

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Criminal No. 12-269 (JNE/SER)

UNITED STATES OF AMERICA,

Plaintiff,

v.

UNITED STATES POSITION  
WITH RESPECT TO  
SENTENCING

DWIGHT FREDERICK BARNES,

Defendant.

The United States of America, by and through its attorneys, B. Todd Jones, 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 Dwight Frederick Barnes.

**I. THE PRESENTENCE INVESTIGATION.**

The United States has reviewed the Presentence Investigation Report (“PSR”) prepared by the U.S. Probation Office. The United States agrees that Defendant qualifies as a Career Offender<sup>1</sup> and has no objection to the facts or the Guidelines range of 151 to 188 months’ imprisonment as set forth in the PSR.

**II. THE APPROPRIATE SENTENCE.**

Taking all of the relevant sentencing factors into account, the United States believes that the appropriate sentence is 151 months’ imprisonment.

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<sup>1</sup> Based on his objections to the PSR, the United States anticipates that Defendant will challenge his status as a Career Offender. However, the United States is not aware of the specific basis, and thus, will provide its response once Defendant has outlined his position.

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).

This case involves Defendant selling a total 85.2 grams of heroin to an undercover officer between June 22, 2012 and July 18, 2012, with amounts increasing with each transaction. While these are not kilogram level sales, they nonetheless represent many hundreds of doses of heroin (a typical dose is approximately 1/10 of a gram) with a street

value of several thousand dollars. Thus, the nature of the offense itself, neither necessitates a sentence above the Guidelines range, nor mitigates in favor of a sentence below the applicable range.

Unfortunately, Defendant's history gives little hope for success in the future. Defendant is 43 years old and has been in prison the majority of the last 30 years. Defendant was incarcerated from 1985 to August 2002 as a result of convictions for two separate robberies.<sup>2</sup> See PSR ¶¶ 34, 35. He then served an additional consecutive sentence as a result of possessing a weapon while in prison. Id. at ¶ 36. Defendant was released from custody in July 2005, only to be caught less than two years later selling heroin to an informant in May 2007. Id. at ¶¶ 36, 37. After being released in March 2011, he violated his conditions of release within five months and was returned to custody. Id. at ¶ 37. After being released in September 2011, he was convicted of misdemeanor fighting in December 2011. Id. at ¶ 38. Six months later, Defendant was again dealing heroin, this time to the undercover officer in this case. Id. at ¶ 5.

Despite long sentences, Defendant has been undeterred from committing additional crimes. Even assuming Defendant had the best intentions to stay crime free, it is clear he cannot stop committing crimes as evidenced by his return to drug dealing following both of his periods of incarceration. Thus, a significant sentence is necessary in order to protect the public.

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<sup>2</sup> Defendant was also convicted of assault with intent to commit murder, but that conviction was overturned. See PSR ¶ 35.

Defendant is justifiably considered a “Career Offender” – whether the Guideline applies or not. He has literally spent his life either incarcerated or committing crimes. Thus, any sentence imposed should be consistent with those of other Career Offenders in order to avoid unwarranted sentencing disparities.

That said, the Defendant is 43 years old and if he is sentenced to the recommended 151 months, he will be close to 55 years old at the time of his release. Hopefully, his age at the time of release will decrease the likelihood that he returns to committing crimes.

Taking all the facts and circumstances of this case into account, the United States respectfully requests that Defendant be sentenced to 151 months’ imprisonment.

Dated: August 14, 2013

Respectfully Submitted,

B. TODD JONES  
United States Attorney

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