

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	CRIM. NO. 3:15cr00207 (VAB)
	:	CRIM. NO. 3:16cr00154 (VAB)
	:	
v.	:	
	:	
MICHAEL HENDERSON	:	JUNE 20, 2018

MEMORANDUM IN AID OF SENTENCING

I. INTRODUCTION

The defendant is charged in two related cases both of which arose out of a gun burglary perpetrated by this defendant, co-defendant, Eric Lewis-Joyner, and others on June 17, 2015 at the Woodbridge Firearms & Trading Post located in Woodbridge, Connecticut. In criminal docket number 3:15cr00207, the defendant was charged with making false statements to a federal officer, namely an Alcohol, Tobacco & Firearms officer who was investigating the Woodbridge gun burglary. He pled guilty to the false statement charge on July 14, 2016 via a *Pimentel* letter of the same date to Count Four of this Indictment charging a violation of 18 U.S.C. § 1001. The defendant had been questioned about a certain Volkswagen Passat that was used in the gun burglary and denied any knowledge of that automobile and further denied ever being in that automobile. Subsequent laboratory testing revealed traces of the defendant's DNA in the vehicle as well as his fingerprints on a bottle of cologne that was left in the vehicle.

In criminal docket number 3:16cr00154, the defendant was charged in a three count Indictment with stealing a firearm from a federally licensed firearms dealer in violation of 18 U.S.C. §§ 922(u), 924(i)(1), possession of a stolen firearm in violation of 18 U.S.C. §§ 922(j) and

924(a)(2) and unlawful possession of a firearm by a convicted felon in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). This Indictment alleged the defendant's actual participation in the Woodbridge gun burglary.

On October 4, 2017 the defendant did, pursuant to a *Pimentel* letter dated October 2, 2017, enter a guilty plea to all three counts of the Indictment. As previously indicated, the gun burglary involved this defendant, co-defendant, Eric Lewis-Joyner, and two others who, on June 17, 2015, drove the Volkswagen Passat through the front door of the Woodbridge Firearms & Trading Post after which one of the perpetrators removed four handguns from an enclosed glass case. The stolen firearms included a Springfield model XDS-9, 9 mm handgun, a Harrington & Richard .38 caliber handgun, another Harrington & Richard .38 caliber handgun and a Harrington & Richard .32 caliber handgun.

In its October 2, 2017 *Pimentel* letter, the Government outlined a proposed advisory guideline calculation and set forth its intention to seek an enhancement of the defendant's sentence up to 35 years because the Government intended to prove at sentencing, by a preponderance of the evidence, that the defendant's history and characteristics demonstrated that he deserves a sentence at or near the statutory maximum on account of (1) his having made death threats to an ATF Special Agent and United States Magistrate purportedly communicated to another inmate while he was in detention at the New Haven Correctional Center; (2) that he assaulted a Wyatt Correctional Facility guard in December of 2016; (3) that he mailed a letter asking another to intimidate a witness that had been revealed to him in connection with the gun burglary case; and (4) that on or about October 11, 2015 he shot and killed one Maurice Richardson.

At a Fatico Hearing held before this Court on April 25, 2018, the Government called one witness, a Shawn Chandler, in an attempt to prove by a preponderance of the evidence that the defendant made death or similar threatening comments concerning Special Agent Brian Ross and Magistrate Judge Garfinkel (described as Judge Garfield by the witness) as well as Agent Ross' partner. No evidence was presented at this hearing in support of the alleged assault on a Wyatt Detention Facility correction's officer in December 2016 nor was there any evidence presented by the Government about a letter sent by the defendant to another individual asking that person to intimidate a witness that had been revealed to him. As indicated in paragraph 11 of the PSR, however, the probation officer did obtain some type of oral verification from Wyatt that, in fact, a CO was assaulted; and, while he was not provided any incident report of the event the defendant admits to striking the Wyatt CO. In addition, the probation officer has not received discovery of the purported witness intimidation letter as indicated in paragraph 28 of the PSR.

The defendant denies the Government's claim that he threatened to kill or harm an ATF Special Agent and a United States Magistrate while in detention at the New Haven Correctional Center as described in paragraph 27 of the PSR and further disputes and denies that he shot Maurice Richardson on or about October 11, 2015. In addition, the defendant disputes the advisory guideline calculation prepared by the Government in its *Pimentel* letter, specifically that portion of the calculation calling for the addition of four levels pursuant to U.S.S.G. § 2K2.1(b)(6)(B) because the Government believes the defendant possessed one of the stolen firearms in connection with another felony. No evidence was presented by the Government to establish that any of the

firearms taken in the firearms store burglary were used by this defendant in connection with the perpetration of another felony.

Factually the defendant does not dispute the offense conduct described in paragraphs 12 through 26 as set forth in the PSR. As for the claims made in paragraph 29 of the PSR, the defendant disputes that any of the firearms he obtained from the gun burglary were used in the commission of another felony namely the shooting of Maurice Richardson, and the Government has not produced any evidence at the Fatico Hearing or otherwise that one of those firearms was involved in that shooting. In an ATF investigative report dated June 22, 2015, three of the four firearms taken in the burglary were described as “not functional” and the only functional firearm, described as a Springfield Arms 5DX 9mm, was actually found on the possession of Mr. Lewis-Joyner.¹ The defendant admits being in possession of a firearm as a convicted felon.

As indicated in paragraph 32 of the PSR, the defendant candidly admitted that he participated with Eric Lewis-Joyner and others in the burglary at the Woodbridge Firearms & Trading Post on June 17, 2015, and described how they backed a car into the store and stole four firearms as described in the Indictment. He later acknowledged having been in possession of two of the firearms following the burglary, having been previously been convicted of a felony in State Court, and that he had lied to the ATF Officer as to whether he was ever in one of the cars used in the burglary. Based on this statement, the probation officer, in paragraph 34 of the PSR, concluded

¹ Government’s Sentencing Memorandum, *U.S.A. v. Eric Lewis-Joyner*, Case No. 3:15cr207 (VAB) dated 5/17/16 at page three.

that the defendant has clearly accepted responsibility for the instant offenses and agreed to recommend a three level reduction of the adjusted offense level.

The defendant agrees with the advisory guideline calculation contained at paragraphs 36 through 47 of the PSR, including a two level enhancement for obstruction of justice based on his having given a false statement to a federal officer about the gun burglary. The defendant also agrees with the criminal history calculated in the PSR. With a criminal history score of 10, the defendant agrees this places him in criminal history category V. With a base total offense level of 17, his established advisory sentencing guideline range is 46 to 57 months.

The defendant submits that a sentence within the advisory sentencing guideline range, is under 18 U.S.C. § 3553, sufficient, but not greater than necessary to comply with the purposes of sentencing.

II. LEGAL STANDARD

A sentencing judge has very wide latitude to decide the proper degree of punishment for an individual offender and a particular crime. *United States v. Cavera*, 550 F.3d 180, 188 (2d Cir. 2008) (en banc). In reaching its sentencing decision, the Court must consider each of the factors set forth in 18 U.S.C. § 3553(a) to make an individualized sentencing determination. See *United States v. Booker*, 543 U.S. 220, 245-46 (2005); *Gall v. United States*, 552 U.S. 38, 59 (2007). The Court should begin by calculating the applicable Sentencing Guidelines range. However, “[t]he Guidelines are not only *not mandatory* on sentencing courts; they are also not to be *presumed* reasonable.” *Nelson v. United States*, 555 U.S. 350, 352 (2009).

Rather than relying on the Guidelines, a sentencing court must make an individualized assessment as to the appropriate sentence based on the facts presented and in light of each of the factors set forth in 18 U.S.C. § 3553(a). The Court may impose a below-Guidelines sentence based entirely on policy considerations, including disagreements with the Guidelines. *Kimbrough v. United States*, 552 U.S. 85, 101 (2007); *United States v. Seval*, 293 F. App'x 824, 836-37 (2nd Cir. 2008) (unpublished summary order) (“the Supreme Court has made it clear that sentencing judges may consider the general appropriateness of a Guideline range”). This is particularly true when considering Guidelines that are not based on the Sentencing Commission’s traditional empirical and experiential study. See *Kimbrough*, 552 U.S. at 109.

Section 3553(a)(2) states that the purposes of sentencing include:

- (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.

To determine a sentence that best comports with these goals, the Court should consider:

- (1) the nature and circumstances of the offense and the history and characteristics of the offender;
- (2) the kinds of sentences available; (3) the kinds of sentences and the sentencing range established in the Sentencing Guidelines; (4) policy statements issued by the Sentencing Commission; (6) the need to avoid unwarranted sentence disparities amount similarly situated defendants; and (7) the need to provide restitution to any victims of the offense. See 18 U.S.C. § 3553(a)(1), (a)(3)-(7).

Most importantly, the Court should order a sentence that is “sufficient, but not greater than necessary, to comply with the purposes” of sentencing.

III. THE UPWARD ENHANCEMENT

At the Fatico Hearing, the Government called one Shawn Chandler as a witness who testified essentially that while incarcerated at the New Haven Correctional Center in March of 2016 he allegedly overheard the defendant speak about a shooting he may have been involved in and also talking about killing or doing bodily harm to Magistrate Judge Garfinkel (described by Mr. Chandler as Judge Garfield) and the ATF Agent who investigated him. Chandler indicated that Henderson said some words to the effect that they were coming at him, harassing him and trying to get him for a body. Mr. Chandler believed that the words “get him for a body” means that Henderson was talking about shooting someone and he further went on to say that Henderson made his finger look like a gun and pointed it at his head and said “you know there were no witnesses so they are setting me up.” He further went on to describe how Henderson talked about the gun burglary and related how Henderson seemed to know where the agent worked and perhaps even lived, testifying that “we have somebody watching him.” Chandler testified Henderson said he was going to take them out if he keeps getting harassed and that if he has to do time, why not get rid of them and if he could not get to them he would get to somebody, presumably meaning Magistrate Judge Garfinkel. He thought it was significant that he saw the sign in Henderson’s cell that said “ISIS.”

This Court should reject Mr. Chandler’s testimony as unreliable and not enhance the defendant’s sentence up to the statutory maximum of 35 years for several reasons. First, it is

apparent that Mr. Chandler had access to the defendant's "paperwork," which was presumably Exhibit 3, being the criminal complaint for the defendant's false statement case. In that criminal complaint, the Affidavit of Brian Ross sets forth his background and training from which Mr. Chandler obtained the information he provided relative to the agents. The complaint also describes the details of the gun burglary and the interview with Agent Ross and the defendant wherein the defendant denied any knowledge of the Volkswagen Passat. The complaint is signed by Magistrate Judge Garfinkel. Thus it is submitted that any details Mr. Chandler testified to about anything Henderson allegedly said to him are all set forth in black and white in the criminal complaint, which no doubt he read after the defendant gave it to him. Second, the defendant, per his criminal history sheet Exhibit 1, has at least two prior felony convictions, including arson in the 3rd degree in 1999, for which he received a two year sentence and assault in the 2nd degree in 1999, for which he received a three year sentence. In addition, Exhibit 1 shows that he was arrested for assault in the 2nd degree in 1996, but it is not disclosed whether or not he was convicted of the same. Third, when specifically asked if Henderson ever told him that he shot anybody, including Maurice Richardson, Chandler said "no." Fourth, up until that point in time the defendant was incarcerated on his several presently pending charges in the Waterbury Superior Court (approximately February of 2016), he was an admitted severe heroin addict and could not recall exactly when the last time he had worked; and, up to the point of his arrest; claimed to be current on child support obligations for his children. Fifth, per his criminal history sheet (Exhibit 1), the defendant presently has seven felony cases pending against him, six of which involve some form of burglary and larceny, one of which involves robbery in the 1st degree and larceny. The controlled substance case is a

misdemeanor. Sixth, according to Exhibit 2, the State of Connecticut Judicial Branch website case details, the defendant, in addition to the cases listed on Exhibit 1, has eight other cases pending against him, five of which involve charges of burglary in the 3rd degree and some form of larceny, one of which is for burglary 3rd degree, one of which is a larceny in the 3rd degree and one of which is a controlled substance offense. Of the 16 cases pending against him presently, all but two are felony charges involving dishonest conduct and all of the offenses are alleged to have been committed between January 8, 2016 and February 4, 2016. Mr. Chandler is obviously both a heroin addict and career thief who was on a crime spree up until he was taken into custody. Seventh, Mr. Chandler testified that his cases are presently on the jury trial list in Waterbury and the final pretrial offer made to him was a sentence of 20 years, execution suspended after 10 years to serve with 10 years of special parole. Mr. Chandler outright lied to the Court when he denied on at least two or perhaps three occasions that he was seeking any benefit with regard to his sentence for his testimony at the Fatico hearing. This is not only inconsistent with the position he finds himself in, but also with his testimony that as soon as he heard the defendant talking about the ATF he attempted to ingratiate himself with the defendant by fabricating his own story about his past experience with the ATF. No doubt Mr. Chandler, who has served time in prison on two prior occasions, orchestrated a situation where he could become a jailhouse informant in the hopes of helping himself by obtaining a lesser sentence in exchange for his fabricated testimony. Lastly, and very significant, is the email exchange between Attorney Kale and Attorney Therkildsen about Mr. Chandler. Attorney Kale contacted Attorney Therkildsen in an email dated April 12, 2018 and in reply on April 16, 2018. Attorney Therkildsen wrote:

I met with Chandler and Attorney Brown and found Chandler to be exaggerating information he had in a possible attack on one of our police officers and would be happy to talk more about that if you would like. 203-236-8142. I have no objection to your meeting him or using him. If he is extremely helpful we will give him some consideration but he has tried this in the past, just as a heads up

In response to this email, Attorney Kale, on April 16, 2018, wrote “Thanks! SA [State’s Attorney] Pat [Griffin] had similar sentiments.” Thus it is clear that Mr. Chandler has attempted to provide this type of information in the past in other cases and it is apparent that state’s prosecutors who are familiar with him found him to be untruthful, unreliable and prone to exaggeration.

For all of the above reasons, this Court should reject the testimony of Mr. Chandler as a basis for proving by a preponderance of the evidence that this defendant threatened to harm or kill Agent Ross and Magistrate Judge Garfinkel, or that he shot Maurice Richardson, and not enhance his sentence beyond the advisory guideline range of the PSR.

IV. A SENTENCE WITHIN THE ADVISORY SENTENCING GUIDELINE RANGE IS REASONABLE FOR THIS DEFENDANT

It is apparent from the Presentence Report that the defendant has made many bad decisions in his life and accomplished little; however, arguably much of his bad decision making and lack of accomplishments are traceable to circumstances somewhat beyond his control. At birth, in August of 1992, he was taken from his mother as a result of her addiction to crack cocaine and, while he did have supervised visitation with his mother for a period of time, her parental rights were terminated in 1997 because she was not appearing at the supervised visits. For all practical purposes his mother abandoned him and his biological father was never a presence in his life during his formative years. According to the defendant’s DCF file, as reviewed by the probation officer,

he was prenatally exposed to narcotic substances and when the defendant was asked how his mother's absence in his life had impacted him, he replied, "sometimes I wonder what life would be like if she was there for me." He recalls one meeting with his biological father in 2014 when he was living with his sister and attempted to give him money and an explanation for his absence which the defendant rejected because as he said "he tried to give me money as if that was going to change everything I've been through."

The defendant views his parents as being Geraldine and Willard James, where he was placed at various times as a foster child. He had the very good fortune of being placed with the James family, but after this initial placement he was, for some reason unknown to him, taken out of their home and placed in another foster home which caused him to act out on a regular basis. Eventually he was returned to the James home, but over the years, while under DCF supervision, had a total of 32 different placements in residential programs focusing on behavioral treatment. Many of his removals from these placements were the result of his bad behavior. When not in one of these placement programs, he would return to the James household.

Psychologically, an assessment by the Elmcrest Behavior Health Network in 1999 diagnosed Intermittent Explosive Disorder; Depressive Disorder, not otherwise specified; and Attention Deficit Hyperactivity Disorder. In 2008, he was assessed at the Connecticut Junior Republic and they concluded he had Reactive Attachment Disorder and an Oppositional Defiant Disorder. Some of his disorders, particularly his Reactive Attachment Disorder, can be attributed to the total abandonment of him by his mother at birth.

Mr. and Mrs. James described the defendant as a “good kid” who was never a problem while living in their home. They pointed out that he did have some behavioral problems while at school, indicating that he would often succumb to peer-pressure and frequently find himself in trouble. They both described how, despite having been removed from their care on a number of occasions, the defendant would always find his way back to them. The defendant described the James’ as the only real parents he ever knew saying, Mr. James is his “everything” and referring to Mrs. James stating “I love my mom to death.” He now feels bad that both these individuals are aging and he is not home to help them and acknowledged that his being self-centered in his previous decision making regrettably led to his being taken away from them.

Without a doubt the horrible circumstances which afflicted the defendant prior to his birth and immediately upon his birth, as well as the complete absence of his biological parents in his life, had a significant impact on the defendant’s many poor choices throughout his life. Reactive Attachment Disorder is a condition precipitated by parental abandonment at birth and certainly prenatal exposure to narcotics had a very negative developmental impact. Additionally, the several psychological diagnoses which have been ascribed to him were a contributing factor to the defendant’s poor disciplinary record while incarcerated, to the accumulation of his criminal history score and to his lack of any significant educational or vocational achievement. Most of his poor decision making has had consequences ranging from his removal from the James household, where he was happy, to a DCF placement and eventually to incarceration. Moreover, his poor decision making has also led to physical consequences such as having been shot in the knee.

In paragraph 112 of the PSR the probation officer pointed out how it is unclear, given the defendant's juvenile adjudications and adult criminal convictions, to discern if the defendant has the capacity to live a law-abiding life. The defendant accepts full responsibility for his offense conduct of conviction, but more importantly, is desirous of accepting full responsibility for his child, so that his child will not suffer as he suffered going through life without both biological parents. He described himself as a caring, observant, emotional and thoughtful person and, upon release from prison, plans to find a job and support himself and his son. Looking back he recognizes how self-destructive his poor decision making has been for him and is determined to change his course heading in life. During his sentence, he intends to get his GED and utilize whatever vocational programs and training he can get. While at Wyatt, he received three certificates of completion for programs on violence in society, a domestic violence workshop and an anger management and substance abuse awareness program. He acknowledged that the circumstances with his son now are eerily familiar to that of his own father's lack of presence in his life and expressed a strong desire to return home and be an active participant in the life of his son.

Regarding his criminal history, it is notable that of the six criminal convictions, the defendant's only one has violent behavior as an essential element and that was his assault in the 3rd degree conviction in 2013, which is a misdemeanor. Of these convictions, the most serious is carrying a pistol without a permit, which is a felony. The other convictions are for misdemeanors. One of his two pending cases is the felony offense of larceny in the 3rd degree and the other pending

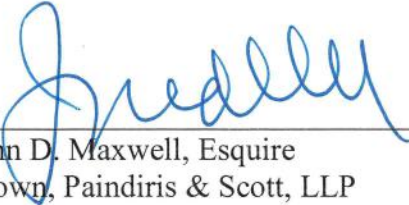
case is for the misdemeanor offense of criminal mischief in the 2nd degree. While his criminal history is extensive for his age, it cannot be characterized as particularly violent.

Forty-six to 57 months is a significant time in prison and a significant punishment particularly for a 25 age man. Such a sentence, however, will enable the defendant the opportunities to obtain his GED and vocational training and also provide him with an opportunity to look forward to accomplishing his vocational, educational and parenting goals upon his release. It will not diminish the seriousness of his offense conduct and it will provide a general deterrence and promote respect for the law.

V. **CONCLUSION**

For all of the foregoing reasons the defendant requests that the Court impose a sentence within the advisory guideline range of 46 to 57 months as set forth in the PSR.

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CERTIFICATE OF SERVICE

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