

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : NO. 1:13-CR-233
: :
v. : (JUDGE CALDWELL)
: :
WILLIAM TRICKETT SMITH, SR. : (FILED ELECTRONICALLY)

SENTENCING MEMORANDUM OF THE UNITED STATES

COMES NOW, the United States of America, by and through its attorneys, Peter J. Smith, United States Attorney for the Middle District of Pennsylvania, and James T. Clancy, Assistant U.S. Attorney, and respectfully files this memorandum in aid of sentencing.

Introduction

The defendant understandably makes an unabashed plea for leniency in sentencing. That plea, however, minimizes the conduct involved in the offenses of conviction, disregards the havoc that could have ensued had the defendant's plan been successful, and essentially ignores the decades of crimes committed by the defendant. The defendant's sentencing memorandum asks the court to disregard the properly calculated advisory Sentencing Guidelines range, arrive at a lower range, and then vary downward from that lower range to essentially impose no sentence in a case of a decades-long recidivist

whose latest crime was to devise a plan to help an accused brutal murderer escape from custody to avoid extradition. Such a result would make a mockery of the federal judicial system, promote the idea that lawyers are treated more favorably than other defendants, and send a message that age and station in life trump recidivism. The defendant should be sentenced to a prison term of 24 months consecutive to his current unrelated prison term in the state.

Background

The defendant pled guilty to attempting to assist the escape of his son from federal custody while he awaited extradition to Peru to face charges that he murdered his wife. He also pled guilty to lying to agents investigating the escape attempt. The escape plan was one Smith committed to writing and spoke about several times. As noted in the Indictment to which Smith pled guilty, his plan involved filing a false criminal complaint in a local magistrate's office naming his son as the defendant. Doc. 1, paras. 13, 14. The filing of that complaint would cause his son, in state custody on a parole violation at the time, to be transported to Harrisburg to answer to the complaint. During the

transport, a stop would be made so Smith's son could use the restroom. During that stop, the transporting constable would be assaulted by two individuals who then would facilitate the escape. Money would be paid by Smith to the magistrate and the constable. When that plan was thwarted because Smith's son was moved to another prison, Smith began talking to a correctional officer at that prison to create another plan for his son's escape. The extradition thwarted that plan.

Although characterized as "fantasy" and "legally impossible" in his sentencing memorandum, *see* Doc. 43 at 6, Smith's plan was more than that. Smith took steps to make his plan work. Investigators obtained his handwritten note outlining the plan. Smith did file the bogus complaint naming his son as a defendant. He had several conversations with his son in which he mentioned details of the plan. Because his son was in custody, those calls were recorded and obtained by investigators. Phone messages he left for the correctional officer to arrange a meeting were obtained by investigators. A meeting he had with that officer was recorded.

The Sentencing Guidelines calculation.

Smith objects to the five-level enhancement pursuant to Guideline 2P1.1(b)(1). Doc. 43 at 3. That enhancement is to be applied, “If the use or the threat of force against any person was involved.” U.S.S.G. § 2P1.1(b)(1). In this case, the plan devised by Smith did involve the threat of force. Investigators obtained the handwritten note in which Smith made it clear there would be some level of force used in the plan. The constable would have to receive enough of “a hit” to make the scheme seem legitimate. By the clear language of the Guideline, the enhancement applies to this case.

Smith argues the enhancement should not apply because others consented to be involved in the scheme. *See* Doc. 43 at 3. But there is no exception to the enhancement for consensual involvement in a scheme that contemplates the use of force, and Smith has cited no cases supporting that theory. The objection to the enhancement should be overruled.

Application of factors pursuant to 18 U.S.C. 3553(a).

The defendant points to factors including his age, health, and background to suggest that a Guidelines sentence consecutive to his current prison term is not necessary and would not serve as a deterrent to others. Quite the contrary is true. Smith's training as a lawyer and his involvement in the criminal justice system gave him the knowledge he needed to devise his plan. It is understandable that one might act irrationally when presented with a critical situation involving a family member. And had this matter been the first and only thing in Smith's life that caused him to run afoul of the law, the kind of leniency he requests might be palatable. This case, however, exposes the actions of a man who did not learn a lesson from significant violations of the law and the severe consequences of those violations. After his federal conviction and lengthy prison term, and the reinstatement of his law license, he stole funds from clients he represented. After serving a prison sentence for those offenses, Smith committed arson and insurance fraud, resulting in the sentence he currently is serving.

Despite these significant transgressions, Smith still was able to garner support from two veteran members of the bar and a college and law school classmate. Those friends echo the request for leniency. Most notably, however, the members of the bar recognize Smith's illegal acts cannot be condoned.

The sentence imposed by this court should not be unduly harsh, but it must send a clear message of deterrence to anyone of any age, especially lawyers and other professionals, that recidivism and the kind of crimes committed in this case will be punished appropriately. The advisory Guideline range in this case is not unduly harsh. To make this sentence concurrent would be akin to imposing no sentence at all. Therefore, the United States requests that the court impose a sentence of 24 months consecutive to the Smith's current term of incarceration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Standing Order 03-1 and Local Rules 4.2 and 5.7, I hereby certify that I caused the foregoing document to be served through electronic case filing.

Respectfully submitted,

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