

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

**UNITED STATES OF AMERICA,** )

**Plaintiff,** )

v. )

**JIMMY C. CHISUM,** )

**Defendant.** )

**Case No. 05-CR-43-01-RAW**

**SENTENCING MEMORANDUM**

Defendant, JIMMY C. CHISUM, acting as his own attorney, has directed advisory counsel Stephen J. Knorr to file this sentencing memorandum on his behalf due to the lack of materials at the Muskogee County jail which has prevented him from filing this memorandum himself. In support of this motion, Mr. Chisum states as follows:

**Sentencing Hearing Held on November 15<sup>th</sup>, 2007**

At the hearing held on November 15<sup>th</sup>, 2007, the Court heard arguments on the sentencing issue that was before the Court, that being whether Mr. Chisum was an organizer or leader pursuant to advisory guideline 3B1.1(c). After hearing arguments from the government, Mr. Chisum, and advisory counsel (in a special limited role), the Court directed that the parties file by noon on November 26<sup>th</sup> their respective positions on the enhancement and specifically whether the government might re-consider its objection to the presentence report. Mr. Chisum understands from advisory counsel that the government through Mr. Gay

Guthrie has decided to withdraw its objection to the presentence report. Given that, the issue remanded to the district court has become moot and the advisory sentencing guideline should be reduced from 97-121 months to 78-97 months.

At the same hearing, the district court put the parties on notice that it was considering a downward variance from the otherwise applicable guideline range, stating that the sentence imposed might have been greater than necessary to comply with the factors enumerated in 18 U.S.C. § 3553(a), especially sentencing disparity. The Court invited both parties to address the variance issue. By this sentencing memorandum, Mr. Chisum urges the Court to consider all the factors and impose a sentence less than what the advisory guidelines suggest might be an appropriate sentence.

#### VARIANCE FROM THE ADVISORY GUIDELINE RANGE

Mr. Chisum has consulted with his court-appointed standby counsel and has directed counsel to file this memorandum setting forth Mr. Chisum's reasons why a variance should be issued in this case. § 3553(a) mandates that a court "shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) [3553(a)(2)] of this subsection." In determining what an appropriate sentence should be, a court is further required to consider all the factors set forth in § 3553(a) (1-7). The advisory sentencing guideline range is but one of these factors. § 3553(a)(4). The following factors suggest that a downward variance from the advisory guideline range would produce a sentence that would not be greater than necessary to comply with the purposes of the

sentencing.

*Nature and Circumstances of the Offense; History and Characteristics of the Defendant*

The Court is well aware of the charges for which Mr. Chisum stood trial and was convicted, that being participating in a scheme to evade taxes on the income earned by Brian and Mitzi Chadsey. Mr. Chisum was convicted of setting up certain trusts and then using various bank accounts, including off-shore accounts, to evade taxes on income earned from a chiropractic business. Although Mr. Chisum testified to his good faith belief in the use of such trusts and his understanding of the tax laws, the jury concluded that Mr. Chisum knowingly and willfully assisted the Chadsey's in tax evasion. The offense did not involve any violence, threats of violence, firearms, or controlled substances.

Mr. Chisum is presently 62 years old and has been in custody since July 6, 2006, a period of nearly 17 months. As the PSI report set forth on page 13, Mr. Chisum has no prior criminal convictions. The only prior arrest occurred in 2003 for contempt of court for failing to produce documents dealing with trust accounts for which Mr. Chisum was trustee during a divorce proceeding. Mr. Chisum is a veteran of the U.S. Navy, having served for approximately nine years at which time he received an honorable discharge. Mr. Chisum has been married three times and has one daughter and a step-daughter. His daughter has four children and Mr. Chisum and his wife Donna took on the responsibility of raising the four children themselves. Upon Mr. Chisum's incarceration, Donna Chisum continued to raise the children by herself. In October, Donna Chisum died unexpectedly. The

grandchildren are now being cared for other family members.

Since Mr. Chisum's conviction, several events have occurred that speak to the nature of Mr. Chisum's character. Upon his release on bond following his conviction, Mr. Chisum was well aware during the period from November of 2005 until July of 2006 that this Court as well as the government did not want him to be involved in any more trust accounts similar to the ones involved in the offenses of conviction or similar accounts that were set up elsewhere. Mr. Chisum in effect got out of the business, severing his ties to any existing trusts and relinquishing any obligations and duties he might have had with respect to any such accounts. In addition, Mr. Chisum no longer held seminars or attended meetings to describe the trusts that he had previously recommended to individuals seeking to reduce their tax burdens.

Upon arriving at the LaTuna federal prison camp, Mr. Chisum as well as other inmates were told by staff to avoid raising any issues about staff members. On or about May 2<sup>nd</sup> or 3<sup>rd</sup> of 2007, Mr. Chisum witnessed a verbal assault by a staff member, A.L., a Hispanic male, against another staff member, J.L., an African-American female. Mr. Chisum heard the verbal assault by the male staff member and also heard the female respond "don't touch me, keep your hands off of me." Mr. Chisum did not observe any physical abuse but did see the female officer being forced out of an office. The female officer then reported the incident as both physical abuse and discrimination. Besides Mr. Chisum, there were about seven other inmates present in the garage where the incident took place.

The next morning, Mr. Chisum was the only inmate who prepared and delivered a written account of the incident. Mr. Chisum did so without being asked because he felt that J.L. had been subject to both racial and sexual discrimination in the past. Since that time, J.L. also has filed a complaint with the E.E.O.C. In August, Mr. Chisum was interviewed by the internal affairs branch of the Bureau of Prisons and was asked to sign an affidavit which Mr. Chisum believed was incomplete. After signing the affidavit under protest, Mr. Chisum then filed a BP-9 form consisting of a more complete statement of what had happened and the apparent attempt by internal affairs to cover up the issue of discrimination. To Mr. Chisum's knowledge, nothing has happened since that time.

Following the death of his wife, Mr. Chisum applied for a furlough to attend services for his wife in Phoenix. Although Mr. Chisum was serving a 97 month prison sentence and had not voluntarily surrendered to begin service of his sentence, the Bureau of Prisons granted the furlough. Mr. Chisum was released from the Bureau on October 28, 2007, and was allowed to travel unescorted to and from Phoenix. Mr. Chisum complied with all the conditions of his furlough as well as passing urinalysis and breathalyzer tests upon his return.

Purposes of Sentencing

§ 3553(a)(2) provides that the sentence should reflect the seriousness of the offense, promote respect for the law, provide just punishment, afford adequate deterrence, protect the public from further crimes, and provide training and care in an effective manner. Given the advisory guideline range of 78-97 months, a sentence less than that range but which still

requires a custodial term would reflect that the offense was serious, something that Mr. Chisum fully understands, and provide a just punishment. While he may have sincere beliefs with respect to his interpretation of the law based on reading the law and studying it, Mr. Chisum now realizes that his views are not in conformity with the law and that continuing to act on his beliefs would subject himself to further criminal liability. Mr. Chisum has ceased being an advocate of his beliefs to others based on his conviction and incarceration and that has shown a respect for the law even though Mr. Chisum might disagree with it.

Given Mr. Chisum's age, his lack of prior criminal convictions, the loss of his wife, and his responsibilities for his grandchildren, there is little, if any, need to deter Mr. Chisum from further criminal conduct. While Mr. Chisum may continue to have good-faith beliefs about certain laws, there is little reason to believe that he would continue to act upon those beliefs in ways such as the offenses committed in the instant case. A sentence of incarceration outside of and under the advisory guideline range would also serve to protect the public from further crimes of Mr. Chisum but the period of time, given the history and characteristics of Mr. Chisum, need not be a minimum of seventy-eight months.

Advisory Sentencing Guidelines

As set forth in the PSI report, the tax loss for the offenses of conviction was \$39,504. PSI at page 6. Without including relevant conduct, the offense level would have been a 14 rather than a 26. The "sophisticated means" enhancement has raised the level to 16 and 28 respectively, resulting in a guideline range of 21-27 months with no relevant conduct versus

the 78-97 month range including relevant conduct. The tax losses that the PSI report has included as relevant conduct were over eight and one-half million dollars. Each individual tax payer who avoided taxes that were due and owing are responsible for the payment of those taxes, including the Chadseys. Thus, while the tax losses based on the returns set forth in the PSI report may have been over eight million dollars, it is likely that a considerable amount of the taxes owed will be, and may have already been, collected by the Internal Revenue Service. Thus, while the loss amounts listed may have reflected the actual loss at the time of the filing of the returns, the net actual loss will undoubtedly be much less. In that sense, the twelve level increase based on total tax loss may overstate the actual loss to the Internal Revenue Service.

In addition, the benefit of the tax avoidance scheme was primarily and principally to the Chadseys, and presumably the other taxpayers listed in the PSI report. There is no indication that Mr. Chisum benefitted in any significant monetary fashion from his efforts in setting up and, in some instances, acting as trustee. Chadsey testified at the trial that the agreement was to pay Mr. Chisum \$400 a year for his [Chisum's] involvement in the trust and that Chadsey was not even sure that Mr. Chisum received that much. Tr. at 138. While there was a schedule for fees that involved cost for setting up legal entities, Chadsey testified that not everything was done or set up, thus certain fees were never given to Mr. Chisum. Tr. at 142-143. Per the PSI report, \$121,379 of the \$170,000 wired to off-shore accounts was traced back to the benefit of Mr. Chadsey. PSI report at page 5. Chadsey recalled at the trial

that another \$30,000 or more was still in the account when he broke with Mr. Chisum and those monies were returned to him. Tr. at 222.

There is little reason in this record to believe that Mr. Chisum benefitted in any substantial monetary way from his involvement in these trusts. While the tax guideline is driven largely by the amount of tax loss, the actual amount of money received by Mr. Chisum was but a tiny fraction of the loss. Many cases of fraud involve an offender receiving for his or her own personal benefit the entire amount of the fraud loss; such is not the case here.

### Sentencing Disparities

Since Mr. Chisum was the sole defendant in this case, no argument can be made based sentencing disparities with co-defendants. Although Chadsey pled no contest to a tax loss of nearly \$40,000, he received probation. As the Court stated at the hearing on November 15<sup>th</sup>, the Court is in the best position to know what sentences have been imposed in cases before the Court in the past and whether a sentence within the advisory guideline range would result in an unwarranted sentencing disparity.

### CONCLUSION

The advisory guideline range is 78-97 months. That is but one of a number of factors this Court must take into account in determining whether a sentence within that range is sufficient but not greater than necessary to satisfy the goals of sentencing. A number of the factors set forth in this memorandum strongly suggest that a significantly lower sentence would comply with the § 3553(a) factors and constitute sufficient punishment. Mr. Chisum



respectfully requests that this Court grant a variance in this case and impose a sentence below the advisory sentencing guideline range.

Respectfully submitted,

Jimmy C. Chisum, en esse  
Propria persona (Pro Se) Defendant

Undersigned standby counsel has been directed to file this memorandum on behalf of Jimmy C. Chisum

s/ Stephen J. Knorr  
Stephen J. Knorr  
Attorney at Law  
OBA Number 19393  
4815 S. Harvard, Suite 523  
Tulsa, OK 74135  
918-742-1280

**CERTIFICATE OF SERVICE**

I hereby certify as standby counsel and at the direction of Mr. Jimmy C. Chisum, that on November 26<sup>th</sup>, 2007, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Mr. Gay Guthrie, Esq.

s/ Stephen J. Knorr  
Stephen J. Knorr