

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 10-40110-02-RDR

PATRICK M. TRACY, JR.,

Defendant.

O R D E R

This order is issued to record the court's reasons for making a downward variance during the sentencing hearing in the above-captioned case. This matter came before the court for a sentencing hearing on December 9, 2011. Defendant had pleaded guilty to Count 1 of an indictment charging defendant with illegal possession of a firearm as a convicted felon in violation of 18 U.S.C. § 922(g).

The court considered defendant's personal history and characteristics, the nature of the offense, defendant's criminal history, the advisory Sentencing Guidelines, and the factors the court must consider under 18 U.S.C. § 3553 when sentencing. Under the Guidelines, defendant's total offense level was 25 and his criminal history category was V. This produced a guideline range of 100 to 120 months.

The government agreed as part of a plea agreement not to advocate a sentence above 84 months. Defendant asked for a sentence of probation and presented testimony from four witnesses

to support this position.

A co-defendant in this case who pleaded guilty to the same offense received a sentence of 84 months.

The court decided to sentence defendant to 50 months. The court reached this decision for the following reasons. Defendant has a serious criminal record, although not as serious as that of the co-defendant in this case. Defendant's record includes violent crimes and drug crimes. The violent crimes, however, occurred in the 1990s. Defendant appears to have made progress as a person since then, particularly recently.

The offense conduct in this case involved the theft of firearms and then selling the firearms. Defendant's role in the overall offense conduct did not appear as substantial as that of the co-defendant. Moreover, the firearms in this case were not employed to commit some other crime.

The motivation for the crime in this case appears to have been to earn money to sustain a drug habit. The testimony before the court was that defendant has made great progress in controlling a methamphetamine addiction. This is a difficult feat and one for which defendant deserves credit.

Finally, the court heard testimony and read letters from persons who spoke most favorably on defendant's behalf. One of the witnesses was a state probation officer. This distinguishes this case from the case of the co-defendant and from many other cases.

For these reasons, the court decided to make a substantial downward variance from the bottom of the guideline range and to give defendant a substantially lesser sentence than the co-defendant. However, because of defendant's criminal history and his substantial history of drug abuse, the court was unwilling to grant a sentence of probation.

IT IS SO ORDERED.

Dated this 19th day of December, 2011 at Topeka, Kansas.

s/Richard D. Rogers
United States District Judge