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

UNITED STATES OF AMERICA,		
	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	**Case No. 10-00162-13-CR-W-FJG**
	)	
GREGORY E. YOUNG,	)	
	)	
Defendant,	)	

DEFENDANT'S SENTENCING MEMORANDUM

COMES NOW Defendant Gregory Young, by and through his attorney of record F.A. White Jr., and hereby submits this Sentencing Memorandum in the above-styled case. The sentencing hearing is presently set before this Court at 2:00 p.m. on November 22, 2011. Mr. Young and his attorney have received and thoroughly reviewed the Presentence Investigation Report (**PSR**) filed in this matter and have discussed all issues with respect to sentencing. This Memorandum is respectfully filed to assist the Court in determining an appropriate sentence in this case.

I. PROCEDURAL BACKGROUND

Defendant was originally charged in Count 1 of a seventeen-count Indictment with the offense of 1) conspiracy to distribute a mixture or substance containing cocaine, a Schedule II controlled substance in an amount of 5 kilograms or mere; and 2) a mixture or substance containing cocaine base ("crack" cocaine), a Schedule II controlled substance in an amount of 50 grams or more, in violation of Title 21, United States Code, Sec. 841(a)(1), (b)(1)(A) and Title 21, United States Code, Sec. 846.

On November 9, 2010, the government filed a notice and information which indicated their intent to use a prior conviction of Mr. Young (possession of a controlled substance) arising out of Jackson County, Mo. in order to enhance his punishment in the instant case, pursuant to 21 U.S.C. Sec. 851. Thereafter, on November 10, 2010, Mr. Young appeared with counsel before this Court at which time, pursuant to a written plea agreement with the government, entered a plea of guilty to the lesser-included offense under Count 1 of conspiracy to distribute 500 grams or more of cocaine and 5 grams or more of cocaine base, in violation of 21 U.S.C. Sec. 841(a)(1) and (b)(1)(B), and Sec. 851. Significant portions of the plea agreement were as follows:

1. The parties agreed that the government would not file any additional charges against the defendant for any federal criminal offense related to the investigation in this case.
2. The parties agreed that the applicable Guidelines section for the offense to which the defendant was offering his plea of guilty would be U.S.S.G. Sec. 2D1.1 but that a base offense level could not be anticipated at the time of the entry of the plea given the recent enactment (on August 3, 2010) of the Fair Sentencing Act of 2010 (see Plea. Agreement, p. 7 ¶10). However, the parties did agree that the amount of crack cocaine involved in this offense would be 363 grams.
3. The parties agreed that the defendant had admitted his guilt and accepted responsibility for his actions, and that he had done so in a timely fashion, thus allowing the government to avoid the time and expense of preparing for trial, and that he therefore should be entitled to a total three-level reduction of his base offense level, pursuant to Sec. 3E1.1 of the Sentencing Guidelines.
4. While the government agreed not to seek an upward departure from the guidelines,

the government agreed that defendant could reserve the right to request that the Court sentence him to the statutory mandatory minimum sentence of 120 months "using the factors set forth in 18 U.S.C. Sec. 3553 as a basis for a variance from the Guidelines range" should the suggested range of punishment ultimately determined by the Court exceed that amount of time.

II. UNRESOLVED ISSUES WITH RESPECT TO PSR

Both counsel and defendant have received and reviewed the **PSR** and the defendant has previously indicated that there would be no objections to that report.

III. ARGUMENT

The plea agreement the government has entered into with Mr. Young indicated that while the government would not seek and upward departure and would be seeking a Guideline sentence, the defendant would be allowed to request that the Court sentence him to the statutory mandatory minimum sentence of 120-months based on any factors the Court might consider with respect to 18 U.S.C. § 3553(a). It is the defendant's contention in this case that there certainly are such factors and that given the facts of the case, the defendant's role in the case as well as the defendant's background, issues which will be discussed hereunder, a sentence of 120-months would be sufficient "but not greater than necessary" to accomplish the purposes of sentencing. In reaching such a decision, a sentencing court generally engages in a three-step process. First, it must determine a defendant's proper Guidelines range. *United States v. Roberson,* 517 F.3d 990,993 (8th Cir. 2008) (citing *Gall v. United States,* 552 U.S. 38, 48-49 (2007). Secondly, the sentencing court should consider whether a departure or variance is appropriate. *Id.* citing *Gall,* 552 U.S. at 48-50; *United States v. Thundershield,* 474 F.3d 503, 506-507 (8th Cir. 2007)). Lastly, the sentencing court should then consider all of the other factors enumerated in section 3553(a) "to determine whether it

should impose a sentence under the guidelines or, rather, a non-guidelines sentence." *United States v. Haack,* 403 F.3d 997, 1002-03 (8th Cir. 2005).

In the instant case, defendant has agreed that the **PSR. (PSR** , p. 24, ¶ 116) is correct in stating that the suggested or advisory Guidelines range in this case should be 135-168 months. Thus, defendant submits that the issue for consideration here is whether there are sufficient reasons for this Court to conclude that a sentence to the "below Guideline" sentence of 120 months would be sufficient to accomplish the goals of sentencing. Based on those factors set forth in 18 U.S.C. § 3553(a) and the information before the Court in the instant case, Mr. Young submits that a 120 months sentence of incarceration would be a reasonable sentence. What, therefore, are those factors?

1. Nature and circumstances of the offense and the history and characteristics of the defendant.

It is clear from the analysis of the government's case outlined in **PSR** as well as Mr. Young's candid and immediate acceptance of responsibility for his actions that he participated over a period of several months in the distribution of cocaine. His "cooperation" with regard to accepting his responsibility actually began on June 9, 2010 when officers appeared on a federal warrant seeking his arrest. At that time, Mr. Young gave permission to search his residence and volunteered that there they would find heroin as well as fire-arms he had just purchased in that residence. On the following day he gave a statement with regard to his involvement with the one other person in this case that he knew and whom he had known since he was "8 or 9 years old." (**PSR** p. 10, ¶ 40). While he was a participant in selling drugs to others, Mr. Hampton was his primary source.

The **PSR** has also set out a fair and accurate representation of this Mr. Young's criminal history. (**PSR** p. 17, ¶ 69). Although he has accumulated 6 Criminal History Points which would provide for a Criminal History Category III under the Federal Sentencing Guidelines, a review of

his prior convictions indicates that they involved possession offenses with the exception of a couple minor traffic offenses. It is also clear that drugs have been a problem for Mr. Young for many years now. In fact, Mr. Young would indicate that during the entire time of this conspiracy was operating he was a drug addict, and that he was and had been addicted to heroin (that very substance found at his residence) and that he has used it "daily" (a half a gram or more a day) and that he had even used it along with cocaine in the hours immediately prior to his arrest in June 2010 (**PSR**. p. 21- 22, ¶¶s 100-101).

Added to that is the fact that Mr. Young has also suffered since 2006 from a degenerative disc condition in his lower back. That problem was exacerbated in 2007 when he was involved in a serious vehicular accident while driving a truck for his then employer in 2007. As a result of that accident, he herniated yet another disc in his back and, as noted in the **PSR** and as his medical records confirm, he was under the care of an orthopedic specialist in Lee Summit for several months during 2008. (**PSR,** p. 21, ¶ 95). From the date of that accident, in 2007, Mr. Young's ability to work has been severely restricted (since he could no longer lift anything greater than 15-pounds) and he has been in constant pain every day of his life. Even at the present time (during his lengthy incarceration for the instant offense) he is taking 5 prescription medications for that pain. **(PSR,** p. 21, ¶ 96). As a result of the pain, as well as the medications and their side effects, Mr. Young, unable to work began to suffer various bouts of extreme depression. Admittedly, Mr. Young chose a wrong path with regard to participating in the possession for the resale of narcotics and in the ultimate distribution of those narcotics. However, Mr. Young is not suggesting this medical condition as an excuse to justify that illegal behavior for which he has readily admitted his participation, but rather to justify his argument that a sentence of 120 months, 10 years of his life, would be more than sufficient punishment for those activities.

Incidentally, Mr. Young recognizes that the **PSR** has correctly recommended a two level increase as a result of in accordance with 2D1.1(b)(1) for possession of firearms (and Mr. Young readily admitted to officers his possession of those firearms from the time of his arrest). He would submit, however, that there is no indication in the voluminous discovery material provided by the government in this case that Mr. Young ever used or brandished a weapon in connection with any of the narcotic purchases or sales. While recognizing that he is subject to the enhancement under the Guidelines for the mere possession of any weapon in conjunction with the drugs, it is hoped that the Court would consider that fact in deciding that 120 months would be an appropriate sentence in this case.

Finally, with regard to Mr. Young's criminal history, although he does have prior convictions, the maximum amount of time he has ever served in jail was 120-days. That was as a result of a conviction, again for simple possession of a controlled substance in Platte County, Missouri in April 2002. In that case, although he had originally received a 5-year sentence, it was under the provisions of Missouri law which provided for institutional drug treatment and he was released on probation after a 4-month stay. The only other periods of incarceration were county jail sentences of 30-ddays or less for relatively minor offenses. Thus, although standing before this Court with a criminal history which the guidelines take into account, Mr. Young has never spent any significant amount of time in prison. That, of course, will no longer be the case whatever sentence this Court imposes.

2. The need for a sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; to afford adequate deterrents to criminal conduct and to protect the public from further crimes of the defendant; and to provide the defendant with needed educational or vocational training; medical care, or other corrected treatment in the most effective manner.

It is submitted that the 120 month sentence requested by Mr. Young in the instant case would satisfy all of the above factors. No one could argue that ten years is a significant punishment for a person never having spent any significant time incarcerated, or a person who was not a drug dealer from the standpoint of making a substantial living doing this. He had no money at all at the time he was arrested. He did have a very serious drug habit, however, and anyone realizing the cost of a heroin habit of (1/2 gram or more per day) as well as cocaine usage at least "two to three times weekly" would certainly know why he had no money. So the punishment factor and the deterrent factor discussed by 3553(a) would be well satisfied by a ten year sentence.

As this Court no doubt often hears, Mr. Young is hurt most by the harm his lengthy incarceration has already caused and is going to cause to his children. While it is easy for someone to say "why didn't he think of that while he was doing this?" the undersigned submits that such a person simply does not understand the "pull" of drug addiction. Mr. Young loves his children and understands that his actions have not only hurt him but more importantly have hurt them. Certainly the Court could consider this with regard to determining whether a sentence of 120-months is indeed reasonable or whether for some reason an additional period of time of more than a year to reach the advisory guideline range would serve any more society's interest in a "just punishment."

Mr. Young certainly wishes he could change the past. He has had a great deal of time to think about it and has indicated to the undersigned on more than one occasion that he has thought about it. Unfortunately, he knows this cannot be done. He does hope to better himself and at some point to get out and reunite with his family and start his life anew. He is asking this Court to recommend his screening for and hopefully his ultimate placement in the 500-hour Residential Drug Treatment Program. A review of Mr. Young's past would certainly indicate that when he is looking at possession offenses dating an entire decade prior to his arrest on this serious federal

offense, if anyone would need drug treatment it would be him. He would submit that the first indication of the possibility of successful drug treatment is the recognition by a person that he or she needs that treatment. Mr. Young also is hopeful that during the period of his incarceration he can do whatever he can to address the serious back problems that he, as a relatively young man, is experiencing and that are presumably going to stay with him for the rest of his life. He is hoping to receive some type of vocational or educational training that will help him seek out alternative methods to earn a living for himself and his family upon his ultimate release. He wants this Court to understand and has asked me to convey to the Court that he intends to do whatever he can within the confines of a structured custodial setting to improve his life so that when he does return to his children and his family he can do so in the best possible posture to help not only reunite with them but to be able to support himself and no longer be a burden on his family or on society.

The undersigned and Mr. Young recognize not only the awesome responsibility placed in a Court who must determine the appropriate sentence for any individual appearing before it, but also the broad discretion that such a sentencing court has. This Court is well aware that it may basically do whatever it wishes with regard to sentencing decisions including varying from the suggested and advisory guideline range when it deems it appropriate to do so. In fact, it can vary if it wishes simply because it disagrees with what the guideline calculations call for. *Kimbrough*, *supra,* 128 S. Ct. at 570. Whatever sentence this Court imposes is going to be entitled to "highly deferential review" (should anyone call for such a review) by any appellate court and only would be disturbed if it is determined there is a "clear abuse of discretion." *United States v. Burns*, 577 F.3d 887, 894-95 (8th Cir. 2009).

When one considers the other aspects of 18 U.S.C Sec. 3553 such as the requirement that the sentence be such as to "afford adequate deterrence to criminal conduct," one must ask: would a

sentence of 135 months be any more of a deterrent to someone than a sentence of 120 months which the defendant is seeking; would a sentence of 135 months as opposed to the 120 months being sought by this defendant be any more important to society in order to "reflect the seriousness of the offense, to promote respect for the law and to be found to have provided a "just punishment" for the offense; or would a sentence of 135 months as opposed to the 120 months sought by this defendant be any more likely to "protect the public" from further crimes of this defendant? By the time the defendant would have served a 10 year sentence he would now be approaching 50 years of age. It is submitted that it is doubtful that another year would do any more to protect the public from further problems with this defendant. One must ask, is the charge against this defendant of such a nature as to justify the protection of society by simply keeping him "incarcerated as long as we can?"

Finally, it is submitted that the 120 months that the defendant is seeking would be more than sufficient to provide this defendant with the needed educational or vocational training, medical care, other correctional treatment in the most effective manner as called for by 18 U.S.C. Sec. 3553 (a). Hopefully, the Court will consider all of this and agree that a sentence of 120 months would indeed be sufficient to address all of these goals of sentencing.

CONCLUSION

The defendant is requesting that the Court impose a sentence consistent with the suggestions contained in this Memorandum and for its recommendation that defendant be screened for placement in the Bureau of Prisons 500 hour RDAP program and for any other relief deemed proper by the Court.

Respectfully Submitted,

/s/ F.A. White Jr.
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CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2011, the forgoing was filed using the Court's electronic filing system and a copy electronically served on all parties.

/s/ F.A. White Jr.
F. A. White, Jr.