

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
 v.) 1:23-cr-10290-ADB
)
)
FERNANDO BOST)

DEFENDANT’S MEMORANDUM IN AID OF SENTENCING

Fernando Bost stands ready to be sentenced by this Court on March 7, 2024. He has entered into a binding “(C)” plea agreement with the government under which the parties will jointly recommend a sentence of 102 months and three years supervised release, to be imposed concurrently with the state sentence to be imposed for a probation violation based on the conduct in the case at hand. Dkt. 13, Plea Agreement. That recommendation is within the advisory sentencing range of 100-125 months as determined by the probation department. PSR ¶ 83. The parties arrived at the joint recommendation through good faith negotiations which considered the expected guidelines and the sentencing factors of 18 U.S.C. § 3553(a). Mr. Bost submits, based on the reasons below and contained within the Presentence Report, that a sentence of 102 months, or 8.5 years, is one that is “sufficient, but not greater than necessary” to accomplish the goals of sentencing. 18 U.S.C. § 3553(a).

I. The probation department has correctly calculated the advisory sentencing range.

Although the parties reached a slightly different calculation in the plea agreement, Mr. Bost agrees that the probation department has calculated the guidelines correctly. Mr. Bost has pled guilty to two counts of Hobbs Act Robbery in violation of 18 U.S.C. § 1951(a) and one count of Felon in Possession of Firearm and Ammunition under 18 U.S.C. § 922(g)(1). The two robberies each start with a base offense level of 20. PSR ¶¶ 28, 35. One of them receives a six-point increase because Mr. Bost pointed the firearm at the victim. PSR ¶¶ 10, 29. Two points are also added under the rules for multiple counts because there were two robberies. PSR ¶¶ 41, 43. Three points are then subtracted for acceptance of responsibility, resulting in a Total Offense Level of 25. PSR ¶ 48. The difference between the parties' calculation in the plea agreement and the one reached by the probation department is that the parties increased the offense level by five points for "brandishing" a firearm, but it should have been increased by six because the pointing of the firearm qualifies as "otherwise used." USSG § 2B3.1(b)(2).

Mr. Bost has three prior convictions which score. Each is for a prior robbery and each receives three criminal history points. PSR ¶¶ 53-55. One additional point is added because he was under a criminal justice sentence at the time of the instant offense, resulting in a total of 10 criminal history points. PSR ¶¶ 56, 57. Ten points places Mr. Bost in Criminal History Category V. Offense Level 25 in Category V yields an advisory range of 100-125 months. The parties' recommendation of 102 months is therefore near the low end of the advisory range.

II. The sentencing factors of § 3553(a) support a sentence of 102 months.

Under 18 U.S.C. § 3553(a), the Court is required to consider a wide range of factors with the ultimate goal of imposing a sentence that is “sufficient, but not greater than necessary.” The First Circuit has stated that this mandate means that the Court must impose a sentence “that is *minimally* sufficient to achieve the broad goals of sentencing.” *United States v. Rodriguez*, 527 F.3d 221, 228 (1st Cir. 2008) (emphasis added). The sentencing factors in this case show that a sentence of 102 months, or 8.5 years, is minimally sufficient.

One leading factor that supports the jointly recommended sentence is Mr. Bost’s swift acceptance of responsibility. His Initial Appearance in federal court was September 18, 2023. Dkt. 15. By November 8, 2023, less than two months later, he had indicated to the government that he would waive indictment and plead guilty to an Information under the same general provisions later adopted in the plea agreement. He is set to be sentenced on March 7, 2024, less than six months after his Initial Appearance. The speed of this resolution shows that Mr. Bost immediately acknowledged the harm of his actions and accepted serious consequences for them.

The description of Mr. Bost’s childhood and young adult life in the Presentence Report provides a clear explanation of the life that has led him to appear before this Court for sentencing. He was born in Springfield, but he and his sister were separated from their parents when he was a young child. PSR ¶ 64. Mr. Bost does not know exactly when or why this occurred. *Id.* A friend of his mother’s obtained custody of him when he was six years and moved him to Savannah, Georgia. *Id.* His mother’s friend did not turn out to be his rescuer though, as she routinely physically abused him and his sisters. *Id.*

When the abuse by the mother's friend was discovered Mr. Bost entered foster care. Id. In eighth grade he was then adopted by the Bost family who brought him to their home in a small town in rural Georgia. Id. While the Bosts were financially comfortable, they argued regularly and also physically abused him. Id. The family moved to South Carolina when he was 10 and then to Michigan when he was 12.

At 13, Mr. Bost left the house for a period due to the family's dysfunction. PSR ¶ 65. When he returned, he was not allowed back in. Id. This left him essentially homeless between ages 13 and 15, during which time he stayed with friends and began to pick up criminal cases. Id. With no support in Michigan, he eventually moved back to Springfield to live with his sister. Id. Because he was back in the area where he was originally from, he began a relationship with his biological mother. Id. To his and her credit, the two have created a positive relationship despite all they have been through. Id.

The abuse and neglect Mr. Bost suffered in his childhood had a clear effect on him. The first criminal charges noted in the Presentence Report occurred in Michigan when he was 17 years old in 2008. PSR ¶ 60. Because he left that area due to the complete lack of support, those charges remain in warrant status 16 years later. Id. An arrest as a teenager led him to leave high school. PSR ¶ 74. He thus never received his diploma but did earn a GED while in custody in 2012. Id.

Sadly, it is clear that Fernando Bost has not yet been able to recover from the deprivation he suffered as a child and young man. Without a sufficient education, work history, or family support, he has again committed crimes similar to those which he committed before. He has acknowledged that the consequence is an even longer sentence than he has previously served.

After the completion of that sentence, he will have to try again. Mr. Bost hopes that federal incarceration and supervision will provide more resources than the Commonwealth of Massachusetts has been able to so far and is thus attempting to serve his time in federal custody as explained below.

III. The Court should take steps so that the time that Mr. Bost has been in state custody based on the conduct in this case is credited towards the federal sentence.

When Mr. Bost was arrested on April 6, 2023, it was for the state case that was based on the gun charge that is now part of the instant offense. PSR ¶ 19, 62. He has remained in state custody since then for the probation violation which is based on all the charges in the instant offense. PSR p. 2; ¶ 55. Because Mr. Bost has been in state custody, his pretrial incarceration would normally not be credited to the federal sentence.

However, just as the parties here have agreed to recommend that the federal sentence run concurrently with the state sentence, the parties in the state matter have agreed that the state sentence should run concurrently with the federal sentence. Counsel has been in contact with Mr. Bost's state attorney and understands that Mr. Bost intends stipulate to the violations on March 8, 2024, with the parties jointly recommending a concurrent sentence of 5 years to 5 years and a day in the state matter. The state parties have also agreed to a procedure which is intended to allow Mr. Bost to serve both sentences in federal custody so that he can take advantage of the greater opportunities for rehabilitation during his incarceration. To that end, the state parties will ask that the sentence be stayed and Mr. Bost released to the federal detainer on March 8th. They intend to schedule a status conference for a later date once Mr. Bost is in the custody of the

Bureau of Prisons. Importantly, the state parties will ask that the state sentence not receive any jail credit in order to allow it to be credited towards the federal sentence under 18 U.S.C. § 3585(b). Mr. Bost is not entitled to receive jail credit on both the state and federal sentences for the same period of detention and is thus seeking to receive the credit only on the federal sentence because it is significantly longer. Mr. Bost submits that this is a fair result because his pretrial detention was due to the offenses for which he was ultimately sentenced in the federal case.

In an effort to make the amount of credit clear to the Bureau of Prisons, Mr. Bost requests that the judgment note that he should receive credit from April 6, 2023 under 18 U.S.C. § 3585(b) because it was a result of the offense for which sentence was imposed and has not been credited towards any other sentence. Mr. Bost also requests a minor change to two sections of the Presentence Report to avoid any misinterpretation by the Bureau of Prisons. On page two and in paragraph 1, Mr. Bost requests that the state probation case, docket 1779 CR 0027, be referred to as a related case rather than unrelated since the violation and sentence are based on the same conduct at issue in the present case. The intended end result of these requests and those to the state court are that Mr. Bost serve his time in federal custody, effectively beginning on the date he was arrested for these offenses.

IV. Conclusion

Fernando Bost agrees that he committed a serious crime which deserves a serious sentence. For the reasons argued above, 102 months incarceration and three years supervised release is a sufficiently serious sentence. More importantly, it is certainly one that is “sufficient, but not greater than necessary” to achieve the goals of sentencing.

Respectfully submitted,
FERNANDO BOST
by his attorney

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Certificate of Service

I, Joshua R. Hanye, hereby certify that this document was this day filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (“NEF”).

Date: March 5, 2024

/s/ Joshua R. Hanye
Joshua R. Hanye