

IN THE UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 06-0000
)	
ABOUT TOBE SENTENCED,)	
)	
Defendant.)	

ALLOCUTION STATEMENT

Rule 32(i)(4) of the FEDERAL RULES OF CRIMINAL PROCEDURE permits a defendant the opportunity to speak or present any information to mitigate the sentence. Counsel for About Tobe Sentenced, gave *him/her* a list of questions relating to reasons *he/she* should be given leniency. The Allocution Statement is provided for the Court’s consideration in determining what type and length of sentence is sufficient, but not greater than necessary, to comply with the statutory directives set forth in Title 18, United States Code, § 3553(a).

About Tobe Sentenced’s verbatim handwritten (or typed) Allocution Statement addresses the following Section 3553(a) factors:

What are your best accomplishments?¹

¹ the nature and circumstances of the offense and the history and characteristics of the defendant [18 U.S.C. § 3553(a)(1)].

What are your best attributes?¹

What have you done that you are most proud of?¹

What are your short term goals?¹

What are your long term goals?¹

Why are you a better person now?¹

How does giving you leniency reflect the seriousness of your offense?²

How would leniency promote your respect for the law?²

How will giving you leniency promote other people's respect for the law?²

What is a just punishment for your offense and why?²

Will giving you leniency cause other people not to break the law as you did?³

Why will giving you leniency protect the public from further crimes by you?⁴

Do you need educational or vocational training? How would leniency provide you educational or vocational training?⁵

² the need for the sentence imposed 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)].

³ to afford adequate deterrence to criminal conduct [18 U.S.C. § 3553(a)(2)(B)].

⁴ to protect the public from further crimes of the defendant [18 U.S.C. §3553(a)(2)(C)].

⁵ to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner [18 U.S.C. §3553(a)(2)(D)].

Do you need medical care? How would leniency provide you with medical care?¹

Why should the Judge give YOU a break?

Respectfully submitted,

s/ Defense Counsel

DEFENSE COUNSEL

Attorney for Defendant, About Tobe Sentenced

OFFICE OF THE FEDERAL PUBLIC DEFENDER

Address, City, State ZIP

Telephone: Facsimile:

E-Mail

CERTIFICATE OF SERVICE

 X I hereby certify that on Tuesday, February 7, 2006, I electronically transmitted the attached 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:

Prosecutor, Assistant United States Attorney

_____ I hereby certify that on _____, I served the attached document by _____ on the following, who are not registered participants of the ECF System:

s/ Defense Counsel

DEFENSE COUNSEL

1
What are your best accomplishments?

Its hard to place an exact order of my accomplishments. When I was young it was the success I had in Royal Rangers. That's a group like Boy Scouts only it deals with God and the church of the Assembly of God. I was one award away from earning the Gold Medal of Achievement which is the equivalent to an Eagle Scout. Later in life I met my wife and started a family. The perfect family. A loving and caring wife, one daughter and two sons. One of the biggest accomplishment was watching the joy in each one of my kids faces as they participated in the own things. My daughter played softball. I coached her from when she was 5yr old till she was 14yr old. She turned into one of the best centerfields and all-around player in the state. We had a competitive traveling squad. Also she was selected to be a Student Ambassador to England, Ireland, Scotland and Wales. She was honorary Mayor of OKC for a day and honorary Governor of the state for a day. We were all invited to the Government pleasure reception.

My oldest son was a dare devil and found joy in baseball, football and going to work with Dad. He was always big for his age and felt he needed to protect other kids who sometimes got picked on. At work he always wanted me to leave so he could run the crew. This was at a 8. My youngest son was the brains. At age 3 he could take his toys, look at the labels, go get on line but matching the looks of each letter. After my wife and I separated I raised my kids by myself for 14 months and ran my own framing crew. The town we lived in has an opening parade the Friday before Labor day. My kids were in pre-K, 4th and 8th. They were chosen Kings and Queen of each of their classes. They each rode on their own float. I was a very proud Dad to say the least. I consider these very important accomplishments. Accomplishment dealing with me alone who be building my own framing business. In just 4 short year I was consider one of the best framers in Oklahoma.

I built each house as though it was my own. I took a lot of pride in what I did, always striving to be the best or put out the best house.

What are your best attributes?

My character for one. When ever I was recommended for a job the way I conducted myself and crew on the job site was always mentioned. Also I have patience with young people causing the ability to teach them, sports, work even a few things about right and wrong. I've always been honest, kind, hard working and never reluctant to lend a helping hand.

What have you done that you are the most proud of?

That would really be covered by the first question. Other than my kids there are several individual houses I'm very proud of. Different designs no one else has done. Special ceiling and structural techniques.

What are your short term goals?

It is to re-enter life with my mind clean and re-establish the life I once had. Rejoin my relationship with my kids, take care of my responsibilities required by the courts. Stay away from Meth. Tell other about the evils of the drug hopefully giving them hope to kick their own habit.

What are your long term goals?

To continue raising my kids. Staying clean and spreading the word to young and old alike about the dangers of meth.

Why are you a better person now?

For one I'm clean and sober. I'm lucky I still have the majority of my brain cells left and my health. I can make it in the real world. I still have what it takes. I also have another chance to get it right. A lot of people don't get that chance. I'm 41 yrs old I still have time. This was the biggest wake up call to life I've ever had. I plan to make the most of it.

How does giving you leniency reflect the seriousness of your offense?

Giving me leniency will not reflect on the seriousness of my offense. The seriousness of my offense is just what it is on the record. I'm asking for leniency of my own character, on what I can accomplish in the real world. I have the ability to change or at least give them the knowledge to change from their drug world.

How would leniency promote your respect for the law?

It would prove to me that it's a fair law, the system as a whole. I'm not a bad person in the least. I'm a drug addict. The decision I've made since early 2001 was due to that fact. I am a faithful law abider and have the most respect for the law. The offenses I committed weren't done with the idea of breaking the law, it was to compensate my drug habit.

What is a just punishment for your offense/why?

A just punishment would be supervised release for 8 yrs. The reason is simple. I'm an addict not a criminal. The Western District of Oklahoma is considered the headquarters for the war against drugs. With that in mind

It doesn't make sense to make me a casualty of war. That would be the case if I was sent to prison. In order to win this war people like me who have learned their lesson need to be on the street informing other people just how bad meth is. Oklahoma needs soldiers on the street fighting the war. I can do that. I would give talks at schools, churches, etc. People used to listen to me and I know they will again. I just need to be saying the right stuff. I have the ability to reach these people who have drug problems. And that's exactly what I'd do. Drugs have cost me the last 4 yrs of my life. Now it's time to get back what I can and help prevent others from making the same mistakes. Learn from my mistakes instead of having to go through what I have.

How will giving you leniency promote other people's respect for the law?

Because showing leniency would prove the system is a fair system and one that works. There are a lot of people who know what kind of person I am. They know I'm a honest, caring and all-around good guy.

who has made a few mistakes.

Will giving you leniency cause other people not to break the law as you did?

Yes, as long as I do what I say, I have to inform every person I come in contact just how serious the war against drugs is. I believe I can convince not everyone but the majority of people to change their ways. I've been in that same boat and I know sometimes all it takes is one word from a person you respect to cause you to do something different. I know alot of people who haven't made the big mistakes yet but their well on their way. Its just a matter of time. Someone needs to help them and I feel like I can be that person.

Why will giving you leniency protect the public from further crimes by you?

Nothing can be gained by sending me to prison. Some people might say well that just one more druggie off the street. Maybe so but I assure be on a shadow of a doubt there will be three to replace me. I've learned my lesson. I'm 46 yrs old, I'm done

It all over for me, I know my life prior to 2001 was so much better than the one I've been living since. Drugs is a no win situation. I'm not one who broke laws or went around committing crimes outside of the meth. All the usually crimes which accompany the drug world never applied to me. I don't like breaking the law that's not what I was about. I am a law abiding drug addict, the fact meth at any level is illegal is what makes me a criminal. I have no choice but to stay clean. That's the only way I can get back my life and the things that are really important.

Why should the judge give you a break?

Simply because of what I can do in the war against drugs. I'm not a violent person and I'm not a constant law breaker. I'm a person who is hard working, caring, concerned about other people making the same mistakes I have. I would better service the community by being on the street as opposed to being imprisoned. It doesn't make sense to make a person who is capable of providing ^{not} only for his belt and family but ^{also} aid in helping other people a dependant of the U.S. Government. Let me do what I know I'm capable of doing. Changing my life and others who need help.

I fully understand what I've have done. I'm truly sorry for that. I just want to put back in society what I have helped taken out. That was never my intention to promote drugs to other. I was just doing what I had to do for myself. I can see now I was an enabler of such. Now by giving me a break I can try to right that wrong. I know it's not as simple as, "I'm sorry and I promise not to do it again." But when a person reaches that decision is

their life in really is that simple. I've reached that point, finally! I've spent 37 years of my life living and doing the right things. Making a living and raising a family. Along the way teaching others what I could and adding a little joy in their lives when I could. The last 4 yrs has not been that. I'm ready to get back to life as I once knew it. Promoting life without drugs will be one of my main concerns. I know I can be a success at this. That's my nature. Always striving to be the best at what I'm doing. This is why I need a break. For what I can do now on the streets. I'm in a position that not a lot of people know. I've seen life from both sides. I know personally what their going through. That is what will give me an advantage over the next person. People will listen to me because they will know what I've been through.

What are your best accomplishments?

Expertise in the field of automobile repair. Developed a reputation as a reliable, trustworthy technician.

What are your best attributes?

I feel that I am a very loyal, faithful, non-judgmental person. I'm a survivor. I feel I have survived through the most difficult of times. I think I am able to be realistic, especially about my past choices.

What have you done that you are most proud of?

I've taken this experience and used it as a tool for improvement. I've grown spiritually and learned to respect myself. I can tell that since I've began respecting myself, others seem to respect me more too. I can honestly say that I feel I'm a good person and capable and ready to change my life around for the better.

What are your short term goals?

To get my GED.

What are your long term goals?

To take a computer course to further my ability in the ever changing automotive field and to have my own shop.

Why are you a better person now?

I have faith in the Lord. I realize the errors of my ways. I've learned that my actions and poor choices effect not just me but everyone around me.

How does giving you leniency reflect the seriousness of your offense?

There was no malice intent by me possessing the firearm. No individual was harmed by this crime, therefore making the sentence less for this charge than for a person possessing a weapon with ill intent or with action/harm to another.

How would leniency promote your respect for the law?

I wasn't possessing the firearm with any intent to commit a crime. I feel sentencing should be based on the conduct of myself and that my conduct since the charges were made should be a consideration as well as others committing the same offense. By abiding by all the stipulations made by the court of my supervised release, I think that proves good intent to be a law abiding citizen. By making these things a consideration on the degree of leniency, I would feel the court was fair by using these measures in their determination and because of these things I would gain more respect for the law.

How will giving you leniency promote other people's respect for the law?

In my situation, I've made many changes in my lifestyle. I have removed myself from acquaintances that are not of good moral character or law abiding citizens. These changes have been consistent for more than a short period, but instead has been for almost 2 years. My lifestyle changes are easy for me now. I'm very glad I've made the changes. The changes can be proven, they are for real and they are what I want to do.

I think that leniency in my case would show the public that leniency is not given to just those with a lot of money or power, but to the citizens who truly have a desire to become a good working respected member of society. I think most of the citizens would rather see changes made in those charged with a crime rather than support them in our court systems.

Page Two

What is a just punishment for your offense and why?

I think a sentence of probation that includes a condition or combination of conditions that substitute intermittent confinement, community confinement, or home detention for imprisonment.

There was no harm by me to society. I have continued to work and I plan to continue to be employed. I have shown a change in my lifestyle. I've had no derogatory incidents since this action began which was approximately 2 years ago.

Will giving you leniency cause other people not to break the law as you did?

No. I believe that giving me leniency will not cause other people to break the law. (If I am understanding your questions right)

Why will giving you leniency protect the public from further crimes by you?

Leniency would not have anything to do with protecting the public from me. I'm determined and have vowed to myself to be a better person and to never place myself in any questionable situations or have any involvement with any person that is not a law abiding citizen. I have every intent to be a law abiding person who respects the law. I will be proud to say I'm a law abiding citizen.

Do you need educational or vocational training? How would leniency provide you educational or vocational training?

By granting me leniency, I could begin working on my short and long term goals which are very important to me.

Do you need medical care? How would leniency provide you with medical care?

I still am receiving physical therapy a couple of times a week by a friend of mine who is a physical therapist. He does this for free. The therapy is for both hand injuries that happened in the shop. I need my hands rehabilitated so I can continue with my goals. Without rehabilitation it would be very hard for me to keep working in the auto mechanic field.

Why should the Judge give YOU a break?

I've heard through my life that sometimes some of the best things comes out of the worst situations. I've been dealing with that kind of experience. I've truly taken this charge seriously. I haven't broken any rules of my supervised release. I've continued to work. I've changed my entire lifestyle and I'm happy with it. I haven't done anything unlawful or that wasn't permitted by my supervised release since the proceedings in this case began. I've tried very hard to prove myself to the court - I've not faltered. I'm showing that even with all that is going on, I'm still moving forward. I'm not giving up on myself and I want to opportunity to continue proving myself. I have a plan and I'm already working on it. I am not a threat to society.

Sincerely,

THE STORY BEHIND THE ALLOCUTION PLEADING

In determining the appropriate punishment, a court is to consider the factors set forth in Title 18, United States Code, §§ 3553(a)(1)-(a)(7). Particularly, the court is to consider: (1) the nature and circumstances of the offense and the history and characteristics of the defendant [18 U.S.C. § 3553(a)(1)]; (2) the need for the sentence imposed 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 [18 U.S.C. § 3553(a)(2)(B)]; to protect the public from further crimes of the defendant [18 U.S.C. § 3553(a)(2)(C)]; to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner [18 U.S.C. § 3553(a)(2)(D)]; (3) the kinds of sentences available [18 U.S.C. § 3553(a)(3)]; (4) the applicable guidelines or policy statements issued by the Sentencing Commission [18 U.S.C. § 3553(a)(4)]; and (5) the need to avoid unwarranted sentence disparities among defendants with similar records with similar conduct [18 U.S.C. § 3553(a)(6)].

The court shall impose a sentence sufficient, but not greater than necessary to comply with the purposes set forth in 18 U.S.C. § 3553(a)(2).

The sentencing court is not required to consider individually each of the factors listed in Title 18, United States Code, § 3553(a) before issuing a sentence.

The sentencing court need only give the reasons for its action as required by Title 18, United States Code, § 3553(c). Thus, when imposing a sentence, a district court need only consider Title 18, United States Code, § 3553(a) *en masse* and state its reasons for imposing a given sentence.

After *Booker*, this Allocution Pleading has been used in numerous sentencing. Answering these questions for the sentencing Judge makes the defendant think about the sentencing process and provides insight that would never be reflected in the Presentence Investigation Report.

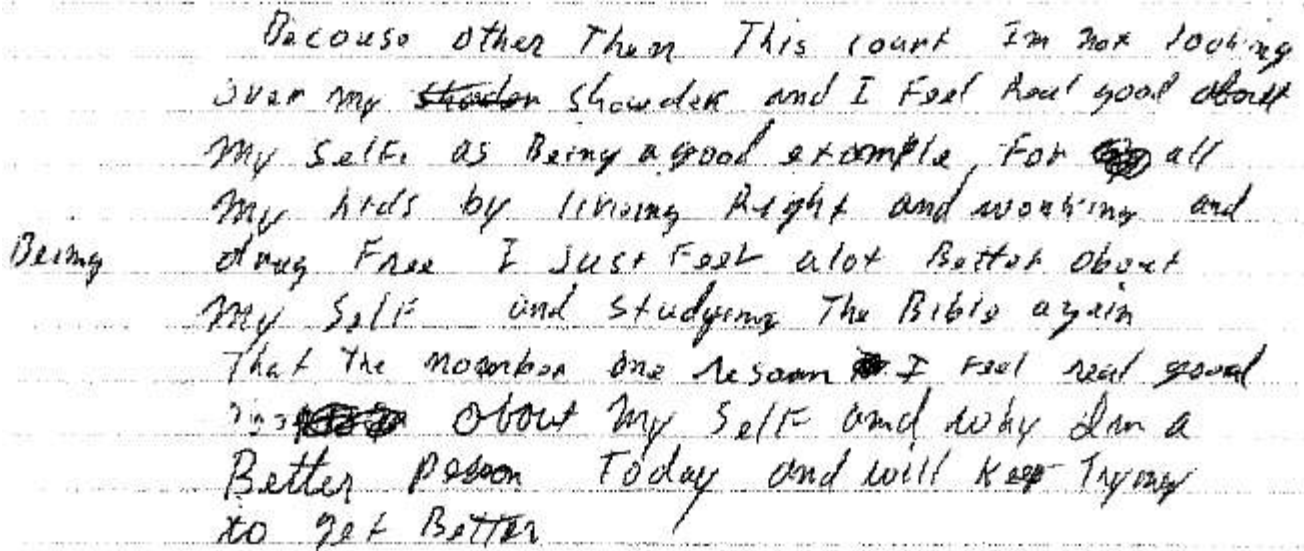
Counsel must make sure the defendant has not written something that ought not be written; *i.e.* denial of responsibility, inappropriate minimalization, etc.. Counsel's familiarity with the sentencing judge assists in tailoring the allocution statement.

The Allocution Statement answer sheet is almost always in the defendant's handwriting. This is partly because in many cases the defendant is detained pending sentencing without access to a typewriter or computer. Furthermore, handwriting tends to tell more about the individual. Here is an example of handwritten versus typed. The question is: *Why are you a better person now?*

First the typed:

Because other than this court I'm not looking over my shoulder and I feel real good about myself. As being a good example for all my kids and living right and working and being drug free. I just feel a lot better about myself and studying the Bible again that the number one reason I feel real good about myself and why I'm a better person today and will keep trying to get better.

Now, the handwritten:

A photograph of a handwritten statement on lined paper. The handwriting is in cursive and somewhat messy. The text reads: "Because other than this court I'm not looking over my ~~shoulder~~ shoulder and I feel real good about my self as being a good example for ~~all~~ all my kids by living right and working and being drug free I just feel a lot better about my self and studying the Bible again that the number one reason I feel real good ~~is~~ about my self and why I'm a better person today and will keep trying to get better". There are several corrections and deletions in the original image.

Because other than this court I'm not looking over my ~~shoulder~~ shoulder and I feel real good about my self as being a good example for ~~all~~ all my kids by living right and working and being drug free I just feel a lot better about my self and studying the Bible again that the number one reason I feel real good ~~is~~ about my self and why I'm a better person today and will keep trying to get better

There may be times a handwritten statement is not practical. For example, one defendant, while on pre-trial release, was involved in an accident in which he lost a finger and severely damaged other fingers and both hands. It was impracticable to have him write the statement, as his penmanship was illegible.

Most allocution statements are one to three pages in length. Some, like the first example, are rather lengthy. Again, counsel's familiarity with sentencing

judge assists in tailoring the allocution statement. If the sentencing judge enjoys brevity, instruct the client to keep it brief.

The allocution statement also keeps the defendant from freezing up and saying nothing when the judge asks if they have something to say.

A brief note regarding the two examples:

The first handwritten Allocution Statement was written by a defendant convicted of possessing pseudoephedrine knowing it was to be used to manufacture methamphetamine. He was college educated. He was in his mid-thirties before ever having problems with the law. Then he caught a couple of drug cases. There was a suppression hearing regarding the traffic case and the Judge called it “very close.” The government would not agree to a conditional plea. The case went to trial and the defendant was convicted. Despite the trial, the Presentence Report recommended acceptance of responsibility because the government refused to agree to a conditional plea and the Court agreed. The case was subject to a ten year mandatory minimum and the sentencing range was 140 to 175 months based on a total offense level of 29 and Criminal History Category V. The Court sentenced the defendant to 120 months and specifically referenced the Allocution Statement in the Statement of Reasons attached to the Judgment.

The typed Allocution Statement was written by the defendant whose hand was disfigured in an accident. He is a high school drop out and former Rogue's Motorcycle Club member. He was arrested originally in April of 2004 for being a felon in possession. The district court suppressed the evidence and the government appealed. The government won its appeal. (408 F.3d 1313) The defendant remained on conditions of release throughout the appeal process. While on conditions of release, the defendant suffered the debilitating accident. After remand, the defendant pled guilty. His sentencing is pending as of this writing.