

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CASE NO. 21-60171-CR-SMITH

CINDI ELLIS DENTON,

Defendant.

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**MOTION FOR A DOWNWARD VARIANCE**

Defendant, CINDI ELLIS DENTON, by and through her undersigned counsel, pursuant to Title 18 U.S.C. Section 3553(a), respectfully moves this Honorable Court to grant a downward variance from the Sentencing Guidelines range and as grounds for therefore states as follows:

1. There are objections [DE: 38] to the Presentence Investigation Report (PSR). Defendant's position is that the advisory sentencing guidelines are a total offense level of 12 and a criminal history category of I. The guideline imprisonment range is 10 to 16 months imprisonment, in Zone C of the Sentencing Table. This motion/request is for a downward variance from the advisory Sentencing Guidelines which was initially requested with the objections to the PSR [DE: 38].

2. In United States v. Booker, 543 U.S. 220, 125 S. Ct. 738, (2005), the Supreme Court held that the Sentencing Guidelines are advisory only, not mandatory. "The district courts, while not bound to apply the Guidelines, must consult those Guidelines and take them into account when sentencing." Id. at 245, 125 S. Ct. at 767.

After this Court calculates the Guidelines range, it may impose a more severe or more lenient sentence as long as the sentence is reasonable. Id. at 245, 125 S. Ct. at 767.

3. Post Booker, the Section 3553(a) factors must be considered in determining a sentence. In determining the sentence minimally sufficient to comply with the Section 3553(a)(2) purposes of sentencing, the court must consider several factors listed in Section 3553(a). These are (1) “the nature and circumstances of the offense and the history and characteristics of the defendant;” (2) “the kinds of sentence available;” (3) the guidelines and policy statements issued by the Sentencing Commission, including the (now non-mandatory) guideline range; (4) the need to avoid unwarranted sentencing disparity; and (5) the need to provide restitution where applicable. 18 U.S.C. Section 3553 (a)(1), (a)(3), (a)(5)-(7).

4. Cindi Ellis Denton is a 63 year old first time offender. She suffers from a variety of medical infirmities which has included a stroke that place her at risk if incarcerated. See paragraphs 73-77 of the PSR.

5. Ms. Denton is the person responsible (i.e., guardian and caretaker) for the care of two (2) minor children with special needs. She also home schools them. See paragraphs 66, 69 & 70 of the PSR.

6. Ms. Denton is truly sorry and remorseful for her actions. See paragraph 43 of the PSR.

7. Defendant seeks a downward variance based on Defendant being a first time offender, her medical conditions, her family circumstances, her mitigating minimal role, her aberrant behavior, how she is extremely susceptible to the Covad-19 Delta Variant, how the deadly virus affects the prisons and the safety of inmates in confined conditions, and the unlikelihood of recidivism on the part of Ms. Denton.

8. Based on the above factors, this Court can give Ms. Denton a downward variance to a sufficient sentence that is both procedurally and substantively reasonable. This would be a fair and just sentence that achieves the sentencing objectives of Section 3553 (a).

9. Ms. Denton will provide further detail/explanation in a Sentencing Memorandum.

WHEREFORE, for the foregoing reasons Defendant, CINDI ELLIS DENTON, respectfully requests that this Honorable Court grant a downward variance from the Sentencing Guidelines range.

#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this 25<sup>th</sup> day of September, 2021, on all counsel of

record either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

Respectfully submitted,

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