

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

GOVERNMENT'S RESPONSE TO DEFENDANT ROSTIE'S SENTENCING MEMORANDUM

The United States of America, by and through its undersigned counsel, hereby submits this response to Defendant Mary Lynn Rostie’s (“defendant”) sentencing memorandum.

SUMMARY OF THE GOVERNMENT'S SENTENCING POSITION

The Government will request a sentence below the sentencing guidelines range because Defendant Mary Lynn Rostie has provided substantial assistance as outlined in the forthcoming Government's motion for downward departure. The Government, however, objects to the defendant's intimation that she should be granted a downward variance based on the deterioration of her health.

PROCEDURAL BACKGROUND

Defendant Rostie pleaded guilty, pursuant to a written plea agreement, on September 4, 2008, to conspiracy to distribute and dispense controlled substances, contrary to 21 U.S.C. §§ 841(a)(1), (b)(1)(D) and 846; and conspiracy to commit money laundering, contrary to 18 U.S.C. § 1956(h). (Doc. No. 103.) Of particular note, paragraph 10(h) of the plea agreement provides that the United States agrees not to seek an upward departure from the Guidelines range and defendant Rostie agrees not to seek a downward departure from the Guidelines.

The Presentence Investigation Report (“PSR”) calculated a total offense level of 17, a Criminal History Category of I, and a resulting advisory guideline range of 24 months to 30 months’ imprisonment.

DISCUSSION

Following *United States v. Booker*, 543 U.S. 220 (2005), the Eighth Circuit observed that “the district court has flexibility to vary from the advisory guideline range ‘to individualize sentences where necessary,’ and to tailor the sentence in light of statutory concerns other than the advisory guidelines.” *United States v. Maloney*, 466 F.3d 663, 668 (8th Cir. 2006) (quoting *Booker*, 543 U.S. at 245-46). In *Gall v. United States*, 128 S.Ct. 586 (2007), the United States Supreme Court reiterated the proper procedures for district courts’ sentencing decisions. The Court explained that, “[a]s a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark.” *Id.*, at 590. The sentencing court then should “consider all of the § 3553(a) factors to determine whether they support the sentence requested by a party.” *Id.*

Section 3553(a) provides, in pertinent part, as follows:

The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider –

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed –

- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant; and
 - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established for—
- (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines. . . .
- * * *
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct. . . .

In this case, the defendant's advisory imprisonment range is 24 months to 30 months.

The Government will agree that a departure from the guidelines range is warranted in this case due to the defendant's cooperation in this case. However, any such departure should be based solely on defendant Rostie's cooperation and not because of the reasons set forth by defendant Rostie in her sentencing memorandum. *See United States v. Johnson*, 517 F.3d 1020, 1023-24 (8th Cir. 2008)(reasoning that "to employ factors unrelated to the defendant's assistance below the mandatory minimum would exceed that limited authority."). An additional motion will be filed to address the defendant's cooperation.

CONCLUSION

WHEREFORE, for the foregoing reasons and authorities, the Government respectfully requests that the Court deny the defendant's implied suggestion to vary downward based on her deteriorating health and to sentence defendant Rostie to an appropriate sentence based solely on her cooperation, which will be addressed at sentencing.

Respectfully,

Beth Phillips
United States Attorney

By /s/ Rudolph R. Rhodes, IV
Rudolph R. Rhodes, IV
Assistant United States Attorney

By /s/ James C. Bohling
James C. Bohling
Assistant United States Attorney

Charles Evans Whittaker Courthouse
400 East 9th Street, Room 5510
Kansas City, Missouri 64106
Telephone: (816) 426-2605

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on April 18, 2011, to the CM-ECF system of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

Georgia Ann Mathers, Esq.
P.O. Box 105643
Jefferson City, Missouri 64110
Counsel for Defendant Mary Lynn Rostie

/s/ Rudolph R. Rhodes IV
Rudolph R. Rhodes IV
Assistant United States Attorney

RRR/jm