

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :
 :
 v. : No. 3:11CR214(JBA)
 :
 JULIANA STARBUCK : June 4, 2012

SENTENCING MEMORANDUM

The United States of America (the “United States” or “government”) respectfully submits this memorandum in aid of sentencing, presently scheduled for Tuesday, June 26, 2012, at 11:30 a.m. For the reasons set forth below, the United States recommends that the Court sentence the defendant at the low end of the stipulated, advisory sentencing guidelines range, that is, a term of probation. This memorandum sets forth the government’s recommendation in five parts. First, it addresses the offense conduct and charges, adopting the account set forth in the Presentence Report (“PSR”). Second, it summarizes the procedure to be followed in sentencings in the wake of *United States v. Booker*, 543 U.S. 220 (2005), and its progeny. Third, it adopts the PSR’s calculations of the sentencing range under the Sentencing Guidelines. Fourth, it explains the government’s concurrence in the recommendation of a four-level downward adjustment for “aberrant behavior” under section 5K2.20. Finally, it explains why the recommended sentence of probation is appropriate under the sentencing guidelines and accomplishes the purposes of 18 U.S.C. § 3553(a).

I. The Offense Conduct and Charges

The Government agrees with and adopts the description of the offense conduct as set forth in the February 13, 2012, PSR at pp. 2-4, ¶¶6-14, and respectfully requests this Court to adopt the factual findings of the PSR.

II. Sentencing Post-Booker

In *United States v. Crosby*, 397 F.3d 103, the Second Circuit explained that, in light of *United States v. Booker*, 543 U.S. 220 (2005), district courts should engage in a three-step sentencing procedure. First, the district court must determine the applicable Guidelines range, and in so doing, “the sentencing judge will be entitled to find all of the facts that the Guidelines make relevant to the determination of a Guidelines sentence and all of the facts relevant to the determination of a non-Guidelines sentence.” *Crosby*, 397 F.3d at 112. Second, the district court should consider whether a departure from that Guidelines range is appropriate. *Id.* at 112. Third, the court must consider the Guidelines range, “along with all of the factors listed in [Title 18 of the United States Code,] section 3553(a),” and determine the sentence to impose. *Id.* at 112-13.

Section 3553(a) provides that the sentencing “court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection,” and then sets forth seven specific considerations:

- (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];
- (5) any pertinent policy statement [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.

The Second Circuit has instructed district judges to consider the Guidelines “faithfully” when sentencing. *Crosby*, 397 F.3d at 114. “*Booker* did not signal a return to wholly discretionary sentencing.” *United States v. Rattoballi*, 452 F.3d 127, 132 (2d Cir. 2006) (citing *Crosby*, 397 F.3d at 113). The fact that the Sentencing Guidelines are no longer mandatory does not reduce them to “a body of casual advice, to be consulted or overlooked at the whim of a sentencing judge.” *Crosby*, 397 F.3d at 113. Because the Guidelines are “the product of careful study based on extensive empirical evidence derived from the review of thousands of individual sentencing decisions,” *Gall v. United States*, 128 S. Ct. 586, 594 (2007), district courts must treat the Guidelines as the “starting point and the initial benchmark” in sentencing proceedings. *Id.* at 596; *see also Rattoballi*, 452 F.3d at 133 (the Guidelines “cannot be called just ‘another factor’ in the statutory list, 18 U.S.C. § 3553(a), because they are the only integration of the multiple factors and, with important exceptions, their calculations were based upon the actual sentences of many judges.”) (quoting *United States v. Jiminez-Beltre*, 440 F.3d 514, 518 (1st Cir. 2006) (en banc); *Kimbrough v. United States*, 128 S. Ct. 558, 574 (2007)). The Second Circuit has “recognize[d] that in the overwhelming majority of cases, a Guidelines sentence will fall comfortably within the broad range of sentences that would be reasonable in the particular circumstances.” *United States v. Fernandez*, 443 F.3d 19, 27 (2d Cir. 2006); *see also Kimbrough*, 128 S. Ct. at 574 (“We have accordingly recognized that, in the ordinary case, the Commission’s recommendation of a sentencing range will ‘reflect a rough approximation of sentences that might achieve § 3553(a)’s objectives.”) (quoting *Rita v. United States*, 127 S. Ct. 2456, 2465 (2007)); *Rattoballi*, 452 F.3d at 133 (“In calibrating our review for reasonableness, we will continue to seek guidance from the considered judgment of the Sentencing Commission as expressed in the Sentencing Guidelines and authorized by Congress.”).

III. The PSR Properly Calculated the Pertinent Sentencing Factors.

The government agrees with and adopts PSR's calculations at pp. 4-5 and 9-11, ¶¶ 17-27 and 44-56. Specifically, the PSR correctly notes that the applicable sentencing guideline is U.S.S.G. section 2J1.2, which prescribes a base offense level of 14; that two levels are deducted for acceptance of responsibility, for a total offense level of 12; that the offense conduct may constitute aberrant behavior under section 5K2.20 (a conclusion with which the government agrees); and that the defendant has no criminal history points, resulting in a Criminal History category I.

IV. The Government Agrees that a Four-Level Downward Adjustment for "Aberrant Behavior" Under Section 5K2.20 Is Warranted.

The "Guideline Stipulation" section of the parties' signed plea agreement states in pertinent part:

. . . The Government and the defendant stipulate and agree that the offense conduct constituted aberrant behavior as that term is defined in U.S.S.G. § 5K2.20, and that a 4-level downward adjustment under that section is warranted

The government agrees that the offense conduct in this case involved no significant planning, was of very limited duration, and appears to be a substantial deviation from the defendant's usual conduct. A four-level downward departure yields a total adjusted offense level of 8. Along with a Criminal History category I, this yields an advisory sentencing guidelines range of 0 to 6 months imprisonment, a \$1,000 to \$10,000 fine, and one to three years of supervised release.

V. A Sentence of Probation is Appropriate, Fair, and Accomplishes the Purposes of 18 U.S.C. § 3553(a).

18 U.S.C. § 3553(a) identifies the following “[f]actors to be considered in imposing a sentence”: (1) “the nature and circumstances of the offense and history and characteristics of the defendant”; (2) the need for the sentence to serve various goals of the criminal justice system, including (a) “to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment,” (b) to accomplish specific and general deterrence, (c) to protect the public from the defendant, (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 sentencing range set forth in the Guidelines; (5) policy statements issued by the Sentencing Commission; (6) the need to avoid unwarranted sentencing disparities; and (7) the need to provide restitution to victims. The United States submits that a sentence at the bottom of the advisory sentencing guidelines range, that is, probation, faithfully reflects and implements these considerations.

1. Nature and circumstances of the offense, and history and characteristics of the defendant

The government regards the offense conduct as serious. Briefly to recap, on December 7, 2007, agents from Internal Revenue Service – Criminal Investigations (“IRS-CI”) came to the combined business/residence of the owners/operators of Stepping Stone Farm in Ridgefield, Connecticut, to execute a search warrant. Before executing the warrant, they were admitted to the residence by Juliana and Amanda Starbuck. The business owner and lead target, Juliana Weber – who is the mother of Juliana and Amanda Starbuck – was working in Florida at the time, but engaged in a voluntary telephonic interview with the agents via speaker-phone. Amanda Starbuck

was in the room during that interview, while Juliana Starbuck was intermittently in and out of the room. Among other topics discussed was the agents' need to access the family's safe deposit boxes at the local Webster Bank branch, for which the agents also had a search warrant. At some point Juliana asked and was given permission by the agents to tend to the horses and customers. Soon after that, agents received notification from the local Webster Bank – to which the agents had given prior notice of the impending safe deposit box search – that one of the Starbucks had arrived to access the boxes.

Investigating agents rushed to the bank branch, and found Juliana Starbuck stuffing cash-filled envelopes into a sweater and other portable objects. As noted in the plea stipulation, the total amount of cash removed from the safe deposit boxes was more than \$1.33 million. Had the agents been delayed by just another 15-20 minutes, the defendant and the funds would have been gone, with the agents having no way to determine how much actually had been taken.

As also discussed above, however, the government regards this behavior on the part of the defendant as aberrant conduct, insofar as it lacked any significant planning, was of very limited duration, and appears to be a substantial deviation from the defendant's usual conduct.¹ Her choice to commit this offense appears to have been highly impulsive. Although her mother was not in any way directly involved in the conduct, the defendant's actions appear to have been significantly driven

¹ Insofar as the defendant also failed fully to report her taxable income for several years – which the defendant also admitted and fully corrected, having paid all taxes, interest, and penalties due – the government does not concur that the defendant's life was otherwise completely "law-abiding." But that does not alter the government's judgment that the offense conduct at issue falls squarely within the definition and understanding of "aberrant" under the sentencing guidelines.

by a strictly subordinate and unusually protective relationship towards her mother, whose money the defendant was seeking to remove and conceal.

Regarding the history and characteristics of the defendant, the record shows a disciplined, productive individual with a strong demonstrated work ethic, who comes before the Court with no prior criminal history. The government also notes that the defendant and her sister have taken over the day-to-day operation of the family business from their mother, and that their stewardship of the business has been entirely free of the illegal methods previously employed by their mother in managing the cash flow and employee payments.

Based on all of the foregoing, the government believes that the advisory sentencing guidelines range of 0-6 months (with aberrant conduct departure) is the appropriate sentencing range, and that a sentence at the bottom of that range, that is, probation, is a fair and appropriate sentence in this case.

2. Need for sentence to promote respect for law, specific & general deterrence, to protect the public, and provide defendant with needed training, care, and correctional treatment

Specific deterrence is not an issue here, as there is no expectation that the defendant is likely to re-offend. Regarding general deterrence, the government is mindful of at least three considerations arising from the somewhat unusual aspects of this case. First, the defendant's offense conduct was in some significant part intertwined with, and would not have been possible without, the long-term and substantial pattern of illegal conduct of her mother, Juliana Weber. Second, the substantial and somewhat highly publicized array of penalties paid by the defendant's mother addresses, at least to some significant degree, the general deterrence concerns raised by these intertwined episodes of offense conduct by the mother and daughter. Third, the charged offense

conduct of the defendant was very brief and is generally quite rare, in contrast to the mother's charged offense conduct – tax evasion – which was of very long duration and involved a very large loss amount, and which in general is unfortunately somewhat prevalent. Taking all these considerations into account, the government believes that the defendant's felony conviction adequately addresses general deterrence concerns. Accordingly, the United States believes that the recommended probationary sentence is appropriate.

3 & 4. The kinds of sentences available / The sentencing range set forth in the guidelines

For the reasons set forth above, the United States submits that the recommended sentence at the bottom of the stipulated sentencing guidelines range comports with the terms and purposes of all applicable sentencing guidelines.

5. Policy statements issued by the Sentencing Commission

Apart from policy statement 5K2.20, which already has been addressed above, there are no policy statements pertinent to this sentencing recommendation.

6. The need to avoid unwarranted sentencing disparities

A sentence within the advisory sentencing guidelines range, as recommended herein, will avoid unwarranted sentencing disparities.

7. The need to provide restitution to victims

This factor is not applicable in the instant case.²

² As already noted, the defendant has made complete, civil restitution to the IRS for the uncharged, underpayment of taxes.

CONCLUSION

For all of the foregoing reasons, the government respectfully recommends that the Court impose a sentence at the bottom of the stipulated, advisory sentencing guidelines range, that is, probation.

Respectfully submitted

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/s/

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