

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 16-20955-CR-WILLIAMS

UNITED STATES OF AMERICA

v.

JOSE PATIN,

Defendant.

GOVERNMENT'S RESPONSE TO DEFENDANT'S SENTENCING MEMORANDUM

The United States, by and through the undersigned Assistant United States Attorney, respectfully files this sentencing memorandum in response to Defendant's Sentencing Memorandum (DE: 51). The government's position is that the Defendant has not demonstrated "extraordinary acceptance of responsibility," and the other mitigating factors that Defendant cites in requesting a variance below the advisory guideline range of 87-108 months' imprisonment are not persuasive when subjected to the sentencing factors enumerated in Title 18, United States Code, Section 3553(a). The government is recommending a sentence at the high end of the advisory guideline range of 108 months' imprisonment.

I. Factual Background

In response particularly to Defendant's claim that he has shown "extraordinary acceptance of responsibility," the government is providing this supplemental background of the investigation that led to the arrest of the Defendant. The government is not providing this in an attempt to increase the Defendant's guideline range, but to demonstrate to the Court that Defendant's

forfeiture agreement was in recognition that a potential superseding indictment would greatly increase Defendant's sentencing and asset forfeiture exposure and should not be the basis for any variance.

The Defendant was arrested and indicted for a controlled purchase of two kilograms of cocaine on November 16, 2016, and a second attempted controlled purchase on December 6, 2016, where an additional four kilograms of cocaine were seized. The government also executed search warrants on Defendant's condominium and the hangar at Fort Lauderdale Executive Airport where Defendant's charter air business was located. The basis for these search warrants was an investigation that started in 2014.

That investigation gathered evidence from cooperating defendants, confidential sources, court authorized Title III wire and electronic communication interceptions, physical surveillance, electronic surveillance, search warrants, controlled purchases of cocaine, and consensually recorded conversations. The primary target of that investigation was an individual, who is now a confidential source, "CS," who distributed kilogram quantities of cocaine that were obtained from the Defendant. In June 2015, the CS agreed to proactively cooperate with the DEA in an effort to earn substantial assistance on a future federal indictment. The CS's information was corroborated by prior law enforcement investigation, controlled calls, consensually recorded meetings with the Defendant, and the controlled receipt of the two kilograms of cocaine on November 16, 2016.

After the CS began cooperating in June 2015, the CS stated that the Defendant supplied the CS with multi-kilogram shipments of cocaine that the Defendant would smuggle into the United States secreted in charter airplanes owned by Defendant's air charter businesses. The CS

claimed that the Defendant obtained the kilograms of cocaine in the Dominican Republic, and the CS assisted in unloading the cocaine from the airplanes on a number of occasions. The CS stated that he would receive the kilograms of cocaine from the Defendant on consignment, and then pay the Defendant within a week or two after receiving the cocaine.

On March 6, 2015, prior to the CS agreeing to cooperate, approximately \$100,000 in drug proceeds intended for the Defendant were seized from a vehicle that the CS was driving. As to that \$100,000, the CS stated that in early March, Defendant and the CS met at the Defendant's residence, located at 520 Brickell Key Drive in Miami for breakfast. During that meeting, the Defendant pulled five kilograms of cocaine wrapped in plastic/tape from the Defendant's vehicle and placed it into the CS's vehicle. A few days later on March 6, the CS was driving to Defendant's residence with the \$100,000 in drug proceeds to pay the Defendant, when law enforcement seized the money. This was corroborated in a later consensually recorded conversation approximately a year later, on March 18, 2016, when Defendant asked about the money the CS owed, and the CS tried to reason with the Defendant that it would be better to not fight the seizure. The CS then asked the Defendant for "work," or drugs to sell, and the Defendant stated that he would let the CS know at a later date. This later date occurred in November 2016.

Prior to cooperating, a number of drug ledgers were located and seized on an external hard drive as part of a search warrant of the CS's residence. Those ledgers included documentation of large amounts of money paid to the Defendant over a period of years by the CS. The CS, after agreeing to cooperate, explained the ledgers to the DEA, which the CS claimed showed drugs received from the Defendant and drug proceeds paid to the Defendant. Based upon these ledgers,

the CS claimed that the Defendant had supplied the CS with hundreds of kilograms of cocaine over a period of years, and the CS had paid the Defendant millions of dollars in drug proceeds. The CS also admitted to assisting the Defendant in laundering the drug proceeds via wire transfers to Defendant's air charter business bank accounts in Miami and the Dominican Republic. Those bank accounts belonged to Servicios de Aviacion General, SAP, which is Defendant's air charter business in Fort Lauderdale and the Dominican Republic.

The CS's information as to the money laundering was corroborated by an undercover money laundering operation conducted by the DEA, during which the DEA used a cooperating defendant to receive money and instructions on where to wire transfer the money in 2014. On April 1 and 2, 2014, the CS gave the DEA approximately \$245,960 in cash to be wire transferred to the bank accounts for Servicios de Aviacion General, SAP, from an undercover bank account. On May 20, 2014, the CS had given the DEA approximately \$289,970 in cash with instructions to wire transfer the money to Defendant's air charter business, Servicios de Aviacion General, SAP, bank accounts from an undercover bank account. This was the basis for the civil complaint in 16-25033-CIV-Williams, which resulted in the seizure of those bank accounts.

II. Defendant's Claim of Extraordinary Acceptance is without merit

The Defendant claims that one mitigating factor the Court should consider in granting a variance is Defendant's "extraordinary acceptance of responsibility." The Defendant points to the portion of his plea agreement where he voluntarily forfeits property resulting in a total money judgment of \$3.5 million. (DE: 51, p.3). However, as described above, the Defendant's criminal and asset forfeiture liability were much greater than the incidents of November 16 and December 6, 2016 contained in the indictment. In fact, in exchange for agreeing to the forfeiture, the

Defendant received a significant benefit from the government in Paragraph 12 of the Plea Agreement. (DE: 35, ¶ 12).

The agreement in Paragraph 12 states, in part, that the plea “resolves the defendant’s federal criminal liability in the Southern District of Florida growing out of any narcotics-related offenses by the defendant known to this Office, as of December 6, 2016.” (Id.) Additionally, Paragraph 12 also “resolves the defendant’s federal criminal liability in the Southern District of Florida arising from defendant’s money laundering activities from January 1, 2014, through December 6, 2016, where narcotics-related offenses were the specified unlawful activity, including specific wire transactions that occurred in November 2014.” (Id.)

As the agreement in Paragraph 12 demonstrates, the Defendant is avoiding potential charges of importation of controlled substances and money laundering as a result of his plea and agreement to forfeit property to satisfy a money judgment. As described above, the investigation was continuing to obtain additional evidence that would have potentially enhanced the Defendant’s sentencing exposure and the amounts of assets subject to forfeiture. By pleading guilty and agreeing to the money judgment of \$3.5 million, the Defendant was able to avoid additional charges in a superseding indictment or later indictments. Additionally, the civil complaint has been dismissed as a result of the Defendant’s plea. (DE: 35, ¶ 11). Since the Defendant has obtained the benefits he bargained for by agreeing to the forfeiture and Paragraph 12 of the Plea Agreement, the Court should not view this as a mitigating factor warranting a variance from the advisory guideline range.

III. Defendant’s Claim that he is a “first offender” is also without merit

The Defendant claims that another mitigating factor is he is a “first offender” with no

criminal history points. (DE: 51, at p. 4-5). While the government does not dispute that the Defendant has no criminal history points; to attempt to classify him as a “first offender” disregards the facts in this case. The government can establish on at least three occasions, March 2015, November 16, 2016, and December 6, 2016, the Defendant supplied the CS with multiple kilogram loads of cocaine. In fact, if the CS’s information and interpretation of the ledgers is credible, Defendant’s drug distribution activity continued for a period of years. This is certainly not someone who made a single bad decision or committed a crime for the first time. Instead, the Defendant demonstrated that he was organized, willing, and had the means to distribute multiple kilograms of cocaine at a time.

Moreover, as the plea agreement states, Defendant was the boss of co-defendant Wilkin DeJesus Matos-Feliz, and the Defendant agreed to receive a two-point leadership role based upon his actions in directing Matos-Feliz in his drug distribution activities. (DE: 35, ¶ 8(c)). Further, the fact that Defendant has no criminal history points was already taken into account by the Sentencing Guidelines in determining his advisory guideline range. This avoids sentencing disparity by providing lower advisory guideline ranges based upon a lack of criminal history points. Based upon these facts, to characterize the Defendant as a “first offender” is without merit and should not be considered as a mitigating factor.

IV. Defendant’s age and health issues as mitigating factors

The government does not dispute the Defendant’s health issues, however, the government would point out to the Court that these health issues did not seem to prevent the Defendant from engaging in the criminal conduct of distributing multiple kilograms of cocaine. Despite this fact, the Defendant has already received a benefit to account for this factor. The Defendant, who is

not eligible for the safety valve, was facing a ten-year mandatory minimum sentence as to Count 1. However, the government allowed the Defendant to plead guilty to Count 2 of the Indictment, which only has a five-year mandatory minimum sentence. This allowed the Defendant to receive credit for acceptance of responsibility and an advisory guideline range below the ten-year mandatory minimum that Defendant was facing as to Count 1. This is a significant benefit that the Defendant received from the government to account for his age, health issues, and acceptance of responsibility. The government submits that Defendant's health issues should be given no additional consideration in the area of mitigation.

V. Defendant's Community Service and Commendations

The Defendant claims that Defendant assisted in providing relief to Haiti during the earthquake of 2010, as well as receiving commendations from the Dominican Republic in 2004 and the Puerto Rican Senate in 2003. While helping those in need during a crisis is certainly commendable, the government submits that the Defendant also used the air charter service planes to commit the instant offense. The Defendant's good works should be balanced by examining the commission of this crime, which occurred over the span of at least two years distributing multiple kilograms of cocaine in the United States well after the Defendant's submitted good deeds and commendations.

In citing those good works, the Defendant cites his actions in 2010, which happened over seven years ago. The 2004 commendation from the Dominican Republic for dedication to the promotion and development of the Dominican aeronautical industry is over thirteen years old, and the Puerto Rico award is fourteen years old. In the more recent past, the Defendant gave the CS two kilograms of cocaine on consignment on November 16, 2016, and was ready to provide an

additional four kilograms to the CS on December 6, 2016. The government submits that these commendations and assistance during the Haitian earthquake of 2010 do not mitigate the Defendant's criminal actions in this case.

VI. Conclusion

Based upon the facts of the case, the substantial benefits that Defendant is receiving by pleading guilty, and the Defendant's relevant conduct in this case, the government requests that the Defendant's motion for a variance be denied. Additionally, the government submits that a sentence at the high end of the advisory guideline range is necessary to satisfy the factors enumerated in Title 18, United States Code, Section 3553. Therefore, the government is recommending a sentence of 108 months' imprisonment for the Defendant.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was electronically filed with the Court's CM/ECF system this 27th day of July, 2017.

By: /s/ Brian Dobbins
Assistant United States Attorney