

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) No. 14-CR-30012-DRH
)
NATHAN CHRISTIAN,)
)
Defendant.)

DEFENDANT’S SENTENCING MEMORANDUM

I. Introduction

People change. That simple phrase translated into Spanish is “no eres quien eras,” which literally means “you are not who you were.”

The Nathan Christian charged by the Government in 2014 is not the Nathan Christian of 2009 which is when the crimes he pleaded “guilty” to occurred.

As is too often the case, short shrift is given to the Defendant who has rehabilitated himself without the assistance of anyone. The focus is not on the changes that a Defendant makes to their lives; rather it is on the crime that was committed. During the 5 years that Nathan committed these crimes and was charged in the instant indictment, he went through a metamorphous. Nathan transformed his life. Nathan changed.

The Supreme Court has emphasized that sentencing courts should impose a punishment that “fit[s] the offender and not merely the crime.” *Pepper v. United States*, 131 S.Ct. 1229, 1240 (2011). The implication for someone like Nathan is that the 5 year period between 2009 and 2014 and the changes Nathan --- on his own --- made to his personal life should be considered. In other words a sentencing Court should not solely focus on the crime. Moreover, the Supreme Court has outright rejected any rule that would require "extraordinary" circumstances to justify a sentence outside the Guidelines range. *Gall v. United States*, 128 S.Ct. 586, 595 (2007)

II. Nathan Christian

Nathan is a 32 year old father of 2 young children. Nathan was rarely in trouble until his parents divorced.

Nathan began using alcohol at a fairly young age and ultimately graduated to daily use of marijuana. As time went by, Nathan began using cocaine but latched onto opiates. Even though he moved to Arizona to escape his drug past in Toledo, Nathan was incapable of freeing himself of his addiction. Nathan returned to Toledo and by the time he was 21, had become a hardcore heroin addict.

A. Drug Addiction & Employment at Premier Timeshare Solutions (PTS)

On one occasion, in 2007 while in Toledo, Nathan participated in a rehabilitation program which was unsuccessful. In 2008 Nathan travelled to Palm Beach, Florida and completed a 30 day inpatient program called New Day Treatment Services followed by six months in a half-way house. Since 2008, Nathan has been sober.

Defense attorneys refer to Bruce Reppert's "gotcha conferences" as "the treatment." Whereas the large majority of Assistant U.S. Attorneys use "gotcha conferences" to try and thump the Defendant and boastfully tout the strength of their case, Mr. Reppert thoroughly discusses the strengths of the Defendant's case and the evidence the Government will use to demolish any defense that might be mounted. When Mr. Reppert is finished, the Defendants know the gig is up and generally plead "guilty."

Here, Mr. Reppert explained that the main reason employees like Nathan were hired by PTS was because of their drug addiction. The undersigned learned in the *Tavis Doyle* trial that Midwestern drug addicts gravitate to Florida due to the weather. In Nathan's case, Mr. Reppert explained that Florida is the epicenter of timeshare fraud because the owners of the timeshare companies preferred hiring recovered addicts who were desperate for "legitimate" employment. Florida based timeshare companies desiring to commit fraud had a vast pool of prospective employees like Nathan willing to work for them and commit fraud in order to obtain employment.

More importantly for purposes of working for companies like PTS, drug addicts have lived most of their lives convincing family, friends and loved ones about almost any lie that comes into their heads. It becomes fairly easy then to convince desperate timeshare owners that what seems too good to be true is in fact true.

B. Selling Timeshares

The lure of owning a timeshare is strong. Timeshares are sold to individuals who want a luxurious place away from home. Honorable companies like the Westin sell a “dream” to people who are vacationing at one of their resorts. The individual buys the timeshare without reading the fine print. They do not learn until later that the bottom basement resort fees are subject to being increased. They do not learn until later that the timeshares cannot easily be unloaded. They do not learn until later that they have essentially bought a pig in a poke.

When Nathan exited the halfway house after successfully completing his 30 day treatment, he did not want to return to Toledo. Nathan decided to stay in Florida and seek employment. The owners of PTS sought out Nathan because he was a recovering addict, and due to his intelligence and ability to lie, Nathan rose quickly through the ranks. Ultimately, the pressure of lying, stealing and cheating took its toll on Nathan and even though he could have moved higher up in PTS, he eventually decided to quit.

Individuals who are unable to afford the timeshares do whatever they can to rid themselves of this anchor. During Nathan’s proffer one of the agents showed the undersigned on his iPhone that time shares were being sold on ebay for \$1.

These timeshare owners are perfect foils for companies like PTS. Promised a way out of their hopeless situation, the timeshare owners believed that if they paid an advance fee of over \$1,000 their nightmare would end.

C. Post PTS Life

At the beginning of 2010 Nathan’s life changed dramatically. Nathan obtained a conscience. He had just left PTS and the gnawing feeling of guilt for what he had done to timeshare owners gradually subsided thanks in large part to his relationship with Melissa Stevens.

Melissa is an extremely strong woman who loves Nathan unconditionally. His relationship with Melissa has evolved to the point where between 2010 and 2014, Nathan became the man that his parents hoped he would become. These 5 years were difficult for Nathan. He did everything the *hard* way and fortunately is able to see tangible results.

Nathan is now a hardworking family man. He gets up early, works hard and returns home to be with his family. Nathan helped create a marketing company called C & B Marketing. He originally was one of the executives running C & B, but due to this indictment had to resign from that role and is now the manager of the graphic design department. Nathan earns \$6,244.00 per month at C & B.

It is quite a change to go from being paid to defraud people to earning nearly \$75,000 a year in legitimate income. More importantly, is that Nathan now awakens tired and goes to bed tired due to hard work.

III. 3553 Factors

The undersigned is the rare defense attorney who believes that the Guidelines were/are correct in the majority of cases. Criminal **ACTS** should be punished. The problem with the mandatory nature of the Guidelines is that sentencing courts were mandated to sentence the crime and were prohibited from taking into consideration anything involving the person committing the crime.

Fortunately for Nathan, 18 U.S.C. §3553 mandates, and *Pepper* urges, that the entire life he has lead, including his post-criminal conduct life, and not just the few months that encompassed this crime, be taken into consideration when imposing a sentence.

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)

As will be shown below, for purposes of disparity, the undersigned feels strongly that the 28 month sentence this Honorable Court imposed for Kyle Robertson is the “ceiling” as to what sentence Nathan should receive.

A. Types of Sentences Available

3553 (a)(3) and (a)(4)(A) directs the Sentencing Court to consider the kinds of sentences available as well as the sentencing range established for “the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines.”

Booker and its progeny made the Guidelines advisory. Contrary to popular belief, the Guidelines were not abolished. The Guidelines are a good starting point when considering what sentence to impose because “experts” spent decades studying data and statistics to come up with what an Advisory Guideline sentence should be for a particular Defendant and the crime that was committed.

A plethora of sentences are available to this Honorable Court. Incarceration is not the only way that Nathan can be punished. The undersigned believes that a component of Nathan’s sentence should include community service, which will allow this Honorable Court to let Nathan use his God given skills and talents to help others not make the same mistakes he made.

B. 3553 (a)(1)

3553 (a)(1) lumps the nature and circumstances of the offense and the history and characteristics of the defendant into one. In this case it is necessary to divide them into separate sections.

C. The Nature And Circumstances Of The Offense

Nathan took advantage of financially distressed individuals. He sold “hope” for financial salvation. Each telephone call Nathan made he knew what he was doing was wrong. There is nothing good for Nathan regarding the nature of the offense.

Just as Nathan took advantage of timeshare owners, he was taken advantage of by the owners of PTS. They trolled the rehabilitation facilities in South Florida targeting prospective employees like Nathan, who were desperate to find gainful employment. The

owners of PTS taught Nathan how to defraud the timeshare owners. Just as the nature of the offense is the anchor around Nathan's leg, hopefully this Honorable Court will understand that the circumstances of the offense can act as a sort of ballast.

D. The History And Characteristics Of Nathan

When crafting 3553 (a)(1) Congress directed the sentencing court to consider the history and characteristics of the defendant along with the nature and circumstances of the offense.

The difficulty here is that Nathan was able to rehabilitate himself *years* before he was charged with this crime. This is where "no eres quien eras --- you are not who you were" comes into play. If Nathan were still defrauding people at the time he was charged, or was involved in some sleazy enterprise, it would be impossible to argue against a straight Guideline sentence. Nathan is now a hardworking, responsible member of society.

Nathan lost his way in life for several years. He descended into addiction and flailed around when released from his 30 days New Day Treatment Services. Aside from his use of drugs, the worst decisions in Nathan's life were when he chose to begin working at PTS and defrauded timeshare owners.

The impact of Nathan's incarceration will be felt by his entire family. It will be felt by Melissa, his parents and his children. Like all relationships, Nathan's and Melissa's has its "ups and downs," especially in regards to the upcoming sentencing. Melissa will go from being a stay at home Mom to someone scared about what the future holds, and facing the fact that she may be raising two young children by herself.

Fortunately, Nathan's Mom Cynthia will move from Ohio to Florida if need be to help Melissa in any way possible. Obviously though, the children's growth and development will not be the same without Nathan's presence.

Probably the two characteristic which stand out most about Nathan are his decency and his drive.

Decency, because Nathan's true remorse about his actions at PTS shows that he has a conscious. At sentencing, almost every Defendant shows sorrow for being *caught*.

In that regard, Nathan is no different. At his proffer though, Nathan discussed how “dirty” he felt after a short time at PTS committing this fraud. At his proffer, Nathan shook his head over and over because he was disgusted at what he had done.

Nathan’s decency was also shown by the stress on his face every time the undersigned has seen him. Nathan knows he will be removed from his significant other and two small children. Nathan knows that his actions are the cause of his being incarcerated.

Nathan’s motivation and drive are exceptional. When he left PTS, Nathan went from one small job to another. Nathan was paid a considerable amount of money to commit fraud. The majority of people in Nathan’s position would have tried and failed to earn legitimate income and quickly return to a life of crime. Nathan did ***NOT*** take the easy way out. Nathan had several minor low paying jobs and ultimately helped create a successful marketing and web design company which employs numerous people.

Hopefully, when considering everything involving Nathan’s life, this Honorable Court will feel that a break should be in order.

E. Sentencing Disparities

It was logical for those who favored the Guidelines to argue that a benefit of mandatory guideline sentencing would be to eliminate sentencing disparities. From this standpoint, the Guidelines failed because no crime is the same, no U.S. Attorney’s office is the same and no sentencing judge is the same. There are a myriad of components that go into a sentencing, such as the impact the crime has on a particular victim, the time it took to commit the crime, or the amount of planning that went into the crime.

For example, under the Guidelines, a person could rob \$20,000 with a gun from a bank in Des Moines, Iowa and receive a different sentence than someone who uses a firearm to rob \$20,000 from a bank in Casper, Wyoming. Actually, a person could rob \$20,000 with a gun from a bank in Des Moines, Iowa and receive a different sentence than someone who uses a firearm to rob \$20,000 from a bank in Des Moines, Iowa. When the “human element” becomes a component of sentencing, different sentences will always be the result.

Fortunately for Nathan, his co-worker, Kyle Robertson, was sentenced in January of 2015 by this Honorable Court to 28 months in jail. A 5K1.1 Motion was filed and based on Mr. Robertson's cooperation, this Honorable Court departed downward approximately 50%. Hopefully, this Honorable Court will understand the logic as to why this 28 month sentence is the ceiling and perfect starting point in terms of cooperation regarding Nathan.

Both Nathan and Mr. Robertson cooperated with the Government. What differentiates them is the fact that Mr. Robertson was a manager/supervisor of PTS which resulted in a 3 level enhancement under Section 3B1.1(b) of the Guidelines. Nathan was not a manager/supervisor which is why no enhancement would be applicable to him.

The undersigned generally does not discuss cooperation in Sentencing Memorandum because the U.S. Attorney's Office files excellent 5K1.1 Motions which include the Defendant's cooperation. Here, the good fortune Nate had was to be prosecuted by Bruce Reppert who probably knows more about timeshare fraud than any other Assistant U.S. Attorney in the country. The investigators in this case are retired law enforcement "all stars." Nathan dealt almost exclusively with Tim Brunholtz who as this Honorable Court knows is a retired DEA agent.

Both Mr. Brunholtz and Mr. Reppert were extremely satisfied with Nathan's cooperation and expressed that it was as timely, thorough and complete as anyone who cooperated into the timeshare fraud investigation.

Based on Nathan's cooperation, the undersigned feels that a reduction to 14 months is in order which is greater than the approximately 50% reduction Mr. Robertson received.

F. 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

The letters in support of Nathan as well as the exemplary life he has led since leaving PTS should dispel any concern about the public needing protection from further crimes of Nathan.

Very little can be done to deter to criminal conduct when greed is the sole reason for the crime. Future fraudsters probably will not decide against committing timeshare fraud based on whatever sentence this Honorable Court imposes on Nathan on May 29, 2015.

Therefore, weighing the seriousness of the offense with just punishment is what is left for this Honorable Court to determine regarding 3553 (a)(2). This Honorable Court needs to determine whether a sentence of 14 months, plus a component including community service is “just punishment” which adequately reflect the seriousness of the offense.

The victims will certainly say that this sentence is too light. That this sentence means Nathan is “getting off easy.” That Nathan is not being adequately punished for his crime, because in their eyes the only “punishment” is the statutory maximum. This belief would be correct under the “old” view where the Guidelines mandated incarceration. In the post-*Booker* world though 3553 allows a sentencing court to look at the “whole Defendant” not just the crime that was committed when fashioning an appropriate sentence. That theory does not take into consideration the man Nathan has become or the cooperation he has given to the Government.

A sentence of 14 months will sufficiently punish Nathan in terms of removing him from society. At the same time though it will allow Nathan to return to his family and job earlier.

Most importantly from a rehabilitation standpoint, community service will allow Nathan to help other people who like him, become addicted to drugs and out of desperation commit crimes.

Obviously, if this Honorable Court feels more incarceration and less community service is in order, the figures can be adjusted accordingly. In the undersigned’s opinion, it is unnecessary for there to be “straight incarceration” for Nathan.

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 which does not consider Nathan's cooperation or the person he has become, in the undersigned's opinion, is greater than necessary when considering who Nathan is and what he has done in his life.

A sentence of 14 months, plus community service is a sufficient sentence and one which the undersigned hopes this Honorable Court will impose on May 29, 2015.

NATHAN CHRISTIAN

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CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2015, 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:

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