

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA CASE NO.: 2:22-CR-39-SPC-NPM

vs.

DANIEL JOSEPH TISONE
_____ /

**DEFENDANT’S MOTION FOR DOWNWARD DEPARTURE FROM
CRIMINAL HISTORY CATEGORY III**

The defendant, Daniel Joseph Tisone, by and through undersigned counsel, files this Motion for Downward Departure from Criminal History Category III and avers the following:

1. This matter is currently set for sentencing on January 30, 2023 at 9:30 am.
2. The Presentence Investigation Report (PSI) asserts that Mr. Tisone’s criminal history category is a level III.
3. Undersigned maintains that Mr. Tisone’s criminal history category overstates his propensity to commit crimes and significantly over-represents the seriousness of defendant’s criminal history.
4. In the PSI, the first criminal history point assessed is for the charge of possession of a controlled substance committed in 2005 when Mr. Tisone was merely 18 years old. He is currently 35 years old. While he pled guilty to the charge in 2006, he wasn’t adjudicated of the offense until 2012 because of his incarceration on an unrelated case.
5. In 2006, he was convicted of attempted robbery and assault charges when he was just 19 years old. He served six years in prison and five years of probation. As a result of those convictions, he received three points towards his criminal history level.
6. Had Mr. Tisone’s adjudication for the 2005 possession of a controlled substance offense not been delayed until 2012, seven years after the

offense was committed, his three level increase for the 2006 attempted robbery/assault charges would not have been scored under the guidelines. Instead, he would be in category I.

7. As the PSI correctly reveals, other than the instant case, since 2006, Mr. Tisone has not committed any new law violations.
8. Undersigned respectfully requests that this Court grant this instant motion for a downward departure, finding that Mr. Tisone's criminal history overstates his propensity to commit crimes. Additionally, Mr. Tisone's criminal history category significantly over-represents the seriousness of his criminal history. See:

U.S. v. Brown, 985 F.2d 478, 482 (9th Cir. 1993); U.S. v. Cuevas-Gomez, 61 F.3d 749 (9th Cir. 1995); U.S. v. Fletcher, 15 F.3d 553, 557 (6th Cir. 1994); U.S. v. Shoupe, 988 F.2d 440, 447 (3d Cir. 1993).

9. Undersigned is requesting that the Court consider Mr. Tisone in criminal history category I. Alternatively, undersigned is requesting that the Court reduce his level to category II.

WHEREFORE, based upon the above and foregoing, the Defendant respectfully requests this Court to grant the instant motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via CM/ECF to: United States Attorney's Office, AUSA Trenton Reichling and Probation Officer Nick Stevens, this 9th day of January, 2023.

Respectfully submitted,
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