

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
FRANKFORT

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:13-CR-06-GFVT
)	
RICHARD DWIGHT FARMER, JR.,)	
)	
Defendants.)	
)	

DEFENDANT’S SENTENCING MEMORANDUM

Comes the defendant, Richard Dwight Farmer, II, by counsel, and submits this Sentencing Memorandum pursuant to the Court’s Order of September 13, 2013 (Doc. # 34).

INTRODUCTION

This Sentencing Memorandum is filed, as directed by the Court’s Order, to address two matters. First, this memorandum addresses the Plea Agreement and the Presentence Investigation Report (“PSR”). Second, this memorandum addresses particular factors under 18 U.S.C. § 3553(a) which the defendant believes should influence a sentence of 21 months, the bottom of the agreed sentencing guidelines range.

Simply put, the defendant respectfully submits that the guidelines sentencing range of 21 to 27 months agreed to by the parties is a fair and reasonable application of the United States Sentencing Guidelines (“USSG”) based on the parties’ good faith calculation of the loss, the primary

factor influencing the sentencing range. And further, the defendant respectfully submits that a sentence of 21 months is “sufficient, but not greater than necessary” to satisfy the “purposes” of 18 U.S.C. § 3553(a). Where this defendant is concerned, the “fall from grace” has been punishment enough. As the government acknowledges, “this sentencing is more about the crime and society than it is about the defendant.” A 21 month sentence sends a strong message. Another six months does not enhance the message, nor does it further the ends of § 3553(a).

THE UNRESOLVED OBJECTIONS TO THE PSR

The defendant agrees with the government’s position that the Plea Agreement should be accepted. *See* Doc. # 39 at 1. For the most part, the defendant also agrees with the government’s reasoning as to why.

The Plea Agreement is the product of good faith negotiations based upon a close evaluation of the conduct charged, the anticipated proof, and the abundant vagaries of the circumstances. Moreover, as the government acknowledges, the Plea Agreement is part of a “global settlement,” and rejecting the Agreement “could have significant collateral consequences.” *See* Doc. # 39 at 3-4.

The primary disparity between the Plea Agreement and the PSR is the calculation of the actual or intended loss, which in turn, impacts which rung of the USSG § 2B1.1(b)(1) loss ladder applies. The primary factor influencing the actual or intended loss is, as the government puts it, the “estimated value of unperformed labor.” *Id.* at 2. But this very issue is one of the uncertainties resulting in the agreed loss calculation reflected in the Plea Agreement. The subject of “unperformed labor” presented many troublesome issues for both sides in determining whether to proceed to trial, and if not, how to value the “loss” for purposes of an agreed resolution, *to wit*: on which occasions were the subject employees not providing some service beneficial to the Commonwealth and was

Commissioner Farmer aware of or did he ratify the conduct.

The defendant respectfully submits that the actual or intended loss calculation of \$120,500 is reasonable and appropriate, as is the Total Offense Level of 16 and the agreed sentencing range of 21 to 27 months. The defendant joins the government in requesting that the Court approve the Plea Agreement and impose a sentence within the agreed sentencing range.¹

SENTENCING FACTORS UNDER 18 U.S.C. § 3553(a)

In evaluating the pertinent sentencing factors under 18 U.S.C. § 3553(a), the defendant will emphasize the most relevant provisions of § 3553(a).

A. The nature and circumstances of the offense and the history and characteristics of the defendant.

Under 18 U.S.C. § 3553(a)(1) the Court has to consider “the nature and circumstances of the offense and the history and characteristics of the defendant.” The defendant will address these factors in reverse order.

1. History and characteristics of the defendant.

The government suggests that “this sentencing is more about the crime and society than it is about the defendant.” (Doc. # 39 at 5). Regardless which sentencing factor – the defendant, the crime, or society – is deemed of ultimate importance, a 21 month sentence is sufficient to meet the § 3553(a) objectives.

Richie Farmer is only 44 years old. He graduated from Clay County High School in 1988. He completed his education at the University of Kentucky in 1995, obtaining a Bachelor of Science degree in Agricultural Economics and Agribusiness Management. After working in the private

¹ The defendant submitted objections to the PSR by letter dated December 17, 2013. The PSR was not materially amended based on the objections, so the defendant incorporates his objections herein.

sector for a number of years, Richie ran for and was elected Commissioner of Agriculture in 2003. He was re-elected in 2007. In 2011, Richie was the candidate for Lieutenant Governor on the unsuccessful Williams-Farmer ticket.

To recount the history of Richie Farmer is to state the obvious. Every Kentuckian who enjoys basketball – and most who don't – knows the story of Richie Farmer. In fact, many of us, at some stage in life, dreamed of a Richie Farmer-like experience.

Richie grew up in Clay County, deep in the mountains of southeast Kentucky. He was raised in a stable family with two loving and encouraging parents, as well as two siblings – an older sister and a younger brother. By all accounts, including the numerous letters of support supplied to the Court, Richie was a good student and a thoughtful and courteous young man.

What separated Richie from the pack was his skill and ability as a basketball player, and his dedication to excellence in the game. Richie had a storied high school career, leading Clay County High School to three state championship appearances and one state championship title. His outstanding high school career resulted in him being named Kentucky's "Mr. Basketball," as well as his eventual induction into the Kentucky Athletic Hall of Fame. Richie went on to play basketball at the University of Kentucky from 1988 to 1992. He was among the group of UK basketball players known as the "Unforgettables." Richie and his teammates stuck with the University of Kentucky through a dark period of NCAA sanctions. He was loyal to the UK basketball program, and the state he loves, when it would have been easier to cut and run. Ultimately, Richie and his teammates led UK basketball back to national prominence with an appearance in the finals of the regional of the 1992 NCAA tournament. Richie was on the floor when Duke University launched the infamous "hail Mary" pass which to this day sticks in the craw of every UK basketball fan.

In 1998, Richie married Rebecca Morgan. Together they had three children, Richard Dwight “Trey” Farmer, III, age 17; Ryan Thomas Farmer, age 15; and Russell Tate Farmer, age 11. Richie and Rebecca separated in 2011, and their divorce was final in July 2012. Richie has always been a dedicated, even doting, father to his three sons. In fact, one of the major motivations behind Richie’s decision to enter into a plea agreement with the government is the negative impact which a trial would have on his sons and their emotional well-being. Even though it meant agreeing to a prison sentence, Richie insisted that his sons not be subjected to the emotional trauma of a very public, very lengthy trial. Throughout the divorce proceeding, the lengthy audit/investigation by the Kentucky Auditor of Public Accounts, the criminal investigation by state and federal authorities, and now this prosecution, Richie has managed a remarkable level of normalcy for his children and has, to the fullest extent possible, worked to shield them from embarrassment and ridicule. As some of the letters of support sadly confirm, he has not been completely successful in his efforts.

Richie’s rise as a high school and college basketball star in Kentucky brought with it a great many (seeming) benefits. These “benefits,” in retrospect, may be more accurately viewed as “consequences.” Everyone was anxious to be seen with Richie, to be Richie’s friend, to be in business with Richie, to take care of Richie and in return benefit from Richie’s “celebrity.” From Richie’s perspective everyone “seemed” to have his best interest at heart. Richie lived in a rather unrealistic, fragile world.

Despite an obvious lack of state government, or for that matter even management, credentials, Richie was urged to use his “celebrity” and run for Commissioner of Agriculture. He brought his learned, but unrealistic, perspective of how life works to Frankfort with him.

The government says that the “public’s adoration” of Richie “engendered in the defendant

what appears to have been a profound sense of entitlement.” *See* Doc. # 39 at 4. Maybe so. It’s a fair observation that because he was blessed with so much, more was expected from him.² That being said, the government’s use of the past participle “been” – “what appears to have *been* a profound sense of entitlement” – is accurate. Given the events of the past year, any such “sense of entitlement” is in the past – gone. The lessons available for learning have been learned.

This defendant does not *need* a 27 month sentence, as urged by the government, or for that matter even a 21 month sentence. He has gotten the message loud and clear; the rules *do* apply to him. A 21 month sentence as provided in the Plea Agreement is sufficient. A longer sentence serves no useful purpose.

2. *Nature and circumstances of the case.*

Richie has entered a plea of guilty to Counts 1 and 4 of the Indictment. Both counts charge a misappropriation theory under 18 U.S.C. § 666(a). He has agreed to pay restitution in the amount of \$120,500, and the government has agreed that the appropriate sentencing range is 21 to 27 months.

The circumstances surrounding Count 1 of the Indictment primarily arise out of the 2008 conference of the Southern Association of State Departments of Agriculture (“SASDA”) hosted by the Kentucky Department of Agriculture (“KDA”) in Lexington. Numerous items or “favors” – such as rifles, knives, cigars, etc. – were purchased as gifts for those state agriculture officials from various states who would be attending the conference. It was typical for the hosting state to make such gifts, or “favors,” available to those state agriculture officials attending the SASDA conference.

² It may also be a fair observation that a “sense of entitlement” is learned; it’s not inherent. Perhaps the message to the young and gifted needs to shift from “because you are gifted you are entitled to more,” to a message of “because you are gifted more is expected of you.”

The conference was funded through a combination of state funds and private donations. The crux of Count 1 is that more “favors” were ordered for the SASDA conference than were necessary for the expected attendance, and that Richie Farmer took possession of some of the excess items.

Count 4 charges that portions of the salaries paid to certain KDA employees, who are also personal friends of Richie Farmer, were unearned. The relationship between Richie Farmer and the individuals identified in Count 4 is not in dispute. The salaries of these individuals is not in dispute. The more troublesome issue is how much of the salaries should be deemed as “unearned.” The defendant and the government have agreed on a loss which reflects a good faith estimate of the percentage of the salary deemed to be a misappropriation.

The circumstances of this prosecution are unique in Kentucky. Certainly, city and county-level officials in Kentucky have been prosecuted under 18 U.S.C. § 666(a) related to misappropriations. To this counsel’s knowledge, however, no statewide Kentucky official has ever been prosecuted on a claim that expenditures on a professional conference, or the employment of and the assignment of duties to state employees, constitutes a misappropriation.

Whether prosecuted or not, it would ignore reality to suggest that this is a first for such conduct by an elected, or appointed, state official. On a daily basis state employees use their time, or their time is used by others, in questionable ways. But clearly, a significant point to be made by the prosecution of this case – and the sentence imposed by this Court – is that such questionable conduct should stop. So, the question becomes, what sentence is necessary to make this point? The government agrees that a sentence in the range of 21 to 27 months makes the point. It urges 27 months. But it is difficult to imagine that a sentence of 27 months has any greater deterrent effect than does a sentence of 21 months. State officials who, like Richie Farmer, are persons of good

reputation and no criminal history will certainly be deterred by the mere fact of this prosecution, much less a prison sentence of 21 months. The extra six months the government seeks only serves to further punish the Farmer children – it does nothing for Richie or for the good of deterrence.

B. The need for the sentence to deter, protect, and rehabilitate.

Pursuant to 18 U.S.C. § 3553(a)(2) the sentence is to satisfy certain criteria which would, in summary, reflect the seriousness of the offense, deter criminal conduct, protect the public, and serve to rehabilitate the defendant. For the most part, these factors have already been addressed.

Under § 3553(a)(2)(A) and (B), the sentence must “reflect the seriousness of the offense, . . . promote respect for the law, and . . . provide just punishment,” as well as “afford adequate deterrents to criminal conduct.” As noted previously, it is not necessary to impose a sentence above 21 months in order to meet these objectives. A 21 month sentence is more than sufficient to “reflect the seriousness of the offense” and “promote respect for the law.” Certainly, a 21 month sentence sends a message to other public officials that conduct similar to that charged in the instant indictment will be treated seriously.

Section 3553(a)(2)(C) provides that the sentence is to “protect the public from further crimes of the defendant.” This is not an issue with Richie Farmer. There is nothing about Richie which would lead anyone to conclude that he is likely to commit other crimes and put the public at risk.

Finally, § 3553(a)(2)(D) allows that the sentence is to “provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.” It is submitted that no sentence can meet these goals. Simply put, Richie is not in need of educational or vocational training, nor does he require “correctional treatment.” He has received, and continues to be in need of, medical treatment. That treatment, it is respectfully submitted, is best

provided outside a prison setting.

C. The sentences available and the sentencing range.

Section 3553(a)(3), (4) and (5) require the Court to examine the “kinds of sentences available,” as well as the impact of the sentencing guidelines.

As previously noted, the defendant and the government have agreed upon a guideline range of 21 to 27 months which is driven by a good faith estimate of the loss in the amount of \$120,500, resulting in a Total Offense Level under the sentencing guidelines of 16. The PSR, on the other hand, estimates the loss at a higher amount resulting in a Total Offense Level of 18.

In short, the loss and offense level agreed upon by the defendant and the government are not much different from the loss calculated in the PSR. The loss calculated in the PSR is one rung higher on the USSG § 2B1.1(b)(1) loss ladder. The loss calculations are driven primarily by an estimate of the “unearned” percentage of the salary of two employees. It is impossible to be precise about how much of the time these employees spent working on legitimate KDA business and how much time they spent on other endeavors. The agreement between the government and the defendant on this loss amount are the result of good faith negotiations based on the expected proof at trial. The defendant submits that the agreement is entitled to deference.

The agreed upon sentencing range of 21 to 27 months is appropriate under the sentencing guidelines. The minimum sentence of 21 months is sufficient in these circumstances.

D. The need to avoid unwanted sentence disparities.

Under 18 U.S.C. § 3553(a)(6) the Court is to observe “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” In this instance, there are no other defendants to consider. However, the fact that similar

conduct has perhaps been overlooked in the past should not be ignored.

E. Restitution.

Finally, 18 U.S.C. § 3553(a)(7) calls on the Court to consider the need for restitution to any victims. Richie Farmer has agreed in the Plea Agreement to pay restitution in the amount of \$120,500. The government has agreed that such restitution is appropriate and there is an agreement as to how the restitution is to be allocated. This sentencing factor has been adequately addressed.

CONCLUSION

This situation has taken an incredible toll on Richie, his career, his reputation, his health, and most importantly, his family. Even before he is sentenced, he has endured much punishment. A sentence of 21 months is “sufficient, but not greater than necessary” to satisfy the “purposes” of 18 U.S.C. § 3553(a).

WHEREFORE, the defendant, Richard Dwight Farmer, II, respectfully requests that the Court impose the minimum sentence of 21 months.

Respectfully submitted,

TRUE GUARNIERI AYER, LLP

/s/ J. Guthrie True
J. Guthrie True
Whitney True Lawson
124 West Clinton Street
Frankfort, KY 40601
Telephone: (502) 605-9900
Facsimile: (502) 605-9901
E-mail: gtrue@truelawky.com
E-mail: wlawson@truelawky.com

Counsel for Defendant, Richard Dwight Farmer, Jr.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served this 9th day of January, 2014, by the Court's electronic filing service on all counsel of record.

/s/ J. Guthrie True
J. Guthrie True