

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 10-00162-16-CR-W-GAF
)	
THEODORE S. WIGGINS,)	
)	
Defendant.)	

**GOVERNMENT'S RESPONSE IN OPPOSITION TO
THE DEFENDANT'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 response to defendant's sentencing memorandum in anticipation of Theodore Wiggins's sentencing that is scheduled for Monday December 10, 2012.

A. Summary

On May 26, 2010, a federal grand jury indicted Shawn Hampton and his associates, including Theodore Wiggins, for conspiracy to distribute more than 5 kilograms of cocaine and more than 280 grams of cocaine base. Following a trial by jury, which began on June 4, 2012, Defendant Wiggins was convicted of Count One, conspiracy to distribute more than 5 kilograms of cocaine or more than 280 grams of cocaine base, and Count Eight, distribution of some amount of cocaine base.

The final Presentence Investigation Report was filed on October 12, 2012, (Doc. 859). The government has no objections to the findings of the presentence investigation and the government concurs with the probation office responses to Defendant Wiggins' objections, as detailed in the Addendum to the Presentence Report.

The Government is recommending a sentence of life imprisonment, the mandatory sentence required by Title 21 U.S.C. §§ 841(a)(1), (b)(1)(A), and 851, as a result of Defendant Wiggins' two prior convictions for felony drug offenses.

B. Statutory Mandatory Sentence

Title 21 U.S.C. § 841(b)(1)(A) provides that, upon conviction, "...after two or more prior convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release and fined in accordance with the preceding sentence." The Eighth Circuit case law permits the use of a simple drug possession conviction for enhancement under Title 21 U.S.C. §§ 841(b)(1)(A) and 851 as long as it is a felony conviction. *United States v. Jones*, 559 F.3d 831, 837 (2009).

Notice of Defendant Wiggins' two previous convictions for felony drug offenses, pursuant to Title 21 U.S.C. § 851, was filed on May 31, 2011. This notice (Doc. 345) detailed Defendant Wiggins' prior convictions for distribution of a controlled substance in Jackson County case number CR98-03880, and possession of a controlled substance in Clay County case number 7CR199001701. These convictions, along with Defendant Wiggins' other felony convictions, were made available to Wiggins during discovery prior to trial. Additionally, certified copies of the felony drug convictions were admitted at Wiggins' trial as government's exhibit number 64 (case number CR98-03880), and exhibit number 65 (case number 7CR199001701).

C. 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 an amount of crack cocaine that is a reasonable amount to attribute to the conspiracy for which Defendant Wiggins was convicted. Shawn Hampton, a cocaine supplier to Wiggins, testified that during the conspiracy, he purchased

kilograms of cocaine that were broken down for sale and converted to cocaine base. Application of the career offender enhancement raises Wiggins' base offense level to 37. Wiggins is a career offender as a result of prior convictions for the crimes of sale of a controlled substance (Jackson County case number CR98-03880), second degree robbery (Jackson County case number CR99-02436) and second degree robbery and armed criminal action (Jackson County case number CR2001-02315). The resulting guidelines range is 360 months to life imprisonment. However, the advisory guidelines range is superseded by the statutory mandatory sentence of life imprisonment.

Respectfully submitted,

David M. Ketchmark
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 December 4, 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