



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

United States v. Atneyel, Case No. SACR 14-105 JVS

Sentencing Memorandum

This matter is before the Court for sentencing defendant Stephen Argon Atneyel (“Atneyel”) on his plea to Count 1 of the Indictment for violation of 26 U.S.C. § 5861(d), possession of an unregistered firearm. In arriving at a reasonable sentence as instructed by United States v. Booker, 543 U.S. 220 (2005), the Court has taken into consideration the United States Sentencing Commission Guidelines, the policies of the Sentencing Reform Act of 1984, 18 U.S.C. § 3553(a), and the specific facts of this case. The Court has reviewed the Presentence Report (“PSR”) and the parties’ submissions. As set forth below, the Court finds that a sentence of 3 years probation which includes 9 months home detention and a fine of \$4,000 represents a reasonable sentence in light of all of these factors.

1. Sentencing Guidelines.<sup>1</sup> The Court adopts the Guidelines analysis of the PSR.

1.1. Offense Level. The Court concurs that the applicable guideline is Section K2.1 which provides a base offense level of 18. Atneyel is entitled to a 3-level reduction for accepting responsibility. U.S.S.G. §§ 3E1.1(a), (b). The Court finds that the record establishes by a preponderance of the evidence the basis for the base offense and the reduction. The adjusted offense level is 15.

1.2. Criminal History. The Court concurs that the defendant’s Criminal History Category is I, based on the absence of any Criminal History points.

1.3. Departures. The Court acknowledges that it has discretion to depart from the sentence which results from an application of the Guidelines. The Court finds that there is no basis for a departure in this case.

1.4. Conclusion. The Court finds that proper application of the Guidelines calls for a sentence of imprisonment for 18-24 months and a fine of \$7,500 to \$75,000.

2. Sentencing Reform Act. In arriving at a reasonable sentence, the Court

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<sup>1</sup>Although the Court considers the Guidelines first, the Court is mindful that the Guidelines are only the starting point in crafting a reasonable sentence. Gall v. United States, 552 U.S. 38, 49 (2007); United States v. Carty, 520 F.3d 984, 991 (9<sup>th</sup> Cir. 2008); United States v. Cantrell, 433 F.3d 1269, 1280 (9<sup>th</sup> Cir. 2006). There is no presumption in this Court that a Guidelines sentence should apply. Nelson v. United States, 555 U.S. 350, 352 (2008) (*per curiam*); Rita v. United States, 551 U.S. 338, 351 (2007); Carty, 520 F.3d at 994.

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considers the following factors outlined in the Sentencing Reform Act.

2.1. Nature of Circumstances of the Offense and History and Characteristics of Defendant. As the Supreme Court observed in Gall v. United States, 552 U.S. 38, 52 (2007) (internal quotation marks deleted), “the sentencing judge consider[s] every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.”

Atneyel possessed an AKM-type weapon which he did not register with the National Firearms Registration and Transfer Record. (PSR, ¶ 10.) He offered to sell the weapon to an undercover agent. After his arrest, additional weapons were discovered.

After his parents separated and divorced, he lived with his mother until he went to college. (PSR, ¶ 38.)

He not been previously married, but is engaged to be married. (PSR, ¶ 40.)

He has submitted a number of letters of support attesting to his character. (Defendant’s Sentencing Position, Exs. 1-9.)

In 2014, Atneyel graduated from Pepperdine University with a Bachelors of Science in Management. (PSR, ¶ 48.) He has been accepted to graduate school, but has deferred commencement in view of this case.

Atneyel has been continuously employed for self-employed since 2005. (PSR, ¶¶ 51-51.) From 2010, he has been the co-owner of an automotive engineering company. (PSR, ¶ 51.) The company employs 26 persons and has clients around the world.

Atneyel has a net worth in excess of \$120,000 (PSR, ¶ 56), and thus has the ability to pay a fine.

2.2. Need for Sentence to Reflect Seriousness of Offense, to Promote Respect for Law, and to Provide Just Punishment. The Court finds that the Guidelines analysis has taken into account this factor.<sup>2</sup>

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<sup>2</sup>The crime here is in the “mine run of roughly similar . . . cases,” and the Court finds that with respect to this factor, the “Guidelines sentence is a proper sentence (in terms of § 3353(a) and other congressional mandates) in the typical case.” Rita v. United States, 551 U.S. at 357, 359. Where the parties do not argue to the contrary, “the judge normally need say no more.” (Id. at 357.) As the Ninth Circuit has recently elaborated: “A within-Guidelines sentence ordinarily needs little explanation unless a party has requested a specific departure, argued that a different sentence is otherwise warranted, or challenged the Guidelines calculation

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2.3. Need to Afford Adequate Deterrence of Criminal Conduct. The Court finds that the Guidelines analysis has taken into account this factor.

2.4. Need to Protect the Public. The Court finds that the Guidelines analysis has taken into account this factor.

2.5. Need to Provide Defendant Individualized Service Needs. This is not a factor in this case.

2.6. Kinds of Sentences Available. Under the terms of the advisory Guidelines, a sentence falling within Zone D must include a term on imprisonment equivalent to the low end of the Guidelines range (18 months). U.S.S.G. § 5C1.1(f). The Court, of course, acknowledges that this directive, as well as all others in the Guidelines, is merely advisory.

2.7. Facts of the Case. There are additional facts which the Guidelines analysis and the other factors in Section 3553(a) have not taken into account in type or degree. Atneyel has a steady and responsible work history. On this basis, the Probation Office recommend the equivalent of a 4-level variance: a probationary sentence which includes 8 months home detention. (Probation Officer Letter, p. 5.) The Government likewise recommends a variance in the form of a 1-year split sentence. (Government's Sentencing Position, p. 4.) While not seeking a Guidelines departure, the Government notes his cooperation with law enforcement. (Id., pp, 3-4.)

The Court concludes that while a significant liberty-restricting sentence is necessary to reflect the seriousness of the crime, a custodial sentence is not warranted. The Court takes into account Atneyel's work history, the ramifications of a custodial sentence on his business and its employees, and his ability to continue to pursue his education. The Court also considers his cooperation with the Government. In light of these factors, the Court imposes a sentence of 3 years probation which includes 9 months home detention and a fine of \$4,000

2.8. Sufficiency of Punishment. The Court finds that the sentence imposed is sufficient but no more than necessary to meet the goals of the Sentencing Reform Act, including specifically punishment and deterrence. Kimbrough v. United States, 552 U.S. 85, 110-11

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itself as contrary to § 3553(a)." Carty, 520 F.3d at 992.

The Court does not mean that the Guidelines analysis overrides the factors in Section 3553(a), but rather that the Court will consider the same facts only once unless the facts have additional or different significance under a Section 3553(a) analysis or render the case atypical. The Court has noted where this is the case. United States v. Mix, 450 F.3d 375, 382 (9<sup>th</sup> Cir. 2006).

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(2007).

4. Conclusion. In setting this sentence, the Court has taken into account that it has discretion under both the Guidelines and Booker. As noted above, the Court has exercised its discretion under Booker, but in adopting the present sentence, the Court is mindful that whether a sentence falls within or without the Guideline range, the Court's ultimate decision is a reflection of its discretion. The Court finds that taking into account the analysis mandated by Booker, a sentence of 3 years probation which includes 9 months home detention and a fine of \$4,000 represents a reasonable sentence.