

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 15-CR-30073-MJR
)	
JOSEPH SCHWANK,)	
)	
Defendant.)	

DEFENDANT’S SENTENCING MEMORANDUM

I. Introduction

Unlike a lot of Defendants who appear before this Honorable Court for Sentencing, Joseph Schwank (Joe) was raised “right.” Joe was raised by two parents who got up every morning and went to work. His parents provided for all of Joe and his brothers’ needs. His parents attended parent/teacher conferences and all of Joe’s athletic endeavors. Joe’s family went on family vacations together. Joe was loved.

Now, as Joe’s childhood friends are working at their first jobs and moving up life’s ladder of success and failure, Joe is hoping that he will be released by the Bureau of Prisons before his 32nd birthday. The “good” years of his life will be spent behind bars.

The Presentence Investigation Report in this case is exceptionally well written. Joe believes that the low end of the Advisory Guideline range found in the PSR, 92 months is an appropriate sentence.

II. Criminal History

The proverbial “elephant in the room” on September 16, 2015 will be Joe’s horrendous criminal record.

There is no good spin that can be placed on 11 pages of criminal history starting when Joe was 15. The question is what assurances can be made to ensure that Joe is rehabilitated at the conclusion of this sentence so that his cycle of crime ceases?

On September 16, 2015, Joe will have to tell this Honorable Court *why* he will not continue breaking the law? Why is a 92 months sentence appropriate as opposed to a 115 month sentence? Joe's 11 pages of criminal history have given the Government a powerful arsenal to request, with a straight face, a sentence of 115 months.

Every criminal Defendant who appears before this Honorable Court says that they have learned their lesson and will not commit another crime. In meeting with Joe, the undersigned believes there are four reasons why *Joe's* case is different from the others. These reasons are: (A) the birth of Joe's son, Joseph Michael in 2013, (B) the impact *this* case is having on his family, (C) Joe's lack of ever having been truly punished for his past crimes and (D) Joe's drug addiction.

A. The Birth of Joseph Michael Schwank

In May of 2013 Joe became a father. Children know very little about love, because they are supposed to be loved by their parents. The only thing a parent has to do is love their child.

Joe's Dad, Rick, taught Joe and his brothers how to hunt. Rick showed them how to play football, baseball and basketball. Rick participated in scouting with his sons.

Joe's Mom Shellan loves her sons unconditionally. She is a nurturing loving mother who was always "there" for her sons.

The love and support Joe has felt his entire life from his parents and immediate family is something which allow him to not only be a productive member of society one day, but also to be a good parent. Joe was not only loved, he was also blessed with good role models.

In "real world terms," Joe will not be able throw a football to his son until "Little Joey" is in 2nd grade. "Little Joey" will be a cub scout while Joe is in some Bureau of Prisons facility. Joe will never be able to hunt with his son.

In reviewing the PSR, it is clear that the only true happiness Joe experienced was before he became a teenager when he allowed drugs to ravage his life. Joe's happiness revolved around his family.

This “family dynamic” has existed Joe’s entire life. Every time Joe appeared in Court, his parents or other family members accompanied him. Joe had no real responsibilities. That changed once Joe became a father.

Because of his actions in this case, Joe will not be able to be a “father” to his son. Joe will not be able to give the happy childhood experiences to “Little Joey” that Joe’s parents gave to him. The only real input Joe will have in his son’s life will be from Bureau of Prisons visits.

Because Joe was blessed with good role models, and now that his brain is not addled with drugs, he is able to completely understand the impact his actions will directly have on his own son.

B. The Impact This Case is Having on Joe’s Family

The burden of raising Joe’s son will fall to his parents. Instead of enjoying retirement, Rick & Shellan will raise their grandson.

Joe always enjoyed a special relationship with his younger brother James. During Joe’s darkest moments, James was the light of reason. There were numerous times when James pulled Joe back from the abyss.

On December 21, 2014, only two days after Joe was released from the Illinois Department of Corrections, James was involved in a horrible car accident that left him paralyzed. James resides in a Louisville rehabilitation facility in the hopes that he will recover his ability to walk.

Rather than dealing with this tragedy as he should have, Joe turned to heroin. Simply stated, Joe’s refusal to get sober and stay sober is selfish. Rather than being “there” to help his family with James, Joe has saddled his family with this responsibility.

It is impossible to fathom the guilt Joe feels for being incarcerated instead of present to help his parents with his son Joey and brother James.

C. Joe’s Lack of Having Been Punished For Past Crimes

St. Ignatius Loyola said that the power of love is much stronger than the power of fear. Catholic “guilt” of breaking arcane rules loses its grip after awhile. However, by not doing something wrong because of love for someone or something lasts forever.

Every person fears being incarcerated. Eventually though, that fear is displaced by the reality of being incarcerated. In Joe's case, time after time he was charged with a crime, but in reality was never "truly" punished.

Joe has now "graduated" to federal crimes where requesting what might be perceived as a light sentence works against a Defendant. The hope of probation or a sentence under 92 months simply is unrealistic.

For the first time ever, Joe is faced with a "real" sentence. This is not meant to disparage the criminal justice system in Illinois. There are factors related to sentencing in State court which are not relevant in federal court.

The longest sentence Joe ever served in Illinois was 13 months. That might seem like a long time, but in reality after the 3-4 months it took to become acclimated to his environment, Joe could see being released in the horizon. For example, one can see June of 2016 in the horizon. It does not seem that far away.

However, it is impossible to see 2022 in the horizon. That seems to be an eternity. While incarcerated, Joe will be sober for the longest period of time since his adolescence. Joe will have to face his demons head-on. Joe will have to face the destruction his conduct has wrought to his family and loved ones. Joe will have to grow up.

Whatever sentence is imposed, Joe's fear of incarceration will be quickly dissipated. According to St. Ignatius Loyola, if Joe is going to be reformed, it will be due to the love he has for a little boy he barely knows. Joe's reformation will have to be through the love he has of being with his family. Joe will have to adapt to an environment where showing love to his son and family will be through weekly visits, correspondence and telephone calls.

Either Joe loves his family enough to stop breaking the law or the cycle of convictions and incarcerations will continue unbroken until he eventually dies in prison.

D. Heroin Addiction

Joe's life was sporadically spiraling out of control until he was 20 years old. Prior to age 20, Joe's life pattern was that he would commit a crime, be slapped on the wrist by

the State of Illinois, go into rehab., get released from rehab., and for a short period of time be a semi-productive member of society. The pattern would then start anew.

Joe's life nosedived when at age 20 he began using heroin. As this Honorable Court is aware, heroin has become *the scourge* of the United States. The frequency of heroin overdoses is astonishing. For example, Joe first began using heroin with his then girlfriend Scarlett Salvador in 2011. In December of 2012 a young man overdosed and died in Ms. Salvador's bathroom. When the undersigned met Joe's parents, Rick and Shellan, they said they were happy to know where Joe was, because they at least knew that he was alive.

No one is immune from heroin's tentacles, and generally, users become addicted after their first use. Compounding this scourge is the difficulty addicts have at rehabilitation. The addiction is more than mental; it is physical. When the undersigned first met Joe, he was "dope sick," which is addict-speak for becoming violently ill while withdrawing from heroin.

The impetus of Joe's crimes was so that he could feed his heroin addiction. So completely addicted to heroin was Joe that he robbed a bank and a few pizza parlors. Without his addiction to heroin, there is great probability that Joe would not have committed these crimes.

Addiction is a crutch Joe has used for a long time. It is an excuse that has permitted Joe to fool himself and others. Joe now is in the federal system where addiction is a small component of sentencing.

Here, the sad thing is that these crimes show that Joe never adequately dealt with his heroin addiction. His brother's accident sent Joe over the edge. Joe's coping mechanism was to go on a heroin binge, which he could not afford, so he resorted to robbing a bank and 2 pizza parlors garnering \$1,613 from U.S. Bank, \$475.08 from Pizza Hut and \$53.53 from Dominos for a total of \$2,141.61.

If sentenced to 92 months, Joe will have approximately 7 years to deal with his drug addiction in the Bureau of Prisons. The undersigned has discussed with Joe the 500 hour RDAP program offered by the BOP. Due to the crimes for which he will be

incarcerated, Joe will not receive any sort of a sentence reduction if admitted into the RDAP program, but the benefits could be overwhelmingly positive once Joe is released.

III. Addiction & Mental Illness

Joe has fought his entire life with addiction and mental illness, and his criminal history is rife with stints at rehabilitation facilities. Because Joe never had the mental fortitude to fully rehabilitate, the best sentence he can hope for under the Advisory Guidelines is 7 ½ years.

Oftentimes, a Defendant's criminal history has a great deal to do with issues related to mental health and drug addiction. Joe has a history of mental health issues and he has previously been diagnosed with bipolar disorder, and anxiety disorder. (¶103) Joe is presently being prescribed 10 mg of Olanzapine daily for mood disorder and bipolar disorder while incarcerated at the St. Clair County Jail.

As is too often the case, it appears that to a certain extent, Joe self-medicated himself with drugs.

IV. The Victims

Unlike most cases before this Honorable Court, there are real victims in this case who fortunately were not physically unharmed. While not physically harmed, the psychological scars of these individuals will probably never fully heal.

The undersigned is ***not*** going to play games with words or try to pretend that because the airsoft gun used in the pizza parlor robberies was not a *real* gun that leniency is in order. The workers in these pizza parlors thought it was a real gun when Joe pointed it at them, and that is all that matters.

The undersigned recalls the testimony of the tellers in the *U.S.A. v. Fuller* trial. Bank tellers barely make minimum wage. They tend to be cheerful, happy go lucky people. They are bank tellers because they love working with the public. In *Fuller*, the undersigned saw firsthand the mental and emotional trauma that ***all*** tellers working at a bank go through when a robbery occurs.

Imagine the fear this poor teller must have had when Joe passed the note to her. Again, the fact that no gun was involved does not diminish the impact that the robbery had on the workers at U.S. Bank.

Joe being “sorry” for his part in this crime is not enough. Of course he is sorry --- he got caught. Joe caused palpable damage to people whose only goal in life was to make enough money to make ends meet or to be happy and make others around them happy. By committing these robberies, Joe forever changed innocent people’s lives.

For the victims, it is too late to answer “why” Joe committed these crimes. They could care less. For them, justice is measured by the punishment Joe receives. Punishment to the victims is the number of years this Honorable Court imposes.

There is nothing this Honorable Court can do to give “justice” to the victim. The clock cannot be reset to December 22, 2014 where through hindsight Joe would have coped with his brother’s accident differently.

V. 3553 Factors

Joe has lived a Dr. Jekyll/Mr. Hyde life. For purposes of 18 U.S.C. §3553 the question is does this Honorable Court sentence Dr. Jekyll to the low end of the Advisory Guideline or Mr. Hyde to the high end of the Advisory Guidelines?

Now that the Guidelines have become advisory, criminal defense attorneys tend to request outlandish variances.

They tend to forget how bleak things were just a short time ago when if someone who had the virtues of Mother Theresa was caught with a rock of “crack” cocaine she would be incarcerated for 6 or 7 years. The crime was punished without any consideration for the life of the Defendant.

The undersigned is *not* going to recommend a variance for the simple reason that the Advisory Guidelines got it “right.” Hopefully, this Honorable Court will agree and sentence Joe within the Advisory Guideline range and determine that a 92 month sentence is appropriate.

As the mandate of the draconian Guidelines has ebbed, the imposition of well thought out sentences based on 3553 (a) factors and who the individual is has flowed.

A. Nature of the Offense

Rather than plodding Germanically through each subsection of 3553, the undersigned will deal with the preamble to 3553(a) last. The preamble mandates that 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.” (Emphasis added)

Almost immediately one jumps to paragraph (2) and bypasses paragraph (1) which requires this Honorable Court to take look at the nature and circumstances of the offense and the history and characteristics of the defendant.

The nature of this crime is simple. Joe robbed three businesses. Joe caused psychological damage to each and every person working in those businesses.

B. Circumstances of the Offense

While the nature of the offense is bad, the circumstances surrounding the offense are a little different, and in Joe’s case tend to lessen what the nature of the crime is.

Shortly after Joe’s brother was involved in a horrific car accident in December of 2014, Joe began using heroin again. Joe’s addiction led him down a self-destructive path ending in doing whatever was necessary to stay “high.”

Most importantly regarding circumstance of the offense is that Joe never intended to harm anyone. The Advisory Guidelines took into consideration the use of a firearm and is why Joe received an unopposed sentencing enhancement for taking the airsoft gun into a pizza parlors

Joe’s demeanor regarding the Pizza Hut robbery, where he possessed an airsoft pistol made the employees believe the robbery was a joke. (¶11 of PSR) In neither of the other two robberies was a weapon present. This might be a distinction without a difference, but it shows that the three robberies were not violent in any way.

C. The History And Characteristics Of Joe

The undersigned spent a great deal of time on the first 5 ½ pages of this Sentencing Memorandum explaining the history and characteristics of Joe.

For purposes of 3553, the Advisory Guidelines have already taken into consideration Joe’s criminal conduct.

If Joe were a Criminal History Category I his Advisory Guideline Sentence would be 46 months or one-half of the 92 months found in the PSR because of the fact that he is a Criminal History Category VI.

The Government indicated it will request an Advisory Guideline sentence at the high end of the 92-115 range, due to Joe's criminal history. As was stated above, the criminal history category is VI, Joe received 2 criminal history points for breaking the law while on parole, and a two point enhancement for a firearm has been assessed. There is no reason to give a high end Advisory Guideline sentence.

Once arrested Joe immediately tried to do the right thing. Shortly after being arrested by the Alton Police Department, Joe admitted to what he had done and went so far as to show the police the routes he took after the robberies.

Looking at Joe's criminal history, it is easy to immediately conclude he is a bad person. That there is only Mr. Hyde. The first half of Joe's life was idyllic. He did everything any "normal" kid would do, and unfortunately the relative calm of his childhood was shaken by the tsunami of drug use. Through all of the torment that has occurred in the second half of Joe's life, his family has remained staunch supporters. Joe is loved.

Rather than trying to put a "lawyer's spin" on Joe's life, attached and marked Exhibit A is a letter from Joe's Mom, Shellan. This letter is one of the best the undersigned has ever read, because it shows the truth in the statement that "a parent's only job is to love," while at the same time being realistic that Joe deserves to be punished on September 16, 2015.

"Thank you for receiving this letter on behalf of my son Joseph Edmund Schwank. I'd like to share a little about Joe and our family in an attempt to explain to you and to myself how we got to this tragic place.

My husband, Rick, and I met in 1978 in Peoria. He was a 25 year old farm boy from Sterling, had graduated from SIUC, and was working at WABCO. I was a senior nursing student at St. Francis School of Nursing. We both came from large stable middle class families with good old fashioned values. I was drawn to my husband because of his honesty,

kindness, self-discipline, and high integrity. I knew he would be a good husband and father. I was not wrong. We did everything “right.” We both had educations, jobs, fell in love, got married, and *then* had our kids. We went to mass every Sunday, were very active in sports and Scouts, disciplined firmly with love, and stayed married. We are not perfect parents, but we do love our kids. Joe has a good foundation and knows what “normal” looks like.

Joe is the 3rd of our four sons. He was always a good little boy. Very loving, kind, and gentle. He was also very active; needed to be on the move all the time. He refused to move from Atlanta to Godfrey when he was in the 1st grade unless he could play hockey. Joe was athletically gifted. He won the K of C free-shooting contest, was on the Catholic Schools League Basketball All Stars Team, and did extremely well in soccer and baseball. That all changed in the 7th grade. He met a boy whose father was dying of cancer, who had access to marijuana and Oxycontin. I never thought Joe would be a drug addict. Joe had been deeply traumatized by a close family member who was a drug abuser and, as a child, swore that he would never do that to his family or himself.

Joe went downhill fast. We had Joe under the care of counselors and an adolescent psychiatrist. My own brother was an Illinois State Trooper. We tried everything. It was like trying to stop a speeding train with your bare hands. Joe didn't have enough credits to enter the 9th grade, so we sent him to St. John's Military Academy in Salina, KS for the summer to take courses and receive discipline and P.T. That worked for a short while. He was able to start 9th grade at Alton High, but had to enter inpatient substance abuse treatment that year. He was in trouble with the law. No amount of discipline, policing, or prayer was working. The court didn't know what to do with him. He was sentenced to the Mt Carmel Youth Ranch in Wyoming in February of his 10th grade year. Mt Carmel is a privately owned working cattle ranch operated by a Catholic family – not a dude ranch. For 2 years he had daily mass, prayer, classes, and lots of chores and hard work. He rode the ranges on real cattle drives and enjoyed good clean wholesome living. I have come to learn that the many rehabs people attend are not cures, but stepping stones/foundations for future sobriety. Joe lacked the maturity to overcome peer pressure and the common everyday pressures of life. He missed formative developmental

milestones when he used drugs all through his teenage years, which affected his judgment and impulse control.

When Joe was released from IDOC on December 19, 2014 he seemed more focused and stable than ever. I really thought that this time he had the will to stay clean for his little son, stay away from his old friends, and get on with his life.

Then, another nightmare. Our youngest son, James, was in an accident December 21, 2014. He is now a C6 quadriplegic. James' accident knocked the wind out of our entire family. James is the "little brother", an Eagle Scout, state medal wrestler, college student, and was the brother closest to Joe, that Joe could always count on. Joe asked God, why James and not him? Joe was at James' side in the ICU tenderly and competently caring for him, as were the rest of us. Rick and I were so consumed with James, as well we should have been, that we were not there to support Joe in his vulnerable time. In an attempt to be with his little son, Joe reconnected with his old girlfriend. Joe would never blame his relapse on James' accident, his girlfriend, or anyone else, but do not underestimate the effect it all had on him. Joe is the first to accept blame and full responsibility for his actions.

I am stunned, sickened, and ashamed of Joe's crimes. What was he thinking? I love him so much. The hearts of our entire family are broken at this waste of life. He holds such promise and potential. His sponsor in Wyoming had him on track to become an electrician, as he could see Joe's intelligence and skill. I thank God that my beloved son is still alive, that he has not physically hurt anyone, and that he still has opportunity to turn his life around. When Joe is clean and sober, he is fun to be around, a great story-teller, good sense of humor, hard worker, a caring, helpful, good person. He is good and patient with his elderly grandparents- wheeled them all over the Mayo Clinic, and is respectful and loving to my mother who has dementia.

Once the dust has settled and he is sober, there is no one more remorseful for his sins than Joe. I think that his time away in Federal prison will give his brain a chance to mend and mature so he can come out and be the good man that he is destined to be."

Rather than write a letter, Joe's Dad, Rick has asked to speak to this Honorable Court for 2 or 3 minutes on September 16, 2015 and will discuss Joe from a father's standpoint.

Exhibit B is a letter from Diane White, owner of White's Greenhouse. This shows that when sober, Joe is a productive member of society and a hard worker.

Generally, letters from clergy are clouded with references to scripture and are not useful to a Sentencing Court. Exhibit C, a letter from Deacon Bill Kessler is the exception. Deacon Kessler was an immensely successful businessman in the Alton area and gave up a lucrative job to become a fulltime Deacon at St. Ambrose parish in Godfrey. Everyone in the Alton area knows and respects Deacon Kessler. He is a man who will write on behalf of someone *only if* he truly believes what he is writing.

Deacon Kessler bluntly discusses the impact Joe's addiction has had and is having on others. He tells this Honorable Court that "drugs have robbed not only society but Joe himself. . ." "Joe clearly needs to deal with his addiction issues. However what is different now, over those many scrapes Joe has gotten himself into, is his little boy Joe. Finally it was clear to Joe the night we met at the Alton Jail, if it was not before, that his little boy is now going to pay a price for his mistakes."

Joe's life is like Camus' Sisyphus. Each time Joe pushed the boulder up the mountain, he seems doomed to have it roll back down. Deacon Kessler describes Joe's experience in Wyoming:

"Joe has generous, loving and long suffering parents. It was them who asked for our intervention with Joe. Additionally he had a role model out in Wyoming, Mr. Dan Burton of the Mt. Carmel Youth Ranch. Joe looked to Dan as a model for his own recovery. We assisted Joe as a Parish and afforded travel expenses for him to return to Mt. Carmel. Joe had a three point plan ... learn a trade as an electrician, work on the ranch for his room and board and most importantly he would be away from the bad influences he had locally. Unfortunately Dan died unexpectedly, at an all too early age, and I can only wonder if his death shook Joe more than his care givers might have thought. This effort of many months crumbled and Joe came home only to fall back into old ways."

In December of 2014, Joe seemed to be getting his life together, yet just as when Mr. Burton died unexpectedly in Wyoming, James' accident caused Joe to relapse.

D. 3553 (a)(2)(A)(B) & (C)

3553 (a)(2)(A)(B) & (C) mandates

(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

A 92 month sentence certainly shows the seriousness of the offense. What is “*just*” for purposes of just punishment? “Just” punishment deals with the offense, not a Defendant’s criminal history score. For purposes of “just” punishment for this offense in order to promote respect for the law and reflect the seriousness of the robberies, a 92 month sentence is more than satisfactory. Thankfully, no one was hurt. Thankfully, Joe was caught soon after the last robbery so he could be locked up and unable to continue using heroin, because in all likelihood he would have overdosed. The fact that the robberies did not involve violence should inure to Joe’s benefit for purposes of a low end Advisory Guideline sentence of 92 months.

Heroin addicts are oblivious to sentences other addicts receive. The draw of heroin is just too powerful, so with regard to adequate deterrence to criminal conduct, the sentence imposed will not have any impact on future heroin addicts robbing places to support their addiction.

Sections 3553 (a)(2)(B) & (C) are the crux of what concerns the general public and this Honorable Court.

Whatever sentence is imposed must ensure that Joe stops breaking the law. Even though no one was physically injured by Joe’s conduct, the public nevertheless needs to be protected.

The reality is that a 115 month sentence will not stop Joe from breaking the law again any more than a 92 month sentence will. A 92 month sentence though is six times longer than any other sentence Joe has ever served and that in and of itself means Joe

realizes that since he has graduated to committing federal crimes, his actions have serious consequences.

Exhibits D, E, F & G, letters from Joe's godmother Maureen McIntosh, uncle Gary Schwank and brothers John & Collin. These letters show that when he is sober, Joe is a good and loving family member. The letters show that when Joe is released from the Bureau of Prisons he will have a strong support group to help him. Sadly, that is rare in the federal criminal justice system.

Joe has to decide once and for all if his love for illegal drugs outweighs the love he has for his family and his freedom. The Bureau of Prisons can be used by Joe to help him with his addiction. The 500 hour RDAP program is one of the best in the country and if Joe avails himself of this program, everyone will benefit. Similarly, a long period of supervised release will allow Joe to be "monitored" by the U.S. Probation office.

The 500 hour RDAP program "rewards" participants with up to a year off of their sentences. Because a fake gun was used in one of the pizza parlor robberies, Joe will not receive any sort of a sentence reduction whatsoever. Hopefully, this Honorable Court will take this into consideration when deciding whether or not a low end Advisory Guideline sentence should be imposed.

VI. Conclusion

The preamble of 3553 is the perfect place to conclude. It directs this Honorable Court to impose a sentence which is sufficient but not greater than necessary to comply with Section (a)(2).

The preamble relies on the sentencing court to use the scales of justice to weigh what is the perfect sentence for the crime which was committed by weighing on one scale the crime and on the other scale who the Defendant is.

Here, a straight Guideline sentence of 92 months ---7 ½ years--- of incarceration, in the undersigned's opinion, is not greater than necessary when considering who Joe is and the loving family he has.

A sentence of 7 ½ years is a sufficient sentence and one which the undersigned hopes this Honorable Court will impose on September 16, 2015.

JOSEPH SCHWANK

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CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2015, a copy of the attached *Defendant's 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:

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