

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
v.)	No. 10-10119-01-WEB
)	
SANTIAGO PIEDRA-SOTO,)	
)	
Defendant.)	
_____)	

Memorandum and Order

This matter came before the court on the parties' motions for departure or variance and for sentencing. The court ruled orally on the motions at the sentencing hearing of March 9, 2011. This written memorandum will supplement the court's oral ruling.

The defendant Santiago Piedra-Soto pled guilty to one count of conspiracy to distribute five pounds of a mixture containing methamphetamine. Pursuant to a plea agreement with the Government, the parties agreed to ask for a sentence within the guideline range determined by the Probation Office. The Government agreed that it would recommend a sentence at the low end of the guideline range.

A Presentence Report was prepared by the Probation Office, which calculated the defendant's total offense level as 33 (including a two-level reduction for application of the "safety valve"), and his Criminal History Category as I, resulting in an advisory guideline range of 135-168 months' imprisonment. The 120-month mandatory minimum of 21 U.S.C. § 841(b)(1)(A) was found not to apply because defendant meets the requirements of the safety valve.

Neither party filed any objections to the Presentence Report. Prior to sentencing, the Government filed a motion pursuant to USSG 5K1.1 and 18 U.S.C. § 3553(e). Based on the defendant's substantial assistance, the Government recommended a sentence of 120 months. The defendant filed his own motion for variance, arguing that several factors, including the fact that he is 42 years old, that he faces deportation after serving his sentence, and that both he and his family suffer from significant health problems, all warrant a sentence less than 120 months.

After giving substantial weight to the Government's recommendation concerning the amount of assistance provided, and considering the factors in § 3553(a) – including the need to reflect the seriousness of the offense, and to avoid unwarranted disparities in sentencing – the court concluded that a sentence of 120 months, together with the other terms and conditions stated at the hearing, represents a sentence sufficient but not greater than necessary to achieve the purposes of sentencing in § 3553(a).

Conclusion.

The Government's Motion for Downward Departure (Doc. 85) is GRANTED. The defendant's Motion for Variance (Doc. 93) is DENIED. The Probation Officer in charge of this case shall see that a copy of this order is appended to any copy of the Presentence Report made available to the Bureau of Prisons. IT IS SO ORDERED this 9th Day of March, 2011, at Wichita, Ks.

s/Wesley E. Brown

Wesley E. Brown
U.S. Senior District Judge