

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 14-CR-00009-ERW
)	
WILLIAM BEHRLE,)	
)	
Defendant.)	

DEFENDANT’S SENTENCING MEMORANDUM

I. Introduction

On October 16, 2014, William Behrle (Bill) will appear before this Honorable Court to be sentenced.

The PSR incorrectly determines that he will have an Advisory Guideline level of 27 before any variances are taken into consideration. The undersigned has objected to that calculation and will request that this Honorable Court determine Bill’s Total Offense Level to be 24 which when combined with a Criminal History Category I produces an Advisory Guideline sentence of 51-63 months.¹

Because Bill will request two variances, one for the disparity between pill buyers and methamphetamine cooks and the other for his hard life, a Sentencing Memorandum will assist this Honorable Court in determining how far it should vary.

II. Objections to PSR

The PSR objections are straightforward. The probation office in reading police reports has made a determination that because something is written on paper, it must be true. Application Note 11(A) to Advisory Guideline Section 2D1.1 is inapplicable to this case because of the ***improbability*** that the firearms seized were connected to this offense. See *United States v. Tyler*, 238 F.3d 1036 (8th Cir. 2001)

¹ The undersigned spoke earlier today with Assistant U.S. Attorney Montavani and it appears likely that the probation office will prepare a Final PSR removing the objectionable paragraphs to the initial PSR.

Tyler held:

“We have acknowledged that weapons are generally considered to be "tools of the narcotics dealer's trade," *United States v. LaGuardia*, 774 F.2d 317, 320 (8th Cir.1985), but we have held that the mere presence of a weapon is not sufficient to justify a sentence enhancement. *Turpin*, 920 F.2d at 1386. Moreover, "[t]he government has the burden of establishing a relationship between a defendant's possession of the firearm and the offense which he or she has committed." *United States v. Nash*, 929 F.2d 356, 358 (8th Cir.1991). See also *United States v. Pou*, 953 F.2d 363, 371 (8th Cir.) ("A firearm possessed by a convicted drug offender must be connected with the drug offense of conviction before its possession can be used to enhance his sentence."), cert. denied, --- U.S. ----, 112 S.Ct. 1982, 1983, 118 L.Ed.2d 580, 581 (1992).”

As part of the plea negotiations, the Government determined that there was no connection between the firearms and the crime Bill committed.

Since Bill will have proffered truthfully prior to his sentencing and because there is not firearm enhancement, he meets all of the criteria of 5C1.2 and as such should receive an additional 2 level reduction for the “safety valve.”

III. William Behrle

On July 11, 2011, William Behrle “Bill” was firmly ensconced in an upper middle class lifestyle. Bill had nice cars. He lived in a nice area. He had influential friends. All of that was literally wiped out in the blink of an eye.

July 11, 2011 was a beautiful day and Bill decided to ride his motorcycle. While stopped at a green light awaiting to turn left, he was hit from behind by a driver who was texting. It is a miracle that Bill was not killed.

Bill grew up poor. He was abused by all of the men in his life. He was shot by one of them. Bill really never had a childhood because he had to work to help his Mom take care of his other siblings. Bill had every reason to “quit” on life. He could have blamed his poor circumstances on a bad childhood.

Something inside of Bill though took hold and he excelled. He was not satisfied being a union carpenter as witnessed by his starting Midwest Ceilings where at its peak Bill employed a number of people. Midwest Ceilings won bids throughout the St. Louis

area and installed all of the ceilings at Boeing and other large corporations. On July 11, 2011 Bill was contemplating a bid worth several hundred thousand dollars, but sadly his life spiraled out of control once the accident occurred. After a stay in the hospital and physical therapy Bill was never able to return to who or what he was before the accident.

Descent from upper middle class to that of a junky is rarely swift. Bill did all he could to get back to work to restart his company, but he physically was unable to do so. His tools worth nearly \$100,000 were stolen. Without Bill being present at the job sites, his workers did shoddy work. One thing led to another and ultimately the nice cars, nice house and important people were gone.

Once a self-employed businessperson is unable to work the realities of life strike. Good insurance is financially impossible to obtain. The individual can no longer work to make house, car or insurance payments. The person can no longer pay his medical bills. Sliding from upper middle class to a junky shreds one's pride. *Pride* is the basis of the "American Dream" Bill lived.

Once Bill's pride was gone, what at one time seemed impossible became the norm. In the real world, someone who is horribly injured without insurance is a bad statistic waiting to happen. Just because there is no insurance does not mean there is no pain. Bill was writhing in pain after the accident and once he lost insurance coverage he lost his pain medication. To help ease the pain Bill ultimately began using and became addicted to methamphetamine.

The horrible beauty of methamphetamine addiction is that an addict is able to stay high through the simple purchase of pseudoephedrine. Bill purchased pills and dabbled in the manufacture of methamphetamine.

A literal reading of Paragraph 58 of the PSR would lead one to think that at age 5 Bill began drinking alcohol and that in 2001 he began using methamphetamine. What Bill told the probation officer was that at age 5 he sipped alcohol from his parents' glass unbeknownst to them and that he tried methamphetamine recreationally in 2001. In reality, it was not until 2013 that William Behrle the proud owner of Midwest Ceiling was a hardcore "meth-head."

Bill used methamphetamine every day and as often as he could get his hands on it because it was inexpensive and helped ease his pain. It says a great deal about the strength of character of Bill that without the help of anyone, he was able to stop using methamphetamine.

IV. Variances

A. Pill buyer v. cook

A variance should be granted because had Bill been charged with manufacturing methamphetamine, which is a worse crime than possession of cold pills to manufacture he would have been better off. In short, the cook would receive a lighter sentence than the pill buyer.

Pursuant to congressional directive, the Commission linked pseudoephedrine offense levels to the penalty structure for “actual” methamphetamine in 2001. This resulted in the chemical table found in USSG §2D1.11, for ephedrine, pseudoephedrine, and phenylpropanolamine (PPA). The table ties the base offense levels for these chemicals to the base offense levels for methamphetamine (actual) set forth in USSG §2D1.1, assuming a 50 percent actual yield of the controlled substance from the chemicals.

According to various U.S. Attorney’s Offices and probation offices throughout the country, pseudoephedrine offense levels are more fairly linked to the penalty structure for methamphetamine mixture (not actual), which results in a lower offense level found in the Advisory Guidelines.

Accordingly, this Honorable Court may wish to consider a downward variance based on the comparable penalty structure of methamphetamine mixture. In this case, the instant offense involved a total of 45 grams of pseudoephedrine and a base offense level of 28. If computed based on the methamphetamine mixture penalty structure, the base offense level for 45 grams of methamphetamine mixture would have been 24, and ultimately, after consideration of other applicable enhancements and reductions in this case, the total offense level would have been 19, which combined with a criminal history category of III, results in a guideline sentence range of 30 to 37 months.

B. Bill's Hard Life

Generally, the focus of any variance is on a Defendant's hardluck story. Here, Bill fits this stereotype perfectly. He grew up dirt poor in a household where his Mom married men who were abusive to her and to Bill. Bill was shot by an enraged stepfather. He has no relationship whatsoever with his father. Bill's health situation is volatile at best.

To focus on these hardships though would do a disservice to Bill. *ANY* additional variance should be awarded because of these hardships as well as who the man Bill became. Life put a lot of roadblocks in his path and instead of trying to go around them, Bill met these challenges head-on and went through them.

Bill could have "quit life" as a kid. He could have blamed society that his father and stepfather are bums who abused him and his mother. In order to make up for a lost childhood helping his Mom (who worked two jobs) raise his siblings, Bill could have become a teenaged hoodlum. Once caught, Bill could have easily sought pity for his mistakes based on his childhood.

As a man, he excelled at being a carpenter to the extent that he was able to start a company which eventually thrived.

At the height of his success, God dealt Bill a debilitating blow and Bill lost everything including his dignity to drugs. After the motorcycle wreck, Bill could have blamed others for his slide into drug addiction.

Like a phoenix though, the self-determination and strength Bill exhibited throughout his life allowed him to fight off the demons of depression and drug addiction. On his own he was able to quit methamphetamine.

The best reason why this Honorable Court should vary is because Bill Behrle has always risen to the task at hand. The reason Bill has not complained once about his plight is because he has never bought into the "victim culture" that has engulfed the modern American society.

Bill has done wrong and should be punished. A 30 month sentence though seems harsh in light of the life Bill has lived.

C. Requested Variance

The undersigned is confident that he will prevail on the objections to the PSR and that before considering a second variance, Bill's sentence will commence at 30 months.

Generally, the undersigned would request a variance to a particular sentence. The undersigned has been in front of this Honorable Court so often and is so comfortable with its reasoning that no specific request will be made.

V. Conclusion

The most difficult task for any judge has to be sentencing someone to prison. Any drug crime has to be punished severely because of the impact it has on society as a whole. The question, for purposes of 18 U.S.C. § 3553 is finding the balance between a sentence which is sufficient, but not greater than necessary to ensure among other things just punishment.

This Honorable Court has the wisdom and courage to do what it thinks is fair and just which is the only thing any Defendant can request.

WILLIAM BEHRLE

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CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2014, a copy of the attached *Defendant's Sentencing Memorandum* was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

Mr. John Mantovani
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