

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff,	§	
	§	Criminal No. 3:03-CR-189-D
VS.	§	
	§	
DANIEL T. ROSE,	§	
	§	
Defendant.	§	

SENTENCING MEMORANDUM

Defendant Daniel T. Rose (“Rose”) is before the court for resentencing following the Fifth Circuit’s decision affirming his conviction but vacating his sentence and remanding for resentencing. *See United States v. Rose*, 449 F.3d 627 (5th Cir. 2006). In a June 14, 2006 order, the court granted Rose’s June 13, 2006 unopposed motion to waive personal appearance at resentencing and set a schedule for making resentencing submissions. The court has considered all written materials, including the presentence report (“PSR”), submitted at Rose’s original sentencing on March 18, 2005. Additionally, the court has considered the United States Probation Officer’s May 31, 2006 supplement and second addendum to the PSR, the government’s June 27, 2006 statement regarding supplement and second addendum to the PSR, Rose’s June 27, 2006 response to the supplemental second addendum to the PSR, the government’s July 14, 2006 statement concerning resentencing of the defendant, and Rose’s July 14, 2006 sentencing mitigation memorandum.

The supplement and second addendum to the PSR recommends an offense level of 18, and a criminal history category of I, resulting in an advisory guideline range of 27 to 33 months. In his June 27, 2006 response, Rose states that, although he does not abandon his objections and arguments made at his original sentencing that may be applicable at resentencing, he has no specific objections

to the supplement and second addendum to the PSR, other than to posit that his new sentence should be at the bottom or below the new guideline range. In his July 14, 2006 sentencing mitigation memorandum, he also argues for a sentence at the bottom or below the new guideline advisory range. The government maintains in its July 14, 2006 statement concerning resentencing that the court should impose the same sentence of 30 months, which is the mid-point of the new advisory guideline range. It contends this sentence is still reasonable considering the *de minimis* reduction in the volume of commerce that the Fifth Circuit found resulted in a one-level decrease in the guideline range, the need to comply with the relevant statutory sentencing factors in the context of this antitrust case, and to avoid reducing the deterrent effect and integrity of the antitrust laws.

Because there are no new objections to the PSR that have not been resolved by this court at the original sentencing or by the Fifth Circuit on appeal, the court finds and concludes that the advisory guideline range is 27 to 33 months. The court recognizes that the guideline range is advisory only. It has considered all the factors set out in 18 U.S.C. § 3553(a). In particular, it has considered Rose's arguments based on § 3553(a)(6) ("the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct"). It has also considered Rose's July 6, 2006 letter to the court. The court finds that a sentence within, although at the bottom of, the advisory guideline range is sufficient, but not greater than necessary, to comply with the purposes set forth in § 3553(a)(2). The court recognizes its jurisdiction on remand and authority under an advisory guideline scheme to sentence the defendant below the advisory guideline range, but it declines to do so.

Accordingly, the court imposes the following sentence on count 1.*

It is adjudged that Rose is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of 27 months.

It is ordered that he pay a mandatory special assessment of \$100.

The court has determined that the complication and prolongation of the sentencing process resulting from the fashioning of an order of restitution outweigh the need to provide restitution to any victims.

It is ordered that Rose shall immediately pay a fine to the United States in the amount of \$20,000, payable to the United States District Clerk. If upon commencement of the term of supervised release any part of the fine remains unpaid, he shall make payments on such unpaid balance beginning 60 days after release from custody at the rate of at least \$2,000 per month until the fine is paid in full. It is ordered that the defendant pay interest on the unpaid balance pursuant to 18 U. S. C. § 3612(f)(1). The fine is below the advisory guideline range because the defendant does not have the ability to pay a fine within the guideline range.

It is ordered that Rose serve a term of supervised release of 1 year. While on supervised release, Rose shall not commit another federal, state, or local crime and shall not illegally possess a controlled substance. He shall refrain from any unlawful use of a controlled substance. He shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the U.S. Probation Officer. He shall also comply with the standard

*The United States Probation Officer has advised the court that Rose has paid the mandatory special assessment and fine imposed as part of the original sentence pronounced March 18, 2005. The mandatory special assessment and fine imposed as part of this sentence are not in addition to those imposed originally and already paid.

terms and conditions for supervised release recommended by the United States Sentencing Commission and adopted by this court on its judgment form.

He shall also comply with the following additional terms and conditions. He shall not possess a firearm, as defined in 18 U.S.C. § 921. He shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons. He shall immediately pay a fine to the United States in the amount of \$20,000, payable to the United States District Clerk. If upon commencement of the term of supervised release any part of the fine remains unpaid, he shall make payments on such unpaid balance beginning 60 days after release from custody at the rate of at least \$2,000 per month until the fine is paid in full. It is ordered that the defendant shall pay interest on the unpaid balance pursuant to 18 U.S.C. § 3612(f)(1). He shall provide to the U.S. Probation Officer any requested financial information. He shall refrain from incurring new credit charges or opening additional lines of credit without approval of the U.S. Probation Officer. He shall cooperate in the collection of DNA within the first 180 days of supervision, as directed by the U. S. Probation Officer.

The court recommends to the Bureau of Prisons that the defendant be assigned to FPC-Marion, Illinois, if eligible.

The court will file today an amended judgment consistent with the sentence hereby imposed.

July 18, 2006.


SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE