

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 19-CR-151
Green Bay Division

GABIEL Y. BONILLA,

Defendant.

SENTENCING MEMORANDUM

The defendant, Gabiel Bonilla, by his attorney, John A. Birdsall of Birdsall Obear and Associates, LLC, pursuant to the Due Process provisions of the Fifth Amendment to the United States Constitution and Rule 32(c) of the Federal Rules of Criminal Procedure, respectfully submits the following Sentencing Memorandum which requests a departure from the government's recommendation, but within the sentencing guidelines based on an analysis of factors set forth in 18 U.S.C. § 3553(a).¹

The defendant plead guilty to one count of knowingly and intentionally conspiring to distribute and possess with the intent to distribute 100 grams but less than one kilogram of heroin, and more than 40 grams but less than 400 grams of fentanyl, 21 U.S.C. § 841(a)(1); 21 U.S.C. § 841(b)(1)(B).² The pre-sentencing report,

¹ The only requirement is that the sentence imposed must be sufficient but *not greater than necessary*. 18 U.S.C. § 3553(a) (emphasis added).

² That offense has a mandatory minimum sentence of 5 years, to maximum of 40 years imprisonment. 21 U.S.C. § 841(a)(1); 21 U.S.C. § 841(b)(1)(B).

based upon the 2021 Sentencing Guidelines Manual, suggests a sentence range of 110 to 137 months based on an offense level of 27 and criminal history level VI.

In the plea agreement, the government recommends a sentence of 90 months of imprisonment running concurrently to any prison term(s) currently being served based on the instant offense, followed by 60 months of supervised release. Because of the defendants' need for rehabilitation, education, and the unique circumstances of this case, the defense joins this recommendation of 90 months of incarceration running concurrently to any prison term(s) being served based on the instant offense, followed by 60 months of supervised release. Previously, this Court expressed its willingness to impose a sentence that runs concurrently to any sentence currently being served based on this instant offense. *See* Dkt. 277 [Change of Plea Hearing, September 14, 2021]. Specifically, that is 29 months and six days at the time of the defendant's sentencing, should be credited to this instance sentence and that any remaining time for that sentence to run concurrently with this instant sentence.

SENTENCING ANALYSIS

I. NATURE OF THE OFFENSE

Between May 2017 and August 2019, Mr. Bonilla and his co-defendants, allegedly ran a drug trafficking operation. Federal charges only arose after the state requested that the "top suppliers and dealers" be charged in federal jurisdiction. Presentencing Report, ¶10. However, Mr. Bonilla was not a "top supplier and runner." For the first nineteen months of the alleged drug operation, Mr. Bonilla

was physically unable to be a participant in the operation.³ “Top” guys certainly need more than eight months to become established. The government’s own evidence shows Mr. Bonilla was not a “top runner or supplier,” as “Domo” and “Biggs” were the only ones reported to have a final say. See Presentencing Report, ¶23. Moreover, “top” guys would certainly have at least some illegal substance or money located at their residence. But, after eighteen search warrants were executed, no illegal contraband was recovered from Mr. Bonilla’s. Over 3,000 grams of cocaine, 6,700 grams of marijuana, 101 grams of crack, 391 grams of heroin, 20 firearms, and \$123,000.00 had been recovered, yet none of which from Mr. Bonilla’s.

The government can only conclusively show Mr. Bonilla is responsible for six sales of heroin to a confidential information, a mere total of 47.25 grams. When Mr. Bonilla was pulled over and subsequently arrested, *suspected* fentanyl had been recovered in the back seat of his vehicle. Presentencing report, ¶28 (emphasis added). Rather than testing the substance, the government relies on a statement from another defendant to prove it is fentanyl.

Because no controlled substances, firearms, or money were found at Mr. Bonilla’s residence; only three grams of *suspected* (but not confirmed) “fentanyl” were found behind Mr. Bonilla’s seat; there are no victims; and Mr. Bonilla only was involved for eight of the twenty-eight-month operation, this Court should find a sentence of 85 months is sufficient. That sentence is not greater than necessary, and

³ Mr. Bonilla had been in state custody until November 27, 2018. See Brown County Case No. 08CF899.

a longer sentence would negatively impact Mr. Bonilla's ability to successfully rehabilitate and return to the community.

II. NEEDS AND CHARACTERISTICS OF THE DEFENDANT

Mr. Bonilla was born in Puerto Rico and lived there for ten years prior to coming to the United States. Mr. Bonilla came to the United States in 1993 to reside with his grandfather. He grew up across the street from his mother, Carmen Gonzalez. Ms. Gonzalez, at that time, was living with and in a relationship with Fundador Sanchez. Mr. Sanchez, for seven years, abused Mr. Bonilla and his mother. Mr. Bonilla, scared and desperate to escape, sought refuge in the neighborhood gang. At that time, he was only 13 years old and did not realize impact of what "joining a gang" would have.

Mr. Bonilla has struggled with addiction since he was eighteen years old. Mr. Bonilla is willing to participate in a drug rehabilitation program, as he has not previous had the opportunity. Mr. Bonilla's mother believes that would be beneficial to him as well. Mr. Bonilla has a HSED, equivalent to a high school diploma, but has not participated in any further education or training. That is Mr. Bonilla's biggest down-fall. That is, the lack of education or vocational training impedes on Mr. Bonilla's ability to stop falling into past patterns. Mr. Bonilla kept falling into the same pattern, hanging with the same group of people, and desires to break that pattern. To break that pattern, Mr. Bonilla needs proper education and rehabilitation to allow him to flourish in our community.

Mr. Bonilla has two children, Gabriela Bonilla and Miguel Bonilla. Gabriela is 14 years old, and Miguel is 12 years old. Both reside with Ms. Gonzalez, who has guardianship of them, in Green Bay, WI. Their mother, Rae Ann Teller, is not actively involved. It is clear to both Mr. Bonilla and Ms. Gonzalez that Ms. Teller does not want to be active in the children's life. Mr. Bonilla is a stellar father and is actively involved in his children's life, as much as he can be. He communicates with his kids daily and wants to be a positive influence on them. That is why Mr. Bonilla needs rehabilitation and education training. Ms. Gonzalez believes Mr. Bonilla is a good father and wants Mr. Bonilla to be a part of his children's life. Ms. Gonzalez is also the primary caretaker of Mr. Bonilla's grandfather, Miguel Gonzalez, who needs around the clock care. Between caring for Mr. Bonilla's children and Mr. Bonilla's grandfather, Ms. Gonzalez wants, upon Mr. Bonilla's release, for Mr. Bonilla to help support and care for his children.

Because Ms. Gonzalez is the primary caretaker of Mr. Bonilla's grandfather, who has recently suffered a stroke, is on bed rest, and is paralyzed from the waist down; and is the primary caretaker of Mr. Bonilla's two children, Mr. Bonilla needs rehabilitation and vocation training. That is so Mr. Bonilla will be able to care for himself and his kids. A sentence of 85 months is sufficient to successfully rehabilitate and educate Mr. Bonilla, yet is not greater than necessary.

CONCLUSION

Mr. Bonilla wants to participate in drug rehabilitation programs and vocational training during his sentence. Mr. Bonilla acknowledges his conduct was

wrong and desperately wants to escape his past behavior. He knows, and his mother agrees, that his behavior is a direct result from the people he surrounded himself with, and upon his release, desires to start over and surround himself with positive influences. Rehabilitative treatment and vocational training will set Mr. Bonilla up with the proper skills and education to flourish in a new environment upon his release. Therefore, the defense respectfully requests this Court impose a sentence of 5 years of incarceration (7.5 years minus 2.5 years allocating time-served), followed by 7 years of extended release. Specifically, the defense requests this Court to impose a sufficient but not greater than necessary sentence.

Dated at Milwaukee, Wisconsin, this 14th day of December, 2021.

Respectfully Submitted,

BIRDSALL OBEAR & ASSOCIATES

/s/ John A. Birdsall

John A. Birdsall, Esq.

State Bar No.: 1017786

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OCT 7 AT 12:15 PM

Character letter for Gabriel

Bonilla Add label



Eric Ebbole 11:47 AM

to ahsaunjustme1 ▾



To whom it may concern

My name is Eric Ebbole I have been working with inmates through our outreach program in Heroin Anonymous our mission is to find individuals that want and need a better way of life without the use of mind altering substances. I met Gabriel in one of our Brown Co. meetings and met with him on several professional visits , and have been receiving phone calls every since. In my experience recovery starts knowing there is a problem, finding the solution, and taking action to grow in understanding and effectiveness, we use the 12 steps of AA and we have been going through the process. I am going to continue to work with him and answer any questions that he may have that will benefit his recovery. If you have any questions or concerns please feel free to contact me.

Ebboleeric1@gmail.com or 920-205-7797

Thank you Eric Ebbole

Sent from my iPhone