

**UNITES STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE AT CHATTANOOGA**

UNITED STATES OF AMERICA)	
)	
v.)	Case No. 1:09-CR-90
)	Collier/Lee
AMAR WALKER)	

SENTENCING MEMORANDUM

As this Court is aware, the United States Supreme Court has held that a sentencing court may depart from a guideline sentence based upon crack cocaine quantities in order to bring the sentence within the range it would be had the drug been powder cocaine instead. Kimbrough v. U.S., 552 U.S. 85, 128 S.Ct. 558 (2007). Recognition of this power was affirmed two years later in Spears v. U.S. 129 S.Ct. 840 172 L. Ed. 2d 596 (2009).

The Sixth Circuit Court of Appeals has reversed and remanded several cases in which the sentencing court felt it lacked the authority to depart downward on the basis of the disparity; reminding them that they do have such authority (see for example U.S. v. Mayce ___ F.3d ___ 2009, WL 3162253 (6th Cir. 2009).

Counsel is certain that the Court is well aware of the history of the disparity as recounted in detail in Kimbrough. What is also interesting in the Kimbrough decision, when reviewing the defendant’s case, is the fact that the sentencing court recognized that the case involved “an unremarkable drug trafficking offense”.

Such is also the case here. The defendant ran a stop sign apparently unaware that he was being followed by a Chattanooga Police officer on a routine patrol. The officer stopped the defendant but before the defendant’s car stopped, a small plastic bag was thrown from the window. It was retrieved and found to contain approximately 13 grams of crack cocaine. The defendant has no co-defendants and is not indicted for participation in a conspiracy. Counsel is unaware of any preexisting suspicion that the defendant was a drug dealer or of

any investigation involving him or anyone he was alleged to be dealing with. No large quantity of money was found. The defendant has no prior felony convictions.

Accordingly, the defendant requests that the Court grant a downward departure and sentence the defendant within the guidelines that would apply to the same quantity of powder cocaine.

Respectfully submitted,

CAVETT & ABBOTT, PLLC

By: /s/ John C. Cavett, Jr.

John C. Cavett, Jr., TN BPR #9388
801 Broad Street, Suite 428
Chattanooga, TN 37402
(423) 265-8804

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing document has been duly served upon all parties of record either by ___ hand delivery, X ECF, or by ___ placing a copy of same in the United States mail, properly addressed with sufficient postage affixed thereto to carry same to its destination this 30th day of October, 2009.

By: s/ John C. Cavett, Jr.