

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**



Case No.: 6:24-cr-74-Orl-JSS-EJK

UNITED STATES OF AMERICA,

v.

JEREMY DEWITTE

_____ /

DEWITTE'S SENTENCING MEMORANDUM

Defendant, Jeremy Dewitte, hereby files his Sentencing Memorandum, in which he asks this Court to exercise its discretion under *Booker*¹ and impose a reasonable sentence of certainly no more than 33 months. Alternatively, or in conjunction with the exercise of that discretion, asks this Court to downwardly depart and/or to vary or adjust his sentence downward from the advisory guideline range.

I. FACTUAL AND PROCEDURAL BACKGROUND

Dewitte adopts the facts in the PSR minus the previous objections.

On March 27, 2024, the grand jury returned a two count indictment against Dewitte. Both counts charge him with willfully making a false tax return, in violation of Title 26, United States Code, Section 7206(1). On September 25, 2024, Dewitte pled guilty without a written plea agreement.

¹ *United States v. Booker* and *United States v. FanFan*, 543 US 220 (2005).

II. UNITED STATES v. BOOKER AND 18 U.S.C. § 3553(a)

The decision of the United States Supreme Court in *Booker* has rendered the United States Sentencing Guidelines “effectively advisory.” *Booker*, 543 US 220, 249-65. Pursuant to *Booker*, sentencing courts are required to consider a defendant’s Guideline range, but may “tailor the sentence in light of other statutory concerns as well.” *Id.* at 265 (*citing* 18 U.S.C. § 3553 (a)). *Cunningham v. California*, 549 U.S. 270 (2007), *Rita v. U.S.*, 551 U.S. 338 (2007), *Gall v. U.S.*, 552 U.S. 38, 128 S. Ct. 586 (2007), and *Kimbrough v. U.S.*, 552 U.S. 85, 128 S. Ct. 558 (2007) have made it clear district court judges are no longer bound by the guideline outcomes, and instead in determining what is an appropriate sentence in a particular case are to consult and consider the guidelines, then consider all of the factors found in 18 U.S.C. § 3553(a) to determine a reasonable sentence tailored to the specifics of the particular case at hand. *See e.g. Kimbrough v. U.S.*, 128 S. Ct. 558, 570 (2007).

The effect of *Booker* is that federal district courts must consider the seven factors set forth by § 3553 (a) in determining a sentence:

- (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 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 applicable Sentencing Guidelines];
- (5) any pertinent [Sentencing Guidelines] 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 victim of the offense.

See 18 U.S.C. § 3553(a). Each of these factors will be discussed in turn below.

Sentencing under § 3553 (a) requires the Court to start with the minimum sentence permissible and add only so much additional punishment, if any, as necessary to comply with §3553(a)'s purposes. As discussed below, application of the § 3553(a) factors to the facts of this case establishes that a sentence of certainly no more than 33 months is “sufficient . . . to comply with the purpose” of § 3553. Such a sentence would be sufficient to achieve the purposes of § 3553(a).

III. THE APPLICATION OF 18 U.S.C. § 3553(a)

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

The nature and circumstances of this offense, as well as the history and characteristics of Dewitte weigh in favor of a sentence of certainly no more than 33 months. Facts support Dewitte's request for a sentence of certainly no more than 33 months. With regard to Dewitte's personal characteristics, Dewitte is 44 years old. He was born in New Port Richey, Florida. His parents separate at age three. He loves his mother and refers to her as a saint. He had no meaningful contact with his father, who died from cancer in 2018. His stepfather died of cancer in 2014. He has one child. His wife lost her job due to absences which resulted from taking care of their sick child. Dewitte had multiple surgeries from a motorcycle accident in 2014, which resulted in him being in a coma for one month. He has brain trama, memory loss, anxiety, depression, and suicidal ideation.

He has a bachelors degree

Evidence about a defendant's background is relevant because the belief "long held by this society, that the defendants who commit criminal acts that are attributable to a disadvantaged background or to emotional or mental problems may be less culpable than defendants who have no such excuse." *Penry v. Lynaugh*, 492 U.S. 302, 319 (1989); *United States v. Lopez*, 938 F.2d 1293, 1298 (D.C. Cir. 1991); *United States v. Deiger*, 916 F.2d 916, 918-19 (4th Cir. 1990). In this case, Dewitte's background is not an excuse for his actions but it does explain why he would commit the charged offense.

B. The Purposes of Sentencing

Section 3553(a)(2) lists four purposes of sentencing, which can be summarized as: (1) just punishment; (2) deterrence; (3) protection of the public; and (4) rehabilitation. Under the parsimony principal, the sentence in this case should be the minimum necessary to accomplish the listed purposes. *See* 18 U.S.C. § 3553(a); *United States v. Lacy*, 99 F. Supp.2d 108, 119 (D. Mass 2000). In this case, there is no need to impose a sentence certainly no greater than 33 months. Each of the purposes listed by § 3553(a)(2) would be achieved by such a sentence. With regard to a just punishment, Dewitte respectfully suggests no more than 33 months is just punishment. Alternatively, Dewitte asks this Court to downwardly depart and/or to vary or adjust his sentence downward from the advisory guideline range.

C. The Kinds of Sentences Available

Both counts carry a minimum three (3) years.

D. The Sentencing Guidelines and Guideline Policy Statements

The Advisory Guideline Range as Calculated by the PSR

“Because the guidelines are now only advisory, and because a guideline sentence is not presumptively reasonable in this circuit, it follows that a reasonable sentence may fall above or below the guideline range, so long as it comports with the Section 3553(a) factors.” *United States v. Aaron Williams*, Case No. 6:04-cr-111-Orl-31JGG at Doc. No. 63 at 7 (M.D. Fla. 2007) (Presnell, J.) citing *United States v. Talley*, 431 F.3d 784 (11th Cir. 2005).

Pursuant to *Booker*, “district courts, while not bound to apply the Guidelines, must consult those Guidelines and take them into account when sentencing.” *Booker*, 543 U.S. at 264, 125 S.Ct. at 767. Based upon the type of offense, Dewitt’s prior criminal history, United States Sentencing Guideline impose an advisory guideline range of 33-41 months. This guideline calculation is based upon a total offense level of 13, and a criminal history category of VI.

IV. CONCLUSION

For the reasons stated herein, Dewitt respectfully urges this Court to impose a sentence of certainly no more than 33 months. Alternatively, and in conjunction, Dewitt asks this Court to downwardly depart and/or to vary or adjust his sentence downward from the advisory guideline range. Such a sentence will be reasonable and adequately take into account the advisory guideline range and the factors set forth at 18 U.S.C. § 3553(a). Such a sentence will be fair and just punishment.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been electronically filed with the Clerk of Court (CMECF) on this 6th day of January 2025 by using the CMECF system which will send a notice of electronic filing to the following: assigned Assistant United States Attorney.

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