

IN THE DISTRICT COURT OF THE UNITED STATES
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

United States of America)
)
v.)
)
Michael L. Miller)
_____)

CR No.: 3:07-764-JFA
Sentencing Memorandum

The defendant, Michael L. Miller, pled guilty to Count 1 and Count 9 of a nine-count Superseding Indictment on November 13, 2007. Count 1 charged him with conspiring with co-defendants Thomas Ravenel and Pasquale Pellicoro to knowingly and intentionally conspiring to unlawfully possess with intent to distribute and to distribute a quantity of cocaine.¹ Count 9 charged him with knowingly, intentionally and unlawfully possessing with intent to distribute and distributing a quantity of cocaine on January 3, 2006.²

On March 14, 2008, this court imposed a sentence consisting of a custodial term of 10 months, followed by a three year period of supervised release. This order sets forth the court's reasons for imposition of this sentence.

Following the defendant's guilty plea, the United States Probation Officer prepared a Presentence Report ("PSR") that was furnished to the defendant and his counsel, Assistant Federal Public Defender Langdon D. Long. Long objected to paragraphs 36, 37, 57, 59, and 80 of the PSR. These objections all challenged the Probation Officer's determination that Miller should not receive a two-level reduction in his guideline offense level for acceptance

¹ In violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(c) and 846.

² In violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(c).

of responsibility. The Probation Officer concluded that Miller had not readily accepted responsibility for his wrongful conduct as evidenced by his violations of the conditions of his bond shortly after he was released from federal custody pending sentencing. After hearing argument from the government and the defendant, the court overruled the objections and determined that Miller should not receive an adjustment for acceptance of responsibility in this case.

The PSR written by the Probation Officer established the defendant's offense level as 14 and his criminal case history category as I, yielding a custodial sentencing range of 15 to 21 months. Having overruled the defendant's objections, the court adopted the Probation Officer's version of the PSR as the starting point for purposes of advisory guideline sentencing.

The court next addressed the government's motion for a downward departure pursuant to § 5K1.1 of the United States Sentencing Guidelines Manual based upon Miller's substantial assistance in this case. Specifically, the government asserted that Miller provided authorities with information that led to the indictment and subsequent guilty plea of co-defendant Thomas Ravenel, as well as the indictment of co-defendant Pasquale Pellicoro who, as of this date, is a fugitive.

After hearing from all parties, the court announced that it would grant the government's motion for a downward departure and depart downward two levels, which departure yields a new advisory sentencing guideline of ten to sixteen months. The court determined that a sentence at the low end of this new guideline range, ten months, was the appropriate custodial

sentence in this case.

The court determined that a departure of two levels in the Miller case is appropriate because the record clearly disclosed that he provided substantial assistance that directly led to the indictment and subsequent guilty plea of Ravenel and the indictment of Pellicoro. Miller's decision to implicate co-defendant Ravenel when first approached by law enforcement officers should not be minimized. By implicating Ravenel, Miller arguably placed himself at odds with one of South Carolina's most politically prominent and powerful families. Ravenel, a State Constitutional Officer and eminently successful businessman, obviously had significant resources, friends and associates in the Charleston area and throughout the State of South Carolina. To someone like Miller, who admits to daily drug use, has never maintained a permanent job, reports no assets, and lives with his parents, the decision to implicate a member of this State's power structure obviously required a degree of resolve that the court determined should be rewarded with a two level reduction in his offense level. The government also indicated that Miller has "provided information about people up the food chain," referring to Miller's substantial assistance in the investigation of other persons who have committed offenses, but whom the government has not yet charged and about whom the government cannot divulge further information without risk to its ongoing investigations. Consistent with the government's position in this and other cases, the court reserves ruling on the substantial assistance rendered by Miller in the investigation and prosecution of persons other than Ravenel and Pellicoro, until such time that the government presents an appropriate Rule 35

motion detailing the nature and level of Miller's substantial assistance in those matters.³

Once the new advisory guideline level was determined, the court settled upon a sentence at the low end of the guideline range. In doing so, the court also took into account the statutory sentencing factors set out in Title 18 of the United States Code Section 3553(a).

STATUTORY FACTORS

In addition to considering the advisory guideline regime in determining a sentence sufficient, but not greater than necessary, to comply with the purposes set forth by statute, the court considered the factors set out in 18 U.S.C. § 3553(a). In considering those factors, the court found that the nature and circumstances of the offense and the history and characteristics of the defendant supported a custodial sentence at the low end of the advisory guideline range. The court found the need to render a custodial sentence in order to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense.

Specifically, the court finds the nature and circumstances of Miller's offense, involving a relatively minor amount of powder cocaine, as compared to amounts typically prosecuted in federal court, warrants a minimum sentence. But for being involved in a conspiracy with Ravenel, a State Constitutional Officer, Miller would likely have been prosecuted in state court, if at all. However, because the original investigating agency, SLED, was a state agency and thereby perceived a potential conflict of interest in investigating a case involving Miller's

³ In an effort to accommodate the suggestion that Miller should benefit from his cooperation with authorities in other ongoing investigations, the court permitted Miller to delay his reporting date until five months from the imposition of the sentence, within which time the government conceded that it would be able to complete its other investigations such that a determination on a Rule 35 motion could be made timely. By letter filed with the court on March 19, 2008, Miller declined to avail himself of the five month delay in reporting and stated that he wishes to report in the normal course.

co-defendant Ravenel, the State Constitutional Officer who signed their paychecks, it handed off the investigation to the U.S. Attorney's Office, landing Miller's case in federal court, as well. The court finds that the nature and circumstances of Miller's offense—resulting in a rather anomalous federal case charging a minimal amount of powder cocaine—favors a minimum sentence.

Further, the court finds that Miller was a habitual drug user, admitting to daily use of cocaine and prescription pills, and that he dealt drugs to feed his habit and to profit, as his record does not reflect a stable history of legitimate employment.

Next, the court considered the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense. Given the relatively minor amount of cocaine involved in this case, and the fact that the victims in this offense were willing participants sharing the drugs at private parties, the court finds just punishment to favor a minimum sentence. However, the court recognizes that no matter how minor the amount of drugs involved, the law is the law, and it must be enforced. The court's function is not to make, but to apply, the law. Therefore, the court finds a custodial sentence is appropriate so as to promote respect for the law, to deter defendant from further criminal conduct, and to provide the defendant with needed correctional treatment in the most effective manner.

The court has considered all these factors and has determined that a sentence at the low end of the advisory guideline range, to wit: ten months, comports with all of the statutory sentencing factors, as well as the advisory sentencing guidelines. The court recommends that

if Miller otherwise qualifies, that he be designated to an institution as close to Charleston, South Carolina, as possible.

The Clerk shall file this memorandum with the public record in this case as documentation of the court's reasons for imposition of the particular sentence.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Joseph F. Anderson, Jr." in a cursive style.

Joseph F. Anderson, Jr.
United States District Judge

March 21, 2008
Columbia, South Carolina