

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 06-538 JH

DANUEL QUAINTANCE,

Defendant.

**SENTENCING MEMORANDUM ON
BEHALF OF DANUEL QUAINTANCE**

Daniel Quaintance, by and through his counsel, hereby provides this Sentencing Memorandum to the Court.

I. INTRODUCTION AND BACKGROUND

This matter comes before the court for sentencing. Mr. Quaintance has provided formal and informal objections to the presentence report.

Daniel Quaintance is 56 years old. He has had a few minor brushes with the law earlier in his life, but has no criminal history points. The court is also aware that Mr. Quaintance is a veteran and was honorably discharged. He currently suffers from hypoglycemia and pancreatitis for which he receives social security disability.

II. LAW AND ANALYSIS

One of the objections raised by Mr. Quaintance was the assessment of four additional points against him as a leader and organizer in the presentence report. While counsel has addressed this in his letter to the U.S. Probation Office, it is worth re-examining. The U.S. Attorney attempts to shore up this assessment in its response dated

December 18, 2008. A closer inspection reveals that this upward adjustment is not necessarily warranted.

A. JOSEPH BUTTS/MISSOURI ARREST

In his response, the U.S. Attorney first addresses Joseph Butts and his arrest in Missouri.

AUSA Martinez' argument is, essentially, as follows: Mr. Butts, as the brother-in-law of Mr. Quaintance, had a "courier certificate" issued to him and signed by Danuel Quaintance, along with travel itinerary originating in Pima, Arizona and other "paperwork" indicating his affiliation with the Church of Cognizance. Counsel for the government is, however, relying on a circumstantial leap of faith to equate this as an organizer/leader or participant role for Mr. Quaintance.

As counsel Herrera has pointed out, there is no dispute that Mr. Quaintance provided the so-called "courier certificate" or other church indicia to Joseph Butts. However, **that does not equate with the conclusion that Mr. Butts was transporting marijuana for Mr. Quaintance.** One can conclude, however, that Mr. Butts was correct in his statement that he was transporting it "for the church." The Church of Cognizance is comprised of approximately 200 members, located in various venues across the United States. Counsel referenced this before, but it bears repeating: Couriers, like Mr. Butts, are independent entities and are not under the control of anyone in the Church of Cognizance. Nor are they required to report to anyone about where they are or what they are doing.

There is no evidence to suggest that Mr. Butts was transporting marijuana for the Quaintances.

§3B1.1 of the U.S.S.G. (c) references a two point upward adjustment “If the defendant was an organizer, leader, manager, or supervisor in any criminal activity other than described in (a) or (b)” of this section, rather than four levels. While counsel does not concede that any enhancement is appropriate, if any upward adjustment is applicable, this is the appropriate one. *Application Note 4* of this section provides the appropriate framework and guidance for assessing and determining leadership roles. It reads, in part:

Factors the court should consider include the exercise of decision making authority, the nature of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the degree of participation in planning or organizing the offense, the nature and scope of the illegal activity, and the degree of control and authority exercised over others.

The government’s argument is nothing more than asking the court to **assume** that Mr. Quaintance was somehow an organizer or leader relative to Mr. Butts. The criteria that the court must look at, are simply not present here. In other words, there is no evidence to suggest that Mr. Butts was engaged in this activity for Mr. Quaintance. That is to say, there is no evidence of Mr. Quaintance’ decision-making authority, recruitment, claimed right to a larger share of the fruits, the degree of any participation or planning or control and authority over Mr. Butts. Without this evidence, Mr. Butts, while perhaps part of a conspiracy was not lead, organized or directed by Mr. Quaintance.

B. TIMOTHY KRIPNER

_____The government, in its response, argues that because the defendant disputes the recruitment of Timothy Kripner, that upward role adjustment is not based on recruitment. Again, criteria expressed in *Application Note 4* reference that recruitment is one of the

elements that the court should examine.

This court is well aware of Mr. Kripner's mercenary temperament and his desire to obtain leniency for his role in this matter. This court is also well aware of Mr. Kripner's abuse of controlled substances, including cocaine. It is more than just coincidental that Mr. Kripner's allegation of abuse of other controlled substances by the Quaintances did not surface until after he himself violated pretrial conditions of release. Again, there simply is no evidence to corroborate Mr. Kripner's naked allegations against the Quaintances. There was no evidence of cocaine in either the Quaintance homestead or vehicle during the searches. However, Mr. Kripner conveniently admits that he himself is a cocaine addict. His comments should be viewed with caution and circumspection.

One of Mr. Kripner's more troubling comments as referenced in the presentence report was that "he knows Mr. Quaintance and his religion are not real, but he figured if he would be able to smoke, transport, and possess marijuana, that was reason enough to join the church." Mr. Quaintance has never tried to hide his strongly professed and strongly held beliefs relative to marijuana as both a diety and a sacrament. While this belief may not square with traditional, mainstream religions, it is, nonetheless, his belief. He has not acted clandestinely, but rather openly. Mr. Kripner, on the other hand, is an opportunistic individual, willing to exploit those beliefs for his own personal gain.

C. BACKPACKERS

Counsel provided his objection to any proposed role adjustment increase relative to the "backpackers" in this matter. Mr. Quaintance does not know the backpackers, and he did not, in any fashion, direct the backpackers. Mr. Quaintance does not speak Spanish and could not direct, organize, lead, manage or supervise them, even if he wanted to.

These were individuals who were directed by the monastery in Mexico that was the genesis of this marijuana delivery.

This court heard testimony about a telephone call Mr. Quaintance received, while he, Ms. Quaintance and Kripner were in Deming, instructing him to bring food. It is this lack of knowledge about protocol that clearly demonstrates Mr. Quaintance' non-control. *He was instructed to bring food. He did not instruct, he complied.* Further, there is no evidence that anyone, other than from the monastery, directed where the drop-off point for the marijuana would be. Again, no evidence of leadership, organization, management or supervision; no evidence of decision-making authority; no evidence of recruitment of the backpackers; no evidence of a claimed right to a larger share; no evidence of any degree of control or authority exercised over these individuals.

In essence, Mr. Quaintance can, at best, be held accountable, if at all, for a two level upward role adjustment for his involvement, Ms. Quaintance role (only as a driver) and Mr. Kripner. This assessment would remove him from subsection (a) as an organizer or leader of a criminal activity that involved five or more participants. There's a reason why §3B1.1 addresses this role adjustment in degrees and also talks, not only in numbers of participants, but also in terms of "**or was otherwise extensive**" [emphasis added]. In the grand scheme of things and the big picture, the government, it would seem, be hard-pressed to make a case that this was "otherwise extensive."

But before the Court makes its decision, it should also examine whether or not an aggravating enhancement is even appropriate, given the nature of this case and the serious legal questions and issues presented. It appears clear, that Danuel and Mary Helen are not living a life of grandeur. Their's is not a life that comports with images we've

seen of drug dealers and drug lords, replete with opulent mansions on a lush mountain top, expensive cars and armed guards surrounding a fortress. Quite to the contrary. The real intent of §3B1.1, it seems, would be and should be reserved for meaningful application to such other individuals. To apply it here, is to dilute its value.

Daniel and Mary Helen, lead quiet lives, living on his disability income of \$943.00 per month. They live simple lives in their mobile home near to their children and grandchildren. They surround themselves with very few possessions, short of a few laptop computers they bought on ebay for their grandchildren for use on schoolwork. They paid \$50.00 each. The court can see from the presentence report that their financial assets are meager indeed: \$12,100.00—their mobile home valued at \$10,000.00 and their two 10 year old vehicles valued at \$2,100.00.

It seems clear that Mr. Quantance's actions do not comport with the nature or legislative intent for whom this enhancement provision of the sentencing guidelines was designed. In examining the sentencing factors enumerated under 18 U.S.C. §3553, the court's sentence should be sufficient, but not greater than necessary to comply with the purposes set forth. The court shall consider—

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed--
 - A. To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - B. To afford adequate deterrence to criminal conduct; . . .

A sentence without aggravating factors would accomplish this agenda. And, moreover, because of the extensively unique and anomalous nature of this case, Mr.

Quaintance could ostensibly be eligible for a further reduction under the safety valve provision of U.S.S.G. §5C1.2 .

III. CONCLUSION

Counsel would therefore respectfully request that the court consider the following:

1) No imposition of the enhancement provisions as an organizer or leader under U.S.S.G. §3B1.1; 2) imposition of sentence at the low end of the guideline range to include a safety valve reduction; and, 3) allowing Mr. Quaintance to remain on conditions of release pending the appeal in this matter.

Electronically filed on 03 January 2009

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I hereby certify that I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification to opposing counsel of record on this date.

Electronically filed on 03 January 2009.