

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

JAMES STOKES

No. 08 - CR - 10012 - JLA

DEFENDANT'S SENTENCING MEMORANDUM

Defendant James Stokes respectfully submits this memorandum to assist the Court in sentencing.

On January 8, 2008, Mr. Stokes pled guilty to a two-count misdemeanor information charging him with displaying a counterfeit military discharge document, in violation of 18 U.S.C. § 498 (count one), and making a false claim about receipt of military medals, in violation of 18 U.S.C. § 704 (count two).

For the reasons that follow, Mr. Stokes submits that a sentence of imprisonment for **time served** (the day of his arrest) followed by **one year of supervised release** and a **fine of two hundred fifty dollars (\$250.00)** is sufficient, but not greater than necessary, to effectuate the purposes of sentencing set forth in 18 U.S.C. § 3553(a).

Background

James Stokes is 63 years old, the youngest of 22 children. Born in Lowell, Mr. Stokes is a life-long resident of the Lowell and Lawrence areas, with the exception of a brief periods in North Carolina in the 1970s and Texas in the 1980s. He currently resides in Lawrence with his wife, Fern, and two grandchildren of his wife, Michael DeRemer (age 14) and Deandre DeRemer

(age 12).

For many years, Mr. Stokes has been actively engaged in civic and volunteer work in the Lawrence area, including renovation of the Lawrence Veterans Memorial Stadium, construction and renovation of multiple war memorials in Lawrence, the annual Marine Corps Toys for Tots program, as well as the activities of neighborhood associations and other volunteer activities (e.g., counseling at-risk youth). A sample of letters and other recognition Mr. Stokes has received over the years is appended as Exhibit A, including:

- Letter from Frank Incropera of Mt. Vernon Neighborhood Association recognizing work for the needy as well as work to promote renovation of the Veterans Memorial Stadium and participation in other activities to honor veterans;
- Certificate from State Senate recognizing work to establish Marine Corps and Navy Corpsmen Monument;
- Resolution from Lawrence City Council recognizing work in Toys for Tots program;
- Letter from Tower Hill Neighborhood Association recognizing fundraising efforts;
- Letter from William J. Maloney, Esq. recognizing work with at-risk youth;
- Letter from City Councilor Nicholas Kolofoles recognizing efforts to erect memorial to Civil War veteran.
- Letter from manager of Beacon Courts (Lawrence Housing Authority) recognizing volunteer efforts.

After years of being closely identified with veterans' causes, many assumed that Mr. Stokes was a veteran and Mr. Stokes, himself, began falsely to claim veteran status. After public doubts arose about his status, Mr. Stokes committed the offenses that underlie this case.

Mr. Stokes understands that there is no excuse for his actions, deeply regrets them, and takes full responsibility for them. Notably, Mr. Stokes immediately admitted his conduct when questioned by the FBI and entered a prompt plea of guilty in this case.

Argument

Mr. Stokes submits that the proposed sentence of imprisonment for time served followed by one year of supervised release and a fine of \$250 will be “sufficient, but not greater than necessary, to comply with the purposes of sentencing.” 18 U.S.C. § 3553(a).

The Guideline Sentencing Range calculation of 0 to 6 months imprisonment – the lowest possible Guideline range – is undisputed and the proposed sentence falls within it. As the Supreme Court recently recognized, “the Guidelines should be the starting point and the initial benchmark” when determining an appropriate sentence. *Gall v. United States*, 128 S.Ct. 586, 596 (2007); 18 U.S.C. 3553(a)(4). The Court also must “make an individualized assessment based on the facts presented.” *Id.* at 596-7. Here, the nature and circumstances of the offense as well as Mr. Stokes’ background militate in favor of sentence that does not entail any further incarceration.

A. The Proposed Sentence Will Provide Just Punishment.

The proposed sentence represents a substantial penalty that adequately reflects the seriousness of the offenses of conviction, will promote respect for the law, and provide just punishment as required by section 3553(a)(2)(A). The government elected to seek a warrant for these misdemeanor charges rather than issuance of a summons, subjecting Mr. Stokes to the shock and public humiliation of arrest and leaving him to spend a substantial portion of that day in the Courthouse lockup. Since his arrest, Mr. Stokes has become a pariah in the community

and has resigned from his seat on the Lawrence School Committee. Mr. Stokes and his family, including his grandchildren who live with him, also have been subject to ongoing harassment and threats arising from the charges in this case.

Moreover, as the Supreme Court noted in *Gall*, probation and/or supervised release also amount to a “substantial restriction of freedom.” 128 S.Ct. at 595. As one judge in this district observed in a sentencing hearing conducted shortly after the Supreme Court’s decision:

Gall recognized for the very first time in a very long time that probation is not nothing, that there are substantial restrictions on an individual’s freedom in probation, that we can structure a probationary sentence that meets all the purposes of sentencing, and that is entirely appropriate. This was one of the things that the guidelines ignored, and the guidelines dramatically changed from preguideline practice and which the Supreme Court is essentially saying we can now look at again.

United States v. Ramos, 04-10275-NG (D. Mass. 2008) (excerpt of sentencing transcript filed with Judgment, dkt # 62) (ordering sentence of probation in drug trafficking case); *see also Gall*, 128 S.Ct. at 602 (emphasizing that section “3553(a) directs the judge to consider sentences other than imprisonment”). A fine of \$250 is also a substantial penalty in light of Mr. Stokes’ limited income and financial circumstances.

Conversely, a “sentence of imprisonment may work to promote not respect, but derision, of the law if the law is viewed as merely a means to dispense harsh punishment without taking into account the real conduct and circumstances involved in sentencing.” *Gall*, 128 S.Ct. at 599. Notably, this is not a case where the misrepresentation of military service was intended to obtain veterans’ benefits for which defendant was ineligible or otherwise defraud the government. A sentence of additional imprisonment would be excessive given the nature of the offenses and background of Mr. Stokes – including his long history of public service generally and support of

veterans' causes specifically.

B. The Proposed Sentence Will Adequately Deter Criminal Conduct and Protect the Public.

The proposed sentence will be more than sufficient to deter Mr. Stokes from future criminal activity and to protect the public, as required by sections 3553(a)(2)(B) and (C). The peculiar circumstances giving rise to this offense are highly unlikely to repeat themselves and Mr. Stokes poses no conceivable threat to public safety. His public exposure and humiliation also provide a stark example to deter others who might contemplate falsely claiming military credentials.

C. The Proposed Sentence Will Provide the Defendant With Needed Treatment.

Mr. Stokes is not in need of "correctional treatment," 18 U.S.C. § 3553(a)(2)(D), of the sort that a Bureau of Prisons placement would uniquely facilitate. To the contrary, a term of imprisonment would put his fragile health at further risk.

Conclusion

For the foregoing reasons, the Court should impose a sentence of imprisonment for a period of “time served” followed by one year of supervised release and a fine of \$250.

Respectfully submitted,

JAMES STOKES

By his attorney,

/s/ William W. Fick

William W. Fick, Esq.

BBO# 650562

FEDERAL DEFENDER OFFICE

408 Atlantic Ave., 3d Floor

Boston, MA 02110

617-223-8061

WILLIAM_FICK@FD.ORG

Dated: May 19, 2008

Certificate of Service

I, William W. Fick, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on May 19, 2008

/s/ William Fick