

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:07-CR-42-D

UNITED STATES OF AMERICA)
)
 v.)
)
 JAMES BOYCE BLACK,)
)
 Defendant.)

ORDER

The sentencing hearing will take place in courtroom 1 of the Terry Sanford Federal Building, 310 New Bern Avenue, Raleigh, North Carolina at 9:00 a.m. on Friday, May 18, 2007.

Pursuant to Federal Rule of Criminal Procedure 32(h), this court provides notice that at the sentencing hearing it wants to receive evidence concerning the amount of money that defendant Jim Black raised from chiropractors from 1999 to 2006. Cf. United States v. Black, No. 5:07-CR-42-D U.S. Factual Basis ¶¶ 1-3 (filed Feb. 15, 2007). The court also wants to know the identities of the chiropractors identified in the Factual Basis. Id. ¶¶ 3(c)-8. The court also wants to receive evidence on whether and how the defendant spent or distributed the cash that he received from the chiropractors. The court also wants to receive evidence concerning the August 15, 2006, meeting between Dr. Keith and the defendant.

The court also wants to receive the parties' views on how to account for defendant's February 20, 2007, convictions in Wake County Superior Court referenced in paragraph 20 of the PSR. Cf. U.S.S.G. §§ 4A1.1, 4A1.2, 4A1.2 cmt. n.3. This issue relates to determining the defendant's criminal history for the purposes of the advisory Guidelines.

At the sentencing hearing, the court must determine the defendant's base offense level and total offense level under the advisory Guidelines. Cf. U.S.S.G. Appendix A (discussing violation

of 18 U.S.C. § 666(a)(1)(B)). The court wants to receive evidence concerning these issues and any relevant evidence related to “the value” calculation under U.S.S.G. § 2C1.1(b)(2). The court also wants to receive evidence related to “the value” calculation under U.S.S.G. § 2C1.2(b)(2). Such evidence also relates (in part) to whether the court should depart upward pursuant to application note 7 of U.S.S.G. § 2C1.1.


At the sentencing hearing, the court wants to receive evidence concerning whether an aggravating role adjustment is appropriate under U.S.S.G. § 3B1.1.

The court recognizes that Jim Black’s statutory maximum prison term is 120 months and his maximum fine is \$250,000. See 18 U.S.C. § 666(a)(1)(B). Because the court will not determine the applicable advisory Guideline range until the sentencing hearing, the court is not sure what the advisory Guideline range established at sentencing will be. Nevertheless, pursuant to Rule 32(h) of the Federal Rules of Criminal Procedure, the court provides notice that it is contemplating an upward departure from the advisory Guideline range established at sentencing. See United States v. Davenport, 445 F.3d 366, 371 (4th Cir. 2006); United States v. Moreland, 437 F.3d 424, 432-37 (4th Cir. 2006). The grounds for this possible upward departure include application note 7 of U.S.S.G. § 2C1.1, the possible inadequacy of the defendant’s criminal history category under U.S.S.G. § 4A1.3, circumstances not adequately taken into account under U.S.S.G. § 5K2.0, disruption of governmental function under U.S.S.G. § 5K2.7, and uncharged conduct under U.S.S.G. § 5K2.21. As for the issue under U.S.S.G. § 2C1.1, 5K2.0, or 5K2.7, the court wants to receive evidence concerning 2007 legislative remedial measures that the General Assembly has taken with respect to laws concerning chiropractors. As for the issue of uncharged conduct, the court wants to receive evidence concerning whether Jim Black paid taxes on the cash that he received as a result of his criminal conduct.

The court also provides notice under Rule 32(h) that it is contemplating a variance above the advisory Guideline range established at sentencing. See, e.g., United States v. McClung, No. 05-4906, 2007 WL 1203018 (4th Cir. Apr. 25, 2007). A variance sentence would be designed to ensure that the court imposes a sentence “sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection.” 18 U.S.C. § 3553(a). These purposes include a sentence that reflects the seriousness of the offense, promotes respect for the law, provides just punishment for the offense, and affords adequate deterrence to criminal conduct. See 18 U.S.C. § 3553(a)(2)(A)-(B). Of course, the court intends to consider, as appropriate, all of the factors set forth in 18 U.S.C. § 3553(a).

Any legal memoranda, motion, or other material that either party wants the court to consider at the hearing must be filed or submitted not later than noon on May 11, 2007. If a party wishes to respond in writing to any memoranda, motion, or other material, such a response is due not later than noon on May 15, 2007.

SO ORDERED. This 1 day of May 2007.


JAMES C. DEVER III
United States District Judge