

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

UNITED STATES OF AMERICA,)	
Plaintiff,)	
)	
vs.)	Case No. 09-00157-02-CR-W-SOW
)	
JULIE ANN TORNEDEN,)	
Defendant.)	

SENTENCING MEMORANDUM

COMES NOW, Julie Torneden, by and through counsel Tricia A. Tenpenny, of Bath & Edmonds, P.A., and respectfully submits the following sentencing memorandum pursuant to United States v. Booker, 125 S.Ct. 738 (2005), in support of a sentence below the guideline range. Specifically, Ms. Torneden seeks a sentence to a term of probation. In support of her motion, Ms. Torneden offers the following:

Background Summary

On May 19, 2009, Ms. Torneden was indicted, along with others, including her former husband Garland Duane Hankins for conspiring to manufacture and distribute methamphetamine as well as to possess pseudoephedrine with the intent to manufacture or knowledge that it would be used to manufacture methamphetamine. The two conspiracies cover the same time frame, from January 2005 to the date of the Indictment. On May 26, 2009, Ms. Torneden voluntarily surrendered on the above-described Indictment. She was in custody for two days before being released on an unsecured bond.

Because Ms. Torneden was the former wife of the lead defendant, parties soon began engaging in discussions related to her cooperation and eventual plea. On December 2, 2009, Ms. Torneden appeared before this court and entered a guilty plea to Count 2 of the Indictment. Since that time, Ms. Torneden has remained on pretrial release with no violations.

The U.S. Probation Office has calculated Ms. Torneden's base offense level at 30. As Ms. Torneden has no prior adult or juvenile convictions or adjudications, she is a criminal history category I. Her guideline range is 70-87 months.

Argument

A downward-departure from the guidelines is appropriate in this case. 18 U.S.C. §3553 establishes the criteria which guide this Court in determining and imposing an appropriate sentence. §3553(a)(1) compels the Court to consider the characteristics of the offense and of the offender. *Gall v. United States*, 128 S.Ct. 586. In fact, the United States Supreme Court has specifically declared that it would not be an abuse of discretion for a District Court to impose a below-the-guidelines sentence when the §3553(a) factors indicate that a sentence within the guidelines would be "greater than necessary." *Kimbrough v. United States*, 128 S.Ct. 586, 564 (2007). The *Gall* decision reinforces this point, mandating a sentence that is "sufficient, but not greater than necessary to comply with the purposes of sentencing" described in the §3553(a) factors. *Gall*, 128 S.Ct. at 598 (internal quotations deleted).

Pursuant to 18 U.S.C. §3553(a) the court is to impose a sentence sufficient, but not greater than necessary, to comply with the considerations in §3553(a)(2). In making those considerations, the court is directed at §3553(a)(1) that it shall consider "the nature and circumstances of the offense and the history and

characteristics of the defendant” as well as the §3553(a)(2) factors. Those factors relate to the need for the sentence (A) to reflect the seriousness of the offense, promote respect for the law, and provide just punishment; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from future crimes by Ms. Torneden; and (D) to provide Ms. Torneden with appropriate correctional treatment.

A number of statutory factors (nature and seriousness of the offense, need to promote respect for the law, adequate deterrence and punishment) deal generally with the seriousness of the offense and the societal need for punishment. Ms. Torneden concedes that her offense is serious and has accepted responsibility for her actions. Still, the question remains, as to how many months in prison are “sufficient, but not greater than necessary” to adequately serve the statutory factors, as specifically applied to Ms. Torneden and her actions. A review of other statutory factors is necessary in analyzing this question.

A number of additional statutory factors require the Court to look generally at Ms. Torneden's background to help determine an appropriate sentence. As noted in *Booker*, Congress in passing the Guidelines wanted the sentencing judge to conduct “a comprehensive examination of the characteristics of the particular offense and the particular offender” as a part of the sentencing process. *Booker*, 543 U.S. at 250 (quoting S.Rep. No. 98-225, p. 51 (1983)).

As noted above and in the PSR, Ms. Torneden is a 46-year-old woman with no prior arrests or convictions for any type of criminal conduct. Ms. Torneden was the lone child born to her biological parents but had three older half siblings. As noted in the PSR, at the age of 8 or 9, Ms. Torneden's two half-brothers (ages 13 and 17 at the time)

engaged in sexual molestation of her. The abuse, though limited in duration, left Ms. Torneden emotionally scarred. At the age of 13 she was again molested by a 19 year old boy. Ms. Torneden did not tell anyone of this incident and received no counseling related to it. In the years that would follow, Ms. Torneden would find herself repeatedly in the company of men who were emotionally and physically abuse of her.

In October of 2003, Ms. Torneden, having been raising her two young daughters as a single mother for nearly 4 years, met Garland Duane Hankins through an on-line personal service. Ms. Torneden was struck by the financial security that Mr. Hankins offered for her and her two teenage daughters (allowing her to quit the second job that she had been working) and happy that he was not physically abuse of her. In December of 2004, the two were married.

Not long thereafter, Mr. Hankins began to physically demean and degrade Ms. Torneden. However, in each instance, he would apologize by buying her an extravagant gift. Ms. Torneden knew that Mr. Hankins had been at his job for some time and had rental income. As such, she did not question his ability to provide for her financially. She later learned that Mr. Hankins had been selling "products" that he got through his employment and that these products could be used to make drugs. Mr. Hankins assured her that he was out of that business and Ms. Torneden agreed to stay with him. However, Ms. Torneden soon began to see sexually deviant conduct by Mr. Hankins. In October 2005, Ms. Torneden filed for divorce. Mr. Hankins agreed to go to counseling and the two reconciled.

In August of 2006, Ms. Torneden was out of town when a break-in occurred at her residence. Mr. Hankins indicated to her that a large sum of cash had been taken and admitted that he had obtained the money by once again selling "product." At that

point, Ms. Torneden had grown accustomed to living beyond their means and no longer insisted that Mr. Hankins stop this activity. In fact, while she never participated in delivering the product (which she no knows to have been pseudoephedrine), she helped Mr. Hankins count money from the pseudoephedrine transactions on a handful of occasions. However, on July 2, 2008, Ms. Torneden left Mr. Hankins' home, never to return. She filed for divorce in September and the divorce was final on January of 2009, some four months before the end of the conspiracy.

As reflected in the character letters provided to the Court, Ms. Torneden has the support of friends, employers, co-workers, and family. The letters describe a woman who has always been a hard-worker and good mother. They describe her as always being there for and supportive of her two young daughters. A couple of the letters describe that her upbeat personality changed when she became involved with Garland Duane Hankins. The letters also describe a woman who is remorseful and burdened by the shame of what she did and the choice she made to stay with someone who was breaking the law, to reap the financial rewards of his conduct and eventually to become involved in the conduct herself. The court should give great consideration to the character of the woman that these letters describe and the circumstances that led to her participation in this offense. In doing so, the court will see that a sentence of 70-87 months is far greater than necessary to accomplish the goals and purposes of sentencing, in light of the now advisory nature of the federal sentencing guidelines.

While the guidelines do not authorize a sentence of probation, there is not statutory prohibition. Instead, the statute authorizes a term of probation between 1 and 5 years. Ms. Torneden is an ideal candidate for a sentence of 5 years probation due to her history and characteristics (no prior criminal history, steady employment record, no

history of drug addiction), her minimal role in the offense (counsel did not seek a 3B1.2 adjustment for role in the offense since the PSR had already noted Ms. Torneden's minimal role in reaching the level 30 base offense level) and her cooperation with law enforcement.

Conclusion

Application of the 18 U.S.C. 3553(a) factors indicate that, in this case, a sentence within the guideline range would be greater than that needed to comply with the purposes of sentencing. Ms. Torneden prays for this Court's judgment granting the above specified relief, or any other relief which this Court might deem appropriate.

Respectfully submitted,

/s/ Tricia A. Tenpenny

Tricia A. Tenpenny #51904

BATH & EDMONDS, P.A.

Historic Voigts Building

7944 Santa Fe Drive

Overland Park, KS 66204

(913) 652-9800

FAX (913) 649-8494

E-mail: tricia@bathedmonds.com

ATTORNEY FOR MS. TORNEDEN

CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2010 I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send notice of electronic filing to all parties of record herein.

/s/ Tricia A. Tenpenny

Tricia A. Tenpenny