

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 02-CR-495-CDP (TIA)
	)	
CASSANDRA OWENS,	)	
	)	
Defendant.	)	

**DEFENDANT'S SENTENCING MEMORANDUM**

*I. Introduction*

Sentencing Cassandra Owens to jail would be wrong. The Guidelines do *not* require incarceration if this Honorable Court determines that Cassandra meets one of the grounds for Downward Departure requested in her Motion for Downward Departure. The *easy* way out would be for this Honorable Court to follow the Government's position regarding what the Guidelines require, which would essentially make Cassandra, and her family (especially her little girls) Guideline *casualties*.

On November 14, 2003 Cassandra will appear before this Honorable Court to be sentenced. If she is sentenced under the Guidelines the *best* sentence she can hope for is one year and one day. If this Honorable Court grants her Motion for Downward Departure, pursuant to United States Guideline Section 5C1.1 Cassandra could be sentenced to twelve months of home confinement and probation.

Before addressing the objections which have been made to the PSR, and in order to properly address Cassandra's request for Downward Departure, it would be helpful if this Honorable Court understood her background in context with the legal principles of federal sentencing. As such this Memorandum will be divided into the following categories: 1)

Cassandra's background; 2) judgments against Cassandra; 3) legal principles explaining why a Zone B sentence of 12 months is appropriate; and 4) conclusion.

With the promulgation of the U.S. Sentencing Commission's Federal Sentencing Guidelines many District Judges incorrectly assumed that there was very little that they could do to alleviate some of the harshness contained in the Guidelines, and rarely granted downward departures where a particular Defendant did not meet the exact requirements of a particular Guideline section. This all changed with the Supreme Court's decision in *Koon v. U.S.A.*, 518 U.S. 81, 135 L.Ed. 2d 392, 116 S.Ct. 2035 (1996), which breathed life into downward departures by greatly broadening the District Court's ability to grant downward departures.<sup>1</sup>

Chapter 1A (4)(b) directs the sentencing court to treat each "guideline as carving out a 'heartland,' a set of typical cases embodying the conduct that each guideline describes. When a court finds any atypical case, one to which a particular guideline linguistically applies but where conduct significantly differs from the norm, the court may consider whether a departure is warranted." And in drafting the Guidelines, the Commission "did not intend to limit the kinds of factors, whether or not mentioned anywhere else in the guidelines, that could constitute grounds for departure in an unusual case."

*Koon* explained that a sentencing court considering a departure should ask the following questions:

- “1) What features of this case, potentially, take it outside the Guidelines' 'heartland' and make it a special or unusual case?
- 2) Has the Commission forbidden departures based on those features?
- 3) If not, has the Commission encouraged departures based on those features?
- 4) If not, has the Commission discouraged departures based on those features?”

---

<sup>1</sup>Unfortunately, Congress, in its infinite wisdom decided to emasculate *Koon* through the Feeney Amendment which does not impact this Honorable Court's ability to downward depart in Cassandra's case for the reasons requested herein. In what appears to be an infraction on the separation of powers doctrine, Congress has also enacted the PROTECT Act which essentially relegates U.S. District Court Judges to minions whose task it is to document every departure they grant to satisfy the United States Congress. Hopefully, this Sentencing Memorandum can be used to adequately satisfy the PROTECT Act.

## *II. Cassandra's Background*

The PSR discusses Cassandra's background in general terms, but doesn't capture who Cassandra truly is. Cassandra is a survivor. She is an intelligent industrious woman, who has had a rough life. But for the economic situation she was born into there is no doubt Cassandra would be a different person.

*Poverty.* The word is easy to write. The word is easy to speak. And for those not suffering from it, poverty is easy to define. Those suffering from poverty are *consumed* on a daily basis by the overwhelming feeling of helplessness caused by just being able to get by. Poverty was, is and will be a part of Cassandra's life. To be blunt, it's probably *too late* for Cassandra to ever get 100% out of poverty. She will always probably just be able to get by. But rather than quitting, like most people would do in her position, Cassandra is doing the best she can to ensure that her children, especially her little girls can break free from the grip that poverty has over them.

Cassandra's life is similar to that of Sisyphus, the Greek character who, as punishment by the gods, was required for the rest of eternity to roll a boulder up a mountain, only to have it roll back down upon reaching the top. At any time in her life Cassandra could have quit. She could have accepted her *fate* and allowed the mistakes she made in the 1980's mentioned by the Government in its opposition to a downward departure for aberrant behavior to ruin her and her children. She could have lived her life differently. The *theme* of this Sentencing Memorandum will be that Cassandra Owens has never quit. In all sincerity if this Honorable Court denies Cassandra's Motion for Downward Departure and incarcerates her, Cassandra will be able to recover.

The victims will ultimately be her two little girls who probably would not be able to recover from this blow. Jail means that Cassandra will not be the primary caregiver of her little girls which will impact on whether or not they are able to remain in the magnet school program. Their hopes and dreams will be shattered if they are forced to return to the city of St. Louis' public schools.

### *III. Judgments*

After sporadic periods of embarrassing behavior in the 1980's, Cassandra pulled herself together enough to start a little business where she would clean peoples' homes and offices. From around 1992 until around 1996 Cassandra owned and operated Better Living, St. Louis. It was a growing business until the bottom fell out.

In 1994, the union decided that Cassandra was operating against the rules and owed it money. The union filed a civil lawsuit against her. Unfortunately, in the American system of civil lawsuits the romanticism of David beating Goliath is non-existent. Goliath generally squashes David like a bug. This is what happened to Cassandra. The civil cases against Cassandra were highly defensible, and in reality if she had been able to afford an attorney to represent her, these judgments might not have been entered against her. How fair is it for a big, high-powered union and its cadre of attorneys to go after a *pro se* defendant?

When she was clobbered with these judgments, Cassandra didn't quit. She returned to buying homes in areas of north St. Louis with potential, fixing these homes up and selling them for a profit. When title searches were conducted the civil judgments entered against her were unearthed. When confronted with these civil judgments, Cassandra lied about her social security number. She was completely unsophisticated though and no planning went into ensuring that she could hide from the title companies who she really was. Ultimately when/if confronted with the false social security number partial payments oftentimes were made toward the judgments.

The reason Cassandra lied about her real social security number is simple. In her mind Cassandra did not owe \$100,000.00. The few times Cassandra used a fake social security number, or attempted to do so it was out of self-preservation. She was too poor to retain an attorney to defend her in the civil cases brought against her and was a mere *pro se* speed-bump for the union's attorneys. Cassandra was too resilient to quit though. Even after these judgments were entered against her she continued to buy homes, fix them up and sell them for a profit.

A. No loss

It is important to note that no harm resulted from the use of false social security numbers because as soon as her name was run by the title companies, agreements were generally reached with the union's attorneys and partial payments made.

Cassandra was originally charged in a fraud for her attempt to sell two pieces of property, one on Plover and the other on Minerva. Before going forward with the Plea Agreement herein, the Government required an incredibly lengthy factual basis which went on ad infinitum about the facts which constituted Cassandra's original charges. The factual basis set out who the "players" were in Michael Washington's organization and each person's level of responsibility. Cassandra is at the very bottom of the "Washington totem pole." Had she been successful in going through with the sham sale, Cassandra would ultimately have been the victim because *everyone* knew who she was since she was the owner of the Plover and Minerva properties. She was going to get caught regardless had the sham sales gone through. The Government contends that Cassandra's role was "substantial and material," because she happened to own two pieces of property free and clear. She got caught up with Michael Washington, and . . . the rest is history.

What the Government fails to realize is that perhaps Cassandra was viewed as *vulnerable* by Michael Washington. Michael Washington is an insidious individual who preyed on poor people like Cassandra. He knew she was weak. He knew she was vulnerable. He knew that she needed money. And he took advantage of her. She was a pawn to Michael Washington and as such was a minor participant when compared to the other individuals involved herein.

It is somewhat incongruous for the Government to claim, as it did in one of its pleadings, that Cassandra *only* pleaded guilty to social security fraud and therefore there is no one else in the chain for purposes of role in the offense.

That argument might have merit under U.S.S.G. §3B1.2 but under U.S.S.G. §5H1.7 the Court may determine after looking at all of the factors to depart downward for

Cassandra's minor role in the offense. Otherwise, why would the Guidelines contain §5H1.7? Here, Cassandra's relevant conduct was based on a mythical attempted loss. She did not gain from the use of a false social security number nor would she have gained from its use. Cassandra's interest was in selling these two pieces of property.

*V. 18 U.S.C. Section 3553*

There is one huge obstacle to the fact that Cassandra warrants a downward departure based on: 1) her conduct constituting aberrant behavior; 2) the lack of loss involved herein; 3) Cassandra's unique family commitments; and 3) her role in the offense is less than others. That obstacle is the United States Sentencing Guidelines which would seem to *mandate* incarceration for Cassandra. On November 14, 2003, Cassandra is going to appear before this Honorable Court, and according to the PSR should be sentenced as to at least 12 months incarceration. The question at her sentencing will be whether or not Cassandra falls outside the *heartland* of cases that appear before this Honorable Court for sentencing? Did the drafters of the Guidelines envision someone like Cassandra Owens when implementing the Guidelines? The unequivocal answer is "*no*," and one need look no further than 18 U.S.C. §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 12 months would be overkill and would constitute a sentence which is certainly “greater than necessary.”

What would be accomplished by a sentence of 12 months? Someone will respond to this question by claiming that Cassandra knew what she was doing and was an integral part of the Michael Washington organization. As such, she needs to learn her lesson—that she needs to be deterred, which is what 3553 (a)(2)(B) deals with. The problem with that argument is that this is the first felony conviction for Cassandra, and when confronted with her true social security number, admitted what she had done and paid off part of the \$100,000 judgment. There was no loss. Incarceration would be *brutal* for the futures of Cassandra’s little girls. These are things that this Honorable Court should look at when deciding whether or not a prison term would make Cassandra “learn her lesson” any more than home confinement and probation would.

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

Surely, the fact that Cassandra has pleaded guilty to this crime, and is sentenced to a Zone B sentence of 6 months home confinement and 6 months probation reflects the seriousness of Cassandra’s offense. This is a case about someone who has never had any real advantages in life. This is a case about someone who has been a victim of the “system” her whole life. This is a case about someone who has very little expectations about the “system” and what the ultimate outcome will be. Based on her previous experiences with the “system,” Cassandra almost expects to go to prison. A Zone B sentence of 6 months probation and 6 months home confinement will not only reinvigorate Cassandra’s belief in the “system,” but will also deliver a very, very strong message to her not to break the law in the future.

If Cassandra is placed on the longest term of supervised release possible, this Honorable Court can throw the book at her if she does anything wrong while on supervised release. This in and of itself acts as another type of deterrence.

Fortunately, with regard to the *danger to the community* aspect of sentencing, common sense dictates that Cassandra poses no danger whatsoever to her community. Actually, Cassandra is a beacon of hope for her community. The Guidelines talk about departures in the “heartland” of cases. The word *heartland* is never defined. Cassandra is a poor black, uneducated woman barely getting by in North St. Louis, Missouri. She buys dilapidated homes in *risky* parts of St. Louis and after working on the homes and waiting for the neighborhoods to improve so that she can sell the property for a profit.

As 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*, Cassandra has already received the worst sentence anyone could possibly give her; having to endure nearly a year awaiting trial on federal charges and having to tell her little girls that



there exists the possibility that *because of her actions* they might have to stop going to their magnet schools which would be horrendously detrimental to their future.

It also should be pointed out that any retribution takes into consideration the fact that Cassandra has undergone an extraordinary amount of stress and pressure. She knows that her actions have repercussions. She is scared to death that her daughters' lives will be destroyed because of her actions. This essentially acts as a *deterrent* against others in her family and community from committing the same crime.

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 Cassandra to a Zone B sentence of 6 months probation and 6 months home confinement.

#### *V. Conclusion*

Cassandra requests that this Honorable Court do the following:

1. Determine that she is eligible for downward departures;
2. Sentence her to a Zone B sentence of 6 months probation and 6 months home confinement;
3. As a fallback position, sentence Cassandra to one year and one day in prison; and
4. Any other relief this Honorable Court deems just.

CASSANDRA OWENS

STOBBS LAW OFFICES

/s/John D. Stobbs II

John D. Stobbs II, NO. 43052

E.D.Mo. Number 40623

Attorney for Defendant

346 West St. Louis Avenue

East Alton, Illinois 62024

Telephone: (618)259-7789

FAX: (618)259-4145

**CERTIFICATE OF SERVICE**

I hereby certify that on the 7<sup>th</sup> day of November, 2003, a copy of the attached *Sentencing Memorandum* was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

Mr. Michael Reap  
Assistant U.S. Attorney  
111 S. 10<sup>th</sup> Street  
St. Louis, MO 63102

Ms. Linda Rogoz (VIA U.S. MAIL)  
U.S. Probation Officer  
111 S. 10<sup>th</sup> Street  
St. Louis, MO 63102

STOBBS LAW OFFICES

/s/John D. Stobbs II  
346 West St. Louis Avenue  
East Alton, Illinois 62024