

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 23CR80154

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GREGORY SCOTT KEOUGH,

Defendant.

SENTENCING MEMORANDUM IN SUPPORT OF REQUEST FOR VARIANCE

COMES NOW the Defendant, GREGORY SCOTT KEOUGH (hereinafter “KEOUGH”), by and through undersigned counsel, David J. Joffe and Patrick R. McKamey, pursuant to the Local Rules for the Southern District of Florida and the Federal Rules of Criminal Procedure, and would hereby file this his Sentencing Memorandum, in which it is requested that this Court impose a sentence “sufficient, but not greater than necessary” in order to achieve individual accountability and just punishment. *See generally, United States v. Irey*, 612 F.3d 1160 (11th Cir. 2010). For the reasons argued herein, KEOUGH and counsel submit that a variance from the proposed guideline sentence should be ordered and that a sentence below the advisory guideline range is sufficient, but not greater than necessary to achieve the sentencing objectives of Title 18, United States Code, Section 3553(a).

As a threshold matter, KEOUGH continues to fully and completely accept responsibility for his offense conduct. The Court should consider a sentence appropriate to reflect KEOUGH’S willingness to cooperate, the cooperation he has already provided, his lack of criminal history, and his personal history.

The request for a variance is as a result of detailed discussions with KEOUGH who has provided relevant input into said request. KEOUGH'S request for a variance is as follows:

VARIANCE SENTENCE

A “variance” occurs when a judge imposes a sentence that is below or above the otherwise properly calculated final sentencing range based on application of the other statutory factors enumerated in 18 U.S.C. 3553(a). *United States v. Rangel*, 697 F.3d 795 (9th Cir. 2012). KEOUGH'S request for a variance comports with the sentencing procedures that have evolved since the Supreme Court's decisions in *United States v. Booker*, 543 U.S. 220, 125 S.Ct. 738 (2005), and *Gall v. United States*, 552 U.S. 38, 128 S.Ct. 586 (2007). *See, United States v. Livesay*, 525 F.3d 1081, 1089-90 (11th Cir. 2008) (summarizing current sentencing procedures in Eleventh Circuit).

The Sentencing Court must properly determine the guideline range, then the Court must determine whether to apply any of the guidelines' departure policy statements to adjust the guideline range and finally the court must consider all of the factors set forth in 18 U.S.C. 3553(a) as a whole, including whether a variance is warranted. *Gall v. United States* 552 US 38,, 128 S.Ct. at 596-97 (2007); *See, United States v. Livesay*, 525 F.3d 1081, 1089-90 (11th Cir. 2008); . After “consult[ing] and correctly determine[ing] the sentencing range prescribed by the Sentencing Guidelines ... [t]he court must then impose a reasonable sentence in light of the factors enumerated in 18 U.S.C. 3553(a).” *United States v. McBride*, 511 F.3d 1293 (11th Cir 2007). Among the factors which the sentencing Court “shall consider” under Section 3553(a)(1) are “the nature and circumstances of the offense and the history and characteristics of the defendant” and under (a)(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 education or vocational training, medical care, or other correctional treatment in the most effective manner”.

The sentencing Court “shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth” in Section 3553(a)(2)(A)-(D). *See, e.g., United States v. McBride*, 511 F.3d 1293, 1296-97 (11th Cir. 2007). The Court “**may not presume that the [advisory] guidelines range is reasonable**”. *Gall*, 128 S.Ct. at 596-97 (emphasis added); *see also, United States v. Campbell*, 491 F.3d 1306, 1313-1314 (11th Cir. 2007) (“We do not in this Circuit presume reasonable a sentence within the properly calculated guidelines range”). Thus, after making an “individualized assessment” of the Section 3553(a) factors based on the facts presented, the sentencing Court has the power to grant a variance from the advisory guidelines range to whatever extent the Court deems warranted by the facts of each defendant. *Gall*, 128 S.Ct. at 595-97; *Livesay*, 525 F.3d at 1090; *McBride*, 511 F.3d at 1297-98.

Here, the strict application of the advisory sentencing guidelines produces a sentence greater than necessary for punishment under Section 3553(a). This Court must consider KEOUGH’S individual history, *i.e.*, his lack of prior criminal history, the accommodations he received while serving our government, his medical history regarding PTSD, the fact that he was cooperative and has agreed to fully assist the agents in their investigation, and that he pled guilty to Counts 4, 5 and 8 of the Indictment. The fact that KEOUGH pled guilty support a sentence beneath the advisory guidelines range for the offense conduct in this case and supports a sentence of supervised release and/or probation with no prison time for a term of not less than one year and no more than five years pursuant to 18 U.S.C. §3561(c)(1). The statutory factors set forth in Section 3553(a) weigh strongly in favor of a sentence outside of and below the

advisory sentencing guidelines, i.e., supervised release and/or probation without any prison time. Where circumstances warrant, the District Courts can impose a sentence that varies downward significantly from the advisory guidelines range and the Appellate Court will affirm such sentences as reasonable. *Kimbrough v. United States*, 552 U.S. 85, 128 S.Ct. 558 (2007). As set out below, each of the applicable sentencing factors set forth in Section 3553(a) amply justify a variance from the advisory guideline sentence.

A Sentencing Court may in fact consider factors under the broader Title 18, United States Code, Section 3553(a), even though the same factors might be prohibited or discouraged under the guidelines. Under the factors as set forth in Section 3553(a), undersigned counsel respectfully submits that a variance sentence is appropriate for KEOUGH, considering his lack of criminal history, the fact that he was cooperative and the fact that KEOUGH was employed by the United States Central intelligence Agency as a covert employee and during his employment he received the CIA Intelligence Star which is an award given to officers “for a voluntary act or acts of courage performed under hazardous condition or for outstanding achievements or services rendered with distinction under conditions of grave risk” (PSI:98) and that he pled guilty to Counts 4, 5 and 8 of the Indictment. The Intelligence Star is one of the rarest and highest valor awards awarded by the US government. There have only been 140 Intelligence Stars awarded, compared to the congressional medal of honor, in which 3,520 have been handed out to military service members. In fact, most Intelligence Stars are awarded posthumously, which makes Mr. Keough one of only a few dozen still living, and who received this award. As described by fellow CIA officers Charlie Gilbert and Don Pepper in their character letters, Mr. Keough's actions on July 19, 1992, demonstrated bravery and selflessness related to saving the lives of his colleagues and demonstrating true heroism. Section 3553(a) directs the Court to impose a

sentence sufficient, but not greater than necessary based upon the statutory objectives and relevant factors. A variance is further supported by Title 18, United States Code, Section 3582, which provides:

(a) Factors To Be Considered in Imposing a Term of Imprisonment.— The court, in determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term, shall consider the factors set forth in section 3553(a) to the extent that they are applicable, recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation....

The post-*Booker* reinstatement of judicial discretion requires the Court to consider the personal background of the offender as well as the offense itself. This is particularly important in this case as the facts of this case and KEOUGH’S personal dynamics are important in considering the proper sentence, i.e., his lack of criminal history, him suffering from PTSD and receiving the CIA Intelligence Star which is an award given to officers “for a voluntary act or acts of courage performed under hazardous condition or for outstanding achievements or services rendered with distinction under conditions of grave risk”. (PSI:98)

(1) The Nature and Circumstances of the Offense and the History and Characteristics of the Defendant. Title 18, United States Code, Section 3553(a)(1).

Now that the guidelines are advisory only, they are simply “one sentencing factor among many”. *United States v. Reinhart*, 442 F.3d 857, 864 (5th Cir. 2006). The Court should look past the four corners of the offense conduct portion of the Presentence Investigation Report to assure the proper sentence is given. Accordingly, the Court has full discretion to sentence below the advisory guideline range as long as the resulting sentence is reasonable. Therefore, based on the fact that KEOUGH has no prior criminal history, was cooperative and accepted full responsibility for his actions, the fact that he received the CIA Intelligence Star which is an award given to officers “for a voluntary act or acts of courage performed under hazardous

condition or for outstanding achievements or services rendered with distinction under conditions of grave risk” (PSI:98) and the fact that KEOUGH pled guilty to Counts 4, 5 and 8 of the Indictment, the Court should grant his request.

Not only is Mr. Keough not a future threat in any way to his community, but he has also demonstrated a long-standing dedication to charitable giving, both in Palm Beach County as well as down in El Salvador where his family currently resides. He has spearheaded efforts to provide the underprivileged in Belle Glade as well as El Salvador, food at gifts during the holidays. That is simply who Mr. Keough is. Charitable giving is in his DNA, and he will continue to give back to any community in which he resides after this case is resolved.

In addition, KEOUGH is entitled to a variance since his criminal history category is I, the fact that he accepted responsibility and reaffirmed his participation. Also, the fact that KEOUGH is not a threat to the community entitles KEOUGH to a sentence at the low end of the guideline with a variance. See generally, *United States v. Whitehead*, 532 F.3d 991 (9th Cir. 2008).

Furthermore, as pointed out throughout the PSR, KEOUGH has returned funds on his own and has voluntarily liquidated his assets to pay back the monies owed the SEC. (PSR:52). Also, KEOUGH has filed various character letters and recommendations that support KEOUGH’S request for a variance due to his character and past accomplishments.

(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 Training or Services. Title 18, United States Code, Section 3553(a)(2)(A)-(D).*

Imprisonment is clearly not warranted in this case considering that pursuant to 18 U.S.C. §3561(c)(1) probation is authorized for a term of not less than one year and no more than five years. Probation and/or home detention or a similar mechanism would reflect the seriousness of this offense and would promote respect for the law and provide just punishment, especially considering KEOUGH has no criminal history, he was cooperative, he received the CIA Intelligence Star which is an award given to officers “for a voluntary act or acts of courage performed under hazardous condition or for outstanding achievements or services rendered with distinction under conditions of grave risk” (PSI:98) and the fact that KEOUGH pled guilty to Counts 4, 5 and 8 of the Indictment. Based on the above facts, KEOUGH should be given a substantial variance to his guideline sentence.

Accordingly, a sentence at the low end of the properly calculated guideline, with a variance is sufficient to provide just punishment for KEOUGH, to protect the public from further crimes of the defendant and promote respect for the law.

(3) *The Kinds of Sentences Available. Title 18, United States Code, Section 3553(a)(3).*

Section 3553(a) expressly dictates that the Court shall impose a sentence sufficient, *but not greater than necessary*. *United States v. Irej*, 612 F.3d 1160 (11th Cir. 2010). Here, the Court is in a position to fashion a sentence that would punish KEOUGH, protect the public and deter others by restricting his freedom. Under *Gall, supra*, the sentencing guidelines and policy statements are but one factor among all of the other Section 3553(a) factors. Moreover, in order to impose a sentence that is procedurally reasonable, this Court must treat the guidelines as advisory and not mandatory and consider the guidelines among all of the statutory factors set forth in Section 3553(a). As noted herein, in fashioning a sentence that is substantially reasonable, this Court has considerable discretion as to the weight it decides to give each of the

Section 3553(a) factors and the guideline sentence itself. Accordingly, a sentence other than imprisonment is warranted based on KEOUGH'S lack of criminal history, his cooperation, him accepting responsibility for his involvement, he received the CIA Intelligence Star which is an award given to officers "for a voluntary act or acts of courage performed under hazardous condition or for outstanding achievements or services rendered with distinction under conditions of grave risk" (PSI:98) and he is clearly not a threat to the community as he pled guilty to a non-violent crime. Furthermore, 18 U.S.C. §3561(c)(1) authorizes a sentence other than imprisonment.

(4) The Kinds of Sentence and Sentencing Range Established by the Sentencing Guidelines and Pertinent Policy Statements. Title 18, United States Code, Section 3553(a)(4).

KEOUGH'S request for a downward variance would make his sentence more in keeping with the policy statements of Title 18, United States Code, Section 3553(a). Said request is again supported by the fact that KEOUGH has no criminal history, his cooperation, him accepting responsibility for his involvement and that he is clearly not a threat to the community as he pled guilty to a non-violent crime.

(5) The Need to Avoid Unwarranted Sentence Disparities Among Defendants with Similar Records Who Have Been Found Guilty of Similar Conduct. Title 18, United States Code, Section 3553(a)(5).

Although the primary purpose of the Sentencing Reform Act was to "reduce unwarranted sentencing disparities", the guideline regime has led to variants of disparity never contemplated by its drafters. Sentencing is driven in part by the applicable guidelines, the statutory sentencing factors and individual judicial discretion. KEOUGH is a defendant whose offense behavior requires the Court to consider a multitude of mitigating factors including his status, personal

background and other mitigating circumstances argued herein that in fact support a downward variance.

(6) *The Need to Provide Restitution to Any Victims of the Offense. Title 18, United States Code, Section 3553(a)(6).*

KEOUGH has already paid his responsibility for restitution without the need for any further litigation regarding same.

Conclusion

KEOUGH does not minimize the seriousness of the offense he committed. As such, the “totality of circumstances” requires the proper exercise of *Booker* discretion in favor of granting KEOUGH’S request for a variance.

The Presentence Investigation Report’s advisory guideline range of 41 to 51 months imprisonment is both inequitable and unreasonable given the facts in the case *sub judice*. This Court must take into consideration’ KEOUGH’S arguments made herein and in his Objections to Presentence Investigation Report and make an individualized assessment of KEOUGH, which warrants a substantial variance.

Mercy and compassion are a part of justice. “A country which is secure in its institutions, confident in its laws should not be ashamed of the concept of mercy.” Justice Kennedy, ABA speech 2003. Punishment should not be more severe than that necessary to satisfy the goals of punishment. *United States v. Carvajal*, 2005 WL 476125 (S.D. N.Y. 2005). A judge must sentence “without ever being indifferent to defendant’s plea for compassion, for compassion also is a component of justice”. *United States v. Kloda*, 133 F.Supp.2d 345 (S.D. N.Y. 2001).

Accordingly, this Honorable Court is respectfully urged to consider the facts and circumstances of this case against the backdrop of Title 18, United States Code, Section 3553(a), and fashion a sentence that is not “greater than necessary”.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 6, 2024, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

Respectfully submitted,
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