

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-80058-CR-HURLEY/VITUNAC

UNITED STATES OF AMERICA :  
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 v. :  
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 JOSEPH LAMBERTI :  
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MEMORANDUM ON SENTENCE

I. SUMMARY

This memorandum is offered to help the Court as it decides what punishment is justified for Joseph Lamberti. He has pleaded guilty and is seeking a sentence beneath the applicable advisory guideline range.<sup>1</sup>

Overall, taking into account a variety of factors, Joseph Lamberti is distinctly outside the heartland of offenders for his admitted conduct.

Most significantly, his voluntary efforts to: (1) immediately disclosed his wrongful conduct even before seeking legal counsel or advice and (2) accept complete responsibility for it, demonstrate a degree of acceptance of responsibility sufficiently “unusual” and “in excess of that ordinarily present” so as to justify a corresponding downward sentencing adjustment.

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<sup>1</sup> See United States v. Booker, 543 U.S. 220; 125 S. Ct. 738 (2005). Under 18 U.S.C. § 3553, the Court clearly has discretion to sentence beneath the applicable advisory guideline range. All relevant factors may be considered by a sentencing court in fashioning a sentence to individually fit a defendant. Gall v. United States, 128, S.Ct. 586, 169 L.Ed.2d 445 (2007).

Moreover, his otherwise unblemished reputation, widely recognized and exceptional good character, his drug habit and family circumstances are additional factors which the Court may consider.

Accordingly, Joseph Lamberti merits a considerably lesser sentence than those given to similarly situated offenders.

## II. EVALUATION

Immediately after being approached by the government during the investigation that proceeded the within charges, Joseph Lamberti voluntarily disclosed his offense and cooperated completely in the investigation and development of the charges which were eventually brought against him.

Hence, Joseph Lamberti does not merely adopt the government's version of his offense, most significantly, entirely as a result of his cooperation, he contributed self-incriminating information which would have been unavailable to the government, but for his cooperation.

Accordingly, he has accepted responsibility fully for his participation in all acts forming the subject matter of his offense and full disclosure has occurred which has enabled the government to achieve its ends expeditiously.

In sum, by an extraordinary means of reparation, consistent with his character, as attested to in a remarkable collection of letters written to the Court in his behalf, and by the duties required by his station in life, Joseph Lamberti is made out to be singular, as he is brought before the Court for sentencing.

## III. THE DEFENSE BELIEVES JOSEPH LAMBERTI DOES NOT MERIT A JAIL TERM

In deciding what punishment is justified for Joseph Lamberti, it is requested that the Court consider the following factors. The factors to be weighed are not in dispute; they are simple and clear:

1. The collection of character letters submitted to the Court demonstrate that Joseph Lamberti's character, values and practices make it most unlikely that he could commit another offense.
2. He is clearly a man of good will.
3. His decision to plead guilty came at the earliest stage of these proceedings.
4. When first confronted with the government's investigation, Joseph Lamberti cooperated completely in the investigation and development of the charges which were eventually brought against him. His cooperation was remarkably extensive.
5. His further cooperation led to the arrest and conviction of a more significant drug offender, his supplier.
6. By accepting responsibility for the offense as charged and by pleading guilty, the time and expense saved by the government is enormous.
7. The Government has saved great time and expense in avoiding the additional burden of a trial.
8. His cooperation has made possible a full assessment of criminal responsibility.
9. His conduct was the result of circumstances which most assuredly will not recur.
10. He has no prior history of criminal activity and has led a respected and accomplished law-abiding life for 21 years.
11. Imprisonment would be excessive punishment and entail undue hardship. IV.

## MEASURE OF SENTENCE

This Court has the authority to impose a sentence that entirely avoids incarceration in a correction facility. As the United States Supreme Court has made clear in the recent case of Gall v. United States, 128, S.Ct. 586, 169 L.Ed.2d 445 (2007), notwithstanding that the Guidelines must be given meaningful consideration, all additional relevant factors must be considered in determining a sentence that fittingly treats a defendant and his offense individually. Id. at 597 – 598.

“It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.”

Id. at 598 (footnote omitted).

In Gall the guideline range of imprisonment was 30 to 37 months. By upholding the district court’s probationary sentence, the Supreme Court recognized that a sentence of probation is fitting in some cases even if the advisory guideline range calls for a term of imprisonment. Id. at 595 – 596. The Court explicitly recognized that a sentence of probation significantly restricts a person’s liberty and that it is imposed for punitive purposes. Id. at 595.

In this case the guideline range is 70 to 87 months imprisonment. We respectfully request that the Court look beyond the offense of conviction and the prescribed guideline range and take into account the totality of factors and circumstances that constitute, Joseph Lamberti, the individual.

A sentence of imprisonment would be excessive punishment and entail undue hardship to Mr. Lamberti and his dependents:

**A.** Pursuant to what is known as the “parsimony provision,” 18 USC § 3553(a), “. . .

[t]he court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth . . . [in] this subsection;”<sup>2</sup>

**B.** Further, following the mandate of United States v. Booker, 543 U.S. 220; 125 S. Ct. 738 (2005) and Gall v. United States, 128, S.Ct. 586 (2007), a sentencing court must consider, in addition to giving meaningful consideration to the Sentencing Guidelines, as separate and distinct factors at sentencing, the provisions of 18 USC § 3553. 18 USC § 3553(a) (1) is the first factor: “. . . the nature and circumstances of the offense and the history and characteristics of the defendant; and,

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<sup>2</sup> The basic mandate and overriding principle of §

3553(a) requires a District Court to impose a sentence “sufficient, but not greater than necessary”, to comply with the four purposes of sentencing set forth in § 3553(a)(2):

- (a) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (b) to afford adequate deterrence to criminal conduct,
- (c) to protect the public from further crimes of the defendant, and,
- (d) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

In determining what sentence is sufficient, “but not greater than necessary” to comply with § 3553(a)(2) purposes of sentencing, the sentencing court is further directed to consider the following factors:

- (1) “The nature and circumstances of the offense and the history and characteristics of the defendant”;
- (2) “The kinds of sentences available”;
- (3) “The Guidelines and policy statements issued by the Sentencing Commission, including the (now non-mandatory) guideline range;
- (4) “The need to avoid unwarranted sentencing disparity among defendants who have been found guilty of similar conduct,” and
- (5) “The need to provide restitution where applicable. 18 USC § 3553(a)(1), (a)(3)-(7).”

C. Finally, U.S.S.G. § 5K2.0 provides that “. . . [A] sentencing court may depart from the applicable guideline range . . . if . . . the court finds, pursuant to 18 U.S.C. § 3553(b) (1), that there exists . . . [a] mitigating circumstance . . . of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that, in order to advance the objective set forth in 18 U.S.C. § 3553(a)(2), should result in a sentence different from that described.”<sup>3</sup>

A sentencing court is further guided by 18 USC § 3582, which provides that in determining whether and to what extent imprisonment is appropriate based on the § 3553(a) factors, the judge is required to “recognize that imprisonment is ***not*** an appropriate means of promoting correction and rehabilitation” (emphasis added).

In Rita v. United States, 127 S. Ct. 2456, (S. Ct. 2007) the Supreme Court held that courts of appeal may presume that a guideline sentence is reasonable, but stressed the presumption was “an **appellate** court presumption [that] applies only on appellate review”. By contrast, “the sentencing court does not enjoy the benefit of a **legal presumption that the Guidelines sentence should apply.**” In United States v. Sachsenmaier, 491 F3d 680 (7<sup>th</sup> Cir. 2007) (post Rita case) the courts stated that the “District Courts must calculate the advisory sentencing guideline range accurately, so that they can derive whatever insight the guidelines have to offer, but ultimately they must sentence based on 18 USC § 3553(a) **without any thumb on the scale favoring a guideline sentence.**”

In United States v. Santoya, 493 F. Supp. 2d 1075 (E.D. Wisc.) the Court stated

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<sup>3</sup> It is clear that all of the § 3553 factors are subservient to § 3553(a)’s mandate to impose a sentence not greater than necessary to comply with the four purposes of sentencing.

that under Rita “the sentencing judge is forbidden from indulging a presumption that the Guidelines sentence is the correct one.”

In Gall v. United States, 552 U.S. (2007) No: 06-7949, the court basically cleared the way for judges to impose a sentence below the specified range and still have punishment regarded as “reasonable”. Justice Stevens told federal appeals courts to use a “deferential abuse-of –discretion standard” even when a trial sets a punishment below the

Finally, Mr. Lamberti is not a threat to society.

We believe that a period of incarceration, no matter how brief, would be harshly destructive to Joseph Lamberti and his ailing wife. Such a sentence would not serve the goals of sentencing.

Accordingly, given all the circumstances and factors in mitigation of punishment and weighing the otherwise good person Joseph Lamberti is shown to be, it is respectfully requested that the Court impose a term of probation with conditions, as an alternative to confinement, as the appropriate sentence in this case.

Respectfully submitted,

/s/ \_\_\_\_\_  
NICHOLAS J. NASTASI  
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on February , 2009 I caused a copy of the Memorandum on Sentence to be served by electronic filing, upon the following:

AUSA Peter Katz

/s/

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NICHOLAS J. NASTASI, ESQUIRE