

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
SHARON JONES,)
)
Defendant.)

**DEFENDANT'S MEMORANDUM
IN SUPPORT OF MOTION FOR VARIANCE**

I. Introduction

A variance is warranted due to Sharon being a battered woman, the disparity in sentencing between her and Saul Smith as well as other 3553 factors.

II. Battered Spouse

Circumstances have spared Saul Smith from being sentenced by this Honorable Court. Smith is a manipulator. This is the face of a coward. Smith is a wife beater. Smith is a child beater. How a bright, attractive, personable woman like Sharon could be drawn in by someone like Saul Smith is the question. Fortunately, Dr. Richard Simon is able to provide insight into “why” Sharon would allow herself to be manipulated and why she did not and could not leave him at the first instance of abuse. (Dr. Simon’s Report Exhibit A)

A. Childhood

Like all people, one’s personal life history affects how that individual develops. The same goes for an abused spouse like Sharon Jones. Sharon’s upbringing in Belize, while middle class, was not idyllic.

Sharon’s mother was abusive, controlling and manipulative. Her father was a womanizing narcissist who was largely absent from her childhood. These influences on Sharon’s upbringing caused her to expect abuse/punishment(from her mother) and

abandonment (by her father.) It was no surprise to Dr. Simon that Saul Smith was the personality with whom Sharon paired.

B. The First Beating From Saul Smith

Dr. Simon describes the first incident of abuse:

“While living in New York, Ms. Jones met Saul Smith. The relationship developed quickly and Ms. Jones was exposed early in the relationship to Mr. Smith’s dominance, control and violence. She indicated that the first time he hit her, he referred to her as a "cunt," and she slapped him. He then pushed her down and hit her hard in the arm. In one episode recounted in one of the statements provided to the examiner, Mr. Smith was angry and slammed an ice tray in her face. He broke her nose, causing substantial bleeding. Because of the injury, she called police. As well, Ms. Jones’ sister and her partner came to the apartment. Mr. Smith was arrested for the assault and Ms. Jones sought treatment. Ms. Jones indicated that when she went to court, Mr. Smith's lawyer looked at her and said, "You don't look so bad, drop the charge," so she did. She noted that Mr. Smith did not show remorse or care about the consequences of breaking her nose. Following this first summer together, Ms. Jones went home. She reported that she was "so lost, so lonely." She acknowledged that she was very infatuated with Mr. Smith and that her loneliness allowed her to return to him. When she returned to New York, he already had another girlfriend, but they eventually resumed their relationship after he pursued her and tried to prove that he would be different. Ms. Jones indicated that the aggression continued and that he had multiple affairs while they dated.” (Page 4)

The abuse didn’t stop. It went on and on as set out by Dr. Simon:

“As documented by multiple reporters, including friends of the family, the nannies and the three older children of the couple, Mr. Smith continued to be verbally, emotionally and physically abusive of Ms. Jones. The children described everyone in the household having to be very careful not to provoke Mr. Smith’s anger by doing something that upset him, asking for anything, or not following his rigid rules. Each of the reporters with information about this conduct confirmed the reports made by Ms. Jones that Mr. Smith was persistently violent toward Ms. Jones. Episodes included punching her in the stomach, kicking her, knocking her down, and throwing her down the front stairs while she was pregnant with their youngest child, tearing the ligaments in her ankle and possibly harming the fetus. Many, many examples were offered of the persistent anger and rage,

physical intimidation and violence perpetrated by Mr. Smith against Ms. Jones.” (Page 5)

C. Isolation & Domination

From the moment Sharon allowed Smith to slither back, her life became a living Hell. Over time, Smith was able to isolate Sharon. Isolation is the first step towards dominance. Over time Smith was able to remove any vestiges of Sharon’s independence. Smith’s jealousy fueled his rage and his own insecurities. His total domination of Sharon grew greater over time. An example of his early dominance and isolation is when Sharon wanted to take graphic art classes to further her career.

Although Smith had no knowledge of, or interest in graphic art, he “demanded that he take the courses at the same time as her.” To Sharon, her husband was showing an interest in her and her career. To Dr. Simon, it was an example of isolation leading to domination.

D. Total Domination

“Mr. Smith controlled the family finances, not allowing Ms. Jones to make decisions without his consultation. He engaged in a pattern of "gaslighting," in which he would deny Ms. Jones’ perceptions, tell her that she was "imagining things," and completely control decision-making, thereby disempowering her. Ms. Jones spontaneously described feeling unable to leave the relationship, because therapists and supporters in their synagogue valued the marriage over the quality of the relationship. That is, Ms. Jones was frequently reminded to overlook Mr. Smith’s "idiosyncrasies." She was told that with children it was her obligation to remain in the relationship. Additionally, Mr. Smith isolated her from her social supports. As reported by Ms. Jones and otherwise confirmed by friends, Ms. Jones was not allowed to have significant time away from Mr. Smith, other than at home. He isolated her from the family, who could not come to their home without having a specific purpose or for a specific occasion. Ms. Jones was not allowed to have social relationships that did not include him, and he reportedly accompanied her when having meals with friends, so that she was not alone with other women or men. As noted above, Ms. Jones reported that Mr. Smith insisted upon taking computer graphic design courses with Ms. Jones and he required her to do her freelance graphic arts work at the office where they had the telemarketing business.” (Page 5)

Sharon had become a shadow of herself. Her dependence on Smith was complete. The beatings, verbal abuse and/or rage had become part of her everyday existence. An untrained outsider might look with ridicule on Sharon—and claim that she had the power to break from this cycle of violence, or that somehow because of her lifestyle she is an unsympathetic victim. That claim misunderstands the whole disease of being a battered spouse like Sharon. A battered wife's will is no longer her own. In his report Dr. Simon directly addresses how Smith's control became complete over Sharon.

“There were several examples offered above from this evaluation and the letters and records provided by other sources that reflected the degree of dependence that Ms. Jones developed with regard to Mr. Smith. She struggled to be able to make independent decisions after the divorce. She submitted to Mr. Smith's will during the relationship in numerous ways, including allowing him to control her relationships, financial means, sexuality, and aspects of parenting. There was evidence offered indicating that Mr. Smith used the technique to manipulate the accuracy of Ms. Jones' beliefs, challenging her ideas that he was having affairs or that she perceived things correctly. By isolating an individual, exhibiting over-possessiveness and intrusiveness, using recurrent threats and violence, as well as demonstrating aggressiveness and abusive toward others, the batterer gains the ability to control most aspects of a relationship. Notably, the literature also identifies seeking outside support, but not receiving support to leave the relationship, as a factor that increases the likelihood that the abused spouse will remain under the influence of the batterer. In addition to controlling her relationships and finances, Mr. Smith reportedly used his control of her cellphone and electronic media to view her e-mails, track her telephone calls and question her activities.” (Page 9)

E. The Crime

There is a long history of battered women receiving departures or variances. What makes Sharon's case unique, and why she should receive an exceptional variance, is the affect Smith's abuse had on the crimes to which Sharon pleaded.

Sharon's father introduced Smith to his ultimately illegal businesses, and “as her father's illegal activities were coming to light, he "passed" his businesses to Mr. Smith, which ultimately led to Ms. Jones being involved in the criminal activities for which she has been charged.”

A skeptic could incorrectly view Sharon with disdain. Her father had been arrested for doing something illegal and the business was now being run by her husband. How could she not have known from the get-go that what she was doing was illegal?

This is beautifully answered by Dr. Simon:

“Ms. Jones retains the capacity to understand right from wrong. To the degree that she was allowed by Mr. Smith to have full information about the business enterprise, she certainly would have been able to appreciate the wrongfulness of the conduct of the business, including her participation in it. However, when a person is so completely dominated by another, their ability to perceive the option of independent decision-making and to seek out information that would challenge the controlling person’s statements is substantially impaired. Further, those individuals often do not think to question the batterer, especially in a long-term relationship such as this. Ms. Jones spontaneously stated that she believed her ex-husband when he told her that the business was different from the business being run by her father. She noted that he liked to refer to her father and his associates as "idiots," and to profess that he was running the business properly. Ms. Jones stated, "I didn't even think to question it. I couldn't question him. I had no access to the accounts, bank accounts, etc. Nothing. I wanted to get away from him.”

Therefore, although Ms. Jones possesses the capacity to understand the wrongfulness of conduct and clearly had knowledge of substantial problems in the business, the examiner finds that she was so thoroughly under the influence of Mr. Smith that her perceptions of what was occurring in the business, her independence to challenge him, and her ability to seek out additional information that could assist her in understanding what was happening in the fraudulent activity was virtually eliminated. It was only after the company was closed and she was able to separate from Mr. Smith physically and emotionally that she was able to fully comprehend the degree of her illegal activities. As such, the examiner finds that it is extremely important to consider the degree to which she was a battered spouse in considering the degree of her culpability in these crimes.” (Page 9)

In direct response to skeptics who might think she knew from the beginning the criminal activities of her abusive husband or that she could have ceased her participation

in his criminal enterprise — *if Sharon really, really, really wanted a good beating she needed to only question Smith as to what he was doing or refuse to go to work that day.* He might have killed her.

Dr. Simon notes that there was a time when Sharon, “talked about her wish to remain at home with the children, especially after she had three, then four children. However, she noted that Mr. Smith refused to allow her to do so, making the argument that if he had to work, she did, too. He required that they hire nannies to watch the children while they worked.” (Page 4)

For purposes of a variance the degree of abuse, domination and control imposed on Sharon should be given great weight by this Honorable Court.

III. Sentencing Disparity

Unfortunately—or fortunately, Saul Smith’s ultimate judgment and sentencing will be carried out by a Higher Authority. Based on his earthly actions, Heaven and Purgatory do not appear to be viable options for the Almighty.

The largest earthly sentence that can be meted out is 10 years. Because Smith only pleaded “guilty” to one Count, 120 months is the longest sentence Smith can receive. Smith is prohibited from asking for any sort of variance, so in all likelihood the “only” available sentence is 10 years.

Sharon pleaded “guilty” to multiple Counts, meaning she could conceivably receive a higher sentence than Smith. She retained the right to request a variance. The Government has agreed to request a 10 year sentence, so in reality Sharon is “capped” at 10 years with the opportunity for a reduced sentence through a variance.

Since 18 U.S.C. §3553 requires a sentencing judge to consider where each Defendants “fits” in a particular crime when imposing sentencing, it would be unfair and unjust for Sharon to be given the same 10 year sentence as Smith.

The question is, how much of a variance is warranted for the abuse Sharon suffered at the hands of her co-defendant? While the abuse Sharon received from Smith is not a defense to the crime for which she pleaded, it nevertheless is something which should be considered when deciding her reduced culpability due to Smith’s conduct.

Bluntly stated, for purposes of sentencing disparity, the abuser should not receive the same sentence as the woman he abused. Sharon's participation and employment at the fraudulent companies was directly related to Smith demanding that she work there. As early as 1997, she pointed this out to her therapist, Michelle D. Samuels. Dr. Simon mentioned this in his report as well:

"The letter summarizing therapy provided by Michelle D. Samuels indicates that Ms. Jones and Mr. Smith began marital therapy in 1997. Ms. Jones was pregnant with her youngest child and complained that her husband was controlling and demanding, and that he had a bad temper. Ms. Samuels documented a history of violence and abuse in the relationship, including some of the incidents described above. She also noted the February 1997 incident involving Mr. Smith pushing Ms. Jones down the stairs, causing her to tear the ligaments in her ankle. Ms. Samuels documented Ms. Jones' reports of fear and powerlessness. She documented other matters that are addressed above, as well. Ms. Samuels noted in 1998 about Ms. Jones, "[H]aving been abused at the hands of her husband for so many years, she was unable to make decisions for herself." She reported that the degree of control that Mr. Smith had over his wife, including his demand that she work with him in the telemarketing business, "so he could control her and know with whom she spent time. He did not like her to go out with friends without him." Therapy continued until the end of 2002, although, Ms. Samuels was provided information later about the remainder of the marriage. She documented Ms. Jones' state of mind, the effects of being "an abused woman," and the degree of control that was given to Mr. Smith due to his abuse and domination." (Page 6)

The degree of control that Sharon yielded to Smith included her participating in his criminal schemes. She has pleaded "guilty" to her crimes as has Smith. He will receive 10 years and hopefully this Honorable Court will recognize that Smith's manipulation and abuse warrants a significantly lower sentence for Sharon.

IV. Collateral Consequences

There are always collateral consequences to any sentencing. Families are torn apart. The sole earner is incarcerated.

In Sharon's case, the collateral damage is colossal. Attached hereto and marked as Exhibits B, C & D are letters from Sharon's children, Jenifer, Frank & Debbie. These

letters show Saul Smith is a wife beater and a child beater. It is one thing for a coward like Smith to beat up and abuse his wife. She's a "grown-up" subject to the "she could have left" criticism that goes along with being an abused spouse. It is entirely different for a father to terrorize his defenseless children.

Where were they going to go? What did they do to deserve the terror and abuse?

A. Sharon's Incarceration Is Having A Detrimental Impact on Her Children

Just as Smith deserves to be punished for his conduct, Sharon should be credited for the nurturing job she has done for her children. In her damaged state, Sharon was able to imbue a sense of "normalcy" on her children. The children knew that in the caldron of abuse brewed by their father, there was a semblance of "family," love and support which have allowed each of these 3 to mature into responsible adults.

When Smith threw Sharon off of the balcony, she was pregnant with Mike. The fall might have caused damage to the fetus. Mike desperately needs his Mom. Sharon was blessed to have met her second husband Benedict who is taking care of Mike. Mike has a learning disability and was kept afloat academically due to Sharon's care and nurturing. Her incarceration has resulted in his being held back a year. Any lengthy incarceration will likely exacerbate matters and retard his growth.

The "awesome mother" credit is a shade of gray that blossoms into full color and splendor when held beside the "crappy father" default that Saul Smith should suffer.

When Smith was finally thrown out of the house, the skies opened and the sun shone in brightly. It was Mardi Gras in Sharon's household. Dr. Simon describes this in several parts of his report:

"In addition to the first arrest in New York City, Mr. Smith was arrested twice in Belize for assaulting Ms. Jones. The second assault resulted in arrest and probation, during which Mr. Smith was required to participate in a 24-month anger management program. During that time Ms. Jones participated in a support group. She commented during the interview that she was "in such denial" and did not view herself is likely other families, because she was financially stable and lived well, other than the violence. Subsequent to this program, Mr. Smith continue to be aggressive. The final assault provided Ms. Jones the opportunity to escape the relationship. She had asked him for a divorce and had been forced to live in another part of

the house. He refused to leave and refused the divorce. He continued to be verbally abusive and aggressive with her. After he was arrested for the third time, Mr. Smith was prevented from residing in the family home per the authority of the court and his probation officer.

The elder three children provided statements corroborating much of what Ms. Jones told the examiner and providing their own views and accounts of the verbal, emotional and physical abuse suffered by Ms. Jones. *Each of the children described the dramatic change in the family that occurred after the divorce, when Mr. Smith could no longer control them.*” (Page 6) (Emphasis Added)

B. Jenifer’s Letter

Dr. Simon’s report is brilliant. But, it only glimpses into Sharon’s world. The contrast between Sharon and Smith as parents is startling, and best told by their daughter Jenifer.

“My mom is a wonderful person. . . I honestly don’t know what kind of a person I would be without her. She has kept me grounded and sane throughout the 22 years of my life. She always puts her children first no matter what. She has worked so hard these past several years just to keep us off the streets and keep a roof over our heads. I know I am safe when my mom is around. She struggled for so many years just to keep us protected from my abusive father and now we are finally free of him because of her. . . I love my mom more than anything in the world and I don’t know what I would do without her. I would be completely lost, she is what keeps us together.”

Contrast that with Jenifer saying she has “no memory of a single instance where I felt safe and protected by” Smith or “ I have no real interest in having any sort of relationship with my father. He made my childhood a living hell and he has never once shown any sort of remorse for what he did to me, to my mom and to my siblings.” That says all one needs to know about Smith.

Because of her own father, Jenifer spent large portions of her childhood in a closet because it was a “safe place” for her to go to and escape from her father’s frequent rages. At age 6, Jenifer observed the wife beater throw her mom down a flight of steps. A father is supposed to protect his children—not subject them to terror and abuse.

C. Post Criminal Conduct Behavior

Most telling about Sharon is what she did once she finally rid herself of Smith.

“Subsequent to the shutdown of the companies after the criminal investigation was initiated, Ms. Jones began working for a nursing home doing quality and project management. She developed her skills in this area and began working as a professional organizer. As she developed her relationships with real estate agents, while holding estate sales, she began conducting organizational seminars and entering the "home staging" business. She reported that in Chicago, the housing market has remained very strong, so she has been able to develop her company effectively. She informed the probation officer that she earns approximately \$60,000 a year through her company, Green Gardens.”

Sharon relentlessly carved out a living so that she and her children would be able to survive.

Sharon didn't allow herself to be a “victim” nor did she make excuses for what had happened to her. She made a future for herself and her children. More telling is that Smith turned out to be the true loser that his actions portended. Smith even weaseled out of paying what was owed in child support and ultimately bounced from one job to the other. Smith worked developing websites and ultimately ended up in sales. He is now broke.

VI. Conclusion

Out from under the domination, manipulation, and abuse of Smith, Sharon is evolving as a person and building a secure and positive future for herself and her children. She is doing the best she can for herself and her children under very difficult circumstances.

A lengthy incarceration will fail to recognize the abuse and terror by her co-defendant. Continued incarceration runs the risks of dismantling the secure and positive future she is building for herself and her children.

Therefore a significant variance from her Guideline sentence to a minimal sentence is urged.

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