IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA	*	
v.	*	**Criminal No.**
CLIENT	*	

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[PROPOSED] FINDINGS OF FACT IN SUPPORT OF DEPARTURES

Having reviewed sentencing submissions by both parties, and having heard oral argument and the defendant's allocution at sentencing, the Court makes the following findings of fact in support of the defendant's departure requests.

A. Over-Representation (U.S.S.G. § 4A1.3)

1. The defendant's past criminal conduct consists of one resisting arrest conviction (PSR ¶¶ 23-24), two misdemeanor drug convictions (PSR ¶¶ 25-26, 27-28), and one misdemeanor theft conviction (PSR ¶¶ 29-30). The defendant was on probation for the theft conviction at the time of his arrest in this case.

2. The resisting arrest conviction and one of the drug offenses (¶¶ 25-26) date from 1994, nearly ten years prior to the date of the criminal conduct in this case.

3. Although it amounts to ten criminal history points, the defendant's criminal history is significantly less serious than that of most defendants in Criminal History Category V and is more comparable to that of defendants in Criminal History Category IV.

4. The defendant is a former drug addict, whose criminal conduct appears to have been motivated by his addiction (PSR ¶ 38). Having completed treatment, it is unlikely that the defendant will commit future crimes.

5. The defendant is forty years-old. By the time he is released from prison, he will be in his fifties. Studies show that older men are less likely to recidivate when released from prison. *See, e.g.*, U.S. Department of Justice, Bureau of

Justice Statistics, Pub. No. NCJ 193427, *Recidivism of Prisoners Released in 1994* (2002).

B. Post-Offense Rehabilitation (5K2.0 & *United States v. Brock*, 108 F.3d 31 (4th Cir. 1997))

1. The defendant, a heroin addict since the age of twenty (PSR ¶ 38), successfully completed the twenty-eight-day inpatient drug program at the Tuerk House and a six-month residential transition program at Pathways. (Def. Exs. B & C)

2. Pretrial Services testing verifies that the defendant has been drug-free for nine months since completing those programs.

3. This is the first time in the defendant's life that he has been drug-free for this long (PSR ¶ 38).

4. The defendant is maintaining his first meaningful employment as a warehouse worker with Integrated Delivery Services of Glen Burnie, MD.

5. The defendant has reconciled with his wife and children and is now paying (non-court-ordered) child support. (Def. Ex. E)

6. The defendant has been in mental health counseling since his release from Pathways. His counselor states that he has gained "significant insight" into his prior behavior. (Def. Ex. F)

7. The defendant attends narcotics anonymous daily, and has presented proof of that participation to the Court. (Def. Ex. D)

8. The defendant has written letters of apology to the bank tellers whom he victimized. (Def. Exs. G-I)

C. Substantial Assistance (U.S.S.G. § 5K1.1)

1. The defendant provided detailed information about the offense, which was corroborated by the testimony of other witnesses and by the evidence seized in the course of the investigation.

2. The defendant's assistance enabled the guilty pleas of two co-defendants who were motivated to plead guilty because of the threat of the defendant's testimony against them at trial.

3. The defendant's testimony at the trial of the third co-defendant was material to the jury's finding of guilt as the only direct evidence of a conspiracy between the defendant, the other two co-defendants, and the third co-defendant.

4. The defendant's testimony at the trial of the third co-defendant was material to the Court's finding of obstruction of justice at sentencing as the only evidence that the third co-defendant attempted to influence the testimony of witnesses.

5. The defendant sustained serious bodily injury in an attack at the Talbot County Detention Center which the institution suspected was related to his cooperation. (Def. Ex. J)

6. The defendant was transported to and from the courthouse in the same vehicle with his co-defendants, against whom he was cooperating, on more than one occasion. On at least one of those occasions, the defendant was threatened by one of the co-defendants.

7. The defendant commenced cooperating immediately upon his arrest and initial appearance.

These findings are to be filed under seal. Although they are being reported in accordance with 18 U.S.C. § 994(w), as recently amended, they are not to be further disclosed without prior notice to this Court and the parties, and further order of this Court.

Dated: _____

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The Honorable Judge
United States District Judge

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[PROPOSED] FINDINGS OF FACT IN SUPPORT OF DEPARTURES

Having reviewed sentencing submissions by both parties, and having heard oral argument and the defendant's allocution at sentencing, the Court makes the following findings of fact in support of the defendant's departure requests.

A. Acceptance of Responsibility (U.S.S.G. § 3E1.1)

1. The defendant permitted the government to avoid preparing for trial in this matter by notifying the government by letter and by phone within two weeks of his arraignment that he would not seek a trial in this matter. (Def. Exs. A & B)

2. The defendant permitted the government to avoid preparing for trial in this matter by entering a guilty plea immediately following a hearing on his motion to suppress.

3. The hearing on the motion to suppress required far fewer government resources than a trial would have. Among other things, the motion hearing lasted only one morning, whereas the government estimated that trial would have taken at least two days, and the motion hearing required only two government witnesses, whereas a trial would have required at least four.

4. The defendant's guilty plea permitted the court to allocate its resources efficiently by saving the time and cost of a jury trial.

5. The motion to suppress raised a substantial constitutional question, which, while ultimately resolved in favor of the government, was important to litigate in the interest of justice.

6. The defendant expressed acceptance and responsibility throughout these proceedings, beginning with the statement following his arrest and concluding with his allocution at sentencing.

B. Catch-All Acceptance Departure (5K2.0)

1. The defendant demonstrated extraordinary acceptance of responsibility in offering truthful information to the government regarding the criminal conduct of others, even though that information did not rise to the level of "substantial assistance" warranting a departure under U.S.S.G. § 5K1.1.

2. The defendant demonstrated extraordinary acceptance of responsibility in commencing restitution payments prior to sentencing.

3. The defendant assisted in the effective administration of justice in entering an early plea enabling.

Dated: _____

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The Honorable Judge
United States District Judge