UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
at COVINGTON

CRIMINAL ACTION NO. 11-70-DCR

UNITED STATES OF AMERICA **PLAINTIFF**

V.

RONALD E. WEINLAND **DEFENDANT**

DEFENDANT RONALD E. WEINLAND'S MOTION FOR VARIANCE AND MEMORANDUM IN SUPPORT

Defendant Ronald E. Weinland, through undersigned counsel, moves the Court under 18 U.S.C. § 3553(a) and *United States v. Booker*, 543 U.S. 220 (2005), and its progeny for a downward variance from the advisory sentencing guidelines range as determined by the Court. For the reasons stated below, a sentence below the advisory sentencing guidelines range in this matter would be "sufficient, but not greater than necessary" to comply with the purposes of punishment.

MEMORANDUM IN SUPPORT

Following *Booker*, the Court must impose sentence in accordance with 18 U.S.C. § 3553(a). In particular, the Court must fashion a sentence "sufficient, but not greater than necessary" to comply with the purposes of punishment set forth in 18 U.S.C. § 3553(a)(2). *Id.* (emphasis added); *see, e.g., Pepper v. United States*, 131 S. Ct. 1229, 1242 (2011) (sentencing in accordance with "sufficient, but not greater than necessary" mandate is court's "overarching duty"); *Kimbrough v. United States*, 552 U.S. 85, 111 (2007) ("sufficient, but not greater than necessary" requirement is the "overarching instruction" of § 3553(a)). Those purposes include "to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense," 18 U.S.C. § 3553(a)(2)(A); "to afford adequate deterrence to

criminal conduct," *id.* § 3553(a)(2)(B); "to protect the public from further crimes of the defendant," *id.* § 3553(a)(2)(C); and "to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner," *id.* § 3553(a)(2)(D).

In determining a sentence "sufficient, but not greater than necessary" to accomplish these purposes, courts must consider certain factors, including "the nature and circumstances of the offense and the history and characteristics of the defendant," *id*. § 3553(a)(1); the guidelines sentencing range and any applicable Sentencing Commission policy statements, *id*. § 3553(a)(4), (5); and "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct," *id*. § 3553(a)(6).

In light of the § 3553(a) factors, a sentence below the advisory sentencing guidelines range would be "sufficient, but not greater than necessary" to fulfill the purposes of punishment.

I. THE SERIOUSNESS OF THE OFFENSE, RESPECT FOR THE LAW, AND JUST PUNISHMENT.

A. Circumstances of the Offense.

The offenses of which Mr. Weinland stands convicted—five separate counts of tax evasion—are unquestionably serious. But the "circumstances of the offense[s]" suggest that the conduct at issue was primarily the result of the substantial growth of The Church of God – Preparing for the Kingdom of God ("COG-PKG") during the time period covered by the indictment coupled with Mr. Weinland's admitted failure to ensure that appropriate recordkeeping and accounting measures were in place to accommodate the church's rapid growth and properly account for the church's expenses, rather than any affirmative acts of Mr. Weinland to evade the payment of tax.

Mr. Weinland has spent the majority of his life in service to various church congregations as a minister. During the time period covered by the indictment, Mr. Weinland spent most of his time traveling to counsel, worship, and study with numerous COG-PKG congregations and church members across the world, preparing and delivering sermons, updating website materials, and writing a book. To be clear, Mr. Weinland's significant daily efforts on behalf of COG-PKG are not offered as an excuse to any tax deficiency owed to the government or any failure to oversee the church's finances. They simply confirm that Mr. Weinland was overwhelmed by the extensive growth of COG-PKG and his constant efforts to reach out to members across the world and did not have the appropriate expertise or assistance to properly address the substantial accounting and tax issues inherent to the operation of a religious or nonprofit organization.

As was stated in Mr. Weinland's Memorandum Concerning the Sentencing Guidelines filed with this motion, the heart of the conduct at issue was a very unsophisticated reimbursement process wherein Mr. and Mrs. Weinland reimbursed themselves with church funds for expenses that were incurred on personal credit cards. Although the government disagreed with how certain expenses were characterized (*i.e.*, church vs. personal), the evidence at trial supported a reimbursement process through which the Weinlands reimbursed themselves for substantial legitimate church expenses that they had incurred on their personal credit cards. For example, the government's investigation determined that the Weinlands incurred legitimate church expenses on their personal credit cards totaling $2,979,417.57 (or, approximately 84% of the $3,567,236.35 in total credit card transactions) during the time period covered by the indictment. That is, accepting the government's characterization of the transactions at issue, under the reimbursement system in place, the Weinlands properly classified expenses as legitimate church expenses approximately 84% of the time. This does not take into account the

fact that the government's determinations failed to consider whether the Weinlands treated certain transactions as personal consistent with the government's characterization. These factors confirm Mr. Weinland's desire to attempt to properly account for legitimate church expenses and reflect mistake or error in that process rather than an intent to evade or defeat the payment of tax.

Moreover, Mr. Weinland did nothing to hide this reimbursement process or the related transfers. There was no separate set of books or accounting records or accounts opened in the names of nominees or sham entities. All of the transfers were made through accounts either held in the name of Mr. and Mrs. Weinland and the church. Most of the purchases at issue were made using credit cards held in the name of Mr. and Mrs. Weinland. The Weinlands kept a significant amount of expense receipts during the five-year period and created a significant paper trail that permitted the government to completely reconstruct five years of financial activity. Again, there is no evidence that Mr. Weinland attempted to hide assets or transactions through the use of fictitious entities or other individuals or that he undertook any complex or complicated asset structuring or tax planning.

With respect to the transfer of church funds into certain foreign accounts with a foreign financial institution in Switzerland, it is undisputed that Mr. Weinland transferred approximately $290,000 of church funds in 2007 into the foreign accounts through his personal account. It is also undisputed that Mr. Weinland established the foreign accounts in 2003 shortly after Mr. Weinland delivered a sermon to church members in late 2002 informing them that, consistent with their beliefs, he was going to open an account in Switzerland in his personal name using approximately $200,000 of church funds. After opening the account, Mr. Weinland traveled to Switzerland with a COG-PKG representative so that the representative could be added as a power of attorney on the account. In late 2008 and early 2009, all of the funds in the foreign

accounts were transferred from the foreign accounts back to church accounts in the United States.

It is clear that these funds remained church funds while on deposit in the foreign accounts and the funds were eventually returned to the church accounts. There was no attempt by Mr. Weinland to hide from church members the existence of the foreign accounts, the transfer of church funds to the foreign accounts, the reasons for the transfers to the foreign accounts, or the fact that the foreign accounts were opened in his personal name. Moreover, Mr. Weinland disclosed the existence of the foreign accounts to Special Agents with the IRS Criminal Investigation during his initial interview. With respect to Mr. Weinland's failure to timely file a 2008 individual income tax return, Mr. Weinland reasonably relied on the advice of his attorney at the time.

As stated above, Mr. Weinland understands the seriousness of the offenses and does not take them lightly. As the leader of COG-PKG, Mr. Weinland has acknowledged that he made mistakes in overseeing the financial matters of the church. To that end, Mr. Weinland has taken steps to engage a reputable accounting firm, with significant experience in working with religious organizations, nonprofits and ministers, to assist the church with handling financial and accounting matters. Further, Mr. Weinland accepts full responsibility for his actions and recognizes that there is likely tax due and owing for the tax years at issue. Mr. Weinland is prepared to cooperate fully with the IRS to determine what his appropriate civil tax liability is for the years at issue and work with the IRS to address payment of any outstanding liability.

B. Characteristics of the Offender.

In determining a sentence "sufficient, but not greater than necessary" to provide "just punishment," the Court must consider the "characteristics of the defendant." 18 U.S.C.

§ 3553(a)(1). The PSR provides a sketch of Mr. Weinland's life and accomplishments. The numerous sentencing letters in support of Mr. Weinland that were submitted to the Court under seal offer more detail. The letters come from individuals throughout the world that Mr. Weinland has touched in deep and meaningful ways throughout his years in service as a minister. They portray Mr. Weinland as a compassionate counselor that has helped many families traverse difficult times ranging from marriage troubles to severe health issues; as a dedicated teacher that has helped lead and nurture numerous people in their daily religious studies and devotions; as a devoted husband and parent that serves as a role model and mentor to church members; as a trusted advisor that has helped guide several individuals through the darkness and despair of addiction and depression; as a kind and generous friend; and as a man of integrity.

A representative letter, from a church member, puts it this way: "My life personally has changed drastically for the better as a direct result of Ronald Weinland's ministry . . . . more meaningful; not only for me, but for everyone that I come in contact with on a daily basis." Another church member writes that Mr. Weinland's ministry has "impacted my life for the better – helping me to see things in myself that have improved my relationship with my husband, children, parents, neighbors, etc." Finally, another church member states that "Mr. Weinland has drawn my family closer together and given me the encouragement to move on and not be afraid to raise my children as a young father."

The letters speak for themselves far better than we could paraphrase them. We urge the Court to consider them carefully in its sentencing decision.

C. Guidelines and Policy Statements.

The Court must consider the advisory guidelines sentencing range and applicable Sentencing Commission policy statements. 18 U.S.C. § 3553(a)(4), (5); *see also Pepper*, 131 S.

Ct. at 1241-42. Properly calculated,[1] the advisory guidelines suggest an advisory sentencing guidelines range of 21 to 27 months.

D. The Need to Avoid Unwarranted Sentence Disparities.

The Court must also consider, as part of the "just punishment" determination, "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6). The Tenth Circuit recently emphasized that "[t]he need to avoid unwarranted disparities is a critical sentencing factor. Equal justice is a core goal of our constitutional system." *United States v. Lente*, 647 F.3d 1021, at 1039 (10th Cir. 2011) (vacating sentence for failure to address the disparate sentence issue). This "critical" factor strongly supports a sentence outside of the advisory sentencing guidelines range.

Sentencing Commission statistics[2] show the following mean (average) sentences from 2006 through 2011 for the potentially relevant offenses here:

2006: Tax: 15.0 months

2007: Tax: 14.2 months

2008: Tax: 16.2 months

2009: Tax: 15.7 months

2010: Tax: 16.3 months

2011: Tax: 16.0 months

These average sentences suggest that a sentence outside of the advisory sentencing guidelines range would be consistent with the equal treatment principle that 18 U.S.C. § 3553(a)(6) embodies and suggests that such a sentence for Mr. Weinland advances the goal of

[1] *See* Defendant Ronald E. Weinland's Sentencing Memorandum, filed with this motion.
[2] The statistics are available at the "Data and Statistics" tab on the Sentencing Commission website, www.ussc.gov.

"avoiding unwarranted sentencing disparities." 18 U.S.C. § 3553(a)(6). A comparison of this case with two recent local cases involving convictions under 26 U.S.C. § 7201 confirms this point.

In *United States v. Shehan*, No. 2:10-CR-72 (E.D.Ky. Jan. 6, 2012), an individual taxpayer pleaded guilty to one count of attempted income tax evasion under 26 U.S.C. § 7201. The district court determined that the amount of tax due and owing to the IRS was $2,256,819.96 and sentenced the defendant to **24 months**.

In *United States v. Rozin, et al*, No. 1:05-CR-139 (S.D.Ohio Feb. 9, 2011), taxpayer Rozin, along with other defendants, took business and individual tax deductions for the cost of so-called "Loss of Income" insurance policies, although the insurance aspect of the policies was questionable and the policies allegedly permitted Rozin to get back or maintain control of the premium funds. Rozin was convicted by a jury on three counts of tax-related crimes: subscribing a false tax return under 26 U.S.C. § 7206(1); attempting to evade taxes under 26 U.S.C. § 7201; and conspiracy to defraud the Government under 18 U.S.C. § 371. Following Rozin's conviction, the district court determined the tax loss to be $775,294 and sentenced Rozin to **12 months and 1 day**, and the court of appeals affirmed.

These sample cases appeared to involve a range of conduct that was arguably far more culpable than Weinland's alleged conduct and tax loss amounts that are far in excess of the tax loss at issue here. These sample sentences suggest that a sentence for Weinland below the advisory sentencing guidelines range advances the goal of "avoiding unwarranted sentencing disparities." 18 U.S.C. § 3553(a)(6).

II. DETERRENCE.

The Court must impose a sentence that is sufficient, but not greater than necessary, "to afford adequate deterrence to criminal conduct." 18 U.S.C. § 3553(a)(2)(B). This factor encompasses both specific deterrence--deterrence of Weinland himself--and general deterrence--deterrence of others.

Weinland does not require any further deterrence. He has no prior criminal record and, as the sentencing letters reflect, has lived an exemplary life. Even with a sentence at the low end of the appropriate advisory sentencing range, he will be almost 65 years old upon release from prison. Weinland has worked to correct accounting and recordkeeping practices within COG-PKG, and he has engaged a reputable CPA firm experienced in representing churches and nonprofits, in order to ensure that there are no tax issues in the future and all income is appropriately reported. There is no chance of recidivism.

General deterrence is a significant goal in any white collar sentencing. But the need to "send a message" has diminished over the past decade. As Judge Lake observed in imposing a below-guidelines sentence for securities fraud, "Since [2001], the media has reported on lengthy sentences received by a number of white-collar defendants. The court is persuaded that the public in general, and potential white-collar criminals in particular, have become aware of the substantial risk of imprisonment for lengthy periods if they commit crimes of this nature." *United States v. Olis*, 2006 U.S. Dist. LEXIS 68281, at *43 (S.D. Tex. Sept. 22, 2006). Moreover, "there is a considerable evidence that even relatively short sentences can have a strong deterrent effect on prospective 'white collar' offenders." *United States v. Adelson*, 441 F. Supp. 2d 506, 514 (S.D.N.Y. 2006) (citing Richard Frase, *Punishment Purposes*, 58 Stanford L. Rev. 67, 80 (2005), and Elizabeth Szockyj, *Imprisoning White Collar Criminals?*, 23 S. Ill. U.

L.J. 485, 492 (1998)), *aff'd mem.*, 301 Fed. App'x 93 (2d Cir. 2008). As *Adelson* and the authorities it cites suggest, it is the certainty of apprehension and incarceration, rather than the duration of imprisonment, that serves as the principal deterrent to potential white collar offenders.

A sentence for Ronald Weinland that is below the advisory sentencing guidelines range is "sufficient, but not greater than necessary" to accomplish the sentencing goal of general deterrence. No one who has witnessed the highly public destruction and ridicule visited upon Mr. Weinland and his family will be tempted to engage in similar conduct. The indictment in 2011 brought increased media scrutiny and public contempt and significantly damaged his reputation. At verdict on June 14, 2012, Mr. Weinland was ordered to home confinement where he has remained for more than four months under GPS surveillance with strict travel restrictions. Mr. Weinland now potentially faces multiple years in prison and certain financial difficulty. Such punishment is certainly "sufficient" to deter others from a similar course of action. Any harsher punishment would be "greater than necessary" to achieve general deterrence. 18 U.S.C. § 3553(a).

III. PROTECTION OF THE PUBLIC FROM WEINLAND.

The letters to the Court make clear that the public needs no protection from Mr. Weinland. In no way is Mr. Weinland a “danger to society." Imprisonment is thus not necessary to further this sentencing goal.

IV. THE NEED FOR CORRECTIONAL TREATMENT.

Mr. Weinland has no need for "educational or vocational training, medical care, or other correctional treatment." 18 U.S.C. § 3553(a)(2)(D). Imprisonment is not necessary to further this sentencing goal.

V. FINE.

As stated above, properly calculated,[3] the advisory guidelines suggest a guidelines level 16 with an advisory sentencing guidelines range of 21 to 27 months. At that offense level, the guidelines recommend a fine range of $5000 to $50,000. U.S.S.G. § 5E1.2(c)(3). In light of the factors in § 5E1.2(d), we urge the Court to impose a fine within this range.

VI. RESTITUTION.

No restitution should be ordered against Mr. Weinland. Restitution is not mandatory in this matter. *See United States v. Frith*, 461 F.3d 914, at 919 n.2 (7th Cir. 2006) (after *Booker*, 543 U.S. at 246, 259-60, § 5E1.1 is advisory). Section 5E1.1(b)(2), provides that restitution need not be ordered if the district court finds that "determining complex issues of fact related to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process." Here, any loss related to Mr. Weinland's specific conduct would be limited to any unpaid taxes due and owing to the government. The appropriate avenue to determine Mr. Weinland's potential tax deficiency for the years at issue would be through an IRS civil audit that is sure to follow. This will ensure that all of the complex tax issues involved in this matter can be addressed in a meaningful manner and that they will be appropriately resolved.

[3] *See* Defendant Ronald E. Weinland's Sentencing Memorandum, filed with this motion.

CONCLUSION

For the foregoing reasons, we ask the Court to sentence Weinland to a sentence below the advisory sentencing guidelines range and a fine of between $5000 and $50,000, and no restitution.

Respectfully submitted,

/s/ J. Christopher Coffman
Robert C. Webb
J. Christopher Coffman
Frost Brown Todd LLC
400 W. Market Street, Floor 32
Louisville, KY 40202-3363
Phone: (502) 589-5400
Fax: (502) 581-1087
E-mail: bwebb@fbtlaw.com
ccoffman@fbtlaw.com
Counsel for Ronald E. Weinland

CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2012, I electronically filed this document with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to Robert K. McBride, Robert.McBride@usdoj.gov and Christopher L. Nasson, Chris.Nasson@usdoj.gov.

By: /s/ J. Christopher Coffman
J. CHRISTOPHER COFFMAN
Counsel for Ronald E. Weinland