

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CR No. 14-3608 MCA
	)	
vs.	)	
	)	
NATHAN MONDRAGON,	)	
	)	
Defendant.	)	

**UNITED STATES SENTENCING MEMORANDUM AND RESPONSE TO  
DEFENDANT'S MEMORANDUM**

The United States hereby files this memorandum after careful review of the Pre-sentence Investigation Report associated with the above-captioned case. This memorandum requests that this Honorable Court accept the plea agreement entered by the Defendant on December 23, 2014, and sentence the Defendant within the proposed guideline range.

As an initial matter, the United States has no objections to the facts as set forth in the pre-sentence report. The pre-sentence report disclosed on February 20, 2015, correctly calculated the applicable offense level and criminal history relevant to the Defendant. The Defendant's adjusted total offense level, with acceptance, stands at 25. PSR ¶47. His criminal history category is III. PSR ¶ 54. The term of supervised release is not more than 3 years. PSR ¶ 117.

The facts of this case are unfortunately an all too familiar set of facts for the Defendant who has previously been charged on fourteen prior occasions for violent crimes. In most of the cases, the victims' were family or friends, and the assaults were unprovoked. In at least two of the prior cases the Defendant used a knife, including the case that was previously prosecuted in

this Court. PSR ¶¶ 51, 52. The victim in this case, well-loved by his family, has experienced a great deal of trauma, physical and emotional, as a result of this assault. It is not a surprise given the Defendant's violent history, and current offense that the victim would like the Court to impose the higher range of the sentencing guidelines. PSR ¶30.

Accordingly, the United States respectfully requests that this Honorable Court implement the sentencing guideline range established after the offense level reduction for acceptance of responsibility of 70 to 87 months for assault resulting in serious bodily injury.

**1. A sentence within the United States Sentencing Guidelines range is appropriate**

It is acknowledged that the Defendant's personal situation and history are imperfect. However, the Defendant's history and characteristics are not so manifestly unique as to qualify him for a sentence outside the prescribed USSG range. Many, if not most, assaults occur under extenuating or emotionally compromised circumstances.

The formative question is then whether this case falls outside the "heartland of cases" of its type that would have been considered by the sentencing commission in drafting its guidelines. *Rita v. United States*, 551 U.S. 338, 351 (2007). Upon analysis, the facts and circumstances of the above-captioned matter support the concept that the case falls within the "heartland of cases" and cannot, in turn, support the conclusion that the case falls outside the "heartland of cases."

In cases with roughly parallel fact patterns, this court has applied *Rita* to reject sentence variance in cases where a defendant's history and circumstances may have contributed to the criminal activity or implied the need for a lesser prison term. *See United States v. Valenzuela-Perez*, 812 F. Supp. 2d 1274 (D.N.M. 2011); *see also United States v. Vallecillo-Rodriguez*, 770 F. Supp. 2d 1194 (D.N.M. 2011). In such cases a defendant's circumstances may be problematic

and even complicated but are too commonplace among similarly situated defendants to fall outside of the “heartland of cases.”

Unfortunately for the Defendant, the same rationale applies to the above-captioned matter. An overwhelming amount of assaults in the District of New Mexico involve cruel circumstance and alcohol-substance abuse-sobriety issues. If these factors were to systematically qualify each defendant for a sentence varied downward, then virtually all assaults – even ones such as the one sustained by this victim, who feared for his life and continues to be traumatized by what the Defendant did to him, and what happened to him during his participation of traditional activities – would result in a downward variance. The court in *Valenzuela-Perez* captured the sensibility of this troublesome scenario wherein a retreat from the guidelines is contemplated when it wrote: “[O]nly those defendants disconnected from all human association would merit a guidelines sentence.” *Valenzuela-Perez*, 812 F. Supp. 2d at 1278.

## **2. Factors Weigh Against a Variance**

There are two different analyses that could result in a non-guidelines sentence, namely variance and departure. By invoking the factors enumerated in 18 U.S.C. § 3553(a), the Defendant has indicated his request for a variance. *See United States v. Atencio*, 476 F.3d 1099, 1101, n.1 (10<sup>th</sup> Cir. 2007). However, it is the position of the United States that the factors requiring consideration under 18 U.S.C. § 3553 weigh against such a variance.

### *a. Unwarranted sentence disparity*

18 U.S.C. § 3553(a)(6) advises of the “need to avoid unwarranted sentence disparity among defendants with similar records who have been found guilty of similar conduct.” Commonly, most defendants with personal and criminal histories and characteristics similar to the Defendant’s, who commit the similar type of crime will receive the United States Sentencing

Guidelines Sentence of 70 to 87 months imprisonment. Especially considering the Defendant has already been sentenced to federal prison for a similar crime, the need for a more severe sentence to avoid unwarranted disparities is even more crucial in the current case.

Moreover, when weighing considerations of downward sentence variation against the shadow of unwelcome sentence disparity, the *Gall* test informs the analysis. In this context, *Gall* states: “[A] major departure should be supported by a more significant justification than a minor one.” *Gall v. United States*, 552 U.S. 38 (2007). The circumstantial and biographical support presented by the Defendant for a lesser sentence by way of sentence variance, while no doubt especially meaningful to the Defendant, are comparatively less appropriate on a universal scale.

*b. Severity of the crime*

18 U.S.C. § 3553(a)(2)(A) concerns the need for the sentence imposed “to reflect the seriousness of the offense, promote respect for the law, and to provide just punishment for the offense.” The Defendant’s crime was, by definition, serious. In this light, the period of imprisonment faithful to the term of sentence identified by the United States Sentencing Guidelines serves to ultimately represent a fair, just and reasoned sentence sufficient, but not greater than necessary, to comply with § 3553. Such a sentence fairly and proportionately balances with the harm that the Defendant inflicted on his friend, John Doe. Indeed, the Defendant, as mentioned in the PSR, stabbed John Doe twice, causing the Defendant to be airlifted to the hospital where a tube was inserted in his chest. The Defendant isn’t exactly sure what provoked him to stab John Doe, but given the whereabouts of John Doe at the time of the assault, the shower, any suggested provocation seems inapt. Given the history of the Defendant, and his thoughtless and life threatening assault on John Doe, the victim deserves to know that the serious physical harm brought to him and his family - will be punished adequately in a way that

in some measure accounts for this violent betrayal of trust. A sentence not removed from the United States Sentencing Guidelines promotes this sentencing.

*c. Deterrence*

18 U.S.C. § 3553(a)(2)(B) instructs that sentences should seek “to afford adequate deterrence to criminal conduct.” The larger question is not just whether the sentence will provide deterrence but whether it will provide *adequate* deterrence. Prospective perpetrators in circumstances similar to the Defendant’s should be on notice and should confidently expect that an assault will result in significant jail time and that carrying a significant, violent criminal history is a crucial component to facilitating the courts ultimate sentencing decision. This dynamic and this deterring result of significant imprisonment, made available by the instrument of the United States Sentencing Guidelines, establishes a reasoned infrastructure for deterring future assaults, a penalty which the small community of Taos Pueblo will pay close attention to.

**3. Victim Related Adjustment**

The Defendant first victim related adjustment objection pertains to physical restraint pursuant to USSG § 3A1.3. Regardless of which statement the Court relies upon, the victim stated he was lying in the tub, Government Discovery (GD), at 28, or the witnesses account, GD, at 15 and 34, which states that the Defendant was standing next to John Doe holding a knife to him, the application of USSG § 3A1.3 would apply under both instances. In either instance the Defendant’s action was “intended “restraint” to mean the defendant's conduct must hold the victim back from some action, procedure, or course, prevent the victim from doing something, or otherwise keep the victim within bounds or under control.” *United States v. Checora*, 175 F.3d 782, 791 (10th Cir. 1999). Holding a knife to the victim when he is standing up or laying down

prevents him from doing anything, and certainly keeps him under control. For that basis the application was correctly applied in the PSR ¶39.

As to the PSR adjustment under ¶40, the Defendant concedes that there is a legitimate basis for being a vulnerable victim because he was naked and in the shower. The United States agrees with the Defendant and therefore USSG § 3A1.1(b)(1) was correctly applied in the PSR.

#### **4. Recalculation of Total Offense Level**

The United States firmly agrees with the basis for an upward departure pursuant to USSG §4A1.3, but gives deference to the Defendant for two reasons. For one, the Defendant's prompt acceptance of responsibility, which he has been given credit for already, conserved considerable resources that would have otherwise been put towards an emotional trial for John Doe. Within two months of being arrested the Defendant agreed to take responsibility and thereby minimized the additional trauma that would have been brought upon John Doe that would have likely led to additional months of anticipation and anxiety related to trial. Secondly, the United States takes the position that a sentence at the high end of the guidelines, 87 months, is sufficient to fulfill the sentencing goals established by Congress.

#### **5. Defendant's Objection to Life Threatening Injury**

The United States through its agent has attempted to reach out to the treating physician for his opinion as to whether or not the injury was life-threatening. Up until this point a statement from the doctor has not been obtained. However, this issue is analogous to that in *Tindall*, where the victim suffered a laceration to the head. The defendant in *Tindall* argued that the risk of death was mitigated because the doctors were able to control the bleeding. The court reasoned that the fact the "injury is ultimately cured does not answer whether the injury was "life-threatening" when inflicted." *United States v. Tindall*, 519 F.3d 1057, 1064 (10th Cir. 2008). Similarly, the

Third Circuit found that a “stab wound may be seen as involving a substantial risk of death when it is traumatic enough to require emergency. See *United States v. Jacob*, 167 F.3d 792, 797-98 (3d Cir. 1999). To the contrary, “injuries that are “serious” but not typically “life-threatening” include fractured bones, *United States v. Reese*, 2 F.3d 870, 897 (9th Cir.1993), unconsciousness as a result of a blow, *United States v. Thompson*, 60 F.3d 514, 518 (8th Cir.1995), and **injuries** that may be treated with outpatient procedures, *United States v. Woodlee*, 136 F.3d 1399, 1408–09 (10th Cir.1998). The victim here was airlifted to Christus St. Vincent Regional Medical Center where he was treated for his stab wound, which included a Thoracostomy, to release the air accumulation in the chest wall which caused difficulty breathing. If relying upon the rationale in *Tindall*, if John Doe didn’t receive medical treatment for his injuries it seems apparent that he would have likely died from loss of blood or lack of oxygen. In total he remained at the hospital for four days. PSR ¶¶ 23, 24. Sustaining the Defendant’s objection that the injury is serious bodily injury, would contradict the finding in *Woodlee*, a Tenth Circuit opinion, that injuries treated by outpatient care are more typical of serious bodily injury, when the injuries sustained here required much greater care and attention than outpatient procedures.

## 6. Conclusion

In the context of the facts and circumstances of this case, a United States Sentencing Guidelines sentence represents a fair and just range for this Defendant. Such a sentence, sufficient, but not greater than necessary, in compliance with 18 U.S.C. § 3553, would reflect the seriousness of the offense, promote respect for the law, provide a reasonably just punishment for the offense, and afford adequate deterrence to criminal conduct. No less importantly, such a sentence would substantively prevent unwarranted sentence disparity among defendants with similar records who have been and will be found guilty of similar conduct.

Therefore, for the reasons and the authorities cited above, the United States respectfully requests that this Honorable Court sentence the Defendant to a sentence of imprisonment as set forth by the applicable United States Sentencing Guidelines. The United States respectfully submits that a sentence of incarceration within 70-87 months would sufficiently satisfy the sentencing objectives set forth by § 3553 as it would particularly reflect the seriousness of the offense, afford adequate deterrence to similar future criminal conduct, and would avoid unwarranted sentence disparities among defendants with similar records who have been and will be found guilty of similar conduct. Given the unconscionable acts committed by the Defendant against a friend that was intimately connected to him, coupled with his criminal history, a sentence at the high-end of the proposed guideline range seems appropriate.

Wherefore, for the reasons described above, the United States respectfully requests that this Honorable Court accept the plea agreement in the above-captioned matter and sentence the Defendant to the high-end of the proposed sentencing range.

Respectfully submitted,

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I hereby certify that on June 9, 2015, the foregoing was filed electronically through the CM/ECF system, which caused counsel for the defendant to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.



\_\_\_\_\_/s/\_\_\_\_\_  
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