

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

NO. 11-20699

HON. NANCY G. EDMUNDS

v.

D-1 LEO SHARP,

Defendant.

_____ /

GOVERNMENT'S SENTENCING MEMORANDUM

Now comes the United States of America, by and through undersigned counsel, and submits the following memorandum in support of its position as to sentencing in the above captioned case.

PROCEDURAL POSTURE

The defendant pleaded guilty on October 8, 2013 to Count One of the Superseding Information which charged him with conspiring with Pedro Delgado-Sanchez, Octavio Gamez, and others to distribute cocaine over the course 2010 - 2011. The plea was part of a Rule 11 agreement which allowed the defendant to plead to the cocaine conspiracy without the 10 year mandatory minimum language included in the charge, but which also recognized that the applicable guideline range

for the defendant's misconduct is 168 - 210 months. The Rule 11 agreement also called for the government to make a below guidelines recommendation to 60 months of imprisonment and a request from both parties that the Court make a recommendation to the Bureau of Prisons (BOP) that any term of imprisonment be served in a BOP medical facility. The government agreed to make this below guidelines recommendation based upon the defendant's age and his prior military service.

FACTS

Contrary to the defendant's claims in his sentencing memorandum that "his conduct in this case was truly an aberration" or "a monumental mistake," *see* Docket Entry (DE) 370 at 1, the defendant has been a drug courier for the better part of a decade, and specific to this case, made seven trips to Michigan (five of which included the defendant delivering over 200 kilograms of cocaine, another involved the defendant delivering 100 kilograms of cocaine, and the other one involved the defendant receiving duffel bags stuffed full of drug proceeds that he drove to the southwest border). There was no mistake in the defendant's actions; rather, when one sifts through all of the evidence in this case, the defendant clearly chose his role in this conspiracy for two reasons: (1) he saw nothing wrong with the trafficking of

cocaine and (2) greed.¹

If the defendant had proceeded to trial, the government was prepared to present the testimony of Ramon Ramos concerning the amount of narcotics this particular drug trafficking organization (DTO) had brought to southeastern Michigan between 2008 and February 2012. Ramos was expected to testify that he began transporting narcotics proceeds and acting as a “look out” for the DTO’s leader, Jose Roberto Bustamante, sometime in the fall of 2008. It was during this time period, that Ramos witnessed large shipments of cocaine (several hundred kilograms), marijuana (3,000 – 5,000 pounds at a time), and heroin (kilogram quantities) being delivered to the other charged co-conspirators. According to Ramos, these shipments usually arrived by way of semi-trucks.

Ramos was expected to testify that the DTO experienced somewhat of a lull during 2009, although it still received approximately 15 marijuana shipments and sporadic cocaine deliveries. However, the cocaine once again came to the fore with

¹ The government would direct the Court’s attention to an interview the defendant gave to the Chicago, Illinois ABC affiliate that aired shortly after the original superseding indictment was unsealed. *See* ABC News Report, May 23, 2012, <http://abclocal.go.com/wls/story?section=news/iteam&id=8590424> (a copy of the webpage is attached as Exhibit 1; however, the page also includes a link to the actual on-air segment in which the defendant is interviewed). During his interview, the defendant revealed his philosophical views on cocaine when he equated the cocoa plant to the daylilies he raised, stating: “all God’s plants that cheer people up are created for a purpose to take depressed peoples’ minds and make them feel good.”

the arrival of Pedro Delgado-Sanchez and the defendant. Ramos was expected to testify that, beginning in February 2010, he was introduced to Pedro Delgado-Sanchez by co-defendant Armando Dias-Lucero. It was within days of that meeting when the defendant started bringing large shipments of cocaine to Michigan for the Bustamante DTO.

The first shipment the defendant brought was 246 kilograms of cocaine to co-defendant Oscar Martinez's house.² According to Ramos, 221 kilograms of that shipment stayed with the portion of the organization that he was keeping records for (the individuals charged in Count Three), and the defendant kept the remaining 25 kilograms in his truck for delivery to another customer (Count Four co-defendant Moises Licon). In March and April 2010, the defendant brought two separate shipments of 250 kilograms of cocaine to Michigan, with 125 kilograms being delivered each time to the individuals identified in Count Three and 125 kilograms being delivered to the individuals identified in Count Four. Ramos was expected to testify that after these deliveries in March and April, the defendant received drug proceeds from the prior shipments for delivery to co-conspirators on the southwest U.S. border. For example, in March 2011, the defendant picked up \$5,871,000 in

² Ramos became the DTO's bookkeeper in approximately late 2009/2010 and has provided drug ledgers to law enforcement. The grand total for the entire conspiracy (accounting for shipments brought by the DTO's other couriers, Walter Ogden and Mark Bailey) was in excess of one thousand kilograms of cocaine and thousands of pounds of marijuana.

cash from the Count Three co-conspirators alone. The following two months saw two more deliveries by the defendant, each involving 200 kilograms, and the defendant leaving with drug proceeds for his return trip to the border.

In support of Ramos' testimony, the government also had video footage of the defendant backing his Lincoln Navigator pickup truck into Theodore Czach's warehouse on September 17, 2011. The defendant exits the truck, jokes with some of the Count Three co-conspirators about how he feels after driving and how his doctor expects him to live to 100 years, watches as three large duffel bags filled with narcotics proceeds are loaded into the back of his truck, and offers a bag of onions to Ramos that he brought with him from Georgia. The government also received cell site information from the defendant's cell phone which showed that, on the trip he was finally arrested on, he drove from Florida to North Carolina (where he met co-defendant Octavio Gamez and picked up narcotics proceeds there), then drove from North Carolina to Arizona, and finally from Arizona to Michigan – all within a span of eight days from October 13 – 21, 2011.

In total, according to Ramos (who is supported by information contained in the ledgers and statements given by Pedro Delgado-Sanchez), the defendant brought approximately 1,250 kilograms of cocaine from the southwest border to

co-conspirators here in Michigan between February 2010 and October 2011.³ Finally, Ramos would also have testified that he spoke with the defendant while the cocaine was being unloaded or while the proceeds were put in the defendant's truck. Ramos found the defendant very engaging and said that the defendant would get very emotional, even to the point of tears, when speaking about his family.

The government was also prepared to have Pedro Delgado-Sanchez testify. Delgado-Sanchez was expected to testify that he began his narcotics trafficking with marijuana distribution in 1997 while he was living in California. One of his partners in that operation brought him to Chicago in 2000 and introduced him to certain narcotics traffickers there. Delgado-Sanchez was expected to testify that he first met the defendant in Chicago in 2000 and then, as the narcotics relationship began to develop between the organization he was part of in California and the Chicago organization, Delgado-Sanchez realized the defendant was a courier for that particular Chicago drug trafficking organization. Delgado-Sanchez would have testified that over the course of the next several years, there were ebbs and flows in the narcotics relationship between the individuals in California and Chicago, but that the defendant remained a consistent courier between 2001 and 2003. Delgado-Sanchez was expected to testify that he used the defendant to deliver multi-kilogram shipments of

³ This total includes the 104 kilograms of cocaine seized during the defendant's arrest in October 2011.

cocaine to Moises Licon, who at that time was working out of the Fort Wayne, Indiana area. After Delgado-Sanchez was arrested in a house in Fort Wayne with \$373,670 in 2005, Delgado-Sanchez left the narcotic distribution business for a number of years. However, in 2010, Delgado-Sanchez was persuaded to re-enter the narcotics distribution business to act a middle man between co-conspirators in Mexico and the DTO in Michigan. Delgado-Sanchez stated that it was at this time that he reached out to Licon to see if he was interested in receiving cocaine as well. Delgado-Sanchez stated that he began sending “double” loads with the defendant, with half of the shipments going to the side of the DTO Ramos was involved with and the other half going to the side of the DTO Licon was involved with. Delgado-Sanchez was also expected to testify that the defendant began to lose interest in transporting cocaine shipments for the DTO and that is why the DTO recruited Mark Bailey and Walter Ogden to bring cocaine loads as well.

Finally, Delgado-Sanchez would have testified that the defendant received \$1,000 per kilogram of cocaine that he brought to Michigan. Delgado-Sanchez also views the defendant as a friend who he affectionately refers to as “grandpa.” Delgado-Sanchez, his family and the defendant have vacationed in Hawaii together. Delgado-Sanchez would have testified that the relationship with the defendant was friendly and at no time was the defendant ever threatened by Delgado-Sanchez or

members of the DTO.⁴

SENTENCING FACTORS

Consideration of the appropriate sentencing factors supports the imposition of a sentence of 60 months incarceration in this case. Pursuant to 18 U.S.C. § 3583(c), the factors to be considered include the following:

3553(a)(1): the nature and circumstances of the offense and the history and characteristics of the defendant

The offense of conviction is conspiracy to possess with intent to distribute cocaine. The statute of conviction, for the amount of narcotics involved in this case, normally carries with it a statutory mandatory minimum of ten years and a maximum of life imprisonment. This potential penalty recognizes the serious nature of large scale cocaine trafficking both in terms of the societal damage inflicted by narcotics and the violence that is often times associated with narcotics trafficking. It is well-documented how illegal distribution of narcotics has been a major factor in the ravishing of major urban centers in the United States, and Detroit, in particular, as well as leading to

⁴ The defendant continues to raise the issues of duress and coercion both in his interview with the probation officer and in his sentencing memorandum. *See* DE 370 at 14. These claims should be given zero weight. Never once has the defendant identified who the “they” are who “put a gun to [his] head and threatened [him] and they said they would kill [his] family.” *Id.* The video of the defendant in co-defendant Czach’s warehouse in September 2011 shows him laughing and joking with the other charged individuals. The person who the defendant was closest with, Pedro Delgado-Sanchez, has a long relationship with him and clearly holds the defendant in high esteem. There is not one credible piece of evidence supporting the defendant’s coercion claims.

horrific cartel violence in Mexico. The defendant's actions are directly linked to this destructive force with his sole motivation being financial gain.

Nor, as the evidence has shown, was this a small time operation. This defendant was a part of a DTO that included two distinct operations that literally flooded the streets of southeast Michigan and Fort Wayne, Indiana, with kilograms of cocaine. The defendant, by himself, brought 1,250 kilograms and literally dumped them into the streets of our district. The government is not aware of a single courier, in recent memory, who has transported the volume of cocaine to southeast Michigan that the defendant did in the twenty-one month time period he was active in this organization.

In this specific case, the government agreed to allow the defendant to plead to charge that does not include the mandatory minimum language. The government did not agree to make this concession because it views the defendant's crime to be less serious or that the defendant should be given a free pass from the consequences of his actions. The government made this concession because it wanted to allow the Court maximum flexibility in fashioning an appropriate sentence given the totality of the circumstances presented in this case. There are clearly elements at play in this defendant's sentencing that make the Court's decision unique.

The government acknowledges that the defendant's age and his combat record in the military may warrant a departure from the applicable guideline range of 168 – 210 months. However, the government believes that the defendant also makes too much

of these factors in arguing for home detention. The defendant's sentencing memorandum, and its attachments, details at length the defendant's age, his physical and medical state, and how he may fare if he is incarcerated. The government emphasizes the word "may" because, at this point, all of the future dilemmas the defendant may face, i.e. continued deterioration of health, being taken advantage of in prison by other inmates, are speculative at best. The defendant's arguments also make it seem as if he is the first elderly individual BOP has dealt with.

There are certain facts that the Court can rely on fashioning the defendant's sentence. First, if the Court decides to incarcerate the defendant, BOP will conduct a health screening of the defendant prior to assigning him to a particular confinement facility. BOP is staffed with competent medical professionals who take their jobs seriously and will evaluate the defendant to ensure that he is properly taken care of. Clearly, BOP will be faced with challenges if the defendant's health takes a decided turn, but the list of problems enunciated by the defense expert, Mr. Wise (i.e. no BOP facilities specifically designed to meet the needs of geriatric inmates, some medication or medical specialists that the defendant may not have access to because he is incarcerated) are no different for this defendant than for any other defendant who is incarcerated during the later years of his life. Second, there are many federal inmates who are in their eighties or nineties serving life or decades-long sentences for crimes similar to the defendant's and who BOP is currently managing. Third, BOP will do

whatever is necessary to properly care for the defendant. The federal penal system works very hard to care for the individuals under their care, whether they are in their twenties or in their nineties. There is simply nothing in the defendant's medical history that would make him excludable from serving some time in incarceration.

3553(a)(2)(A): the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense

The government believes that a sentence of imprisonment is the only way to reflect the seriousness of or provide just punishment for the offense. The defendant's criminal misconduct was simply not a mistake. He profited, and profited handsomely, from trafficking an astounding amount of cocaine into this region with apparently little or no remorse. *See* Exhibit 1, ABC News, March 23, 2012. With his proposed sentence, home detention and forfeiture, the defendant is essentially advocating that, as a consequence of his trafficking over a thousand kilograms of cocaine, he be allowed to pay money and to spend the rest of his sentence at home – where he lives now.⁵ Such a sentence would serve to undercut the seriousness of the offense and would provide little or no punishment. Furthermore, it would be incongruent with lengthy prison sentences handed out in federal court for far less amounts of drugs as a rule, and specifically, in this case, where two couriers, Walter Ogden and Mark Bailey, who

⁵ While the forfeiture amount in this case is substantial (\$500,000), it comes directly from money he made trafficking in cocaine.

delivered far smaller amounts of cocaine received 60 and 84 months respectively. Consequently, the government believes a sentence that includes incarceration would be the most appropriate sentence given the circumstances and seriousness of the offense and the defendant's role within that offense.⁶

3553(a)(2)(B): the need for the sentence imposed to afford adequate deterrence

This factor dovetails the factor above. In order to serve the purpose of general deterrence – that is, to deter others from the same conduct that the defendant has committed – the nature and seriousness of the instant offense is of great import. To deter others from entering into this violent world of the drug trade, members of the public must know that engaging in this activity brings with it severe punishment. While general deterrence is not normally of paramount importance, it is a very important factor in this particular sentencing.

The defendant's case has garnered widespread attention. The general public needs to be aware that an individual cannot escape incarceration simply because of one's age. As discussed above, the defendant's advanced age could warrant a departure from the applicable sentencing guidelines. However, his age should not allow him to avoid all punishment, especially since it was his age which he used as the very tool to be successful in his criminal endeavor as he aptly pointed out in his interview with ABC,

⁶ If incarceration is adjudged, given the defendant's repeated statements that he will kill himself if he sentenced to prison, the government will be seeking immediate remand.

“because an old man is not gonna be bothered by cops, driving through Arizona.” The defendant’s actions warrant incarceration and a sentence to imprisonment hopefully will prove to have a significant deterrent effect on similarly situated individuals.

3553(a)(2)(C): the need for the sentence imposed to protect the public from further crimes of the defendant

To date, the defendant has not spoken to the government about this offense. Consequently, the government has no ability to judge the defendant’s remorsefulness for his actions or whether he recognizes the error and dangerousness of his criminal misconduct. Clearly, the defendant is of an advanced age and does not pose many of the same threats to public safety as many of the defendants this Court normally sentences. However, with all of the discussion about this defendant’s age, the fact that he regularly drove cross-country, oftentimes fairly non-stop, at least seven times at the age of 86-87 should also not be forgotten. The defendant has shown himself to be a highly resourceful person and it would not be entirely beyond the realm of possibilities for him to take up another courier job if he believed he needed the money and could get away with it.

3553(a)(6): the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct

The great majority of the defendant’s co-conspirators are facing lengthy prison

sentences. Depending on their respective criminal histories, sixteen of the nineteen individuals indicted as part of this drug trafficking organization are/were facing at least the ten year mandatory minimum (unless safety valve eligible) with guideline ranges typically 135-168, 168-210, or 210-262 month range. In terms of sentence disparities, the government believes that the defendant's sentence should be minimally equal to Walter Ogden's, another older drug courier in this case. To date, the couriers have received the following sentences:

Walter Ogden: **60 months** (after safety valve applied)

Mark Bailey: **84 months** (after safety valve applied)

The major cocaine/marijuana distributors have received the following sentences:

Moises Licon: **186 months**

Kenneth Jenkins: **166 months**

Antonio Simmons: Rule 11 calls for a specific sentence of **216 months**

David Jurado: Rule 11 calculates a guideline of **168-210 months** or **135-168 months** if found to be safety valve eligible

Theodore Czach: Rule 11 calculates a guideline of **168-210 months** or **135-168 months** if found to be safety valve eligible

Two men who assisted in the distribution of cocaine once it reached Michigan have received the following sentences:

Oscar Martinez: **90 months** (after safety valve applied)

Sergio Alvarado: **120 months**

Finally, Martin Najjar received a 2 year supervised release sentence for his money laundering conviction and Tamara Bond-Ogden received a 2 year supervised release sentence for the assistance she lent her husband in couriering cocaine cross-country.

Given all of the factors discussed above, the government believes an adequate and just sentence for this defendant should be **60 months**.

Respectfully submitted,

Dated: May 5, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on Tuesday, May 06, 2014, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Darryl A. Goldberg

I further certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

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I-Team **I-Team Report: The Reluctant Mule**

Wednesday, March 21, 2012

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March 21, 2012 (CHICAGO) (WLS) -- Accused drug runners for Mexico's ruthless Sinaloa cartel don't often do television interviews. Then again, not many suspected drug mules are 87 years old. But Leo Sharp is 87 and he admits to being a drug mule, someone who smuggles cocaine on behalf of a supplier.

Sharp is a horticulturist.

"I'm known all over the planet-and I'm talking about all over the planet," he said. "I have customers in New Zealand, Japan."

Brookwood Garden, his 46-acre daylily farm in Michigan City, Indiana, is 2,500 miles from the coca fields of Colombia, South America. But according to Sharp, both plants bring pleasure. Daylilies produce one bloom a day. Coca plants produce cocaine.

"All God's plants that cheer people up are created for a purpose," Sharp said. "To take depressed peoples' minds and make them feel good."

Daylilies, Mr. Sharp's lifelong passion and profession, are legal. Cocaine is not.

According to an affidavit from a federal drug agent, last October Sharp's pick-up truck was stopped for an improper lane change on an interstate near Detroit.

"What happened was I was pulled over by a state cop because he wanted to put out a ticket and get a fine and of course he brings a dog," he said.

A drug-sniffing dog found the cocaine in 104 bricks. Sharp was arrested. He claims he had been recruited by one of his farmhands to transport cash.

"My workers are Mexican. That's the only people that'll do the work, and they go to church, and one of the guys they go to church with came over and asked me to do this. He asked me also if I would take drugs from Tucson to Detroit, Michigan and I said, the answer is no," said Sharp.

But he says they forced him to deliver the drugs or his family would be killed-something fugitive Sinaloa leader Joaquin Guzman Loera, known as "El Chapo," has been known to do.

Goudie: "Why would they have picked you to put this cocaine in your van."

Sharp: "Because an old man is not gonna be bothered by cops, driving through Arizona."

Goudie: "But you were bothered in Michigan."

Sharp: "I was busted up there, obviously."

Goudie: "Did you know that was cocaine in your van?"

Sharp: "I did. I did."

Federal prosecutors say Sharp wasn't forced to do anything that day in October and that he had done it before.

According to a newly filed indictment, Mr. Sharp is now accused of delivering cocaine on numerous occasions for the Sinaloa cartel - 670 kilos - between 2009 and last fall. Sharp is charged with 17 other men in a wide-ranging drug conspiracy.

Goudie: "Leo, are you worried about this thing in Michigan?"

Sharp: "Well, the answer is yes. But at age 87, I know, my doctor tells me that I will live to be 100. But I won't live to be 100 if I am sentenced to prison. I'm just going to end it all. Period."

Goudie: "What do you mean you're going to end it all?"

Sharp: "I'm going to get a Goddamn gun and shoot myself in the mouth or my ear, one or the other...I won't live in a toilet with bars...ever."

Leo Sharp says he isn't a drug user himself; that he only took LSD once in 1965 and that it made him "crazy" for 24 hours. Other than legal issues he says he's in fine health.

Sharp's Chicago attorney Darryl Goldberg wasn't pleased to learn his client had spoken with the I-Team, but says he plans to put on a vigorous defense starting with Sharp's arraignment in Detroit Friday.

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