

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

UNITED STATES OF AMERICA,

UNDER SEAL

JAMES TRUMAN,

Defendant.

SENTENCING MEMORANDUM

James Truman is a young man who, prior to his offenses, worked hard to lead a good life and support his family. He continues to do so. He is most concerned about the effect a period of imprisonment will have upon his family given his wife’s fragile health and need for his help. He has shown a willingness to persevere and overcome challenges that would have frustrated many. Though his actions harmed the women involved and the institution of the Bureau of Prisons, given his family circumstances, the evidence of his otherwise good character, and the collateral consequences Mr. Truman will suffer, a sentence of probation would be “sufficient, but not greater than necessary” to comply with the goals of sentencing established by Congress. 18 U.S.C. § 3553(a).

Std.
Intro

Family Circumstances

Sub-Heading

Mr. Truman’s wife, Sylvia, is able to work as a secretary for the Lincoln County School Board Maintenance Department, but her health is precarious.¹ On a day to day basis, she “has

¹ Ms. Truman has missed 149 hours of work since the end of February because of illness or her need for medical treatment. *See* Ms. Truman’s leave record attached as Ex. 1 (Some of the leave is designated annual leave (AL) or personal leave (PL) rather than sick leave (SK), but that is because Ms. Truman had exhausted her sick leave. Note, too, that in some instances she took her leave in a ten-hour increment because during the summer the Department works four 10 hour days.) Ms.

difficulty with simple tasks of daily living, such as turning door knobs and opening jars.” Ex. 3, p. 2. Most mornings, she needs help getting dressed. Ex. 4. She depends upon her husband to give her weekly injections, as she has difficulty “pushing the plunger.” *Id.* “She struggles with fatigue and muscle and joint aches with swelling.” Ex. 3, p. 2. Doc.

Ms. Truman’s difficulties stem to a great degree from the rheumatoid arthritis for which she is under the care of physicians at the Shands Hospital Clinic in Gainesville and the Southern Medical Group in Tallahassee. Ex. 5, p. 1. It is a disease that, as described by Florida State Nursing Professor Laurie Grubbs, “leads to destruction of the articular cartilage of the joints resulting in fusion of the affected joints thus crippling the individual.” *Id.* at 2. It can also affect other tissues and organs, including inflammation of the lungs, heart, and eyes.” *Id.* Ms. Truman, unfortunately, also suffers from a liver disease, primary biliary cirrhosis. *Id.* Like the rheumatoid arthritis, it is a progressive disease. In Ms. Truman’s case, she may need a liver transplant within the decade. *Id.* Medical Records

Mr. Truman’s Disadvantages Sub_Heading

Mr. Truman’s mother, Gloria Truman, has described the difficulties in life her son has faced. Ex. 3, pp. 1-2. Those difficulties range from the abuse he suffered as an infant at the hands of his biological mother, who, herself, was hospitalized at Florida State Hospital, his struggles at school marked by a learning disability and difficulties in speech and communication, and lingering physical and emotional problems. *Id.* Tallahassee psychologist Terry Leland, in his report, as has psychiatric Doc.

Truman has advised, too, that her mother had to donate 60 hours of leave in April of this year because she had exhausted all of hers. *See* Ex. 2. She reports that she currently has used up all of her sick leave and has roughly 20 hours of annual leave.

mental health nurse practitioner Elaine Wyman in her letter, have detailed those emotional difficulties in clinical terms. Ex. 6, 7.² Doc.

Sub-Heading

Mr. Truman's History

Mr. Truman, though, has in many ways surmounted his disadvantages. As an adult, Mr. Truman has always worked. Prior to his employment by the Bureau of Prisons, he worked for Florida's Department of Corrections, and, in his younger days, worked a variety of jobs: Super-Lube, West Florida Electric, a grocery store, and a mobile home company. PSR, ¶ 52-55. Upon losing his job with the Bureau of Prisons, Mr. Truman went right to work for a north Florida sawmill. *Id.* at ¶ 51.

Mr. Truman worked nearly six years for the Bureau of Prisons before losing his job as a result of the offenses that have brought him before this Court. *Id.* at ¶ 52. His job was a difficult one, and in Mr. Truman's case, resulted in a number of injuries usually from his efforts to separate prisoners who were fighting one another. In one instance, he suffered a knee injury that required extensive surgery. Ex. 3, p. 1. In another that occurred in 2009, he suffered a concussion in a fight where a prisoner's effort to stab him failed only because of Mr. Truman's protective vest. Ex. 3, p. 1, PSR ¶ 48. The latter incident was particularly unsettling, leading Mr. Truman to seek psychological counseling and resulting in a diagnosis of post-traumatic stress disorder. *Id.*³ Doc.

²In paragraph 49 of the presentence report, there is mention of Mr. Truman's alcohol abuse during some of the time he worked for the Bureau of Prisons. Mr. Truman reports he stopped drinking about the time his employment ended with the Bureau of Prisons and that he no longer consumes alcohol.

³In paragraph 48 of the presentence report, it is stated that the diagnosis of post traumatic stress disorder was made in 2003 following the death of Mr. Truman's grandmother. While Mr. Truman did begin counseling in 2003 following the death of his grandmother, Ms. Wyman concluded that he suffered from post traumatic stress disorder in 2009, after the near stabbing.

His mother describes him as “a very hard worker, reliable, courteous, a wonderful father and husband.” Ex. 3, p. 2. Neighbors, Mildred Roebuck and Margaret Kennedy find him to be “respectful” and “willing to help others.” Ex. 8, pp. 1-2. His pastor, Fred Kilpatrick, a neighbor, Wanda Twain, and a former employer, Bill Simpson, have written of him as a good and reliable father and as being devoted to his family. *Id.* at 4-5.⁴ Family friend, James Wade, Margaret Kennedy, and Mr. Truman’s mother all mention his efforts to overcome his learning disabilities. *Id.* at 2, 7, Ex. 3.

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Collateral Consequences of Sex Offender Registration

Sub-Heading

It’s difficult to explain just why Mr. Truman committed his offenses. Some may claim his actions were motivated by a desire to take advantage of those over whom he wielded authority or even by some form of misogyny. His wife who has stood by him, however, has suggested that health problems that she and their daughter were experiencing contributed to a high-level of stress, which affected her husband’s judgment. Ex. 4. His mother notes that her son had stopped taking his medications during the time the offenses occurred, which may have “contributed to his impulsive, irresponsible behavior.” Ex. 3. Dr. Leland believes that what he found to be Mr. Truman’s lack of “adequate coping mechanisms for working through his emotional distress” contributed to Mr. Truman’s conduct. Ex. 6. Mr. Truman describes his actions as “a serious lapse of judgment.” Ex. 9.

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Whatever the exact reason, he has no criminal history and the offenses were situational - he was a prison guard responsible for women prisoners. Realistically, he is not the sort of individual who presents a threat to his neighbors or to those with whom he comes into contact. Nonetheless,

⁴Mr. Truman acknowledges that his actions that led to the charges in this case are at odds with his concern for his family and the observations about his devotion to his family. It is his hope that the Court will see his conduct for what it was, a lapse, an inexcusable one, but not an abandonment of his concern.

he is required by the federal Sex Offender and Registration and Notification Act to register as a sex offender. PSR ¶ 65. The law requires that he, as a tier I sex offender, do so for 15 years with the possibility of a reduction to 10 years if he meets certain conditions. *See* 42 U.S.C. § 16915(a)(1) and (b)(1). Under Florida law, the most onerous conditions, such as the residency restrictions found in Fla. Stat. § 775.215 and employment restrictions in § 775.21(10)(b), apply to those classified pursuant to Fla. Stat. § 775.21 as a “sexual predators,” a classification inapplicable to Mr. Truman. Nonetheless, given the federal registration requirement, his name, picture, and address will appear on the “Florida Sexual Offenders and Predators” web site maintained by the Florida Department of Law Enforcement.⁵ The web site has a feature that allows visitors to find the name, address and picture of any sexual predator or offender. Visitors can search by the offender’s name or by choosing an optional radius of any given address. Visitors can also sign up for an alert that is sent if a sexual offender move close to any address the visitor wishes to monitor.⁶ Within two days of being sentenced, Mr. Truman will have to report to Florida’s Department of Highway Safety to obtain a new driver’s license, one that bears on the front the marking “943.0435,” which will designate him, at least to anyone knowledgeable about Florida’s registration law, as a sexual offender. Fla. Stat. §§ 943.0435(3), 322.141(3)(b). In registering, Mr. Truman will have to report in person to the Lincoln County Sheriff’s Department and provide them with a long list of information, including any “electronic mail address” and any “instant messaging name.” Fla. Stat. § 943.0435(1)(a)(2). Within

⁵ The website is located at:
http://offender.fdle.state.fl.us/offender/homepage.do;jsessionid=WMV+yQvhHrKbAVaEzpTh3w__

⁶<http://www.floridaoffenderalert.com/>

two days changing his address, he must report in person to the local sheriff. Fla. Stat. § 943.0435(1)(a)(4)(b).

The consequences of being labeled as a sex offender will be significant. The internet registries are “not ignored by the public.” Catherine Wagner, *The Good Left Undone: How to Stop Sex Offender Laws From Causing Unnecessary Harm at the Expense of Effectiveness*, 38 Am. J. Crim. L. 263, 266 (2011). In Florida, between June and August of this year, visitors to the Florida Department of Law Enforcement website examined almost 12 million times the information about individuals listed as sexual offenders or predators. Ex. 10.⁷

Other
Sources

The public has a harsh view of those labeled as sexual offenders with significant percentages believing sexual offenders should be harassed or harmed:

One survey found that 75% of people did not believe that Megan’s Law violated sex offenders’ right to privacy, including 37% who believed that sex offenders had no rights. In that same study 44% of respondents thought it was acceptable for sex offenders to be harassed, 35% thought it was acceptable for sex offenders to be injured, and 28% thought it was acceptable for sex offenders to have their property damaged because of their status as sex offenders.

Id. at 267. The views of the public translate into real consequences for those labeled as sex offenders. As a rule those, such as Mr. Truman, who live in rural areas “generally experience[] more negative consequences than those living in metropolitan areas.” Richard Tewksbury, *Exile at Home: The Unintended Consequences of Sex Offender Residency Restrictions*, 42 Harv. C.R. - C.L. L.Rev 531,

Other
Sources

⁷Exhibit 10 is a document from the Florida Department of Law Enforcement that shows there were 11,971,444 requests for a “public flyer” from its “Sexual Offender and Predator Internet site.” As a representative from the Department explained to a Federal Public Defender investigator, when a visitor to the website follows the links to a particular individual listed as a sexual offender or a sexual predator, it is electronically recorded as a request for a “public flyer.”

533 (2007). In a Kentucky study of a general sample of registered sex offenders, 47% had been “harassed in person” and 43% had “lost a job as a result of registration.” *Id.* at 532. In a Florida study, 27% of those interviewed reported losing their job because of their registration and 19% “reported harassment of some form.” *Id.* at 533. And none of this, of course, measures the difficulty of getting a job in the first place. A felony conviction is, in itself, a formidable obstacle. The sex offender designation must be insurmountable for many.

Other
Sources

Collateral Financial Consequences

Sub-Heading

In his letter to the Court, Mr. Truman concisely stated his employment circumstances: “I also have screwed up our future, no job I will be able to get is going to have a good retirement.” Ex. 9. At the \$10 an hour he is now earning at the sawmill, he could, if there are 50 weeks worth of full-time work, earn \$20,000 this year. He earned \$49,000 working for the Bureau of Prisons. PSR ¶52. His loss of retirement and health benefits further erode his and his family’s welfare. Even if Mr. Truman’s job prospects improve some over time, it is a loss that, especially when extrapolated into the years to come, will dramatically reduce the well being of he and his family.

Collateral Consequences and Sentencing

Sub-Heading

The collateral consequences of a conviction and potential prison sentence can appropriately play a role in a court’s sentencing decision. Those consequences include the impact the sentence will have upon the defendant’s family. *See Gall v. United States*, 552 U.S. 38, 59 (2007) (citing Government’s oral argument that a below-guidelines sentence would be appropriate where “there are compelling family circumstances where individuals will be very badly hurt if no one is available to take care of them”); *United States v. Nowak*, 2007 WL 528194, *3 (E.D. Wis. Feb. 15, 2007) (“Imprisonment would also have harmed those who depended upon the defendant, financially and

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emotionally: his kids, his fiancé, and his mother and sister (and her five kids)"). Courts have considered, too, the defendant's loss of his job. *See, e.g. United States v. Samaras*, 390 F. Supp.2d 805, 809 (E.D. Wis. 2005) (imposing below-guideline sentence because "as a consequence of his conviction and sentence, defendant lost a good public sector job, another factor not supported by the guidelines.") The harsh consequences that follow designation as a sex offender have also been relied upon by the courts to impose below-guideline sentences. *See, e.g., United States v. Garate*, 543 F.3d 1026, 1028-1029 (8th Cir. 2008) (district court properly considered lasting effects of registering as a sex offender in deciding to impose below-guideline sentence); *United States v. Baird*, 2008 WL 151258 (D. Neb. Jan. 11, 2008) (where the court imposed a below-guidelines sentence because, among other reasons, "Baird lost his military career, has a felony conviction on his record, and will have to register as a sex offender").

18 U.S.C. § 3553(a)

In Mr. Truman's case, his wife needs his help to accomplish the tasks of daily living. She needs his help especially in the care of the couple's four-year old daughter, Savannah. Then, too, his family faces financial difficulties that would be significantly worsened by his imprisonment. They currently own a modest home in Chattahoochee with mortgage payments of \$400 a month. PSR ¶ 57. Mr. Truman's loss of his job with the Bureau of Prisons has left the family with a negative cash flow. *Id.* The loss of what is close to 50% of the family income if Mr. Truman went to prison would be financially disastrous. *Id.*

Under the Sentencing Guidelines, the Sentencing Commission discouraged departures based upon "Family Ties and Responsibilities." USSG §5H1.6. Even under that provision, though, one of Departure the circumstances listed in the commentary aptly describes Mr. Truman's situation: "The defendant's

service of a sentence within the applicable range will cause a substantial, direct, and specific loss of essential caretaking, or essential financial support, to the defendant's family." USSG §5H1.6, comment. (n. 1(B)(i)). As for the §3553(a) factors, the need for the sentence to provide "just punishment" surely takes into account harsh consequences visited upon those who depend upon the defendant. 18 U.S.C. § 3553(a)(2)(A). That would seem to be especially true for Mr. Truman, where given his otherwise good character and the nature of the offense, there is no need to imprison him to "protect the public." 18 U.S.C. § 3553(a)(2)(C).

3553(a)

The long-term damage Mr. Truman has suffered to his ability to make a living and provide for his family as well as the hardships he will face because of his obligation to register as a sex offender also enter into the calculus of the need to provide just punishment. While many who are convicted and sentenced in federal court do suffer financially in the years following a conviction, most will not suffer to the extent that Mr. Truman will. Some do not have as much to lose as did Mr. Truman. Others have a better educational background or a greater ability to make up the loss. Only a handful of those who come before the court will experience the hardship that comes with being labeled a sex offender, and in nearly all of those cases, there will be a far more compelling reason that justifies the scarlet letter.

Finally, and maybe most importantly, Mr. Truman's devotion to his family, his support of his family, and his willingness to work hard to overcome obstacles all provide assurance that Mr. Truman will be the decent hard-working person he has been for nearly all of his twenty eight years.

Conclusion

Sub-Heading

Even when the Sentencing Guidelines were mandatory, sentencing courts were to treat those before them as individuals. *See Koon v. United States*, 518 U.S. 81, 113 (1996) ("It has been uniform

and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.”). The change in the law brought about by the decision in Booker v. United States, 543 U.S. 220 (2005), and the command of 18 U.S.C. § 3553(a) to impose a sentence that is “sufficient, but not greater than necessary,” have given sentencing courts latitude to impose a sentence that fits the crime and the person before the court. Mr. Truman respectfully requests this Court to do just that and to impose a sentence of probation.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to office of Karen Rhew-Miller, Assistant United States Attorney, 111 N. Adams Street, Tallahassee, FL 32301, this September 12, 2012.

Respectfully submitted,

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