

months imprisonment, four years of supervised release, and a \$200 special assessment. For the reasons outlined below, the government urges the Court to accept the terms of the plea agreement and sentence the defendant accordingly.

II. FACTS OF THE CASE

On September 30, 2020, members of the Philadelphia Police Department (PPD) and ATF Task Force executed a search warrant on defendant Tyrese Carter's residence located at 3450 J Street, Apt. 116, Philadelphia, Pennsylvania. Carter, his girlfriend N.F., and an infant child were located within the residence and were the only occupants. The following items were recovered throughout the residence upon execution of the search warrant: approximately fifty-four (54) grams of cocaine base ("crack cocaine"), a Schedule II controlled substance; one hundred twenty-one (121) small containers, each containing cocaine base; one hundred thirty-eight (138) small containers, each containing methamphetamine, a Schedule II controlled substance, weighing approximately 8.6 grams; fifty-eight (58) two milligram Alprazolam tablets, a Schedule IV controlled substance; approximately five hundred sixty-three and one-half (563.5) grams of marijuana, a Schedule I controlled substance; narcotics packaging, including new and unused packaging; drug distribution paraphernalia, including a digital scale and ceramic plates; ammunition, firearms parts, and the Poly80 style pistol loaded with 21 rounds of .40 caliber PMC branded ammunition, which were previously observed in Carter's possession in social media posts. Carter was subsequently arrested by investigators on narcotics and firearms violations.

Carter was then transported to the PPD Southwest Detective Division (SWDD). While there, ATF agents and task force officers placed Carter in an interview room, and initiated recording equipment. Carter was provided his rights under Miranda. Carter elected to waive his

rights and stated that he wished to provide a statement to investigators. In summary, Carter admitted to the possession of the narcotics, drug packaging, the firearm, ammunition, and accessories. Carter stated the crack cocaine was for resale, but, that the methamphetamine inside of the house belonged to a friend of his. Carter stated he purchased the firearm a couple weeks prior to his arrest from an unknown homeless male near the intersections of Kensington and Allegheny Avenues in Philadelphia, PA for \$500. Carter stated he is a previously convicted felon and knew he could not possess a firearm. Carter stated he purchased the ammunition from a store in Delaware. Carter stated he and N.F. have lived in their apartment for a few months and no one else resides there.

III. LEGAL STANDARD

This Court must follow a three-step process when sentencing a defendant: (1) calculate the defendant's guideline sentence, (2) formally rule on any departure motions and state how any departure affects the defendant's guideline calculation, and (3) exercise discretion by separately considering the relevant factors outlined in 18 U.S.C. § 3553(a) when setting the sentence.

United States v. Gunter, 462 F.3d 237, 247 (3d Cir. 2006).

At the third step of the sentencing process, the Court must consider the advisory guideline range along with all the pertinent § 3553(a) factors in determining the final sentence. “The record must demonstrate the trial court gave meaningful consideration to the § 3553(a) factors. . . . [A] rote statement of the § 3553(a) factors should not suffice if at sentencing either the defendant or the prosecution properly raises ‘a ground of recognized legal merit (provided it has a factual basis)’ and the court fails to address it.” *United States v. Cooper*, 437 F.3d 324, 329-30 (3d Cir. 2006) (citations omitted).

The government explains below its view of the proper consideration in this case of the advisory guideline range and of the Section 3553(a) factors, which support a sentence of 60 months imprisonment, four years of supervised release, and a \$200 special assessment.

IV. SENTENCING CALCULATION

A. Statutory Maximum Sentence

The total maximum sentence that can be imposed on Count One is 40 years imprisonment, four years of supervised release up to a lifetime of supervised release, a \$5,000,000 fine and a \$100 special assessment. The total maximum sentence that this Court can impose on Count Two is 10 years' imprisonment, three years of supervised release, a \$250,000 fine, and a \$100 special assessment. Thus, the total maximum sentence upon conviction on Counts One and Two is 50 years' incarceration, four years of supervised release up to a lifetime of supervised release, and a \$200 special assessment.

B. Sentencing Guidelines Calculation

The presentence report calculates the defendant's guideline range at 60-71 months in prison. PSR ¶ 98. In this case, the parties stipulated that the defendant possessed 57 grams of cocaine base ("crack") and the defendant's guideline range should be based on this amount. PSR ¶ 27. The base offense level was then correctly determined to be 24. Two additional levels are added because the defendant possessed a dangerous weapon in connection with the offense. PSR ¶ 28; USSG §§ 1B1.3 and 2D1.1(b)(1). After subtracting three levels for acceptance of responsibility, the total offense level is 23. PSR ¶ 34-35.

The defendant has the following unscored criminal convictions: in the Delaware County Court of Common Pleas: on February 1, 2010, the defendant was sentenced to probation for providing false information to a law enforcement officer. PSR ¶ 39. In the Kent County

Delaware Superior Court, on September 15, 2009, the defendant plead guilty to aggravated assault – displaying what appears to be a weapon, and was sentenced to three years of imprisonment that was suspended. PSR ¶ 40. Because both of these convictions did not result in a sentence of incarceration and they occurred ten years before the charged conduct in this case, they do not receive criminal history points. USSG § 4A.1.2(e)(3).

Then on February 1, 2010, the defendant was sentenced to a four to ten year term of incarceration in Delaware County Court of Criminal Pleas for criminal conspiracy and aggravated assault arising from a shooting that occurred in Chester, Pennsylvania on September 24, 2009. PSR ¶ 41. Because this conviction occurred within the last 15 years, three criminal history points are added. On January 8, 2019, the defendant pled guilty to possession of drug paraphernalia in the Kent County (Delaware) Court of Common Pleas and was sentenced to no further penalty. PSR ¶ 42. Because the defendant committed the instant offense within ten years of this conviction, an additional one point is added for a total of four criminal history points. PSR ¶ 42. A criminal history score of four establishes a criminal history category of III. PSR ¶ 44.

The applicable guideline range for an offense level of 23 and a criminal history category of III is 60-71 months' imprisonment. USSG Sentencing Table.

V. GOVERNMENT'S RECOMMENDATIONS CONCERNING SENTENCING

A. Sentencing Factors

A thorough consideration of all of the sentencing factors set forth in 18 U.S.C. § 3553(a) suggests that the parties' recommended sentence is an appropriate sentence in this case. The Court must consider all of the sentencing considerations set forth in § 3553(a). Those factors include: (1) the nature and circumstances of the offense and the history and characteristics of the

defendant; (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need to afford adequate deterrence to criminal conduct, and to protect the public from further crimes of the defendant; (4) the need to provide the defendant with educational or vocational training, medical care, or other correctional treatment in the most effective manner; (5) the guidelines and policy statements issued by the Sentencing Commission; (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense. 18 U.S.C. § 3553(a).

B. Application

The relevant § 3553(a) factors will be discussed in turn.

1. The Nature and Circumstances of the Offense

This was a serious offense. Notwithstanding Carter's criminal history, that includes a violent offense committed with a firearm, he possessed a polymer 80 firearm, multiple rounds of ammunition, and a large amount of crack cocaine in Philadelphia. Given the crisis in Philadelphia concerning violent crimes being committed with firearms and as well as the plethora of illegal narcotics in the city, the defendant's decision to possess a loaded Polymer 80 firearm and a large amount of crack cocaine, notwithstanding his criminal history, are serious crimes.

2. The History and Characteristics of the Defendant

The defendant is a 33-year-old male from Philadelphia who had been living in Philadelphia at the time of his arrest. PSR ¶ 69. The defendant is not married but lived with his girlfriend since 2019 and is the father of two children from separate relationships. PSR ¶ 67-68.

The defendant plans to return to his girlfriend's residence upon his release from custody. PSR ¶ 70. While the defendant has a notable criminal history with an apparent proclivity towards possessing firearms, he is young enough that he can be rehabilitated and begin to lead a law abiding lifestyle, if he wishes.

3. The Need for Sentence Imposed to Reflect Seriousness of the Offense, Promote Respect for Law, and Provide Just Punishment

There is a strong need to impose a custodial sentence that reflects the seriousness of these offenses, promotes respect for U.S. laws, and provides just punishment. The City of Philadelphia is plagued by gun violence and drug distribution. It is imperative, therefore, that the defendant's conduct be punished accordingly for his possession of a firearm and decision to engage in narcotics trafficking in this case. The defendant's conduct in this case demonstrates that he has no respect for the laws of this country, and his conduct supports a sentence of imprisonment. The agreed upon term of incarceration, 60 months, is longer than any other term imposed on the defendant and will far exceed his prior incarceration terms. It is the government's belief that this term of imprisonment will help to instill respect for the law and reflect the seriousness of the case upon the defendant.

4. The Need for Adequate Deterrence and Protection of Public

The need for adequate deterrence of this type of crime is great. Given the prevalence of gun violence in this region, the need to deter others from similar crimes is especially important. Furthermore, the recommended sentence protects the public from further crimes by the defendant, for at least as long as he remains in prison. The agreed upon 60-month term of incarceration and four-year period of supervised release, should deter the defendant from future crime, particularly gun crime. The defendant will effectively be under court related oversight for

a lengthy period of time, nine years, which will aid in his deterrence. Facing the prospect of reincarceration for any violation, and potential future federal prosecution for any new offense, the defendant will, hopefully, begin to lead a law-abiding lifestyle.

5. The Need to Provide the Defendant with Training, Medical Care or Correctional Treatment

There is no demonstrated need to adjust the sentence in order to provide the defendant with needed educational or vocational training, medical care or additional treatment that cannot be adequately addressed by the Bureau of Prisons during incarceration. Should the defendant wish to avail himself of the Bureau of Prisons', or U.S. Probation Office's, offerings for education, training, or treatment, the agreed upon sentence will not inhibit those efforts.

6. The Need to Avoid Unwarranted Sentence Disparities Among Similarly Situated Defendants

Adherence to the recommended guideline range is generally the best course for assuring that the defendant's sentence is consistent with those imposed nationwide on similarly-situated offenders. Here, in accordance with the terms of the plea agreement entered by the parties, the government requests a sentence at the bottom of the guidelines of 60 months. The government recommends that the Court accept the plea agreement and impose the agreed-upon sentence of 60-months, four years of supervised release, and a \$200 special assessment. PSR ¶ 100.

7. Restitution

There is no restitution in this case.

VII. CONCLUSION

Therefore, in sum, all of the appropriate considerations of sentencing favor the imposition of a sentence of 60 months' imprisonment in this case. For the reasons outlined above, the agreement upon terms should be accepted by the Court because they are fair, appropriate, and sufficient but not greater than necessary to meet the goals of sentencing.

Respectfully submitted,

Jennifer Arbittier Williams
United States Attorney

/s Robert E. Eckert
Robert E. Eckert
Assistant United States Attorney

Date: February 3, 2022

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Government's Sentencing Memorandum has been served by electronic mail upon the following:

Andrew Moon
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_____/s Robert E. Eckert _____
Robert E. Eckert
Assistant United States Attorney

Date: February 3, 2022