

than necessary” to comply with the purposes of federal sentencing? *See* 18 U.S.C. § 3553(a). The advisory Sentencing Guidelines provide for a sentence of 63 to 78 months – five to six-and-one-half years, a term that would incarcerate Mr. Daum into his seventies – but, as the Court is aware, the Guidelines range is only one of many factors to be considered, and the Court “may not presume that the Guidelines range is reasonable.” *Gall v. United States*, 552 U.S. 38, 50 (2007). We urge the Court to conclude, based on Mr. Daum’s history and characteristics, the nature and circumstances of his offense, and other factors, that a sentence of this duration would be excessive in the case of this 66-year-old defendant who has lost his livelihood and his reputation in a highly-publicized prosecution, who gained no personal enrichment from his crimes, and who presents no risk of recidivism. Instead, we ask the Court to apply a downward variance and sentence Mr. Daum to one year and a day of incarceration. We respectfully submit that, for this defendant, such a sentence is amply punitive to reflect the seriousness of his offenses and send a strong message of deterrence to others in his situation, but also would recognize the many other forms of punishment and permanent consequences that Mr. Daum has and will continue to experience as a result of his convictions.

I. THE ADVISORY SENTENCING GUIDELINES RANGE

Mr. Daum does not dispute that his advisory Guidelines range is, as the Presentence Investigation Report (PIR) reflects, 63 to 78 months. The calculation begins with Guideline section 2J1.2, the obstruction-of-justice Guideline, but ultimately ends with Guideline section 2X3.1, the accessory-after-the-fact Guideline. This transition between Guidelines is controlled by a cross-reference in section 2J1.2, which requires reliance on whichever Guideline (2J1.2 or 2X3.1) results in the higher offense level. Mr. Daum’s adjusted offense level under the obstruction-of-justice Guideline (2J1.2) is 19. But the accessory-after-the-fact Guideline (2X3.1)

ties Mr. Daum's base offense level to that of Delante White's very serious crime (Unlawful Possession with Intent to Distribute 50 grams or more of Cocaine Base) by adopting that offense level (28, which reflects the drug weight involved in Mr. White's case) and then subtracting 6 levels. The resulting offense level under section 2X3.1, and the one that applies here because it is higher than the applicable offense level under section 2J1.1, is 22.

Mr. Daum also does not dispute the PIR writer's conclusion that the Court's findings of fact at trial would support application of a four-level upward adjustment under Guideline section 3B1.1(a) (*i.e.*, for an "organizer or leader" of criminal activity involving five or more participants), which results in a total offense level of 26. With Mr. Daum's criminal history category of I, the applicable advisory Guidelines range is 63 to 78 months.

II. THE OTHER § 3553 FACTORS

In the post-*Booker* era, the sentencing court's duty is to consider all the factors identified in 18 U.S.C. § 3553 and impose a sentence that is "sufficient, but not greater than necessary" to comply with the four purposes of sentencing set forth in the statute. 18 U.S.C. § 3553(a). Those four purposes are the need for the sentence imposed (1) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment; (2) to afford adequate deterrence to criminal conduct; (3) to protect the public from further crimes of the defendant; and (4) to provide the defendant with needed training, medical care, or other correctional treatment in the most effective manner. 18 U.S.C. § 3553(a)(2). In addition, § 3553 requires district courts to consider the following factors (in addition to the advisory Guidelines range and any pertinent policy statements issued by the Sentencing Commission) in imposing sentence: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the kinds of sentences available; (3) the need to avoid unwarranted sentence disparities among

defendants with similar records who have been found guilty of similar conduct; and (4) the need to provide restitution to any victim(s). 18 U.S.C. § 3553(a)(1)-(7). For the reasons that follow, we submit that a downward variance from the advisory Guidelines range is warranted in this case.

A. *The Nature and Circumstances of Mr. Daum's Offenses*

This Court knows the facts of this case well, and Mr. Daum acknowledges the very serious nature of the offenses of which he has been convicted. The trial evidence proved to the Court's satisfaction that Mr. Daum violated his duties as an officer of the Court and member of the Bar by leading several other individuals in a dishonest and illegal effort to corrupt a federal criminal proceeding. Given the Court's findings, Mr. Daum does not ask the Court to afford him sentencing leniency on any theory that relies on characterizing his offenses as minor, insignificant, or excusable. But Mr. Daum does ask the Court to consider one aspect of the offenses of conviction that, we submit, warrants some recognition at sentencing.

In particular, Mr. Daum did not benefit personally, or even stand potentially to benefit personally, from his offenses. The Court remarked on this very matter – *i.e.*, the absence of any apparent personal motive for Mr. Daum to commit his crimes – in its verdict. Verdict, Dkt. 228, at 25. At that time, the Court noted that the government bore no burden to prove motive at trial. That is true, but at sentencing the Court can consider the absence of any self-enrichment motive as a feature of the “nature and circumstances” of Mr. Daum's offenses that bears on the type and duration of sentence that is “sufficient, but not greater than necessary” in this case. The conduct that resulted in Mr. Daum's convictions, while unquestionably wrong, did not result in or promise any meaningful monetary profit to Mr. Daum or his law practice, nor did it benefit Mr. Daum or anyone close to him in any non-monetary sense. Rather, the only discernible motive

for the conduct shown at trial appears to have been excessive and seriously misguided zeal on Mr. Daum's part to assist a criminal client facing a 20-year sentence. That fact does not excuse Mr. Daum or the indefensible decisions that the Court has found that he made. But it does distinguish him from defendants who engage in comparable conduct for personal enrichment. We ask the Court to consider this distinction to be a mitigating factor for sentencing purposes.

B. *The History and Characteristics of Mr. Daum*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Through hard work and perseverance, Mr. Daum accomplished those goals by being the first college graduate in his family and then completing law school to become an attorney. His against-the-odds achievements have now been eclipsed by this prosecution and the events underlying it. Thus, in the final years of his career, Mr. Daum destroyed the professional stature and reputation that he spent a lifetime building. We ask the Court to consider Mr. Daum's history and characteristics, and the non-incarceration punishment he has endured as a result of his crimes, as factors favoring a downward variance.

Mr. Daum was born in 1946 in South Orange, New Jersey. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

June 23, 1978, Mr. Daum was admitted to the District of Columbia Bar and commenced his 33-year career as an attorney.

From 1978 to 1985, Mr. Daum practiced in the areas of administrative and civil law. From 1985 to 1987, he served as general counsel for Pan America Financial Corporation in Arlington, Virginia. From 1987 to 1991, Mr. Daum was introduced to criminal defense practice at the law firm of Kellogg, Krebs & Moran in Falls Church, Virginia. He then joined the law firm of Schwitzer, Benzen & Scheer, in Washington, D.C. In 1994, Mr. Daum became a solo criminal-defense practitioner with a portfolio comprised largely (*i.e.*, 85%) of court-appointed representations. This practice was rewarding to Mr. Daum, as he felt he was making a positive contribution to the community and the courts while also engaging in a worthwhile profession that he enjoyed.

Mr. Daum ended his law practice in 2012 as a result of this prosecution and knows that he will never be able to practice law again. He also knows that the scores of cases he handled well in the course of his career are now a forgotten part of his legacy, as his name has become synonymous with the criminal conduct that led to this highly-publicized prosecution. At age 66, Mr. Daum is an outcast from the legal community that he worked so hard and overcame adversity to join. He has squandered his accomplishments and will live with the constant and heavy burden of that regret.

Mr. Daum has been fortunate to have his wife, Mary Patterson Daum, with him during these difficult times. The couple married in 2001 (this is Mr. Daum's third marriage), and they are committed to and supportive of each other. Mrs. Daum's [REDACTED] [REDACTED] with her husband [REDACTED] and their three young children. Mr. Daum has a close relationship with [REDACTED], and the children refer to

him as their “Poppy.” Mr. Daum sees the [REDACTED] children regularly, and his relationship with them is one of the greatest joys in his life. Mr. Daum also enjoys a close relationship with [REDACTED]

[REDACTED] Mr. Daum’s [REDACTED]

[REDACTED] Mr. Daum has been committed throughout his life to supporting his family, friends, and community, both financially and emotionally. In her letter to the Court, Mrs. Daum describes her husband in these terms:

Perhaps it would be helpful to offer some insight as to the man I have known for 16 years. Charles is a quiet and gentle man who has always made time to help others. From the beginning of our courtship until now he has shown an uncommon respect for family, friends and community. His love of family is a joy to behold. He is a wonderful husband, father and grandfather. Our family although small is close in large part due to the time he spends with all of us, especially with our grandchildren, [REDACTED]

[REDACTED] Oh how they love Poppy. Throughout our marriage [I] am proud to say that my husband is there to assist friends and neighbors in things large and small. He constantly gives of himself without asking for anything in return. Likewise[,] he is first to volunteer his time to community projects involving children and senior citizens. It is touching to see Charles spending time with elderly people so they don't feel forgotten or neglected. His generosity of time and spirit for young and old alike is matched by determined loyalty. [REDACTED]

[REDACTED] As a partner in our marriage[,] Charles has been hard working and supportive of family harmony. It is a gift to be married to such an unselfish man.

See Attachment A, Letter from Mary Patterson Daum. In keeping with Mrs. Daum’s characterizations of her husband, the couple made plans to participate in a “Mission of Mercy” dental outreach operation in Salisbury, Maryland, later this year. The operation is dedicated to providing essential dental exams and other dental care to homeless citizens of Wicomico County. Mr. Daum’s role in the operation, if he is able to attend, would be transporting patients to the examination sites and providing other logistical support.

It is devastating to Mr. Daum that, through his own conduct, he has jeopardized the time he will spend in the future with his family. [REDACTED]

[REDACTED] he now faces the difficult reality that he must go to prison and will lose, permanently, some number of months or years with them. He also will be unable to provide the financial support for his family and community that he once did and, perhaps most difficult of all, he has brought disrepute and humiliation on himself and, by extension, his family. Ms. Patterson describes the effect that the many stresses and anxieties of this prosecution have had on Mr. Daum:

As his wife [I] have watched the toll this criminal case has taken on him [REDACTED]

[REDACTED] Judge Kessler, [I] know my husband to be a good [person] who made a mistake. [I] ask that you weigh his lifelong behavior of good deeds against this single unfortunate mistake, and see that he will make the most of a second chance if given the opportunity.

See Exhibit A. As Mrs. Daum explains, Mr. Daum recognizes that the hardships he faces are of his own making. But having only oneself to blame for errors that destroy one's career and bring upheaval upon one's family does not alleviate the mental and physical toll that results. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mr. Daum asks the Court to consider his history, personal characteristics, and the many forms of punishment he will experience as a result of his convictions to be factors weighing in favor of a downward variance from the advisory Guidelines range.

C. *The Purposes of Federal Sentencing*

As noted at the outset, Congress has identified four purposes of federal sentencing that must guide district courts in selecting a sentence within the statutory penalty range. The sentence must be “sufficient, but not greater than necessary” to serve those purposes. With these guideposts in mind, Mr. Daum respectfully asks the Court to apply a downward variance from the advisory Guidelines range and to sentence him to one year and a day in prison.

The first purpose of federal sentencing is “to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense.” As discussed above, Mr. Daum acknowledges the seriousness of his offenses of conviction, as well as the added seriousness derived from the fact that Mr. Daum was an officer of the Court at the time of his crimes. But in considering what amounts to “just punishment” for these offenses, the Court also can consider the fact that the occurrence of Mr. Daum’s offenses in his capacity as a criminal defense attorney subjects him to additional penalties – *i.e.*, disbarment, loss of his profession, and the very public humiliation that resulted from his high-profile prosecution – that do not befall other defendants who commit these same crimes. In addition, because Mr. Daum’s crimes involved no personal enrichment or benefit, they can be deemed, in this limited respect, less egregious than other obstruction-of-justice cases. Finally, given Mr. Daum’s age and health issues, incarceration of any duration will be amply punitive.

The second purpose of federal sentencing is to afford adequate deterrence to criminal conduct. A sentence of one year and a day would serve this purpose. Mr. Daum is as deterred from future crimes as any person could be and, as an added guarantee against his recidivism, he will never practice law again. As for general deterrence, the publicity surrounding Mr. Daum’s prosecution has brought significant attention to the issue of corruption in the legal profession.

The unprecedented nature of his prosecution, standing alone, stands as a powerful deterrent to illegal conduct by any lawyer who represents a criminal defendant at trial. A prison sentence of any duration will amplify that deterrent effect substantially.

The third purpose of federal sentencing is “to protect the public from further crimes of the defendant.” This case is Mr. Daum’s first contact with the criminal justice system. The absence of a criminal history is a valid reason for finding that the purposes of sentencing will be adequately served by a sentence below the advisory Guidelines range. *See, e.g., United States v. Huckins*, 529 F.3d 1312, 1318-19 (10th Cir. 2008) (a district court “may weigh a defendant’s lack of a criminal record” in deciding whether to grant a downward variance from the advisory Guidelines range “even when the defendant has been placed into a criminal history category of I”). Particularly given Mr. Daum’s age and the termination of his legal practice that has resulted from his convictions, he presents no danger of recidivism.

In conclusion, Mr. Daum stands before the Court with deep regret and shame. There is no satisfactory explanation for why, after working so hard to enter and serve the legal profession, Mr. Daum has ended his career on this disgraceful note. He knows that he must go to prison. But in crafting its sentence, Mr. Daum asks the Court to consider his positive contributions to his family and the community over the years and the myriad ways in which Mr. Daum has and will continue to be punished for his crimes. When these considerations are appropriately weighed, we submit that a prison sentence of one year and a day is “sufficient, but not greater than necessary” to serve all of the purposes of federal sentencing.

CONCLUSION

Based on the foregoing reasons and any other that may appear to the Court, Mr. Daum respectfully submits that a sentence of one year and a day is sufficient, but not greater than necessary, to comply with the statutory directives set forth in 18 U.S.C. § 3553(a).

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Respectfully submitted:

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