

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 12-197 (RHK/JSM)

UNITED STATES OF AMERICA,

Plaintiff,

v.

UNITED STATES POSITION
WITH RESPECT TO
SENTENCING

(4) ROSSCO ANTONIEO ROSS,

Defendant.

The United States of America, by and through its attorneys, John R. Marti, Acting United States Attorney for the District of Minnesota, and LeeAnn K. Bell, Assistant United States Attorney, submits its position with respect to the sentencing of defendant Rossco Antonio Ross.

I. THE PRESENTENCE INVESTIGATION.

The United States has reviewed the Presentence Investigation Report (“PSR”) prepared by the U.S. Probation Office. The United States has no objection to the facts or the Guidelines range of 188-235 months’ imprisonment as set forth in the PSR. The United States further agrees that the defendant is subject to a 120 month mandatory minimum sentence.

II. ANTICIPATED CHALLENGES TO THE FIREARM ENHANCEMENT.

Defendant has noted that he objects to the firearm enhancement pursuant to U.S.S.G. § 2D1.1(b)(1). This enhancement “should be applied if the weapon was present, unless it is clearly improbable that the weapon was connected with the offense.” Id. at App. n. 3(A) (2011). For § 2D1.1(b)(1) to apply, the government must prove (1) the

weapon was possessed; and (2) it was not clearly improbable that the weapon was connected to the drug offense. See United States v. Garcia, 703 F.3d 471, 476 (8th Cir. 2013). “The government can prove that the weapon was connected with the offense by showing that a temporal and spatial relation existed between the weapon, the drug trafficking activity, and the defendant.” United States v. Payne, 81 F.3d 759, 763 (8th Cir.1996) (quotation and citation omitted). Although the mere presence of a weapon is not enough, United States v. Savage, 414 F.3d 964, 966 (8th Cir.2005), the government need not show the defendant used or even touched a weapon to find a connection. United States v. Fladten, 230 F.3d 1083, 1086 (8th Cir.2000) (per curiam). The enhancement poses “a very low bar for the government to hurdle.” Garcia, 703 F.3d at 476.

The facts themselves are not in dispute. On February 9, 2012, law enforcement intercepted a phone call during which they believed that Defendant discussed loaning a firearm to co-defendant Gregory Carter. During the conversation, Defendant and Carter agreed to meet at the “Holiday Downtown.” PSR ¶ 39. In discussing the meeting, Defendant asked Carter, “Hey, you aint’ got no felonies, do you?” Later in the call, Defendant told Carter, “you gonna leave me naked.” Id.

On March 21, 2012, a search warrant was executed at Defendant’s residence. Defendant and his son were the only individuals present at the residence during the execution of the warrant. Two firearms were recovered from the upstairs bedroom in the residence. Id. at ¶ 47. Given these facts, it is not clearly improbable that the firearms were connected to the drug offense.

III. THE APPROPRIATE SENTENCE.

Taking all of the relevant sentencing factors into account, the United States believes that the appropriate sentence is 188 months' imprisonment.

In Gall v. United States, 552 U.S. 38 (2007), the Supreme Court set forth the appropriate sentencing methodology: the district court calculates the advisory Guidelines range and, after hearing from the parties, considers the 18 U.S.C. § 3553(a) factors to determine an appropriate sentence. 552 U.S. at 49-50; United States v. Ruvalcava-Perez, 561 F.3d 883, 886 (8th Cir. 2009) ("In sentencing a defendant, the district court should first determine the appropriate Guidelines range, then evaluate whether a traditional departure is warranted, and finally decide whether or not to impose a guideline sentence after considering all the § 3553(a) sentencing factors").

The district court may not assume that the Guidelines range is reasonable, but instead "must make an individualized assessment based on the facts presented." Id. at 50. If the court determines that a sentence outside of the Guidelines is called for, it "must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance." Id. Section 3553(a) requires the Court to analyze a number of factors, including, "the nature and circumstances of the offense," "the history and characteristics of the defendant," "the need for the sentence to reflect the seriousness of the offense," "the need for deterrence," "the need to protect the public from further crimes of the defendant," and "the need to avoid unwarranted disparities." 18 U.S.C. § 3553(a).

The instant offense is very serious and requires a significant sentence. Defendant supplied multiple individuals with crack cocaine during this conspiracy and the sheer quantity he distributed was notable. For example, during a single delivery to co-defendant Peeler, Defendant delivered over 81 grams of crack cocaine. PSR at 53. In the span of 12 days in January 2012, Defendant delivered 175 grams of crack cocaine to co-defendant Jackson. Id. In addition, Defendant possessed firearms and was heard discussing firearms during the interceptions creating an even greater danger and a need for the sentence to reflect the seriousness of the offense.

Defendant's adult criminal history is as long as it is varied. His first two convictions were the start of Defendant's theft/property related convictions. In 1995 Defendant was convicted of simple robbery and theft of a motor vehicle. PSR ¶¶ 73, 74. After multiple revocations, Defendant was ordered to serve 18 months and a year and a day, respectively. Id. His next theft/property-related felony occurred in January 1997, when he was convicted of receiving stolen property. Id. at 76.

Defendant also has a history of assaultive or abusive conduct. Defendant was convicted in 1998 of felony using minors in a sexual performance for which he served five months. Id. at 77. Defendant was then convicted in 1999 of reckless discharge of a firearm resulting from firing shots at an individual with whom Defendant had a prior altercation. Id. at 79. Defendant was also convicted of misdemeanor domestic assault in 2001. Id. at 82. Finally, Defendant was convicted of first degree burglary in 2003 and

sentenced to seven years after he entered an ex-girlfriend's house and assaulted her resulting in a fractured nose and a broken tooth. Id. at 86.

Defendant has also committed crimes evidencing his lack of truthfulness such as his 2002 conviction for false information to police and his 2004 conviction for identity theft and theft by swindle. Id. at 80, 87. In addition, Defendant has been convicted of driving-related offenses seventeen times. Id. at 81, 83, 84, 85, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

Despite incrementally longer and longer sentences (18 months, 12 months, 5 months, 12 months and 46 months), Defendant has not been deterred from committing crimes. Thus, a significant sentence is necessary to deter Defendant and protect the public.

Several co-defendants have already been sentenced in this case, including two of Defendant's customers, Gregory Carter and Charles Jackson who received 90 and 96 months, respectively. Like this Defendant, Jackson was in the highest criminal history category, but Defendant is above Jackson on the distribution chain and was involved in at least double the narcotics as Jackson, and thus, his sentence should reflect that difference. Further, Defendant had firearms and his sentence should also reflect that difference. Thus, Defendant should receive a sentence significantly higher than his co-defendant customers.

IV. CONCLUSION.

Based on the foregoing, the United States respectfully requests that the Court sentence Defendant to 188 months imprisonment.

Dated: December 2, 2013

Respectfully Submitted,

JOHN R. MARTI
Acting United States Attorney

s/LeeAnn K. Bell
BY: LEEANN K. BELL
Assistant U.S. Attorney
Atty. Reg. No. 318334