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6 MAHSA PARVIZ

7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA

9 UNITED STATES OF AMERICA

10 Plaintiff,

11 vs.

12 MAHSA PARVIZ

13 Defendant.

14 NOTICE OF FILING AND SENTENCING
15 MEMORANDUM OF DEFENDANT
16 MAHSA PARVIZ

17 DATE: July 12, 2022
18 Time: 8:30 a.m.
19 Hon. Stanley Blumenfeld, Jr.

20 Defendant Mahsa Parviz is before this Court for sentencing subsequent to her conviction
21 after a jury trial on counts one and two of the indictment. The charges consisted of making a
22 false statement in a passport application in count one in violation of 18 U.S.C. 1542 and
23 aggravated identity theft in count two in violation of 18 U.S.C. 1028 A (a)(1). Subsequent to Ms.
24 Parviz' conviction, the Court ordered the probation office to prepare a pre-sentence report (PSR).
25 The pre-sentence report (PSR), disclosed on January 26, 2022 was prepared by probation officer
26 Scott Shaffer.

27 Defendant Parviz objects to the probation officer's analysis and conclusion with respect to the
28 recommended upward departure sentence of 73 months.

Ms. Parviz respectfully submits that a sentence of 24 months would indeed be an appropriate and
reasonable sentence when the Court takes into consideration the statutory factors entailed in
18 U.S.C 3553 (a), 3661.

1 **THE SENTENCING GUIDELINES ARE ADVISORY, NOT MANDATORY**

2 The United States Supreme Court in United States vs. Booker, 125 S. Ct. 738 (2005),
3 held that the U.S. Sentencing Guidelines are merely advisory in nature, and the Court must
4 consider all of the sentencing factors enumerated in 18 U.S.C. 3553 (a), despite the fact that the
5 Guidelines rejected or ignored these factors. The factors mentioned in 18 U.S.C. 3553 (a) directs
6 the Court to consider: 1) the nature and the circumstances of the offense, 2) the history and the
7 characteristics of the offender, 3) the need to avoid unwarranted sentencing disparities among
8 defendants with similar records who have been found guilty of similar conduct, 4) the need to
9 impose a punishment that reflects the seriousness of the offense, to promote respect for the law
10 and to provide just punishment for the offense, 5) to afford adequate deterrence, 6) to protect the
11 public from further crimes, 7) to provide defendant with needed education , vocational training,
12 medical care or other correctional treatment, and 8) the kinds of sentences that are available.
13 Additionally, 18 U.S.C. 3661 provides that “no limitation shall be placed on the information
14 concerning the background, character, and conduct of the person ... which a court... may consider
15 for the purpose of imposing an appropriate sentence.” In summary, in all cases, courts must
16 consider all of the statutory factors, not just the Guidelines in arriving at the appropriate sentence.
17 According to Booker, Congress’ basic goal in passing the Sentencing Act was to move the
18 sentencing system in the direction of increased uniformity. However, that uniformity did not
19 consist simply of similar sentences for violation of the same statute. It consists, more
20 importantly, of similar relationships between sentences and real conduct. Additionally, Booker,
21 emphasizes that Congress sought to “provide certainty and fairness in meeting the purposes of
22 sentencing, while avoiding unwarranted sentencing disparities ... and maintaining sufficient
23 flexibility to permit individualized sentences when warranted.”
24 Other statutory sections also provide the Court direction in sentencing such as the issue of
25 “length of the term” of a prison sentence. 18 U.S.C 3582, specifically provides that the Court in
26 determining the length of the term, shall consider factors set forth in section 3553 (a),
27 recognizing that imprisonment is not an appropriate means of correction and rehabilitation.

28 The reasonableness for all sentencing decisions according to the Ninth Circuit, is an

1 abuse of discretion standard whether the sentence is inside or outside of the Guidelines.
2 United States vs. Ruff, 535 F.3d 999, 1002 (9th Cir. 2008); Gall vs. United States, 128 S. Ct.586,
3 594, 600 (2007). In Ruff, it was held that although the court of appeals considers the totality of
4 the circumstances in reviewing a sentence, including the degree of variance for a sentence
5 imposed outside of the sentencing guidelines range, extraordinary circumstances are not needed
6 to justify a sentence outside of the guidelines range and the Court of Appeals must give due
7 deference to the District Court’s decision that the sentencing factors warrant a particular
8 variance. Furthermore in Gall, it was held that while appellate court, in reviewing
9 reasonableness of a sentence outside advisory guidelines range, may take degree of variance into
10 account and there is no rule that requires “extraordinary” circumstances to justify sentence
11 outside guidelines range. The court in Gall, further held that the district judge may not presume
12 that guidelines range is reasonable, but must make an individualized assessment based on the
13 facts presented.

14 Probation Officer is suggesting a 73 month sentence for defendant Parviz recommending
15 an upward departure from the guideline range of 30-37 months for count 1, because of the
16 “seriousness of the offense” specifically arguing that the present crime was committed to
17 facilitate or conceal another crime namely attempted kidnaping of her child. It is important to
18 point out that although almost all felony offenses can be considered “serious”, Ms. Parviz was
19 previously charged and convicted of attempted kidnaping in state court and served approximately
20 1.7 years in prison.

21 As such she should not be punished twice for the same offense.

22 **NATURE AND CIRCUMSTANCES OF THE OFFENSE**

23 **MITIGATING FACTORS**

24 The gravamen of Ms. Parviz’s misdeeds resulting in violation of criminal statutes in both
25 recent state and federal courts stems from her desperation, frustration and anger that her child
26 was taken away from her custody. According to Dr. Saint Martin (see evaluation report; Exh. #1)
27 Ms. Parviz suffers from borderline personality disorder and also bipolar disorder which is
28 considered a serious mental condition and deficiency. Dr. Saint Martin explains that defendant’s

1 borderline personality disorder would not have resulted in criminal behavior if Ms. Parviz had
2 not developed a post-partum bipolar disorder (p.6). In his psychiatric evaluation report Dr. Saint
3 Martin concludes that Ms. Parviz developed bipolar disorder after giving birth to her child.
4 According to the report the bipolar disorder exacerbated Ms. Parviz' borderline personality
5 disorder. Additionally, Dr. Saint Martin aptly states that "Ms. Parviz' behavior from the time she
6 gave birth to up the current federal offense and continuing are attributed to an untreated bipolar
7 disorder on top of a borderline personality disorder. (p. 5). In conclusion Dr. Saint Martin
8 strongly recommends that Ms. Parviz needs treatment for her bipolar disorder because it was
9 responsible for her criminal behavior. Pursuant to U.S. Sentencing Guidelines Sec. 5K2.13, a
10 downward departure may be warranted if, 1) the defendant committed the offense while suffering
11 from a significantly reduced mental capacity, and 2) the significantly reduced mental capacity
12 contributed substantially to the commission of the offense. Here in the instant case, according to
13 Dr. Saint Martin defendant Parviz suffered from bipolar disorder that contributed to the
14 commission of her offenses. It is abundantly clear that bipolar disorder is considered a serious
15 mental disorder that significantly reduces a person's mental capacity.
16 Accordingly, defendant Parviz is requesting that the Court consider her significantly reduced
17 mental capacity due to her bipolar disorder and depart downward as permitted by Sec. 5K2.13 of
18 the guidelines.

19 In 2019, prior to her arrest for the current matter, defendant Parviz was convicted in
20 Texas State Court for offenses of attempted kidnaping (her child) and tampering with
21 government documents. She served approximately 1.7 years in prison for the offenses
22 mentioned. The above mentioned offenses and subsequent convictions in Texas were related to
23 her child. As such, the above mentioned state offenses should be considered relevant conduct
24 when taken into account in the present sentencing calculation. Pursuant to sections 5K2.23
25 a downward departure may be appropriate if the defendant 1) has completed serving a term of
26 imprisonment; and 2) subsection (b) of 5G1.3 (imposition of a sentence on a defendant subject to
27 undischarged term of imprisonment) would have provided an adjustment had that completed
28 term of imprisonment been undischarged at time of sentencing for the instant offense.

1 Basically, USSG Sec. 5K2.23 mentions downward departure is appropriate even for discharged
2 or completed prior sentence as long as the prior offense is considered relevant conduct.

3 DEPARTURE BASED ON INADEQUACY OF CRIMINAL HISTORY CATEGORY

4 According to USSG Sec. 4A1.3 (b)(1) the standard for downward departure is as follows:

5 If reliable information indicates that the defendant's criminal history category substantially over-
6 represents the seriousness of the defendant's criminal history or the likelihood that the defendant
7 will commit other crimes, a downward departure may be warranted.

8 Here in this instance defendant's criminal history consisted of drunk driving, forgery,
9 endangering a child negligently, evading arrest (misdemeanor), tampering with government
10 documents and attempted kidnaping of her child. Although it can be argued that the above
11 mentioned offenses are serious, yet none of them involved violence and the attempted kidnaping
12 conviction involved defendant trying to gain custody of her child albeit illegally and recklessly.

13 According to Dr. Saint Martin defendant Mahsa Parviz has been suffering from bipolar disorder
14 and because of her significantly diminished mental capacity due to bipolar disorder, she was
15 unable to think and act rationally at the time of committing the offenses.

16 ADJUSTMENT BASED ON ACCEPTANCE OF RESPONSIBILITY

17 In the commentary notes sec.2 of USSG Sec. 3E1.1, "conviction by trial, however, does not
18 automatically preclude a defendant from consideration for reduction. In rare situations a
19 defendant may clearly demonstrate an acceptance of responsibility for his conduct even though
20 he exercises his constitutional right to trial. This may occur, for example, where a defendant
21 goes to trial to assert and preserve issues that do not relate to factual guilt (e.g., constitutional
22 challenge to a statute or a challenge to the applicability of a statute to his conduct).

23 Here in this instance, Ms. Parviz in her trial challenged the applicability of count 2, namely
24 aggravated identity theft, 18 U.S.C 1028A (a)(1) to her conduct in this case in her motions for
25 new trial and/or acquittal, pursuant to Federal Rules of Criminal Procedure. 29 and 31.

26 Defendant Parviz has indicated to her defense counsel and probation officer in her recent
27 interview that she accepts responsibility for her conduct. Accordingly, she is allowed a 2 point
28 deduction even though she exercised her constitutional right to trial.

