

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 16-60227-CR-HURLEY

UNITED STATES OF AMERICA,

Plaintiff,

v.

TODD HANSON,

Defendant.

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**SENTENCING MEMORANDUM AND INCORPORATED MOTION FOR
DOWNWARD DEPARTURE AND VARIANCE BELOW THE LOW END OF
THE APPLICABLE GUIDELINE RANGE**

COMES NOW, the Defendant, TODD HANSON, by and through his undersigned counsel, and submits this sentencing memorandum in support of his request for a sentence below the applicable guideline range that is “sufficient, but not greater than necessary, to comply with the purposes set forth” in 18 U.S.C. §3553(a). The Defendant is asking this court to sentence him to 97 (ninety –seven months), followed by a period of supervised release. In support of this motion, the Defendant offers the following:

I. INTRODUCTION

a. Todd's Abusive Upbringing

[THIS PORTION OF THE MEMORANDUM HAS BEEN FILED UNDER SEAL.]

b. Becoming a Marine

When Todd was seventeen he took his life into his hands and was determined to escape the chaos of his life he “overcame insurmountable odds to make it out of the city and join the Marines.”¹ He was fortunate that the Marines accepted him despite his handicaps. It has been said time and time again by former Marines that Marine Corps recruit training was the most difficult thing they ever had to do in their entire lives. When we asked Todd about his experience, he told me it was “bliss” compared to where he came from. For the first time in his life he had 3 meals a day, a bed to sleep in, he was not sexually abused and he felt camaraderie with his fellow Marines that he had never experienced before. As a Marine, he excelled and was awarded numerous medals and accolades. His courage and bravery to participate in every dangerous mission and risk his life masked his real feelings of being worthless, but it earned him the respect and admiration of his fellow marines. He had never experienced friendship or the feeling of being respected and he was so starved for these experiences that this is what began his compulsion to seek admiration even if it meant putting aside his values and morals.

c. Adult Survivors of Child Abuse

¹ Mark Hanson’s Letter

[THIS PORTION OF THE MEMORANDUM HAS BEEN FILED UNDER SEAL.]

d. Todd's Mental Health Issues

[THIS PORTION OF THE MEMORANDUM HAS BEEN FILED UNDER SEAL.]

II. FACTS SURROUNDING THE INSTANT OFFENSE

Undersigned counsel adopts and accepts all the facts in the factual proffer previously agreed to on October 25, 2016 [DE #169], and submits these additional facts merely to provide more detail as to Mr. Hanson's role in this conspiracy.

Prior to the conspiracy, Todd Hanson was a successful self-taught software developer. In May 2013 NuMedCare, contracted with Todd Hanson to design and build Enterprise Resource Planning software for them and their affiliated companies. At the same time, Greg Norman's hedge fund also contracted with Todd to provided services to them in designing a pharmacy accounting and inventory system. In 2014, NuMedCare began to receive payments for prescriptions for compound pharmaceuticals. In September 2014, Todd purchased Clinical Corp from Greg Norman's hedge fund. Cliff Carroll moved all the employees, postal address, phone and fax numbers from Clinical Corp to NuMedCare. At that time, Todd Hanson was their Chief Operating Officer.

As is outlined in the factual proffer, the purpose of the conspiracy was to benefit from the high reimbursement from insurance companies for compound pharmaceuticals and to incentivize physicians with illegal gifts to write prescriptions for these expensive medications. [DE#169] The method used by the coconspirators was to create surveys for physicians to complete, regarding their patients, and to pay the physicians for completing these surveys. But, the data was never used for legitimate purposes and this method merely concealed the illegal kickbacks to the physicians. Todd was responsible for creating the software that collected the data from physicians and for training staff members on how to manage the software and educate the physicians on how to use it.

In November 2014, Todd was forced by Cliff Carroll, Todd Stephens and Tim Clinton to sell them 52.5% of Clinical Corp thereby removing Todd from majority control of Clinical Corp. All of Todd's access to Clinical Corp software, billing and accounting records, physicians and sales representatives was revoked in December 2014. The majority of profits Todd earned as a result of this conspiracy were invested into the Nativ Hotel located in Denver, Colorado for which Todd has hired an attorney to extricate his ownership.

**III. DEFENDANT'S MOTION FOR DOWNWARD DEPARTURE BASED ON
DEFENDANT NOT RECEIVING FULL CREDIT FOR HIS TIMELY
ACCEPTANCE**

Due to Todd's guideline calculation being almost in excess of the statutory maximum, Todd is not receiving full credit for his timely acceptance and as such a downward departure or variance is warranted.

Todd, as it now stands, is facing a statutory maximum of fifteen (15) years or one hundred and eighty (180) months with a Guideline range, after an adjustment for acceptance of responsibility, of 168-210 months. With the above stated statutory maximum, the actual guidelines for Todd are 168-180 months or only a minimal twelve-month reduction under the guidelines for acceptance of responsibility.

A defendant with a level 38 accepting responsibility for his or her offense would be afforded a 67-month reduction for that acceptance. However, due to the statutory maximum, the guidelines only take into account a twelve-month reduction for acceptance of responsibility or approximately just 9% of the sentence.

In light of the forgoing, and especially giving consideration to Todd's early and extensive cooperation with the United States Attorney's Office, and agreed to plead to an information in the case *sub judice*, the sentence reduction the Defendant would ordinarily receive for acceptance of responsibility is practically negated.

In *United States v. Rodriguez*, 64 F.3d 638 (11th Cir. 1995) stated that a “defendant's acceptance of responsibility is a circumstance that the guidelines clearly and explicitly consider. The §3E1.1 adjustment entitles a defendant who demonstrates acceptance of responsibility to a two- or three-level reduction in his offense level. Thus, acceptance of responsibility generally is not grounds for a departure.” *Id.* at 643.

The Sentencing Guidelines reflect the importance of plea bargaining, as well as guilty pleas generally, by rewarding one who pleads guilty. See U.S.S.G. §6B1.2, comment. (Defendant who timely enters guilty plea enhances likelihood of receiving downward adjustment under §3E1.1); § 3E1.1, comment. (n. 3) (guilty plea is significant evidence of acceptance of responsibility).

The court in *Rodriguez* found that a district court has the discretion to reward a defendant's acceptance of responsibility by departing downward when § 5G1.1(a) renders § 3E1.1 ineffectual in reducing the defendant's actual sentence. *Id.* at 643 (11th Cir. 1995) As this court is aware, U.S.S.G. § 5G1.1(a) provides that “[w]here the statutorily authorized maximum sentence is less than the minimum of the applicable guideline range, the statutorily authorized maximum sentence shall be the guideline sentence.”

Therefore, in order to comply with the spirit of the Guidelines,

since Todd's advisory guideline range exceeds the statutory maximum, the court has discretion to downwardly depart and/or otherwise vary from the advisory guideline range and impose a sentence sufficiently below the statutory maximum in order to truly give Todd his earned reduction for acceptance of responsibility.

**IV. MOTION FOR DOWNWARD DEPARTURE BASED ON
DEFENDANT'S MENTAL AND EMOTIONAL CONDITION
PURSUANT TO §5H1.3**

[THIS PORTION OF THE MEMORANDUM HAS BEEN FILED UNDER SEAL.]

**V. THE FACTORS 18 U.S.C. §3553 SUPPORT THE DEFENDANT'S
MOTION FOR A DOWNWARD VARIANCE.**

**A. THE COURT MUST CONSIDER ALL FACTORS SURROUNDING THE
OFFENSE WHEN DETERMINING A SENTENCE.**

Perhaps the greatest benefit of the United States Supreme Court decision in *United States v. Booker*, 543 U.S. 220, 125 S.Ct. 738 (2005) was that it once again vested the power with the federal district judges to actually be judges when it comes to sentencing. Post-*Booker* judges are now again trusted to weigh the facts and surrounding circumstances of each individual case and defendant, and then tailor a sentence that they believe to be truly just. The beauty of the *Booker* decision is that although the guidelines must be calculated and considered, they are but one factor the court need take into consideration when imposing sentence.

When considering the nature and circumstances of the offense as required by §3553, the court should take into account *all* surrounding factors so as to be certain to craft the appropriate sentence. Post-*Booker*, the guidelines themselves are but one factor the court should consider in determining sentence. No longer is a guideline sentence presumed to be fair. The Eleventh Circuit Court of Appeals has joined other circuits, which have refused to prescribe to the concept that a low-end Guideline sentence is *per se* reasonable. In the case of *United States v. Talley*, 431 F.3d 784 (11th Cir. 2005), when addressing the government's argument that a guidelines sentence is *per se* reasonable, the court stated:

"The United States argues that a 'sentence at the low end of the applicable advisory Sentencing Guideline range is, per se, a reasonable sentence.'" This argument does not comport with the *Booker* decision. According to Black's Law Dictionary, "per se" means 'Of in, or by itself; standing alone, without reference to additional facts.'" To say that a sentence within the Guideline range is "by itself" reasonable is to ignore the requirement that the district court, when determining a sentence, take into account the other factors listed in section 3553(a). *Id.* at 786, citing to *United States v. Booker*, 543 U.S. 220, 125 S.Ct. 738, 765-766 (2005).

For the court to simply look to the Guidelines and not take into consideration the many factors that inevitably surround an offense would result in a sentence that is inherently unfair.

Sending Todd to prison for a lengthy period of time will not advance any of the other purposes of sentencing set out in 18 U.S.C. § 3553(a). Todd Hanson is not a dangerous man who needs lengthy imprisonment to protect the public. He is a first time offender and is certain to never commit another crime again. There is also no need to imprison him for a long time in order to reflect the seriousness of the offense. Todd is deeply remorseful for his actions and has substantially cooperated with the government. The nature and circumstances of the offense, as well as the history and characteristics unique to Todd, strongly support a significant variance below the applicable guideline range.

B. THE DEFENDANT'S EXTENSIVE CO-OPERATION AND EXTRAORDINARY ACCEPTANCE OF RESPONSIBILITY WARRANT A DOWNWARD VARIANCE

“Acceptance of responsibility” results in a three level departure from the advisory sentencing guidelines pursuant to U.S.S.G § 3E1.1. If a defendant does not cooperate, makes no statements and merely pleads guilty (even on the eve of trial) he, or she will be entitled to that departure. Todd provided substantial cooperation to the government prior to sentencing, and therefore is in a very different position than those who receive credit for merely accepting responsibility. Despite his early and extensive cooperation, which included over six, multiple hour

long debriefs and well over 300 documents provided to the government the government will not be filing a 5k1.1 motion on Todd's behalf.

This court is not precluded from varying from the advisory guideline sentence due to extraordinary acceptance of responsibility in the form of cooperation. This court has the discretion to consider all 3553(a) factors, and substantial cooperation can clearly be applied to two of those factors.

First, a defendant's substantial cooperation is clearly applicable to the "nature and circumstances of the offense and history and characteristics of the defendant" (18 U.S.C. 3553(a)(1)). The assistance provided to the government by Mr. Hanson is a clear indicator of his character. He took responsibility very early on and took steps to assist the government in their investigation by providing explanatory information and evidence that could have been used to prosecute his co-defendants had they proceeded to trial. Undersigned counsel acknowledges that Todd withheld information that was obstructive but not directly related to the investigation. Todd pled guilty to that charge, but that should not discount all the extraordinary efforts Todd made to assist the government.

Todd Hanson is in a very different position than that of many of his co-defendants. He has contributed lengthy and substantial cooperation

to the government by being debriefed, providing his own personal financial documents and documents of the company, insight into the software with which the enterprise operated, and countless other facts which were helpful to the government.

In *United States v. Sol*, the court properly took into account a defendant's "extraordinary acceptance of responsibility" as part of the 3553 factor analysis. *Id.* at 522 Fed. Appx.567, 568 (11th Cir. 2013). The court found that the defendant's guilty plea along with her cooperation during her prosecution should be factored into the sentence. Similarly, this court in granting him a downward variance should consider Todd's extensive cooperation.

C. THE HISTORY AND CHARACTERISTICS OF THE DEFENDANT SUPPORT A SIGNIFICANT DOWNWARD VARIANCE.

The instant offense does not accurately reflect Todd's character. Notwithstanding the serious charges, Todd has never had any significant contact with the criminal justice system. As reflected in the PSI, he has a criminal history category of I.

As Todd's character letters demonstrate, Todd has been a law-abiding citizen and led an exemplary life filled with acts of service for his community, his country and those in need of help. His conduct was inconsistent in this case with who Todd really is. He has learned a great

deal from his involvement and subsequent conviction in this case and he is certain to never again find himself facing criminal charges.

While the crime of which Todd has been convicted of is extremely serious, the court should take note the sum of a person is not reflected in his weakest and worst moment, but rather in the character he has built throughout the entirety of his life.

1. Todd's Community Service

All of the letters submitted by undersigned counsel, refer to Todd's lifetime commitment to service work and his utter dedication to helping others. He "somehow took handicaps, poverty, mental institutionalization, war and turned it into enthusiasm for helping complete strangers." ² He has "quiet dignity" that he brings to his work and "he recognizes the value of people he encounters without judging their circumstances or economic background." ³ He is "constantly going out of his way to help others." ⁴ Through his charity work Todd has found an environment that is safe and free of judgment with everyone focusing towards a positive common good. This type of environment is well suited to someone with Todd's handicaps because the social interactions are usually friendly but limited as everyone is focused on the task at hand.

² Gail Hanson's Letter

³ Larry Malkin Letter

⁴ Diana Hanson's Letter

For Todd this has “been a way of life . . . every friend he has can be tied somehow to a volunteer organization, animal shelter or the armed services.” This past year Todd has volunteered “over 1400 hours in his.”⁵

2. Who Todd is to the people in his life

As a husband, Todd has helped his wife Diana, who is from the Philippines and is new to the United States, to “assimilate into this great country while helping to combat the homesickness of a girl from a small family and a tiny village on the other side of the world.”⁶ They met each other on the hillsides of the Philippines when Todd travelled there to assist in the rescue efforts after landslides devastated the area. He “knew about 5 words (barely) of Tagalong and yet he flew to the other side of the world to help complete strangers”

Despite the horrors his mother subjected Todd to, he has forgiven her. Every month “he drives over 17 hours to visit me in Phoenix, Arizona, to help fix things around the house and check that I am doing fine.”⁷

As a friend, Todd is the person you call when your wife needs to go to hospital for surgery because “Todd took it upon himself to drive my wife and I to the hospital and stayed with me for over 10 hours during my

⁵ Thomas DeLauer Letter

⁶ Diana Hanson’s Letter

⁷ Gail Hanson’s Letter

wife's surgery.”⁸ When Larry Malkin's parents were critically injured in a car accident, the first person that called him to ask how he could help was Todd.⁹ Todd then “referred and paid for a lawyer to help my family fulfill our financial and legal obligations. Without this timely support, my family would have lost the family home. Soon thereafter, Todd organized other friends in a donation drive to help pay for my parents recurring medical costs. They raised more than \$35,000.” When Dionysius Fiumano was depressed and suicidal, he turned to Todd who helped mentor him “through my issues and view my actions and behavior in a different and more positive light. The comparison literally saved my life.”¹⁰

As a Marine, Todd was awarded many medals. He fought for his country with distinction and honor. But it was his measured response to a dangerous situation that saved the life of Mostafa Ammar. During the Gulf War, Mostafa was in the Iraqi Army:

“Todd encountered another and myself as we were seeking cover from the shooting. We immediately surrendered but were very scared at the time so we did not drop our weapons. In a display seldom seen in one so young he had the presence of mind not to fire upon us as what was happening with some of the other soldiers. He treated us with dignity and gave us 2 MRE's to eat out of his pack before turning us over to an officer.”¹¹

⁸ Bob Nelson's Letter

⁹ Larry Malkin's Letter

¹⁰ Dionysius Fiumano Letter

¹¹ Mostafa Ammar Letter

Had Todd not shown mercy to this man, he never would have been able to go on to have a family and lead the wonderful life he has.

As an employer, Todd is generous and understanding, when Sundha Sahandra's mother was injured in an accident in India "Todd immediately promoted her with a raise and 90 day paid vacation so she could travel to India and care for her mother . . . I have seldom (sic) witnesses such an act of generosity and loyalty to an employee these days." ¹²If you are someone who hired Todd to do work for you and your company is struggling to pay then Todd is likely to "release companies from their contracts and waive payments and fees for clients that are struggling."¹³

Todd has contributed greatly to his community and his country and for Mark Hanson "there is no other that you would want next to be in a foxhole, at a hospital bedside or my kid's graduation."

3. What Todd has achieved since the inception of this case

Todd has taken great steps to demonstrate his remorse for his actions "from the moment he understood the enormity of what he had participated in he took massive and overwhelming action" and to atone for his mistakes. ¹⁴Along with his extensive cooperation with the United

¹² Bob Nelson's Letter

¹³ Bob Haines' Letter

¹⁴ Thomas DeLauer Letter

States government, he has given many speeches to employer groups on “blunders in judgment, book drafts, proposals and articles to those whom were affected by his crime.”¹⁵ He also voluntarily started drug and mental health counseling and has been working with various mentors who hold him accountable for his sobriety.

Todd also hired the services of a forensic accountant and provided his financial documentation to the government to assist in their investigation. He is currently enrolled at Adams College and has lectured to students on how “he allowed his greed to bend his values.”¹⁶ He has also been working extensively with Pre-Trial Services in Nevada on a program to help provide defendants with volunteer opportunities in their communities while they are on supervision. These “are the actions of a man who is trying to right the wrongs he has caused”¹⁷ and he is trying to “teach others better decision -making by using himself as an example.”¹⁸

V. CONCLUSION

Punishment comes in many forms and it is the unenviable task of this court to determine what form is most appropriate. All too often courts are quick to find that the only truly punitive tool at their disposal

¹⁵ Thomas DeLauer Letter

¹⁶ Thomas DeLauer Letter

¹⁷ Lance Malkin Letter

¹⁸ Diana Hansons Letter

is lengthy imprisonment. While this is often true for repeat, violent and remorseless offenders, in the instant case, the man who stands before the court has suffered and will continue to suffer for his mistakes. There is no fear of reoffending and no need for rehabilitation, as such any lengthy term of incarceration would prove unduly harsh and unnecessary.

The Supreme Court in *Booker* has vested the district courts with the ability to judge the facts and circumstances, but more importantly the characteristics of the defendant. Todd is a good man who made a very serious error in judgment when he committed the crimes he pled guilty to. He has readily admitted his mistakes and accepts his responsibility. He now stands before the court as a convicted felon who will forever have to live with the shame and consequences of his acts. Todd is an example of someone who was able to “rise above abuse, disability and poverty”¹⁹ and his “willingness to be a beacon of hope for inner city youth and the invaluable lessons regarding poor decision making will be among the many things he can share with others in the future.”²⁰

Todd has suffered “the loss of his assets, damage to his family, career, lost respect in the community, personal freedom being lost and the weight of being a convicted felon.”²¹ He has accepted responsibility

¹⁹ Mark Hanson’s Letter

²⁰ Mark Hanson’s Letter

²¹ Richard Skelton Letter

for his actions and is truly repentant. As a decorated veteran and a man who has dedicated his life to community service, Todd stands out amongst the majority of criminal defendants in criminal case especially when his tragic upbringing is taken into account. 18 U.S.C. §3553(a) states that any sentence imposed must be “sufficient but not greater than necessary.” In this instance, a sentence of 97 (ninety –seven months), followed by a period of supervised release certainly meets those criteria.

WHEREFORE, based upon the foregoing and additional arguments to be made at the time of sentencing, the Defendant, TODD HANSON, by and through his undersigned counsel, moves this court to grant his motion for downward departure and downward variance in accordance with 18 U.S.C. §3553 and sentence Mr. Hanson to 97 (ninety –seven months), followed by a period of supervised release.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing was electronically filed with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record this 23rd day of March, 2017.

Respectfully submitted,
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