

SENTENCING SUBMISSIONS

Sentencing memorandums are an immensely important tool. They afford the defense lawyer an opportunity to show the judge that the defendant is someone special who deserves a lenient sentence. This portrayal usually differs starkly with the dark portrait of the defendant in the Probation Department's Presentence Report. The following is an example of a Sentencing Memorandum, which Jonathan Marks wrote and submitted to the sentencing judge in a recent case.

July 12, 2010

The Honorable [REDACTED]
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, NY 10007

Re: **United States v.** [REDACTED]
[REDACTED]

Dear Judge [REDACTED]

I submit this superseding sentencing memorandum on behalf of defendant [REDACTED] ("[REDACTED]") in support of his request for a sentence below the sentencing guidelines range. I respectfully submit that a sentence of probation with home detention, pursuant to USSG §5C1.1(c)(3) would be "sufficient, but not greater than necessary, to comply with the purposes [of sentencing]." 18 USC §3553(a). Defendant's request is based upon his history and character, his minor role in the offense, and his diligent efforts to make amends for his wrongdoing by promptly providing the United States Attorney's Office with all of the information in his possession concerning his criminal conduct and the conduct of his co-defendants and by offering to cooperate fully against his co-defendants.

The Offense Conduct

In or about 2002, [REDACTED] met co-defendant [REDACTED] in her capacity as a customer representative at the Bank of New York. At the time, Mr. [REDACTED] was earning a living as a tax preparer and accountant and, at her request, began preparing her tax returns. [REDACTED] told [REDACTED] that she was a mortgage

broker with Southwest Capital. [REDACTED] continued to undertake the odd accounting project for her.

In 2005, [REDACTED] asked [REDACTED] to prepare a W-2 and a paystub for someone whom she claimed was an employee of hers. He did. Over time, she and [REDACTED] asked him to prepare such documents for employees of many different entities. He generally charged \$150 for each set of documents. The assertion in the PSR at ¶20 that he generally charged \$300 per document is incorrect. The PSR alludes to a check that [REDACTED] sent to [REDACTED] for \$300 for his work on behalf of one particular buyer (PSR at ¶26). Mr. [REDACTED] informs me that he performed much more than the usual amount of work on that case, warranting the relatively large payment.

At one point, [REDACTED] questioned why it was that [REDACTED] was asking him to prepare documents for so many employers. [REDACTED] asked her, "Are you sure that this is right?" She assured him that it was and that the employers had all authorized her to have the documents prepared. Gullible as he was, [REDACTED] accepted her assurance that everything was on the up and up.

In the autumn of 2007, [REDACTED] asked [REDACTED] to prepare a CPA letter for someone he did not know. It would have been clearly wrong for [REDACTED] to have prepared such a letter. This was an epiphany. [REDACTED] at once came to realize that the documents he had prepared for [REDACTED] were bogus. He stopped working for her.

However, around Christmas [REDACTED] importuned him to start working for her again. [REDACTED] was then in terrible financial straits; he was scared that he was going to lose his house, which was in foreclosure. It is with great shame that he admits to succumbing to temptation. He resumed preparing documents for [REDACTED] and [REDACTED] through about the end of January 2008 even though he knew that the documents were bogus. He also prepared a false tax return for [REDACTED] in January 2009.

[REDACTED]'s Cooperation with the Government

Within days of [REDACTED]'s arrest, he arranged to meet with AUSA [REDACTED] with a view to cooperating with the government. During a lengthy proffer session, [REDACTED] fully and truthfully disclosed his criminal activities and those of his

co-defendants. He admitted his wrongdoing, including the fact that he had resumed preparing the documents after he knew that they were bogus, and described in detail his dealings with [REDACTED], [REDACTED] and [REDACTED]. [REDACTED] had every intention of cooperating fully with the government. However, some months after the proffer, Ms. [REDACTED] informed defense counsel that, while she considered [REDACTED]'s statements in the proffer session to be completely truthful, she did not need his assistance. It is because Ms. [REDACTED] did not need [REDACTED]'s cooperation and for no other reason that the government declined to offer [REDACTED] a cooperation agreement.

[REDACTED]'s History and Characteristics Warrant a Variance from the Guidelines

With the exception of the documents he prepared for [REDACTED], [REDACTED] and [REDACTED], [REDACTED] has led an exemplary life. He worked hard as a tax preparer and answered the call to minister to the needy. In a letter to the court dated June 14, 2010, [REDACTED] writes that [REDACTED] (ironically) is to take over a pastor of his church on July 25, 2010, two days after he is sentenced. He devotes his time visiting the sick, making prison visits, and counseling troubled teens. He is, she writes, sensitive to the needs of the poor, the oppressed, the sick and the less fortunate.

As demonstrated by [REDACTED]'s precarious financial condition, he is not a greedy man. Far from it, [REDACTED] has chosen to devote his life in the service of others. In this regard, he is very different from his co-defendants, who appear to have made large amounts of money from their criminal activities. What money [REDACTED] had, he spent on his education, first to become an accountant, and later a minister. Now he lives extremely modestly and barely gets by on his meager income.

In his letter to the court explaining how he got involved in helping his co-defendants to carry out their fraud, [REDACTED]'s remorse is palpable. He is deeply ashamed – as he should be – that he agreed to prepare documents that he knew were false. Why would he do such a thing? The answer is fairly obvious: in order to save his house, which was in foreclosure. This does not in any way justify his crimes. It does however put them in context. He was not motivated by greed but rather by the natural human impulse to survive. Quite obviously, [REDACTED] his religious commitment notwithstanding, lacked the moral courage to say no to [REDACTED]'s requests in the face of financial ruin. He was weak, not greedy.

The Nature and History of the Offense Militate Against a Sentence of Incarceration

Admittedly, without the false documents [REDACTED] and others created, his co-defendants' scheme would not have succeeded. Nevertheless, his role was a minor, ministerial one and spanned only a few months after he learned that the information provided to him was false. Under the Guidelines, [REDACTED] is entitled to a two-point role adjustment. That adjustment, however, does not reflect the short duration of his criminal activities, lasting only a few months, in a scheme that spanned more than two years.

A Sentence of Home Confinement would be Sufficient, but not Greater than Necessary, to Comply with the Purposes of Sentencing Under Section 3553(a)

There are several factors that justify a lenient, non-jail sentence. [REDACTED]'s life is commendable. He is fundamentally an ethical, albeit flawed, human being. He has chosen a life of service. His criminal activity was not the outgrowth of greed but rather the fear of financial disaster and homelessness. He is profoundly remorseful.

[REDACTED]'s criminal activities place him at the bottom of the hierarchy in this scheme. His contribution – knowingly preparing false documents – lasted only a few months. He did prepare documents for sometime before he knew that they were bogus, but his criminal activity began only after Christmas 2007, when he agreed to prepare documents after he concluded that they were fraudulent.

In terms of satisfying the purposes of sentencing, I suggest that in light of his extreme remorsefulness, a prison sentence is not necessary in order to protect society against the possibility of [REDACTED]'s returning to crime. While a sentence of home detention is lenient, in the circumstances presented here, it is sufficient – coupled with the moral approbation, felony conviction, and shame so painfully obvious in [REDACTED]'s case – to deter others from engaging in the kind of activity to which he pleaded guilty. No one could reasonably argue that the small amount of money [REDACTED] earned from his crime would tempt others to take the chance of being confined to their homes for many months and branded a felon. Thus, I respectfully submit that a sentence of probation with home detention is a sufficient general deterrent in these particular circumstances. Likewise, such a

Hon. [REDACTED]
July 12, 2010
Page 5

sentence would be sufficient to promote respect for the law and to reflect the seriousness of the crime. Finally, a sentence of home detention would permit [REDACTED] to continue to serve others in his church while punishing him for his wrongdoing.

Conclusion

For the reasons set forth above, I respectfully submit that a sentence of probation with home detention is appropriate in the specific circumstances presented here.

Respectfully submitted,

Jonathan Marks

Attachments

cc: [REDACTED] Esq.
[REDACTED] USPO