

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
Plaintiff,)	
)	
vs.)	Case No. CR-14-20-JHP
)	
)	
JASON BRETT MERIDA,)	
Defendant.)	

MOTION FOR DOWNWARD VARIANCE

Comes now Jason Merida, by and through his undersigned attorneys, and hereby moves for a downward variance from the sentencing guideline range stated in the presentence report, for a plethora of reasons including the fact that Mr. Merida has no prior criminal history at all (no prior convictions and no prior arrests), the white-collar nature of the offenses which involved no acts of violence or possession/distribution of controlled drugs, as well as the disparity between the guideline range stated in the final version of the presentence report and the sentences imposed against his co-conspirators, two of those whose conduct was far more culpable than that of Mr. Merida.

CO-CONSPIRATORS

The two co-conspirators with conduct far more culpable than that of Mr. Merida are Brent Parsons and Laurie Parsons, husband and wife, who operated Builders Steel. As accurately noted in paragraphs 50-54 of the presentence report,

Brent Parsons and Laurie Parsons defrauded the Choctaw Nation by accepting \$10.3 million in consideration from the Nation for a large purchase of steel, without purchasing the steel; and, Merida was not aware that the Parsons' would not purchase the steel as they had represented to the Nation. Accordingly, the culpability of the Parsons' is far greater than that of Merida.

The difference in the level of culpability is reflected by the disparity in restitution owed by Mr. Merida as compared to the Parsons'. While Merida owes a combined \$577,149.00 in restitution, both Parsons' were sentenced to far higher restitution amounts. In CR-13-63 JHP (Document 146), Brent Parsons was ordered to pay \$3,977,200.00 in restitution (almost 7 times the amount owed by Merida); and in the same case (Document 145) Lauri Parsons was ordered to pay \$3,535,498.24 in restitution (over 6 times the amount owed by Merida).

Despite the fact that the Parsons' were collectively about 6.5 times more culpable than Mr. Merida, each of the Parsons' received a sentence of imprisonment far below the bottom of Merida's guideline range under the Final Presentence Report (168-210 months), with Brent Parsons sentenced to 60 months, and Lauri Parsons sentenced to 46 months. (The record reflects that both Parsons' entered into plea agreements, with the Government having filed USSG §5K1.1 Motions for Downward Departure on each of their behalves.)

Mr. Merida's culpability is more comparable to that of Dewayne Gifford and James Stewart, with Merida's culpability being somewhat higher than Gifford and Stewart. In CR-14-10-JHP (Document 50), Gifford was sentenced to 48 months imprisonment and ordered to pay \$345,000 in restitution. (However, unlike the Parsons', the record does not reflect a USSG §5K1.1 Motion for Downward Departure having been filed on Gifford's behalf, although it does reflect that Gifford entered into a plea agreement.)

In CR-13-63 (Document 141), James Stewart was ordered to pay \$345,000 in restitution and sentenced to 21 months imprisonment. (The record reflects that Parsons' entered into a plea agreement, with the Government having filed a USSG §5K1.1 Motion for Downward Departure on his behalf.)

ARGUMENT AND AUTHORITY

For the record, it is understood by Mr. Merida and his below-signed attorneys that he (unlike the above-referenced co-conspirators) does not have the sentencing-relief benefits of a plea agreement such as acceptance of responsibility and (unlike the Parsons' and Stewart) the benefit of having earned a USSG §5K1.1 Motion for Downward Departure. Counselors for Merida do not dispute that the Parsons', Stewart, and Gifford were entitled to reductions in their sentences for acceptance of responsibility and cooperation with the Government in its investigation. However, those factors alone do not warrant the shockingly high

sentencing disparity that would arise if Merida was sentenced under the guideline range of 168-210 months.

That is especially true as to the Parsons', both of whom have levels of culpability 6-7 times greater than that of Merida. The Parsons' were the perpetrators of the \$10.3 million fraud scheme involving the non-purchased steal, of which Merida was not involved. As a result, the Parsons' respective restitution obligations are 6-7 times that of Merida. Understanding that grave disparity in culpability, credit for acceptance of responsibility and cooperation/testimony alone does not account for the differences between the Parsons' sentences of 46 months (Lauri) and 60 months (Brent) respectively and Merida's guideline range of 168-210 months.

And even though Merida's culpability is a little higher than that of James Stewart and Dewayne Gifford, credit for acceptance of responsibility and cooperation (and in the case of Stewart testimony) alone does not account for the dramatic differences between the sentences imposed for Stewart and Gifford and the sentencing guideline range for Merida.

Mr. Merida has no prior criminal arrests, investigations, or convictions. He has no history of violence, and has no history of drug or controlled substance use. And serious as the offenses may be, they do not involve crimes of violence or controlled substances. Those factors, in combination with the relatively low

sentences imposed on his co-conspirators, result in more appropriate, less punitive sentencing options being available under the sentencing factors of 18 U.S.C.

§3553(a) as opposed to the guideline range.

The factors to be applied under 18 U.S.C. §3553(a) are as follows”

“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[.]”

Applying the above factors to Mr. Merida, the nature and characteristics of the offenses are definitely serious. However, the offenses are white-collar in nature, and do not involve the use of violence or drugs. And as to the characteristics of the defendant, Merida has absolutely no prior criminal history, no prior arrests or convictions, and he has never before been the target of a criminal

investigation. And while a sentence of imprisonment would promote respect for the law, provide just punishment, and afford adequate deterrence, a long sentence of imprisonment would needlessly delay Merida's return to the work force and delay his repayment of his restitution obligation, which is substantial at \$577,149.00. Given Merida's dearth of prior criminal history, the chances of him committing further crimes are infinitesimal, therefore there is little if any need to protect the public from further crimes on his part. As to the question of needed educational or vocational training, medical care, or other correctional treatment, Merida has graduated from college and has a plethora of technical skills and work experience, and as noted in paragraphs 64-65 of the presentence report, he has no history of mental health problems or substance abuse, and therefore he would not be a candidate for any of those types of rehabilitation programs with the Bureau of Prisons.

CONCLUSION

In the matter at bar, the guideline range of imprisonment in the final version of the presentence report is overly punitive once the factors under 18 U.S.C. §3553(a) are taken into account, as well as the consideration of other relevant sentencing factors. Mr. Merida has no prior criminal history at all (no prior convictions and no prior arrests), the offenses did not involve acts of violence or possession/distribution of controlled drugs, and there is a dramatic disparity

between the guideline range stated in the final version of the presentence report and the sentences imposed against his co-conspirators, two of those whose conduct was far more culpable than that of Merida. Also, the longer the length of his sentence of imprisonment, the longer the amount of time before Merida can re-enter the workforce and start paying off his restitution. The case at bar is a prime example of why the guidelines should be advisory and not mandatory, as it is a situation where the guideline range is overly punitive considering all relevant sentencing factors. Wherefore, Mr. Merida respectfully requests the District Court to consider those factors and impose a sentence well below the guideline range of 168-210 months.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of April, 2015, a true and correct copy of the above and foregoing instrument was electronically transmitted to all counsel of record contemporaneously with the filing thereof.

/s/ J. Lance Hopkins
J. Lance Hopkins

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