

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 14-CR-30116-DRH
)	
LAWRENCE THIGPEN,)	
)	
Defendant.)	

DEFENDANT’S SENTENCING MEMORANDUM

I. Introduction

This is an exceptionally complicated case for sentencing because this Honorable Court is forced to decide whether this horrifically obese Defendant with a long history of fraud deserves to be imprisoned for his crime.

Defendant will request that this Honorable Court vary downward from an Advisory Guideline level 8 Zone D range of 15-21 months to a level 6 split sentence of 15 months.

II. Lawrence Thigpen

On the one hand pages 6 through 15 of the Presentence Investigation Report show that Lawrence Thigpen is a “thief.” To say that this Honorable Court has a low tolerance for repeat offenders is an understatement.

On the other hand Lawrence Thigpen is a horrifically obese man weighing 630 pounds who is confined to a wheelchair. Mr. Thigpen’s girth prohibits him from easily passing through “normal” doors. Mr. Thigpen never physically made it into the undersigned’s office, although he did make it to the undersigned’s office building. Mr. Thigpen was driven to the undersigned’s office, and while exiting the vehicle fell to the ground. He required a great deal of help to get off of the ground and ultimately, the undersigned met with him on a hallway bench because Mr. Thigpen could not maneuver into the undersigned’s office.

The tip of the iceberg for purposes of a variance, is Mr. Thigpen's weight. His girth is readily apparent, but his other medical conditions listed in paragraph 77 are not as apparent:

"The defendant advised that he is in poor health. He weighs 600 pounds and is in need of gastric surgery; however, he first has to get his weight down to 450 pounds. He has arthritis in his right knee and the bones in his left knee are "bone to bone." He also has nerve damage to his left knee and neuropathy in both legs. He is in need of knee replacement surgery, but has to lose weight first. He also has a bad back and sleep apnea for which he uses a CPAP machine. In addition, he uses a motor scooter to get around. He also reportedly has ulcers on his legs, high blood pressure, shortness of breath, congestive heart failure, acid reflux, prostate cancer and a torn rotator cuff. The defendant has received most of his medical care from St. Louis University (SLU) Hospital in St. Louis."

Simply stated, Mr. Thigpen is a walking time bomb. He has one foot in the grave. Mr. Thigpen has been prescribed nearly 30 medications to deal with the various maladies he suffers from, and combined with his depression, Mr. Thigpen's medical situation warrants a variance.

In all criminal cases there are 18 U.S.C. §3553(a) factors that need to be addressed and Mr. Thigpen will focus on his physical characteristics including his mental health

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

II. Plea Calculations

Defendant entered into a "straight-up" plea. When the Government produced the "Agreement to Plead Guilty" showing the loss to be under \$5,000, the undersigned's assumption was that Mr. Thigpen was receiving the benefit of the doubt for some of the loss calculations ultimately contained in the PSR. As such the Government was conceding some of the loss calculation.

The undersigned has attempted unsuccessfully to get from the Government its precise reasoning as to why the loss would be under \$5,000. The undersigned will not

file objections to the PSR at this time because to do so could conceivably result in Mr. Thigpen losing his acceptance of responsibility if the Government now supports the findings in the PSR.

III. 3553 Factors

Clearly, as witnessed by the Agreement to Plead Guilty, the Government does not believe Mr. Thigpen warrants incarceration. The Agreement to Plead Guilty calls for probation.

Mr. Thigpen's physical and mental conditions are ongoing. They are not something that will ease over time. This case and the fear of incarceration has exasperated his condition. The ups and downs that go with federal criminal prosecutions are not easy to deal with under "normal" circumstances and for someone with a debilitating physical and mental condition like Mr. Thigpen's this stress is magnified exponentially.

Even when the Guidelines were mandatory, a Sentencing Court was able to take into consideration a Defendant's physical and mental condition. Post-*Gall*, with the advisory nature of the Guidelines, Sentencing Courts can now take into consideration a Defendant's physical and mental health for purposes of 3553 analysis and vary downward.

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 would be foolish, and the undersigned would lose all credibility by trying to make a silk purse out of a sow's ear regarding Mr. Thigpen's criminal history.

It is rare for a federal criminal defendant to have 9 paragraphs of criminal history. In 25 years, the undersigned has never represented someone with **9 pages** of criminal history.

But, Mr. Thigpen's criminal history is only one prong of "history and characteristics" of the defendant. His criminal history is indefensible. But, Mr. Thigpen's other characteristics will hopefully offset some of the harm his criminal history does. It

is remarkable that Mr. Thigpen needs to lose nearly 200 pounds, *just to be considered* for lap-band surgery. The prospect of Mr. Thigpen losing 200 pounds is remote. But, the fact that doctors have mandated such a dramatic weight loss in and of itself shows how bad Mr. Thigpen's other medical conditions are. Doctors are too concerned about Mr. Thigpen's other maladies to perform what could be a life-saving procedure.

Mr. Thigpen has three children, one of whom is autistic. ¶75 Fortunately, if this Honorable Court does not vary downward, and if Mr. Thigpen is incarcerated one of Lawrence Jr.'s siblings will be able take care of him while Mr. Thigpen is away. The reality for autistic children is that *any* change, no matter how slight, is detrimental to that child. Hopefully, this will be considered as well when determining if a variance is appropriate for Mr. Thigpen.

While the crime that Mr. Thigpen committed is not the "crime of the century" stealing from a program meant to help the poorest in our society is pretty low.

So, the first prong is probably a "draw." Fortunately, the other prong of 3553(a) helps Mr. Thigpen.

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.

Regarding subsection (c), protecting the public from further crimes of the Defendant, this Honorable Court will understandably point out that a Defendant's criminal history is generally indicative of what will transpire in the future.

Mr. Thigpen's last brush with the law was in 2012 when he was arrested for stealing T-shirts and *medicine* from a Wal-Mart. Mr. Thigpen's girth prohibits him from buying (or stealing) clothes from Wal-Mart, K-Mart or Target. He cannot buy (or steal) clothes "off the rack." That means that the T-shirts were for Angela Jones who was with Mr. Thigpen on the day in question in 2012. The medicine which was stolen was probably for Mr. Thigpen.

Prior to 2012 Mr. Thigpen's last contact with law enforcement was eight years ago, in 2007. While this is perhaps a distinction without a difference, it adds perspective to the 2012 crime and hopefully shows that Mr. Thigpen is on the right track regarding protecting the public from his future criminal activity.

Similarly, in terms of protecting the public from Mr. Thigpen, the amount of time he will hopefully be on probation/home confinement combined with supervised release will protect the public from any of Mr. Thigpen's transgressions.

Subsections (A) and (B) deal with ensuring that a sentence will deter similar type crimes as well as reflect the seriousness of the crime, by promoting respect for the law, and providing just punishment for the offense.

As stated above, Mr. Thigpen's crime is not "the crime of the century." It is a crime of "ease" based on poverty. "Ease" because when Mr. Thigpen and Ms. Jones concocted this scheme the last thing they expected was for law enforcement to become involved. Had Ms. Jones not been incarcerated at the time, it would have been difficult for law enforcement to prove the crime.

"Poverty," because in order to be part of the Medicaid program at issue and to have a personal assistant like Ms. Jones, the recipient has to be eligible based on having a low income. The amount of money at issue is miniscule and was not used to support an extravagant lifestyle.

At one time the undersigned was concerned about the public's view of what might be considered a "light sentence." In reality, other than life in prison or the death penalty, the public is never satisfied with any sentence that is handed out. "Just punishment/deterrence" is what a Sentencing Court is required to consider when imposing a sentence. Here, a variance to a split sentence is just punishment because it will remove Mr. Thigpen from the public for as much of the 15 month sentence as this Honorable Court desires.

Regarding deterrence, the argument will go that if Mr. Thigpen gets off easy, no message will be sent to others similarly situated who might decide to get involved in a criminal conspiracy.

If this were a large scale conspiracy where Mr. Thigpen is stealing hundreds of thousands of dollars, perhaps that could be a concern. Here, the message is getting out that no matter the amount, the Government will prosecute a would be thief. That in and of itself is the message.

Just punishment and deterrence do not fully take into consideration someone like Mr. Thigpen. He has real mental issues which are percolating below the surface. Every second of every day Mr. Thigpen worries about being incarcerated. He worries that the Bureau of Prisons is not set-up for 630 pound inmates. He worries that he will not fit into a "normal" prison bed. He worries that whatever bed he is given, his other maladies like sleep apnea will not be addressed. Mr. Thigpen worries about the two and a half medications he is presently prescribed being changed by a prison doctor who does not know or understand him. Mr. Thigpen worries about not being able to wear "normal" prison clothes. Mr. Thigpen no longer has a personal aid to assist him. Mr. Thigpen is practically confined to his house because of his physical limitations. All of this adversely impacts his physical health. After a certain period of time, this vicious circle of worry and concern will be catastrophic.

IV. 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 Mr. Thigpen's life. He no longer has a personal aid which he needs to make his life that much easier.

For the foregoing reasons, Mr. Thigpen requests that this Honorable Court grant his Motion for Variance and vary downward from a Total Offense Level of 8 to a Total Offense Level 6 which when combined with a Criminal History Category V results in a Zone B sentencing range of 9-15 months. Mr. Thigpen will request a sentence of 15 months which is at the top of this Guideline level. A Zone B sentence of 15 months can be satisfied with 7 months of the sentence served on probation and the other 8 months of the sentence served on home confinement.

LAWRENCE THIGPEN

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CERTIFICATE OF SERVICE

I hereby certify that on January 23, 2015, 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. Michael Hallock
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