

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION
09 CR 300 (2) (JRT/SRN)

United States of America,)
)
 Plaintiff,)
)
 vs.) **DEFENDANT’S POSITION**
) **REGARDING SENTENCING**
)
 Luke Robert Peterson,)
)
 Defendant.)

* * * * *

Defendant, LUKE ROBERT PETERSON, by and through his attorney, MARK W. PETERSON, hereby notifies the Court of his position with respect to sentencing pursuant to USDC Local Rule 83.10.

Defendant and his attorney have reviewed the Presentence Investigation report and agree that it is complete and accurate.

This is a case where the Court is compelled to impose a mandatory minimum sentence of 10 years unless the government moves for downward departure, which has not yet been determined. That failing, we urge the Court to impose the minimum of 10 years in prison and 5 years of supervised release.

In determining the appropriate sentence to impose, this Court must follow the guidance of the United States Supreme Court in Gall vs. United States, 552 US 38, 50 (2007):

(The) district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range. As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark. The Guidelines are not the only consideration, however. Accordingly, after giving both parties an opportunity to argue for whatever sentence they deem appropriate, the district judge should then consider all of the § 3553(a) factors to determine whether they support the sentence requested by a party. In so doing, he may not presume that the Guidelines range is reasonable. He must make an individualized assessment based on the facts presented. If he decides that an outside-Guidelines sentence is warranted, he must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance. We find it uncontroversial that a major departure should be supported by a more significant justification than a minor one. After settling on the appropriate sentence, he must adequately explain the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing. (Citation and footnote omitted).

Analysis of the factors set forth in 18 USC §3553(a) support the result which defendant seeks.

1. Sufficient but not greater than necessary to comply with the purposes set forth below. 18 USC §3553(a)

This is the general directive which basically directs the Court to formulate a sentence which is sufficient to accomplish the purposes of sentencing, but no more than that.

2. Nature and circumstances of the offense and the history and characteristics of the defendant. 18 USC §3553(a)(1)

Conspiracy to distribute 500 grams or more of methamphetamine is unquestionably a serious offense. The defendant was an average participant in the offense, purchasing from a source both to support his personal habit and for resale (PSI ¶ 29).

As the Court can tell, defendant has a long history of drug use, beginning with marijuana and alcohol (PSI ¶¶ 86-87), graduating to cocaine and other dangerous drugs (PSI ¶¶ 88-89) and eventually developing a serious problem with methamphetamine at age 17, culminating in a multi-gram habit and which involved daily use (PSI ¶ 90). From all available information, the conspiracy in this case constituted his first involvement in any illegal drug sales.

Luke was arrested at the scene of an imminent sale of methamphetamine on July 29, 2009 (PSI ¶ 22). As a result, he made the decision to straighten out his life, at age 28, and his involvement in the conspiracy terminated. He underwent a chemical dependency evaluation through Anoka County and was diagnosed as a multiple-substance dependent. (PSI ¶ 92). He entered inpatient treatment on August 20, 2009, continued with residential treatment, and completed those phases of recovery on December 15, 2009 (PSI ¶ 93). He continued with outpatient treatment, completing that phase of his recovery in March, 2010. He continues to be abstinent, attends NA regularly, and even speaks to other addicts about his illness and recovery. (PSI ¶¶ 94-95). He has been on supervised release since his first appearance (October 27, 2009) and has complied with all conditions of release, including random drug testing (PSI ¶ 96).

Hopefully it is clear to the Court that Luke has completely accepted responsibility for his illegal activity and has made significant changes in his life since ceasing his criminal activity and voluntarily seeking treatment in August, 2009. In short, he has done everything possible to overcome the addiction which caused him to become involved in selling drugs in the first place.

In Gall vs. United States, id. at 57, the Court recognized that pre-indictment efforts at rehabilitation are important in determining an appropriate sentence and justifying a sentence below the applicable guidelines:

The District Court quite reasonably attached great weight to the fact that Gall voluntarily withdrew from the conspiracy after deciding, on his own initiative, to change his life. This lends strong support to the District Court's conclusion that Gall is not going to return to criminal behavior and is not a danger to society. See 18 U.S.C. §§ 3553(a) (2)(B), (C). Compared to a case where the offender's rehabilitation occurred after he was charged with a crime, the District Court here had greater justification for believing Gall's turnaround was genuine, as distinct from transparent attempt to build a mitigation case.

We submit that these observations are relevant here, and if a motion for downward departure is not made by the government, the defendant's decision to terminate his involvement in a drug conspiracy and get help for his drug problem supports our position that he should receive the minimum mandatory sentence.

Attached to this pleading are character references from the following individuals:

| | |
|----------------------------|-------------------------|
| Floyd and Tracey Peterson | Parents |
| Rachel Peterson | Sister |
| Kellie White | Aunt |
| Susan Hartfiel | Son's Great Grandmother |
| NM and Judy Peterson | Aunt and Uncle |
| Doris and Harvey Morehouse | Aunt and Uncle |
| EJ & Erma Booth | Aunt and Uncle |
| Brian & Tammy Peterson | Cousins |
| Betty White | Grandmother |
| Russell Falck | NA and sponsor |
| Klaus Hecht | NA and co-speaker |

We urge the Court to carefully consider these opinions and observations from individuals who know the defendant best. We submit that he is clearly shown to be a caring and sensitive individual, whose family and extended family are very important to him (in particular his son); he recognizes both the evil and the danger of involvement with drugs; and he is sincere about his ability to continue the positive changes he has made in his life and to be a law-abiding and productive citizen.

Augmenting Luke's rehabilitative efforts is the fact that within a week of his first

appearance he agreed to cooperate, and was fully de-briefed by government agents on November 2, 2009. The decision as to the significance of his cooperation remains to be determined, but even if the government makes no motion under USC §3553(e) and USSG §5K1.1, the Court may still consider his cooperation when assessing all of the 18 USC §3553(a) factors. United States vs. Fernandez, 443 F3d 19, 35 (2d Cir. 2006), cert. den. 549 US 882.

In summary, Luke comes from a supportive and cohesive middle class family with no apparent problems except for his abuse of drugs and alcohol. He does have numerous prior arrests, but most of his convictions are for traffic, primarily alcohol-related, offenses and none are more serious than a misdemeanor. He completed his high school education and has been regularly employed when able to find a job. He is extremely devoted to his son Anthony, 4 years old and the product of his relationship with a former girlfriend (PSI ¶77).

3. General purposes of sentencing. 18 USC §3553(a)(2)

- a. reflect seriousness of the offense, promote respect for the law and provide just punishment;
- b. afford adequate deterrence;
- c. protect the public; and
- d. provide the defendant with needed services in the most effective way.

Luke is facing a sentence of at least 10 years, which certainly is sufficient to satisfy the purposes set forth in the statute. There is no apparent risk of re-offending, as his rehabilitative efforts show. He has expressed his willingness to participate in further substance abuse treatment while incarcerated (PSI ¶97).

4. Kinds of sentences available. 18 USC §3553(a)(3)

5. Relevant guidelines. 18 USC §3553(a)(4)

The possible sentences and applicable guidelines are accurately set forth in the PSI (¶¶ 112-122). We note that Luke is not eligible for the “safety valve” protection because of his prior misdemeanor convictions. Were it not for USSG p.s. §4A1.3(b)(3)(B), we would argue that his criminal history category of 3 substantially over-represents the seriousness of his prior illegal conduct and the likelihood that he will commit other offenses, particularly since none of them were drug-related. In any event, his prior misdemeanor record, consisting mostly of

alcohol-related (not drug-related) offenses, supports our position that 10 years is an adequate sentence.

6. Relevant policy statements. 18 USC §3553(a)(5)

No policy statements appear to be relevant.

7. Need to avoid unwarranted sentencing disparities. 18 USC §3553(a)(6)

No relevant information.

8. Restitution. 18 USC §3553(a)(7)

Not applicable.

Conclusion

We respectfully urge the Court to impose the minimum sentence permitted by law, 10 years and 5 years of supervised release. Although the defendant must obviously accept the consequences of his behavior, he is not a person who is likely to re-offend, and there is nothing in his background or the circumstances of the offense which would call for a sentence greater than the minimum permitted under law. He certainly understands that there will be serious consequences for his criminal activity, but hopes that once he has served his sentence, he will be able to continue the progress he has made to date in becoming a responsible member of society.

Dated this 1st day of June, 2010.

Respectfully submitted,

/s/ Mark W. Peterson
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