

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

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

GOVERNMENT'S SENTENCING MEMORANDUM

Comes now the United States of America, by David M. Ketchmark, Acting United States Attorney, and Brent Venneman, Assistant United States Attorney, both for the Western District of Missouri, and files its sentencing memorandum in anticipation of Defendant Dorothea Cain's sentencing that is scheduled for Wednesday August 22, 2012.

A. Summary

The Government is recommending a sentence of 151 months due to the defendant's violent criminal history. The defendant's Guidelines Range is 151 – 188 months because she is a career offender. Two of Cain's six prior felony convictions involve stabbings: the first occurred when Cain stabbed a security guard with a pair of scissors during a robbery at J.C. Penney in October of 1993; the second occurred when Cain stabbed a woman in the back with a steak knife during an argument outside of an apartment building in June of 2005. Pursuant to the parties' plea agreement, the government is bound to request a sentence within the Guidelines Range while the defendant is free to request a sentence below this range.

B. Procedural History

On May 26, 2010, a federal grand jury indicted Shawn Hampton and his associates, including Dorothea Cain, for conspiracy to distribute more than 5 kilograms of cocaine and more than 50 grams of cocaine base. Cain pleaded guilty on May 25, 2011, to the lesser-included offense of conspiracy to distribute some amount of cocaine and some amount of cocaine base in violation of Title 21 U.S.C. §§ 841(a)(1), (b)(1)(C), and 846. The statutory range of punishment is not more than 20 years' imprisonment.

C. Impact of the plea agreement

The plea agreement (P.A.) allowed Cain to plead guilty to a lesser included offense that reflects the actual weight of crack cocaine that was attributable directly to her rather than the weight of the conspiracy. The lesser included offense, a violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C), and 846, does not carry a mandatory minimum sentence. Whereas, the original charge under Count One of the Indictment, charging a violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), and 846, would have resulted in a mandatory minimum sentence of ten years with the possibility of a mandatory life sentence due to Cain's prior convictions for controlled substances offenses.

Additionally, the plea agreement calculated the base offense level based upon drug quantity thresholds for crack cocaine cases pursuant to the Fair Sentencing Act of 2010. Accordingly, the parties agreed to at least 22 but not more than 28 grams of crack cocaine as the drug quantity specifically attributable to Cain resulting in a base offense level 24. (P.A. ¶ 10(c)). The parties also recognized that Cain would, in all likelihood, be classified as a career offender and that this would result in an offense level of 32. (P.A. ¶ 10(c)).

The government agreed that the defendant would qualify for a three-point reduction for acceptance of responsibility under § 3E1.1(a). The presentence report agreed with this analysis.

Finally, under the plea agreement, although the government is bound to request a sentence within the guidelines range, the defendant is open to argue for a sentence outside of the calculated guidelines range of 151 - 188 months.

D. Sentencing Guidelines calculations

The final Presentence Investigation Report (PSR) calculated the defendant's base offense level under revised U.S.S.G. § 2D1.1(c)(6) as 24 which reflects the crack cocaine that is directly attributable to Cain. Application of the career offender enhancement raises the base offense level to 32. Cain is a career offender as a result of prior convictions for the crimes of second degree assault (PSR ¶ 59, 78) which occurred on July 15, 2005, and distribution of sale of controlled substance (PSR ¶ 59 and 81) which occurred on May 8, 2008. This is the base offense level that has, likewise, been agreed upon by the parties in the written plea agreement. After receiving a three-level reduction for acceptance of responsibility Cain's total offense level is 29 resulting in a guidelines range of 151 - 188 months.

E. Sentencing factors under 18 U.S.C. § 3553(a)

To properly sentence the defendant, the Court must deduce a "reasonable" sentence which is presumed but not required to be within the advisory sentencing guidelines, and takes into account the sentencing factors described in 18 U.S.C. § 3553(a). *United States v. Farmer*, 647 F.3d 1175, 1178-9 (8th Cir. 2011). In this case, the factors listed in §3553 as to this defendant can be summarized as follows:

1. Nature and Circumstances of the Offense.

The parties have agreed to an amount of 22 - 28 grams of crack cocaine that is directly attributable to Cain. This amount reflects that she was a low-level participant in the conspiracy with Shawn Hampton and his associates.

2. History and Characteristics of the Defendant.

As indicated in the defendant's sentencing memorandum, Cain suffers from anti-social personality disorder and relatively low intelligence (Doc. 793 pp. 3-5). Cain also has a serious felony record that includes four prior convictions from Jackson County, Missouri. Specifically, she has two prior drug convictions involving cocaine and crack cocaine, including a distribution case and a trafficking case, and two prior violent felonies. According to the PSR, Cain was not required to serve a prison sentence for any of these prior drug cases. Her performance on probation and post-release supervision has been poor. The PSR indicates that she has violated court-ordered supervision by failing to follow orders, absconding, and committing new crimes. It appears, from the PSR, that the longest sentence of incarceration Cain has served was a one-year sentence following her conviction for second degree assault when she stabbed her victim with a steak knife. (PSR ¶ 78).

3. Seriousness of the Offense / Promote Respect for the Law / Just Punishment.

The proposed guidelines range of 151 months imprisonment adequately reflects the level of culpability attributable to this defendant's participation in the conspiracy and would provide for a lengthy and just punishment.

4. Deterrence and Protection of the Public.

This defendant and her associates in this conspiracy have shown a propensity to commit crimes associated with drug trafficking. Cain has, likewise, demonstrated that she is a considerable danger to the community as reflected in her numerous prior convictions involving violent felonies, resisting arrest, obstruction of official duty, and stealing. A sentence of 151 months will serve to deter similar prospective criminal activity and protect the public.

5. Effectively Provide Defendant With an Opportunity to Rehabilitate.

This defendant would be afforded the same opportunity to participate in classes and programs offered by the Bureau of Prisons as other similarly situated defendants.

E. The government's specific sentencing recommendation.

The government recommends a sentence of 151 months which is the bottom of the Sentencing Guidelines range, and is consistent with the sentencing factors of 18 U.S.C. § 3553(a), and reflects the plea agreement between the parties.

Respectfully submitted,

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Acting United States Attorney

By */s/ Brent Venneman*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on July 27, 2012, 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.

/s/ Brent Venneman

Brent Venneman
Assistant United States Attorney