

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

OSCAR PENA,
a/k/a “King O-Block”

Defendant

Criminal No. 19-CR-10459-RWZ

MEMORANDUM IN SUPPORT OF SENTENCING RECOMMENDATION

The government submits the instant memorandum in support of its recommendation for 63 months of incarceration for the defendant, Oscar Pena a/k/a “King O-Block.” This recommendation reflects the seriousness of the offense, the defendant’s personal and significant involvement in the activities of the criminal enterprise, and his lengthy criminal history, and is sufficient but no greater than necessary to accomplish the goals of sentencing.

THE ADVISORY SENTENCING GUIDELINES

In the plea agreement, Dkt. 1190, the parties agreed that the defendant’s total offense level is 19, based on a base offense level of 22 for his participation in the racketeering conspiracy (U.S.S.G. § 2E1.1(a)(1))—which included the specific underlying activity of distributing 38.7 grams of fentanyl—and with a three-level reduction for his acceptance of responsibility (U.S.S.G. § 3E1.1). Probation agrees with the parties in this calculation. PSR ¶¶ 63-74.

In the plea agreement, the government further agreed to recommend a sentence within this agreed-upon guideline range, while the defendant reserved the right to request a two-level minor role adjustment. Probation recommended that no role adjustment be applied. PSR ¶ 68.

Based on an offense level of 19 and a criminal history category of VI,¹ Probation calculates an advisory sentencing range of 63-78 months.

ARGUMENT

The defendant was unquestionably a member of the Latin Kings. He was present at recorded chapter meetings and even received a beating (or “violation”) by another gang member for breaking the gang’s rules.

The defendant worked to further the gang’s violence and personally participated in the enterprise’s drug distribution activities. For example, on September 26, 2019, the defendant was recorded as he and co-defendants Angel Calderon and Alexis Velasquez sold a .22 caliber submachine gun with a purported silencer to Massachusetts State Cacique Jorge Rodriguez. PSR ¶ 59. In March 2015, Pena was also stopped with two other Latin Kings members and was found to be carrying a Smith and Wesson .45 caliber semi-automatic firearm and a large amount of marijuana. PSR ¶ 57.

On November 21, 2018, the defendant sold a cooperating witness 38.7 grams of fentanyl in a recorded transaction. PSR ¶ 48. This was not the defendant’s only documented drug activity, as he also attempted to sell heroin to a cooperating witness on December 6, 2018 (the sale was complete, but the substance contained no controlled substances), and was caught driving with 2 grams of cocaine and 13 grams of heroin in 2017. PSR ¶ 49.

The defendant has amassed a lengthy and serious criminal history which includes multiple convictions or adjudications for robbery, breaking and entering, larceny, assault and battery on a

¹ Defendant objects to Probation’s calculation of the defendant’s criminal history on the grounds that the sentences were completed long before the instant offense conduct began. As the PSR notes, however, the defendant’s participation in the Latin Kings criminal enterprise dates back to at least March 2015. PSR ¶¶ 51-57. As such, the government agrees with Probation’s calculation.

police officer, and unlawful possession of a firearm and knife. At age 25, he has earned a designation in the highest criminal history category.

In light of this serious criminal history, and the defendant's conduct in furtherance of the criminal enterprise, a sentence of 63 months is sufficient but no greater than necessary to accomplish the goals of sentencing. The defendant's fentanyl distribution activities alone might support this sentence, as he distributed nearly 40 grams of fentanyl—a quantity which Congress has deemed so dangerous and harmful as to warrant a 60-month mandatory minimum sentence regardless of the offender's criminal history. But the serious nature of the defendant's criminal conduct is highlighted when viewed in the context of this large criminal enterprise and his facilitation of the enterprises' violent reign through the possession and distribution of firearms.

A 63-month sentence serves the purposes of promoting respect for the law and providing just—but not excessive—punishment for the harm the defendant caused to the community through his enterprise activities, and provides specific deterrence for a man who has repeatedly refused to conform his behavior to the law but who has, thus far, escaped serious punishment. On consideration of all these factors, 63 months is a fair and just sentence.

CONCLUSION

The Court should impose a sentence of 63 months of incarceration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

Date: January 11, 2020

/s/ Lauren A. Graber
LAUREN A. GRABER
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