

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN WATERLOO DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Case No. CR 21-2068-2 CJW
vs.)	
)	SENTENCING MEMORANDUM
ABYEHUN TEFERI,)	
)	
Defendant.)	

Comes Now, defendant Abyehun Teferi, by and through counsel, and hereby submits this Sentencing Memorandum, offering the following in support:

- I. The Defendant does not intend to call any witnesses.
- II. The Defendant intends to offer the following exhibits at the hearing:
 - (A1-A11) Character letters on behalf of Mr. Teferi.
 - (B) Letter of Promotion for Mr. Teferi.
 - (C) Blackhawk County Order, case # SPCR009718, 7/22/21
 - (D) Affidavit of Senework Abebe
 - (E1 – E3) Range videos of Teferi and Kucko
 - (F) Video
- III. There are four issues in dispute that the Court will need to decide at the hearing:
 - (1) Base Offense Level, USSG 2K2.1;
 - (2) Two-level enhancement for the offense involving 3 -7 firearms, USSG 2K2.1(b)(1)(A);
 - (3) Offense level reduction to level 6 for possessing all ammunition

and firearms solely for lawful sporting purposes or collection,
USSG 2K2.1(b)(2);

- (4) Teferi's Motion for downward variance based on background and characteristics, nature of the offense, and all factors under Title 18 USC 3553(a).

Respectfully Submitted

/s/ Michael K. Lahammer

Michael K. Lahammer, Li 014693

425 2nd Street SE, Suite 1010

Cedar Rapids, IA 52401

Phone: 319-364-1140

Attorney for the Defendant

Email: mike@lahammerlaw.com

Copy to:

Kyndra Lundquist, AUSA

Meggie Fahrner, USPO

I certify that I electronically filed the
above on July 11, 2022, via CM/ECF,
and all parties of record were notified accordingly.

/s/ Michael K. Lahammer

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN WATERLOO DIVISION**

UNITED STATES OF AMERICA,)) Plaintiff,)) vs,)) ABYEHUN TEFERI,)) Defendant.))	Case No. CR21-02068-2 CJW BRIEF IN SUPPORT OF SENTENCING MEMORANDUM
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Comes Now, defendant Abyehun Teferi, by and through counsel, and submits this Brief in Support of Sentencing Memorandum.

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I. INTRODUCTION

Abyehun Teferi does not deserve to go to prison. His conduct in this case involved the social use of marijuana, and possession of firearms solely used for target practice and collection purposes. This is not a typical user in possession case. Additionally, there was no violence in this offense. There is no need to protect the public, and a prison term would only serve as retribution, and not in accordance with all of the factors that the Court must consider.

Mr. Teferi asks that the Court keep this in mind - that the Sentencing Guidelines are just that—they are a *guide*. They are advisory. The court can use a person’s guideline range as *a* factor in determining what particular sentence to create for that individual— *but it is not the only factor*. The court is not duty-bound to hand down a sentence within the guideline range. The Court must consider ALL of the “factors” under Title 18 USC 3553(a).

II. ISSUES:

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III. ARGUMENTS

(1) Base Offense Level, USSG 2K2.1:

Paragraph 22 of the PSIR suggests a base offense level of 20 due to the fact that in the bedroom he shared with his wife, Alyssa, Abyehun was holding a Radical Arms 5.56 NATO caliber pistol for “safekeeping” while his friend, Senework Abebe, was temporarily living in a camper with his children. (PSIR ¶22)(Def. Exh. D). The PSIR also recommended this level due to “constructive” possession of Alyssa’s Canik/Century Arms 9mm, which she kept on her side of the bedroom, separate from Teferi’s firearms. (Id.)

Teferi acknowledges that he had dominion and control over the premises at the time of the search warrant, and technically “constructively” possessed Alyssa’s 9mm Canik. But for this “constructive” possession and doing a favor for a friend, he would clearly warrant a base offense level 14. This 6-level increase should only apply to those defendants who deliberately

and intentionally possess the firearms having large capacity magazines, and not those under these circumstances.

(2) Two-level enhancement for the offense involving 3 -7 firearms, USSG 2K2.1(b)(1)(A):

As stated above, Mr. Teferi acknowledges that he “constructively” possessed the Canik/Century Arms 9mm owned by his wife. He also admits that he was “safekeeping” the Radical Firearms RF-15 5.56 NATO cal. pistol owned by his friend, Senework Abebe while his friend was living in a camper with his kids. However, Teferi’s firearms on his side of the bedroom consisted of a 9mm Taurus, the Radical Firearms 5.56 NATO cal. pistol, and a Palmetto State Armory 5.56 upper receiver, which was not a complete firearm and incapable of operation. *United States v. Sholley-Gonzalez*, 996 F.3d 887 (8th Cir. 2021) (USSG 2K2.1(b)(2) does not contemplate attempted firearm purchases, only completed transactions.) The enhancement for 3-7 firearms should not apply.

(3) Offense level reduction to level 6 for possessing all ammunition and firearms solely for lawful sporting purposes or collection, USSG 2K2.1(b)(2);

For certain defendants, a reduction in the offense level is specified where the court finds that the defendant “possessed all ammunition and

firearms solely for lawful sporting purposes or collection, and did not unlawfully discharge or otherwise unlawfully use such firearms or ammunition.” §2K2.1(b)(2). If the court finds that this provision applies, the offense level is reduced to six. The reduction does not apply, however, to base offense levels determined under subsections (a)(1) - (a)(5) of §2K2.1. The defendant carries the burden of proving the applicability of this reduction. *United States v. Keller*, 947 F.2d 739 (5th Cir. 1991).

However, the guidelines do not state a requirement that a defendant produce evidence of actual use of the firearms in question, only that the firearms were possessed for sporting or collection purposes. *United States v. Mason*, 692 F.3d 178 (2d Cir. 2012). A district court’s finding is reviewed for clear error on appeal. See *United States v. Massey*, 462 F.3d 843 (8th Cir. 2006). Applicability of the reduction is determined by examining the “relevant surrounding circumstances” including “the number and type of firearms, the amount and type of ammunition, the location and circumstances of possession and actual use, the nature of the defendant’s criminal history (e.g., prior convictions for offenses involving firearms), and the extent to which possession was restricted by local law.” §2K2.1(b)(2), comment. (n.6).

“Plinking,” a form of target shooting for amusement and recreation, can be a sporting purpose under the guidelines. See *United States v. Hanson*, 534 F.3d 1315 (10th Cir. 2008) (citing *United States v. Lewitzke*, 176 F.3d 1022 (7th Cir. 1999); *United States v. Bossinger*, 12 F.3d 28 (3d Cir. 1993)).

In this case it is readily apparent that the only purpose for Abyehun’s possession of any firearm was for collection and shooting at the range for target practice. (Def. Exh. A6, D, E1-3). He did not use the firearms in connection with any other crimes, and other than being a “social” marijuana user on occasion, was a responsible gun owner. Absent the “constructive” possession of Alyssa’s Canik/Sentury Arms 9mm (which is a Competitive Target pistol), and the “safekeeping” of a friend’s weapon, the advisory guidelines would not preclude application of the sporting use reduction under USSG 2K2.1(b)(2). As the guidelines are advisory, including any enhancements or reductions, the Court should consider these arguments and circumstances in support of a sporting exception in this case.

(4) Teferi’s Motion for downward variance based on background and characteristics of Mr. Teferi, the nature of the offense, and all factors under Title 18 USC 3553(a).

The Defendant submits that mitigating factors exist in this case demonstrating that a within Guidelines sentence is in direct conflict with the

sentencing mandate under 18 U.S.C. §3553(a), which requires this Court to impose a sentence that is “sufficient, but not greater than necessary to achieve the goals of sentencing.” Mitigating factors that this Court should take into consideration under §3553(a) include: (1) Mr. Teferi’s remorse and post-offense desire for rehabilitation; (2) Abyehun’s background and characteristics, including accelerated success at his employment and having a newborn child; and (3) the nature of the offense, including Mr. Teferi’s “social” use of marijuana, obtaining any firearms for purposes of target shooting and range shooting, and storing a firearm for a friend. Based on the above, Abyehun Teferi submits that he should be sentenced below the applicable Guideline range.

Mr. Teferi absolutely has accepted responsibility for his involvement in the instant offense, as evidenced by his guilty plea. In making these arguments at sentencing, he in no way attempts to minimize his involvement. Instead, Abyehun merely wishes to be sentenced on the basis of accurate information and to provide relevant information for the Court to use in fashioning a sentence no greater than necessary to effectuate the goals of sentencing under 18 U.S.C. §3553(a)(2). He recognizes that his offense is serious and requires the appropriate attention of this Court. He acknowledges that his conduct was wrong.

But it is important to also remember that even if the Court rules that a certain enhancement should apply despite defense arguments to the contrary, *that doesn't mean the Court has to give the defendant whatever guideline sentence applies based on that enhancement*. That is because the Sentencing Guidelines are just a guide.

A sentence which satisfies the purposes of sentencing defined in §3553(a) is more than sufficient. For the reasons discussed below, a sentence of probation with home confinement conforms with the sentencing guidelines and sufficiently satisfies the purposes of sentencing.

While judges were previously limited by the Federal Sentencing Guidelines (“Guidelines”) to imposing a sentence within the mandated range unless there was a justified grounds for departure, the new sentencing landscape requires that the sentencing judge consider all of the factors set forth in §3553(a). While the Guidelines remain in place, they are now only one of seven sentencing factors set forth in 18 U.S.C. §3553(a). A ‘guideline sentence,’ although presumptively reasonable, can still be found unreasonable when all the §3553(a) factors are considered. *U.S. v. Mickelson*, 433 F.3d 1050, 1055 (8th Cir. 2006).

(a.) Abyehun Teferi’s Remorse, Contrition, Desire for Rehabilitation:

The Defendant's life has truly been changed forever as a result of his choices and the repercussions of those choices. As a 27-year-old facing the possibility of a lengthy term of incarceration, the Defendant finds himself at the possible worst time of his life, and he is dedicated to separating himself entirely from the marijuana use that led to his involvement in this case. The Defendant is remorseful and contrite and desires only a chance to live as a productive, drug-free, law-abiding citizen. He understands that he can never again possess a firearm for the rest of his life.

The Defendant has made an attempt to repay society by waiving many substantive rights, admitting his conduct, and pleading guilty to his involvement in the offense. These actions have assisted the government and the judiciary in facilitating the administration of justice. The Defendant wishes to further repay society through serving this Court's sentence and through achieving total rehabilitation so that he never again becomes involved in illegal conduct in the future.

Remorse is also a factor the Court must consider. *U.S. v. Fagan*, 162 F.3d 1280, 1284-85 (10th Cir. 1998). Under the old departure analysis, “[b]ecause remorse is not a prohibited factor, but a factor already considered in the Sentencing Guidelines, a sentencing court may depart downward if it finds that remorse is present to an exceptional degree.” Now that the

Guidelines are merely advisory, these factors are relevant in determining a reasonable sentencing after Booker under §3553(a). It is clear from the character letters submitted that Mr. Teferi is making effort to learn from his mistakes.

Based on the above, it is without a doubt that Mr. Teferi will not ever commit another crime. His 10 months on pretrial release *without any violations* have demonstrated that for the Court. A prison sentence only serves to provide retribution and severe punishment, and certainly not rehabilitation or to protect the public. Further, this was not a violent offense and the offense involves no victims. The Defendant respectfully asks that this Court take these factors into consideration under §3553(a) in determining a sentence that is no greater than necessary.

(b) Abyehun Teferi's Background and Characteristics:

Mr. Teferi has worked for Tyson Foods in Waterloo for more than 6 years. While starting out in the lower tiers of employment, he has swiftly and diligently worked his way up to being a Supervisor in their warehouse. (Def. Exh. A5 – A8, B, F). He recently earned a promotion and a raise. (Def. Exh. B). He and his wife, Alyssa, recently welcomed a baby boy. (PSIR ¶ 48). Abyehun and Alyssa have been together for 6 years. A prison term would mean the end of his employment as a supervisor at Tyson's, and

a separation from his newborn during an important bonding time for both parents.

Mr. Teferi's life has also been impacted by his parent's divorce in 2011 (Abyehun was 16 years old); his Mother's death in 2020 at age 48 from cancer, and caring for his Grandfather. (Def. Exh. A4).

Although not argued as a separate reason for a downward variance, Mr. Teferi's criminal history does not reflect that of a violent, law defying individual. At age 19 while in college he received a trespassing charge at a dorm building. At age 20 he pleaded to an OWI-1st offense. At age 24 he and his then-girlfriend, co-defendant Alyssa Kucko, got into an argument that escalated, and when he defended himself he was charged. He was actually the one who called 911 that evening. He pleaded guilty to a non-domestic on the advice of his attorney, Mark Seda. He could have just done the minimum 2 days in jail, but instead chose to plead to a deferred judgment, which involved 1 year of probation before allowing him to get the charge expunged. It was this period of probation that resulted in an additional 2 points for his criminal history under USSG §4A1.1(d).

Finally, Mr. Teferi did receive a possession of marijuana charge – 1st offense, in June, 2020, which also resulted in a one-year term of probation that expired before the events occurred involving the federal charge.

(c) Abyehun Teferi's Nature of the Offense:

Abyehun was a “social” user of marijuana, often using it on his rare days off. (PSIR ¶ 17, 19, 53). His last use before the search warrant in this case on Sept. 2, 2021, had been 2 weeks earlier when he and his then-girlfriend (Alyssa) had gone to Chicago for the weekend, where marijuana use was legal. It is difficult to imagine that a “social” marijuana user is treated as harshly as a heroin user, or a meth user. The statute does not distinguish among types of users.

Mr. Teferi had his 9mm Taurus returned to him by the court following the resolution of his Black Hawk County case where he pleaded guilty on the advice of counsel to a serious misdemeanor for actions involving his then-girlfriend Alyssa Kucko. (PSI ¶ 35)(Def. Exh C). He has always maintained that he acted in self-defense in an argument that escalated. He was the one who called 911, and was told by his Counsel, Mark Seda, that the conviction would have no impact on his right to possess firearms. (PSI ¶35).

Mr. Teferi, in addition to the Taurus 9mm that was returned to him, also had in his possession a Radical Firearms RF-15 5.56 pistol that he was “safekeeping” for a friend who was temporarily living in a camper with small children while awaiting his new residence. (Def. Exh. D).

Mr. Teferi and his wife were regular visitors to the shooting range, where they would enjoy target practice and “plinking” with their weapons. (Def. Exh. A6, D, E and F). It should also be noted that the CANIK/Century Arms 9mm was a competition target pistol.

(e) Other factors for the Court’s consideration:

It should also be noted that, in *U.S. v. Hill*, 2014 WL 4920365 (1st Cir. 2014), Judge Torruella wrote a concurring opinion to note a disturbing trend in criminal prosecutions. All too often, prosecutors charge individuals with relatively minor crimes, carrying correspondingly short sentences, but then use section 1B1.3(a) to argue for significantly enhanced terms of imprisonment under the guise of “relevant conduct” other crimes that have not been charged (or, if charged, have led to an acquittal) and have not been proven beyond a reasonable doubt. In other words, [the defendant] was subject to an additional six to eight years in prison due to isolated drug sales not directly related to the twenty oxycodone pills which led to his conviction, all of which he was never arrested for, never charged with, never pled guilty to, and never convicted of by a jury beyond a reasonable doubt.

This is a prime example of the tail wagging the dog.” “The practice of arguing for higher sentences based on uncharged and untried ‘relevant conduct’ for, at best, tangentially related narcotics transactions seems like an

end-run around these basic constitutional guarantees afforded to all criminal defendants. The government's role is to ensure justice, both to the accused and to the public at large; it is not to maximize conviction rates and argue for the greatest possible sentence. And, while it is unclear to me whether this trend is due to shaky police work resulting in cases that cannot be proven beyond a reasonable doubt, prosecutorial laziness, or other less nefarious factors, it remains troubling regardless."

Interestingly, the U.S. Supreme Court recently discussed judges treating cases with more deference to the Defendants. In *Wooden v. U.S.*, No. 20-5279, March 7, 2022, Justices Gorsuch and Justice Sotomayor, in concurring with the judgment, agreed that courts should be more willing to apply the doctrine known as "the rule of lenity" in cases that are not as "clear" or easy as *Wooden's*.

"The 'rule of lenity' is a new name for an old idea—the notion that 'penal laws should be construed strictly,'" the concurrence notes, before delving into a history of the doctrine and its specific use in the early American judicial system viz. "upholding the Constitution's commitments to due process and the separation of powers." Over time though, Gorsuch notes, federal courts have picked away at the application of the doctrine and shied away from using lenity by creating various self-imposed hurdles.

The concurrence says that such limitations do “not derive from any well considered theory about lenity or the mainstream of this Court’s opinions,” and counsels that federal judges should be more willing to rule in criminal defendants’ favor when facing “ambiguous cases” in order to protect constitutionally-protected liberty interests.

“Where the traditional tools of statutory interpretation yield no clear answer, the judge’s next step isn’t to legislative history or the law’s unexpressed purposes,” Gorsuch says. “The next step is to lenity.” *Id.* at Pg. 13.

IV. Conclusion:

Retribution is perhaps the most intuitive — and the most questionable — aim of punishment in the criminal law. Quite contrary to the idea of rehabilitation and distinct from the utilitarian purposes of restraint and deterrence, the purpose of retribution is actively to injure criminal offenders, ideally in proportion with their injuries to society, and so expiate them of guilt. (Retribution: The Purposes of Punishment (upcounsel.com))

Based on the foregoing, it is respectfully submitted that Abyehun Teferi should be sentenced to a probationary term, with home confinement, and a reasonable fine, under all of the factors that the Court must consider under Title 18 USC §3553(a).

Respectfully Submitted,

/s/ Michael K. Lahammer

Michael K. Lahammer
425 2nd Street SE, Suite 1010
Cedar Rapids, IA 52401
319-364-1140
Attorney for the Defendant
mike@lahammerlaw.com

Copy to:

Kyndra Lundquist, AUSA
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