

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CASE NUMBER: 1:19-CR-0360

DENNIS TYLER,

Defendant.

SENTENCING MEMORANDUM OF DENNIS TYLER

Comes now the Defendant, Dennis Tyler, by his attorneys James H. Voyles and Jennifer M. Lukemeyer and submits the following Sentencing Memorandum with attached letters of support for the Court's consideration at sentencing.

I. Preliminary Statement

Dennis Tyler, age 78, stands before this Court asking for a non-custodial sentence. This request is not unreasonable given the circumstances of this offense, Mr. Tyler's character, and the other factors this Court must consider in crafting an appropriate sentence. A sentence of probation can serve justice and would be aligned with the illegal conduct of Mr. Tyler.

Mr. Tyler was the mayor of Muncie Indiana from 2012 until 2019. As the mayor, he oversaw many departments within the city, including the Board of Public Works (hereinafter "Board"). A duty of the Board is approving contracts for public projects within the city of Muncie. For certain projects, the Board will put out requests for proposals (RFPs) and then choose between the bids received in response to the request. In the case before this Court, a

commercial development project was being planned in an area of Muncie called Nebo Commons. Because the project would require excavation work, the Board put out an RFP to collect bids for this portion of the project. The contract was awarded to a company called RCM Construction, which was owned by John Raef, Jr., despite the existence of a lower bid. When this project's bids were put before the Board, a mayor's office representative instructed that the lower bid was not to be considered. Thus, the Board was steered towards awarding the \$108,975.00 contract to RCM. This happened on May 27, 2015, and was recorded in the Board's minutes.

In December of 2015, a city employee named Tracy Barton¹ met with Mr. Tyler. At that meeting, Barton gave Tyler \$5,000.00 in cash, essentially as a reward for ensuring that RCM received the Nebo Commons job. Tyler accepted the money, which constituted a bribe in the form of a gratuity. The bribe and Tyler's acceptance is the reason he stands before this Court. It should be noted that the statute Tyler violated prescribes a \$5,000 threshold amount.

The advisory guidelines suggest a sentencing range of 12 – 18 months and allow for a portion of that sentence to be served in community confinement. Of course, the true minimum sentence could be probation, as these guidelines are advisory. Probation is sufficient in light of the 18 U.S.C. § 3553 (a) factors to be considered by this Court.

II. Tyler's History and Characteristics

Dennis Tyler dedicated his entire adult life to public service. By way of his childhood, Tyler's life and contributions to his community could have been far less positive. He never knew his biological father. His first stepfather, Ansley Tyler, was very abusive to Tyler, his mother, and

¹ It should be noted that Tracy Barton was also indicted and has agreed to plead to wire fraud. His indictment stems from a larger scheme of kickbacks in which Barton and others engaged. As mentioned in Mr. Tyler's Presentence Report, there are other related cases which involve Barton and others committing wire fraud in a kickback scheme that victimized the city of Muncie.

his brothers. The abuse was severe, routine, and came in many forms. In one instance, Tyler stabbed his stepfather in attempt to stop him from beating his mother. Although he was successful in saving his mother, Tyler was then subjected to a severe retaliatory beating by his stepfather. The abuse culminated when his stepfather threw Tyler's toddler brother across a room. This prompted Tyler's mother to escape in the middle of the night while his stepfather was passed out.

After moving from relative to relative, his mother moved Tyler and his brothers into government housing. The frequency of the moves meant that Tyler attended many different schools during his childhood. However, educational and housing stability was restored to the family when Tyler's mother met Charles Rainey. Rainey provided Tyler a much-needed father figure and encouraged Tyler to walk a straight and virtuous path. Tyler's life could have easily been derailed but for Rainey's influence.

Tyler's strong and enduring work ethic was founded from a young age. Throughout his teens, Tyler worked at a bowling alley where he encountered many firefighters who participated in bowling leagues. Tyler became an excellent bowler, which endeared him to the firefighters. They eventually took Tyler under their wing and as he grew older, they encouraged him to apply for the fire department. When Tyler was 21, he went through the firefighting school and finished 5th out of 125. Under the merit system, he was hired and fell in love with what would be a 42-year career with the Muncie Fire Department.

Within the department, Tyler eventually rose to the rank of Line Captain and was responsible for 3 fire stations. He led the Fire Fighter Union which was part of the State Fire Fighter Union. Although this was a non-compensated position, Tyler felt obligated to serve those

with whom he served. This leadership within the local AFL-CIO indirectly led him into more traditional politics. He led the local Democratic party and when a spot in the general assembly opened in his district due to illness, Tyler was elected by caucus. He went on to serve his constituents for 3 terms in the Statehouse.

As a state representative for 6 years, he served on the following Committees: Labor and Employment Committee; Ways and Means Committee; Government and Regulatory Reform Committee; Veterans Affairs Committee; Public Safety Committee; Roads and Transportation Committee; and the Autism Commission Summer Study Committee. Tyler believes his most meaningful work was accomplished through the Autism Committee because of the injustice his efforts aimed to cure. He had to educate himself on this condition and spent countless hours at Riley Children's Hospital with their faculty learning about autism spectrum disorder. Through his work on the committee, he learned about the lack of protections afforded to individuals on the spectrum as well as their families. He helped pass legislation in the areas of insurance and education to assist those on the spectrum and their families. His efforts made a tangible difference in real Hoosier lives.

III. Nature and Circumstances of the Offense.

This matter is not a traditional bribery case. The "bribe" is better characterized as a "gratuity" as it was given after the benefits were bestowed by Tyler's action. The gratuity was \$5,000.00 given to Tyler, unsolicited, on behalf of a local contractor who received work from the city. The cash gratuity was given to Tyler by Tracy Barton who was a Superintendent with the Muncie Sanitary District. Barton was a co-conspirator within a much larger bribery and kickback scheme within the city government.

The contractor who received the work in this instance was a local contractor. Tyler desired to keep the work local and commonly encouraged the city to engage with local companies. His loyalty to the local unions further drove him to encourage city projects going to local contractors with union affiliations. Regardless of his intentions, Tyler let his personal guard down when accepting the cash from Barton.

There is no evidence that Tyler's actions were motivated by inherent greed and/or materialism. There were no fancy cars or trips or jewelry. Tyler does not have a gambling addiction to feed or a mistress to keep hidden. Tyler did not maintain a lifestyle beyond his means. In fact, Tyler and his wife sustain their lives on a fixed income with very little discretionary funds. The cash gratuity he accepted was likely utilized as petty cash within his office and home. Obviously, the price Tyler must now pay far exceeds any benefit reaped by the gratuity.

IV. Application of Title 18 U.S.C. § 3553

With regard to the overall sentence, § 3553 instructs courts to impose a sentence that is sufficient *but not greater than necessary* to comply with the established purposes of sentencing. In making this determination, § 3553 instructs the court to consider: (a)(1) the nature and circumstances of the offense and the history and characteristics of the defendant; (a)(2) the need for the sentence imposed to reflect the seriousness of the offense, and afford adequate deterrence to criminal conduct, protect from further crimes of the defendant, and provide training, medical care, or treatment in the most effective manner; (a)(3) the kinds of sentences available; (a)(4) the kinds of sentences available and the sentencing range established for the offense committed as set forth in the sentencing guidelines; (a)(5) pertinent policy statements; (a)(6) the need to avoid

unwarranted sentence disparities among defendants with similar records who been found guilty of similar conduct; and (a)(7) the need to provide restitution to victims of the offense.

The nature and circumstances of the offense, as well as the history and characteristics of the defendant have been discussed herein. It should be noted that Mr. Tyler does have health issues that includes diabetes, skin lesions that need monitoring, high cholesterol, and high blood pressure. While he does not necessarily have a compromised immune system, his being 78 years old makes him high risk should he contract COVID.

As to the type of sentence that would provide general and specific deterrence, and considering those sentences that are available to best provide treatment needed, a non-custodial sentence is appropriate. The need for general deterrence should not be given equal weight to the other factors of § 3553. Further, specific deterrence has been accomplished by way of Tyler's conviction. As Tyler is now a convicted felon, he is prevented from holding office in the future. Without such political power, Tyler cannot commit a similar offense again. Lastly, the guidelines allow for a split sentence, meaning community confinement is available, at least in part, for his sentence. A probated sentence will not create any sort of disparity in sentencing with like defendants and like records².

The type of sentences available include probation, home confinement, or prison. Probation provides a sufficient sentence. Quite frankly, the shame that this offense has brought to Tyler and his family is far worse than any sentence that could be imposed. Tyler was in the public spotlight for most of his life in Muncie – as a firefighter, labor union leader, a state representative, and then Mayor of Muncie. Almost everyone in Muncie knew Tyler and now almost everyone in

² From 2015 - 2020, a total of 309 Bribery/Corruption cases were registered within Sentencing Zone C. According to the Commission, 30.4% of these offenders received probation or a fine only; less than half received prison sentences.

Muncie will know of his criminal transgression. This shame unfortunately but naturally trickles down to his children and grandchildren.

IV. Sentencing Guidelines

Under *Booker*, the guideline range is merely advisory. While the Court has a duty to calculate the guideline range, it is reversible error for this Court to presume the guideline range is reasonable. *Nelson v. United States*, 129 S.Ct. 890 (2009); *United States v. Ross*, 501 F.3d 851, 853 (7th Cir. 2007). As demonstrated above, the defendant would respectfully suggest that a Guideline sentence in this case would not be reasonable.

The information provided in footnote 2 demonstrates that a probated sentence would not create a disparate sentence for this offense. What also supports a downward departure to probation is the fact that Tyler's gratuity *just* meets the amount threshold for this offense (\$5,000.00). Further, the gratuity accepted by Tyler seems to be an isolated event that was not driven by a greed-thirsty politician/person. Finally, consideration of his age is appropriate to support a downward departure. Tyler stands before this court as a 78-year-old man who has otherwise led an exemplary, public-service driven life. This is clearly not how Tyler intended to be remembered at this stage in his life, but his conviction is now inevitably part of the narrative.

V. Conclusion

Dennis Tyler stands before this Court requesting a sentence crafted to fulfill the purpose of a sentence. This can be done through a non-custodial sentence as set forth above. Counsel, on behalf of their client, Dennis Tyler, respectfully requests this Court sentence him to a period of probation.

Respectfully submitted,

/s/Jennifer M. Lukemeyer
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Attorney for the Defendant
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CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2021, a copy of the foregoing was filed electronically. Service of this filing will be made on all ECF – registered counsel by operation of the court’s electronic filing system. Parties may access this filing through the court’s system.

s/James H. Voyles
James H. Voyles, #631-49

s/Jennifer M. Lukemeyer
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VI. Appendix - Letters of Support

- A. Mark R. McKinney
- B. JoAnn McKinney
- C. James P. Borgmann
- D. Jud Fisher
- E. Jake Dunnuck
- F. Chandler Thompson
- G. Tammy Neal
- H. Tara Gudger
- I. Jack Quirk
- J. Thomas Hanify
- K. Linda L. Dobbs
- L. Alison Quirk
- M. Edward A. Bell
- N. Kipper V. Tew
- O. Pastor Jerry Blevins
- P. Gregory F. Hahn
- Q. Mary Chambers
- R. Marilyn Kay Walker
- S. Terrell Cooper
- T. William E. Hall, PE
- U. Megan Quirk

- V. John Dickerson
- W. John A. Fallon, III, Ph.D.
- X. Myrna Robertson
- Y. Charles (Charlize) Jamieson
- Z. Sarah L. C. Beach
- AA. Mike Whited
- BB. John Quirk
- CC. Victoria Veach
- DD. Dr. Dominyse Carey DNP, APRN, FNP-C
- EE. Yolanda L. Carey
- FF. Cheryl Crowder
- GG. Wendy M. Granger
- HH. Gloria McKinley
- II. James Mansfield, Jr.
- JJ. Julius J. Anderson
- KK. Kathy J. Carey
- LL. Joel C. Miller
- MM. Joe Huff
- NN. Bret L. Granger
- OO. Brittany Bales
- PP. Brenda Corya
- QQ. Bernice Beaty

RR. Jennifer L. Hill
SS. Richard Huff
TT. Belinda Hughes
UU. Meredith Conn
VV. Mohammad Saber Bahrami, M.D.
WW. Ludonna Strunk
XX. Jeff Granger
YY. Kasey Hyneman
ZZ. Kim Dodson
AAA. Scott Quirk
BBB. Matt Walker
CCC. Yvonne C. Thompson
DDD. Sonni Stevenson
EEE. Bachar Al-Khatib, MD, MPH
FFF. Fred A. Fields
GGG. Tim Hale
HHH. Brian Lough
III. Tamelia Moore
JJJ. Michael King
KKK. Walter C. Duncan
LLL. Sandra K. Greer
MMM. Joe E. Greer