

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 2:13-CR-90-NT-2
)	
HAMADI HASSAN)	

DEFENDANT’S SENTENCING MEMORANDUM

Hamadi Hassan left Somalia with his parents when he was 12 years old. The family left to escape, an economic, political and social tragedy. They moved to Seattle but the stress of the transition changed Hamadi. At age 14 his parents sent him to Boston to live with a distant uncle; Mr. Hassan has not seen his parents or his four siblings since that move. His uncle provided a place to sleep but very little supervision. By the age of 15, Hamadi was living on his own, he began using drugs and alcohol around that time. He left school at age 16 and tried to support himself on the streets. He is not a U.S. Citizen and lacked the proper documentation needed to get a work permit.

As a young teen trying to feed his own addiction, Hamadi began purchasing and then selling marijuana. He fell in with a group of older people who participated in similar activities. He began smoking cocaine and had been addicted to crack cocaine until his recent arrest. Mr Hassan relocated to Portland and found a new community of drug dealers and users. Hamadi, his co defendants and other associates were heavily addicted to cocaine around this time. To supply and support their habits, they purchased quantities of powder cocaine from out of state, used a certain amount and sold a certain amount. The funds raised were simply rolled into the next trip. Despite what appears to have been a significant drug trafficking operation, Hamadi has absolutely nothing to show for this conduct. He has no house, car, cash, jewelry or other valuable possessions. He does not even have money for the jail commissary.

His most recent period of incarceration represents the longest time Mr. Hassan has been behind bars. The last years have changed him in a fundamental way. He has taken advantage of this time to get his GED certificate while at Two Bridges Jail, he has attended the “money smart” classes there and learned how to open a bank account and manage money. He has also participated in the Career Pathways program which teaches basic skills associated with obtaining and retaining a job. He has participated in substance abuse classes including AA meetings. Hamadi has had no disciplinary issues at the Two Bridges Jail and he has become a trustee in the pod entrusted to clean and help out in the kitchen. He feels a sense of accomplishment and pride in his work. Though this time in jail has not been fun, it has given him a glimpse of what a real life might look like. If he is able to get released and remain in this country, Hamadi intends to get further training in the trades or other field that would allow him to support himself, maintain sobriety and to make something productive of his life.

1. Defense Proposed Sentence

The defense proposes that the court impose a sentence below the guideline sentencing range. The defense asks that the court order the federal sentence to run concurrently with the state court sentence the defendant is currently serving. Mr. Hassan asks that the court recommend designation to the Berlin, New Hampshire prison. This will give him the potential to have visits from the limited number of family and friends who reside in the Boston area. Given Mr. Hassan’s extensive history of serious drug abuse, we also ask that the court recommend he complete the 500 hour drug treatment program.

Mr. Hassan is not a citizen so, practically speaking, he could be deported upon completion of the sentence. Prior convictions have made him deportable but, because of the

political situation in his home country, immigration authorities have been unable to remove him. He has no known family and no other connections to that country.

2. Sentencing Guideline Calculation

While this Court must correctly calculate the guideline range, *Gall v. United States*, 552 U.S. 38, 49 (2007), it may not treat that range as mandatory or presumptive, *id.* at 51; *Nelson v. United States*, 555 U.S. 350, 352 (2009), but must treat it as “one factor among several” to consider in imposing an appropriate sentence under § 3553(a). *Kimbrough v United States*, 552 U.S. 85, 90 (2007). The Court must “consider all of the § 3553(a) factors,” “make an individualized assessment based on the facts presented,” *id.* at 49-50, and explain how the facts relate to the purposes of sentencing. *Id.* at 53-60; *Pepper v. United States*, 131 S. Ct. 1229, 1242-43 (2011). The Court’s “overarching” duty is to “‘impose a sentence sufficient, but not greater than necessary’ to accomplish the goals of sentencing.” *Id.* at 101; *Pepper*, 131 S. Ct. at 1242-43.

In this case the parties have agreed that the applicable offense level is 35 and the criminal history category is VI. That offense level represents a drug quantity level of 30, with 2 levels added for use or threats of violence, 2 levels added for possession of a firearm, 4 levels added for the defendant’s leadership role, and a 3 level reduction for acceptance of responsibility. The guideline range is therefore 292-365 months. The mandatory minimum sentence is 5 years and the maximum sentence is 40 years.

3. A Sentence that is Sufficient but not Greater Than Necessary 18 U.S.C. §3553(a):

This court must impose a sentence that is sufficient but not greater than necessary to serve the purposes listed in §3553(a)(2). Those are: (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.

§3553(a)(2) The proposed sentence is sufficient but not greater than necessary to:

- (A) Reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense: A below guideline sentence would still be a very serious punishment. Mr. Hassan would then be on supervised release for at least 4 years. This proposed sentence is profoundly more serious than any sentence Mr. Hassan has ever served. His longest period of prior incarceration is in the range of one year.
- (B) Adequate deterrence to criminal conduct: The proposed sentence will have a deterrent effect and that is important. The recent years of incarceration have given Mr. Hassan the opportunity to reflect upon his prior life. Since his arrest, Hamadi has enjoyed his longest period of sobriety since the age of 15. He realizes now how heavily addicted he had become. The good news is that, since substance abuse is at the core of this offense, the risk of recidivism can be effectively mitigated through supervision and treatment. Community based treatment is the best possible way to manage that risk. It's worth noting that current research suggests incarcerative sentences are a particularly ineffective at deterring future criminality and may serve to increase recidivism.

“[H]aving pulled together the best available evidence, we have been persuaded that prisons do not reduce recidivism more than noncustodial sanctions...[A]cross the offender population, imprisonment does not have special powers in persuading the wayward to go straight. To the extent that prisons are used because of the belief that they reduce reoffending more than other penalty options, then this policy is unjustified.”¹

“The research evidence is unequivocal that incarceration does not reduce offender recidivism...Incarceration actually results in slightly increased rates of offender recidivism.”²

¹ Francis T. Cullen, Cheryl Lero Johnson & Daniel S. Nagin, *Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science*, 91 Prison J. 48S, 50S-51S (2011).

² Roger Warren, National Center for State Courts, *Evidence-Based Practice to Reduce Recidivism: Implications for State*

(C) Protect the public from further crimes of the defendant. The public can best be protected through a term of supervised release. The resources provided through probation can give Hamadi the potential to lead a law-abiding life, but will also provide for his further incapacitation if he violates. In fact, the leading research shows that the best way to reduce recidivism is through non-custodial, community based interventions like intensive supervision, education and treatment.³ Also, though this offense involves a high offense level, that is not any valid predictor of defendant's risk for recidivism. This is born out by the research:

There is no correlation between recidivism and guideline's offense level. Whether an offender has a low or high guideline offense level, recidivism rates are similar. While surprising at first glance, this finding should be expected. The guideline's offense level is not intended or designed to predict recidivism.⁴

(D) Provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. Mr. Hassan has had some serious medical issues including a seizure disorder, which while not acute currently, remains untreated. He was assaulted and sustained a serious head injury, which left him unconscious and hospitalized for some period of weeks. He still suffers problems with memory and other cognitive limitations because of that. Though he does not currently need significant medical treatment, he is badly in need of educational and vocation training. With the help and support of probation, he has the potential to make something of his life. Though a period of incarceration is mandatory, it will not promote

Judiciaries (2007), available at <http://nicic.gov/library/files/023358.pdf>.

³ Kimberly Wiebrecht, *Evidence-Based Practices and Criminal Defense: Opportunities, Challenges, and Practical Considerations* 8 (2008), available at <http://nicic.gov/library/files/023356.pdf>.

⁴ USSC, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines* 15 (2004)

any pro-social goals and will do little to put Hamadi in a position to reintegrate effectively into society.

4. Concurrent vs. Consecutive Sentencing

Hamadi Hassan is currently serving a 10 year sentence for a State Court Aggravated Assault conviction, docket number CUMCD-CR-11-4230. That offense is further detailed in paragraph 50 of the pre-sentence report. Pursuant to 18 U.S.C § 3584 (a) this court has the discretion to order that sentences run concurrently even though they are imposed at different times:

if a term of imprisonment is imposed on a defendant who is already subject to an undischarged term of imprisonment, the terms may run concurrently or consecutively, ... Multiple terms of imprisonment imposed at different times run consecutively unless the court orders that the terms are to run concurrently.

18 U.S.C § 3584 (b) provides that “The court, in determining whether the terms imposed are to be ordered to run concurrently or consecutively, shall consider, as to each offense for which a term of imprisonment is being imposed, the factors set forth in section 3553 (a).” Those factors are discussed above and they counsel in favor of a concurrent sentence. A consecutive sentence will further extend Mr. Hassan’s period of incarceration but it will do little if anything to further the statutory goals of sentencing. As discussed above, lengthy prison terms do not act as effective deterrents and may actually increase recidivism rates. Community based interventions are, however, effective ways to address criminality, promote rehabilitation and reduce recidivism. A longer prison sentence will simply delay that intervention.

Also consider that the state court conviction is related in many ways to the current offense.

- It occurred during the time of the federal conspiracy.
- It occurred at Riverton Park, the scene of much of the drug activity associated with this conspiracy,

- It involved some of the same people including the co-defendant Tsegai and others who's names are connected to this investigation.
- Drugs were involved.
- The offense constitutes an act of violence and the defendant is already receiving a guideline enhancement for that kind of conduct.

6. Conclusion

Though he must first endure the traumatic, anti-social and criminogenic environment that is federal prison, Hamadi Hassan will not be there forever. He hopes that, upon release, he will have the opportunity to work with the U.S. probation department who will help him to get the treatment, education, and support he needs to succeed. It is that community based intervention that will best serve the purposes of sentencing. There is no legitimate reason to delay that sorely needed work any longer than absolutely necessary.

November 5, 2014

/s/ Luke Rioux
Luke Rioux (9915)
Attorney for Defendant
97A Exchange St #404
Portland ME 04101
207-358-4909
luke@rdcplawyers.com

CERTIFICATE OF SERVICE

I, Luke Rioux, Esq., hereby certify that I have caused this motion to be electronically filed with the CM/ECF system which will send electronic notice of this filing to:

Assistant United States Attorney Michael Conley.

/s/ Luke Rioux
Luke Rioux (9915)
Attorney for Defendant
97A Exchange St #404
Portland ME 04101
207-358-4909
luke@rdcplawyers.com