

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 02-CR-40074-GPM
	)	
JOHN RODNEY VEACH,	)	
	)	
Defendant.	)	

**DEFENDANT'S SENTENCING MEMORANDUM**

*I. Introduction*

This is one of the most difficult Sentencing Memorandums the undersigned has ever prepared. As presented in the Presentence Investigation Report (PSR), which goes out of its way to be impartial, Defendant John Rodney Veach (Rodney) is someone who deserves no mercy. He beats women. He is constantly in trouble with the law. He doesn't get "it." He is trying to use a *technicality* to avoid being sentenced as a Career Offender.

Rodney's saving grace is that justice does not magnify warts. Under the law everyone is treated equally. *Technicalities* carry the same Constitutional weight as a sound pronouncement from the United States' Supreme Court. Lady Justice is blind.

On October 20, 2003 Rodney will appear before this Honorable Court to be sentenced. If he is sentenced as a Career Offender, the *best* sentence he can hope for is nearly 13 years. If he is sentenced under the Guidelines, and not as a Career Offender, the best sentence he can hope for is nearly 6 years. At issue are 7 years of Rodney's life.

Before addressing the objections which have been made to the PSR, it would be helpful if this Honorable Court understood Rodney's background in context with the legal principles of federal sentencing. As such this Memorandum will be divided into the following categories: 1) Rodney's background; 2) Career Offender (objections to the PSR); 3) legal principles; and 4) conclusion.

## *II. Rodney's Background*

Superficially, Rodney appears to have it all. He comes from a middle-class background. He is handsome. He is intelligent. He is well-spoken. Rodney was *not* raised to beat women. He was raised in a loving, nurturing environment by his adoptive parents, John and Mary Veach. His father is a minister. He never viewed abuse growing up. All of which begs the question of *how* someone like Rodney ended up abusing drugs, beating up women and appearing before this Honorable Court to be sentenced.

This outward appearance of normalcy shrouds a very troubled person. Rodney is suffering from a plethora of psychological conditions. He is addicted to cocaine and marijuana. He has lived a great deal of the last 15 years in a drug induced fog.

In layman's terms, Rodney is a mean or angry drunk. When he was high on drugs he became abusive to those closest to him. His unstable mental condition exacerbated his abuse toward women if he was afraid they were going to end their relationship with him. While excuses are "cheap," they nevertheless exist in Rodney's case.

From the PSR, it appears that Rodney's life began swirling out of control around 1994 (perhaps 1992 or 1993) when he decided to "find his family." The glorified fantasies he had about his birth mother were shattered when he learned that she was a heroin addict who died in 1982, in part due to her heroin addiction. What a horrible shock this must have been for Rodney. After learning the "truth" about his birth mother, Rodney's life began to careen out of control. Prior to that, Rodney had no juvenile convictions and only one minor conviction for illegal possession of cannabis. After learning about his birth mother, hardly a year went by that Rodney wasn't charged with some sort of crime.

In 1998, in an effort to get off of the roller coaster his life had become, Rodney went to the Heartland Community Health Center in Marion, Illinois. Dr. Wristen diagnosed Rodney with a "chemical imbalance in his brain," (Exhibit A) and treated him for depression/anxiety. He sought counseling for what his life had become, but because he was never able to cease his dependence on drugs, he was never able to fully recover and his life continued to spiral out of control.

Perhaps his life would have remained in a holding pattern of minor mischief. But once he met Kiley Todd, Rodney was hooked. She was the match that ignited Rodney's combustible life. Any hope he had of overcoming his addiction and straightening his life out was dashed once Kiley entered Rodney's life. She was as much his lover as his "drug buddy." As Dr. Jason Dana, a forensic studies unit psychologist employed by the Bureau of Prisons mentions in his forensic report (Exhibit B), Kiley wasn't the most stable of partners for Rodney considering that she would go on methamphetamine binges, work part time as a stripper and shack up with unknown men. This infuriated Rodney, but as Dr. Dana reports, not nearly as much as Kiley's constant threats of leaving him.

Rodney's drug addled brain, combined with his fear of abandonment by Kiley, (which no doubt is a result of his birth mother *abandoning* him), created an uncontrollable monster. The worst period Kiley and Rodney endured prior to his arrest in this case was the period of June, 2001. Once she told him that she wanted out of the relationship, Rodney's inner beast, his Mr. Hyde, took over. When Kiley said she wanted to leave Rodney and he thought there was the real possibility of abandonment, he beat her. Specifically, once he committed the June 5, 2001 offense, this normally entailed that he would commit the June 12, 2001 offense. In all candor, there were probably other non-charged criminal offenses Rodney committed between June 5, 2001 and June 12, 2001. Once Rodney began beating Kiley out of fear that she would leave him, the normal progression would be that he beat her until he felt secure that she wouldn't leave. Sadly, that's the sickness of the violent circle of spousal abuse.

This is borne out by what Rodney told Dr. Dana "***that both felony convictions were the result of a two week period in which he and his girlfriend had been experiencing significant discord as a result of her leaving him for a period of six weeks.***" Once Kiley returned after six weeks, the beatings began and continued until Rodney was secure that he wouldn't be abandoned again.

Denial is the word which describes how those closest to Rodney viewed what was going on. What wonderful parents he has been blessed with. There are many definitions of

unconditional love, but the best is shown in the two letters (exhibits C and D) that Rodney's mother has written to this Honorable Court. Once one gets past the denials that *any* mother would make for her son, the letters show a woman consumed with guilt for what is happening to her son. She did everything any parent would or could do for their child, with no results.

Rodney has only known love and respect from his parents. Early on, when Rodney was two years old, his Mom stayed up with him to comfort a baby going through withdrawals resulting from his birth mother's addiction to heroin. She watched a bright, talented child slowly become consumed by his mental illness. And she was powerless to help him. Now, the only thing Rodney's Mom can do to help her son is to make a plea for leniency. She can't do anything else for her son.

Rodney's Dad is a minister. He's hopeful that Rodney will get his life together through a newfound faith in Jesus Christ (Exhibit E). Both of Rodney's parents have witnessed firsthand Rodney's slow fall into being in federal court for sentencing.

The most poignant letter (Exhibit F) is from his daughter Sahara. Rodney's a good cook. To a nine year old child, the fact that her Dad's a good cook is as good as it gets. Sahara's letter shows a gentle side to Rodney. The letter is indicative of the fact that Rodney can become a productive member of society once he serves whatever sentence this Honorable Court imposes.

### *III. Career Offender*

All of the above is well and good, but on October 20, 2003, Rodney is going to appear before this Honorable Court, and according to the PSR, should be sentenced as a Career Offender. On August 23, 2001 Rodney pleaded guilty in Jackson County to aggravated battery and on February 1, 2002 he again pleaded guilty in Johnson County to aggravated battery. As such the PSR concludes that for purposes of §4B1.2, Rodney is a Career Offender.<sup>1</sup>

---

<sup>1</sup>The February 26, 1997 conviction for burglary does not count for purposes of §4B1.1, because §4B1.2(a)(2) defines "crime of violence" as burglary of a dwelling. The burglary mentioned in paragraph 38 was of a business.

Section 4B1.2 of the Guidelines, defines a Career Offender as someone who:

“was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) *the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense.*” (emphasis added)

In order to determine whether a defendant has two prior felony convictions, §4B1.1 refers to §4B1.2 which in turn relies on §4A1.2, which is entitled *Definitions and Instructions for Computing Criminal History*.

§4A1.2(a)(2) states:

“Prior sentences imposed in unrelated cases are to be counted separately. Prior sentences imposed in related cases are to be treated as one sentence for purposes of §4A1.1(a)(b), and (c). . . .”

Application Note 3 defines the term *related cases*:

“Prior sentences are not considered related if they were for offenses that were separated by an intervening arrest (*i.e.* the defendant is arrested for the first offense prior to committing the second offense). Otherwise, prior sentences are considered related if they resulted from offenses that (A) occurred on the same occasion, (B) were part of a single common scheme or plan, or (C) were consolidated for trial or sentencing. The court should be aware that there may be instances in which this definition is overly broad and will result in a criminal history score that under-represents the seriousness of the defendant’s criminal history and the danger that he presents to the public.”

Because the word *or* is used, if Rodney can show this Honorable Court that

- 1). there was no intervening arrest between the two incidents, and
- 2). the two aggravated batteries were part of a common scheme or plan

the two sentences would be considered *related* for purposes of §4A1.2. This means for purposes of §4B1.1 Rodney would *not* have two prior felony convictions for crimes of

violence. This in turn would mean that he should be sentenced according to the Guidelines which would be approximately 6 years.

#### *No Intervening Arrest*

In order to understand why there was no intervening arrest between these two offenses, a quick discussion of the history of the Johnson County charge and Jackson County charge is necessary.

The easiest of the two is the Johnson County case, where Rodney was arrested for beating up his then girlfriend Kiley Todd on June 5, 2001. Rodney apparently was arrested by Johnson County, even though no record of his Johnson County arrest exists. (Exhibit G) Regardless, on June 15, 2001 Rodney appeared in Johnson County where he was released on bond.

On June 12, 2001 Rodney again beat up his then girlfriend Kiley Todd in Jackson County, Illinois. On June 15, 2001 the Jackson County State's Attorney filed an Information under the number 01-CM-440. Exhibit H is a copy of the Motion for Arrest Warrant, which was filed and a warrant issued. On June 15, 2001, the Johnson County Sheriff's Department served Exhibit I on Rodney, which is the arrest warrant. On June 20, 2001 an Order Cancelling Warrant was entered at the behest of the Jackson County State's Attorney (Exhibit J) and on that same date, the Information (case number 01-CM-440) was dismissed. (Exhibit K)

On June 20, 2001 a second Information was filed, under the number 01-CF-321 and on that date another Motion for Arrest Warrant was filed and a warrant issued. (Exhibit L) Likewise, on June 20, 2001 an *Order Cancelling Warrant* was entered (Exhibit M) and instead of a warrant, a SUMMONS was issued. (Exhibit N)

A summons is a notice to appear in court. It is served on the individual so as to avoid the necessity of *arresting* the individual. Here, the summons indicated that if Rodney failed to appear in the Circuit Court in Jackson County as directed on July 11, 2001, "*a warrant may be issued for your arrest.*"

Obviously then, Rodney is able to clear the first hurdle regarding the fact that there was no intervening arrest between the Johnson County and Jackson County charges.

#### *Common Scheme or Plan*

The real issue then is for Rodney to convince this Honorable Court that the two cases involve a common scheme or plan as defined in §4A1.2 and as such should not be counted separately.

A logical place to start regarding whether or not the Johnson County and Jackson County cases involve a common scheme or plan is Application Note 9 to § 1B1.3 which defines common scheme or plan as:

“For two or more offenses to constitute a part of a common scheme or plan, they must be substantially connected to each other by at least one common factor, such as common victims, common accomplices, common purpose or similar modus operandi. For example, the conduct of five defendants who together defrauded a group of investors by computer manipulations that unlawfully transferred funds over an eighteen month period would qualify as a common scheme or plan on the basis of any of the above listed factors; i.e. the commonality of victims (the same investors were defrauded on an ongoing basis), commonality of offenders (the conduct constituted an ongoing conspiracy), commonality of purpose (to defraud the group of investors), or similarity of modus operandi (the same or similar computer manipulations were used to execute the scheme).”

If something such as relevant conduct were at issue, for purposes of §1B1.3 these two cases are obviously substantially connected. The obvious common factor is that Kiley Todd is the victim in both cases. In each instance Rodney physically abused Kiley. So for purposes of § 1B1.3 these two cases should be considered to be part of a common scheme or plan.

#### *IV. Legal Principles*

The foregoing must now be placed into a legal “box” though so that this Honorable Court can determine whether or not the close technicality of related cases allows Rodney to escape being sentenced as a Career Offender.

The Guidelines have sapped the nerve of most U.S. District Court judges. Close cases seem to always go the Government's way, perhaps in part because the Defendants (but not the Government) have waived their right to appeal.

In light of the Seventh Circuit's narrow interpretation of common scheme or plan, this is a close call. The Government will argue that the June 5, 2001 incident was totally separate from the June 12, 2001 incident. The answer to a hypothetical question will combat the Government's argument and show that the June 5, 2001 incident naturally led to the June 12, 2001 incident. If there were a third incident of Rodney beating up Kiley and Rodney were charged with this third instance of aggravated battery, would the Government do *everything* within its power to convince this Honorable Court that because of Rodney's history of spousal abuse the June 5, 2001 incident naturally led to the June 12, 2001 incident which in turn naturally led to the third aggravated battery? The answer is an unqualified *yes*.

There is a long line of Supreme Court decisions which declare that ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity to the Defendant. In other words, close calls should go to the Defendant. See *Dunn v United States* (1979) 442 US 100, 60 L Ed 2d 743, 99 S Ct 2190

With regard to the issue of related cases, as this Honorable Court is aware, in 1997 the Seventh Circuit in *U.S.A. v. Carroll*, 110 F.3d 457, and its progeny, interpreted "common scheme or plan" for purposes of §4A1.2 in a very restrictive manner. But, when viewed in the proper light, and under the rule of leniency, Rodney meets the criteria set out in *Carroll*.

Most instances where a Defendant tries to convince a court that his prior convictions are *related* involve a drug addict who commits burglaries to support his habit. Without success, Defendants ultimately argue that the way the crimes are committed shows a *modus operandi* and are unable to show that committing the first crime would normally entail committing the second crime.

That is *not* the case here. Rodney is in a unique position because the situation in which he found himself in June of 2001 was a "perfect storm." The Bureau of Prisons' forensic report prepared by Dr. Dana tells of an individual "with a large capacity for angry,

hostile outbursts.” Dr. Dana goes on to explain that complications that someone like Rodney experiences while high on cocaine are “paranoia, aggression, anxiety and depression.” Rodney’s “borderline features are manifest in a history of extreme sensitivity towards perceived abandonment and hostile, angry response to the break-up of important interpersonal relationships.” So, when Kiley told Rodney in June of 2001 that she definitely wanted to leave him, all of Rodney’s demons once again came together and he abused her.

He abused her on June 5, 2001 and continued to do so through June 12, 2001. The vicious cycle commenced when Kiley told Rodney she definitely wanted to leave him and continued until he was comfortable in knowing that she wouldn’t leave him. The first incident entailed each and every successive incident.

As the Court is well aware, 28 U.S.C. 994 (k) and 18 U.S.C. 3553 (a) are the two statutes it must rely upon in imposing sentence on a particular Defendant, and this section will discuss the elements of these statutes to show why a 6 year sentence satisfies the statutory requirements of sentencing.

*28 U.S.C. 994 (k)*

Simply stated, 28 U.S.C. 994 (k) removes the sympathy factor from sentencing, and was implemented to ensure that no defendant was incarcerated in order to put him in a place where it was hoped that rehabilitation would occur. Here, the aspect of rehabilitation should be viewed as a place where Rodney can get his life together. He needs *real* drug treatment. He needs *real* psychological counseling. He needs to learn to handle problems so that his first reaction isn’t to beat someone up.

994 (k) specifies specific traditional penological purposes for incarceration such as “rehabilitating the defendant or providing the defendant with needed educational or vocational training, medical care, or other correctional treatment.” The portion of 994 (k) regarding “educational training” jumps out because prison can actually be an “opportunity” for Rodney. Rodney has the intellectual ability to go to college. He has many other talents which until now have been untapped because of his drug induced fog. It was easier and more

expedient to be high than it was to better himself. Prison will offer him the opportunity to get his life in order.

The undersigned has represented hundreds of criminal defendants in federal court, who dropped out of school because it was easier for them to deal drugs than it was to go to school and do homework. Almost to a client they realize that had they not dropped out of school they would have a much easier road to rehabilitation and they use the BOP to facilitate obtaining an education. Rodney is no different, and actually is in a better position than most defendants because he has the wherewithal to complete college level courses.

*18 U.S.C. Section 3553*

Section 3553 states in pertinent part:

**3553. Imposition of a sentence**

**“(a) factors to be considered in imposing a sentence.**—The 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 court, in determining the particular sentence to be imposed, shall consider—

- (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 further crimes of the defendant; and
  - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner . . . (and)
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.”

Starting with the preamble of 3553 which states “the court shall impose a sentence sufficient, but not greater than necessary,” a sentence of 6 years is certainly a sufficient sentence, and under the circumstances it would not appear to be “greater than necessary.”

What would be accomplished by a sentence in excess of 10 years accomplish? Someone will respond to this question by claiming that Rodney’s prior criminal history

shows that he needs to learn his lesson—that he needs to be deterred, which is what 3553 (a)(2)(B) deals with. The problem with that argument is that Rodney has *never* been incarcerated for his past transgressions. This is Rodney’s first *real* experience in the criminal justice system because this is the first time he is facing a significant period of incarceration. This is something this Honorable Court should look at when deciding whether or not a 13 year prison term would make Rodney “learn his lesson” any more than a 6 year sentence would.

Regarding 3553 (a)(1), the undersigned has already devoted a great deal of time discussing the nature and circumstances of Rodney’s offense as well as his history and characteristics. Nothing more really needs to be added.

Surely, a 6 year sentence reflects the seriousness of Rodney’s offense. With regard to his criminal history, he is already being punished for that due to the fear of being sentenced as a career offender, or at the very best being sentenced with a criminal history category of III. This is a case about someone with a very bad addiction, who decided to fuel his addiction through the sale of drugs. He got caught selling drugs and is now going to be punished. A 6 year sentence will deliver a very, very strong message to Rodney that unless he stops dealing drugs, he will end up spending the rest of his life in jail, because the next time he is charged federally he will absolutely, positively be a career offender. Almost any living person, including Rodney, would understand that type of message.

It would be foolish to try to minimize this aspect of sentencing as it relates to Rodney. His mental condition and addiction create a danger to those closest to him. However, if Rodney does get the mental help he needs and successfully completes the BOP’s drug program there is hope. He would have nearly 6 years to get his life in order and in the event he has any sort of “relapse” while on supervised release it is assumed that this Honorable Court will throw the book at him and incarcerate Rodney to the maximum possible sentence.

Fortunately, with regard to the *danger to the community* aspect of sentencing, the legislative history makes clear, Section 3553 (a) "deliberately [does] not show a preference

for one purpose of sentencing over another." S.Rep. No. 98-225, 98th Cong., 1st Sess., at 77 (1983). In including several purposes of sentencing without favoring any of them, Section 3553 (a) reflects what has been characterized as the inclusive theory of punishment. However, Section 3553 (a) allows for "different purposes ... [to] play greater or lesser roles in sentencing for different types of offenses committed by different types of defendants." S. Rep. No. 98-225, 98th Cong., 1st Sess., at 77 (1983). The intent of Section 3553 (a) "is to recognize the four purposes that sentencing in general is designed to achieve, and to require that the judge consider what impact, if any, each particular purpose should have on the sentence in each case." Id.

18 USC Section 3553 alludes to the proposition that a sentencing court is to impose a sentence *sufficient, but not greater than necessary*, to comply with the statutorily enumerated purposes of sentencing, namely, general and special deterrence, retribution, rehabilitation, and incapacitation. (Emphasis added.)

The aspect of *rehabilitation* has already been addressed and with regard to *retribution*, Rodney has already received the worst sentence anyone could possibly give him; a life knowing that his actions will take him away from his daughter Sahara for at the very least 4 or 5 more years. She will either be in 8<sup>th</sup> grade when he is released from prison or out of college. She will either be entering her teenage years or adulthood. Likewise, Rodney is going to prison for the first time in his life, meaning he is paying the consequences of his actions.

#### *Deterrent*

It also should be pointed out that any retribution takes into consideration the fact that Rodney will have to serve a certain amount of time away from his family, which essentially acts as a *deterrent* against others in his family and community from committing the same crime. Rodney's natural mother died at an early age due in part to her addiction to heroin, and Rodney obviously had a predilection to become a drug addict because of his birth mother's addiction. He didn't have the necessary tools to fight this predilection. His

daughter Sahara has an addict for a father meaning that she has a predilection toward being an addict herself. Once Rodney is released from prison and becomes involved in Sahara's life again, the fact that he can tell his daughter that drug use will lead to prison is extremely powerful, meaning that Rodney's punishment will be a future deterrent to his daughter. If not, the sad truth is that more than likely she will begin down the same path her father and grandmother took, which should have a chilling effect on Rodney.

This Honorable Court has a great deal of leeway regarding what sentence to impose so as to satisfy the requirements of 28 U.S.C. 994 (k) and 18 U.S.C. 3553 (a), and hopefully this Honorable Court will sentence Rodney to a sentence of 70-87 months which is his non-Career Offender Guideline range.

#### *V. Conclusion*

Rodney requests that this Honorable Court do the following:

1. Determine that the 2001 Jackson County and 2002 Johnson County convictions are related and not sentence him as a Career Offender;
2. Sentence him to 70-87 months;
3. As a fallback position, determine that a Career Offender criminal history category of VI over-represents his criminal conduct and depart downward to a criminal history category III;
4. Recommend that he participate in the Bureau of Prisons residential drug and alcohol program (RDAP);
5. Be incarcerated in a Bureau of Prisons facility in close proximity to the Southern District of Illinois and
6. Any other relief this Honorable Court deems just.

JOHN RODNEY VEACH

STOBBS LAW OFFICES

BY:

---

John D. Stobbs II, NO. 06206358  
Attorney for Defendant  
346 West St. Louis Avenue  
East Alton, Illinois 62024  
Telephone: (618)259-7789  
FAX: (618)259-4145

**CERTIFICATE OF SERVICE**

The undersigned certifies that on the 11<sup>th</sup> day of October, 2003, a copy of the attached *Defendant's Sentencing Memorandum* was served on the following persons by depositing

a copy of same in an envelope with postage prepaid in the United States Mails in the Post Office in East Alton, Illinois addressed as set out, namely:

Ms. Amanda Robertson  
Assistant U.S. Attorney  
402 West Main, Suite 2A  
Benton, Illinois 62812

Mr. Eric Bell  
Attorney at law  
601 South LaSalle Street  
Chicago, Illinois 60605

STOBBS LAW OFFICES

---

346 W. St. Louis Ave.  
East Alton, IL 62024