

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

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

**GOVERNMENT RESPONSE TO
DEFENDANT SENTENCING MEMORANDUM**

Comes now the United States of America, by the United States Attorney for the Western District of Missouri, and does hereby submit its response to the sentencing memorandum filed by Defendant Corbitt.

SUPPORTING SUGGESTIONS

In the interest of brevity, the Government will only address those items in the Defendant’s sentencing memorandum with which the Government takes issue. With that said, the Government does *not* believe that the late filing in any manner or way prejudices the Government and the Government does not object in any way to the filing of said sentencing memorandum. Additionally, *all* of the issues addressed by the defendant were raised previously in person by his counsel with Government counsel and therefore there is no surprise in anything set out in said sentencing memorandum.

While it is admittedly a minor point and lacking in sentencing impact, the Government would not characterize Corbitt’s incarceration following his failure to appear at sentencing as “self-surrender” as set out in paragraphs three (3) and sixteen (16). This position is based

entirely upon the report submitted to the pre-sentence report (PSR) writer from the United States Marshall Service following Corbitt's arrest on this Court's Failure to Appear warrant. While it is true that Corbitt stopped actively hiding from authorities and agreed to be arrested, that *only* occurred following law enforcement actions that left him with little or no choice due to everyone associated with him refusing to further assist him in evading arrest or encouraging his surrender. But again, the Government concedes this factual disagreement could easily be seen as inconsequential.

Outside the facts set forth in the PSR, the Government is without facts or evidence to take issue with or agree with the facts set for in paragraphs nine (9) and fourteen (14).

While the Government doesn't take issue with the premise of a sentence shorter than the adjusted guideline sentence, the Government cannot agree that no increase, other than the loss of a downward departure from the Government, is appropriate, as set out in paragraph thirteen (13), fifteen (15) and sixteen (16). There *must* be some impact on a defendant, albeit specific, articulable and reasonable, by the Court *and* Government, for absconding and failure to appear, not just in this case, but *any* case. After all, one of the tenants of 18 U.S.C. § 3553 is to promote respect for the law.

For the Government, the "elephant in the . . . room at this sentencing is . . ." what is a reasonable sentence recommendation to the Court in a case where at one time the Government was prepared to recommend a sentence well below the statutory minimum of 120 months? Especially in a case such as the one now before the Court where the majority of the sentence arguments by the Defendant absolutely bear fruit.

In light of the foregoing and the un-objected to portions of the Defendant's sentencing memorandum, the Government urges the Court to suspend its standing order on timing of sentencing memorandum, therefore allowing for a full review of that memorandum and this response. Following that review and this Court's routine fine-tooth comb review of all the other legal, factual and policy issues with respect to sentencing, including the PSR, the Government urges this Court to consider a sentence of 168 months. That is the low end of the guideline range for a level 33 with a category III criminal history. The Government arrives at that sentence by reducing the adjusted guideline range by three levels.

The Government doesn't lightly make this recommendation. The PSR writer accurately and fairly calculated the original guideline range and the adjusted guideline range following Corbitt's failure to appear and absconding. Every single bit of the responsibility for this case can be laid at the feet of only one person, the defendant, Charles Whitson Corbitt. This Court's power and authority are affected by said actions of the defendant due to him being on pre-trial release. While all of this is true, it is also true that many of the sentencing arguments made by the defendant are accurate in light of fairness, substantial justice and several tenants of § 3553. Unlike the defense, the Government's duty is to seek justice. In this case, while the Government (and the Court) could legally and statutorily easily justify a sentence within the adjusted guideline range, the Government can find logic in arguments for a lesser sentence. That isn't to say that the only logical and justice serving sentence is 168 months, just that 168 months is acceptable to the Government in light of those, and other, legal tenants.

Wherefore, the Government requests this Court to consider its Response to the Defendant's Sentencing Memorandum and rule accordingly.

Respectfully,

Beth Phillips
United States Attorney

By */s/ Bruce Rhoades*

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CERTIFICATE OF SERVICE

I hereby certify that an electronic copy of the foregoing was filed with the ECF/PACER system on this 18th Day of April, 2011 and a copy was electronically mailed or sent by facsimile to the defendant's attorney of record, James E. Brown.

/s/ Bruce Rhoades

Bruce Rhoades
Assistant United States Attorney