

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

*Norfolk Division*

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. 2:21-CR-92-002
	)	
TYEREIS SMITH	)	
	)	
Defendant.	)	

**POSITION OF THE UNITED STATES WITH RESPECT TO SENTENCING**

The United States of America, through its attorneys, Jessica D. Aber, United States Attorney, and Kristin G. Bird, Special Assistant United States Attorney, hereby submits its position with respect to the defendant's sentencing factors. In the Presentence Investigation Report (PSR) prepared in this matter, the United States Probation Office determined the applicable advisory guidelines range to be a term of 30 to 37 months' imprisonment based on a Total Offense Level of 19 and a Criminal History Category of I.

In accordance with § 6A1.2 of the Sentencing Guidelines Manual and this Court's policy regarding sentencing, the United States represents that it has reviewed the PSR and consulted with the Probation Office and defense counsel. The United States does not dispute any of the sentencing factors set forth in the PSR or the guidelines range calculation.

For the reasons outlined herein and after consideration of the PSR, the relevant conduct associated with this crime, the defendant's history and characteristics, the defendant's criminal record, the United States respectfully submits that a sentence of 30 months is appropriate, warranted, and not greater than necessary to accomplish the goals of 18 U.S.C. § 3553(a).

**I. Motion**

The United States moves this Court, pursuant to U.S.S.G. § 3E1.1(b) and based upon the terms of the binding plea agreement in this case, to grant a one-level reduction in the defendant's offense level for acceptance of responsibility. The defendant timely notified the United States of his intention to enter a plea of guilty, thereby allowing the United States to avoid preparing for trial and permitting the United States and the Court to allocate their resources efficiently.

**II. Background**

On July 29, 2021, the defendant was charged with a single count of Transferring a Firearm in Violation of the National Firearms Act, in violation of 26 U.S.C. § 5861(e) and 18 U.S.C. § 2.

On September 21, 2021, the defendant entered a guilty plea to Count One of the Indictment before the Honorable Roderick C. Young, United States District Judge. He is scheduled to appear before this Court for sentencing on January 18, 2022.

**III. Position on Sentencing and Argument**

“[I]n imposing a sentence after *Booker*, the district court must engage in a multi-step process. First, the court must correctly determine, after making appropriate findings of fact, the applicable guideline range.” *United States v. Moreland*, 437 F.3d 424, 432 (4th Cir. 2006). “Next, the court must ‘determine whether a sentence within that range serves the factors set forth in § 3553(a) and, if not, select a sentence [within statutory limits] that does serve those factors.’” *Id.* (quoting *United States v. Green*, 436 F.3d 449, 455 (4th Cir. 2006)). In making this determination,

a sentencing court must consider “the nature and circumstances of the offense and the history and characteristics of the defendant” and the need “to reflect the seriousness of the offense,” provide “just punishment,” “afford adequate deterrence,” “protect the public,” and “avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.”

*United States v. Hampton*, 441 F.3d 284, 287 (4th Cir. 2006) (quoting 18 U.S.C. § 3553(a)).

A. Nature and Circumstances of the Offense

In early 2021, law enforcement learned that certain individuals were selling firearms and drugs from their residences, located in Atlantis Apartments in Virginia Beach. To further their investigation, law enforcement deployed confidential sources (“CS”) to make controlled purchases of firearms and drugs in the apartment complex.

On February 10, 2021, a CS went to Gerald Thomas’s apartment, a separately charged, yet related defendant. PSR ¶¶ 7, 11. While there, this defendant called to inform the CS that he had a sawed-off shotgun and a “556” rifle for sale. *Id.* When the CS inquired about the sale price, the defendant explained that the guns were Jhaimeek Carter’s (“Carter”), so he would have to set the price. *Id.* During this same conversation, Carter spoke to the CS to negotiate the price.

On February 11, 2021, the CS finalized arrangements to purchase the sawed-off shotgun, the “556” rifle, and a 9mm firearm from the defendant and Carter. PSR ¶ 12. After settling on a price, the three agreed to meet at Atlantis Apartments to complete the sale. Once the CS confirmed their arrival at the apartment complex, the defendant and Carter exited carrying a blue bag and entered the CS’s vehicle. *Id.* In exchange for the three firearms, the CS gave the defendant \$1800.00. *Id.* After counting the money, the defendant gave Carter a portion of the proceeds and they exited the vehicle. *Id.* The CS met up with law enforcement and turned over an Honor Guard 9mm Pistol, a Palmetto State Armory PA-15 Rifle, and a Bay State 12-gauge sawed-off shotgun. PSR ¶ 8(2); Gov. Ex. 1A-1D.

On February 12, 2021, the defendant told a CS that Carter had a new Ruger P90 firearm for sale for \$900.00. PSR ¶ 13. Although the CS indicated an interest in purchasing the Ruger P90, this firearm was not the subject of a controlled purchase. Rather it was recovered from Carter’s residence during the execution of a search warrant in March of 2021.

On February 21, 2021, a task force officer viewed a live video on an Instagram profile identified as belonging to the defendant. PSR ¶ 14. During the video, the defendant is seen smoking marijuana and flashing a black Citadel .45 caliber handgun with a green grip. *Id.*; Gov. Ex. 2A. The defendant later sold this firearm to Gerald Thomas – a convicted felon. PSR ¶¶ 7, 14.

On February 23, 2021, a CS contacted the defendant via Facebook. PSR ¶ 16. The defendant informed the CS that he had a Taurus firearm for sale for \$800.00. *Id.* The CS drove to Atlantis Apartments and met with the defendant and an unindicted female. The female sold the CS the Taurus for \$800.00. *Id.* Immediately thereafter, the CS purchased the Citadel .45 caliber handgun from Gerald Thomas for \$800.00. *Id.*; Gov. Ex. 2B. In total, the defendant facilitated the sale of five different firearms in the span of thirteen days.

On March 28, 2021, Virginia Beach Police executed a search warrant at the defendant's residence. PSR ¶ 17. Officers recovered two baggies containing a green leafy plant material, two digital scales, a clear plastic baggie containing a purple triangle pill, numerous cell phones, a 7-round black ACT-Mag, one .223 rifle round, and a black Citadel gun case, consistent with the firearm the defendant possessed while on Instagram on February 21, 2021. *Id.*

B. History and Characteristics of the Defendant

The defendant is 19 years old and finds himself before a court for the first time. PSR ¶ 27. The defendant does not suffer from any significant medical, mental, or emotional issues that might shed light on why he chose to sell firearms repeatedly and illegally for profit. Moreover, the defendant reportedly enjoyed a “fun” upbringing, despite his father's periods of incarceration and his mother's absence due to an accident. PSR ¶ 49. He denied any abuse or neglect as a child and described his family as “loving” and supportive. *Id.*

The defendant's mother is shocked by his involvement in these crimes as he, according to her, did not present any behavioral problems as a child. *Id.* She maintains his conduct is the result of falling in with the "wrong crowd." *Id.* However, the defendant did not just fall in with the wrong crowd – he is a certified member of Bounty Hunter Watt, a criminal street gang. PSR ¶ 50.

C. Other Factors to Be Considered Under Section 3553(a)

The defendant's conduct was reckless at best, incredibly dangerous at worst. He middlemanned and sold five firearms for profit with no concern or consideration for the dangers the firearms and/or his customers may present to the community at-large. We are fortunate that the firearms were ultimately purchased and recovered by law enforcement; however, that does not mitigate the dangers posed by the defendant's conduct.

Though young, the defendant has seen firsthand the consequences of criminal behavior as his father has been incarcerated for significant periods of time. Undoubtedly, he knows all that can be lost when one fails to abide by society's laws. Unfortunately, his father's repeated incarceration and absence from the defendant's life has ultimately failed to deter the defendant from following down a similar path. Rather than decide to work on becoming a productive member of society, the defendant is a certified member of a criminal street gang, who uses drugs and sells firearms for profit. Moreover, he flaunts this lifestyle on social media, which serves to influence and encourage others to do the same.

The recommended sentence of 30 months' imprisonment is significant, but warranted, and needed to achieve both general and specific deterrence. Further, the recommended sentence reflects the seriousness of the offense and will serve to promote respect for the law, provide just punishment, and promote public safety.



**Certificate of Service**

I certify that on January 5, 2022, I electronically filed a copy of the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to counsel of record.

I further certify that on January 5, 2022, I sent by electronic mail a true and correct copy of the foregoing to the following:

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