

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 10-00162-7-CR-W-FJG
)	
CALAH JONHSON,)	
)	
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 Calah Johnson's sentencing that is scheduled for Friday August 24, 2012.

A. Summary

The Government is recommending a sentence of 264 months (22 years) due to the defendant's extensive criminal record. The defendant's Guidelines Range is 262 – 327 months because he is a career offender. Like the instant offense, most of Johnson's prior convictions involve trafficking crack cocaine. And although he was very young when these crimes were committed, his conduct while incarcerated, as detailed in PSR ¶ 65, was abominable. Likewise, Johnson did not adjust well to post-release supervision and returned to drug trafficking within months after completing parole on June 1, 2009. 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 Calah Johnson, for conspiracy to distribute more than 5 kilograms of cocaine and more than 50 grams of cocaine base. Johnson pleaded guilty on February 7, 2012, to Count One of the indictment charging conspiracy in violation of Title 21 U.S.C. §§ 841(a)(1), (b)(1)(A), and 846. The statutory range of punishment for Johnson is not less than twenty years' imprisonment and not more than life as a result of a sentencing enhancement for one of his prior felony drug convictions.

C. Impact of the plea agreement

The plea agreement (P.A.) allowed Johnson to plead guilty to the actual weight of crack cocaine that was attributable directly to him rather than the weight of the conspiracy. Additionally, the government agreed to file only one sentencing enhancement rather than face a mandatory life sentence which would have resulted without a plea agreement, due to Johnson's numerous 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 a base offense level 34 to reflect the amount of crack cocaine specifically attributable to Johnson. (P.A. ¶ 10(c)). The parties also recognized that Johnson would, in all likelihood, be classified as a career offender and that this would result in an offense level of 37. (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 of 262 - 327 months, the defendant is open to argue for a sentence

outside of the calculated guidelines range but not below the statutory mandatory minimum of 240 months. (P.A. ¶ 10(g)).

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 as 34 which reflects the crack cocaine that is directly attributable to Johnson. Application of the career offender enhancement raises the base offense level to 37. Johnson is a career offender as a result of prior convictions for the crimes of sale of a controlled substance and drug trafficking. After receiving a three-level reduction for acceptance of responsibility Johnson's total offense level is 33 resulting in a guidelines range of 262 - 327 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 a base level of 34 to reflect at least 840 grams of crack cocaine that is attributable to Johnson. This amount and the intercepted phone calls between Johnson and Hampton demonstrate that Johnson was one of the top associates in Shawn Hampton's drug trafficking group.

2. History and Characteristics of the Defendant.

Johnson's extensive criminal record and poor adjustment to supervision demonstrate that he is a danger to the community. Johnson has a serious felony record that includes five prior drug trafficking convictions from Jackson County, Missouri, which ultimately resulted in an eight-year period of incarceration. Prior to being remanded to custody, Johnson had been on probation but received numerous violation reports. During his period of incarceration, Johnson accrued 34 violation reports. Within months of his release from parole, Johnson began participating in this drug trafficking conspiracy. (PSR ¶ 65).

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

The proposed guidelines range of 264 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 has shown a propensity to commit crimes associated with drug trafficking. Because of the substantial amounts of drugs involved in this offense and the use of firearms, Johnson can fairly be considered as a considerable danger to the community. A sentence of 264 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 264 months (22 years) which is at the low-end of his 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,

David M. Ketchmark
Acting United States Attorney

By */s/ Brent Venneman*

Brent Venneman
Assistant United States Attorney

Charles Evans Whittaker Courthouse
400 East 9th Street, Fifth Floor
Kansas City, Missouri 64106
Telephone: (816) 426-3122

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on August 13, 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