

**United States District Court
Eastern District of Wisconsin**

United States of America,

Plaintiff,

Case No. 2006-CR-215

v.

Lawrence Butler,

Defendant.

Lawrence Butler's Sentencing Memorandum

Introduction

I. The Facts

The defendant, Lawrence Butler ("Butler") was named in an indictment alleging that he was part of a conspiracy to deliver heroin in the Milwaukee area. On May 17, 2005 Milwaukee Police received information from a confidential informer that the occupants of 3369 N. Palmer St., Milwaukee were selling heroine from that home. At approximately 1:30 p.m. on that day a squad of Milwaukee police officers went to that address and surrounded the house. The police did not have a warrant. Instead, the officers planned to conduct a "knock and talk" with the residents.

After about one minute of knocking and loudly announcing themselves as police officers, an officer stationed at the back of the house saw an unknown black male wearing a white tee-shirt throw out of the kitchen window what appeared to be a plastic baggie with tan powder. The officer who saw the baggie thrown out of the window suspected that the tan powder was heroin and communicated this information to the officers located at the front of the house. Three officers then gained forcible entry through the front door "for the purpose of preventing the destruction of narcotics evidence."

Butler and a number of others were arrested inside the house.

Shortly after his arrest Butler was questioned by Milwaukee Police. During that interview Butler told authorities all he know about the heroin operation and his (Butler's) involvement in it. Butler claimed that he was involved for approximately two months and that his primary function was to answer the phone at the drug house. There is no suggestion in the discovery materials that Butler was anything but entirely truthful in this statement to police.

The general background of the activities of the conspiracy are set forth in detail in the presentence investigation report.

II. Butler's Role

Butler is originally from Chicago; however, in March, 2005 he came to Milwaukee to visit a girlfriend and, while he, he became involved in selling drugs. Primarily, Butler was the "receptionist" who answered the telephone and took orders for drugs. For this he earned \$200 per week until his arrest in May, 2005. Butler's motivation for getting involved was primarily financial. According to Butler he was smoking PCP at least twice a week.

Initially, Butler was charged in state court. He remained in state custody from May, 2005 until November, 2005. Once he was released he returned to Chicago and found a job as a check sorter. At that point Butler felt as though he had turned his life around.

Nonetheless, Butler was rearrested when the indictment in this case was returned.

Discussion

Although the distribution of heroin is a serious offense Butler's involvement was short-lived and minimal. Moreover, Butler immediately took responsibility for his behavior by immediately confessing to the police and entering an early guilty plea in the present case. Thus, it does not appear that Butler poses a general danger to the

community. Butler's has two significant rehabilitative needs. They are drug treatment and education. Thankfully, those are the two needs that the Bureau of Prison is most adept at addressing. Prior to this case Butler has never served any significant period in prison.

Thus, protection of the community and addressing Butler's rehabilitative needs may be accomplished with a five year period in prison (which is the statutory minimum).

18 USCS § 3553 provides:

§ 3553. Imposition of a sentence

(a) Factors to be considered in imposing a sentence. The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider--

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) 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;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for--

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines--

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii) that, except as provided in section 3742(g) [18 USCS § 3742(g)], are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement--

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g) [18 USCS § 3742(g)], is in effect on the date the defendant is sentenced.

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

In passing sentence the court need not recite on record all of the considerations that 18 USCS § 3553(a) lists. Rather, it is enough to calculate the guideline range accurately and to then explain why (if sentence lies outside it) defendant deserves more or less. *United States v George*, 403 F3d 470 (7th Cir. 2005)

I. The factors generally

A. Seriousness of the Offense

There is no denying the seriousness of the offense. Heroin is, perhaps, the most addictive "recreational" drug- and Butler was involved in distributing it in Milwaukee. The community's sentiment is reflected in the fact that Congress imposed a minimum mandatory sentence of five years in prison.

Although Butler recognizes the seriousness of his offense it must be emphasized

that: (1) His motivation, characterized by the PSI writer as "purely financial", was to fund his own drug addiction to PCP (that is, Butler did not do it in order to get rich); and, (2) His involvement in the conspiracy was short-lived and it did not involve directly distributing the drugs. Butler did not get rich working for this conspiracy and he was hardly a director or manager of the group's activities.

B. Acceptance of Responsibility

In determining what steps are necessary to adequately protect the public the court looks to the defendant's acceptance of responsibility. The theory is that a person who recognizes the wrongfulness of his behavior and takes steps to correct it is much less of a danger to the community than a person who is unwilling to acknowledge his criminal behavior.

Here, on the day of his arrest Butler gave a complete accounting of his behavior in the organization. The statement was not given as part of a federal "debriefing" in the hopes that Butler would garner favor from the government. Rather, Butler gave the statement not even knowing that he would eventually be charged in federal court.

Additionally, Butler had an informal period of probation when he was released from state custody in November, 2005. His response was not to return to the destructive life-style he had been engaged in prior to his arrest. Rather, Butler went back to Chicago and almost immediately found a legitimate job. His rehabilitation was interrupted by his arrest in this case.

Nonetheless, Butler was one of the first defendants in this case to enter a guilty plea. Butler entered his plea long before the case was even set for trial. Moreover, Butler did not receive in his plea agreement any overly-generous sentencing recommendations from the government in exchange for "cooperation" against the co-defendants. Rather, Butler pleaded guilty because he was guilty and he wanted to begin putting this incident behind him as soon as possible.

Thus, Butler's behavior during the course of this case demonstrates that he is truly sorry for his involvement and that he is willing to pay his debt to society and move on. Plainly, Butler is not an individual who needs to be incarcerated for a substantial period in order to protect the public.

B. Butler's Rehabilitative Needs

Butler has two glaring rehabilitative needs- educational and drug treatment.

When one reads Butler's biographical information it is surprising that he has done as well for himself as he has. As a child his family life is fairly described as chaotic. His father was a drug user and his mother "gave him up" to his grandmother. Then, during his childhood, Butler's grandmother died and Butler went to live with his mother (apparently out of lack of any other available adult).

His education was abominable. He completed his freshman year in high school with a .88 G.P.A (which is an average of "F"). The most remarkable fact is that this .88 GPA placed Butler in the top third of his class (117th out of 603).

At the plea hearing it was placed on the record that defense counsel was required to read the entire plea agreement to Butler because Butler could not read it himself.

It is apparent, though, that despite having almost no education Butler is not a criminally-inclined person. He prior adult record consists entirely of drug charges.

The bad news is that Butler has these two significant rehabilitative needs. The good news is that drug abuse and education are the needs most effectively addressed by the Bureau of Prisons. Most prisons offer GED courses and, of course, the 500 hour drug treatment program.

If Butler addresses these two rehabilitative needs there is very good chance that he will never reoffend after release.

C. Criminal History

As mentioned above, Butler's criminal history consists of three drug charges. However, he finds himself in criminal history category III primarily because of the fact that the present offense was committed while Butler was already on supervision.

What the court should note, though, in considering Butler's criminal history is the fact that he has never served any substantial period of incarceration as a result of any of his previous convictions. Thus, Butler has never had the "benefit" prison. The

salient point is that Butler's rehabilitative needs and punishment of him can be accomplished with less prison time than might otherwise be necessary given the seriousness of this offense.

D. Lengthy pretrial incarceration

While there has been some contention among circuits over the propriety and wisdom of considering the conditions of confinement as a mitigating sentencing factor, several decisions indicate that granting a departure on this ground "is not categorically foreclosed." *United States v. Ogembe*, 41 F. Supp.2d 567, 571 (E.D.Pa. 1999); see also *United States v. Pacheco*, 67 F. Supp.2d 495, 498 (E.D.Pa. 1999) ("While exceptionally hard conditions of confinement might qualify for a departure . . . , a defendant must demonstrate to the court that the conditions compare unfavorably to those suffered by other inmates.") (internal citations omitted); *United States v. Miranda*, 979 F. Supp. 1040, 1044-45 (D.N.J. 1997), appeal dismissed, 159 F.3d 1354 (3d Cir. 1998) (denying downward departure based on conditions of pretrial confinement as record was "too sparse" to demonstrate that the conditions were "sufficiently deplorable"); *United States v. Sutton*, 973 F. Supp. 488, 493 (D.N.J. 1997), aff'd, 156 F.3d 1226 (3d Cir. 1998) ("Unusual pretrial confinement . . . in either length or severity of condition, can properly be considered by the sentencing court.") We do not decide the question of whether confinement conditions constitute a permissible basis for downward departure.

Here, though, Butler has been in custody at the Dodge Detention Center since the time of his arrest. He is obviously willing to begin addressing his rehabilitative needs; however, at the DDC there simply is no opportunity to do so. Thus, to the extent the court's sentence will include a punishment component, the court should bear in mind that Butler has served many months of "hard time" in a county jail.

Conclusion

For these reasons it is respectfully requested that the court impose a period of sixty months prison. This represents the statutory minimum penalty of five years. Butler is not eligible for Safety Valve because of his prior record even though the low

end of his guideline range is 57 months.

Dated at Milwaukee, Wisconsin, this 9th day of December, 2007.

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