

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

CASE NO.: 2:23-CR-00013-TPB-NPM

UNITED STATES OF AMERICA

Plaintiff,

vs.

AL CLINT LAROCHE,

Defendant.

_____ /

REQUEST FOR AN ALTERNATIVE SENTENCE/VARIANCE

The Defendant, AL CLINT LAROCHE, by and through his undersigned counsel, and pursuant to U.S.S.G. § 6A1.2-3, p.s., Fed. R. Crim. P. 32 (d), (e)(2) and (f), and the Fifth and Sixth Amendments to the *United States Constitution*, respectfully files his Request for an Alternative Sentence/Variance, and as grounds thereof, states as follows:

I. INTRODUCTION:

Al Clint Laroche has pled guilty to two counts of Bank Fraud, 18 USC § 1344 and 2, and sentencing is pending. His acceptance of responsibility, cooperation, and profound remorse in this case were immediate. Mr. Laroche waived prosecution by Indictment and consented to an Information rather than an Indictment. He has signed both a written Plea Agreement and Factual Proffer.

Mr. Laroche is 43 years old, and currently lives in West Palm Beach with his wife and three children. His criminal history point total is zero which then gives him a criminal History Category of 1.

Pursuant to *U.S. v. Booker*, 543 U.S. 220 (2005), the federal sentencing process has adopted a three step approach. (See Fed. R. Crim. P. 11(M), amended December 1, 2007, *U.S. v. Pugh*, 515 F. 3d 1179 (11th Cir. 2008) and Amendment 741 of the Sentencing Guidelines, effective November 1, 2010. There are currently disputed guideline issues that must be determined by the Court which will have a substantial effect on Mr. Laroche's final base offense level. Mr. Laroche's current base offense level is 23. However, if the Court agrees with the pending objections to the PSI, the new base offence level could be 16.

Second, the Court is to consider if there are any factors that may warrant and departure from the *advisory* guideline range. The Government has not filed a substantial assistance motion on behalf of Al Clint Laroche. However, the Defendant would like the Court to take into account the fact that the Defendant did willing agree to cooperate with the Government and was actually debriefed during the pendency of this case. The Defendant immediately provided truthful information to the Government.

Lastly, the Court should consider all of the sentencing factors of 18 USC § 3553(a) and impose a sentence which is *reasonable and not greater than necessary*

to achieve the sentencing objective set forth in 18 USC § 3553(a). This is consistent with the written Plea Agreement, “if the Government files a motion for sentence reduction pursuant to § 5K.1.1, or pursuant to Fed. R. Crim. P. 35, then each party can ask the Court to impose any reasonable sentence, based upon the factors contained in 18 USC § 3553(a).” The Defendant is aware that the Government did not file a 5K1.1 letter in this case, but the Defendant submits there are factors worthy of this Court’s consideration.

II. SENTENCING SUBMISSION AND REQUEST FOR ALTERNATIVE SENTENCE:

Al Clint Laroche has pleaded guilty to two counts of Bank Fraud, in violation of 18 USC § 1344 and 2. The total offense level is currently 23, the *advisory* guideline range is 46 to 57 months. The Government will recommend a low-end sentence.

Nature and Circumstances of Offense:

1. **Factual Proffer:** Both the written Plea Agreement and Factual Proffer in this case were signed by the parties on January 30, 2023. Al Clint Laroche has filed objections to the PSI that have not been ruled on by the Court.

2. **Speedy Resolution of Criminal Liability:** Al Clint Laroche’s acceptance of responsibility for his involvement in this case, his cooperation with the Government, and his profound remorse were all immediate. He has signed both

a written Plea Agreement and Factual Proffer and has pled guilty. Mr. Laroche has done all he can to quickly resolve his criminal liability in this case.

History and Characteristics of Defendant:

1. **Mr. Laroche's Personal and Family History:** Mr. Laroche is a 43-year-old who has lived with his wife and children in Florida since 2012. Mr. Laroche's 14-year-old daughter suffers from Tourette's Syndrome and ADHD. His 10-year-old son was born with only one kidney. Mr. Laroche provides the main support for his family and is also responsible for the maintaining of Health Insurance, and for the care of his children. All three children live at home and are both financially and emotionally dependent on their Father.

Mr. Laroche has been on and off self-employed as a music engineer executive. He produced albums, ran artist's social media accounts, and has been involved in artist development. Mr. Laroche's life ambition has been to be involved in the music business, and it was this desire to succeed in this line of work which led to his involvement in this case. Mr. Laroche initially approached Daniel Tisone because he wanted his credit repaired so he could attempt to get loans to make improvements at his music studio. After he was recruited by Mr. Tisone to participate in this bank fraud scheme, Mr. Laroche used a large sum of this PIP money to make improvements to his music studio, which he has since had to surrender back to the landlord.

Mr. Laroche has stated that he is addicted to marijuana and uses it to manage the pain he suffers from because of knee surgery, diverticulitis, vertigo, and a severed left thumb. This Court can take into consideration when determining a fair and just sentence in this case, the Defendant's physical health. The Sentencing guidelines, 5H1.4, allow the Court to take into consideration the Defendant's physical condition in determining if a downward departure is warranted.

2. Al Clint Laroche's **Extraordinary Family Ties and Responsibilities**: Al is the main source of income for the family. He is the only parent currently working in the family, while his wife takes care of the home schooling and medical needs for two of the three children. His absence would cause great harm to the family if he were absent any length of time.

Effective October 27, 2003, the Sentencing Commission amended § 5H1.6 to limit the availability of departures for family ties and responsibilities. The new application note, § 5H1.6, comment. (n.1(A)(i)-(iii), instructs the court to consider the seriousness of the offense, the defendant's involvement in that offense, and the members of the defendant's family. Further, comment. (n.1(B)(i)-(iv) requires the court to consider if "the defendant's service of a sentence within the guideline range will cause a substantial loss of essential care-taking or essential financial support to his family," that "the loss of care-taking or financial support exceeds the harm ordinarily incident to incarceration for a similarly situated defendant," that

“the loss of care-taking or financial support is one in which no effective remedial or ameliorative programs reasonably are available,” and that “the departure will effectively address the loss of care-taking or financial support.” Notwithstanding this pre-Booker amendment, Mr. Laroche requests that this Court consider his family ties and responsibilities as a § 3553 sentencing factor, again consistent with the terms of the written Plea Agreement.

Courts have addressed the issue of incarcerating parents of very young children and much has been written on the subject.

- “Children with fathers who have been incarcerated are significantly more likely than other children to be expelled or suspended from school (23% compared to 4%). Pew Charitable Trusts Report “Collateral Costs: Incarceration’s Effect on Economic Mobility” (2010) at page 5. “Incarceration also creates economic aftershocks for these children and their families disrupted, destabilized, and deprived of a wage-earner, families with an incarcerated parent are likely to experience a decline in household income as well as an increase likely of poverty. The struggle to maintain ties with a family member confined in an often-distant prison creates additional financial hardship for already fragile families left behind.” Id. At page 18.

- “Parental incarceration contributes to higher rates of delinquency, mental illness, and drug abuse, and reduces level of school success and later employment among children.” Unlocking America, Why and How to Reduce America's Prison Population (JFA Institute, November 2007) at page 32.

Courts have responded.

- *U.S. v. Hammond*, 37 F. Supp. 2d 204 (E.D.N.Y. 1999), “a sentence without a downward departure would contribute to the needless suffering of young, innocent children.”
- *U.S. v. DeRoover*, 36 F. Supp. 2d 531, 532-33 (E.D.N.Y. 1999), “the unique dependence of children on a defendant is a basis for a downward departure.”
- *U.S. v. Chambers*, 885 F. Supp. 12, 14 (D.D.C. 1995), “causing needless suffering of young innocent children does not promote the ends of justice.”
- *U.S. v. Johnson*, 964 F. 2d 124, 128-130 (2d Cir. 1992), “we are reluctant to wreak extraordinary destruction on dependents who rely solely on the defendant for their upbringing.”

As stated above, Mr. Laroche has three minor children who need the support, both financially and emotionally of his Father. Based on his extraordinary

family responsibilities this Court should fashion a sentence consistent with the agreement between the parties.

Latest Sentencing Statistics:

The United States Sentencing Commission's "Sourcebook" of Federal Sentencing Statistics for fiscal year 2017 provides statistics for 66,873 cases sentenced that year. Specifically, as to 2,282 cases sentenced in the Southern District of Florida last year, 42.9% received sentences below the *advisory* guideline range: 8.7% because of substantial assistance motions and 29.7% almost four times the number of Government sponsored motions, because of the sentencing factors of 18 USC § 3553. Nationally, the nature and circumstances of the offense and/or history and characteristics of the defendant were cited as reasons for downward variance in 6,930 cases. Indeed, district courts continue to exercise discretion, post-*Booker*, and impose sentences below *advisory* guideline range.

In the case at bar, Mr. Laroche is requesting that this Court grant a variance and sentence the Defendant to either a short term of incarceration or a term of probation with the added condition of a term of Home Detention.

Conclusion:

Based upon the facts and factors set forth in this filing, Al Clint Laroche respectfully requests this Court to impose a sentence below the *advisory* guideline range, consistent with the agreement of the parties.

Mr. Laroche and counsel thank this Court for considering our Request for an Alternative Sentence. Counsel will have further remarks at the time of sentencing.

Respectfully submitted,

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/s/ Glenn H. Mitchell

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2023, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record 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.

/s/ Glenn H. Mitchell

By: _____

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