

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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 13-CR-457-CEJ-TIA
	)	
LYRA MARIA BEKE,	)	
	)	
Defendant.	)	

**DEFENDANT’S SENTENCING MEMORANDUM**

*I. Introduction*

But for the Government filing a 5K1.1 Motion for Lyra Beke’s (Lyra) cooperation, the best sentence she could hope for under the Advisory Guidelines is 18 months which pursuant to Zone D would mean incarceration. (¶91)

Assistant U.S. Attorney Winfield indicated to the undersigned on July 31, 2014 that the Government will in fact file a 5K1.1 Motion, which allows Lyra to request a departure from a Zone D sentence mandating incarceration to a Zone B sentence of 14 months which does not require incarceration and which can be served by 7 months of home confinement and 7 months of probation.

In all criminal cases there are 18 U.S.C. §3553(a) factors that need to be addressed and for Lyra, she will focus on her personal characteristics including her mental health, her lack of a criminal record, her role in the present offense, as well as her gainful employment.

After addressing these factors, Lyra will discuss the impact *Gall* has on her case and reasons why a split sentence of home confinement and probation is appropriate and meets the requirements of 3553.

The factors to be considered as part of the 5K1.1 Motion will be addressed on the day of her sentencing.

## *II. Lyra Beke*

The term “good soul” best describes Lyra. Her life has been anything but easy, yet she has persevered and has remained positive.

Paragraphs 62 through 65 of the Presentence Investigation Report (PSR) give a snapshot of Lrya’s life. Missing from these paragraphs is a full understanding of the life Lyra has lived. When the undersigned initially met Lyra, he asked her to give an idea of “who” she was. The undersigned was frankly amazed at what he received. Attached hereto and marked Exhibit A is a letter Lyra wrote the undersigned detailing her difficult and extraordinary life.

Rather than writing a long winded dissertation about Lyra the undersigned will rely on the simplicity of her letter which does a remarkable job showing that Lyra has a positive outlook on life notwithstanding all of the negative things that have occurred to her.

The turmoil in Lyra’s life commenced as a child when her parents went through a contentious divorce. Her life never totally spiraled out of control, but Exhibit A demonstrates that each time Lyra would get back on her feet, life would deal her another wicked blow.

Lyra is blessed to have a strong foundation rooted in family and Exhibit A shows that her life revolves around family. Exhibit A shows how fortunate Lyra was to have had a wonderful grandmother (Lyra’s Oma) who taught Lyra a great many things especially how to always remain positive.

Besides her grandmother, Lyra’s anchors are her Mom Deborah and sister Nova Schaffnit. Nova previously wrote this Honorable Court describing the woman she knows and sister she loves. Nova describes some of the trials and tribulations in Lyra’s life but ultimately describes Lyra as a “rock.”

Lyra has also surrounded herself with true friends as witnessed by the letters of support forwarded to this Honorable Court on July 23, 2014. These letters show a woman dedicated to trying to help others around her live a better, more fulfilling life. All of the letters show Lyra has a strong support system which is admirable.

### *A. Mental Condition*

Lyra being described as a “rock” and someone who reaches out to help others is more impressive in light of the serious mental challenges she faces every day.

Relying on paragraphs 68 through 71 of the PSR, paragraph 113 indicates that this Honorable Court may wish to consider a downward variance based on Lyra’s mental and emotional health. The PSR reports that Lyra has been diagnosed with bi-polar disorder and bulimia.

Lyra’s mental condition is ongoing. It is not something that will ease over time. This case and the fear of incarceration has exasperated her condition. The ups and downs that go with federal criminal prosecutions is not easy to deal with under “normal” circumstances and for someone with a debilitating mental condition like Lyra’s is magnified exponentially.

Even when the Guidelines were mandatory, a Sentencing Court was able to take into consideration a Defendant’s mental condition. With the advisory nature of the Guidelines, Sentencing Courts can now take into consideration a Defendant’s mental health for purposes of 3553 analysis and vary downward.

The PSR points out how Lyra’s mental condition impacted her life and how being bi-polar continues to be a burden she has to deal with on a daily basis. While perhaps not as important in light of the 5K1.1 Lyra’s mental condition should be addressed.

### *B. Role in the Offense/Holder Memorandum*

For lack of a better description, Lyra’s role was that of a courier and money launderer for small sums. In the overall conspiracy, Lyra was very low on the totem pole which will hopefully inure to her benefit.

Since a 5K1.1 Motion will be filed, the Holder Memorandum is something this Honorable Court can look at in determining an appropriate sentence for Lyra.

Because no mandatory minimum sentence applies in Lyra’s case, the undersigned acknowledges that the Holder Memorandum does not apply. However, General Holder’s statement that “long sentences for low-level, non-violent drug offenses do not promote public safety, deterrence, and rehabilitation” is interesting because for someone like Lyra

who is on the lowest rung of the ladder for culpability purposes, *any* incarceration would be “long.”

In a speech to the American Bar Association, General Holder stated:

"In some cases, mandatory minimum and recidivist enhancement statutes have resulted in unduly harsh sentences and perceived or actual disparities that do not reflect our Principles of Federal prosecution. Long sentences for low-level, non-violent drug offenses do not promote public safety, deterrence, and rehabilitation."

Holder was even more direct in his ABA speech, calling mandatory minimums "draconian" and asking Congress to reform a system which can “breed disrespect” for itself.

“When applied indiscriminately, they do not serve public safety.” See [http://www.huffingtonpost.com/2013/08/12/eric-holder-mandatory-minimum\\_n\\_3744575.html](http://www.huffingtonpost.com/2013/08/12/eric-holder-mandatory-minimum_n_3744575.html)

General Holder discussed how, over time, charging decisions made by U.S. Attorneys’ offices throughout the country became overly-focused on punishment. General Holder mentioned that rehabilitation should be an aspect of charging decisions and the ultimate sentence a particular Defendant receives.

After considering the merits of the 5K1.1 Motion, hopefully this Honorable Court will determine that a Zone B split sentence meets the language of the Holder Memorandum as well as the requirements of 3553.

### *C. Work History*

The overwhelming majority of individuals who are involved in large drug conspiracies like the one here do not work. They become engrossed in drug conspiracies to support a certain type of lifestyle.

Lyra has worked for most of her adult life. This is commendable for a variety of reasons including her mental health condition, her migraines and a scattered personal history.

This type of stability is beneficial to a Defendant requesting a sentence that does not include incarceration because it allows a Sentencing Court to be comfortable knowing that a Defendant is responsible and capable of following directions from Probation

### III. *Gall* & Probation

Lyra's case is a perfect illustration of the brilliance of *Gall* and shows why a statute trumps an advisory Guideline. In one paragraph of the PSR, (¶98) citing USSG §5B1.1 comment note 2, it states, "since the applicable Guideline range is in a Zone D of the Sentencing Table, Defendant is ineligible for probation." In the preceding paragraph, (¶97) the PSR acknowledges that pursuant to the statute to which Lyra pleaded she is in fact eligible for up to 5 years of probation. Pre-*Gall* a sentencing Court would have had to sentence Lyra to jail, but post-*Gall* this Honorable Court can rely on the language of the statute which allows probation.

Probation was and is viewed as "getting off easy," because the notion is that there is no punishment component. 18 U.S.C. §3553(a)(3) pertains to the kinds of sentences available and *Gall* discussed **PROBATION** which again, to a casual observer is viewed as "getting off easy." *Gall* held:

"We recognize that custodial sentences are qualitatively more severe than probationary sentences of equivalent terms. Offenders on probation are nonetheless subject to several standard conditions that substantially restrict their liberty. See *United States v. Knights*, 534 U.S. 112, 119, 122 S. Ct. 587, 151 L. Ed. 2d 497 (2001) ("Inherent in the very nature of probation is that probationers 'do not enjoy the absolute liberty to which every citizen is entitled'" (quoting *Griffin v. Wisconsin*, 483 U.S. 868, 874, 107 S. Ct. 3164, 97 L. Ed. 2d 709 (1987))).

4 Probationers may not leave [\*596] the judicial district, move, or change jobs without notifying, and in some cases receiving permission from, their probation officer or the court. They must report regularly to their probation officer, permit unannounced visits to their homes, refrain from associating with any person convicted of a felony, and refrain from excessive drinking. USSG § 5B1.3. Most probationers are also subject to individual "special conditions" imposed by the court. *Gall*, for instance, may not patronize [\*\*\*19] any establishment that derives more than 50% of its revenue from the sale of alcohol, and must submit to random drug tests as directed by his probation officer. App. 109.

4 See also Advisory Council of Judges of National Council on Crime and Delinquency, *Guides for Sentencing* 13-14 (1957) ("Probation is not granted out of a spirit of leniency . . . . As the Wickersham Commission said, probation is not merely 'letting an offender off easily'"); 1 N. Cohen, *The Law of Probation and Parole* § 7:9 (2d ed. 1999) ("The probation or parole conditions imposed on an individual can have a significant impact on both that person and society . . . . Often these conditions comprehensively regulate significant facets of their day-to-day lives . . . . They may become subject to frequent searches by government officials, as well as to mandatory counseling sessions with a caseworker or psychotherapist")."

*Under Gall, incarceration is no longer mandated.* Combining this aspect of *Gall* with the 5K1.1 Motion, Lyra's mental condition, role in the offense and stable employment, a Zone B sentence is entirely appropriate.

It would be wholly unfair to take the position that the *only* just punishment is imprisonment so as to act as a deterrence to other Defendants similarly situated to Lyra. To follow this approach would violate the legislative history to Section 3553 (a) where a Sentencing Court should not show a preference for one purpose of sentencing over another.

#### *IV. B. 18 U.S.C. 3553(a)*

At page 22, *Gall* lists and discusses the seven factors that a Sentencing Court *must* consider. The first factor is a broad command to consider "the nature and circumstances of the offense and the history and characteristics of the defendant." *18 U.S.C. § 3553(a)(1)*. It is the undersigned's position that Lyra comes out ahead on this point.

The nature and circumstances of the offense is straightforward. Lyra was a courier and small level money launderer.

While Lyra was much less culpable than others in the conspiracy, she nevertheless voluntarily became involved in a serious crime. But, Lyra was not going to share in the proceeds of the conspiracy which should benefit her for sentencing purposes. Lyra was used by others due to the fact that she desperately needed money.

Regarding the characteristics of Lyra, she is involved in a long-term relationship with Tom Horvath who is an airline pilot. She has a loving and supportive family who continue to help her through this difficult time. Lyra has been gainfully employed the majority of her adult life and has no criminal record whatsoever.

The foregoing paints Lyra as a somewhat bland “normal” person, but in reality, the personal characteristics of Lyra are extraordinary. Exhibit A shows how hard Lyra’s life has been. It shows someone who has not given up and who takes solace in helping others. Lyra made a horrible mistake getting involved in this criminal conspiracy and like any criminal defendant does not want to be incarcerated for that mistake. The obvious argument is that Lyra should have thought about all of her loved ones *before* deciding to get involved in this criminal enterprise.

But, oftentimes individuals allow themselves to be duped into thinking that they are not “really” participating in illegal activity by simply making deliveries to/from California or getting money orders to pay someone’s rent. Over time the need for money supersedes logic. The question for a Sentencing Court is whether incarceration is mandatory. General Holder for example discussed the need for rehabilitation which in Lyra’s case is what a 14 month Zone B split sentence of 7 months home confinement and 7 months probation would be.

The second factor requires the consideration of the general purposes of sentencing, including:

"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." § 3553(a)(2).

The bottom line for any sentencing imposed is to ensure that the Defendant has learned their lesson, won't break the law again and become a productive member of society.

Starting with (c), protecting the public from further crimes of the Defendant assumes that there will be further crimes. A Defendant's criminal history is generally indicative of what will transpire in the future and is no doubt why General Holder specifically addressed first time offenders in his Memorandum. 7 months of probation followed by 7 months of home confinement with a long term of supervised release will ensure that Lyra will not break the law again. If she does, her supervised release will be revoked and this Honorable Court can incarcerate her.

Subsections (A) and (B) are the difficult hurdles to clear. Requesting what might be considered a "light" sentence seems to be contrary to just punishment and deterrence. The argument will go that if Lyra gets off easy, no message will be sent to others similarly situated who might decide to get involved in a criminal conspiracy.

The carrot and stick analogy seems to fit. Each crime and Defendant have their own unique set of circumstances. A Defendant who is "doing life on the installment plan" because they constantly break the law and for whom prison is a home away from home needs the stick.

The question is how big does the "stick" need to be to ensure just punishment? For example, how is it possible to quantify the fear that someone like Lyra has of going to prison? How is it possible to quantify the humiliation that Lyra feels knowing that because of her actions her family will see and perceive her in a different light? How is it possible to quantify the stress and anxiety someone with mental issues like Lyra, has felt since she was arrested on these charges?

#### *V. Conclusion*

As in all sentencings, this Honorable Court has the extraordinarily difficult task of deciding the appropriate sentence for a Defendant.

This case has shredded Lyra's personal life. She is doing as well as can be expected under these extremely difficult circumstances.

The undersigned has developed a great deal of respect and appreciation for Lyra and how she has persevered under very difficult personal circumstances. Lyra has not quit and has a remarkably positive outlook on life. But for these crimes Lyra has led an unblemished life, loved and respected by everyone who crosses her path.

For the foregoing reasons, Lyra requests that this Honorable Court grant the Government's Motion filed pursuant to 5K1.1 and vary downward from a Total Offense Level of 15 to a Total Offense Level 11 which when combined with a Criminal History Category I results in a sentencing range of 11-14 months. Lyra will request a sentence of 14 months which is at the top of this Guideline level. A Zone B sentence of 14 months can be satisfied with 7 months of the sentence served on probation and the other 7 months of the sentence served on home confinement.

LYRA BEKE

STOBBS LAW OFFICES

BY:

/s/John D. Stobbs II

John D. Stobbs II, No. 43052

E.D.Mo. Number 40623

Attorney for Defendant

307 Henry St. Suite 211

Alton, Illinois 62002

Telephone: (618)462-8484

FAX: (618)462-8585

Email: [jds2@stobbslaw.com](mailto:jds2@stobbslaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on August 4, 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:

Ms. Jennifer Winfield  
Assistant U.S. Attorney  
111 S. 10<sup>th</sup> Street  
St. Louis, Missouri 63102

STOBBS LAW OFFICES

/s/ John D. Stobbs II  
Attorney for Defendant  
307 Henry St. Suite 211  
Alton, Illinois 62002