

B. Title 18 U.S.C. § 3553(a) Analysis

A Presentence Investigation Report (“PSR”) was ordered, prepared and filed for record herein. The United States Sentencing Commission (the “Commission”) sets forth the following seven factors, all of which a court must consider prior to imposing a criminal sentence:

- (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 four primary purposes of sentencing, i.e. retribution, deterrence, incapacitation, and rehabilitation;
- (3) The kinds of sentences available (e.g. whether probation is prohibited or whether a mandatory minimum term of imprisonment is required by statute);
- (4) The sentencing range established through application of the sentencing guidelines and the types of sentences available under the guidelines;
- (5) Any relevant policy statements promulgated by the Commission;
- (6) The need to avoid unwarranted sentencing 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.

U.S. FED. SENT. COMM’N, *FED. SENTENCING: THE BASICS*, at 2, 12 (Aug. 2015) (citing 18 U.S.C. §3553(a)). Analysis of these seven factors supports the sentence requested by Defendant hereinbelow.

C. Title 18 U.S.C. § 3553(a) Argument

Defendant, Jerry Kennedy Walsh, was born to David Walsh and Mildred Nelson on June 16, 1946 in Connellsville, Pennsylvania. His parents are deceased. His father was a World War II veteran who died in 1955 from suicide. His mother died in 1990. Defendant has two sisters, Diane Freeman and Cheryl Cherer, both of whom reside in Pennsylvania. He also has a half-sister, Brenda Hamm, who resides in Louisiana. Defendant was raised in Connellsville, Pennsylvania and graduated high school from

that area. Following his graduation, Defendant was drafted into the United States Army and served his country during the Vietnam War. Particularly, he was deployed to the war zone and served in the 40th Infantry Platoon, attached to the 25th Infantry Division, as a scout dog handler. The K-9 teams were trained in safety patrol, ambush detection in mountainous and lowland terrain, and explosive detection and operations on early warning outposts. According to many United States Department of Defense reports, the K-9 teams were determined to be the most effective countermeasure to Viet Cong operations, estimating that the “dog teams” prevented at least 10,000 American casualties during the Vietnam War. During his military service, Defendant earned the National Defense Service Medal, the Vietnam Service Medal with Two Bronze Stars, the Vietnam Campaign Medal with Device 160, the 10/s bar, the Combat Infantryman Badge First Award and Marksman (Rifle M-14), and the Valorous Unit Award for extraordinary heroism in action against an armed enemy of the United States of America. He was honorably discharged on December 20, 1971 and was also honorably discharged from his service in the Arkansas National Guard in October, 1980.

Upon being honorably discharged, Defendant pursued his higher education at Southern State College (now Southern Arkansas University) in Magnolia, Arkansas. He graduated with a bachelor’s degree in sociology and history in 1975. Thereafter, he earned a master’s degree from Southern State in Agency Counseling in 1979. During 1974 to 1976, Defendant was employed as a counselor with South Arkansas Regional Health Center in Magnolia, Arkansas. He was employed at South Arkansas Youth Services beginning in 1987 and served as its Director and Chief Executive Officer until his retirement in April, 2017.

It is readily apparent that Defendant gave his life in service to his country and to protect and promote the rights and needs of troubled and at-risk juveniles. It is also apparent that he did so notwithstanding being afflicted with a variety of serious medical conditions involving his physical, mental, and emotional health. Defendant

has dealt with depression throughout his life, even to the point of suicidal ideations. Currently, he is involved in outpatient mental health treatment through the Veterans Administration, because he has been diagnosed with major depressive disorder as well as suffering from post-traumatic stress disorder. Due to severe depression and suicidal ideations, he was hospitalized in the psychiatric unit of Overton Brooks VA Hospital in Shreveport, Louisiana during 2017. Defendant is on the prescribed medications of sertraline and trazodone in addition to and in conjunction with his ongoing bi-monthly outpatient therapy/counseling.

Now 72 years of age, Defendant also suffers from chronic heart disease, high blood pressure, insomnia, diabetes, retinopathy with macular hemorrhage behind his left eye that is related to his diabetic condition, and spinal arthritis. Defendant has been assigned to a VA medical team for quarterly examinations and receives regular monitoring for all of these medical issues. It should also be noted that, during his military service, Defendant was exposed to Agent Orange, a herbicide and defoliant chemical used by the military as a part of its herbicide warfare program to combat Viet Cong guerillas. The exposure has contributed, in part if not in whole, to the diabetic condition with which Defendant is now afflicted.

Defendant is now a broken, humbled old man in every sense of the word given his current physical, mental, emotional and financial condition. Defendant is very embarrassed and humiliated, very remorseful and regretful, by his criminal conduct herein. He absolutely and sincerely accepts responsibility for his crime and knows that he has consequences with which he must now deal. He recognizes that he will, forever, be a convicted felon and will have to live with that stigma the rest of his life. Certainly, he is not a perfect man, but neither is he a man upon whom taxpayer monies should be spent unnecessarily to confine him, clothe him, feed him and otherwise care for him while he is locked up in a federal prison for an excessive and unreasonable period of time. While Defendant sacrificed the best years of his life in the service of our country

and on behalf of troubled youth, he is hopeful that his remaining last years will be lived with dignity, honor, and productivity. Moreover, a fair and just analysis of the seven factors the Court is to consider prior to imposing a sentence herein supports Defendant's requested downward variance from the *advisory* sentencing guideline range and recommended sentence.

Defendant has absolutely no prior criminal history. One important policy consideration to take into account in Defendant's case is the Commission's goal of "minimiz[ing] the likelihood that the Federal prison population will exceed the capacity of the Federal prisons." U.S. SENTENCING COMM'N, AMENDMENT TO THE SENTENCING GUIDELINES, at 1 (July 18, 2014) (*citing* 28 U.S.C. § 994(g)). Of course, such policy must be balanced with the need for safety to the public. *Id.* Since Defendant has no serious criminal record and poses no danger to the public, this Court may, and should, grant Defendant's request for downward variance from the *advisory* sentencing guideline range and recommended sentence in order to maintain prison space for more serious and dangerous offenders as suggested hereinabove. He is a 72- year old husband, father, and grandfather. The very nature of the nonviolent offense in which he was involved also supports the request for a downward variance sentence. Statistically speaking, Defendant is absolutely one of the least likely types of offenders to recidivate, and thus, any prison sentence is unnecessary to deter future criminal behavior by Defendant. As such, the requested downward variance sentence is more than sufficient to protect the public from his potential to commit future crimes and to otherwise satisfy the deterrence factor.

The hereinbefore described physical, mental and emotional conditions of Defendant are also quite relevant and very supportive of his request for a downward variance sentence. Additionally, Defendant's distinguished military service, employment history, and public service work also warrant such a sentence in the instant case.

D. Conclusion

When considering the totality of the § 3553(a) factors together with Defendant's substantial cooperation and assistance with state and federal government authorities, it is indisputable that Defendant's request for a downward variance from the *advisory* sentencing guideline range and recommended sentence is clearly within this Court's authority and discretion. Moreover, such a downward variance sentence is just and reasonable, fair and appropriate, based upon such considerations that include the nature and circumstances of Defendant's offense, coupled with his overall history and specific personal characteristics.

As this Court is keenly aware, its sentencing obligation since the decisions in *United States vs. Booker*, 125 S. Ct. 738 (2005) and *Gall vs. United States*, 552 U.S. 38 (2007), and their progeny is to impose "a sentence sufficient, but not greater than necessary" to comply with all of the factors set forth in § 3553(a). And a fair and full analysis of the § 3553(a) factors absolutely confers upon the Court the authority to exercise great latitude and sound discretion to vary downward from the imprisonment recommended by the *advisory* guideline range. This is particularly true where, such as in the instant case, the recommended guideline sentence of Defendant is clearly excessive, absolutely inappropriate and fails to consider the § 3553(a) factors and Defendant's cooperation with and assistance to government authorities. Having accepted responsibility and assumed accountability for his criminal conduct herein, Defendant is respectfully requesting the Court to exercise its great and sound latitude in this case by imposing a sentence that includes the combination of conditions that will, indeed, be reflective of a reasonable and just sentence in this case. Such a sentence will certainly provide just punishment for the crime committed by Defendant, but will also give due consideration to Defendant's lack of any criminal history, Defendant's previous military service, Defendant's serious physical and emotional and mental health problems with which he suffers, and Defendant's substantial assistance to and cooperation with government

authorities. Moreover, such a sentence will protect the public by serving as a deterrent to others for criminal conduct of this nature, while affording Defendant with the opportunity to receive necessary medical care for his physical and emotional and mental health problems and continue on a redemptive path of being a productive, law-abiding citizen.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically in compliance with Local Rule 5.2 and forwarded by electronic mail, to Mr. Ben Wulff, Assistant United States Attorney at Ben.Wulff@usdoj.gov and Mr. David W. Baker, U.S. Probation Officer at david_w_baker@arwp.uscourts.gov on this this 13th day of May, 2019.

/s/ John M. Pickett

John M. Pickett