

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

UNITED STATES OF AMERICA,)	
Plaintiff,)	
)	
vs.)	Case No. 10-00162-21-CR-W-FJG
)	
DOROTHEA CAIN,)	
Defendant.)	

DEFENDANT’S SENTENCING MEMORANDUM

COMES NOW, David H. Johnson, attorney for Defendant Dorothea Cain, and hereby submits to the Court her Sentencing Memorandum, to better assist the Court in crafting an appropriate sentence of the defendant in this case taking into consideration all of the factors required under 18 U.S.C. § 3553

A. Criminal History/Career Offender

Defendant Cain is classified a Career Offender USSG §4B1.1(a), by reason of conviction of distribution of controlled substance, 2/12/2010, PSI page 23, paragraph 81; Assault, 6/08/2007, PSI page 21, paragraph 78; Trafficking Drugs, 2nd degree, 11/13/2000, PSI page 19, paragraph 73; and robbery 2nd degree 01/05/1994 PSI page 15, paragraph 66. Defendant Cain’s total criminal history points are 8. PSI page 25, paragraph 87. Although the defendant’s actual criminal history is extensive, detailed at length in the PSI from page 13-25, the history is replete with municipal court convictions of prostitution, shop lifting, numerous substantial driving charges (driving while suspended/revoked) and possession of controlled substance. She also has additional felony convictions in addition to the felony charges upon which the Probation Office

relies in support of Career Offender classification. Those felonies are for possession of controlled substance, not sale.

The Court has the authority to depart downward from the Career Offender classification under USSG §4A1.3(b), upon finding by the Court that “the defendant’s criminal history category substantially over-represents the seriousness of the defendant’s criminal history or the likelihood that the Defendant will commit other crimes...”. A limiting factor to the Court’s authority is USSG §4A1.3(b)(A), which limits the extent of downward departure for career offender to one criminal history category.

Defendant does not dispute nor challenge that she is a career offender as defined by USSG §4B1.1(a). However, a careful reading of the factual basis of the felony distribution and felony violent crimes, given that the defendant suffers from significant mental impairment, do not support the lawful characterization of the Defendant as a Career Offender.

B. Diminished Capacity

USSG § 5K2.13 provides for a downward departure if: “(1) the defendant committed the offense while suffering from a significantly reduced mental capacity; and (2) the significantly reduced mental capacity contributed significantly to the commission of the offense.”

Defendant Cain distributed base cocaine, had no weapon, and no violence was involved. *United States v Valdez*, 146 F3d 547 (8th Cir. 1998) held that “A defendant must have committed a nonviolent offense to be considered for a downward departure under USSG § 5K2.13.” *Valdez*, supra 551.

Defendant was transferred from United States Marshall detention at the Bates County jail to the Federal Medical Center, Carswell, Fort Worth, Texas, and was subsequently evaluated for

mental competency to stand trial. During the course and scope of the mental evaluation, Defendant was underwent a number of psychological testing. Included in the battery of tests were Cognitive Functioning testing utilizing the WASI (Wechsler Abbreviated Scale of Intelligence). Defendant obtained a Performance IQ of 76, a Verbal IQ of 66, and a Full Scale IQ of 69. (Forensic Evaluation Report, November 8, 2010, page 4, last paragraph). Those IQ scores fall in the Borderline to Extremely Low ranges of intelligence. The Defendant's educational and employment background are the expected performances of a person suffering from such mental challenges. (Forensic Evaluation Report, November 8, 2010, page 5, first paragraph)

The Diagnosis contained in the Forensic Evaluation Report of date November 8, 2010, found on page 6, included the following diagnosis:

Axis I: 304.80 Polysubstance Dependence with Physiological Dependence, In a Controlled Environment
309.81 Rule out Posttraumatic Stress Disorder
Axis II: 301.7 Antisocial Personality Disorder
v62.89 Borderline Intellectual Functioning"
Axis III: No Diagnosis
Axis IV: Incarceration, Inadequate Social Support
Axis V: Current Global Assessment Functioning = 60"

Interestingly, the report notes that although the Defendant was found competent to stand trial, the authors noted on page 8, 3rd paragraph, that

“...It is recommended that information discussed regarding courtroom procedures be explained to her in a concrete and simplistic manner by her defense counsel. Her understanding should also be probed throughout the Court process to be sure she has an understanding of material covered.”

The Defendant lived a very difficult and challenging life on the streets of the inner city of Kansas City. Defendant witnessed 15 murders in her life, and reported that every man with whom she had a significant relationship had been killed. The prevailing factors supporting her

diagnosis of Antisocial Personality Disorder include a troubled adult life characterized by vagrancy, prostitution, heavy drug use, poor interpersonal relationships, and extensive criminal history. (Third paragraph, page 7) Defendant suffered gunshot wounds in 2000 or 2001 when she suffered two bullets in her left leg as a result of a drive-by shooting. She was hospitalized in Truman Medical Center for treatment. One of the bullets was subsequently removed during one of her periods of custody. (Page 33, paragraph 118).

Given the fragile nature of the Defendant's mental capacity and Antisocial Personality Disorder, as well as her inability to make appropriate choices in her selection of male companions, the Defendant's involvement in the instant conspiracy was the result of a number of factors over which the Defendant had little control. Counsel anticipates that at sentencing the Defendant would offer her explanation for her sale of drugs. She explains that she "had" to sell the drugs because "Smoke", the head of the Smoke and Aces drug conspiracy, would not give her money for sex, but rather gave her the crack cocaine, so she sold it to get the money she needed to exist. That explanation is clear acceptance of responsibility, does not ameliorate her responsibility for the consequences of her criminal behavior, but does offer insight into her personality, mental capacity, and motivation.

Defendant suggests to the Court that given the Defendant's significant mental challenges, and the Defendant's social environment, and long history of prostitution, drug use, petty crimes, and her involvement with male drug dealers, that her criminal history, while accurate and extensive, is over-stated in that it is the result of her mental incapacity and psychological impairments, and is primarily composed of petty crimes, the Court should depart downward one Criminal History category, from VI to V under the authority of USSG §4A1.3(b).

Second, Defendant suggests to the Court that a Downward Departure pursuant to USSG § 5K2.13, Defendant's mental impairment, is appropriate. Given that the Defendant does have criminal history of drug trafficking, and violent behavior, Defendant recognizes and accepts that she must suffer appropriate incarceration.

Therefore, the Defendant urges the Court to depart from the Career Offender offense level of 32, Criminal History Category VI, to the original offense level of 24, Criminal History Category V. With Acceptance of Responsibility, for 2 level reduction, and timely notification to the Government of her intention to enter a plea, for an additional one level reduction, the Sentencing Offense Level should be 21. The Guideline Range for Offense Level 21, Criminal History Category V is 70-87 months.

Lastly, given the Defendant's persistent substance abuse, the Defendant should be given the opportunity to participate in the 500 hour intensive drug treatment program.

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CERTIFICATE OF SERVICE

I hereby certify that, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification to the attorneys for the Government and co-defendants.

/s/ David H. Johnson
David H. Johnson