

**SENTENCING HEARING OUTLINE**  
**JUDGE MARK R. HORNAK**  
(October, 2017 rev.)

**DATE OF SENTENCING** \_\_\_\_\_

**UNITED STATES v.** \_\_\_\_\_

**DOCKET NUMBER** \_\_\_\_\_

**COUNSEL FOR THE UNITED STATES** \_\_\_\_\_

**COUNSEL FOR THE DEFENDANT** \_\_\_\_\_

***SWEAR IN DEFENDANT AND PERFORM COMPETENCY COLLOQUOY, AND CONFIRM SATISFACTION WITH COUNSEL***

**DATE OF PLEA/CONVICTION** \_\_\_\_\_

**COUNTS/OFFENSE PLED TO/CONVICTED OF:** \_\_\_\_\_

\_\_\_\_\_

**ASK AUSA IF THERE ARE ANY IDENTIFIABLE VICTIMS, AND IF SO WHETHER NOTICE WAS GIVEN TO THEM, AND WHETHER ANY ARE PRESENT.**

**DATE OF PRESENTENCE REPORT (“PSI”)** \_\_\_\_\_

**DATE OF ADDENDUM TO PSI** \_\_\_\_\_

**DATE(S) OF DEFENDANT’S POSITIONS STATEMENT(S)** \_\_\_\_\_

**DATE(S) OF GOVERNMENT’S POSITION STATEMENT(S)** \_\_\_\_\_

**DATE(S) OF COURT’S TENTATIVE FINDINGS** \_\_\_\_\_

**CONFIRM THAT DEFENDANT AND COUNSEL HAVE REVIEWED EACH OF THESE DOCUMENTS. CONFIRM THAT COUNSEL FOR THE UNITED STATES HAS REVIEWED EACH OF THESE DOCUMENTS.**

**CONFIRM ON THE RECORD THAT THE SENTENCING GUIDELINES IN AND OF THEMSELVES HAVE BEEN DECLARED TO BE ADVISORY TO THE COURT, AND ARE NO LONGER MANDATORY, AND THAT A SENTENCING COURT MAY NOT PRESUME, OR TAKE FOR GRANTED, THAT THE ADVISORY GUIDELINES RANGE, OR A PARTICULAR GUIDELINE SENTENCE IS REASONABLE IN A GIVEN CASE. THEREFORE, THE GUIDELINES ARE NOT ONLY NOT MANDATORY, THEY ARE NOT PRESUMED TO BE REASONABLE IN A GIVEN CASE.**

**CONFIRM THAT THE COURT HAS REVIEWED THE COMPLETE FILE, INCLUDING AS APPLICABLE THE PSI AND ADDENDUM, EACH POSITION STATEMENT OF EACH PARTY, LETTERS OR OTHER MATERIALS SUBMITTED TO THE COURT IN AID OF SENTENCING, ANY VICTIM IMPACT STATEMENT, MATERIAL SUBMITTED IN CAMERA PURSUANT TO FEDERAL RULE OF CRIMINAL PROCEDURE 32(i)(4), AND THE RECOMMENDATION OF THE PROBATION OFFICE. CONFIRM AND ORDER THAT PURSUANT TO FEDERAL RULE OF CRIMINAL PROCEDURE 32(e)(3), AND THE LOCAL RULES OF THIS COURT, SUCH RECOMMENDATION IS NOT DISCLOSED TO THE DEFENDANT, OR COUNSEL FOR THE DEFENDANT OR THE UNITED STATES, BUT THAT IN DETERMINING THE SENTENCE, THE COURT WILL NOT CONSIDER ANY FACTUAL OR LEGAL MATTER THAT HAS NOT BEEN DISCLOSED TO THE DEFENDANT AND ALL COUNSEL.**

**ASK COUNSEL FOR DEFENDANT IF THERE ARE ANY MATTERS IN THE PSI OR ADDENDUM OR IN THE COURT'S TENTATIVE FINDINGS WITH WHICH THE DEFENDANT DISAGREES THAT HAVE NOT ALREADY BEEN CALLED TO THE COURT'S ATTENTION? (NOTE ANY CORRECTIONS PREVIOUSLY ADVANCED BY THE DEFENDANT OR THE GOVERNMENT) \_\_\_\_\_**

**SAME QUESTION TO THE GOVERNMENT \_\_\_\_\_**

**ASK IF THERE ARE ANY MATTERS REGARDING THE APPLICATION OF ANY PROVISIONS OF THE ADVISORY GUIDELINES, INCLUDING BUT NOT LIMITED TO ANY MOTIONS REGARDING ANY DEPARTURES, THAT THE COURT NEEDS TO ADDRESS WHICH WERE NOT RESOLVED WITHOUT OBJECTION BY THE PROBATION OFFICE.**

**CONFIRM WHETHER THERE IS ANY APPLICABLE MANDATORY MINIMUM SENTENCE BY STATUTE \_\_\_\_\_**

**IS THERE A PLEA AGREEMENT? \_\_\_\_\_**

**DOES COURT ACCEPT THE PLEA AGREEMENT? \_\_\_\_\_**

**STIPULATIONS IN THE PLEA AGREEMENT \_\_\_\_\_**

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**ADOPT COURT'S TENTATIVE FINDINGS AS APPROPRIATE, AND THE FINDINGS OF THE PSI/ADDENDUM, SUBJECT TO THE COURT'S CORRECTIONS OR AMENDMENTS AS MADE ON OR IN THE RECORD, AND THE MATTERS TO BE RESOLVED AT THE SENTENCING HEARING.**

***IF THERE IS A PLEA AGREEMENT -- CONFIRM THE APPEAL WAIVERS OF THE PLEA AGREEMENT, AND REVIEW ON THE RECORD: NO DIRECT APPEAL FROM CONVICTION OR SENTENCE, UNLESS (1) UNITED STATES APPEALS FROM THE SENTENCE; (2) IF THE SENTENCE EXCEEDS THE APPLICABLE STATUTORY LIMITS OR (3) IF THE SENTENCE UNREASONABLY EXCEEDS THE ADVISORY GUIDELINE RANGE AS DETERMINED BY THE COURT. (IN WHICH CASES THE DEFENDANT MAY APPEAL FROM THE SENTENCE.)***

**\*\*\*\*\*ASK THE AUSA AND THE DEFENDANT'S COUNSEL IF THERE ARE ANY FURTHER POSITION STATEMENTS OR MOTIONS RELATIVE TO SENTENCING (FOR INSTANCE, FOR A DEPARTURE, AS TO §3E1.1 FOR ACCEPTANCE OF RESPONSIBILITY, OR DISMISSAL OF ONE OR MORE COUNTS OF THE INDICTMENT AFTER SENTENCING).\*\*\*\*\***

**\*\*\*\*\*RULE ON ANY MOTIONS OR REQUESTS FOR A DEPARTURE\*\*\*\*\***

**CALL ON COUNSEL FOR THE DEFENDANT TO MAKE ANY STATEMENTS OR PRESENTATIONS ON BEHALF OF THE DEFENDANT, TAKING TESTIMONY OR OTHER EVIDENCE AS APPROPRIATE, INCLUDING AS TO § 3553(a) FACTORS.**

**CALL ON THE DEFENDANT PERSONALLY TO MAKE ANY STATEMENT TO THE COURT.**

**CALL ON COUNSEL FOR THE GOVERNMENT FOR ANY POSITION, EVIDENCE OR ARGUMENT REGARDING SENTENCING.**

**CALL ON ALL COUNSEL AS TO ANYTHING FURTHER PRIOR TO SENTENCING.**

**ASK EACH COUNSEL IF THERE IS ANY REASON THAT SENTENCE MAY NOT BE PRONOUNCED.**

**REVIEW (AS NECESSARY) ADVISORY GUIDELINES CALCULATION:**

**BASE OFFENSE LEVEL** \_\_\_\_\_

**ADJUSTMENTS TO B.O.L. AND BASIS** \_\_\_\_\_

**TOTAL OFFENSE LEVEL** \_\_\_\_\_

**CRIMINAL HISTORY CATEGORY** \_\_\_\_\_ **ZONE** \_\_\_\_\_

**ADVISORY GUIDELINES:**

**IMPRISONMENT** \_\_\_\_\_

**PROBATION** \_\_\_\_\_

**SUPERVISED RELEASE** \_\_\_\_\_

**FINE** \_\_\_\_\_

**RESTITUTION** \_\_\_\_\_

**FORFEITURE** \_\_\_\_\_

**SPECIAL ASSESSMENT PURSUANT TO 18 USC § 3013** \_\_\_\_\_

**RECITATION OF THE CONSIDERATION OF THE FACTORS PURSUANT TO 18 USC § 3553:**

- 1. THE NATURE AND CIRCUMSTANCES OF THE OFFENSE AS SET FORTH IN THE PLEA HEARING RECORD, THE PSI AND THE ADDENDUM.**
- 2. THE HISTORY AND CHARACTERISTICS OF THE DEFENDANT AS SET FORTH AT LENGTH IN THE PSI AND ADDENDUM, INCLUDING FAMILY AND PERSONAL DATA, PHYSICAL CONDITION, MENTAL AND EMOTIONAL HEALTH, EDUCATIONAL AND VOCATIONAL SKILLS AND EMPLOYMENT RECORD.**

**CONFIRM THAT THE COURT HAS CONSIDERED ALL LEGALLY PERMITTED EVIDENCE AS PRESENTED TO THE COURT, THE ARGUMENTS OF COUNSEL AND DEFENDANT'S STATEMENTS TO THE COURT.**

**NOTE THAT IT IS THE OBLIGATION OF THE COURT TO FIX A SENTENCE THAT IS SUFFICIENT BUT NOT GREATER THAN NECESSARY TO COMPLY WITH THE PURPOSES OF SENTENCING, AND STATE HOW EACH APPLIES IN THIS CASE:**

**TO REFLECT THE SERIOUSNESS OF THE OFFENSE**

**TO PROMOTE RESPECT FOR THE LAW**

**TO PROVIDE JUST AND SOUND PUNISHMENT FOR THE OFFENSE**

**TO AFFORD ADEQUATE DETERRENCE TO CRIMINAL CONDUCT BY YOU, OR BY OTHERS IN SOCIETY**

**CONSIDERATION OF THE NOW-ADVISORY SENTENCING GUIDELINES AND ANY APPLICABLE POLICY STATEMENTS AND SENTENCING FACTORS**

**A CONSIDERATION OF THE TYPES AND KINDS OF SENTENCES THAT ARE AVAILABLE**

**TO PROTECT THE PUBLIC FROM THE COMMISSION OF FURTHER CRIMES BY YOU**

**TO PROVIDE ANY NEEDED EDUCATIONAL OR VOCATIONAL TRAINING, MEDICAL CARE OR OTHER CORRECTIONAL TREATMENT IN THE MOST EFFECTIVE MANNER.**

**AVOIDANCE OF ANY UNDUE OR UNJUST DISPARITIES IN SENTENCING.**

**CONSIDER AND RULE UPON ANY FURTHER SENTENCING ARGUMENTS MADE BY ANY PARTY AS TO THE APPLICATION OF THE §3553(a) FACTORS.**

**NOTE THAT IT IS THE COURT'S FUNDAMENTAL OBLIGATION IS TO PROVIDE A SENTENCE THAT IS SUFFICIENT BUT NOT GREATER THAN NECESSARY, WHICH MEANS THAT THE COURT WILL SET A SENTENCE THAT IN THE COURT'S JUDGMENT FULLFILLS THE PURPOSES OF SENTENCING AS DESCRIBED, BUT WILL GO NOT FURTHER. ANY SENTENCE IMPOSED WILL RELATE SPECIFICALLY TO THE DEFENDANT AND THE DEFENDANT'S SITUATION.**

**(STATE ON THE RECORD THE COURT'S REASONING AND ITS DETERMINATION AS TO THE SENTENCE TO BE IMPOSED):**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_

**\*\*\*\*\*THE COURT FINDS AND CONCLUDES THAT THE FOLLOWING SENTENCE IS APPROPRIATE AS BEING SUFFICIENT BUT NOT GREATER THAN NECESSARY TO FULFILL THE PURPOSES OF SENTENCING UNDER THE APPLICABLE LAW AND IN LIGHT OF THE SPECIFIC FACTS OF THIS CASE, PURSUANT TO THE SENTENCING REFORM ACT:**

**YOU, \_\_\_\_\_, ARE HEREBY SENTENCED AS FOLLOWS:**

**TO A TERM OF IMPRISONMENT OF \_\_\_\_\_ MONTHS**

**[OR, TO A TERM OF PROBATION OF \_\_\_\_\_ MONTHS WITH THE FOLLOWING CONDITIONS: \_\_\_\_\_]**

**FINE: \_\_\_\_\_**

**(IF INVESTIGATION SHOWS INABILITY TO PAY, WAIVE FINE)**

**RESTITUTION: \_\_\_\_\_**

**FORFEITURE: \_\_\_\_\_**

**MANDATORY SPECIAL ASSESSMENT: \_\_\_\_\_**

**SUPERVISED RELEASE: \_\_\_\_\_**

**\*\*\*\*\*STATE STANDARD CONDITIONS OF PROBATION OR SUPERVISED RELEASE, AND THEN REVIEW SPECIAL CONDITIONS TO BE IMPOSED AND BASIS FOR IMPOSITION. ADVISE THAT ANY VIOLATIONS OF A CONDITION WILL BE BROUGHT TO THE COURT'S ATTENTION, AND MAY LEAD TO A REVOCATION.**

**MAKE FINAL § 3553(a) FINDINGS:**

**THE SENTENCE IMPOSED IS SUFFICIENT BUT NOT GREATER THAN NECESSARY, CONFORMS TO THE STATUTORY REQUIREMENTS AND THE ADVISORY GUIDELINES, AVOIDS UNWARRANTED SENTENCING DISPARITIES, REFLECTS THE SERIOUSNESS OF THE OFFENSE, PROMOTES RESPECT FOR THE LAW, PROVIDES JUST AND SOUND PUNISHMENT FOR THE OFFENSE, AND AFFORDS ADEQUATE DETERRENCE TO CRIMINAL CONDUCT.**

**\*\*\*\*\*ASK ALL COUNSEL IF THERE ARE ANY OBJECTIONS TO THE PROCEDURAL REASONABLENESS OF THE SENTENCE AS IMPOSED. ASK COUNSEL AND THE PROBATION OFFICER IF THERE IS ANY NEED TO CLARIFY OR AMEND ANYTHING IN THE COURT'S ORAL STATEMENT OF SENTENCE.\*\*\*\*\***

**REVIEW APPEAL RIGHTS:**

**YOU HAVE THE RIGHT TO APPEAL FROM THE ORDERS OF THIS COURT, THE JUDGMENT OF GUILT AND SENTENCE IMPOSED BY THE COURT. THOSE RIGHTS MAY BE LIMITED BY ANY AGREEMENT YOU HAVE MADE UNDER A PLEA AGREEMENT TO WAIVE OR LIMIT SUCH APPEAL RIGHTS.**

**YOU HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER IN ANY SUCH APPEAL. IF YOU CANNOT AFFORD A LAWYER, ONE WILL BE APPOINTED FOR YOU AT NO COST TO YOU. DO YOU UNDERSTAND THAT?**

**IF YOU CANNOT AFFORD TO PAY THE FILING FEES FOR AN APPEAL, THE COURT WILL WAIVE THOSE FILING FEES. DO YOU UNDERSTAND THAT?**

**IF YOU CANNOT AFFORD CERTIFIED COPIES OF NECESSARY COURT RECORDS AND TRANSCRIPTS FOR AN APPEAL, THEY WILL BE FURNISHED TO YOU AT THE EXPENSE OF THE GOVERNMENT. DO YOU UNDERSTAND THAT?**

**IF YOU DO WANT TO APPEAL, YOU MUST DO SO, THAT IS APPEAL, WITHIN 14 DAYS OF TODAY. IF YOU DO NOT SO APPEAL WITHIN 14 DAYS OF TODAY, YOU WILL LOSE YOUR RIGHT TO APPEAL. DO YOU UNDERSTAND THAT?**

**IF YOU SO REQUEST, THE CLERK OF THIS COURT WILL PREPARE AND FILE A NOTICE OF APPEAL ON YOUR BEHALF.**

**ASK COUNSEL IF ANY OTHER MATTERS TO COME BEFORE THE COURT.**

***CUSTODY MATTERS* -- EITHER CONFIRM CONTINUATION OF BOND ON ALL EXISTING (OR OTHER) TERMS, PENDING SELF-REPORT. IF SO, ADVISE DEFENDANT TO REPORT TO U.S. MARSHAL'S OFFICE ON THE SECOND FLOOR OF THIS BUILDING NO LATER THAN NOON ON \_\_\_\_\_, UNLESS THE DEFENDANT HAS ON A SOONER DATE BEEN DIRECTED BY THE BUREAU OF PRISONS WHEN AND WHERE TO REPORT, IN WHICH CASE DEFENDANT IS TO FOLLOW SUCH DIRECTIONS.**

***OR***

**REVOKE THE BOND AND REMAND TO THE CUSTODY OF THE UNITED STATES MARSHAL.**

**SENTENCING IS CONCLUDED AND COURT IS ADJOURNED.**