

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

UNITED STATES OF AMERICA,)

)

Plaintiff,)

)

v.)

Case No. 09-00121-03-CR-W-DGK

)

BRUCE ALLEN BISH,)

)

Defendant.)

SENTENCING MEMORANDUM

COMES NOW the Defendant Bruce Bish (hereinafter Bish), by counsel, and offers the following sentencing memorandum in support of his requested sentence of 79 months incarceration in the U.S. Bureau of Prisons. This sentence can be reached by using the low end of the guideline range as calculated by the Probation Office (87 months) and granting a downward departure of 8 months pursuant to U.S.S.G. Section 5K2.23. In support thereof, Defendant respectfully suggests that:

1. On May 24, 2006, Bish was arrested with 112.4 grams of methamphetamine in his possession. He was prosecuted in Platte County, Missouri, and pled guilty to the offense. On October 12, 2006, he was sentenced to seven years in the custody of the Missouri Department of Corrections. He was granted parole on May 21, 2007, more than 7 months later. He had been on parole

for nearly two years, having never been revoked, when he was arrested based on this federal indictment, handed down on April 9, 2009.

2. Counts 2 and 4 of this indictment are based on exactly the same set of operative facts that led to his arrest in May of 2006 and his conviction in October, 2006. He has no other previous convictions in the intervening three years.

3. The so-called “safety valve” provisions of U.S.S.G. § 5C1.2 are applicable in this case because Bish does not have more than one criminal history point (because the current offense includes the factual basis of the prior offense) and he provided the Government with a truthful accounting of his role in this offense. As a result, he is authorized to receive a sentence lower than the statutory mandatory minimum of 120 months.

4. Bish is also eligible for approximately eight months credit for the time he served in the Missouri Department of Corrections on the Platte County conviction based on the same operative facts per U.S.S. G. § 5K2.23. That guideline provides that:

A downward departure may be appropriate if the defendant (1) has completed serving a term of imprisonment; and (2) subsection (b) of §5G1.3 (Imposition of a Sentence on a Defendant Subject to Undischarged Term of Imprisonment) would have provided an adjustment had that completed term of imprisonment been undischarged at the time of sentencing for the instant offense. Any such departure should be fashioned to achieve a reasonable punishment for the instant offense.

U.S.S.G. § 5G1.3 provides, in plain language, that if the sentence that is to be imposed is based on another offense that “is relevant conduct to the instant offense of conviction” then in calculating the sentence for the instant offense, “the court shall adjust the sentence for any period of imprisonment already served on the undischarged term of imprisonment.” Read in conjunction with § 5K2.23 and applied to Bish’s situation, the guidelines would direct the Court to credit Bish for the nearly eight months he served on the Platte County conviction. Because the Guidelines are not mandatory, neither is the departure or credit available to the Bish under § 5K2.23. *United States v. Coleman*, 556 F.3d 851, (8th Cir. 2009). But whether it is called as a “departure,” “variance,” or “credit” seems to vary from circuit to circuit, but the result is the same when approved by the sentencing court: a reduction in the federal sentence for the state time served for the same behavior. *United States v. Pray*, 373 F.3d 358 (3d Cir. 2004); *Ruggiano v. Reish*, 307 F.3d 121 (3rd Cir. 2002).

5. Finally, in support for his plea for sentencing leniency, Bish offers the attached brief letters from his family for the Court’s consideration. Of particular relevance is the letter from Philip Bish, the Defendant’s father, a correctional officer in the Missouri Department of Corrections in Cameron, Missouri. Mr. Bish points out for the Court’s benefit that upon his son’s release from the MDOC, he got a job, got a house, and was working successfully to put his life back together.

The federal prosecution interrupted that demonstration of his son's rehabilitation, but all of the Defendant's family members are in full support of his renewed and continued rehabilitation upon his release from federal prison. On behalf of the Defendant, they respectfully request that this Court permit the Defendant to start over again as soon as possible.

/s/ Phillip R. Gibson
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CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to all counsel of record.

//s// Phillip R. Gibson
Counsel for Defendant