

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 19CR151

v.

FRANCISCO MARTINEZ,

Defendant.

SENTENCING MEMORANDUM

The defendant, Francisco Martinez, by counsel, Edward J. Hunt, The Hunt Law Group, S. C., submits this sentencing memorandum in support of his request that he be sentenced to a term of imprisonment of no more than a sentence of 9 years and 8 months and 26 days (116 months and 26 days) with a variance and downward adjustment from the mandatory minimum sentence of 10 years (120 months) which recognizes the time he has served in pre trial custody for the related state court case, Brown County Circuit Court Case No. 2019CF827, for the same course of conduct in a drug conspiracy charged in the instant case.

APPLICABLE LEGAL PRINCIPLES

Pursuant to *United States v. Booker*, 543 U.S. 220, 245 (2005), the United States Sentencing Guidelines are merely “advisory,” and the sentencing court is required to consider the factors listed in 18 U.S.C. § 3553(a) in imposing a sentence. *Booker*, 543 U.S. at 245. Those factors include:

- (1) the nature and circumstances of the offense and the history 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;
- (3) the kinds of sentences available;
- (4) the advisory guidelines range;
- (5) any pertinent policy statements issued by the Sentencing

Commission;

- (6) the need to avoid unwarranted sentence disparities; and
- (7) the need to provide restitution to any victims of the offense.

18 U.S.C. § 3553(a)(1) - (7).

Section 3553(a) also requires the sentencing court, after considering these factors, to impose a sentence “**sufficient, but not greater than necessary**,” to comply with the purposes set forth in § 3553(a)(2). The statute “does not attach weights to these factors” and, “thus leaving the sentencing judge with enormous latitude.” *United States v. Beier*, 490 F.3d 572, 574 (7th Cir.. 2007). “Although the guidelines are treated as advisory after Booker, the application of section 3553(a) is mandatory.” *United States v. Miranda*, 505 F.3d 785, 791 (2007). In *United States v. Kimbrough* 552 U.S. 85 (2007), the Court also emphasized the district court’s ability to reject a sentencing guidelines enhancement on policy grounds.

BACKGROUND

Mr. Martinez is scheduled for a sentencing hearing April 22, 2021. On December 22, 2020, pursuant to a plea agreement with the Government, Martinez pled guilty to an offense of Conspiracy to Distribute and Possess with Intent to Distribute Controlled Substances in Count One of the Superseding Indictment. *See*

PSR at 5 ¶¶8. The maximum statutory penalty Martinez faces is a lifetime of imprisonment and the mandatory minimum penalty Martinez faces is 10 years (120 months) imprisonment. The Government will be asking the Court to impose the statutory minimum sentence of 10 years (120 months), but also recognizes that a variance and downward adjustment should be granted for the time he has served in pre trial custody for the related state court case, Brown County Circuit Court Case No. 2019CF827. Based on the calculations as set forth in the plea agreement, his advisory sentencing guideline range would be calculated according to a base offense level of 30 and with a criminal history category of III. With a 3 point reduction for acceptance of responsibility, his base offense level would be 27. With an adjusted base offense level of 27 and a Criminal History Category III, Martinez's advisory sentencing guideline range would be 87-108 months. *See* PSR at 6 ¶¶13, 7-8 ¶¶24-35, 20 ¶¶99-100.

ARGUMENT

For the reasons discussed below, Martinez is asking this Court to impose a sentence with a downward adjustment and also a sentence in variance from the advisory sentencing guidelines as set forth in the Pre-Sentence Report. He requests the minimum sentence available to be served which recognizes the Brown County Jail pre-trial custody time of 3 months and 4 days (97 days) in Brown County Circuit

Court Case No. 2019CF827 which he served from June 20, 2019 until September 24, 2019. *See* PSR at 15 ¶64. The facts of this offense are the same as the federal prosecution. *Id.* He appeared on a return on a warrant on June 20, 2019 in Brown County Circuit Court for an initial appearance still in custody. *See* CCAP entries for State of Wisconsin v. Francisco Martinez, Brown County Case Number 2020CF827. Bond was set at \$5,000. He remained in custody on the State Court charges until September 24, 2019 when the case was dismissed because he had been charged in the instant indictment. *See Id.* The Plea Agreement in this case recognizes that the Government also recommends that a downward adjustment and sentence in variance from the advisory guidelines as set forth in the Pre Sentence Report be allowed in order to reflect the pre trial custody time of 3 months and 4 days (97 days).

Pursuant to 18 U.S.C. § 3584(a) and United States Sentencing Guideline § 5G1.3(b), Martinez asks this court to apply a 3 month and 4 day (97 days) sentence adjustment downward to account for the time he has already served since his arrest for the related state court prosecution and bond set in the state court prosecution for an offense in which the facts are the same as this federal prosecution. *See* PSR at 6 ¶13. *See United States v Hernandez*, 620 F. 3d 822, 823-24 (7th Cir. 2010) (holding that a district court can impose a sentence below a mandatory minimum to account for time served on an undischarged state sentence, as long as the total time between

the two sentences equals the federal statutory minimum). Martinez believes the requested sentence of no more than 9 years and 8 months and 26 days (116 months and 26 days) is appropriate for the following reasons:

1. A sentence of 116 months and 26 days would more be far in excess his longest sentence imposed in state court. From an incremental punishment standpoint, 116 months and 26 days is a huge step up over the prior sentences he has served and will send a message of both general and specific deterrence while also imposing a significant punishment for him, promoting respect for the law, and incapacitating him for a long time.

2. Martinez is 39 years of age, still a young man. However, his life up to this date has seen it's fair share of turmoil. His life has been turned inside out by drug abuse and an unsettled and unstable childhood as the product of a broken home. *See* PSR at 15-17 ¶¶65-76, at 19 ¶¶86-89.

3. Martinez can accomplish good things when he sets his mind to it. He obtained his HSED diploma by the State of Illinois and Regional Office of Education #16 in 2005. *See* PSR at 19 ¶91. Since the fall 2019 semester, he has enrolled in classes over three semesters at Northeast Wisconsin Technical College, located in Green Bay, Wisconsin. He has completed 10 total ungraded credits. *See* PSR at 19 ¶92. He is married and devoted to his wife, Stephanie, and is loving father to his

children, Aevah, age 8, and Valentine, age 6, from that relationship and is also a loving father to his children from a previous relationship, Ceceilia, age 16, Elyssia, age 14, and Francisco Jr., age 13. PSR at 17-18 ¶¶77-79. He has also demonstrated the ability to hold onto a job and perform well over an extended period of time. It is worth noting that he was employed approximately 12 years, from 2004 to October 16, 2016, with the same company under two different owners. PSR at 20 ¶¶ 94-95.

4. Martinez knows that this a serious offense calling for serious consequences, and 116 months and 26 days in prison is certainly that. He has taken responsibility for his actions, pled guilty, and is fully prepared to face the consequences at sentencing. Martinez is fully committed to a different direction in life. He acknowledged to the author of the PSR that he “believes himself to be a good person, but also acknowledges he has made his share of mistakes and poor choices, and views himself as a product of the environment in which he was raised. Mr. Martinez emphasized family has always been the most important thing in his life, and notes while others use their family as a pawn to influence when before the Court, the defendant stressed that it is not something he has done. Instead, when citing his family, his words are not intended to be a sales pitch or a manipulation ploy; rather, he truly speaks from his heart. Through his actions, and now facing a significant sentence in this matter, Mr. Martinez contends the temporary financial gain has not

been worth the destruction caused upon his family. Moving forward, he hopes to establish a stable and ‘legal’ way of life, and placing himself in a position allowing him to continue financially, emotionally, and physically support his children ”. *See* PSR at 18-19 ¶85.

5. Martinez asks the Court to consider a recommendation that he be allowed to enter the 500 hour intensive drug treatment program offered by the Federal Bureau of Prisons.

CONCLUSION

For all of these reasons, a sentence of 9 years and 8 months and 26 days (116 months and 26 days) with a variance and downward adjustment from the mandatory minimum sentence of 10 years (120 months) which recognizes the time he has served in pre trial custody for the related state court case, Brown County Circuit Court Case No. 2019CF827, is appropriate and is “sufficient but not greater than necessary” to comply with the purposes of 18 U.S.C. 3553(a).

Dated this 20th day of April, 2021.

Respectfully submitted,

s/Edward J. Hunt

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