

Billy McBride (#12345)
Altorem Legal Services, PLLC
123 S Legal Aid St.
Salt Lake City, Utah 84111
Phone Number: (801) 855-6541
Facsimile: (801) 234-5678
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, STATE OF UTAH, SALT LAKE CITY

THE STATE OF UTAH,

Plaintiff,

vs.

GOOD CLIENT,

Defendant.

FEDERAL SENTENCING MEMORANDUM

Case No. 123456789

Judge: Good Judge

This memorandum is prepared and submitted by counsel for Defendant, Good Client, to aid the Court in the sentencing of Defendant. It is believed that the probation's recommended guideline calculations are appropriate, but that—in consideration of Defendant meeting the criteria set forth in 18 U.S.C. §§ 3553(f)(1)-(5)—a sentence of probation is sufficient to accomplish the objectives of 18 U.S.C. § 3553(a). Indeed, given the circumstances described hereinbelow, a sentence of probation would be “sufficient, but not greater than necessary” to comply with the goals of sentencing set forth in 18 U.S.C. § 3553(a)(2).

I. DEFENDANT MEETS THE CRITERIA SET FORTH IN 18 U.S.C. §§ 3553(f)(1)-(5)

Defendant was fully cooperative with law enforcement, took full responsibility for his crime, and wholeheartedly regrets having committed the crime. Defendant's good conduct during the arrest, after the arrest, and while in police custody in general was such that he meets the criteria set forth in 18 U.S.C. §§ 3553(f)(1)-(5), which provide that “[n]otwithstanding any provision of

law . . . , the court shall impose a sentence pursuant to guidelines promulgated by the United States Sentencing Commission . . . without regard to any statutory minimum sentence, if the court finds at sentencing . . . that”:

1. “the defendant does not have more than 4 criminal history points, excluding any criminal history points resulting from a 1-point offense, as determined under the sentencing guidelines; a prior 3-point offense, as determined under the sentencing guidelines; and a prior 2-point violent offense, as determined under the sentencing guidelines;
2. “the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;
3. “the offense did not result in death or serious bodily injury to any person;
4. “the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in section 408 of the Controlled Substances Act; and
5. “not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.”

A. Defendant Does Not Have More Than Four Criminal History Points.

As was stated in the Probation Officer's Presentence Investigation Report, ¶¶ 30 – 31, "[t]he criminal convictions . . . result in a subtotal criminal history score of zero." Indeed, Defendant has no criminal history, and so the requirement of 18 U.S.C. § 3553(f)(1) is satisfied.

B. Defendant Did Not Use Violence.

Defendant did not use violence against the arresting officer or any other person when he was arrested on April 7, 2018. In fact, Defendant took full responsibility for his actions and cooperated with law enforcement to the fullest extent. Therefore, the requirement of 18 U.S.C. § 3553(f)(2) is satisfied.

C. The Offense Did Not Result in Death or Bodily Injury to Any Person.

As was stated in the Probation Officer's Presentence Investigation Report, ¶ 12, "[t]here are no identifiable victims in this offense." Therefore, the requirement of 18 U.S.C. § 3553(f)(3) is satisfied.

D. Defendant Was Not an Organizer, Leader, Manager, or Supervisor of Others in the Offense.

During Defendant's interview with the probation officer, Defendant admitted to the offense and stated, among other things, that he "was going to be paid by another person for [his] work in delivering the drugs."¹ Furthermore, Defendant "stated [that] a friend named Felix Efrain was the one who got him involved with transporting the drugs." Reason compels the clear conclusion, therefore, that Defendant was *not* an organizer, leader, manager, or supervisor of others in the

¹ Probation Officer's Presentence Investigation Report, at ¶ 14.

offense; Defendant was simply there to transport the drugs and he had no part in the planning of the offense otherwise. Therefore, the requirement of 18 U.S.C. § 3553(f)(4) is satisfied.

E. Defendant Has Truthfully Provided to the Government All Information and Evidence Defendant Has Concerning the Offense.

Defendant's probation officer has no information indicating that Defendant impeded or obstructed justice.² Not only did Defendant not impede or obstruct justice, but Defendant named the friend who got him involved with transporting the drugs. Defendant has assisted authorities in the investigation or prosecution of Defendant's own misconduct by timely notifying authorities of his intention to enter a plea of guilty.³ Therefore, the requirement of 18 U.S.C. § 3553(f)(5) is satisfied.

II. IN DETERMINING A SENTENCE, THE COURT SHOULD CONSIDER THE GUIDELINES AND FACTORS LAID OUT IN 18 U.S.C. § 3553(a)

Beyond what may be permissible under the Guidelines, "the history and characteristics of the defendant,"⁴ and the other factors set forth in 18 U.S.C. § 3553(a)(2) support a sentence of probation. In *United States v. Hunt*,⁵ the court summarized the factors that must be considered, which are:

1. the nature and circumstances of the offense and the history and characteristics of the defendant;
2. the need for the sentence imposed-

² *Id.* at ¶ 13.

³ *Id.* at ¶ 24.

⁴ 18 U.S.C. § 3553(a).

⁵ 459 F.3d 1180, 1182 (11th Cir. 2006).

- 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 educational or vocational training, medical care, or other correctional treatment in the most effective manner;
3. the kinds of sentences available;
 4. the kinds of sentence and the sentencing range established . . .;
 5. any pertinent [Sentencing Commission] policy statement . . .;
 6. the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
 7. the need to provide restitution to any victims of the offense.

As recognized in *Hunt*, there has been a continuing debate among the courts as to how much weight should be given to one of the listed factors, the Sentencing Guidelines.⁶ In the decision, the court rejected “any across-the-board prescription regarding the appropriate deference to give the guidelines.”⁷ Rather, a “district court may determine, on a case-by-case basis, the weight to give the Guidelines, so long as that determination is made with reference to the remaining section 3553(a) factors that the court must also consider in calculating the defendant’s sentence.”⁸

⁶ *Id.* at 1183 – 1184.

⁷ *Id.*

⁸ *Id.* at 1185.

Factors such as Defendant's non-existent prior criminal record, his minor participation in any criminal activity, acceptance of responsibility, his familial support, and the fact that this is a victimless crime, are all part of the history and characteristics of Defendant that must be considered. Defendant is happily married with children, he has a close relationship with his parents and siblings, and stated they are all "disappointed in him for his action regarding the instant offense."⁹ These characteristics, of course, need to be balanced against the circumstances of the offense. Defendant recognizes that the circumstances of his case work against him. He had a considerable amount of methamphetamine in the car, knew it was in the car, and had intentions of delivering the drugs to another person for money. Defendant got involved with transporting the drugs when meeting a friend, he worked with in Las Vegas. Defendant intended to use the money to help take care of his wife and children. Defendant takes full responsibility for his actions.¹⁰ Other factors to recognize include that this was not a violent crime, there were no victims, it is Defendant's first offense, and, while in the course of the investigation, Defendant gave authorities all of the information he had.

Looking at *United States v. Mendez-Valerde*,¹¹ the Supreme Court ruled that "the punishment that is set forth in the guidelines is not appropriate for this sort of offense." In *Mendez-Valerde*, Mr. Mendez-Valerde, had only been selling drugs for 15 days, and was found to be selling methamphetamine out of a small lockbox at a motel. Also contained in the small lockbox was a gun. Mr. Mendez-Valerde claimed he did not pack the lock box but knew it contained drugs, was

⁹ Probation Officer's Presentence Investigation Report, at ¶ 36.

¹⁰ *Id.* at ¶ 14.

¹¹ 798 F.Supp.2d 1249 (Dist. N.M. July 14, 2011).

unaware of the gun, and it was found that the gun was not loaded. He was originally sentenced to 120 months imprisonment and appealed that decision. Factors the Supreme Court considered in opposing a new sentence for Mr. Mendez-Valerde included that he was a young man, was married, and had three children. He was new to the drug trade, had no criminal history, and played a rather insignificant role. He did not appear to have much control over the quantity of drugs he received and was caught quickly and easily by authorities, which would likely deter him from attempting to traffic drugs in the future. The Court considered all the kinds of sentences and range the Guidelines establish, and the Court believed that a variance was appropriate in that case. The Court, giving minimal to no consideration to the guidelines, sentenced Mr. Mendez-Valerde to 40 months imprisonment.

The circumstances around *United States v. Mendez-Valerde* and the case at hand are similar: Defendant is married with three children, he was new to drug trafficking, he has no prior criminal history, he did not have control over the amount of drugs he was given, and he was caught quickly and easily. A notable difference between the cases is that, in the present case, Defendant, Mr. Client, was not in possession of a gun. A weapon does increase the severity of the crime. The Defendant did not have a weapon, was not violent, and did not use a weapon in the act of his crime. Thus, the circumstances presented in Defendant's case justify a departure from the Sentencing Guidelines even more so than in *United States v. Mendez-Valerde*.

III. THE GUIDELINES IN THIS CASE SHOULD BE GIVEN MINIMAL TO NO CONSIDERATION

There are multiple cases that determine that the Guidelines should be given minimal to no consideration. For example, in *United States v. Booker*, the Court states, "The Guidelines are

advisory only.”¹² Further, In *Nelson v. United States*, the Court states, “The Guidelines are not only not mandatory on sentencing courts; they are also not to be presumed reasonable.”¹³

Looking at *Rita v. United States*,¹⁴ the Court states, “The sentencing court subjects the defendant's sentence to the thorough adversarial testing contemplated by federal sentencing procedure and the sentencing court does not enjoy the benefit of a legal presumption that the Guidelines sentence should apply, when determining the merits of these arguments.”

Looking at *U.S. v. Lopez-Gonzales*¹⁵, the Court says, “[t]he exercise of sound discretion requires consideration of all the circumstances of the crime The sentencing judge is required to consider all mitigating and aggravating circumstances involved. There is a strong public interest in the imposition of a sentence based upon an accurate evaluation of the particular offender and designed to aid in his personal rehabilitation.”

All four of these cases strongly compel the reasonable conclusion that the Guidelines are merely informational for the Court, not mandatory. The sentencing Court is required to look at all aspects of the case, not just considering the Guidelines. Therefore, the Guidelines in this case should be given no consideration, especially in light of the facts of the case at hand as discussed in Section II hereinabove; indeed, the mitigating circumstances in this case (i.e., Defendant’s good behavior and cooperation with law enforcement) strongly justify a departure from the Sentencing Guidelines.

¹² *United States v. Booker*, 543 U.S. 220, 245 (2005).

¹³ *Nelson v. United States*, 555 U.S. 350, 352 (2009).

¹⁴ 551 U.S. 338, 127 S.Ct. 2456, 168 L.Ed.2d 203 (2007).

¹⁵ *U.S. v. Lopez-Gonzales*, 688 F.2d at 1276-1277.

IV. THE OBJECTIVES OF 18 U.S.C. § 3553(a) ARE BEST ACCOMPLISHED WITH A SENTENCE OF PROBATION

Looking at U.S.C § 3553(a), there are objectives that must be considered in imposing a sentence. These include;

- 1.) The nature and circumstances of the offense and the history and characteristics of the defendant;
- 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 for the offense;
 - 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;
- 3.) The kinds of sentences available;
- 4.) The kinds of sentence and the sentencing range established for certain violations outlined in the guidelines; and,
- 5.) Any pertinent policy statements.

Each of these objectives are outlined below and related to the case facts of the case at hand. Then, in consideration of Defendant's conduct while arrested and later detained by law enforcement, it is shown why a sentence of Probation is sufficient to accomplish the objectives of U.S.C § 3553(a).

1. The Nature and Circumstances of the Offense and the History and Characteristics of the Defendant.

a. The Nature and Circumstances of the Offense.

On April 18, 2019, Defendant and his passenger were pulled over by a Utah Highway Patrolmen for having a brake light obscured in the back window by the window tint. Neither Defendant nor his passenger had a driver's license, and the Officer became suspicious of Defendant. A K9 unit was deployed and signaled that there were drugs in the trunk. The Officer found Defendant and his passenger to be in possession of 44 pounds of methamphetamine, and a scale. Defendant was charged with Possession of Methamphetamine with Intent to Distribute, in violation of 21 U.S.C. §841(a)(1).

As aforementioned, factors such as Defendant's non-existent prior criminal record, his minor participation in any criminal activity, acceptance of responsibility, his familial support, and the fact that this is a victimless crime, all contribute to the nature and circumstances of Defendant's offense. There are several mitigating factors regarding Defendant's good behavior and full cooperation with law enforcement that the Court must consider in assigning an appropriate sentence to Defendant. Given the nature and circumstances of the offense, a sentence of probation would best satisfy the objectives of 18 U.S.C. § 3553(a).

b. The history and characteristics of the Defendant.

Highly relevant—if not essential—to the selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics.¹⁶ This is consistent with 18 U.S.C. 3661, which states, "No limitation shall be placed on the

¹⁶ *Pepper v. United States*, 131 U.S. 1229 (2011) (citing *Williams v. New York*, 337 U.S. 241, 246- 247 (1949)).

information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence."

Defendant was born on July 21, 1994, in Sonora Mexico. Defendant and his parents moved to Bell Gardens, California, while Defendant was still an infant. Defendant has four brothers and one sister. Defendant resides in Bell Gardens, California with his parents and two of his brothers. Defendant's other siblings live in the surrounding area. Defendant has a strong relationship with his family. Defendant's strong relationship with his family is such that his risk of recidivism is very low, as he has the support of his family.

Defendant is married to Betsy Boci; they have been married for seven years and have three children who are eight years old, six years old, and three years old. Defendant and his family have no significant physical or mental health issues. Defendant was working in Las Vegas at a restaurant before this incident. It was there he met the person who introduced him to the world of drug trafficking. Since his arrest and release on pre-trial supervision, Defendant and his family have moved to California to be with Defendant's family, and to escape the people who helped him get into this situation to begin with. Defendant hopes to pursue a career as a culinary chef. He hopes to move forward with his family and be there for them. His family are all disappointed in him for his actions regarding this offense. Defendant is disappointed in himself and embarrassed by his actions as well.

Defendant does not have a history of substance abuse and recognizes that it is appropriate to take proper education courses based on the nature of his crime. The lack of substance abuse is tied to a decreased risk of recidivism.¹⁷

Additionally, besides the above-referenced case, Defendant has no criminal record. The Court may consider a defendant's lack of a criminal record as a mitigating factor during sentencing.¹⁸ Individuals like Defendant who have no prior arrests are the most empirically identifiable group of offenders who are unlikely to re-offend.¹⁹

Defendant fully recognizes that what he did was completely wrong. Defendant takes full responsibility for his actions. Defendant is saddened that he put his family and himself in this position. He knows that he should face punishment for his crime and is willing to do what the Court asks of him to put this incident behind him. Judge Laventhal once stated, "There is a natural, and I believe sound, disposition to adjust sanctions when an offender admits his responsibility. This blends in with a readiness to accept the conclusion that such a person has the stuff that portends future improvement."²⁰ Defendant's genuine remorse indicates that he possesses the ability to learn from this mistake, which renders a less severe punishment in this case appropriate. As Defendant did not have a criminal record prior to this incident, as well as the ease with which he was caught, it is safe to say that Defendant has learned his lesson and wants to not only learn from his mistake but make sure it never happens again.

¹⁷ See United States Sentencing Commission, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines* (May 2004) at 13.

¹⁸ *United States v. Autrey*, 555 F.3d 864, 874 (9th Cir. 2009).

¹⁹ See United States Sentencing Commission, *Recidivism and the "First Offender"* (May 2004) at 17.

²⁰ *Scott v. U.S.*, 417 F.2d 264, 282 (1969) (Laventhal, J., concurring).

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 Education or Vocational Training, Medical Care, or Other Correctional Treatment in the Most Effective Manner.

- a. 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.**

While this offense can carry jail time, a punishment of probation would adequately reflect the seriousness of the offense in this case. The offense Defendant is charged with is not a violent offense, had no victims, and it is Defendant's first offense. Defendant deeply regrets his involvement in the crimes charged with; Defendant is determined to never engage in criminal activity again. Defendant played a small role in the crime, he did not form the contacts whom he was intending to deliver the substance to—those were provided to him—and he was not in control of the amount of controlled substance he was given. Additionally, Defendant provided all the information he had including naming the person who gave him his start in the drug trafficking world. Defendant has a strong familial base and is extremely apologetic and remorseful for his role in this offense.

Defendant has already shown that he will and can follow supervision and probation instructions, as he is currently out on Pretrial Supervision. Defendant has been in compliance with the conditions of release imposed by the Court and will continue to do so after his sentencing. It is clear Defendant has respect for the law, as he did not resist arrest, was cooperative with the investigation, and does not have a prior criminal record.

b. To afford adequate deterrence to criminal conduct.

There is no correlation between the severity of the punishment and criminal deterrence.²¹ Defendant is deeply concerned about not being able to care and provide for his family if he has to serve time in prison. Defendant, ironically, got himself into this position because he wanted to help his family financially. Defendant recognizes that breaking the law is not the way to help his family, and with his familial support, he is certain they can get through this incident together. Defendant is dedicated to ensuring that his children learn from his mistake; Defendant is committed to refrain from committing any law-breaking behaviors, in order to set a good example for his children. Defendant's children are young, and Defendant would miss out significantly on time with them if he were to serve time in prison.

c. To protect the public from future crimes by the defendant.

Defendant does not want to cause trouble to his family or the law anymore than he already has. By being on probation, Defendant will have the proper checks and balances he needs to ensure that he will not reoffend. Additionally, by participating in educational courses, Defendant will be able to pass that education on to not only his family but his community. Defendant clearly had a run in with people who are bad influences, but Defendant has cut ties with that community and wishes to proceed with his life free of crime and as a good, conscientious, and productive member of society.

²¹ See Michael Tony, Purposes and Functions of Sentencing, 34 Crime and Justice, A Review of Research 28-29 (2006) ("Increases in severity of punishments do not yield significant (if any) marginal deterrent effects ... Three National Academy of Science panels, all appointed by Republican presidents, reached that conclusion, as has every major survey of the evidence."

- d. To provide the defendant with needed education or vocational training, medical care, or other correctional treatment in the most effective manner.**

Defendant does not have a history of substance abuse but recognizes that the circumstances surrounding his offense require education and treatment. Defendant is willing and able to do whatever the Court asks of him in regard to any education or vocational training, medical care, or other correctional treatment the Court may see fit to prescribe.

3. The Kinds of Sentence; 4. The Range Established.

Probation is recommending a lower guideline range of 63 months to 78 months imprisonment according to USSG §5C1.2(a). Looking at the nature of this crime, Defendant's record, and his familial support, imprisonment is an inappropriate sentence in this case. Additionally, **Section III** of this memorandum outlines why the guidelines should carry no weight in determining the sentence.

5. Any Pertinent Policy Statement.

As mentioned in Section III of this memorandum hereinabove, it is clear that the Sentencing Guidelines are merely informational for the Court and not mandatory. The Sentencing Court is required to look at all aspects of the case, not just considering the Guidelines.

CONCLUSION

Defendant's risk of recidivism is very low. He has a supportive family base, he recognizes what he did was wrong, he took responsibility for his actions, he has no prior criminal history, and was completely cooperative throughout the investigative process.

The Probation Officer's Presentence Investigation Report outlines the following important facts to consider:

- A. Defendant is currently out on Pretrial Supervision.²²
- B. Defendant is in compliance with the conditions of release imposed by the Court.²³
- C. Defendant is maintaining his residence and employment.²⁴
- D. There have been no reported issues regarding his location monitoring.²⁵
- E. A new criminal records check was completed on September 20, 2019; this revealed no new charges.²⁶
- F. There are no identifiable victims in this offense.²⁷
- G. The probation officer has no information indicating the defendant impeded or obstructed justice.²⁸
- H. Defendant was a minor participant in any criminal activity.²⁹
- I. Defendant has a total criminal history score of zero.³⁰
- J. Defendant meets the criteria set forth in 18 U.S.C. §3553(f)(1)-(5).³¹

²² Probation Officer's Presentence Investigation Report, see "Release Status."

²³ *Id.* at ¶ 9.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at ¶ 12.

²⁸ Probation Officer's Presentence Investigation Report, at ¶ 13.

²⁹ *Id.* at ¶ 19.

³⁰ *Id.* at ¶ 31.

³¹ *Id.* at ¶¶ 46 and 48.

Indeed, given the circumstances described above and the information provided by the Probation Officer's Presentence Investigation Report, a sentence of probation would be "sufficient, but not greater than necessary" to comply with the goals of sentencing set forth in 18 U.S.C. § 3553(a)(2).

Accordingly, it is respectfully requested that the Court exercise its discretion and impose a sentence of probation for Defendant.

DATED August 31, 2020.

Altioirem Legal Services, PLLC

/s/ Billy McBride

Billy McBride,

Attorney for Defendant