again gave the agents information regarding the case. PSI at 14. She disclosed three coconspirator's names and specific drug information that benefited the case investigation. PSI at 15. She led the agents to one of the coconspirator's house. Id. Including statements against herself, she provided specific drug weights and dollar amounts of drugs sold and purchased and by whom. Id.

In July and November 2009, Mindy attended two proffer sessions with the case agents. She tried very hard to remember the coconspirators and specific observations but had repressed most of the information during rehabilitation. But she did remember and was able to provide information regarding the large quantities of methamphetamine and the "pharmaceutical" pseudoephedrine that Mr. Harvey possessed. PSI at 13.

Pretrial and Post Guilty Plea

As a pretrial bond requirement, Mindy has successfully continued individualized counseling through ReDiscover Mental Health. PSI at 41. In addition, she and her children are participating in outpatient counseling to help with concerns regarding her possible incarceration and Mr. Morris' imminent release from custody. Id. Mindy has successfully maintained her drug free status since June 17, 2008. Id.

Summary

After full consideration of the purposes outlined in 18 U.S.C. §3553, Mindy Morris respectfully request a sentence of probation. A probation sentence will reflect the seriousness of

her minor role in the offense, will promote respect for the law because of her incredible assistance to case agents; will provide just punishment considering her history and characteristics; will afford adequate deterrence because she knows the consequences if she is not law abiding, and will protect the public from future crimes because clearly Mindy's transgressions directly corresponded to her drug use.

For over two years Mindy has held her head high knowing that she has been incredibly victorious in conquering her drug addiction. She has her family's pride and support. Probation, not incarceration, will allow her to continue counseling, address her ongoing medical needs, and get an education that will serve other substance abusers who could use Mindy's support.

/S/ CYNTHIA M. DODGE

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CERTIFICATE REGARDING SERVICE

I hereby certify that it is my belief and understanding that counsel for plaintiff, and counsel for the co-defendants in this matter are participants in the Court's CM/ECF program and that separate service of the foregoing document is not required beyond the Notification of Electronic Filing to be forwarded on September 2, 2010 upon the filing of the foregoing document.

/s/ Cynthia M. Dodge

CYNTHIA M. DODGE