

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES,)	
)	
Plaintiff,)	NO. _____
)	
v.)	
)	
_____)	
)	
Defendant.)	
_____)	

SENTENCING MEMO

Defendant _____ presents this sentencing memorandum requesting that this Court sentence Defendant to a non-guideline sentence. In support of this request, Defendant presents the following facts and arguments.

I. This Court is free to sentence Defendant to a non-guideline sentence.

As an initial benchmark, this Court “should begin all sentencing proceedings by correctly calculating the applicable Guidelines range.” *Gall v. United States*, 128 S. Ct. 586, 596 (2007). However, the guidelines are not the only consideration. *Id.* As such, this Court may not presume that the guideline range is the correct sentence but must instead “impose a sentence sufficient, but not greater than necessary to comply with the purposes” outlined in 18 U.S.C. § 3553(a). *Gall*, 128 S. Ct. at 596-97 and 18 U.S.C. § 3553(a). These purposes are:

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed –
 - (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 effective manner

18 U.S.C. § 3553(a). If this Court determines that a deviation from the guidelines would better accomplish the goals of sentencing, then this Court “must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance.” *Gall*, 128 S. Ct. at 597.

II. A non-guideline sentence is appropriate.

In this case, a downward deviation from the guideline range accomplishes the goals of sentencing.

a. The career offender enhancement in the guideline sentence reflects a greater penalty than necessary to achieve the goals of § 3553(a).

Defendant’s base offense level is 24. (PSR ¶ 14) However, because Defendant qualifies as a career offender under U.S.S.G. § 4B1.1, his base offense level is elevated to 32. (PSR ¶ 22) Without the career offender status, Defendant’s guideline range would have been 84-105 months, but with the enhancement, Defendant’s guideline range is 168-210 months. Defendant’s guideline range has literally *doubled*.

Defendant urges this Court to impose a below-guideline sentence because the career offender advises a penalty exceedingly greater than necessary to achieve the goals enumerated in 18 U.S.C. § 3553(a). In fact, all the purposes of § 3553(a) could be adequately achieved with a sentence of 84-105 months.

The purpose that the sentence should reflect the nature of circumstances of offense is easily achieved through a sentence of 84-105 months. Simply put, the sentence of 84-105 months *is* the sentence that accounts for the nature of the offense.

Similarly, a sentence of 84-105 months properly asserts respect for the law and justly punishes. A sentencing range of 7 years to 8 years and 9 months is a substantial sentence that accomplishes these goals.

What's more a sentence of 84-105 months would adequately deter criminal behavior. First, it goes without saying that during the term of imprisonment, Defendant will be effectively deterred from committing crimes. Additionally, it would be easy to believe that because Defendant has committed similar offenses in the past, he may be likely to commit such offenses in the future. However, this belief is simply not supported by the record. Defendant has *never* had a sentence that would deter him from committing these crimes in the future. The longest Defendant ever spent in confinement was 23 months. (PSR ¶ 26, 30) If this Court were to sentence Defendant to 84-105 months of federal prison (roughly four times his only other prison sentence), that would be more than enough punishment to deter him from committing crimes in the future. Most importantly, Defendant has an intense desire to eliminate his addiction to crack and begin his life on a different path.

If the extreme and precipitous increase in Defendant's punishment found in the career offender guidelines stems from a desire to apply any of the § 3553(a) factors, it is likely the need for the sentence imposed to protect the public from future crimes. However, the guideline misapplies the fear of recidivism when sentencing drug offenders. The Sentencing Commission itself appears to have realized the error. "The career offender guideline this makes the criminal history category a *less* than perfect measure of recidivism risk than it would be without the inclusion of offenders qualifying only because of prior drug offenses." U.S. Sentencing Commission, "15 Years of

Guideline Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform”, at 133, No. 2004.

Additionally, while Congress has given a general directive indicating that career offenders should receive high sentences, it has never enacted a series of mandatory minimums *compelling* a guideline sentence for such offenders. *See*, 28 U.S.C. § 994(h); U.S.S.G. § 4B1.1, cmt. backg'd (explaining that its decision to apply a less expansive definition of a “career offender” than that suggested by statute was “consistent with Congress’s choice of a directive to the Commission rather than a mandatory minimum sentencing statute...”).

The final factor of § 3553(a) is that the sentence should provide medical and educational opportunities to Defendant. Defendant’s previous prison term failed to provide any medical or educational treatment aimed at addressing his addiction to crack. In fact, Defendant is anxious to begin substance abuse treatment and is optimistic that he can overcome his addiction. A long prison term, as recommended by the Guidelines, would serve no purpose other than just being a long prison term.

Because of Defendant’s desire to reform, his short prison sentence of the past, and Congress’s lack of directive compelling such high sentence, the sentencing goals expressed in § 3553(a) can best be satisfied with a non-career offender status sentence. Therefore, Defendant requests this Court to consider the sentencing range applying his base offense level of 24 totaling 84-105 months.

b. Despite recent amendments to the crack-to-cocaine ratio, wildly divergent disparities exist.

As the table below clearly demonstrates, the various crack-to-powder cocaine ratios create sharp disparities and inequalities in the advisory guideline ranges available for particular offense.

Base Offense Level	Ratio of Crack to Cocaine¹
38	33:1
36	33:1
34	30:1
32	33:1
30	70:1
28	57:1
26	25:1
24	80:1
22	75:1
20	67:1
Lower	50:1

As evident in the chart above, the crack-to-powder cocaine ratio is inconsistent and arbitrary. Worse still, in many situations, the lower the amount of crack the defendant is responsible for, the greater the sentencing disparity between crack and cocaine. Instead, Defendant requests that this Court apply the minimum ratio of crack to powder cocaine adopted by the Sentencing Commission. The chart below illustrates the actual crack amount if the minimum ratio of 25 was applied across the board.²

Base Offense Level	Crack Amount Range in the Guidelines	Crack Amount Range Reflecting a 25:1 Ratio of Crack to Powder Cocaine
38	at or more than 4.5KG	at or more than 6KG
36	1.5KG-4.5KG	2KG-6KG
34	500G-1.5KG	600G-2KG

¹ This ratio was calculated by taking the lowest amount of cocaine assigned to a particular base offense level and then dividing it by the lowest amount of crack cocaine assigned to that base offense level. For example, a person who has in his possession 50KG of cocaine is assigned the same offense level (36) as someone who has in his possession 1.5KG of cocaine base. Taking 50KG of cocaine and dividing it by 1.5KG of crack reveals a 33:1 ratio.

² See, James Egan & Molly Roth, “Good Math to Fight the Bad Math: Applying the Commission’s Lowest Accepted Ratios to All Offense Levels” (Mar. 11, 2008), available at http://www.fd.org/pdf_lib/Egan%20Roth%20March%2011.pdf.

32	150G-500G	200G-600G
30	50G-150G	140G-200G
28	35G-50G	80G-140G
26	20G-35G	20G-80G
24	5G-20G	16G-20G
22	4G-5G	12G-16G
20	3G-4G	8G-12G
18	2G-3G	4G-8G
16	1G-2G	2G-4G
14	500MG-1G	1G-2G
12	less than 500 MG	1G

Applying the various ratios to Defendant's case reveals the following guideline ranges. (Note: this chart compares the base offense levels only without any upward and downward adjustments including the two-point enhancement for distribution near a school).

Current Crack to Powder Ratio at Current Offense Level: 75:1	Lowest Crack to Powder Ratio under Current Guidelines: 25:1
Current Offense Level: 22	Offense Level: 18
Criminal History Category: VI	Criminal History Category: VI
Guideline Range: 84-105	Guideline Range: 57-71

III. Conclusion

Due to changes in the law within the last year, this Court is given the freedom to sentence Defendant as it sees fit. No longer restrained by the Guidelines, this Court is instead required to examine Defendant's life, including his desire to rid his addiction and his positive and supportive family. In determining how much punishment is enough, this Court should not be limited by the career offender status but instead should consider the facts that he received a short prison sentence, he wants to change and the fear of recidivism for drug offenders is overstated to such the extent that the career offender sentence is unnecessarily harsh. Also, the irrational crack to powder cocaine ratio yields bizarre results. Instead, this Court should apply the minimum ration of 25:1.

For these reasons, Defendant requests this Court should downwardly deviate and impose a non-guideline sentence.

Respectfully submitted,