UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	**:**	**Crim. No. 3:12cr107(VLB)**
	:	
v.	**:**	
	:	
JAMEEL WILKES, a.k.a. "Biggs"	**:**	**May 22, 2015**

GOVERNMENT'S MEMORANDUM IN AID OF SENTENCING

The Court has scheduled sentencing in this matter for June 12, 2015. For the reasons set forth below, the government respectfully submits that a sentence of 135 months of imprisonment is warranted in this matter.

I. BACKGROUND

On May 15, 2012, a federal grand jury sitting in New Haven returned a five-count indictment against defendant Jameel Wilkes and several co-defendants. The indictment charged Wilkes in Count One with conspiracy to possess with intent to distribute and to distribute controlled substances, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846, and in Counts Two and Five, with possession with intent to distribute and distribution of cocaine base, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C).

On November 25, 2014, Wilkes pleaded guilty to Count One of the indictment. Specifically, Wilkes pleaded guilty to knowingly, intentionally, and unlawfully conspiring to possess with intent to distribute, and to distribute, 280 grams or more of cocaine base, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846.

In the written plea agreement, the parties contemplated a guidelines range of 135-168 months of imprisonment for the offense of conviction. The government

conditionally agreed not to seek a sentence of imprisonment of greater than 135 months and Wilkes reserved his rights to seek a downward departure or a non-guidelines sentence of 120 months (the mandatory minimum penalty). Wilkes waived his right to appeal or collaterally attack a sentence that does not exceed 135 months of imprisonment, a life term of supervised release, a $10,000,000 fine, and a $100 special assessment. Sentencing in this matter is scheduled for June 12, 2015 at 10:00 a.m.

The broad background of the underlying investigation and this defendant's specific offense conduct are described in paragraphs six through eighteen of the Presentence Report ("PSR") and summarized briefly as follows: Jameel Wilkes operated a large-scale drug trafficking operation in the greater New Haven area, involving cocaine base and marijuana. On May 19, 2011, an individual cooperating with law enforcement engaged in the controlled purchase of 6.9 grams of cocaine base—packaged as two "eight-balls"—from Wilkes. *See* PSR ¶ 11. On January 9, 2012, an individual cooperating with law enforcement engaged in the controlled purchase of 3.4 grams of cocaine base from Wilkes. *See* PSR ¶ 13.

In addition to directly serving his own drug customers, Wilkes worked with several other individuals to further his drug-trafficking activities:

- **Wilkes used co-defendant Kalif Kierce to serve drug customers while Wilkes was incarcerated in Massachusetts between July 2011 and September 2011. *See* PSR ¶ 12. Moreover, an individual cooperating with**

law enforcement reported that "Kierce continued to act as Mr. Wilkes' runner" after Wilkes's release from custody. PSR ¶ 12.

- **Wilkes and co-defendant Kevin Thompson "sometimes pooled money . . . so that they could acquire significant quantities of cocaine." PSR ¶ 15.**
- **"Co-defendant Mark Fuller was a regular customer of Mr. Wilkes[] who bought quantities of crack cocaine on credit ranging from eight-balls to ounce quantities for street level distribution." PSR ¶ 15.**
- **Wilkes supplied co-defendant Vincent Mescrea (also known as Jose Jimenez) with "eight-ball quantities of cocaine base for street level distribution." PSR ¶ 16. Mescrea "sold crack for Mr. Wilkes out of a bar called Lou's Lounge in Fair Haven." PSR ¶ 16.**

Following Wilkes's arrest on May 15, 2012, law enforcement officers executed federal search warrants at two locations. At Wilkes's home, they recovered approximately $3,800 in U.S. currency. *See* PSR ¶ 17. At Wilkes's stash location, they recovered "$5,235 in cash, quantities of marijuana and a small quantity of crack cocaine, a digital scale and mixer with confirmed cocaine residue and packaging material[s]." PSR ¶ 17. Moreover:

> **In a post-arrest statement, Mr. Wilkes admitted that he had been involved in the distribution of crack cocaine since 1994. He further admitted that he had distributed over 500 grams of cocaine base in the past two years and that he had a roster of approximately ten crack customers. Mr. Wilkes explained that he would collect money from customers, acquire cocaine and then convert the cocaine into cocaine base. He would then supply the cocaine base to the customers and make a profit on the transactions. Mr. Wilkes described himself as "nasty" in converting cocaine to crack, meaning he was very good at making high quality crack cocaine.**

PSR ¶ 17. In his presentence report interview, Wilkes attributed his drug trafficking activities—in part—to laziness and greed. *See* PSR ¶ 21.

While detained in connection with this matter, "Wilkes caused to have a telephone conversation of his recorded and subsequently posted to YouTube (#FreeBigFromCt)." PSR ¶ 5. "In the one minute and forty second video, an audio recording [plays] while a stream of still pictures scroll." PSR ¶ 5. Wilkes described this video "as a 'public service announcement.'" PSR ¶ 18. He therein "described 'snitching,' (i.e. cooperating with law enforcement) as a disease and he identified a government witness known by [a particular] nickname [] as someone that was cooperating." PSR ¶ 18. Referring to that government witness and other individuals that Wilkes specifically identified in the video as cooperators, Wilkes stated they "'need to die a horrible death.'" PSR ¶ 18.

Based on the stipulated crack quantity of approximately 500 grams (which is at least 280 grams, but less than 840 grams), the PSR determined a base offense level of 30. *See* PSR ¶ 23. The PSR recommended a three-level adjustment for Wilkes's role in the offense pursuant to U.S.S.G. § 3B1.1(b). *See* PSR ¶ 26. The PSR recommended a two-level adjustment for obstruction of justice pursuant to U.S.S.G. § 3C1.1.[1] *See* PSR ¶¶ 5, 20, 27. The PSR also recommended a three-level reduction for acceptance of responsibility pursuant to

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[1] In addition to the basis for this obstruction enhancement set forth in the PSR, the government also points to the Court's order denying Wilkes's motion to suppress. *See* Dkt. No. 342. In that order, the Court expressly rejected Wilkes's sworn testimony regarding the circumstances of his arrest and his post-arrest statement. A defendant's intentional provision of false testimony regarding a material matter is a basis for this enhancement. *See United States v. Norman*, 776 F.3d 67, 83-85 (2d Cir. 2015). However, if the Court intends to rely on this alternative basis, it must make additional and specific findings.

U.S.S.G. § 3E1.1.[2] *See* PSR ¶¶ 21, 30-31. The PSR thus determined a total offense level of 32. *See* PSR ¶ 32. The PSR then calculated that Wilkes has six criminal history points resulting from his prior convictions. *See* PSR ¶ 42. With a criminal history score of six, Wilkes falls within Criminal History Category III. *See* PSR ¶ 42. At Criminal History Category III and total offense level 32, the guidelines range of imprisonment is 151-188 months. *See* PSR ¶ 62.

The PSR's guidelines range (151-188 months) differs from the range contemplated by the parties in the written plea agreement (135-168 months). *See* PSR ¶ 63. This difference arises because the PSR applies a three-level role adjustment, *see* PSR ¶ 26, whereas the plea agreement contemplated only a two-level role adjustment, *see* PSR ¶ 63. Consistent with the PSR's observation, *see* PSR ¶ 77, the government therefore requests that the Court apply a downward departure to give effect to the plea agreement, *see United States v. Fernandez*, 877 F.2d 1138 (2d Cir. 1989).

The government respectfully submits that a sentence of 135 months of imprisonment is warranted in this case.

II. LEGAL STANDARD

A sentencing judge is required to: "(1) calculate[] the relevant Guidelines range, including any applicable departure under the Guidelines system; (2) consider[] the Guidelines range, along with the other § 3553(a) factors; and (3) impose[] a reasonable sentence." *See United States v. Fernandez*, 443 F.3d 19, 26

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[2] Assuming that no unforeseen circumstances arise between the filing of this sentencing memorandum and the sentencing proceeding, the government intends to move orally at the sentencing proceeding for the "third point" for acceptance of responsibility under U.S.S.G. § 3E1.1(b).

(2d Cir. 2006); *United States v. Crosby*, 397 F.3d 103, 113 (2d Cir. 2005). In turn, 18 U.S.C. § 3553(a) provides that "[t]he 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;**
>
> **(4) the kinds of sentence and the sentencing range established [in the Sentencing Guidelines];**
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> **(5) any pertinent policy statement [issued by the Sentencing Commission];**
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> **(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).

The Second Circuit reviews a sentence for reasonableness, *see Rita v. United States*, 127 S. Ct. 2456, 2459 (2007), under a "deferential abuse-of-

discretion standard," *United States v. Cavera*, 550 F.3d 180, 189 (2d Cir. 2008) (en banc). As the Second Circuit explained:

> **Our review has two components: procedural review and substantive review. [*Cavera*, 550 F.3d at 189.] We "must first ensure that the district court committed no significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence--including an explanation for any deviation from the Guidelines range." *Gall v. United States*, 552 U.S. 38, 51, 128 S. Ct. 586, 169 L. Ed. 2d 445 (2007). Once we have determined that the sentence is procedurally sound, we then review the substantive reasonableness of the sentence, reversing only when the trial court's sentence "cannot be located within the range of permissible decisions." *Cavera*, 550 F.3d at 189 (internal quotation marks omitted).**

***United States v. Dorvee*, 616 F.3d 174, 179 (2d Cir. 2010) (internal quotation marks and citations omitted).**

III. DISCUSSION

The government respectfully submits that a sentence of 135 months of imprisonment is warranted in this case.[3]

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[3] Consistent with his reservation of rights in the plea agreement, the government anticipates that Wilkes will seek a sentence of 120 months of imprisonment (the mandatory minimum penalty). One basis for the defendant's anticipated request likely will be the disparate treatment of powder cocaine and crack cocaine in the guidelines. *See* PSR ¶ 79. The government recognizes the Court's authority "to reject and vary categorically from the crack-cocaine Guidelines based on a policy disagreement with those Guidelines." *Spears v. United States*, 555 U.S. 261, 266 (2009). But the government respectfully submits that such an approach is not warranted in this case. *First*, the Court has applied the 18:1 ratio reflected in the current version of the guidelines in sentencing Wilkes's co-defendants. Application of a 1:1 ratio therefore would create a sentencing disparity within this case. *Second*, the mandatory minimum sentence of 120 months would apply to any defendant convicted of the underlying offense. Application of a 1:1 ratio therefore would create a sentencing disparity between Wilkes and a defendant convicted of the same crime that did not occupy a leadership role or endeavor to obstruct justice. *Third*, for the reasons set forth in the next, a sentence of 135

Seriousness of the offense. **Wilkes's trafficking in cocaine base constitutes serious criminal conduct. Drug trafficking has a broad array of victims, from the purchasers who become addicted to the families that are decimated to the schools where the learning environment is eroded to the communities that are destroyed. Many of Connecticut's cities, including New Haven, suffer severely from these consequences of drug trafficking. But the gravity of Wilkes's offense also is exacerbated by his personal struggles with drug addiction, the consequences of drug trafficking that he witnessed in his own neighborhood, and his leadership role.**

First, "Wilkes reported a significant history of substance abuse." PSR ¶ 54. He started drinking "alcohol at age nine or ten" and "was eleven or twelve years old when he first smoked marijuana." PSR ¶ 54. After a lengthy period of incarceration in New York and his discharge from the attendant period of parole, Wilkes "began smoking marijuana from morning until night." PSR ¶ 54. Indeed, Wilkes reported that he became so dependent on marijuana that he "'had to get high to feel regular.'" PSR ¶ 54. In this same time period, Wilkes also "used Ecstasy daily" and then shifted to Molly ("a form of Ecstasy that could be dissolved into liquid"). PSR ¶ 54. Wilkes also characterized "his step-father" as "'a big alcoholic,'" which contributed to instances of domestic violence. PSR ¶ 44. Wilkes also "advised that his brother . . . went to jail 'a few times' because of drugs." PSR ¶ 45. But despite the very real impact of drug dependence and

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months of imprisonment is "sufficient, but not greater than necessary" to achieve the statutory purposes of sentencing set forth in 18 U.S.C. § 3553(a).

distribution on Wilkes and his family, Wilkes persisted in the trafficking of large quantities of cocaine base and marijuana.

Second, the gravity of the offense is underscored by Wilkes's personal observation of the impact of drug trafficking on his own neighborhood. Wilkes "recalled that his childhood homes were always in areas of high crime and drug dealing." PSR ¶ 45. Indeed, he characterized his area of Fair Haven "as an 'open-air market' for drug sales, 'twenty-four hours per day.'" PSR ¶ 47. Wilkes no doubt recognized the link between such rampant drug-trafficking and the violence that wreaked havoc on his neighborhood and jeopardized his own life on at least three occasions. *See* PSR ¶ 52 (Wilkes was shot on three different occasions, in 1996, 1997, and 2005 or 2006). But despite the impact of drug trafficking on his community, Wilkes persisted in his drug distribution activities.

Third, as Wilkes stipulated and as the PSR determined, Wilkes "was an organizer, leader, manager, or supervisor of criminal activity." *See* Dkt. No. 479 at 4 (plea agreement). Irrespective of the number of participants in this criminal activity, the fact that Wilkes occupied such a role amplifies the seriousness of his offense conduct.

Standing alone, the instant offense is serious and therefore should carry serious consequences. But the gravity of the offense is exacerbated when viewed against the backdrop of Wilkes's personal struggles with drug addiction, the consequences of drug trafficking that he witnessed in his own neighborhood, and his leadership role.

Specific deterrence. **Wilkes's criminal history evidences a real need for the sentence imposed to deter Wilkes from further criminal activity, promote his respect for the law, and protect the public from his commission of further crimes.[4]**

Wilkes's criminal history reveals an inability to comply with the law spanning nearly two decades and three states. His adult convictions began at the age of 17, when he was arrested for (and later convicted of) Possession of Narcotics, Possession of Marijuana, Interfering and Resisting Arrest, and Assault in the Third Degree. *See* PSR ¶¶ 34-37. Indeed, after receiving a suspended sentence for the Possession of Narcotics conviction and while serving the resulting three-year term of probation, Wilkes was arrested for the Possession of Marijuana and Interfering offenses. *See* PSR ¶¶ 34-36. While out on bond for the Possession of Marijuana and Interfering offenses, Wilkes was arrested for the Assault offense. *See* PSR ¶ 37. Less than one month after his release from custody on the foregoing offenses and while still on transitional supervision, Wilkes was arrested in New York for offense conduct that resulted in his subsequent convictions for Criminal Possession of a Controlled Substance in the Second Degree and Reckless Endangerment in the First Degree. *See* PSR ¶ 38. He served approximately five years in prison and then approximately 3.5 years on parole for these New York convictions. *See* PSR ¶ 38. Approximately nine months after discharging from this term of parole, Wilkes was arrested for the conduct

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[4] The government concurs that Wilkes appropriately is placed in Criminal History Category III and does not seek any upward departure in Criminal History Category. But the government does underscore that Wilkes sustained several convictions—among them a felony drug conviction and an Assault in the Third Degree conviction—that are not assigned any criminal history points.

that led to his conviction for Burglary in the Third Degree. *See* PSR ¶ 39. And then, in 2011, Wilkes sustained convictions in Massachusetts for Operating a Motor Vehicle Recklessly/Operating a Motor Vehicle after Suspension and Resisting Arrest, resulting in concurrent sentences of 90 days (during which time co-defendant Kalif Kierce served Wilkes's drug customers). *See* PSR ¶¶ 40-41.

This bleak criminal history reveals a pattern in which Wilkes repeatedly flouts court supervision and persistently returns to criminal conduct. Put simply, the prison gates have been a revolving door for Wilkes. Even the five years he served in the New York prison system did nothing to deter his criminal conduct. Indeed, given the circumstances of the instant offense, it appears that Wilkes's criminal behavior only has escalated since that time. And setting aside his party promotion venture, Wilkes has had minimal legitimate employment history, *see* PSR ¶¶ 57-59, thereby heightening the risk of continued recidivism.

As if that were not enough, the need for specific deterrence is further underscored by Wilkes's behavior while detained in connection with this matter. He committed disciplinary violations—including gambling, rioting/encouraging other detainees, and disobeying a direct order—on five occasions. *See* PSR ¶ 5. Moreover, he caused a YouTube video to be posted in which he specifically identified individuals that he perceived to be cooperating with law enforcement as "snitches" and stated that such individuals "need to die a horrible death." *See* PSR ¶¶ 5, 18, 20, 27. Notwithstanding Wilkes's incarceration, such pronouncements obviously presented a serious risk to the safety of the individuals identified by Wilkes (especially in view of Wilkes's leadership role).

General deterrence. **Finally, there is a need for general deterrence. A sentence of 135 months is necessary to signal to other individuals that drug trafficking—especially when coupled with a leadership role and efforts to obstruct justice—is serious criminal conduct that carries serious consequences.**

IV. CONCLUSION

To reflect the seriousness of the offense, achieve specific deterrence, and promote general deterrence, the government respectfully submits that a sentence at the bottom of the guidelines range contemplated in the plea agreement is necessary. The government therefore seeks a sentence of 135 months of imprisonment. The government objects to any departure or non-Guidelines sentence below 135 months of imprisonment.

Respectfully submitted,

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C E R T I F I C A T I O N

I hereby certify that on May 22, 2015, the foregoing Government's Memorandum in Aid of Sentencing was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's system.

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