

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

United States of America,	:	Case No.: 1:19-CR-00240
	:	
Plaintiff,	:	Judge Dan A. Polster
	:	
v.	:	
	:	
Christopher M. Hardin,	:	<u>DEFENDANT’S SENTENCING</u>
	:	<u>MEMORANDUM</u>
Defendant.	:	

Now comes Defendant, Christopher M. Hardin, by and through counsel, and hereby respectfully submits the attached Sentencing Memorandum, incorporated herein by reference, for this Court’s consideration. Mr. Hardin respectfully urges this Court to impose a sentence of 31 months incarceration. It is submitted, in view of all pertinent sentencing considerations, that a 31-month sentence in this matter constitutes sufficient, but not greater than necessary, punishment and adequately accords due consideration to the factors set forth under 18 U.S.C. § 3553. The reasons and legal authority in support of the foregoing request are addressed more fully in the accompanying Memorandum attached hereto.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed electronically.

Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

Parties may access this filing through the Courts system.

/s/ - Michael J. Goldberg
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Attorney for Defendant

SENTENCING MEMORANDUM

I. BACKGROUND

On April 23, 2019, the government filed a one-count Information charging Defendant, Christopher M. Hardin (Mr. Hardin) with Mail Fraud, in violation of 18 U.S.C. § 1341. The charge stemmed from allegations that Mr. Hardin had, in connection with the business he owned and operated, defrauded clients, suppliers and subcontractors of money and received payment for services not rendered. On May 16, 2019, Mr. Hardin—pursuant to written Plea Agreement (*see* PSR, PageID #94, ¶2)—entered a plea of *guilty* to the sole count of the Information. This Court accepted the plea, found Mr. Hardin guilty and scheduled sentencing for August 29, 2019. This matter was thereafter referred to the Office of U.S. Pretrial Services & Probation (Probation) for the preparation of a Presentence Investigation Report (PSIR). The offense conduct set forth therein, at ¶¶4–10, accurately reflects Mr. Hardin’s actions and conduct and serves as the basis for the Plea Agreement and guilty plea in this matter.

II. LAW AND ARGUMENT

A. **THE GUIDELINE CALCULATIONS SUGGESTED BY THE RULE 11 PLEA AGREEMENT AND THE PSIR.**

Under the statutory scheme set forth under 18 U.S.C. § 1341, with a Criminal History Category of IV, Mr. Hardin’s advisory sentencing guideline range is 51–63 months. PSIR, ¶68. As set forth under the Plea Agreement (Doc #5, PageID #22, ¶16) and PSIR (Doc #7, PageID #97, ¶¶11–23), the suggested guideline calculations are as follows:

Base Offense Level:	7
USSG § 2B1.1(a)(1)	
Specific Offense Characteristic (Loss over \$550k):	+14
USSG § 2B1.1(b)(1)(H)	
Specific Offense Characteristic (10 or more victims):	+2
USSG § 2B1.1(b)(2)(A)(i)	
Total Before Acceptance of Responsibility:	<u>23</u>

Acceptance of Responsibility:	-2
USSG § 3E1.1(a)	
Acceptance of Responsibility:	-1
USSG § 3E1.1(b)	

Total Offense Level: **20**

With a Criminal History Category IV (as suggested by the PSIR at ¶45), the advisory guideline range in this matter is 51–63 months. However, for the reasons set forth herein, it is submitted that the agreed-upon 31-month sentence—although outside of the advisory guideline range—is nonetheless the most appropriate punishment. This Court is charged with imposing a reasonable sentence that is no greater than necessary to serve the purposes of sentencing. In this case, sentencing Mr. Hardin to serve 31 months in prison is capable of doing just that. Therefore, as discussed more below, it is respectfully requested that this Court impose the agree-upon sentence, notwithstanding the advisory guideline range.

B. THE GUIDELINES ARE MERELY ADVISORY TO, NOT BINDING ON, THIS COURT’S ULTIMATE SENTENCING DETERMINATION.

In *United States v. Booker*, 125 S. Ct. 738 (2005), the Supreme Court held that the Sentencing Guidelines are advisory, opposed to being mandatory and binding on a sentencing court. Notwithstanding, the *Booker* decision further stated that other factors set forth in 18 U.S.C. § 3553(a) must still be considered in fashioning the appropriate sentence of. *Id.* at 790 (finding sentencing guidelines are but one of many statutory concerns that federal courts must take into account during sentencing determination.). These factors, as set forth in 18 U.S.C. § 3553(a), include:

1. The nature and circumstances of the offense and the history and characteristics of the Defendant;
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; (B) to afford

adequate deterrence to criminal conduct; (C) to protect the public from future crimes of the Defendant; and (D) to provide the Defendant with needed education or vocational training; medical care or other correctional treatment in the most effective manner;

3. The kinds of sentences available;
4. The advisory guideline range;
5. Any pertinent policy statements issued by the Sentencing Commission;
6. The need to avoid unwarranted sentence disparities;
7. The need to provide restitution to any victims of the offense.
See Booker, 125 S. Ct. at 764.

Following the Supreme Court's finding in *Booker*, district courts have held that fashioning a just sentence cannot be reduced to a mere arithmetical exercise [and that] reliance solely on numbers, quantities, offense levels, criminal history categories, and matrices produces an illusory precision that obscures the fact that sentencing, in the end, must involve the exercise of judgment. *United States v. Biheiri*, 356 F. Supp. 2d 589 (E. D. Va. 2005).

As stated in *Booker*, Section 3553(a) remains in effect, and sets forth numerous factors that guide sentencing. Those factors in turn will guide appellate courts, as they have in the past, in determining whether a sentence is unreasonable. 125 S. Ct. at 766. The overriding principle and basic mandate of 18 U.S.C. § 3553(a) requires district courts to impose a sentence that is sufficient, but not greater than necessary, to achieve the four purposes of sentencing set forth in 18 U.S.C. § 3553(a)(2), to-wit: (i) retribution; (ii) deterrence; (iii) incapacitation; and (iv) rehabilitation. *United States v. Phelps*, 366 F.Supp.2d 580, 587 (E.D. Tenn. 2005). The United States Supreme Court reemphasized the district court's discretion in fashioning a reasonable sentence. *See United States v. Gall*, 2007 WL 4292116 (Case No. 06-7949, December 10, 2007).

In light of the foregoing, Mr. Hardin submits the requested (agreed-upon) sentence of 31 months complies with the law, fairly reflects the seriousness of the offense, and will promote

respect for the law. For these reasons, the requested sentence constitutes just punishment—and, as such, it comports with the purposes of sentencing set forth in 18 U.S.C. § 3553(a).

C. OTHER RELEVANT SENTENCING CONSIDERATIONS OFFERED IN SUPPORT OF THE REQUESTED 31-MONTH SENTENCE.

1. Acceptance of Responsibility.

Mr. Hardin has taken full responsibility for the conduct that led to this matter and acknowledges the wrongfulness of his conduct. While not an excuse for his behavior, what started out as bad business practices turned into a scheme when he began covering personal expenses and old debts with money paid by new clients. Mr. Hardin has begun taking proactive steps to ensure that all restitution is timely paid to the victims in this matter. Moreover, his acceptance of responsibility was at an early stage in these proceedings: within a month of the Information being filed, he entered a plea of guilty to the sole count contained therein. It is submitted that the foregoing bolsters the reasonableness of the agreed-upon sentence of 31 months incarceration.

2. History and Characteristics of the Defendant.

Mr. Hardin is 38-years-old and a lifelong resident of Northeast Ohio. He grew up in a good environment, raised by two supportive parents—his childhood was, by his own account, “normal.” PSIR, ¶54. During his teenage years, Mr. Hardin spent considerable time helping out around family owned businesses—both of his grandfathers owned business. *Id.* The time Mr. Hardin spent assisting with the operation of these businesses was influential in the development of the resilient work ethic he still has to this day. The experience likewise instilled in him a desire to one day run a business himself. *Id.*

However, it was also during this time (i.e., between the ages of 15 and 16) that Mr. Hardin first began consuming alcohol and taking illegal drugs. PSIR, ¶61. Since that time, drugs

and alcohol have beset Mr. Hardin throughout much of his adult life. Even a cursory review of Mr. Hardin's criminal history reveals quite plainly the degree to which drugs and alcohol have contributed to his frequent legal troubles. While in no way downplaying his prior convictions, it is submitted that, above all else, Mr. Hardin's criminal history demonstrates a substance abuse problem which—to at least some extent—underlies most, if not all, of his prior criminal conduct. Yet, Mr. Hardin does not offer this to in any way excuse his past conduct—he personally takes responsibility for neglecting in the past to adequately address his problems with substance abuse. That being said, Mr. Hardin has encouragingly already begun to take positive steps in the right direction. While much remains to be done, he has promisingly acknowledged and accepted that he needs help, as well as indicating a desire to seek help while in treatment. He has also returned negative drug screens throughout the pendency of this matter and hopes to build upon that momentum going forward. Mr. Hardin appreciates what is at stake in terms of moving forward from this matter and understands that he alone is responsible for making the changes necessary to do so successfully.

III. CONCLUSION

For the forgoing reasons, Defendant, Christopher M. Hardin, respectfully asks this Court to impose the agreed-upon sentence of 31 months incarceration. This sentence, in light of what has been set forth above, would be in accordance with due consideration of 18 U.S.C. § 3553 factors.

Respectfully submitted,

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