

**THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

UNITED STATES OF AMERICA	:	CASE NO. 1:08-CR-50
	:	
v.	:	<u>GOVERNMENT’S SENTENCING</u>
	:	<u>MEMORANDUM</u>
ADRIAN D. MITCHELL	:	
	:	HONORABLE SANDRA S. BECKWITH

Defendant Adrian D. Mitchell (“Mitchell”) committed a treacherous fraud against victims Metropolitan Life Company (“MetLife”) and LT. Defendant was a Cincinnati police officer whose deception caused increased financial and emotional hardship for LT and her family. While operating his side business R.I.C.H. Properties, a purported foreclosure rescue/real estate business, defendant took advantage of LT’s obvious mental illness to steal the proceeds of her husband’s life insurance policy, approximately \$188,327.38. LT hoped to use these proceeds as her only means of financial support after the devastating and untimely death of her husband.

Defendant forged LT’s signature, falsely represented himself as a family member to MetLife, and deposited the life insurance money into his business bank accounts making it appear as though the money was legitimate. While not overtly using his position as a police officer to perpetrate the fraud, defendant hid behind the shield to divert suspicion from himself and supplied local investigators with fraudulent documents and a false explanation to conceal the scheme to defraud. Because the victim was mentally incapacitated and her husband was dead, defendant was at liberty to concoct a fraudulent scenario of events and facts that justified taking

the life insurance proceeds. This conduct demonstrated that there was no limit to depths of Mitchell's deceit.

Finally, defendant filed false tax returns with the Internal Revenue Service to avoid paying taxes. To hide the fraud, defendant instructed potential witnesses to lie about their involvement with defendant. Defendant Mitchell turned his back on the law, his oath, and his duty to protect and serve the citizens of Cincinnati, in exchange for his own personal financial benefit. His unadulterated greed and obvious lack of compassion and moral standards are deserving of the agreed-upon sentence of 36 months.

The Supreme Court has provided guidance on fashioning an appropriate sentence:

“[A] district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range... [A]fter giving both parties an opportunity to argue for whatever sentence they deem appropriate, the district judge should then consider all of the § 3553(a) factors to determine whether they support the sentence requested by a party. In so doing, he may not presume that the Guidelines range is reasonable. He must make an individualized assessment based on the facts presented. If he decides that an outside-Guidelines sentence is warranted, he must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance... After settling on the appropriate sentence, he must adequately explain the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing.”

Gall v. United States, 552 U.S. 38, 128 S. Ct. 586, 596-97 (2007) (internal citation omitted).

Given the holding in Gall, the government agrees with the current guidelines calculation by U.S. Probation in the Presentence Investigation Report (“PSR”) and submits that the relevant factors under § 3553(a) would normally warrant a sentence within the guidelines range of 37- 46 months. The parties, however, agreed upon a maximum sentence of 36 months. There were several significant considerations in determining this maximum sentence. The

foremost was the victim. LT was both unwilling and unable to testify at trial. According to her family, LT's mental illness can only be controlled when she is taking proper medication. During the government's attempt to prepare LT for trial, she was unwilling to stay on her medication and therefore, incompetent to testify. The emotional, mental, and financial stress of this case has burdened LT and her family for more than three years and led the government to conclude that a plea to a 36-month maximum sentence was in the best interest of justice. LT's family agreed.

The maximum sentence of 36 months does not significantly deviate from the bottom of the guidelines range, that is 37 months. The loss amounts and other enhancements are substantially reflected in the 36 months. Also, judicial economy was another major factor in the government's decision to the 36-month sentence because the government and the Court were scheduled for two almost back-to-back, lengthy and complex trials with the instant case and U.S. v. Orlando Carter, Case No. 1:08-CR- 51. A plea to what is essentially the bottom of the guidelines range saved valuable time and resources. Additionally, the certainty of the plea agreement, with the condition that defendant Mitchell resign from his position as a police officer, was another important consideration in fashioning the terms of the agreement. Thus, the government respectfully requests that the Court sentence defendant Mitchell to a sentence of 36 months.

I. BACKGROUND

On February 11, 2009, defendant pled guilty to Counts 1 and 13 of the superseding indictment charging him with one count of mail fraud, in violation of 18 U.S.C. § 1341, and one count of filing false tax returns, in violation of 26 U.S.C. § 7206(1). Defendant admitted that he defrauded MetLife and Ms. Tate and wrongfully took the life insurance in the

amount of approximately \$188,327.38. He also admitted that he filed false tax returns.

II. SENTENCING CALCULATION.

A. Statutory Maximum Sentence.

The maximum sentence that may be imposed on defendant Mitchell is 23 years imprisonment, three years of supervised release, a \$500,000 fine, and a \$200 special assessment. Full restitution of at least \$188,327.38 shall also be ordered to LT.

B. Sentencing Guidelines Calculation.

In imposing sentence, the Court must take into account the considerations of sentencing set forth in 18 U.S.C. § 3553(a). United States v. Booker, 543 U.S. 220, 261 (2005). First, as stated in Section 3553(a)(4), the Court must determine and consider the sentencing range established in the Sentencing Guidelines. In this case, as stated in the presentence report (PSR), the correct guideline calculation is as follows. Defendant's base offense level is seven pursuant to U.S.S.G. § 2B1.1(a)(1). There is an 10-level upward adjustment because the loss was more than \$120,000 but less than \$200,000. U.S.S.G. § 2B1.1(b)(1)(F). There is also a two-level increase for vulnerable victim, U.S.S.G. § 3A1.1(b)(1), and two-level upward adjustment for obstruction of justice. U.S.S.G. § 3C1.1. Pursuant to 3D1.4, the multiple count adjustment adds another two levels for a combined adjusted offense level of 23. The plea agreement and initial PSR contemplated a two-level downward adjustment for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a), however, this adjustment is called into question based upon the defendant's objections to the PSR. Without a determination on the applicability of the acceptance of responsibility post plea, his total offense level is 21. He has a criminal history

category I. Defendant's sentencing guidelines range is 37 to 46 months.

C. Objections to PSR and Sentencing Guidelines Calculations

Defense counsel filed several objections to the PSR to which the government responded. These objections and responses are made part of the final PSR. The government submits a copy of defendant's March 15, 2007 interview with the Springfield Police Department, marked as Government's Exhibit 1, and a copy of the video-taped deposition of General Lloyd Austin, U.S. Army, marked as Government's Exhibit 2. The government respectfully requests that the Court consider both of these exhibits as evidence to support the government and U.S. Probation's positions in the PSR as they relate to issues of obstruction of justice and acceptance of responsibility and make them a part of the record. They will be forwarded to the Court with a courtesy copy of the government's sentencing memorandum. Government's Exhibits 1 and 2 have previously been provided to defense counsel in discovery.

III. ANALYSIS OF § 3553(a) FACTORS

Once the Court has properly calculated the guideline range, the Court must next consider all of the sentencing considerations set forth in Section 3553(a). Those factors are:

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed--
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and 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 or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for--

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines . . . issued by the Sentencing Commission . . . that . . . is in effect on the date the defendant is sentenced; . . .

(5) any pertinent policy statement . . . issued by the Sentencing Commission . . . that . . . is in effect on the date the defendant is sentenced.

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

(7) the need to provide restitution to any victims of the offense.

18 U.S.C. § 3553(a).

In a standard analysis, no unusual circumstances exist which warrant an exception to the preference for guideline sentencing. Section 3553(a)(4) and (5) specifically direct the Court to consider the applicable guidelines, and Section 3553(a)(6) commands that the Court strive to avoid disparity in sentencing, which, as explained above, is best accomplished through faithful application of the guidelines. The other 3553(a) factors also point to this conclusion.

The nature and circumstances of this offense are particularly serious because defendant was a police officer who defrauded a vulnerable victim. Defendant has no criminal history and is capable and smart which allowed him the opportunity to operate his own business and obtain a position with the Cincinnati Police Department. Instead of legitimately earning a living, demonstrating fidelity to the law, and being a positive role model for the community, defendant employed deceit and trickery to advance his personal goals.

Any sentence imposed must reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense. 18 U.S.C. § 3553(a)(2)(A). The seriousness of the offense cannot be overstated. The testimony of General Austin, both his video tape deposition and at sentencing, have and will describe the affects that defendant's fraud caused. The sentence must promote respect for the law and serve to deter others from following defendant's example. Just punishment is a sentence that reflects the impact defendant had on all affected by his crime. Here, a guidelines sentence would satisfy all the factors set forth in 18 U.S.C. § 3553(a). However, based on the considerations described above, the government recommends a sentence of 36 months. Defendant has provided no factors to support leniency beyond what he has received from his plea agreement.

IV. CONCLUSION

For all of these reasons, the government respectfully recommends that the Court sentence defendant Adrian D. Mitchell to 36 months imprisonment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Government's Sentencing Memorandum by electronic filing on defense counsel of record.

JENNIFER C. BARRY
Assistant United States Attorney

DATED: _____