

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martínez

Courtroom Deputy: Deborah Hansen
Court Reporter: Gwen Daniel

Date: June 26, 2015
Probation: Michelle Means
Time: forty-seven minutes

Criminal Action No. 14-cr-230-WJM

Counsel:

UNITED STATES OF AMERICA,

Zachary Phillips

Plaintiff,

v.

6. KHARI SMITH, Daniel Sears
Defendant.

COURTROOM MINUTES

HEARING - SENTENCING

02:33 p.m. Court in Session

Appearances

Defendant is present and on bond.

Oath administered to the defendant.

Sentencing Statement by Mr. Phillips

Sentencing Statement by Mr. Sears

The Court addresses the Defendant's Objections to the Presentence Investigation Report [161].

Argument/Discussion

The Court enters findings and rulings on the record with regard to the Defendant's Objections to the original Presentence Investigation Report [161] and the Addendum to the Presentence Investigation Report [174].

ORDERED: The Probation Officer shall prepare an Amended Final Presentence Investigation Report which reflects the Court's rulings.

ORDERED: There being no objection to the Government's Motion To Dismiss Remaining Counts of the Indictment [217], the Motion is GRANTED. Counts 1, 13, 14, 15, 17, 19, 21, 22, 23, 24, 25, 26, 27, 28 and 30 of the Indictment are dismissed as to Defendant Khari Smith only.

ORDERED: There being no objection to the Government's Motion for Defendant To Receive Three-Level Decrease For Acceptance Of Responsibility Under U.S.S.G. §3E.1.1(b) [218], the Motion is GRANTED.

The Court addresses the Government's Motion For Downward Departure Pursuant to U.S.S.G. § 5K1.1 And 18 U.S.C. § 3553(3) [208].

Argument/Discussion

ORDERED: The Government's Motion For Downward Departure Pursuant to U.S.S.G. § 5K1.1 And 18 U.S.C. § 3553(e) [208] is GRANTED.

The Court addresses restricted Motion [166] and the supplemented Motion to Impose Variant Sentence and Statutory Nonguidelines Sentence [210].

Argument/Discussion

ORDERED: The defendant's restricted Motion [166], as amended and amplified by the filing of [210] Motion to Impose Variant Sentence and Statutory Nonguidelines Sentence, is GRANTED.

Probation Officer Means' comments

Defendant's Allocution

Defendant plead guilty to Counts Eighteen and Twenty-Nine on December 30, 2014

ORDERED: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of this Court that the defendant, Khari Smith, is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of 18 months.

In serving this term of incarceration the Court recommends that the Director of the Bureau of Prisons give defendant full credit for the six days he has served in pretrial detention outside of the halfway house facility.

The Court recommends that the Bureau of Prisons place the defendant at a facility appropriate to his security designation located within the District of Colorado.

The Court recommends that the Bureau of Prisons designate an institution with a residential drug abuse or comparable substance abuse program.

ORDERED: Upon release from imprisonment defendant is placed on supervised release for a term of three years.

While on supervised release the defendant shall not commit another federal, state or local crime, shall not possess a firearm as defined in 18 U.S.C. § 921, and defendant shall comply with the standard conditions adopted by this Court.

The defendant shall not unlawfully possess and shall refrain from unlawfully using a controlled substance. The defendant shall submit to one drug test within 15 days of release on supervised release and two periodic tests thereafter.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

ORDERED: Special Conditions of Supervised Release:

1. The defendant shall participate in and successfully complete a program of testing and/or treatment for substance abuse, as approved by the probation officer, until such time as the defendant is released from the program by the probation officer. The defendant shall abstain from the use of alcohol or other intoxicants during the course of treatment and shall pay the cost of treatment as directed by the probation officer.

ORDERED: The Special Assessment fee of \$200.00 is imposed, due and payable immediately.

ORDERED: Defendant has no ability to pay a fine, and the fine is waived.

ORDERED: Pursuant to Rule 32.2 of the Fed. Rules of Crim. P. and the defendant's admission to the Forfeiture Allegation in the Indictment, the defendant shall forfeit to the United States any and all property, real or personal, derived from proceeds from the instant offense and as stipulated to in the Plea Agreement.

The Court finds by clear and convincing evidence that the defendant is not likely to flee or pose a danger to the safety of any other person or the community.

IT IS THEREFORE ORDERED that the Defendant, Khari Smith, surrender at the institution designated by the Bureau of Prisons on July 31, 2015 at 12:00 noon.

In the interim the defendant's bond is continued and all conditions set forth in the Magistrate Judge's Order Setting Conditions of Release shall continue to apply, except that per the recommendation of the probation officer, the defendant shall no longer be subject to being monitored or being required to use an ankle monitor.

The defendant is advised of his right to appeal both his conviction and sentence imposed.

03:20 p.m. Court in Recess
Hearing concluded