

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. ) Case No. 09-00121-05-CR-W-DGK  
 )  
 CHARLES W. CORBITT, )  
 )  
 Defendant. )

**SENTENCING MEMORANDUM**

COMES NOW the defendant, CHARLES W. CORBITT, by and through his counsel, James E. Brown, and submits the following memorandum regarding sentencing which is scheduled for April 20, 2011.

1. The undersigned is aware of the Court's standing order regarding sentencing memoranda; requiring their filing at least 15 days prior to sentencing. Due to the unusual circumstances surrounding the sentencing posture for this defendant, the undersigned requests the court to consider the following out of time.

2. At the time of the plea in this case, it was anticipated that the government would file a motion under the provisions of U.S.S.G. §5K1.1. However, subsequent to the change of plea, Mr. Corbitt violated the terms and conditions of his pretrial release. He failed to appear at his scheduled sentencing and was a

fugitive, until his self-surrender on February 18, 2011. The Government notified the undersigned that, because of his failure to appear and his violation of the terms and conditions of his pretrial release, it would not be filing a motion under the provisions of U.S.S.G. §5K1.1.

3. In an attempt to resurrect the motion for downward departure, and the government's belief Mr. Corbitt might have additional information that they would find valuable, another debriefing was scheduled with Mr. Corbitt. That debriefing took place on April 11, 2011. Government counsel notified the undersigned on April 13, 2011, that although Mr. Corbitt was forthcoming, he just lacked knowledge that would be helpful for the Government, and they would not reconsider their decision not to file a motion for downward departure.

4. The PSR was completed and filed, that reflected a sentencing range of 135 to 168 months, with reductions pursuant to U.S.S.G. 5G1.3(b).

5. Mr. Corbitt, prior to the violation of his pretrial release and absconding, was reasonably facing of sentence of less than 10 years, perhaps considerably less than 10 years.

6. Absent the motion for downward departure, because of Mr. Corbitt's plea to Count 2 of the indictment, the statutory minimum mandatory sentence available to the Court is 10 years.

7. Additionally, an addendum to the PSR was filed, to which Defendant

objects, that removes the three-level reduction for acceptance of responsibility and adds a two-level increase for obstruction of justice. The resulting sentencing range, after those adjustments, is 210 to 262 months.

8. Whatever determination the Court makes regarding the correct guideline calculation, the Court must fashion a reasonable sentence after considering the factors set forth in 18 U.S.C. §3553(a), including the nature and circumstances of the offense and the history and characteristics of the defendant; and the need to avoid unwarranted sentence disparities.

9. The nature and circumstances of the offense and history and characteristics of the defendant are reflected in the PSR and show us a twenty-one year old individual who was addicted to methamphetamine during the time of the offense. After pleading guilty to State charges, that include relevant conduct in this offense, Mr. Corbitt was sentenced to the custody of MDOC, served time, was paroled and on parole supervision at the time of this indictment. Mr. Corbitt was released on pretrial supervision in May, 2009, and was supervised until absconding from supervision in December, 2010. During the first 18 months of his supervision by both Missouri and Federal authorities, there is no indication that he used drugs; he maintained employment; reported as required; and participated in drug counseling and educational programs through his supervising authorities. In November, 2010, he was charged with felony driving while

revoked, became frightened and absconded.

10. At present, seven of the twelve co-conspirators in this case have been sentenced as follows:

<u>Defendant</u>	<u>Sentence imposed</u>
Ernest Sneddon	128 months
Dustin Benny	110 months
Steven Blacketer	120 months
Bruce Bish	80 months
Danny Hughes	135 months
Leatha Guteirrez	85 months
Kala Rose	96 months

11. Additionally, Defendants in related cases have been sentenced to terms of imprisonment as set forth in paragraphs 17 through 26 of the PSR.

12. Sentencing this Defendant within a range of 210-262 months would result in an unwarranted sentencing disparity.

13. The elephant in the corner of the room at this sentencing is Mr. Corbitt's absconding from pretrial supervision and failing to appear at sentencing. The probation office suggests that the guidelines call for a 75-94 month increased punishment for those actions (the net result from the 5 level increase proposed in the latest addendum). Defendant suggests, that while some punishment is

appropriate for absconding from supervision, that punishment is fully accounted for by the loss of the motion for downward departure by the government, and the loss of additional credit for time served in MDOC in case number 06AE-CR-03575-01 which would be applied under the provisions of 5G1.3(b) to a guideline sentence, but which have no applicability to the statutory minimum mandatory sentence. See footnote to Paragraph 96, PSR.

14. By way of explanation, not excuse, Mr. Corbitt had repaired the brakes on his mother's automobile, and was test driving the car when he was recognized by St. Joseph, Missouri, police officers, who knew the status of his driving privileges, who stopped and charged him with Driving While Revoked. Because of his prior convictions, that charge was brought as a felony in Buchanan County, Missouri, Case No. 10BU-CR02927. When learning the charge was a felony, Mr. Corbitt became frightened that he would immediately be taken into custody for violation of his federal pretrial release; stopped reporting to his Missouri parole officer and his federal pretrial service officer; and began living as a fugitive. Those actions reflect immaturity and lack of judgment, but do not warrant an excessive increase in punishment in this case.

15. As to loss of acceptance of responsibility under a guideline calculation, it must be noted that Mr. Corbitt has entered pleas of guilty three times to felonies that comprise the relevant conduct in this case (See Paragraphs 72, 73 PSR); has

cooperated with authorities, including being debriefed and providing information to federal authorities that, but for his absconding, would have resulted in a motion for downward departure; and continues to be remorseful for his conduct. Dual prosecutions covered by the *Petite* policy must have left a substantial federal interest demonstrably unvindicated (USAM 9-2.031) but the policy recognizes the burden to defendants, and a plea to the instant offense demonstrates a acceptance of responsibility not normally found in federal prosecutions. Given all the factors regarding Mr. Corbitt's plea in this case his absconding does not warrant a loss of acceptance of responsibility under the guidelines.

16. The commentary to §3C1.1 U.S.S.G, in Application Note 4(e), recognizes that an enhancement of two levels may be appropriate for willfully failing to appear for a judicial proceeding. Mr. Corbitt failed to appear for his scheduled sentencing February 16, 2011. However, he did contact the undersigned (for the first time in months) that afternoon indicating that he was unable to obtain transportation that morning, and believed the courthouse was closed that afternoon. In that conversation, Mr. Corbitt agreed to surrender himself to the U.S. Marshal, and did so on February 18, 2011. Although some additional punishment may be merited for his failure to appear, a two level increase in the guideline calculation is not warranted.

17. The undersigned believes a sentence of 123 months would be

reasonable, taking into account all the factors set forth in 18 U.S.C. 3553(a).

18. Finally, in support of a reasonable sentence, and to further elucidate Mr. Corbitt's characteristics and history , we have attached three brief letters.

Respectfully submitted,

/s/ James E. Brown  
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ATTORNEY FOR DEFENDANT  
Charles W. Corbitt

**CERTIFICATE OF SERVICE**

In accordance with Rule 49(a), (b) and (d), Fed. R. Crim. P., and Rule 5(b), Fed. R. Civ. P., it is hereby CERTIFIED that the foregoing was sent electronically ECF/PACER to counsel of record.

/s/ James E. Brown  
James E. Brown