

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA

CASE NO. 5:14 CR 0096

Plaintiff,
vs.

JUDGE JOHN ADAMS

ADOLPH HARPER, Jr.

DEFENDANT ADOLPH
HARPER, JR.
SENTENCING
MEMORANDUM

Defendants.

Defendant Adolph Harper Jr. , through undersigned counsel, submits this Sentencing Memorandum for the Court's consideration and requests a sentence, as calculated and reviewed pursuant to Title 18, United States Code §§ 3553(a) and 3661, that is sufficient but not greater than necessary to achieve the statutory goals of sentencing.

Respectfully submitted,
Eddie M. Sipplen

/s/ E.M.Sipplen
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MEMORANDUM

On March 24, 2014, Adolph Harper, Jr., along with three others, were named in a 134-count Indictment. Adolph Harper, Jr. was named in counts 1 – 83 and 131 -134. On October 20, 2014, Adolph Harper, Jr. pled guilty to twenty-one counts of the 134-count indictment. Count I charged Conspiracy to Distribute Oxycodone, in violation of 21 U.S.C. § 846 and 841(a)(1), 21 U.S.C. § 841(b)(1)(C); Counts 2 – 83 charged Drug Trafficking, in violation of 21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(C); Counts 131 – 134 charged Healthcare Fraud, in violation of 18 U.S.C. § 1347 and 2. Subsequent to his plea, the U.S. Pretrial Services and Probation Office conducted a presentence report on Adolph Harper, Jr., to which he offers no objections. As stated per the U.S. Pretrial Services and Probation Office report, the applicable sentencing range is 108 months to 135 months. This is not greater than necessary based on the facts of the case and Adolph Harper is not asking for a variance.

Adolph Harper, Jr. is 64 years old and is in poor health. Mr. Harper currently is diagnosed with hypertension, diabetes (Type II), coronary artery disease, asthma, sleep apnea, hypercholesterolemia, diabetic neuropathy, peripheral arterial disease, osteoarthritis of knees, benign prostatic hypertrophy, allergic rhinitis, obesity, and gastroesophageal reflux disease. Mr. Harper is scheduled to have a total knee replacement of his left knee in March 2015. He uses a cane to assist in walking. Mr. Harper is taking the following medications: Exforge (10/320mg), Metoprolol Succinate (100mg), Ibuprofen (800mg), Mucinex (600mg), Nexium (400mg), over the counter vitamins and supplements, and uses a Bi-PAP machine to assist in breathing while he sleeps.

Adolph married Joanne Catledge in 1973 in Mississippi. They have four children together. Adolph Harper III (age 40) lives with his parents and has been diagnosed with Schizophrenia and bipolar Disorder. Angela Harper (age 38) is a principal and lives in Copley, OH. Adria Harper (age 35) also lives with Mr. and Mrs. Harper with her two children. Arista Harper (age 33) lives with the Harpers and has been diagnosed with mental retardation and suffers from seizures and requires full time care. The family takes turns watching and taking

care of Arista. The family currently has a negative income and a negative network.

The applicable law affords discretion to the District Court Judge to impose a sentence not greater than necessary to satisfy the statutory purposes of sentencing. District Court Judges have discretion to impose sentences, but sentences should not be greater than necessary to satisfy the statutory purposes of sentencing. See Gall v. United States, 552 US. 38 (2007); Kimbrough v. United States, 552 US. 85 (2007); Rita v. United States, 551 US. 338 (2007); United States v. Booker, 543 US. 220 (2005). Both the Supreme Court and the sentencing statutes instruct District Court Judges to impose the *lowest* sentence that will meet the four purposes of sentencing: justice; deterrence; incapacitation; and rehabilitation. 18 U.S.C. § 3553(a)(2); Kimbrough, 552 US. at 10l. After properly calculating the advisory range under the sentencing guidelines, a factor which serves as only the "starting point," this Court will then consider the relevant 18 U.S.C. § 3553(a) factors and impose a sentence sufficient, but not greater than necessary, to fulfill the purposes of sentencing. Gall, 552 US. at 49. After the Supreme Court's decision in Gall, courts have wide discretion in imposing sentencing. The applicable guideline reads, "No limitation shall be placed on the information concerning the background, character, and conduct of the person convicted of an offense," this Court may "consider for the purposes of imposing an appropriate sentence." 18 U.S.C. § 3661.

In imposing the sentence here, this Court must consider the factors set forth in 18 U.S.C. §3553(a), which include: (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; to afford adequate deterrence to criminal conduct; to protect the public from further crimes of the defendant; and 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 advisory guidelines;(5)any pertinent policy statements issued by the Sentencing Commission;(6)the need to avoid unwarranted sentence disparities; and (7)the need to provide restitution to

any victims of the offense. 18 .S.c. §3553(a).

Application of 18 U.S.C. § 3553(a)'s Sentencing Factors

Adolph Harper, Jr. has no prior history of criminal conduct. He has never been charged with nor arrested in connection with any crime. Aside from the instant offense, Adolph Harper, Jr. has always been a law-abiding citizen. He has remained on bond the entire case and has reported to pretrial release as directed. Adolph Harper, Jr. has accepted fully the responsibility for his actions and the actions of the those in his employ.

Conclusion

For the above reasons, Adolph Harper, Jr. respectfully requests a sentence at the lower end of the range and not the maximum as argued by the government. Mr. Harper's suggested sentence is within the applicable advisory guideline range, which is "sufficient but not greater than necessary" to achieve the statutory purposes of punishment, as required by 18 U.S.C. § 3553(a).

Respectfully submitted,

Eddie M. Sipplen

/s/ E.M.Sipplen

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CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2015 a copy of the foregoing Defendant Adolph Harper, Jr. Sentencing Memorandum was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic receipt.