

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA §
 §
v. § NO. 5:22-CR-50053-001
 §
ROBERT CESSARIO §

GOVERNMENT’S SENTENCING MEMORANDUM

The United States of America, by and through the United States Attorney for the Eastern District of Texas, hereby submits this Sentencing Memorandum and respectfully shows the Court as follows:

The government estimates that the sentencing hearing will take no longer than one hour. The government does not intend to call witnesses or present testimony at the hearing.

The defendant entered into a binding plea agreement with the government, pursuant to Fed. R. Crim. Proc. 11(c)(1)(C). The parties stipulated:

- a. The applicable guideline for determining the offense level is U.S.S.G. § 2J1.2;
- b. The cross-reference at U.S.S.G. § 2J1.2(c) does not apply;
- c. The defendant shall be sentenced to a term of probation, the length of which shall be determined by the Court at the time of sentencing, pursuant to 18 U.S.C. § 3563 and U.S.S.G. § 5B1.3. . .

ECF Doc. 6 at paragraph 4.

The presentence report, applying U.S.S.G. § 2J1.2(a), found the base offense level

to be 14. After a reduction of two levels for acceptance of responsibility under U.S.S.G. 3E1.1(a), the PSR found the total offense level to be 12. PSR at 48. A Criminal History Category of “I” resulted in a guideline range of 10 – 16 months, in Zone C of the sentencing table. As the PSR notes, that would, under the advisory guidelines, mandate a sentence that included imprisonment for at least one-half of the minimum term.

The government, however, respectfully requests that the Court accept the plea agreement stipulation and sentence the defendant to a term of probation. The defendant’s conduct, described in detail in the PSR, consisted of wiping a computer on which he, as the primary case agent for a pending prosecution, had placed evidence material to that prosecution. That obstructive conduct occurred after the defendant had been ordered by the Court to make the computer available for a forensic examination. As such, the conduct flouted the Court’s order and threatened to derail a significant prosecution involving public corruption.

However, the government has no evidence suggesting that (a) the defendant had any reason for wiping the computer other than his expressed one, which was to remove sensitive personal and family information on the computer, or (b) the defendant had any motive to impede the public corruption prosecution grander than making one piece of evidence, the computer, unavailable for use in the prosecution. As such, the government concludes that a sentence of probation will accomplish the sentencing factors set forth at 18 U.S.C. § 3553(a).

Given the gravity of the potential effect on the prosecution, however, and given

the defendant's training, experience, and lengthy service as a federal law enforcement agent, which should have informed him of such potential effect, the government recommends that there be included in the sentence elements that will remind the defendant, for a significant period of time, of the effects his conduct had on the prosecution of the criminal case and the expenditure of otherwise unnecessary time and effort by this Court, the United States Attorney's Office, and the defense team. The government therefore recommends that any term of probation include (a) a period of home confinement, so that the defendant suffers some restriction on his activity as a result of his conduct; (b) a periodic reporting requirement to the United States Probation Office to ensure that the defendant is complying with the terms of probation; and (c) a monetary penalty that reflects the costs to the justice system caused by his knowing conduct.

With these inclusions, the government recommends acceptance of the plea agreement's stipulation for a sentence of probation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Government's Sentencing Memorandum was served on counsel of record for defendant via the court's CM/ECF on December 15, 2022.

/s/ Alan R. Jackson
Alan R. Jackson