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April 5, 2012

Honorable Jan E. DuBois
Senior Judge, United States District Court
12613 United States Courthouse
601 Market Street
Philadelphia, PA 19106-1766

Re: United States v. Dwight Grant, a/k/a Beanie Sigel
Criminal No. 10-661

Dear Judge Dubois:

Enclosed please find a copy of the Government's Sentencing Memorandum in the above matter. Also enclosed is a two-page Internal Revenue Service summary of Mr. Grant's income and tax liabilities for the years discussed in the Presentence Investigation. The originals will be filed with the clerk. Copies have been served upon defense counsel. Thank you for your consideration of this matter.

Respectfully submitted,

ZANE DAVID MEMEGER
United States Attorney

s/ Paul L. Gray
PAUL L. GRAY
Assistant United States Attorney

cc: Fred Perri
Mark Cedrone
Leon King (USPO)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	CRIMINAL NO. 10-661
	:	
DWIGHT GRANT a/k/a Beanie Sigel	:	

GOVERNMENT'S SENTENCING MEMORANDUM

I. Introduction

Defendant Dwight Grant entered an open guilty plea to Counts One through Three of the Information, charging him with three counts of failure to file income tax returns for years 2003 through 2005. The maximum sentence on all three counts is a total of three years incarceration. For the reasons discussed below, a sentence of three years incarceration is richly merited. A lesser sentence would depreciate from the seriousness of the offense, would fail to adequately punish Grant, and would provide little deterrence to other members of the public who might consider cheating on their taxes, as Grant so blatantly did.

2. Facts - Sentencing Guidelines

As the thorough Presentence Investigation notes, Grant earned in excess of $1 million net income during the three years of conviction, 2003 through 2005, on which he owes approximately $348,077 in taxes. He paid no taxes during these years. The Investigation also notes that, despite frequent extensions of time to file previous returns, Grant did not file tax returns or pay any appreciable taxes during 1999 through 2002 either.[1] During those years, Grant

[1] Grant paid $10,000 tax in 2001, when he filed for an extension of time within which to file a tax return. PSI par. 10.

earned net taxable income of $1,207,000, on which he owes $380,459 in taxes. In total, Grant earned in excess of $2.2 million in taxable income between 1999 and 2005, on which he has paid a paltry $10,000 in taxes. He owes $728,536 in tax for those six years. The Sentencing Guidelines have been correctly determined to be a base offense level of 20, recognizing the total tax loss in excess of $400,000 but less than $1,000,000. The recommended guideline range for such a staggering tax loss is 51 - 63 months incarceration, significantly greater than the maximum statutory sentence. Absent the statutory maximum, we would eagerly pursue a sentence in that range, since it is so clearly merited.

Grant should receive no acceptance of responsibility, as the PSI recommends, since he has utterly failed to cooperate with the Probation Officer's attempts to determine his current financial condition. The defendant's conduct in this respect is wanting, but even more so since the government expressly agreed to several continuances so Grant could earn money and, at the very least, make a start on paying restitution to the IRS. He has not done so. Grant has failed to file income tax returns for more than a decade, and after pleading guilty to a number of criminal counts for those failures has now demonstrated to this Court his continuing disrespect for the process of law by refusing to cooperate with the Probation Office. For all we know, Grant has earned a significant sum of money and simply squirreled it away out of the reach of the government. He would not even cooperate with the Probation Officer to permit a home visit, a most basic part of the pre-sentence procedure.

However, Grant's post-conviction behavior is no surprise, since it is merely consistent with prior post-conviction conduct and his overall poor criminal history. Grant began his criminal life at age 15, and now, 23 years later, he is again being sentenced. Grant has been

adjudged a juvenile delinquent twice, has three local adult convictions for narcotics distribution, possession, and assault, and one federal conviction for narcotics possession and being a felon in possession of a firearm. After completing a year-long federal jail term, his supervised release was twice revoked for leaving the jurisdiction without permission, associating with convicted felons and drug use. Grant was caught trying to fake his urine sample. PSI, par. 47. The defendant was found not guilty of attempted murder and other offenses in 2005. He has been arrested and charged with narcotics, assault, and weapons offense on five other occasions, all of which resulted in dismissal or the all-to-often-seen withdrawn for lack of prosecution.

3. Analysis of sentencing factors

A thorough consideration of all of the sentencing factors set forth in 18 U.S.C. § 3553(a) supports that three year sentence. "As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark." Gall v. United States, 128 S. Ct. 586, 596 (2007). Thus, the Sentencing Guidelines remain an indispensable resource for assuring appropriate and uniform punishment for federal criminal offenses. Simply put, if Grant's continued criminal conduct doesn't merit a three year sentence, which is considerably lower than the guidelines call for, then we don't know what would.

This Court must also consider all of the sentencing considerations set forth in Section 3553(a). Those factors include: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need to afford adequate deterrence to criminal conduct, and to protect the public from further crimes of the defendant; (4) the need to provide the defendant with educational or

vocational training, medical care, or other correctional treatment in the most effective manner; (5) the guidelines and policy statements issued by the Sentencing Commission; (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense. 18 U.S.C. § 3553(a).[2]

A. The nature and circumstances of the offense and the history and characteristics of the defendant

The nature and circumstances of Grant's offenses are clear. For years he earned hundreds of thousands of dollars a year and completely ignored the necessary tax-paying responsibilities that law-abiding citizens voluntarily follow. His disregard for his most basic civic responsibility, which supports the government and system under which he earned his millions, is blatant.

B. The need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

The need to afford adequate deterrence to criminal conduct, and to protect the public from further crimes of the defendant

It is appropriate that Grant be sentenced to a significant jail term to deter others from being tempted to commit similar crimes. That notion is not theoretical in this case, since

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[2] Further, the "parsimony provision" of Section 3553(a) states that "[t]he court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection." The Third Circuit has held that "district judges are not required by the parsimony provision to routinely state that the sentence imposed is the minimum sentence necessary to achieve the purposes set forth in § 3553(a)(2). . . . '[W]e do not think that the "not greater than necessary" language requires as a general matter that a judge, having explained why a sentence has been chosen, also explain why some lighter sentence is inadequate.'" United States v. Dragon, 471 F.3d 501, 506 (3d Cir. 2006) (quoting United States v. Navedo-Concepcion, 450 F.3d 54, 58 (1st Cir. 2006)).

the press has covered this case and this sentence will be reported. The public needs to know that crimes of this magnitude will surely draw a significant jail term. Beyond the benefits of adequately attempting to deter other tax cheats, and to promote general respect for the law, it is equally appropriate that Grant's sustained cheating merits a jail term which will punish him decisively and in proportion to the seriousness of his offense. In our view, the failure to serve a meaningful prison term for these offenses would provide no deterrence whatsoever and would depreciate from the seriousness of the offenses. The tax system in this country is based on trust and honesty, and Dwight Grant has blatantly exploited this voluntary system. This tax system cannot function if individuals like Grant are allowed to commit their crimes without consequence, especially when his scheme persisted for so long. Individuals like Grant who earn significant incomes and live comfortably cannot be permitted to cheat on their taxes without serious consequences. A maximum three year sentence will work to provide adequate deterrence, while a lower sentence will definitely send the wrong message that paying one's fair share of taxes is not important and that there is no serious consequence to cheating on your taxes.

C. The guidelines and policy statements issued by the Sentencing Commission and the need to provide the defendant with educational or vocational training, medical care, or other correctional treatment in the most effective manner

We are aware of no treatment or training needs by Grant, but doubt there exist any that cannot be addressed during his prison term. Similarly, there are no guideline policy statements that call for a downward variance here.

D. The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct

The most equitable way to ensure that the defendant's sentence is arrived at by a

fair and objective calculation is by imposing a sentence within the guideline range. While the sentencing guidelines are advisory, they remain the sole means available for assuring some measure of uniformity in sentencing, fulfilling a key Congressional goal in adopting the Sentencing Reform Act of 1984. Referring to the guidelines while carefully considering the 3553(a) factors particularly relevant to an individual defendant is the only available means of preventing the disfavored result of basing sentences on the luck of the draw in judicial assignments. The Third Circuit explained:

> Even under the current advisory system, district courts must "meaningfully consider" § 3553(a)(4), i.e., "the applicable category of offense . . . as set forth in the guidelines." The section of *Booker* that makes the Guidelines advisory explains that "the remaining system, while not the system Congress enacted, nonetheless continue[s] to move sentencing in Congress' preferred direction, *helping to avoid excessive sentencing disparities while maintaining flexibility sufficient to individualize sentences where necessary*." Booker, 543 U.S. at 264-65 (emphasis added). The Guidelines remain at the center of this effort to "avoid excessive sentencing disparities," and, as the *Booker* Court explained, the Sentencing Commission will continue "to promote uniformity in the sentencing process" through the Guidelines. Id. at 263. We have likewise observed that the "'Guidelines remain an essential tool in creating a fair and uniform sentencing regime across the country.'" *Cooper*, 437 F.3d at 331 (quoting *United States v. Mykytiuk*, 415 F.3d 606, 608 (7th Cir. 2005)).

United States v. Ricks, 494 F.3d 394, 400 (3d Cir. 2007) (emphasis in original). The best way to avoid sentencing disparity is to issue a sentence within the advisory guideline range. As we have noted above, even the maximum possible statutory sentence of three years incarceration if significantly below the advisory guidelines. We see absolutely no grounds warranting a sentence below three years.

E. The need to provide restitution to any victims of the offense

The tax loss in this case is approximately $728,536. With penalties and interest, Grant will owe considerably more to the IRS, which is entitled to an accurate restitution order.

5. Summary

Grant's offenses were long-standing and egregious, and a sentence of three years incarceration is required "to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense." 18 U.S.C. § 3553(a); see also United States v. Levinson. 543 F.3d 190, 202 (3d Cir. 2008) (long prison sentences are appropriate to deter white-collar criminals and minimize the disparity between the sentences imposed for white- and blue-collar crimes). This sentence will go a long way towards affording adequate deterrence to others who would commit similar offenses, and protects the public from further crimes of the defendant, for at least as long as he remains incarcerated. 18 U.S.C. § 3553(a)(2). As the Supreme Court has noted, "'white-collar crime' [is] one of the most serious problems confronting law enforcement authorities." Braswell v. United States. 487 U.S. 99, 115 (1988). Likewise, Congress has determined national policy, which is that stiff Guidelines sentences are the appropriate punishment for such crimes. See United States v. Rigas. 2009 WL 3166066, *12 (2d Cir. October 5,2009). As Courts of Appeals have consistently held, the Sentencing Guidelines must be the starting point for formulating sentences. Long sentences for white-collar crimes are recommended by the Sentencing Guidelines because of "[the Sentencing Commission's] concern that sentencing for white-collar crime had been ineffectual." Levinson. 543 F.3d at 202.

Grant has thoroughly abused his responsibility to file his tax returns and pay his taxes. Imprisonment for the maximum possible term of three years incarceration is necessary to reflect the crimes' seriousness, to deter others, and to punish Grant decisively and deservedly.

Respectfully submitted,

ZANE DAVID MEMEGER
United States Attorney

s/ Paul L. Gray
PAUL L. GRAY
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Government's Sentencing Memorandum has been served by e-mail upon:

Fred Perri
Mark Cedrone

April 5, 2012