

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Criminal No. 12-45 (SRN/JJG)

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	<b>GOVERNMENT'S POSITION</b>
	)	<b>WITH RESPECT TO</b>
SHEIKH BILAAL MUHAMMAD ARAFAT,	)	<b>SENTENCING</b>
	)	
Defendant.	)	
	)	

The United States of America, by and through its attorneys, John R. Marti, Acting United States Attorney for the District of Minnesota, and Deidre Y. Aanstad and Kevin S. Ueland, Assistant United States Attorneys, hereby submits its position with respect to sentencing of defendant Sheikh Bilaal Muhammad Arafat. The defendant is before the Court after having pled guilty to six counts of Armed Bank Robbery in violation of Title 18, United States Code, Sections 2113(a) and (d). As set forth below, the factors outlined in 18 U.S.C. § 3553(a) support a sentence of 168 months imprisonment.

**INTRODUCTION**

On January 11, 2011, the defendant committed his first known robbery of a Bremer Bank branch in Minneapolis, Minnesota. Presentence Investigation Report (“PSR”), ¶ 5. Subsequently, the defendant committed 28 bank robberies and 2 attempted bank robberies over the next year before his arrest in Saint Peter, Minnesota, on January 3, 2012. Id.

Prior to the defendant's arrest on January 3, 2012, the defendant had not been identified as the suspect in a rash of robberies throughout the Minneapolis/St. Paul area and areas south and west of the metropolitan area. PSR, ¶ 12. However, by the middle of November 2011, the Federal Bureau of Investigation ("FBI") and other law enforcement agencies began to suspect that a serial bank robber was responsible for a rash of bank robberies affecting the metropolitan area because of the consistencies between the execution of each robbery and the description of the suspect in each robbery. PSR, ¶ 5. The suspected serial bank robber was given the moniker "The Man in Black" due to the black face-covering mask he wore during each robbery. Id.

The defendant was arrested on January 3, 2012, after a bank robbery at the Rolling Hills Bank and Trust in Brewster, Minnesota. PSR, ¶¶ 8-9. Law enforcement located currency, a toy gun, and a black face-covering mask in the defendant's vehicle. Id. Based on evidence obtained after the defendant's arrest, the defendant was identified as "the Man in Black" bank robber. PSR, ¶¶ 10-15. In total, law enforcement determined that the defendant robbed 31 banks between January 11, 2011, and January 3, 2012. PSR, ¶ 16.

On February 6, 2012, a grand jury sitting in the District of Minnesota returned an Indictment charging the defendant with 13 counts of Armed Bank Robbery in violation of Title 18, United States Code, Section 2113(a) and (d). PSR, ¶ 1.

After much litigation, the Court granted the defendant's motion for severance, and the first of three trials was scheduled to begin on April 22, 2013.<sup>1</sup> On the day trial was scheduled to start, the defendant appeared before the Court and entered a plea of guilty to Count 1 of the Indictment without a plea agreement. PSR, ¶ 2.

Prior to the second trial and after further negotiations between the United States and the defendant, the defendant entered a plea of guilty to Counts 3, 4, 7, 10, and 12 of the Indictment on May 6, 2013. Id. In the plea agreement between the parties, the defendant not only pled guilty to five counts of armed bank robbery as alleged in the Indictment, but also admitted his responsibility in the commission of 25 additional charged and uncharged bank robberies occurring between January 11, 2011, and January 3, 2012. Plea Agreement ("P.A."), ¶¶ 1 and 10. Further, the defendant agreed to pay restitution for each of the charged and uncharged bank robberies. P.A., ¶ 9. In exchange for the defendant's plea of guilty to a total of 6 armed bank robberies and an admission of responsibility for the commission of 25 additional armed bank robberies, the government and the defendant agreed that, pursuant to Fed. R. Crim. P. 11(c)(1)(C), a 168-month sentence was appropriate after consideration of the sentencing factors set forth in 18 U.S.C. § 3553(a). P.A., ¶ 7. Further, the parties agreed to advocate for a sentence of 168 months imprisonment at the time of sentencing. Id.

Accordingly, pursuant to the plea agreement between the parties and after consideration of the factors set forth in 18 U.S.C. § 3553(a), the government respectfully

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<sup>1</sup> In the Court's Order regarding severance, the Court separated the 13 counts in the indictment into three separate groups for trial: Count 1; Counts 2-8; and Counts 9-13. Trial regarding Count 1 was scheduled to commence on April 22, 2013.

requests that the Court impose a sentence of 168 months imprisonment. Further, the government respectfully requests that the Court impose restitution as outlined in the PSR.

## ARGUMENT

### I. SENTENCING GUIDELINES CALCULATION

When sentencing a defendant, the Court must determine what constitutes a sufficient sentence as guided by the factors set forth in Title 18, United States Code, Section 3553(a). As such, the district court should begin sentencing proceedings by correctly calculating the applicable Guidelines range. Gall v. United States, 552 U.S. 38, 49 (2007). And, although the Guidelines are advisory, the Court must “remain cognizant of them throughout the sentencing process.” Gall, 552 U.S. at 50 n.6. Pursuant to U.S.S.G. §§ 1B1.2(c), the PSR treated the defendant’s plea of guilty to six counts of armed bank robbery and admission of guilt to an additional 25 charged and uncharged armed bank robberies as if the defendant had been convicted of 31 total counts. Additionally, pursuant to U.S.S.G. §§ 3D1.1 to 3D1.4 and the plea agreement in the matter, a 5-level increase was applied to the greatest offense level of 26.<sup>2</sup> Accordingly, the PSR calculated the defendant’s total offense level to be 31, the defendant’s criminal history category to be IV, and a resulting guidelines range of 151 to 188 months imprisonment without acceptance of responsibility.

After reviewing the PSR and guidelines calculations, the government agrees that application of the Guidelines results in an advisory guidelines sentence of 151 to 188

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<sup>2</sup> The greatest offense level was calculated based on Count 13 of the Indictment. The defendant admitted to, but did not enter a plea of guilty, to Count 13.

months imprisonment. Accordingly, the government respectfully requests that the Court adopt the guidelines contemplated in the PSR as its own when making a sentencing determination.

It is anticipated that the defendant will persist in his objections to the calculation of the total offense levels for each of the 31 armed bank robberies for which the defendant either pled guilty or admitted guilt. Further, the defendant will object to the use of dismissed and uncharged conduct pursuant to U.S.S.G. § 1B1.2(c). Finally, the defendant will object to the 5-level increase applied to the offense with the greatest total offense level. Each of the defendant's arguments is without merit. First, the defendant agreed to a minimum total offense level of 25 in his plea agreement. See P.A., ¶ 6. Second, the defendant stipulated to a 5-level increase under the rules set forth in Guideline Sections 3D1.1 – 3D1.4. Id. Finally, the defendant stipulated pursuant to Fed. R. Crim. P. to a stipulated term of 168 months imprisonment. P.A., ¶ 7. After review of the application of the Guidelines as outlined in the PSR, the PSR correctly calculates the defendant's guidelines range.

Finally, the PSR declines to apply a 3-level reduction for acceptance of responsibility based on the defendant's post-plea conduct. The United States concurs with this determination. In the plea agreement between the parties, an recommendation for a reduction for acceptance of responsibility was conditioned on the following: (1) the defendant testifies truthfully during the change-of-plea and sentencing hearings; (2) the defendant provides full, complete and truthful disclosures to the United states Probation Office; and (3) the defendant engages in no conduct inconsistent with acceptance of

responsibility before the time of sentencing. P.A., ¶ 6.d. Nonetheless, since the defendant's plea of guilty to five counts of **armed** bank robbery and admission to committing 24 armed bank robberies and 1 unarmed bank robbery on May 6, 2011, the defendant has engaged in a pattern of conduct that is inconsistent with acceptance of responsibility. In his objections to the PSR, the defendant denies the commission of an armed bank robbery pursuant to 18 U.S.C. §§ 2113(a) and (d). Further, the defendant has disputed the adequacy of the factual basis for his pleas of guilty. The defendant has disputed multiple factual details included in the PSR that are supported by investigative reports, victim accounts, and the defendant's own pleas of guilty. Finally, in a letter to the United States dated October 2, 2013, the defendant denied acceptance of responsibility and requested a re-negotiated term of imprisonment pursuant to Rule 11(c)(1)(C). The defendant's actions do not demonstrate an acceptance of responsibility for his criminal behavior. Accordingly, the defendant should be denied a 3-level reduction for acceptance of responsibility.

Prior to consideration of the sentencing factors set forth in 18 U.S.C. § 3553(a), the United States respectfully requests that the Court adopt the sentencing guidelines calculations set forth in the PSR as its own.

## II. SECTION 3553(a) SENTENCING FACTORS

In addition to considering the United States Sentencing Guidelines, Section 3553(a) requires the court to analyze a number of other factors, including the nature and circumstances of the offense; the history and circumstances of the defendant; the need to protect the public from further crimes of the defendant; the need for the sentence imposed

(a) to reflect the seriousness of the offense, to promote respect for the law, 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 and vocational training, medical care or other correctional treatment in the most effective manner; and the need to avoid unwarranted sentencing disparities. See 18 U.S.C. § 3553(a).

In this case, there can be no dispute that the defendant participated in a rash of bank robberies that resulted in a significant loss to 31 different banks and caused multiple tellers to fear death or serious bodily injury as the result of the defendant's actions and use of a toy gun, that victim tellers believed to be real. An analysis of the Section 3553(a) factors, in combination with the unique circumstances of this case, supports a sentence of 168 months imprisonment as contemplated in the plea agreement. Accordingly, the government respectfully requests that the Court accept the plea agreement and impose a sentence of 168 months imprisonment.

The nature and circumstances of the 31 bank robberies are well-outlined in the PSR. Over the course of 12 months, the defendant caused fear in multiple bank tellers across the Minneapolis/St. Paul area and southern Minnesota. The defendant entered 31 banks wearing a black mask and demanding money. Further, the defendant used a toy gun, believed to be real, to gain money from more than 30 victim bank tellers. The sheer volume and nature of the bank robberies committed by the defendant warrant a significant sentence of imprisonment.

The history and circumstances of the defendant do not mitigate against a significant term of imprisonment. The defendant previously served a term of significant term of imprisonment for mail fraud. Despite this prison sentence, conviction, and subsequent consequences, the defendant voluntarily committed 31 bank robberies. The defendant has failed to show remorse for his actions. Any attempts made by the defendant to show remorse for his actions are negated by his denial of acceptance of responsibility. Based on the defendant's history and personal circumstances outlined in the PSR, including the defendant's prior criminal conduct and employment, the defendant exhibits an unrepentant attitude towards his criminal conduct.

Finally, a significant term of imprisonment in this case serves its own societal purpose: punishment and deterrence. In this case, the defendant committed 31 robberies. The defendant blatantly disregarded the laws of the United States. Further, the defendant turned his head away from societal norms and common human respect for others and property belonging to others. Accordingly, the defendant must be punished for his conduct.

After review of the sentencing factors outlined in Section 3553(a), the government respectfully requests that the Court accept the plea agreement and the stipulated term of imprisonment reached pursuant to Fed. R. Crim. P. 11(c)(1)(C). The government respectfully requests that the Court impose a sentence of 168 months imprisonment.

### III. RESTITUTION

The PSR outlines the restitution due to each of the victim banks. See PSR, ¶ 395. The government respectfully requests that the Court impose restitution according to the



PSR totaling \$108,771.71. Id. Further, the government respectfully requests additional restitution of \$100 to R.R. and \$15 to Paragon Bank. See PSR, ¶¶ 23, 24, and 27. The PSR reflects that the requests totaling \$115 do not appear compensable pursuant to 18 U.S.C. § 3663A(b)(2) because the victim tellers did not suffer bodily injury. However, the term bodily injury as defined in 18 U.S.C. § 1365(h)(4) includes illness and impairment of the function of a bodily member, organ, or mental faculty. Accordingly, based on the victim tellers' reported illnesses, the victims are entitled to reimbursement.

**CONCLUSION**

For the reasons outlined above, the government respectfully requests that the Court accept the plea agreement, including the stipulated term of imprisonment pursuant to Fed. R. Crim. P. 11(c)(1)(C), and impose a concurrent sentence of 168 months imprisonment for each of the six counts of conviction. The government further requests that the Court impose restitution as outlined above.

Dated: October 28, 2013

Respectfully Submitted,

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s/Deidre Y. Aanstad

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