

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

V.

Case No. 3:21cr-30002-001

CRYSTAL PAYNE

DEFENDANT

SENTENCING MEMORANDUM

Comes now Robert C. Marquette, Attorney for Defendant Crystal Payne, and states:

That pursuant to the Court's request, Attorney for Defendant anticipates the length of time for the hearing to be 15 minutes and no testimony will be presented, only statements of counsel.

PSSR

1. That the Pre-Sentence Screening Report filed by the probation officer in this case was received by this attorney and reviewed by the Defendant on two separate occasions. The guideline imprisonment range was determined to be 6-12 months with a criminal history of 0 and a criminal history category of **1** (PSSR 22).
2. Defendant plead guilty to False Statement and the probation officer recommended a reduction for acceptance of responsibility of -2 points (PSSR 21) and an adjustment of +6 points for Specific Offense Characteristics, i.e. the loss of \$59,130 exceeded \$40,000 but is less than \$95,000. (PSSR 21). With a 3rd point awarded for acceptance of reduction of responsibility, the Total Offense Level would be 9 with a guideline imprisonment range of 4-10 months.

3. The Government argues that a different calculation be used to determine the amount of the enhancement at 10 points instead of 6 points as set forth in USSG Sec. 2B1.1(b)(1)(D), arguing that Sec. 2B1.1(b)(1)(F) applies as the greater amount of intended loss instead of the actual loss should be used to determine the guideline range. The Government postulates that the Total Offense Level should be 13 with a guideline imprisonment range of 12-18 months. Defendant has indicated and argues that the actual loss should be used.

BIOGRAPHICAL HISTORY

4. The Defendant is a 42 year old female. She presently lives with her husband James Read and daughter Madelyn Read in Mountain Home, Arkansas. (PSSR 23). Defendant's daughter Madelyn who is age 15 has been diagnosed with bipolar disorder. Defendant is a full time mother and caretaker for Madelyn and because of her daughter's infirmity, she is homeschooling the child due to her diagnosis. (PSSR 23). Defendant is currently being treated by Dr. Robert Kraft at Baxter Regional Medical Center's Interventional Pain Management for chronic pain in the last year. She is prescribed hydrocodone for the pain. Records received by the probation office confirm this information. She has also received mental health treatment and counseling on several occasions. She was previously participating in individual therapy sessions and was diagnosed with obsessive compulsive disorder (OCD). Later she attended individual therapy in 2017 in Mountain Home. Defendant in 2020 attended therapy for anxiety and depression at Burrell Behavioral Health. Finally she is currently receiving Prozac for her anxiety and depression by her primary care physician Dr. Andrea Bounds and is

also being prescribed Xanax. These records have been received by the probation officer from Dr. Bounds (PSSR 24)..

5. Defendant has a high school diploma and an associate degree from the University of Louisiana at Monroe. These records have been confirmed by the probation officer (PSSR 24). Her work history indicates she could once again be a productive member of society and she should be able to be employed and make payments restitution and/or fine payments if released on supervised probation.

ARGUMENTS

6. THE FEDERAL SENTENCING STATUTE: 18 U.S.C. § 3553(a) Factors To Be Considered in Imposing a Sentence. The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider— (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 most effective manner; (3) the kinds of sentences available.

The Defendant because of her cooperation with law enforcement officers, lack of any prior criminal convictions, the full time care and homeschooling provided to her daughter and the absence of any threat to society, was permitted to be released

and placed on probationary conditions and terms and permitted to remain at home rather than being incarcerated. During the time of this court ordered supervisory release, she obeyed all conditions and terms set forth by the Court and the probation office, regularly staying in touch with the probation officer and not engaging in any criminal behavior and not possessing or using any illegal drug or substance. Her behavior during this trying time, made more strenuous by the COVID-19 Pandemic and her medical condition, reflects on the possibility of a sentence which is a downward variance from the sentencing guidelines.

Based on the fact that Defendant's husband James Read has also plead guilty in this Court and would be unable to care for the special needs of their daughter if both parents were to be incarcerated, the Defendant respectfully prays that this Court approve a downward variance from the sentencing guidelines. Defendant requests a supervisory probation sentence and she respectfully asks that this Court based on 3553 factors sentences her to a sentence which varies downward from the guidelines.

CONCLUSION

7. Based on the totality of 3353 factors, Defendant prays that this Court depart below the sentencing guidelines and sentence her to a supervisory probation sentence. Her total absence of any prior criminal behavior in her life along with her being the caretaker and support of a minor child with severe medical conditions requiring homeschooling and other 3553 factors would make Defendant a candidate for a downward variance. It should be noted that should a

slight variance be granted, an offense level of 8 would be in Zone A in which the sentencing guidelines suggest a range of punishment of 0-6 months.

Respectfully submitted,

Crystal Payne

By: /s/ Robert C. Marquette

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CERTIFICATE OF SERVICE

I, Robert C. Marquette, hereby certify that on this 9th day of June, 2021, the foregoing document was filed electronically using the CM/ECF system with the Clerk of the Court which will send electronic notification of such filing to all proper parties and I hereby certify that I have mailed the document by the USPS to the following non-CM/ECF participant, Crystal Payne, Defendant.

Robert C. Marquette
ROBERT C. MARQUETTE