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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	CASE NO. 3:22-CR-00470 RS
)	
Plaintiff,)	UNITED STATES' SENTENCING
)	MEMORANDUM
v.)	
)	Court: Hon. Richard Seeborg
)	Hearing Date: October 17, 2023
SAMUEL POLANCO,)	Hearing Time: 9:30 AM
)	
Defendant.)	
)	

I. INTRODUCTION

Defendant Samuel Polanco, an inmate at Santa Rita Jail, was caught hiding methamphetamine and heroin inside the folds of his skin. He intended to sell the drugs to other vulnerable inmates at the facility. He was caught on October 13, 2022—twenty-seven *days* after he had been sentenced by this same Court for possessing drugs inside this same correctional facility, and twenty-seven *days* after he assured this Court that he was a different man. He remains in Criminal History Category VI. Based on the need for deterrence and to promote respect for the law, the government submits that 33 months of imprisonment is sufficient, but not greater than necessary, to achieve the goals set forth in 18 U.S.C. § 3553(a).

II. PROCEDURAL HISTORY

On December 13, 2022, defendant Samuel Polanco was charged by Indictment with one count of possession with intent to distribute methamphetamine and one count of possession with intent to distribute heroin, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C). Dkt. 1.¹ The defendant pleaded guilty to both counts on June 6, 2023. Dkt. 20. Sentencing is set for October 17, 2023. Dkt. 23.

III. OFFENSE CONDUCT

On September 16, 2022, prior to the instant offenses, the Court sentenced the defendant to 72 months in prison for one count of Felon-in-Possession of a Firearm in violation of 18 U.S.C. § 922(g)(1), one count of Possession with Intent to Distribute 50 grams and more of Methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and (b)(i)(B)(viii), and one count of Possession with Intent to Distribute Suboxone in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(E)(i). *See* 3:21-CR-00069 RS Dkt. 48. Notably, the third charge was added during plea negotiations after the defendant, who was then an inmate at Santa Rita Jail, was caught receiving and distributing Suboxone sublingual strips to other inmates in exchange for money or commissary items. PSR ¶ 6.

The instant offenses *again* involve possession of drugs with intent to distribute inside Santa Rita.

On October 13, 2022, a sheriff's deputy at Santa Rita Jail was supervising medication distribution when he smelled the odor of unburnt marijuana near the defendant's cell. *Id.* ¶ 8. The officer brought the defendant out of his cell and over to a separate room where he then conducted a strip search. He ordered the defendant—a 5'11" and 350lbs man—to lift the folds of his stomach in order to search underneath. When the defendant lifted the folds of his stomach, the officer found a coffee bag and two additional bags. Body camera footage shows the bags dropping out of the defendant's stomach folds during the search.

The coffee bag contained eight paper bindles of a white crystalline substance, later determined to be methamphetamine, weighing 7.468 grams altogether. *Id.* ¶ 9. The methamphetamine bindles had various prices written on them (e.g. 200, 160, 150). *Id.* ¶ 9. The two additional bags contained several bindles of a brown and dark grey powder, later determined to be heroin, weighing 2.146 grams altogether,

¹ This memorandum also references a previous case involving the defendant (3:21-CR-00069 RS). When referring to docket entries from that older case, this memo will specifically mention that case number. Otherwise, the citations refer to the instant case (3:22-CR-00470 RS).

as well as additional white crystalline substance, later determined to be methamphetamine, weighing 0.341 grams. *Id.* The bags also contained small amounts of marijuana.

In an interview with law enforcement later that day, the defendant claimed to have bought the “crys and a little bit of brown” for \$80 from someone inside the facility. *See id.* ¶ 8. He denied bringing the drugs into the facility himself. *Id.* The defendant admitted in his plea agreement that he concealed the drugs in the folds of his skin because he knew they were forbidden, and that he had plans to sell the approximately 7.81 grams of methamphetamine and 2.15 grams of heroin to other inmates inside the facility. *Id.* ¶ 10.

IV. SENTENCING GUIDELINES CALCULATION

The government agrees with the PSR’s calculation of the offense level: 14 points for the possession of 17.77kg of converted drug weight under U.S.S.G. § 2D1.1(a)(5), the addition of 2 points for the distribution of drugs inside a correctional facility under § 2D1.1(b)(4), and the subtraction of 3 points for acceptance of responsibility under § 3E1.1, for a total offense level of 13. *See id.* ¶¶ 17-26. The government also agrees that the defendant’s lengthy criminal history—including ten years of assaults (including with a deadly weapon), thefts, burglaries, and the most recent gun and drug crimes—puts him in Criminal History Category VI. *See id.* ¶ 42. Together, that yields an advisory guidelines range of 33-41 months. *See id.* ¶ 87.

V. APPLICABLE LAW

The Court should impose a sentence sufficient, but not greater than necessary, to reflect the purposes of sentencing that Congress identified in 18 U.S.C. § 3553(a)(2). *United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008). The Court should begin the process of determining an appropriate sentence by calculating the correct sentencing range under the Guidelines. *Id.* After determining the appropriate Guidelines calculation, the Court should then evaluate the sentence for substantive reasonableness in light of the factors set out in Section 3553(a). *Carty*, 520 F.3d at 991–93.

Under 18 U.S.C. § 3553(a), in arriving at the appropriate sentence for the defendant, the Court should consider these factors applicable to this case, among others:

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;

- (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (3) the need for the sentence imposed to afford adequate deterrence to criminal conduct;
- (4) the need for the sentence to protect the public from future crimes of the defendant;
- (5) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (6) the need to provide restitution to any victims of the offense.

VI. RECOMMENDED SENTENCE AND SECTION 3553(a) FACTORS

Based upon a consideration of the Sentencing Guidelines and the factors set forth in 18 U.S.C. § 3553(a), the government respectfully recommends a custodial sentence of 33 months of imprisonment.

At the defendant's previous sentencing hearing on September 16, 2022, the defendant's counsel said, "we'll know in 60 months whether Mr. Polanco is going to make it or not, and if he's not, then he'll be back." *See* 3:21-CR-00069 RS Dkt. 56 at 10. The defendant himself assured the Court that "I'm standing in front of you a different man" and later that "whether I come out a different man, that's my — that's my decision." *See id.* at 12. In response, the Court imposed a 72 month sentence—significantly below the guidelines range of 110-137 months (as agreed to by the parties) and halfway between the recommendations of the parties—and told the defendant, "I will take you at your word that you want to turn things around." *See id.* at 3, 13–14.

Unfortunately, it took nowhere near 60 months to see if the defendant was in fact a different man who could turn things around. On October 13, 2022—a mere 27 *days* after the sentencing hearing—the defendant was caught again doing the exact same thing: possessing controlled substances with the intent to distribute them inside a correctional facility. This time, however, he escalated to more serious drugs like heroin and methamphetamines, and he did so in direct contravention to what he promised to this Court such a short while ago. The defendant, with his actions, has shown a complete lack of respect for the law.

The defendant had an extremely difficult childhood and clear drug dependency problems. That was true at the previous sentencing and it is still true today. That is perhaps why he received below-guidelines recommendations from the parties before, and a below-guidelines sentence from the Court. The defendant was given mercy, but he blew it, and in record time. Though the drug quantities here are

1 admittedly small, the offenses are still serious because of the location. Santa Rita Jail is filled with inmates
 2 who are trying desperately to kick their drug habits, and part of the rehabilitative value of this highly-
 3 controlled environment is to prevent any access to drugs. By selling these particularly-addictive drugs
 4 inside the facility, the defendant was directly harming a highly vulnerable population who needed to be
 5 separated from enticing influences.

6 The defendant's criminal history was already extremely lengthy, with felony after felony since he
 7 turned 18, including assaults, thefts, burglaries, and evading a peace officer. It is even lengthier now than
 8 it was one year ago, when he was sentenced to 72 months for felon in possession of a firearm, possession
 9 with intent to distribute 50 grams or more of methamphetamine, and possession with intent to distribute
 10 Suboxone. And while some aspect of some of these crimes may be attributable to his difficult childhood
 11 or drug dependency problems, one thing is clear: the sentences imposed thus far have not been enough to
 12 deter the defendant's criminal conduct. The sentence for these instant offenses must be severe enough to
 13 provide both general and specific deterrence, as well as to prevent unwarranted sentencing disparities
 14 among defendants. Furthermore, as is typical for sentences imposed at different times, the government
 15 requests that the sentence imposed here run consecutively, not concurrently, with the previous sentence
 16 of 72 months which, as of October 2023, remains far from complete. *See* 18 U.S.C. § 3584(a).

17 **VII. CONCLUSION**

18 For the foregoing reasons, including the need for deterrence and to promote respect for the law,
 19 the government respectfully requests that the Court impose a sentence of 33 months of imprisonment
 20 followed by three years of supervised release.

21
 22 DATED: October 10, 2023

Respectfully submitted,

ISMAIL J. RAMSEY
 United States Attorney

/s/ George O. Hageman
 GEORGE O. HAGEMAN
 Assistant United States Attorney