

UNITED STATES DISTRICT COURT
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No.
v.	)	
	)	Judge
JOHN DOE	)	

JOHN DOE'S SENTENCING MEMORANDUM

Defendant, JOHN DOE, by the FEDERAL DEFENDER PROGRAM and its attorney, JANE SMITH, respectfully requests that this Honorable Court impose a sentence of five years imprisonment, followed by a lengthy term of supervised release, with special conditions requiring sex offender, mental health, and substance abuse treatment as directed by the U.S. Probation Office, because such a sentence is reasonable in light of *Gall v. United States*, 552 U.S. 38 (2007), *Kimbrough v. United States*, 552 U.S. 85 (2007), and the sentencing factors set forth in 18 U.S.C. § 3553(a). In support of this request, Mr. Doe states as follows:

I. Sentencing Request

The presentence investigation report places Mr. Doe in criminal history category__, with a resulting advisory guidelines range of _____ months. (PSR 22.) Mr. Doe's count of conviction has a mandatory minimum sentence of five years imprisonment. (*Id.*)

Mr. Doe's request for five years imprisonment is based on his personal and family history and characteristics, his low risk of recidivism, the need for the sentence imposed to provide him with sex offender, mental health, and substance abuse treatment, and the lack of a need to protect the public from him. The proposed sentence is commensurate with an offense committed by a

first-time child pornography offender at a low risk for becoming a repeat offender or committing a contact offense. The proposed sentence also considers that, as a consequence of his conviction, Mr. Doe has already been required to register as a sex offender for the rest of his life. 18 U.S.C. §§ 3563, 3583, and 4042(c). (PSR 17.)

II. Five Years Imprisonment Is Sufficient But Not Greater Than Necessary To Comply With The § 3553(a) Sentencing Factors

Inherent in the idea of a five-year mandatory minimum sentence for violating 18 U.S.C. § 2252(A)(a)(1) is a congressional recognition that there are certain cases for which the mandatory minimum sentence is sufficient punishment. Mr. Doe's is such a case. Five years in prison would be just punishment, promote respect for the law, and satisfy the other sentencing purposes of § 3553(a) far better than would a sentence suggested by the guidelines.

A. Mr. Doe's abusive childhood

[redacted]

B. Mr. Doe's family circumstances

The one bright spot in Mr. Doe's life was and still is his daughter Jane Doe. (PSR 17.) Jane's mother, from whom Mr. Doe is divorced, dropped Jane off at the age of 6 and never returned. In a letter to the Court that counsel will submit under separate cover, Jane writes that, given her drug addicted mother's abandonment, "all I have ever had is my dad." Growing up, Mr. Doe was terrified by his father. (PE 6.) By contrast, Jane describes her father as "the most loving, caring father a girl could ask for." Importantly, [Jane] was sexually abused as a child by her mother's boyfriend, and says she is highly sensitive to any signs of inappropriate behavior. (MR 3-4.) She never once saw or feared any such behavior from her father. (*Id.*) Her cousin, who also

was sexually abused by a relative, reports the same. (*Id.*)

Mr. Doe is anxious, remorseful, and extremely aware of the enormous, painful consequences of his criminal actions for his family.¹ Specifically, his daughter who has her own physical, mental health, and substance abuse challenges. As this Court is aware, those challenges were amplified in May, when Jane was transported to a hospital approximately 90 miles away, where she was diagnosed with liver failure (hepatic necrosis) and Hepatitis C.² Doctors found in her system not only the Tylenol on which she overdosed, but also a host of other illicit or misused substances. (PSR 17, Ex. C.) In what even doctors called a miracle, Jane’s liver function recovered and she did not require a life-saving liver transplant, which the hospital had not wanted to provide anyway based on her documented substance abuse. (PE 17.)

As a parent, Mr. Doe is stricken with anxiety about his daughter’s well-being. (MR 12.) He is devastated that his criminal wrongdoing means that his daughter will be left alone during a most difficult time in her life. His mother – Jane’s grandmother – is supportive, but she is also 75 years old. In her letter to the Court, Mrs. Mary Doe describes Mr. Doe’s conviction as “so much harder for all of [them]” given Jane’s health problems, and how being abandoned by her mother “broke [Jane’s] heart” and made her especially dependant on the love and support her father freely gives.

¹ Mr. Doe’s letter to the Court concerning his offense will be submitted under separate cover. Also, Dr. B considered it “noteworthy that [Mr. Doe] expressed a strong concern about his obligations and accountability to the court” during their sessions. (PE 10.) The counselor Mr. Doe regularly met with while on pretrial release remarked that Mr. Doe is “genuinely contrite.” (MR 12.)

² Portions of Jane’s medical records from _____ Hospital in _____ (pages one through three), _____ Medical Center in _____ (pages four and five), and _____ (page six), are attached as Exhibit C.

There is no limit on the background and character information that this Court can consider in imposing an appropriate sentence for Mr. Doe. 18 U.S.C. § 3661; *see also* § 3553(a)(1). When determining a sentence, no unusual circumstances need exist. *United States v. Castro-Juarez*, 425 F.3d 430, 436 (7th Cir. 2005). In this post-*Booker* realm, all that is necessary to sustain a sentence outside the guideline range is “an adequate statement of the judge’s reasons, consistent with section 3553(a), for thinking the sentence that [s]he has selected is indeed appropriate for the particular defendant.” *Id.* Thus, as even the PSR notes, Mr. Doe’s history of abuse is extremely relevant for purposes of sentencing. (PSR 26.) This Court may also freely consider that Mr. Doe is a good father to a daughter who clearly still needs him. *See e.g., United States v. Pauley*, 511 F.3d 468 (4th Cir. 2007) (affirming 42-month sentence for defendant convicted of possession of child pornography with an advisory guideline range of 78-97 months in part because “besides the criminal conduct at issue, Pauley was a . . . good father”). Likewise, this Court may consider the effect that a lengthy term of incarceration will have on Mr. Doe’s family. *See, e.g., United States v. Lehmann*, 513 F.3d 805 (8th Cir. 2008) (affirming district court’s consideration of family circumstances in § 3553(a) analysis); *United States v. Baker*, 502 F.3d 465 (6th Cir. 2007) (same).

C. Mr. Doe’s mental health

[redacted]

D. Recidivism and future dangerousness

[redacted]

E. Mr. Doe’s need for treatment

[redacted]

Respectfully submitted,