

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
KANSAS CITY, MISSOURI

UNITED STATES OF AMERICA,
Plaintiff,

Case No. 10-CR-00320-DGK

Vs.

MARGOT CHARLENE DAVISON,
Defendant.

SENTENCING MEMORANDUM

COMES NOW the defendant, Margot Charlene Davison, by and through her counsel, Jacquelyn E. Rokusek, and hereby respectfully requests this honorable court consider all relevant factors to determine whether the type and length of sentence for this particular defendant is sufficient, *but not greater than necessary*, to comply with the statutory instructions set forth in 18 U.S.C. §3553(a).

The defendant asserts that the amount of time she will serve in prison under the Federal Sentencing Guidelines is far greater than necessary. She asks the court to consider a dispositional departure from the Sentencing Guidelines, and asks that she be placed on probation, as the Guidelines do not adequately take into effect the defendant's personal history, specifically the lifelong history of being drug abuse following her sexual assault at nine years of age.

SENTENCING GUIDELINES ARE ADVISORY

The Supreme Court ruled in *Booker* that the mandatory nature of the sentencing guidelines was unconstitutional, as it was incompatible with the Sixth Amendment of the United States Constitution. *United States v. Booker*, 543 U.S. 220, 244, 125 S. Ct. 738, 756 (2005). The Court therefore made the guidelines effectively advisory. *Id.* at 244, 125 S. Ct. at 756. The Court held that to determine the appropriate sentence the district court must first calculate the applicable guidelines sentencing range, and may then impose a sentence outside the range for the

purpose of tailoring the sentence according to the factors set forth in 18 U.S.C. § 3553(a) . *Id.* at 245, 125 S. Ct. at 757. Furthermore, the Guidelines are now only one of the many factors to consider when imposing sentence. *United States v. Gall*, 128 S. Ct. 586, 602 (2007).

FACTORS TO BE CONSIDERED IN IMPOSING SENTENCE

18 U.S.C. § 3553(a) states that a court shall impose a sufficient sentence, but *not greater than necessary*, and should consider seven relevant factors when determining the length or type of the sentence. 18 U.S.C. § 3553(a). The sentencing judge is in the superior position to judge each individual case and impose sentencing based on the § 3553(a) factors, as he has the greatest level of familiarity both with the case and the individual. *Gall*, 128 S. Ct. at 597.

The sentencing judge must consider each convicted person as a unique individual. *Id.* The following is a list of the relevant factors to be considered prior to sentencing Ms. Davison. Only the factors relevant to her case are discussed.

1. “The nature and circumstances of the offense and the history and characteristics of the defendant”

The defendant was arrested November 19, 2010 and placed on pretrial release on November 22, 2010. Thus, she has been on pretrial release for nearly three years. Ms. Davison has complied with nearly every condition of her release during this three year period. The presentence report writer offers no information to suggest that she violated any of the conditions of her pretrial release. Ms. Davison was employed as a housekeeper while physically capable and only recently became physically disabled due to arthritis in her hips.

Pretrial release allows a defendant the opportunity to prove how she will conduct herself within the community. Often, defendants come back before the court for violating the terms and conditions of their pretrial release. The best indicator of how a person will act in the future is how that person behaves while on pretrial release.

Ms. Davison did not use drugs while on pretrial release. She did not violate the law or fail to appear for court. She did not miss meetings with her attorney. Ms. Davison understood what was required of her and she complied with the conditions imposed by the court. The best indicator of future behavior is present behavior. Ms. Davison will succeed if placed on probation, just as she has been successful on pretrial release.

The reality is that Margot Charlene Davison was forced to grow up very quickly. Her grandmother was her primary caretaker, although both parents were alive. Unfortunately, Ms. Davison was raped by her 16-year-old step-brother when she was a mere nine years of age. She later learned that he had molested other family members, as well.

Ms. Davison left home at a very young age (14) and got married to her first husband. She was married for 13 years before getting divorced. She and her first husband raised two boys. However, Ms. Davison was already abusing drugs at 14 years of age. Her drug abuse slowly escalated over the years. Ms. Davison used marijuana on a daily basis from 1968-1969. She used marijuana throughout the years, again eventually using on daily basis from 2008-2010. While Ms. Davison first used marijuana to mask the pain and humiliation of being raped at a young age, she later used it daily to mask the debilitating chronic physical pain from which she suffers.

Ms. Davison's drug use escalated, to include the use of cocaine, crack, methamphetamine, heroin, xanax, PCP, LSD and speed. Unfortunately, she participated in drug treatment on only a few occasions, once after incarceration in prison.

What is notable is that Ms. Davison is now free of the drugs which controlled her existence for so many years. She is also physically disabled and in a wheelchair. She is *not a*

danger to the community. She is not someone in need of drug rehabilitation. She needs drug counseling and surgery on her hips. However, prison is simply not warranted in this case.

This country cannot afford to continue to over-incarcerate our citizens. Ms. Davison has learned a very hard lesson. She is suffering from the effects of years of drug abuse. She is broke, physically disabled and dependent on others for transportation. Prison would serve only one purpose, albeit one that is recognized as appropriate in some cases – punishment. Ms. Davison has been punished. She has been on pretrial release for three years. She is penniless, in pain and lacks independence. She has also been under the constant supervision of pretrial release for three years. There has been a penalty in this case.

In summarizing the characteristics of Margot Charlene Davison, it is relatively easy to assign a non-violent and non-threatening label. Ms. Davison is working on her recovery and living a solid Christian lifestyle. She is a loving and gentle person.

The Court should never lose sight of the fact that Margot Charlene Davison is 59 years old. The age of an offender must be taken into consideration by the court upon sentencing. *Gall*, 128 S. Ct. at 601. The District Court judge for the *Gall* case looked closely at the age and maturity of the defendant, suggesting: "Immaturity at the time of the offense conduct is not an inconsequential consideration. While age does not excuse behavior, a sentencing court should account for age when inquiring into the conduct of a defendant." *Id.* (Quoting *Roper v. Simmons*, 543 U.S. 551, 569, 125 S. Ct. 1183 (2005)). *Gall* was twenty-one years old at the time of his offense. *Gall* at 594. Ms. Davison is not young. So why is age relevant in this case? It is relevant because Margot Charlene Davison has been on her own since she was fourteen. She is now almost 60 years old, yet has the physical body of a person much older than her biological age. Incarceration would be detrimental to her physical health. She would need placement at a

medical facility and would need surgery in the very near future. In fact, the only reason she has not yet had the surgery is that the surgeons want her to get her dental work completed to lessen the risk of infection. Ms. Davison does not even have the \$700.00 necessary to get the dental work done so that she can have her hip replaced. Although her life has been one of drugs and complications, it is quite clear that the turning point in her life happened at the young age of nine, when she was raped by her step-brother and left to cope with the confusion and humiliation. She has simply been masking those feelings for decades – until she was forced to face them following this Indictment.

Ms. Davison is not minimizing the offense. The history of the defendant includes no violence – other than that perpetrated upon her by others. Her criminal history points are at 1, which establishes a category of I for the purposes of sentencing. Clearly the history and characteristics of Ms. Davison illustrates that a sentence far below the guidelines recommended sentence, hopefully a probationary sentence, would be appropriate. Perhaps it is time for Margot Charlene Davison to be given an opportunity to complete this sentence in the same fashion she has during the pendency of this case.

2. “The need for the sentence imposed –

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

Christina Davison pled guilty to conspiracy to distribute marijuana. However, the length of sentence calculated in the Presentence Investigative Report is quite harsh. The suggestion of approximately twenty-four to thirty months as punishment is shocking to the conscience. Such a punishment does not appear fitting. Rather than promoting respect for the law, the suggested sentence, if imposed for the offense of this particular defendant, would highlight an inherent unfairness in the guidelines. The workings and systematic approach of the guidelines and the

law would be criticized rather than respected. A sentence of probation would amply serve to reflect the seriousness of the offense. The purposes of this particular clause would be fulfilled by a probationary sentence, and would be questioned by society if the calculated sentence were instead imposed. The sentencing guidelines' recommended sentence is simply draconian when you consider what Ms. Davison has lived through and been subjected to during her lifetime.

(B) “[T]o afford adequate deterrence to criminal conduct”

Ms. Davison, if granted probation, would be deterred from further criminal activity. She understands the ramifications of this conviction as the message has been clearly conveyed. In fact, the time Ms. Davison has spent pending her sentencing has had the very deterrent effect in question. Ms. Davison yearns to be a good and productive citizen and something more than another person in prison. A sentence of probation is more than enough to deter Ms. Davison from any criminal conduct.

As the Court needs more than rhetoric before determining whether to sentence Ms. Davison to something less than the recommended guidelines sentence, the defendant would again ask the Court to consider the defendant's stellar behavior during pretrial release and her lack of *significant* criminal history.

(C) “[T]o protect the public from further crimes of the defendant”

The defendant is not a violent person, evident by her history void of significant criminal activity and violence. She has done nothing to suggest that she would ever injure or intentionally harm another person. Ms. Davison is a quiet, gentle woman. She shows great respect for the criminal justice system and for those persons in positions of authority.

(D) “[T]o provide the defendant with the needed educational or vocational training, medical care, or other correctional treatment in the most effective manner”

The court should recognize that “imprisonment is not an appropriate means of promoting correction and rehabilitation.” 18 U.S.C. § 3582(a). For Ms. Davison, a probationary sentence will justly serve as a correctional treatment. Ms. Davison does not need vocational or educational training. She needs drug treatment and surgery. However, she will not likely be gainfully employed in the future if she does not get the surgical treatment and physical therapy she needs.

WHAT IS A REASONABLE SENTENCE?

The district court judge should consider all of the 18 U.S.C. §3553(a) factors to determine whether the sentence requested by a party is reasonable and supportable. *Gall*, 128 S. Ct. at 596. Accordingly, after giving both parties an opportunity to argue for whatever sentence they deem appropriate, the district judge should then consider all of the § 3553(a) factors to determine whether they support the sentence requested by a party. *Id.* The court must “make an individualized assessment based on the facts presented.” *Id.* at 597. After the court has come to an appropriate sentence, it should then fully explain the justifications. *Id.* The sentence will be reasonable as long as the court offers appropriate justification “sufficiently compelling to support the degree of variation.” *Id.* at 594. However, the sentence is not presumed to be reasonable just because it falls within the guidelines. *Id.* at 596-597.

Probation is the appropriate sentence in this case. Ms. Davison prays for consideration from this honorable court.

CONCLUSION

Ms. Davison is not a lost cause. She recognizes that she will be punished for the criminal conduct of her conviction, but asks that the court consider all factors under 18 U.S.C. §3553(a) when determining whether departure from the guidelines is justified. The defendant asks for a sentence of probation, as allowed by 18 U.S.C. § 3561(c)(1), maintaining that the purpose of

punishment will be adequately fulfilled, and knowing that this conviction for criminal conduct will be her last. The language of 18 U.S.C. § 3553 makes it quite clear that a sentence should be sufficient, but “not greater than necessary.” The defense feels that the sentence calculated by the guidelines is greater than necessary for the aforementioned reasons. The defense recognizes the importance of the sentencing guidelines, but asks the court to consider departure, stressing that this is the right case to do so.

Respectfully submitted,

/s/ Jacquelyn E. Rokusek #16308
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CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2013 I electronically filed with the clerk of the court by using the CM/ECF system which will send a notice of electronic filing to the following attorneys of record:

AUSA Bruce Rhoades

/s/ Jacquelyn E. Rokusek
Attorney for Defendant