

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
CENTRAL DIVISION  
FRANKFORT**

**ACTION NO: 13-CR-06-GFVT**

**UNITED STATES OF AMERICA**

**PLAINTIFF**

**VS.            SENTENCING MEMORANDUM OF THE UNITED STATES**

**RICHARD DWIGHT FARMER, JR.**

**DEFENDANT**

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Comes the United States, by counsel, and submits the following sentencing memorandum. The defendant, Richard Dwight Farmer, has been convicted by his guilty plea of Counts 1 and 4 of the Indictment, alleging misappropriations from a federally funded state agency, pursuant to 18 U.S.C. 666(a)(1)(A). This conviction is contingent upon the Court's acceptance of his binding plea agreement. Only two issues are before the Court: whether to accept the plea agreement, and, upon acceptance, where to sentence the defendant within the agreed range.

1. *The plea agreement should be accepted.*

The plea agreement (Doc. 30 and 31-1), entered pursuant to F. R. Crim.P. 11(c)(1)(C), is commonly referred to as a "binding plea agreement", because the Court is bound by its terms upon acceptance. If the court rejects the agreement, the defendant must be afforded the opportunity to withdraw his guilty plea. Fed.R. Crim. P. 11(c)(5).

Accepting or rejecting the plea agreement is wholly within the Court's discretion. *Freeman v. United States*, 180 L.Ed. 2d 519 (2011). In the exercise of that discretion, courts look to "whether such [agreed ] sentence is an appropriate sentence within the applicable guideline range, or, if not, that the sentence departs from the applicable guideline range for justifiable reasons." *U.S. Sentencing Guidelines Manual 6B1.2* (2012). The relevant considerations are the adequacy of the sentence in the agreement, the factors under 18 U.S.C. 3553, and the public's interest. *See, e.g., United States v. Wright*, 21 F.R.D. 85 (E.D. Pa. 2013), and cases cited therein.

The plea agreement and the presentence report differ with regard to the guideline range, but the difference is not extreme. That difference arises from the plea agreement's limitation on the scope of "relevant conduct." The parties agreed to limit the loss to that arising from the counts of conviction. [ See, Plea Agreement, Doc. 30, p. 3, para. 4 (b). ] Each of the two counts of misappropriation to which the defendant entered his plea describes a separate 12 month period. The two counts correspond to two calendar years, 2008 and 2011. The government has agreed to move for dismissal of the other counts, which involve different calendar years. The two years were agreed upon because the conduct therein was the most provable. The parties have stipulated that the amount of loss attributable to the defendant's conduct consists of an estimated value of unperformed labor by three employees improperly hired by Farmer, and the value of various gift items Farmer took home following a conference. Based on the accumulated, agreed value of \$120, 500, the offense level is 16, and the guideline range for imprisonment is 21 to 27 months.

The Probation officer, in making his calculation of loss, estimated the value of unperformed labor for the period of June 2007 through 2011. He also added estimated values

of items found to have been misappropriated during the audit conducted by the Kentucky Auditor of Public Accounts, without regard to whether or not they were specifically mentioned in the indictment and without regard to the counts of conviction. He arrived at an estimated intended loss of \$230, 123.35. He applied the identical adjustments for role in the offense and acceptance of responsibility as set out in the plea agreement, before arriving at an offense level of 18 and a guideline sentencing range of 27- 33 months.

The agreed sentencing range, though somewhat less than the one determined by the Probation office, is sufficient to do justice and to accomplish all of the objectives of sentencing. Other grounds support acceptance of the plea agreement as well. First, the plea agreement reflects the realities of criminal trials and juries. While the government firmly believes that evidence is sufficient to support a conviction on each count, it acknowledges the uncertainties of jury verdicts and the fact that this case would require a jury to make the determination that certain employees did not earn their salaries and that their non-performance was the criminal responsibility of the defendant. The government's agreement to limit the defendant's exposure to the two most provable years reflects that uncertainty.

The agreement also recognizes that, especially in cases involving public corruption by persons in high office, there is an element of public closure to the defendant's public acknowledgement of guilt and contrition. The plea agreement benefits the public, the Court and the parties through the saving of large amounts of time, money and resources that would have been consumed during a lengthy trial and appeal. Finally, this plea agreement is part of a global settlement between the defendant, the Kentucky Attorney General's Office, and the Kentucky Executive Branch Ethics Commission, each of which had its own charges against

Farmer. A rejection of this plea agreement could have significant collateral consequences on the agreements reached in those other proceedings, especially if the defendant withdrew his plea and stood trial.

For all of these reasons, the United States urges the Court to accept the plea agreement.

2. The 3353 factors determine where to sentence within the guideline range.

Upon acceptance of the plea agreement, the Court is tasked with deciding at what level to sentence within the agreed range. The sentencing factors set out in 18 U.S.C. 3553 provide for an individualized sentence based upon a consideration of the defendant, the crime, and the crime's effect on society at large.

a. The defendant.

Clearly, this sentencing factor has some mitigating qualities. Farmer has no criminal record. From all appearances, he is an involved and caring father of three boys. He comes from a good family and retains a strong support system.

Of special note here is the defendant's storybook basketball career, which garnered him the goodwill and adoration of thousands of Kentucky citizens. While some might extend leniency and preferential treatment to the defendant on this basis, the United States believes this is actually an aggravating factor. It probably was the public's adoration that engendered in the defendant what appears to have been a profound sense of entitlement. The defendant's athletic success provided the

platform from which he could obtain the very office that he abused. Seen from that perspective, the goodwill was squandered and the public betrayed.

The defendant does not appear to be at risk for recidivism, so the statutory concern about protecting the public from his future crimes is not compelling. He is not a predatory criminal. He differs from the classic embezzler, who secretly steals and hides his gain. To the contrary, the defendant openly and brazenly misused government resources out of that misplaced sense of entitlement. It is doubtful that he will ever again be given that opportunity. In all probability, his political career is over. With his reputation tarnished, he will not receive from the public the perquisites and favors he came to expect. Surely this experience has humbled him.

Similarly, this defendant is not in need of the kind of education, training or correctional treatment that fall under the rehabilitation umbrella. In short, this sentencing is more about the crime and society than it is about the defendant.

*b. The offense.*

The Court should consider the defendant's conduct in the counts of conviction in the overall context of the course of conduct of which it is a small part.<sup>1</sup> When the new Kentucky Commissioner of Agriculture arrived at the office in January 2012, he was informed of some disturbing events and practices that had occurred during the

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<sup>1</sup> The government realizes that there is what may appear to be an inconsistency in the government arguing that the relevant conduct should be limited to the counts of conviction when discussing the plea agreement, while arguing that all of the defendant's conduct should be considered in arriving at an appropriate sentence within the guideline range. However, the government's concessions and compromises in plea negotiations do not preclude the government from pointing out those factors that call for a sentence at the top of the agreed range, nor is there any provision in the agreement that precludes the government from seeking the top end based upon all of the defendant's conduct.

eight year term of his predecessor. The new Commissioner requested an audit by the Auditor of Public Accounts. In April of that year a report was issued by that agency that revealed numerous improprieties by the defendant. Some of this conduct rose to the level of criminal misappropriations, leading to the instant indictment.<sup>2</sup>

The auditor uncovered lavish expenditures of public money, of questionable public value, when the Department of Agriculture sponsored a seminar. Excessive gifts were purchased and then taken home by the defendant<sup>3</sup>. He used state personnel to perform tasks for his personal benefit, including building a basketball court and driving him and his family to events and hunting trips. He hired friends and relatives and expected little from them. He had items such as laptops, personal refrigerators, filing cabinets purchased with state funds and then used them at home, keeping some of them after leaving office. He had extra hotel rooms purchased so his family could stay at the public expense at the state fair, state tournament and a convention. He preselected employees for merit positions, essentially rigging what should have been a competitive hiring process. Farmer also exhibited a pattern of requesting and expecting persons and businesses to give him things free of charge. This course of conduct permeated Farmer's

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<sup>2</sup> References are made herein, and have been made throughout the PSR, to the findings of the APA's audit. Because it is a public document, the audit is not attached, but it can be provided to the Court if so requested.

<sup>3</sup> Recently, the defendant submitted objections to the PSR in which he claims that some of these purchases were required by vendor dictated order minimums. He also said that state regulations are not clear on what should be done with such excess purchases, especially where they were made with private funds. The APA audit does not mention any purchase minimums, nor do the underlying interviews and documents. In addition, while private funds were obtained to help fund the conference, significant department funds were used as well, so that at the very least these gifts were purchased with a combination of both sources. Finally, regardless of what regulations fail to say about the disposition of excess conference gifts it is intuitive that one option cannot be the personal enrichment of a public official.

entire administration. Unfortunately, those around him were too fearful of losing their jobs, income or position to report the abuses until he left office.

There is a compelling need for the sentence here to reflect the seriousness of the offense and to provide just punishment. In these times of government austerity, belt tightening, furloughs and layoffs, there can be no tolerance for public officials who cavalierly waste and misuse public resources.

c. Society at large.

There also is a compelling need for the sentence to promote respect for the law and to afford general deterrence. Many public officials who manage large budgets and have considerable autonomy and authority face the temptation to hire their friends, qualified or not, to bestow on friends and relatives public resources, and to help themselves to the property and labor of the state. As a constitutional officer, elected by the citizens, the defendant had little direct oversight. We now know that many of his employees saw some of the abuses but felt powerless to address them openly. Few of them had knowledge of the scope of the abuse.

When tolerated and not challenged, this type of conduct quickly becomes part of the culture of government. The sentence in this case must send a message to other public officials that they are accountable to the public for the abuse of their office.

3. A sentence at the top of the agreed range is appropriate.

A sentence of 27 months is within the sentence guideline range, both as provided in the presentence report and in the plea agreement. The plea agreement extends to the defendant all of the leniency that is appropriate. The United States urges the Court to impose a sentence of 27 months imprisonment with an order of restitution in the amount of \$120,500, which should be apportioned in conformity with the plea agreement---\$105,500 to the Commonwealth of Kentucky and \$15,000 to the Kentucky Department of Agriculture. [Doc. 31-1, para. 2.].

Respectfully submitted,

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CERTIFICATE OF SERVICE

On January 3, 2014, I electronically filed this motion through the ECF system,  
which will send the notice of electronic filing to:

J. Guthrie True  
*Attorney for Richard Dwight Farmer, Jr.*

s/ Kenneth R. Taylor  
Assistant United States Attorney