

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CRIMINAL NO. 05-81123

v.

HON. NANCY G. EDMUNDS

D-1 DERIC WILLOUGHBY,
a.k.a. "Daddy"

Defendant.

GOVERNMENT'S SENTENCING MEMORANDUM

The United States of America, by its undersigned attorneys, respectfully submits this Sentencing Memorandum regarding defendant, DERIC WILLOUGHBY. For the reasons provided below, the government recommends a sentence within the Guideline range of **70-87 months**, as calculated in the Rule 11 plea agreement. The government contends that a sentence at the top of this range, and not the higher range calculated by the Probation Department, is the correctly calculated, appropriate and reasonable range.

I. BACKGROUND

On December 13, 2006, the defendant, Brandy Shope, Jennifer Huskey and Richard Lamar Gordon were charged in a five count indictment with Conspiracy to

Commit the Sexual Exploitation of Children and Transportation of Children for the Purpose of Prostitution in violation of 18 U.S.C. §371, 1591 and 2423.

The government filed a First Superseding Information as to only defendant Willoughby on August 16, adding count six, criminal forfeiture.

The defendant entered a guilty plea to Counts One and Four of the First Superseding Information on August 28, 2006 pursuant to a Rule 11 Plea Agreement. The Rule 11 Plea Agreement relied upon U.S.S.G. §2G1.3 and calculated the defendant's advisory guideline range as 70-87 months.

SENTENCING CALCULATION

A. Statutory Maximum Sentence

As set forth in 18 U.S.C. § 371, the sentence that may be imposed on Count One is five years, a \$250,000 fine, or both.

As set forth in 18 U.S.C. §§ 2423(a), 2, the sentence that may be imposed on Count Four is between 5 and 30 years, a \$250,000 fine, or both.

B. The Sentencing Guidelines After Booker

The Court of Appeals has held that sentences properly calculated under the Guidelines are credited with “a rebuttable presumption of reasonableness.” *United States v. Williams*, 436 F.3d 706, 707 (6th Cir. 2006). A “reasonable” sentence is one that conforms to the goals, values, and policy determinations set forth by

Congress in 18 U.S.C. §3553(a). These factors include “the nature and circumstances of the offense and the history and characteristics of the defendant;” “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;” and “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” 18 U.S.C. §3553(a).

The *Williams* holding, as well as the factors set forth in 18 U.S.C. §3553(a), demonstrate that the defendant has earned a sentence within the guideline range.

C. Sentencing Guidelines Calculations

In calculating the defendant’s advisory sentencing guideline range, the Department of Probation (“Probation”) relied upon §2G3.1(c)(3) - which cross references the application of §2A3.1 and applied the Sex Abuse Guideline under §2A3.1. Finding a combined adjusted offense level 43 and a criminal history category I, the PSR found the defendant’s guideline range to be 360 months to Life in prison.

The government does not concur in the Department of Probation's recommendation for the application of U.S.S.G. §2A3.1. Rather, the government contends that the Rule 11 plea agreement correctly relied upon the application of §2G1.3 in calculating the defendant's total offense level as 27. Specifically, the government does not believe that it can meet its burden of establishing the sentence enhancements found by the Probation Department.

III. GOVERNMENT'S RECOMMENDATION

As set forth in the Rule 11 Agreement, with a total offense level of 27 and a criminal history category of I, defendant falls within the sentencing range of 70-87 months. The parties have agreed that this is the correctly calculated advisory sentencing guideline range. If the court accepts the Rule 11 advisory guideline range, then the government contends that a sentence at the top of the range is appropriate.

If the court does not accept the Rule 11 advisory guideline range, but the range calculated by Probation, then the defendant has the right to withdraw from his guilty plea pursuant to Paragraph 6 of the Rule 11 Agreement.

The government contends that the advisory guideline calculations contained within the Rule 11 Agreement were correctly calculated and that a sentence at the top of that range is an appropriate sentence. The government asks the Court to

impose a 5 year term of supervised release as to Count 4, concurrent to 3 years of supervised release on Count 1. Moreover, the factors contained in 18 U.S.C. §3553(a) support a term of incarceration at the top of the advisory guideline range.

(1) ***The nature and circumstances of the offense and the history and characteristics of the defendant.***

The defendant admits the following facts accurately represent his criminal activity in this case:

On May 13, 2005, Jane Doe 1 (age 15) and Jane Doe 2 (age 14) were walking to the Wendy's Fast Food Restaurant located in the Toledo, Ohio area when the defendant, DERIC WILLOUGHBY and Brandy Shope pulled up alongside the curb, called out to the two minors and offered them a ride.

Defendant and Brandy Shope brought the two minors to Defendant's residence at 3221 Downing Street, Toledo, Ohio.

Between May 13 and 14, 2005, Brandy Shope and Jennifer Huskey separated Jane Doe 1 and 2, and separately instructed the minors that: (1) they would have to engage in commercial sexual acts for money, including sexual intercourse and oral sex; (2) they would be required to call Defendant "Daddy;" and (3) they were required to show respect for and obey "Daddy" in all things.

Defendant, Brandy Shope and Jennifer Huskey, having agreed to prostitute the minors, did compel the minors to engage in commercial sexual acts, including

sexual intercourse and oral sex, with several different adult males in the Toledo, Ohio area between May 13, 2005 and May 23, 2005. Defendant, Brandy Shope and Jennifer Huskey agreed that any monies obtained by prostituting the minors would be given to the Defendant, and money received in exchange for sexual activity was, in fact, given to Willoughby by Shope and/or Huskey.

During May 13-23, 2005, Defendant provided Jane Doe 1 and 2 with false identities, including false birth dates, which the minors were instructed to use if stopped by law enforcement officials.

On approximately May 22-23, 2005, Defendant transported Jane Doe 1 and 2, Jennifer Huskey, and Brandy Shope to a Sears parking lot in the Toledo, Ohio area and met with Richard Lamar Gordon. Defendants all agreed to transport the two minors, Jane Doe 1 and 2, Jennifer Huskey and Brandy Shope to a truck stop in Michigan for the purpose of engaging in commercial sexual activity. All of the monies obtained through the commercial sexual activities performed by the minors, Jane Doe 1 and 2, were maintained by Jennifer Huskey and/or Brandy Shope and then given to (or would be given to) Defendant Willoughby.

The two minors, Jane Doe 1 and 2 were transported by Richard Lamar Gordon, Jennifer Huskey and Brandy Shope to a TA Truck Stop in Dexter, Michigan, and did engage in commercial sexual activity with adult males at the TA

Truck Stop. Jane Doe 1 also engaged in sexual intercourse with Richard Lamar Gordon in exchange for a sum of currency.

Though the defendant was assessed a criminal history category I, the government asks the court to consider the defendant's prior criminal history in fashioning an appropriate sentence at the top of the defendant's Rule 11 advisory guideline range.

The defendant's criminal history shows a pattern of lawlessness. According to the PSR, the defendant has had a series of convictions beginning in 1987, including violating park curfew, a drug related conviction, and menacing. In 1989, the defendant was separately convicted of misconduct at emergency and disorderly conduct, both yielding suspended sentences. In that year, the defendant was also convicted of a more serious offense, drug abuse with prior conviction. In that case, police responded to a call of a stabbing and found blood and an injured woman. After being directed to the defendant's apartment, the officers executed a search warrant and found two handguns, 1.73 grams of cocaine, and \$596 cash. The defendant negotiated a plea to the drug abuse charge and received one year in the Ohio Department of Rehabilitation and Correction. In 1993, the defendant pled guilty to attempted forgery after an unauthorized use of a credit card. In 1995, the defendant pled no contest to animals/noise. In 1998 and 1999, the defendant

was convicted of disorderly conduct. The defendant did not receive any criminal history points for these offenses.

In addition to the defendant's prior convictions, the government asks the court to consider the defendant's 1995 arrest for Rape and Kidnaping. Though the charges in that case were ultimately dismissed, the conduct is relevant to the court's assessment of the defendant's history and characteristics. In 1995, a 15 year old female alleged that she was raped by the defendant at his home and then told by the defendant that he was going to take her to a truck stop to work (as a prostitute). He also told the victim that she would be required to give all of the money she earned to him. Similar to this case, when the victim told the defendant that she wanted to see her mother, the defendant replied that he would be her mom and dad. The defendant took the victim to someone's home, where the minor contacted her mother and was eventually taken to the hospital. The defendant was arrested on two other occasions (in 1996 and 2002), both resulting in dismissals.

The government also asks the court to consider the defendant's income and employment history. According to the PSR, the defendant left college in June 1986 (without earning a degree) and was employed from April 28, 1986 until July 31, 1986 as a janitor, earning \$4.15 per hour. The PSR reports no other verified employment. However, the defendant also claimed that he operated an

unsuccessful business, called “Naughty Girl Clothing” between 1999 and 2003, and an unprofitable clothing company named “Success Fashions.” Since approximately 2002, the defendant has been involved with Shope and Huskey. He has acted as their pimp, prostituting them while, at the same time, engaging them in “relationships,” and even fathering a child with one of the women.

The defendant’s history, character, and conduct in this offense show the defendant has little regard for the law and is a dangerous individual who preys upon and exploits young women for his own financial gain.

(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.*

The prostitution of minors is one of the most serious offenses for which a defendant may be convicted. This defendant conduct has been the most serious of all the co-defendants in the case. The defendant has victimized and forever altered the lives of two minors. The government asks the court to impose the maximum sentence under the Rule 11 advisory guideline range of 87 months.

(B) *to afford adequate deterrence to criminal conduct*

A sentence at the top of the Rule 11 advisory guidelines range will serve as an adequate deterrence to criminal conduct and protect the public from further

crimes of the defendant. Substantial incarceratory sentences are an important means of deterring others from participating in these unlawful and dangerous criminal activities.

(C) *to protect the public from further crimes of the defendant*

A lengthy sentence is appropriate in this case because Deric Willoughby poses a danger of re-offending and engaging in violent criminal activity. It is clear from the defendant's record that he is a dangerous person who has little regard for the law. Therefore, a sentence at the top of the Rule 11 advisory guideline range would insure the safety of the community and protect the public from further crimes by this defendant.

(D) *to provide the defendant with needed educational or vocational training, medical care or other correctional treatment in the most effective manner*

The defendant has had a history of abusing alcohol and drugs, including marijuana, cocaine and now, methamphetamine. He has sought treatment in the past, but the treatment has been unsuccessful. He was ordered to complete substance abuse treatment as a condition of a prior sentence and the defendant failed to participate in the program. The defendant clearly needs substance abuse treatment and counseling. He may receive inpatient intensive treatment within the federal prison system.

- (3) ***The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.***

A sentence within the Rule 11 advisory guidelines range is appropriate.

Congress has enacted harsh penalties for individuals, like Deric Willoughby, who prey upon and exploit our youth. A sentence at the top of the Rule 11 advisory guideline range will ensure the defendant receives a sentence commensurate with the sentences imposed on similarly situated defendants.

IV. CONCLUSION

For these reasons, the government contends that this defendant should be sentenced on Counts One and Four to **87 months**, the top of the Rule 11 advisory sentencing guideline range, and to 5 years of supervised release on Count 4.

Respectfully submitted,

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