UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA Crim. No. 3:09cr130(SRU)

v.

ANTONIA DELUCIA October 26, 2010

GOVERNMENT'S SENTENCING MEMORANDUM

I. BACKGROUND

On June 4, 2009, a federal grand jury sitting in New Haven returned a twenty-one count Indictment against the defendant and thirteen others charging various narcotics offenses. The Indictment charged this defendant in Count One with conspiracy to possess with the intent to distribute cocaine, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C) and 846. The defendant was arrested on June 16, 2009 and released on a $250,000 surety bond on June 18, 2009. To the Government's knowledge, she has been compliant with the conditions of her release during the pendency of this case.

On August 5, 2009, the defendant pleaded guilty to Count One of the Indictment. At the time of the guilty plea, the defendant entered into a written plea agreement. In the plea agreement, the defendant acknowledged that, during the course of the cocaine conspiracy, she had been involved in the distribution of cocaine, but reserved her right to argue that she distributed less than 25 grams of powder cocaine. The Government reserved its right to argue that she had been responsible for distributing at least 50, but not more than 100 grams of powder cocaine. The Government agreed to recommend either a two-level or a three-level reduction for acceptance of responsibility depending on whether the defendant's base offense level was 16 or greater. The parties also agreed that the defendant had accumulated six criminal history points and fell into Criminal History Category III.

At an adjusted offense level of 10 (with a quantity of less than 25 grams of cocaine) and a Criminal History Category III, the defendant faced a guideline incarceration range of 10-16 months. At an adjusted offense level of 13 (with a quantity of 50-100 grams of cocaine) and a Criminal History Category III, the defendant faced a guideline incarceration range of 18-24 months. The defendant waived her right to appeal or collaterally attack any term of incarceration that did not exceed 16 months.

Had this case proceeded to trial, the Government would have proved the following primarily through the testimony of law enforcement witnesses, the testimony of a cooperating witness and the submission of recorded telephone calls, recorded meetings and seized narcotics: In July of 2008, a known and reliable cooperating witness (hereinafter referred to as "CW-1") informed law enforcement officers that ROBERTO "TITO" RODRIGUEZ (hereinafter referred to as "TITO") and his son, ROBERTO "BLANCO" RODRIGUEZ (hereinafter referred to as "BLANCO"), ran a cocaine distribution operation from a family owned used car lot, located in the Hill Section of New Haven. According to CW-1's information at that time, TITO and BLANCO distributed powder cocaine and crack cocaine in the Fairhaven Sections of New Haven as well as in surrounding towns. CW-1 stated that TITO utilized various vehicles in furtherance of his narcotics trafficking. He had these vehicles for sale on his car lot, and they always bore Connecticut dealer licenses plates. CW-1 also stated that TITO owned several houses in New Haven, but that his primary residence was located on Lexington Avenue in New Haven.

Starting in November, 2008, the FBI began using CW-1 to engage in controlled purchases of powder and crack cocaine from TITO to corroborate information provided by CW-1 and to learn more about the nature and extent of TITO's drug trafficking operation. TITO engaged in

approximately eleven different controlled transactions with CW-1. Specifically, on November 6, 2008, TITO sold approximately 42.1 grams of powder cocaine to CW-1. On November 13, 2008, TITO sold approximately 27.6 grams of powder cocaine to CW-1. On November 17, 2008, TITO sold approximately 38 grams of crack cocaine to CW-1. On November 24, 2008, TITO sold approximately 73.2 grams of crack cocaine to CW-1. On November 25, 2008, TITO sold approximately 70.5 grams of crack cocaine in two separate transactions to CW-1. On December 4, 2008, TITO sold approximately 64 grams of crack cocaine to CW-1. On December 17, 2008, TITO sold approximately 30.8 grams of crack cocaine to CW-1. On January 9, 2009, TITO sold approximately 34.2 grams of crack cocaine to CW-1. On February 9, 2009, TITO sold approximately 63 grams of crack cocaine to CW-1. On February 20, 2009, TITO aided in the distribution of approximately 27.5 grams of powder cocaine to CW-1.

On February 2, 2009, based, in part on these controlled purchases, Senior United States District Judge Peter C. Dorsey signed an Order authorizing the interception of wire communications over a cellular telephone utilized by TITO. The interception of communications commenced on February 3, 2009 and terminated on April 3, 2009.[1]

During the course of these wiretap interceptions, it became apparent that TITO regularly purchased multi-hundred gram quantities of powder cocaine from his suppliers in New York, including co-defendant Luis Paulino, and redistributed the cocaine in various smaller quantities to his co-defendants and other, uncharged customers who purchased cocaine in very small quantities for personal use. More specifically, TITO purchased from his New York supplier approximately 250

[1]There was a period of time of between one and two days between the expiration of the first thirty-day period of the wiretap, and the start of the second thirty-day period of the wiretap (March 5, 2009 through March 6, 2009).

grams of powder cocaine every other week, and redistributed that amount in smaller quantities to his customers. For example, TITO distributed half-ounce, ounce and multi-ounce quantities of powder cocaine to this defendant, Alex Espinoza, Angelo Hernandez, William Gambardella, James Maenza, and John Crisanti.

As to the defendant, intercepted telephone calls revealed that, during the course of the wiretap investigation, she purchased and redistributed in excess of 50 grams, but not more than 100 grams of cocaine. For example, on February 14, 2009, the defendant was intercepted asking TITO, "You want to come by and get that?" TITO confirmed that the defendant was at home. The defendant asked, "What I get, how much money I give you last?" TITO said, "Seven." The defendant said, "All right. That's all." TITO replied, "It's like five of twelve now." The defendant said, "Okay."

On February 25, 2009, the defendant was intercepted asking TITO, "You bring that thing for my brother?" TITO said, "Yeah, what time?" The defendant replied, "I don't know. He's here now. I don't know." TITO replied, "All right, tell him to give me about 25 minutes." The defendant said, "Yeah."

On February 26, 2009, the defendant was intercepted talking with TITO, who asked her, "Hey, what time you want me to come back tonight? . . . What time I'm gonna see you tonight?" The defendant replied, "I don't know I'm trying to get out of here Tito, I was supposed to be out of here. I gotta go do my fuckin . . . order quick I was supposed to be gone I had to make sandwiches already. I got like three more hundred if you want that now or you wanna just wait." TITO said, "I'm not worried about it. I'll see you tonight . . . [I will] stop by your house I'm not worried." The defendant said, "Yeah, no. Yeah, I'll see ya after. Umm." TITO asked, "You check the other car I gave you?" The defendant replied, "Yeah, I seen it. Yeah, it looks . . . I just seen it quick, quick.

Yeah." TITO said, "Yeah, I don't know, I don't know how good it is but its nice, I know that." The defendant said, "I seen it quick, quick." TITO said, "All right."

On February 27, 2009, the defendant was intercepted talking with TITO, who asked, "What do you want me to do? I got that with me, you want me to come by or no?" The defendant replied, "Yeah. Uh-huh." TITO asked, "Huh?" The defendant said, "Yeah." TITO said, "I'll be there, bye." The defendant was overheard in the background stating, "You want it J? J you want it? J you want it? Tito." The defendant said, "Bye." TITO said, "All right, bye."

On March 11, 2009, the defendant was intercepted asking TITO, "Do you have three of them?" TITO repeated, "Do I have three?" DELUCIA said, "Yeah. . . . Joey wants two." TITO said, "Okay." The defendant said, "The same one you gave me, right?" TITO said, "Yep." The defendant said, "All right. He just works here too." TITO said, "All right." The defendant asked, "What time you coming back? Four?" TITO said, "No, before that. What time is it now? . . . I'll come now." The defendant said, "Well, I got to call him back, you know." TITO said, "Yeah, call him back. Tell him I'm over here at Chuck and Eddie's. I'm going to go and pick that up and come by here." The defendant said, "Okay."

Several hours later, on March 11, 2009, the defendant was intercepted asking TITO, "Where are you, are you around or no?" TITO said, "Yeah, I'm around. You still up?" The defendant said, "Yeah, cause I'm going to bed." TITO said, "All right. I'll got get it, when I come there, I'll be there in about twenty minutes." The defendant said, "Twenty minutes, yeah. I'll be up in twenty minutes." TITO asked, "What do you want me to do?" The defendant said, "Umm. Let me see if I can stay up. I gotta go to bed; I am beat." TITO said, "I gotta wait for someone to come over my place, that's why. . . . Yeah, that's why, a few minutes, yeah?" The defendant asked, "You want to

come to the deli in the morning, I'll just take it with me?" TITO said, "Yeah, whatever you want to do, I don't care, whatever you gonna do." The defendant said, "You want to do that, you. I'm getting it right now from him. . . . You want to do that?" TITO said, "That's okay." The defendant said, "I'll take it with me, so make sure you come." TITO replied, "I gonna leave as soon as I leave my house in the morning, about 9:00, 9:30, I'll come there." The defendant said, "Fine, cause I don't want to hold it all day." TITO said, "I know. I know."

On March 26, 2009, the defendant was intercepted talking with TITO. The defendant asked, "What, you're around?" TITO replied, "I'm not around there, but I could be around in a little while." The defendant said, "All right, whatever, cause I got half an hour, I was trying . . . my brothers, but he never showed back up." TITO said, "Well, yeah, I'll be there, in about an hour I'll come over."

Several hours later, on March 26, 2009, the defendant was intercepted telling TITO, "Hey. don't worry about that now because the girl didn't want to wait so fuck her." TITO said, "Okay. . . . You good?" The defendant replied, "Yeah. I'll probably call you tomorrow, yeah she couldn't wait." TITO said, "I didn't know, I thought there was no hurry, you could have called Joey." The defendant said, "I know, no, but no, I didn't. Fuck it, she couldn't wait. No. I had enough for me, but she wanted to . . . , and she didn't want to wait. . . . All right, I'll call you tomorrow."

On March 31, 2009, the defendant was intercepted asking TITO, "You around or no?" TITO said, "Yeah, I'm around. Yeah." The defendant asked, "It, what's it, same, different, same?" TITO replied, "Uh, they're probably different." The defendant said, "Yeah. Right." TITO said, "Yeah." The defendant said, "All right. Uh, when could you come by?" TITO said, "I don't know. Come by. Give me about an hour, I'll be there." The defendant said, "All right."

In addition to the intercepted telephone calls, FBI surveillance observed TITO going to the

TNT Deli, where the defendant works, on February 6, 16, 17, 24 and March 17 and March 18, 2009.

The Pre-Sentence Report ("PSR") found that the base offense level, under Chapter Two of the November 1, 2009 version of the Sentencing Guidelines, was 16 because the defendant was involved in distributing between 50 and 100 grams of cocaine. See PSR ¶ 24. After a three-level reduction for acceptance of responsibility, the PSR placed the defendant at an adjusted offense level of 13. See PSR ¶¶ 30-31. The PSR agreed with the parties' assessment of the defendant's criminal history in the plea agreement and found that she had accumulated six criminal history points, four of which were for prior convictions, and two of which were because the defendant was on state probation when she committed this offense. See PSR ¶ 44. As a result, the PSR placed the defendant in a guideline incarceration range of 18-24 months, based on an adjusted offense level of 13 and a Criminal History Category of III. See PSR ¶ 31, 44, 56.

The defendant has submitted a sentencing memorandum in which she seeks a sentence of probation along with a period of home confinement. She does not object to the factual recitation set forth in the PSR, and agrees that the guideline range is 18-24 months' incarceration. As to the quantity of cocaine involved in her offense, the defendant is no longer alleging that it was less than 25 grams and agrees that it was between 50 and 100 grams. By this memorandum, the Government seeks a sentence within the 18-24 month guideline range set forth in the written plea agreement and the PSR.

II. DISCUSSION

In United States v. Booker, 543 U.S. 220 (2005), the Supreme Court held that the United States Sentencing Guidelines, as written, violate the Sixth Amendment principles articulated in Blakely v. Washington, 542 U.S. 296 (2004). See Booker, 543 U.S. at 243. The Court determined that a mandatory system in which a sentence is increased based on factual findings by a judge violates the right to trial by jury. See id. at 245. As a remedy, the Court severed and excised the statutory provision making the Guidelines mandatory, 18 U.S.C. § 3553(b)(1), thus declaring the Guidelines "effectively advisory." Booker, 543 U.S. at 245.

After the Supreme Court's holding in Booker rendered the Sentencing Guidelines advisory rather than mandatory, a sentencing judge is required to: "(1) calculate[] the relevant Guidelines range, including any applicable departure under the Guidelines system; (2) consider[] the Guidelines range, along with the other § 3553(a) factors; and (3) impose[] a reasonable sentence." See United States v. Fernandez, 443 F.3d 19, 26 (2d Cir.), cert. denied, 127 S. Ct. 192 (2006); United States v. Crosby, 397 F.3d 103, 113 (2d Cir. 2005). The § 3553(a) factors include: (1) "the nature and circumstances of the offense and history and characteristics of the defendant"; (2) the need for the sentence to serve various goals of the criminal justice system, including (a) "to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment," (b) to accomplish specific and general deterrence, (c) to protect the public from 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 sentencing range set forth in the guidelines; (5) policy statements issued by the Sentencing Commission; (6) the need to avoid unwarranted sentencing disparities; and (7) the need to provide restitution to victims.

See 18 U.S.C. § 3553(a).

"[T]he excision of the mandatory aspect of the Guidelines does not mean that the Guidelines have been discarded." Crosby, 397 F.3d at 111. "[I]t would be a mistake to think that, after Booker/Fanfan, district judges may return to the sentencing regime that existed before 1987 and exercise unfettered discretion to select any sentence within the applicable statutory maximum and minimum." Id. at 113.

The Second Circuit reviews a sentence for reasonableness. See Rita v. United States, 127 S. Ct. 2456, 2459 (2007). The reasonableness standard is deferential and focuses "primarily on the sentencing court's compliance with its statutory obligation to consider the factors detailed in 18 U.S.C. § 3553(a)." United States v. Canova, 412 F.3d 331, 350 (2d Cir. 2005). The Supreme Court has reaffirmed that appellate courts must review sentencing challenges under an abuse-of-discretion standard. See Gall v. United States, 128 S. Ct. 586 (2007). In Gall, the Supreme Court held that a reviewing court must first satisfy itself that the sentencing court "committed no significant procedural error." Id. at 597. If there is no procedural error, the appellate court may then "consider the substantive reasonableness of the sentence imposed under an abuse-of-discretion standard." Id.

The defendant has asked for a sentence of probation. In the Government's view, a sentence of probation would not reflect the seriousness of the defendant's criminal conduct or the defendant's prior criminal record. As discussed above, in February and March 2009, the defendant was involved in purchasing and redistributing between 50 and 100 grams of powder cocaine. She appeared to have a good relationship with her cocaine source and relied on that relationship to allow her to purchase various quantities of cocaine for herself and others. Although the defendant was certainly not a large scale distributer of cocaine, she was purchasing and redistributing cocaine out of the very same deli

that she operated as a legitimate business in the community.

The sentence in this case must also account for the defendant's prior criminal record. Unlike some of the other defendants in this case who have been involved in distributing lesser quantities of cocaine and have, as a result, received sentences of probation (Alex Espinoza and Gerald Montanari), this defendant has multiple prior misdemeanor and felony convictions. Indeed, had all of the accumulated points stemming from these convictions counted, the defendant would have been in Criminal History Category IV with nine criminal history points. See PSR ¶ 44. In 1990, she was arrested for sale of narcotics and larceny, convicted of second degree larceny, and sentenced to six years' incarceration, execution suspended, and four years' probation. In 2000, after being arrested for several different charges, she was convicted of threatening, breach of peace and assault on a peace officer and sentenced to a total effective term of two years of incarceration, execution suspended, and three years' probation. In 2004, the defendant was convicted of third degree burglary and sentenced to five years' incarceration, execution suspended, and three years' probation. In 2005, the defendant was convicted of threatening and sentenced to one year of incarceration, execution suspended, and two years' probation. In 2006, the defendant was convicted of possession of marijuana and sentenced to one year of incarceration, execution suspended, and three years' probation. The defendant was on state probation at the time of this offense. Despite all of her prior misdemeanor and felony convictions, the defendant has never been sentenced to serve any time in jail.

When the defendant was sentenced on her 2004 third degree burglary conviction, the state court judge advised, "All you have to do is stay out of trouble for three years. There's no reporting to anyone, but if you do get arrested in the next three years, these five years are going to come back

to haunt you, do you understand that. You start out owing us five years." The defendant replied, "Okay. Thanks." Since that time, the defendant has been convicted of two more misdemeanor offenses, yet, she still has received no jail time as a result of these convictions.

The defendant now comes before this court, having pleaded guilty to engaging in a conspiracy to distribute between 50 and 100 grams of powder cocaine, and again seeks a sentence that does not include jail time. In the Government's view, the defendant's prior criminal history is serious and must be considered in fashioning her sentence. In fact, given the nature of the defendant's prior felony convictions, she is very fortunate that she is only facing a Chapter Two guideline incarceration range of 18-24 months, rather than a Chapter Four career offender range of 151-188 months. The defendant committed this offense while on probation. In 2005 and 2006, she committed offenses while on probation. These prior suspended sentences have not deterred her from continuing to engage in criminal conduct, despite the fact that she has a supportive family and friends and strong employment opportunities. A sentence of probation in this case would not reflect the seriousness of the offense, the defendant's prior criminal record, and the need to deter the defendant from engaging in future criminal conduct.

III. CONCLUSION

For the reasons stated above, the Government respectfully requests that the Court impose a sentence within the 18-24 month guideline range set forth in the PSR.

Respectfully submitted,

DAVID B. FEIN
UNITED STATES ATTORNEY

/s/
ROBERT M. SPECTOR
ASSISTANT UNITED STATES ATTORNEY
FEDERAL BAR NO. CT18082
157 CHURCH STREET; 23rd FLOOR
NEW HAVEN, CT 06510
203-821-3746

CERTIFICATION

I hereby certify that on 26 October 2010, the foregoing Sentencing Memorandum was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's system.

/s/
ROBERT M. SPECTOR
ASSISTANT UNITED STATES ATTORNEY