IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Case 1:19-cr-00018-ABJ

UNITED STATES OF AMERICA,

v.

ROGER J. STONE, JR.,

Defendant.
_____/

DEFENDANT ROGER STONE'S SENTENCING MEMORANDUM AND MOTION FOR VARIANCE FROM ADVISORY GUIDELINES

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DEFENDANT ROGER STONE'S SENTENCING MEMORANDUM AND MOTION FOR VARIANCE FROM ADVISORY GUIDELINES

Defendant, Roger J. Stone, Jr., files this Sentencing Memorandum, pursuant to 18 U.S.C. § 3553 and 18 U.S.C. § 3661, in advance of his sentencing, which is scheduled for February 20, 2020.

INTRODUCTION

Roger Stone stands before the Court for sentencing, having been convicted by a jury of Count I, Obstruction of Proceeding (18 U.S.C. § 1505); Counts II – VI, False Statements (18 U.S.C. § 1001(a)(2)); and Count VII, Witness Tampering (18 U.S.C. § 1512(b)(1)).

Stone, United States Probation, and the Government agree that, under the United States Sentencing Guidelines, the offenses of conviction are grouped, pursuant to U.S.S.G. § 3D1.2(b), and that the controlling guideline is U.S.S.G. § 2J1.2. The parties further agree that the base offense level is 14, which, for Stone, who the parties agree is in Criminal History Category I, has a corresponding advisory range of imprisonment of 15-21 months.

Probation and the Government, however, incorrectly maintain that the following offense level increases are applicable:

Specific Offense Characteristics	U.S.S.G. §2J1.2(b)(1)(B)	8 level increase	¶76[1]
Specific Offense Characteristics	U.S.S.G. §2J1.2(b)(1)(2)	3 level increase	¶77
Obstruction of Justice	U.S.S.G. §3C1.1	2 level increase	¶80
Obstruction of Justice[2]	U.S.S.G. §2J1.2(b)(3)(C)	2 level increase	¶77

[1] Paragraph references are to the Presentence Investigation Report, dated January 16, 2020, ("PSR"). [Dkt. #272].

[2] Government's Objection to Presentence Investigation Report, dated January 30, 2020.

For the reasons set forth below, Stone maintains that the total offense level is 14 and that the 15 offense-level increases for which Probation and the Government advocate are inapplicable under the law and the facts of this case. Accordingly, Stone submits that the Court should find that his total offense level is 14 with a corresponding range of imprisonment of 15-21 months. Stone further respectfully submits that a sentence below the advisory Guidelines range of 15-21 months would be "sufficient but not greater than necessary to comply with the purposes of sentencing." 18 U.S.C. § 3553(a); *See Kimbrough v. United States*, 552 U.S. 85 (2007); *Gall v. United States*, 552 U.S. 38 (2007); *United States v. Booker*, 543 U.S. 220, 125, S. Ct. 738, 765, 160 L. Ed. 2d 621 (2005).

In the sections that follow, we address (a) the calculation of the sentencing Guidelines and the reasons that the offense level increases that Probation and the Government seek are inapplicable (the offense conduct is discussed as relevant throughout this section); and (b) the factors under 18 U.S.C. § 3553(a) that warrant a downward variance from the applicable Guidelines range of 15-21 months imprisonment.

I. The Court Should Find that Stone's Total Guidelines Offense Level is 14.

As noted above, the parties agree that, pursuant to U.S.S.G. § 3D1.2, the seven counts of conviction constitute a single group and that § 2J1.2 is the applicable guideline, which has a base offense level of 14. For the reasons discussed below, the facts of this case do not warrant the application of any offense level increases.

A. An Eight Level Increase for Threatening Physical Injury or Property Damage (§ 2J1.2(b)(1)(B)) Is Unjustified.

An eight-level increase, pursuant to U.S.S.G. § 2J1.2(b)(1)(B), is inapplicable here because Roger Stone did not threaten to physically injure Randy Credico or damage Credico's property, in the manner contemplated by the guideline and relevant case law.

United States Sentencing Guidelines § 2J1.2(b)(1)(B) provides "[i]f the offense involved causing or threatening physical injury to a person, or property damage, in order to obstruct the administration of justice, increase by 8 levels." The function of § 2J1.2(b)(1) is "to distinguish threats of physical injury or property damage from lesser threats." *United States v. Duarte*, 28 F.3d 47 (7th Cir. 1994). The eight-level increase does not apply to the facts here, because, as explained in *United States v. Calvert*, 511 F.3d 1237 (9th Cir. 2008), the increase is applicable in only those cases that involve more serious forms of obstruction:

> [I]t must not be forgotten that for the eight-level enhancement to apply, the Guideline requires that the intent to retaliate have been carried out in a particular manner; The defendant must have caused or threatened to cause property damage or physical injury to the witness. Trivial retaliatory acts will not do; the enhancement is reserved for serious acts used "as a means of intimidation." U.S.S.G. §2J1.2 cmt. application note 5. This point is picked up by the Guideline's commentary that "[t]he specific offense characteristics [found in section 2J1.2(b)(1)-(2)] reflect the *more serious forms of obstruction."* U.S.S.G. §2J.1 cmt. background (emphasis added). Indeed, even this "serious form" of obstruction captured in §2J1.2(b)(1) is considered a floor, as the Guideline's application notes reference the possibility for a further upward departure "[i]f a weapon was used, or bodily injury or significant property damage resulted." U.S.S.G. §2J1.2 cmt. application note 4.

Id. at 1242 (9th Cir. 2008) (emphasis in original).

Randy Credico made it clear, in both a post-trial letter to the Court and in his trial testimony that he did not consider anything that Stone said to constitute a threat. In his letter to the Court for consideration at sentencing, Credico wrote: "*I never in any way felt that Stone himself posed a direct physical threat to me or to my dog. I chalked up his bellicose tirades to 'Stone being Stone.' All bark and no bite!"* [Dkt. #273] (emphasis supplied).

Similarly, his trial testimony makes plain that there can be no serious dispute as to the fact that Roger Stone did not threaten Credico's dog:

> I think [Stone] loves all dogs, I don't think [Stone] would steal a dog, no. . . . dog lovers like dogs, you know what I mean? . . . I don't think [Stone] was going to steal the dog, no, I don't. . . . I know [Stone] would have never touched that dog. All right? So it was hyperbole by [Stone].

TT 795:11 – 796:16. Plainly conceding the point, the Government, thereafter, dropped any reference to Credico's dog in its arguments to the jury.

The facts of this case are also readily distinguishable from cases involving real threats of the kind that the guideline is intended to address. Indeed, this is not *Calvert, supra,* (shooting an elderly witness in the stomach as revenge for his testimony); nor is it *United States v. Bender*, 927 F.3d 1031, 1032 (8th Cir. 2019) (instructing inmates in another prison to "smash" witnesses); or *United States v. Sanchez,* 676 F.3d 627, 629 (8th Cir. 2012) (witness's husband confronted and asked "Where's [your wife]?," "What would you think that [*sic*] if one of your children were killed?" "What would you think if something happened to [your brother]?"); and this is most certainly not *United States v. Denham*, 436 Fed. App'x 627 (6th Cir. 2011), where the following chilling threats of unmistakable physical harm were delivered to the witness:

> You know what happens to rats? You think you're safe? Huh? Do you really think you're safe? You'll be found. Judy is fifty-five years fuck old, do you know that? You mother fuckers are dead. You're dead. Do you understand me? You're dead. Do you hear that? You're fucking dead. And you won't know where it's coming from. Next thing you know you'll be fucking laying with your God-damn hands cut off.

Id. at 627.

Stone's indecorous conversations with Randy Credico were many things, but here, in the circumstances of this nearly 20-year relationship between eccentric men, where crude language was the norm, "prepare to die cocksucker" and conversations of similar ilk, were not threats of physical harm, "serious acts" used as a means of intimidation, or "the more serious forms of

obstruction" contemplated by the Guidelines. *Calvert, supra*; U.S.S.G. § 2J1.2 cmt.; *United States v. Serfass*, 684 F.3d 548, 550 (5th Cir. 2012) (taking consideration of the record as a whole when determining applicability of level enhancements). Stone and Credico engaged in an ongoing dialogue in which each used harsh language as a matter of course and it was understood between them that, as Credico put it, it was "all bark and no bite."

Consequently, we respectfully submit that the Court should find that an eight-level increase under § 2J1.2(b)(1)(B) is inapplicable in the instant matter.

B. A Three Level Increase for Substantial Interference with the Administration of Justice (§ 2J1.2(b)(2)) Is Unjustified.

A three-level increase, pursuant to U.S.S.G. § 2J1.2(b)(2) is inapplicable here because (1) Stone's testimony before, and conduct in connection with, the House Permanent Select Committee on Intelligence ("HPSCI") falls outside the scope of the guideline; (2) there has been no showing that Stone's testimony or conduct caused the unnecessary expenditure of substantial governmental or court resources; and (3) even were Stone's testimony and other conduct within the scope of the guideline, it did not cause substantial interference with the administration of justice.

The plain language of the commentary to the guideline makes clear that this offense level increase is unwarranted here:

> "Substantial interference with the administration of justice" includes a premature or improper termination of a felony investigation; an indictment, verdict, or any judicial determination based upon perjury, false testimony, or other false evidence; or the unnecessary expenditure of substantial governmental or court resources.

U.S.S.G. § 2J1.2 cmt. 1. Accordingly, the court in *United States v. Weissman*, 22 F. Supp. 2d 187, 194 (S.D.N.Y. 1998), found that—absent a finding that the conduct caused the unnecessary expenditure of substantial governmental or court resources—the offense level increase does not apply to testimony before Congress:

> Because Weissman's conduct occurred within the context of a congressional inquiry, rather than a criminal investigation or a judicial proceeding, the only circumstance specified in the Application Notes pertinent to the case at bar is "the unnecessary expenditure of substantial governmental or court resources."

Weissman, 22 F. Supp. 2d at 194.

Thus, here, as in *Weissman*, because Stone's testimony and conduct occurred in the context of a congressional investigation, and not a criminal investigation or judicial proceeding, the offense level increase under § 2J1.2(b)(2) is unwarranted. Consequently, given that neither Probation nor the government has offered any evidence, or even suggested, that Stone's conduct caused the unnecessary expenditure of substantial government or court resources, there is no basis to apply an increase under this section in Stone's Guidelines calculation.

Moreover, even were Stone's actions within the scope of the guideline—and they are not—there is no basis to support a conclusion that they "resulted in substantial interference with the administration of justice" warranting a three level increase, pursuant to U.S.S.G. § 2J1.2(b)(2). Indeed, to find that conduct caused "substantial" interference, the conduct in question must have had an impact of real importance or considerable value, and its impact must not be speculative, imaginary, or illusive:

> The Application Notes for §§ 2J1.2(b)(2) [] do[es] not define the term "substantial." Therefore, the Court will ascribe to the term its "ordinary or natural meaning." . . . Black's Law Dictionary defines substantial as "[o]f real importance; of considerable value; valuable. Something worthwhile as distinguished from something without value or merely nominal." Black's Law Dictionary 1428 (6th ed.1990). In Webster's Third New International Dictionary substantial is defined as "(c) of substance, real, not imaginary or illusive." Webster's Third New International Dictionary 2280 (Merriam Webster 1981).

United States v. Mallory, 525 F. Supp. 2d 1316, 1319 (S.D. Fla. 2007).

"Courts must not speculate concerning the existence of a fact which would permit a more severe sentence under the guidelines." *United States v. Cataldo*, 171 F.3d 1316, 1321 (11th Cir. 1999) (internal citations omitted). Speculation is defined as "the practice or an instance of theorizing about matters over which there is no certain knowledge" (Black's Law Dictionary, 11th ed. 2019); "the contemplation or consideration of some subject" (Dictionary.com); "ideas or guesses about something that is not known." (Merriam-Webster, 2019). *See United States v. McSherry*, 226 F.3d 153, 157-158 (2d Cir. 2000) ("In the absence of persuasive reasons to the contrary, terms in the Guidelines are given their ordinary meanings.").

Here, Probation offers a rationale for the application of this offense level increase that is purely speculative and which is, therefore, deficient.[3] In the PSR, Probation states that "[i]n this case, the defendant's obstruction of justice and witness tampering caused HPSCI to release a report on its investigation into Russian interference in the 2016 election which was erroneous and lacked valuable information which would have been provided by witnesses who chose not to testify." PSR ¶ 77. This statement is unreliable, non-specific, and too speculative to satisfy the requisite burden of proof. *Cataldo*, 171 F.3d at 1321.

It is speculation that HPSCI's Report on Russian Active Measures, released March 22, 2018, is "erroneous." To the contrary, the "Report of the Select Committee on Intelligence United States Senate on Russian Active Measures Campaigns and Interference in the 2016 U.S. Election,"

[3] In its Receipt and Acknowledgement of the PSR, the government adopted Probation's findings without elaboration. The government did, however, claim to reserve the right to make additional arguments in its sentencing submission regarding the Guidelines. Should the government submit any rationale for the Guidelines calculations beyond those identified in the PSR and the government's objections to the PSR, Stone respectfully requests that the Court provide ample opportunity to prepare a written response. The government's unilateral reservation of a right to offer additional justifications for the Guidelines calculation should not be permitted to undercut Stone's right to a full and fair opportunity to address these critical issues in advance of sentencing.

Volumes 1 and 2, and the Special Counsel's "Report on the Investigation Into Russian Interference in the 2016 Presidential Election," Volumes I and II, made findings consistent with those found in the publicly available, redacted HPSCI Report. In other words, even had Stone testified differently and even had Credico testified before HPSCI, the conclusions drawn in its report would not have been materially different.

Thus, Probation's claim that the HPSCI Report "lacked valuable information which would have been provided by witnesses who chose not to testify" (PSR ¶77) grossly overstates the importance and significance of Roger Stone (and Randy Credico). The HPSCI Report states "[s]ix of the witnesses the Committee requested to interview invoked their Fifth amendment protections from self-incrimination, which resulted in the Committee not being able to obtain pertinent information from those particular individuals" (Report, Appendix A – Scope and Methodology, p. 131). Of those six witnesses, only Credico is at issue here and the record is clear that any claim that any effort by Stone to dissuade Credico from appearing before HPSCI substantially interfered with the administration of justice is untenable because Credico knew nothing pertinent to the investigation.

First, over a two-year time period, at least five government entities conducted investigations into Russian interference in the 2016 election. Before it was over, Randy Credico testified before the Grand Jury in the Special Counsel's investigation; was interviewed by the Federal Bureau of Investigations six times; and produced documents in response to subpoenas that include his Facebook messages, his Signal messages, his text messages, and several email accounts. In the end, Credico was mentioned on five pages of the Special Counsel's Report, not mentioned in either volume of the Senate Intelligence Report, and not mentioned at all in the

HPSCI Majority Report. He was mentioned on two pages of the HPSCI Minority Report, where they noted that Stone identified Credico to the Committee.

Thus, the record is clear that if Credico had testified before HPSCI, he would have made the same claim to the Committee as he did to the FBI, the Office of Special Counsel, the Grand Jury, and this Court: He was not an intermediary for Roger Stone and did not know anything about Julian Assange or WikiLeaks *vis a vis* Russian interference with the election. Whatever information HPSCI may have been provided had Credico testified before it can hardly be considered valuable, much less substantial, *i.e.*, "important," "of considerable value," "distinguished from something . . . merely nominal," "of substance, real, not imaginary or illusive." *See*, *Mallory*, *supra*, at 6. To say otherwise is mere conjecture and to increase Stone's offense level based on such speculation would be error.

Second, Credico, in his testimony and other statements (both public and private) has made clear that, regardless of Stone, Credico had no intention of testifying before HPSCI:

- I'm a journalist. I'm not speaking in front of the committee.
- I have first amendment protection.
- If they want to cite me for a contempt that's fine but the bigger picture is [] to protect freedom of the press.
- I will not be talking to them
- For the last 2 years I've been a journalist at WBAI and I have First Amendment protections
- You can trust me on behalf of the First Amendment that many people died to protect none of whom sit on that committee I will be willing to be cited for contempt and spend a few months in jail
- Rest assured I will not communicate with the house Intel committee about any of my communications with anybody because I am protected by the First Amendment
- I've already got 10 lawyers who were working on it

Government Exhibit 065. In addition, Credico was represented by counsel who responded on his behalf to the HPSCI subpoena and asserted his Fifth Amendment protections. Letter from Martin

Stolar, Esq., dated December 12, 2017, to HPSCI. At trial, Credico testified regarding invoking his Fifth Amendment rights this way during direct examination:

> Q: Did you write a message to Mr. Stone about lawyers wanting you to take the Fifth?
>
> A. Yes.
>
> Q. Did you receive some advice from people telling you you should take the Fifth?
>
> A. Some lawyers told me to take the Fifth and some lawyers told me to note take the Fifth.
>
> ***
>
> Q. And was Mr. Stone a reason for you taking the Fifth?
>
> A. He's one of many reasons why I took the Fifth. You know, what - - I finally did, but there's a thousand reasons why I took the Fifth. I got advice from him.

TT 707:19 – 708:6.

On cross examination, he further testified:

> Q. So, without saying, Mr. Credico, what your lawyer said to you, did you authorize your lawyer to write a letter to the House Intelligence Committee, invoking your Fifth Amendment right?
>
> A. Yes, I did.
>
> Q. In fact, you publicly have stated one of the reasons why you asserted your Fifth Amendment is that you thought the House investigation was a witch hunt?
>
> A. Yes.
>
> Q. And in addition to consulting with lawyers and many people, you've consulted with Betsy Woodruff, a journalist.
>
> ***
>
> A. I talked to her about it, yes. I talked to a lot of people about it. I didn't ask her for advice.
>
> Q. And, in fact, you publicly have stated that you have said so many versions of the events, that it was in your best interest to take the Fifth Amendment.

> A. Well, somebody said that when I was on *The Intercept[]* radio show, that - - you know, best that you take; that was one person.
>
> People had - - I was encouraged by other people to take - - to go out and say [assert 5th Amendment], otherwise I was going to have this being held over my head for a long time, even if, in fact, you know, there was the deal. David Corn had put something out. This is suspicious that Credico took the Fifth.
>
> I didn't want that out there. So, I knew there was going to be some kind of repercussions by taking the Fifth Amendment. Even though you have the right to do it, people do speculate, they extrapolate - -

TT 781:25 – 783:4.

Accordingly, "there is not basis under Guideline[] § 2J1.2(b)(2) to increase those levels for attenuated consequences that (if they occurred) did not result from the charged conduct." *United States v. McSherry*, 226 F.3d 153, 159 (2d Cir. 2000).

There is, therefore, no factual basis for an offense level increase pursuant to U.S.S.G. § 2J1.2(b)(2). Any harm caused by the conduct that forms the basis for Stone's convictions for obstruction of justice and witness tampering are adequately reflected in the guideline's base offense level.

C. A Two-Level Increase for Obstruction of Justice (§ 3C1.1) Is Unjustified.

An offense level increase, pursuant to U.S.S.G. § 3C1.1, for obstruction of justice is inapplicable, given that Stone did not "willfully obstruct[], impede[],or attempt[] to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction . . . ." *Id.* Such an adjustment "is not to be applied to the offense level for [obstruction of justice] except if a significant further obstruction occurred" during the prosecution. § 3C1.1, Note 7. "[The Guidelines'] commentary is generally authoritative unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous

reading of, that guideline" (internal quotation marks omitted)." *United States v. Calvert*, 511 F.3d 1237, 1245 (9th Cir. 2008).

For the reasons discussed below, the litany of conduct outlined in the PSR did not cause significant, further obstructions of the prosecution of this case. Those issues ceased well before the trial began, were contemporaneously managed by the Court, and had no impact on the jury. In fact, the Court repeatedly found during jury selection that, despite general knowledge among the jury pool regarding the circumstances of this case, there was an ample pool of qualified jurors who were not rendered biased by the publicly available information about the case.

The facts relevant to this issue are as follows: On February 21, 2019, after some questionable posts on social media contrary to the Court's standing "gag" order, the Court held a hearing to address Stone's most recent misstep. Stone testified during the hearing and the Court heard argument from counsel. At the close of the hearing, the Court issued a ruling prohibiting Stone from any further discussion about "the Special Counsel's investigation or this case or any of the participants in the investigation of the case." Shortly thereafter, upon realizing there may be a possible conflict with the Court's February 21 order, Defense counsel filed a Motion to Clarify.

As the Motion explained, Stone had numerous attorneys representing his various interests in the early part of 2019, as well as in 2018, when he first wrote an Introduction to a book titled "The Myth of Russian Collusion." It was also in 2018 that the business transaction with the publisher occurred. Unfortunately, the existence of the book's Introduction was known by certain defense counsel and not by others. It was not until after the February 21, 2019 court hearing that the import of the Introduction was realized. As far as the statements in the Motion to Clarify are concerned, Stone did not willfully obstruct the proceedings, as this was error on the part of defense

counsel. Furthermore, counsels' use of "imminent" was an oversight and should not have been included. The Motion to Clarify was, however, filed in good faith and should not, in any case, negatively affect Stone.

In addition, Stone did obtain the advice of counsel prior to commenting that "Mr. Cohen's statement is not true." Defense counsel did not specifically recall Stone's February 27 email request for guidance during the July 16, 2019 hearing. Counsel, however, affirms that a review of relevant communications reflects that the comment was approved. It is, therefore, submitted that defense counsel's lack of recall at the July hearing should not be held against Stone.

Furthermore, as was made plain during the relevant proceedings, the conduct in question resulted in large measure from the exacerbation of a longstanding battle with anxiety that was heightened during the pendency of this action, which Stone subsequently corrected with therapeutic treatment. This fact cuts against a finding that the conduct was designed to have a significant obstructive effect and, therefore, weighs against a finding that the conduct at issue warrants an offense level increase under the § 3C1.1.

With respect to the Court's Minute Order dated February 3, 2020, it is respectfully submitted that following the proceedings discussed above, Stone has complied with the Court's orders and conditions of release.

Accordingly, it is respectfully submitted that none of the identified conduct was material or supports the contention that Stone acted purposely to obstruct the proceedings. *See United States v. Makki*, 47 F. Supp. 2d 25, 29 (D.D.C. 1999).

D. A Two Level Increase for Conduct Extensive in Scope, Planning, or Preparation (§ 2J1.2(b)(3)(C)) Is Unjustified.

A two level increase, pursuant to § 2J1.2(b)(3)(C), is unjustified because Stone's conduct does not rise to the requisite level of "extensive in scope, planning, or preparation." "[D]uration of [an] offense is not equivalent to its 'scope' for purposes of § 2J1.2(b)(3)(C)." *United States v. Newman*, 614 F.3d 1232, 1239 (11th Cir. 2010) ("The district court's reliance on the eight-year duration of the offense to find that it was 'extensive in scope' was [] error.").

The conduct here differs both qualitatively and quantitatively from the actions taken in cases where the offense level increase has been affirmed. Indeed, the conduct here stands in stark contrast to that in *United States v. Jensen*, 248 Fed. App'x 849 (10th Cir. 2007), in which the court found conduct of corrections officer extensive in scope because it was "extreme and repetitive" and included supplying inmates with clean urine samples, advance notice of random drug testing, failing to record positive drug tests, and allowing inmates to leave the institution, all in return for sexual favors or money. *Id.*

The instant case similarly lacks the extensive planning and preparation found in *United States v. Hayes*, 358 Fed. App'x 685 (7th Cir. 2009), which involves a defendant who spent months preparing to kidnap a child by fraudulently "obtaining a passport and other identification documents, closing bank accounts, ceasing her mortgage and car payments, and recruiting her friend to assist in the kidnapping." *Id.* at 687.

Furthermore, the cases relied upon by the Government, *United States v. Petruk*, 836 F.3d 974 (8th Cir. 2016), and *United States v. Rodriguez*, 499 Fed. App'x 904 (11th Cir. 2012), do not carry the weight assigned to them and are not applicable here. Indeed, both of the cases on which the government relies involve extensive planning and conduct—including, as the court found in one case, smuggling sperm into a secure prison facility to falsely implicate a corrections officer

(*Rodriguez*) and the use of an elaborate scheme to create false exculpatory evidence for introduction at trial in the other case (*Petruk*).

Accordingly, for the reasons set forth above, an offense level increase under U.S.S.G. § 2J1.2(b)(3)(C) is unjustified.

II. THE 18 U.S.C. §3553(a) FACTORS FAVOR A SENTENCE BELOW THE ADVISORY RANGE OF 15-21 MONTHS IMPRISONMENT.

For the reasons discussed below, the factors set forth in 18 U.S.C. §3553(a), militate in favor of a sentence below the advisory Guidelines range of 15-21 months imprisonment.

"The Court shall impose a sentence sufficient, but not greater than necessary, to comply" with the general purposes of sentencing." 18 U.S.C. § 3553(a). In determining an appropriate sentence, the Court must consider the following:

> 1. The nature and circumstances of the offense and the history and characteristics of the defendant;
>
> 2. The need for the sentence imposed—
>
> a. to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
>
> b. to afford adequate deterrence to criminal conduct;
>
> c. to protect the public from further crimes of the defendant; and
>
> d. to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
>
> 3. The kinds of sentences available;
>
> 4. The [Sentencing Guidelines];
>
> 5. Any pertinent policy statement . . .;

> 6. The need to avoid unwarranted disparities among similarly situated defendants . . .; and
>
> 7. The need to provide restitution to any victims of the offense.

18 U.S.C. § 3553(a) (some minor alterations not noted).

Though the Guidelines are an important factor in the sentencing analysis, they are only advisory and the court is generally free to impose non-Guidelines sentences. *United States v. Gall*, 552 U.S. 38 (2007); *United States v. Booker*, 543 U.S. 220 (2005). This authority is consistent with the fundamental principle that a sentencing court should consider the full scope of a person's life in an effort to sentence the individual as opposed to the crime:

> "It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue." *Koon v. United States*, 518 U.S. 81, 113 . . . (1996). Underlying this tradition is the principle that "the punishment should fit the offender and not merely the crime." *Williams [v. New York]*, 337 U.S. [241,] 247 [(1949)] . . . .

Pepper v. United States, 562 U.S. 476, 487-88, 131 S. Ct. 1229, 1239-40 (2011) (holding that post-sentencing rehabilitation is an acceptable basis for non-Guidelines sentence on resentencing after appeal).

The Supreme Court and Circuit Courts across the country encourage sentencing courts to exercise great discretion in imposing a just and fair sentence. *See e.g., Spears v. United States*, 555 U.S. 261 (2009); *Rita v. United States*, 551 U.S. 338 (2007); *Kimbrough v. United States*, 552 U.S. 85 (2007); *Booker*, 543 U.S. at 220. In exercising its utmost discretion to fashion an appropriate sentence, "the sentencing judge [must] consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate,

sometimes magnify, the crime and the punishment to ensue." *Koon v. United States*, 518 U.S. 81, 113 (1996).

As we demonstrate in the sections that follow, imposing a non-Guidelines sentence on Stone will be sufficient but not greater than necessary to achieve the goals enumerated in 18 U.S.C. § 3553(a).

A. The Nature and Circumstances of the Offense Favor a Sentence Below the Advisory Guidelines Range.

Roger Stone was charged and convicted on Count 1, Obstruction of Proceeding (18 U.S.C. §1505(2)); Counts 2-6, False Statements (18 U.S.C. §1001(a)(2)); and Count 7, Witness Tampering (18 U.S.C. § 1512(b)(1)). He voluntarily testified before the House Permanent Select Committee on Intelligence regarding the Russian state's interference in the 2016 presidential election. In hindsight, notwithstanding the offense conduct, it is apparent that he had no substantive evidence to offer.

While Stone does not seek to minimize the seriousness of the charges, it is important to understand the circumstances in which they arose.

In March 2016, in the midst of the 2016 presidential election campaign, the Democratic campaign chairman's email accounts were compromised. In April 2016, both the Democratic National Convention (DNC) and the Democratic Congressional Campaign Committee's (DCCC) files and email accounts were compromised. DNC and DCCC officials learned of the compromise in May, but, by July 2016, the entire globe had found out. Julian Assange, and his library of documents, WikiLeaks, became the repository for the emails.

Several government agencies opened investigations into Russian interference in the 2016 election," for example: the House Permanent Select Committee on Intelligence ("HPSCI"), the

Senate Select Committee on Intelligence, the House Committee on the Judiciary, the Senate Judiciary Committee, the Federal Bureau of Investigation, and the Office of the Special Counsel.

In the end, the investigations yielded no evidence of the involvement of any American with the Russian government or any agent operating on its behalf to interfere in the 2016 election. It is also undisputed that Roger Stone had nothing to do with obtaining the compromised emails or providing them to WikiLeaks.

Notwithstanding the context under which this case arose, the Court narrowed the scope of the trial to all but eliminate any reference to its genesis. With that in mind, Stone now submits that the Court should not lose sight of the fact that, with respect to the five statements upon which Stone's convictions under 18 U.S.C § 1001 are based, while the government argued and the jury found that the HPSCI Report was impacted by those statements, the conclusions in the report issued by the Office of the Special Counsel make inescapable the fact that the information that Stone failed to provide to HPSCI was insignificant in the broader context of the investigation into Russian interference in the 2016 election.

As discussed above, the Office of the Special Counsel had access to both Jerome Corsi and Randy Credico, as well as to the communications between Stone and each of them, and found no evidence of any connection to Russia. Stone's convictions for obstruction of justice and witness tampering should similarly be viewed in the broader context of the investigation. In other words, Stone stands convicted for having sought to conceal information ultimately determined to be of no investigative value. Neither Corsi, nor Credico, nor any of their communications provided any useful information in the investigation into election interference.

Stone submits further that, even were the Court to find that any of the offense level increases challenged above are applicable—and Stone maintains that they are not—the Court

should look beyond the technical prescriptions of the Guidelines and find that, in the circumstances of this case, Stone's conduct does not fall within the range of cases for which punishment of the magnitude reflected in the Guidelines calculations in the PSR is warranted.

Thus, though Stone does not seek to minimize the seriousness of the charges of which he has been convicted—indeed, he is painfully aware of the severity of the situation—it is respectfully submitted that the nature and circumstances of the conduct at issue would be amply punished with a sentence below the advisory range of 15-21 months imprisonment.

B. The History and Characteristics of the Defendant Favor a Sentence Below the Advisory Guidelines Range.

As a 67-year-old first time offender convicted of serious but non-violent crimes, Roger Stone's history and characteristics support a sentence below the advisory Guidelines range of imprisonment. As detailed in the accompanying letters from his family and friends, Roger Stone is far more than the persona he projects in the media. As those who know him well attest, he is a man devoted to his friends and family, but also someone who has repeatedly extended himself well beyond the normal range to assist virtual strangers.

The quality of his character is seen in the way he and his wife have opened their home to care for someone too poor and sick to manage on his own; the personal interest Stone has taken in the problems of others whom he has aided selflessly; and the strong connections he has made with his wife's children, whom he considers his own and who have proudly taken his name in acknowledgment of the love and support he has provided. These details and many more are provided in the accompanying letters, which the Court is urged to read and consider in fashioning a sentence that takes into account the full scope Stone's history and characteristics and not simply the narrow public persona he has adopted to further his professional endeavors.

Toward that end, the following is a synopsis of Stone's personal and professional history. Roger Stone was born in Norwalk, Connecticut on August 27, 1952. His father, Roger, a well driller, passed away at the age of 82 in 2013. His mother, Gloria, was a homemaker and passed away in 2016 at the age of 91. Roger has two sisters, Lisa Nicholson and Wendy Cox.

Roger's story begins in rural Connecticut where, other than school, his life was all about his family. Roger faithfully attended church with his parents and sisters and participated in community events where they lived. Growing up in a rural area, Roger was not able to join organized team sports, but to keep in shape and he began running and lifting weights, two activities he continues today.

His first exposure to politics was through elections in his primary and secondary schools. It was there his eyes were opened to politics on a local, state, and national level. With a desire to satisfy his curiosity about politics, he applied to and was admitted to the George Washington University where he enrolled in 1970. In order to help pay his way through school, he found a job on Capitol Hill that ultimately led to his hiring in 1971 at the President Richard Nixon re-election campaign and a lifelong obsession with politics and the political process. As a result of this start of his career in politics, before graduating, Roger left George Washington University and has never stopped working in politics.

Ever since landing in D.C., Roger worked very hard to succeed. Along the way, Roger worked for U.S. Senator Bob Dole, the Ronald Reagan presidential campaign, the campaign for both Presidents Bush, and on behalf of countless other candidates. He also played an important role in the post-presidency reputational rehabilitation of President Richard Nixon.

After his efforts in government and as integral parts of campaigns, Roger co-founded Black, Manafort, and Stone, a political affairs company in Washington, DC. After the partners

sold the company to a national public affairs company, Roger was largely self-employed and worked on behalf of causes and people who had interests in front of the government and candidates who wanted to be part of the government.

Through Roger's work in Washington, he met his first wife, Anne (Wesche) Stone. The two were married in 1974. They had no children. They remained married until 1990 when they divorced in Alexandria, Virginia. They remain friends to this day.

Soon thereafter Roger met Nydia Bertran and the two married in 1991. Although, by that year Nydia's children, Adria and Scott, were largely grown, Roger took them under his wing and helped guide them. The children thought so much of Roger and what he did for them and their mother that, without adoption, they changed their last names to be his.

Roger and Nydia now make their home in Fort Lauderdale, near Adria (a trauma nurse) and also close to Scott (a Broward County Sheriff Deputy), his wife, and their minor children, who are the grandchildren of Roger and Nydia.

Many believe they know Roger because of his public persona, but few really know the man. Throughout his life, it has been the things that have largely gone unnoticed that are a part of Roger Stone.

C. The Need for the Sentence to Reflect the Seriousness of the Offense, to Serve as a Deterrent, and to Provide Medical Care in the Most Effective Manner Warrant a Sentence Below the Advisory Guidelines Range.

1. A Non-Guidelines Sentence Would Adequately Reflect the Seriousness of the Offense and Promote Respect for the Law.

A non-Guidelines sentence will adequately reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense.

Roger Stone was arrested under terrifying circumstances that traumatized him and his family. He has since been the focus of public scrutiny and vilification on a constant basis. Long

a public figure with influence in the political arena, he now stands a convicted felon. There is, therefore, no denying the severe and swift consequences that his actions have brought upon him, even prior to the formal imposition of sentence.

Respect for the law, however, is not furthered by rigid adherence to formulaic calculations, which is why the Court must consider the larger picture:

> Imposing a sentence on a fellow human being is a formidable responsibility. It requires a court to consider, with great care and sensitivity, a large complex of facts and factors. **The notion that this complicated analysis, and moral responsibility, can be reduced to the mechanical adding-up of a small set of numbers artificially assigned to a few arbitrarily-selected variables wars with common sense.** Whereas apples and oranges may have but a few salient qualities, human beings in their interactions with society are too complicated to be treated like commodities, and the attempt to do so can only lead to bizarre results.

United States v. Gupta, 904 F. Supp. 2d 349, 350 (S.D.N.Y. 2012) aff'd, 747 F.3d 111 (2d Cir. 2014) (emphasis supplied).

In addition to the stress and strains described above, there is also a need for Stone to defend and respond to a barrage of civil litigation actions brought against him by a would-be witness, and his lawyer. The list below outlines the history of litigation against Stone in the past two years:

Case Name	**Case Number**	**Type of Case**	**Status**
DNC v Russian Federation, Stone et. al.	18-cv-03501 (SDNY)	RICO conspiracy	Dismissed
Cockrum v Trump Campaign & Stone	17-cv-1370 (DDC)	Civil rights conspiracy	Dismissed
Klayman v Stone et. al.	2019-CA-015104 (Palm Beach)	defamation	Motion To Dismiss Pending
Klayman v Stone	19-011394 (Broward)	Tortious Interference	In Discovery
Klayman v Stone	19-002672 (Broward)	defamation	In Discovery
Klayman & Corsi v Stone	19-cv-1573 (DDC)	defamation	Motion To Dismiss Pending

Corsi v Stone & Newsmax	19-13711 (Palm Beach)	defamation	Motion To Dismiss Pending
Corsi v Stone	19-cv-324 (DDC)	defamation	Motion To Dismiss Pending

It is with the above-described considerations in mind that the Court is urged to conclude that, in the instant matter, a sentence below the advisory Guidelines range is sufficient but not greater than necessary to reflect the seriousness of the offense, promote respect for the law, and to provide just punishment. § 3353(a)(2)(a).

2. A Non-Guidelines Sentence Would Provide an Adequate General and Specific Deterrent.

Correspondingly, a non-Guidelines sentence would be sufficient to satisfy the need for the sentence imposed to provide both a general and specific deterrent. With the respect to the public at large, as indicated above, the prosecution of this case and the attendant hardships on Stone and his family are such that, taking all of the circumstances of this case into account, no one could seriously contend that a sentence below the advisory Guidelines range would cause anyone to walk away from these proceedings believing that one can commit the offenses at issue here with impunity. In this case, including a trial more public than most and the corresponding loss of his professional standing, the process is itself significant punishment.

Moreover, as for Stone himself, at 67-years-old, he stands before the Court having no criminal history whatsoever. Despite his decades in the public eye and his often brash behavior, his prior conformity with the law reflects the near certainty that he will never again find himself the subject of criminal prosecution. It is all but guaranteed that the "perfect storm" that led to Stone's actions at the heart of this case are unlikely ever again to materialize in his orbit.

Stone's lack of any criminal history, combined with his age are strong indicators that Stone has no likelihood of recidivism. His lack of criminal history standing alone justifies a variance.

See United States v. Tomko, 562 F.3d 558 (3d Cir. 2009) (*en banc*) (tax offense); *United States v. Autery*, 555 F.3d 864 (9th Cir. 2009) (sentencing defendant guilty of possession of pornography to supervised release).

Empirical data show that defendants with no prior criminal history have the lowest rate of recidivism. United States Sentencing Commission, Recidivism Among Federal Offenders: A Comprehensive Overview (March 2016).[4] Similarly, recidivism rates drop considerably for defendants sentenced for their first conviction over the age of 60. *Id.* at 23; *see also United States v. Bullion*, 466 F.3d 574, 576 (7th Cir. 2006).

Accordingly, it is respectfully submitted that Stone's exceptionally low risk of recidivism favors a sentence below the advisory Guidelines range.

3. A Non-Guidelines Sentence Would Provide Medical Care in the Most Effective Manner.

In addition to the fact that his age renders him a low risk of recidivism, his health is a further factor that weighs in favor a sentence below the advisory Guidelines range. § 3553(a)(2)(d) (a sentence should take into account the need to provide medical care in the most effective manner). Even in the pre-*Booker* landscape, serious medical conditions provided the basis for a below Guidelines sentence:

> (1) Age may be a reason to depart downward only if and to the extent permitted by § 5H1.1." U.S.S.G. § 5K2.22. Under § 5H1.1, "[a]ge may be a reason to depart downward in a case in which the defendant is elderly and infirm and where a form of punishment such as home confinement might be equally efficient as and less costly than incarceration." U.S.S.G. § 5H1.1.

[4] Available at: https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism_overview.pdf.

United States v. Chase, 367 Fed. Appx. 979, 983 (11th Cir. 2010) *cert. denied*, 131 S. Ct. 167 (U.S. 2010) (unpublished). Thus, the Guidelines recognize the need to account for older defendants who suffer from serious medical problems. U.S.S.G. § 5H1.1; *United States v. Brooke*, 308 F.3d 17, 20 n. 2 (D.C. Cir. 2002); *United States v. Irey*, 612 F.3d 1160, 1218 (11th Cir. 2010) *cert. denied*, 131 S. Ct. 1813 (U.S. 2011); *United States v. Stumpner*, 174 Fed. App'x 522, 524 (11th Cir. 2006) (unpublished); *United States v. Powell*, 576 F.3d 482, 499 (7th Cir. 2009); *United States v. Lee*, 454 F.3d 836, 839 (8th Cir. 2006).

Post-*Booker*, courts have routinely found that a sentencing court is free to impose a non-Guidelines sentence based upon the health needs of a defendant. *See, e.g., United States v. Davis*, 458 F.3d 491, 498 (6th Cir.2006) ("[A] trial court ... has a freer hand to account for the defendant's age in its sentencing calculus under § 3353(a) than it had before *Booker*".); *United States v. Smith*, 445 F.3d 1, 5 (1st Cir.2006) (holding district court did not err, *inter alia*, by considering age because "[t]hat a factor is discouraged or forbidden under the guidelines does not automatically make it irrelevant"). *United States v. Lee*, 454 F.3d 836, 839 (8th Cir.2006); *United States v. Simmons*, 470 F.3d 1115, 1130-31 (5th Cir. 2006).

Accordingly, as detailed in the PSR, it is respectfully submitted that Stone's medical conditions warrant the imposition of a non-Guidelines sentence. PSR ¶¶ 103.

D. The Kinds of Sentences Available.

As an alternative to prison, probation or probation with a special condition of home detention for a period of time are viable alternatives in the instant matter. In light of the numerous factors discussed above that render this case outside the heartland of the run-of-the-mill case, it is respectfully submitted that a non-incarceratory sentence is appropriate here. The nature and circumstances of the offense, Stone's history and characteristics, including his low likelihood of

recidivism and significant health concerns, all favor a sentence that provides punishment without incarceration.

E. The Need to Avoid Unwarranted Disparities Favors a Non-Guidelines Sentence.

Roger Stone is but one of approximately 38 individuals or entities to face charges stemming from the investigations into interference in the 2016 election. Of those who have been sentenced, the following warrant consideration:

Defendant	**Case Number**	**Description**	**Sentence**
Paul Manafort	17-CR-0020 (D.D.C)	Manafort was charged with seven counts in the District of Columbia and pleaded guilty to conspiracy against the United States and to witness tampering in the D.C. case.	73 months (30 months concurrent to E.D.V.A.)
Paul Manafort	18-CR-00083 (E.D.Va.)	A jury found Manafort guilty on eight of 18 counts within the Eastern District of Virginia. The guilty charges included multiple counts of false income tax returns, failure to file reports of foreign bank accounts, and bank fraud.	47 months Total between both is 7.5 years.
Michael Cohen	18-CR-00850 (S.D.N.Y.)	Pleaded guilty to making false statements to Congress and campaign finance and tax and banking charges.	2 months for the false statement to Congress and 36 months on other tax and banking charges. Time to be served concurrently.
Richard Pinedo	18-CR- 00024 (D.D.C)	Pinedo pleaded guilty to one count of identity fraud and was sentenced to serve six months in prison, followed by six months of home confinement and 100 hours of community service. (Helped the Russian Troll Farm)	6 months in prison and 6 months home confinement
Rick Gates	17-CR-00201 (D.D.C)	Was charged in two separate federal courts in connection to financial crimes, unregistered foreign lobbying and on allegations that he made false statements to federal prosecutors. Gates pleaded guilty in Washington, D.C. in February 2018 on counts of conspiracy against the United States and lying to federal prosecutors.	45 days in jail followed by 3 years probation

Alexander Vanderzwann	18-CR-00031 (D.D.C.)	He had pleaded guilty to lying to federal agents about his contacts with Trump campaign deputy chair Rick Gates in September 2016. 30 Day sentence	30 days
George Papadopoulos	17-CR-00182 (D.D.C.)	Arrested for lying to FBI investigators about his correspondence with foreign nationals with close ties to senior Russian government officials. He pleaded guilty in October 2017. In September 2018, Papadopoulos was sentenced to 14 days incarceration, 200 hours of community service and a $9,500 fine.	14 days
Sam Patten	18-CR-00260 (D.D.C.)	An American lobbyist admitted brokering access to President Trump's inauguration for a pro-Russian Ukrainian oligarch, a violation of FARA.	3 years probation

When viewed in the context of the other defendants sentenced for similar offenses stemming from the same investigation, the need to avoid disparities between similarly situated defendants indicates the applicability of a non-Guidelines sentence in the instant matter.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Court should impose a non-Guidelines sentence of probation with any conditions that the Court deems reasonable under the circumstances.

Respectfully submitted,
By: */s/*_____

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CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2020, I electronically filed the foregoing with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record parties identified on the attached service list in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notice of Electronic filing.

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