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7 UNITED STATES DISTRICT COURT
8 DISTRICT OF ARIZONA

9 United States of America,
10 Plaintiff,
11 v.
12 Scott A. Maasen,
13 Defendant.

Case No: CR 16-01357-PHX-DGC (MHB)

**DEFENDANT’S SENTENCING
MEMORANDUM**

Assigned to Honorable David G. Campbell

14
15 Defendant Scott A. Maasen requests this Court sentence him to a term of probation. Probation
16 is a reasonable sentence based on the sentencing guidelines and Mr. Maasen’s history and
17 characteristics, which show a personal and professional body of work resulting in good that far
18 outweighs the period of poor decision making that lead to this chapter of his life. The reasons
19 supporting this request are included in the attached Memorandum of Points and Authorities and will
20 be discussed during his sentencing hearing on November 13, 2018.

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1 Excludable delay under 18 U.S.C. § 3161(h)(8)(A) may result from this motion.

2 RESPECTFULLY SUBMITTED this 9th day of November 2018

3 **KURT M. ALTMAN, P.L.C.**

4 *s/ Kurt M. Altman*

5 _____
6 KURT M. ALTMAN
Attorney for Defendant

7 I hereby certify that on the 9th day of November 2018,
8 I electronically transmitted the attached
9 document to the Clerk's Office using the
10 CM/ECF system for filing and transmittal
of a Notice of Electronic Filing to the
following CM/ECF registrants:

11 The Honorable David G. Campbell
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19 *s/ Kurt M. Altman*

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MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS:

On November 8, 2016, after an investigation lasting approximately three years and unsuccessful pre-indictment negotiations, Defendants Scott A. Maasen, David A. Maasen and Heather Holm were indicted on numerous counts relating to Chapter 11 bankruptcy proceedings initiated by Scott A. Maasen. On March 1, 2017, a Superseding Indictment was filed alleging additional overt acts as to each defendant. On April 20, 2018, Defendant Scott A. Maasen entered a change of plea to Count 4, Concealment of Assets in Bankruptcy. Count 4 specifically related to a diamond ring that was not reported as part of the bankruptcy estate. Sentencing is scheduled for November 13, 2018.

II. DISCUSSION:

When imposing a sentence the Court is to consider the United States Sentencing Guidelines (U.S.S.G.) calculation. Once the guidelines have been considered, the Court can then consider statutory sentencing factors.

A. Other Sentencing Factors

Title 18 U.S.C. § 3553 outlines factors to be considered by the Court at sentencing:

- . . .The court, in determining the particular sentence to be imposed, shall consider---
- (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;

- 1 (4) the kinds of sentence and the sentencing range established for--- . . . ;
 2 (5) any pertinent policy statement--- . . . ;
 3 (6) the need to avoid unwarranted sentence disparities among defendants
 with similar records who have been found guilty of similar conduct; . . .

4 18 U.S.C. § 3553.

5 In addition to § 3553, in *United States v. Booker*, 543 U.S. 220 (2005), the Supreme Court
 6 recognized the importance of the Sixth Amendment guarantee to only sentence defendants based
 7 upon the jury’s factual findings or a defendant’s sworn factual admissions in a guilty plea, *id.* at 244,
 8 yet it retained the validity of the Sentencing Guidelines system by making it advisory. *Id.* at 258–65.
 9 *Booker* also determined that on appeal, sentences were to be reviewed for “reasonableness.” *Id.* But
 10 the Court did not spell out the contours of “reasonableness” review. *See id.* at 260–61; *see also id.* at
 11 311 (Scalia, J., dissenting in part).

12 Subsequently, the Supreme Court decided the cases of *Cunningham, Rita* and *Gall*.¹ In
 13 *Cunningham*, the Supreme Court invalidated California’s determinate sentencing scheme. The Court
 14 found California’s scheme failed to comply with the Sixth Amendment right requiring a jury, not a
 15 judge, to find any fact that exposes a defendant to a greater potential sentence. Further, the Court
 16 held that any such fact must be established beyond a reasonable doubt, not merely a preponderance of
 17 the evidence. 127 S.Ct. at 863–64. *Cunningham*² reaffirmed the statutory maximum sentence was
 18 that authorized by the jury’s verdict or the defendant’s admissions in a guilty plea. 127 S.Ct. at 868.

19 In *Rita*, the Court decided that where there were no judicial findings that enhanced the
 20 defendant’s *within*-Guidelines’ sentence, that appellate courts could presume reasonableness for a
 21 “sentence that reflects a proper application of the Sentencing Guidelines.” *Id.* at 2479. In keeping
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 26 ¹ *Cunningham v. California*, 549 U.S. 270, 127 S.Ct. 856 (2007); *Rita v. United States*, 551 U.S. 338, 127 S.Ct. 2456
 (2007); *Gall v United States*, 552 U.S. 38, 128 S.Ct. 586 (2007).

27 ² *Cunningham* reiterates the principles set forth in *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *Blakely v.*
Washington, 542 U.S. 296 (2004).

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1 with *Booker*, the Court applied an appellate standard that required substantive reasonableness review
2 of sentencing decisions. *Id.*; *see also id.* at 2473 (Stevens, J. concurring) (*Booker* “plainly
3 contemplated that reasonableness review would have a substantive component.”).

4
5 Mr. Maasen admitted under oath to facts relating to Count 4 of the indictment in this matter—
6 concealment of a diamond ring with a purchase price of \$89,926.00. Based on the foregoing law as
7 applied to sentencing, this Court is charged with fashioning a reasonable sentence based on Mr.
8 Maasen’s admissions. The Pre-sentence Investigation Report (“PSR”) describes additional conduct
9 based on information provided exclusively by the Government and its agents, which formed the basis
10 for the ultimate indictment in this matter. PSR ¶¶ 6–25. The information is deemed “relevant
11 conduct” pursuant to U.S.S.G. § 1B1.3 and can be used by a court when determining the advisory
12 guideline sentence. However, subsequent to *Booker*, it is not determinative when imposing a
13 “reasonable” sentence based on 18 U.S.C. § 3553. Make no mistake, while in bankruptcy, Mr.
14 Maasen devised a way to propose to the woman he loved with a magnificent ring that was not
15 reported in his bankruptcy proceedings. He does not minimize that conduct or seek to avoid criminal
16 responsibility for it. He simply asks this Court to focus on what is known beyond a reasonable doubt
17 and not be disproportionately influenced by “relevant conduct” that has never been proven beyond a
18 reasonable doubt or admitted.
19

20
21 In the summer of 2016, a tentative resolution was reached before indictment between Mr.
22 Maasen and the Government. That resolution guaranteed Mr. Maasen a very beneficial
23 recommendation as to sentence from the Government that was based on much of the relevant conduct
24 described in the PSR in paragraphs 6–25. Although the terms were extremely favorable to Mr.
25 Maasen, he backed out of the agreement because he simply could not swear under oath to the
26 accuracy of the facts in the plea agreement. Expectedly, he was indicted and stands before this Court
27

1 facing far more severe sanctions even though the facts supporting the Government's indictment
2 remain unchanged.

3 Mr. Maasen failed to disclose the purchase of a diamond ring in bankruptcy, and has admitted
4 such under oath. His actions resulted in his indictment, and also the indictment of his 72-year-old
5 father and former fiancé, the recipient of the ring. Mr. Maasen asks this Court to give the "relevant
6 conduct" the weight it deserves when imposing a sentence based on the facts known beyond a
7 reasonable doubt and based on the entire body of work contained within his life. The factors
8 enumerated in 18 U.S.C. § 3553 allow the Court to do just that.

9
10 **B. Title 18 U.S.C. 3553 factors applied to Mr. Maasen.**

11 When analyzing the sentencing factors in § 3553 it becomes apparent that a sentence
12 substantially less than the recommended 28 months (and the Government's recommended 18 months)
13 is appropriate.

14
15 *1. Nature and Circumstances of the Offense and History and Characteristics of
16 Defendant per § 3553(a)(1).*

17 Mr. Maasen has accepted responsibility for his actions and certainly does not deny the facts
18 set forth in his plea agreement.

19 The PSR accurately describes his history and characteristics. PSR ¶¶ 52–61. However, it is
20 odd that only nine paragraphs detail the life of Mr. Maasen while 25 paragraphs detail the offense
21 conduct in this matter. Fortunately, 18 U.S.C. § 3553 requires consideration of the whole person,
22 along with the conduct. Yet, it is impossible to fully convey the complete Scott Maasen in just a
23 memorandum.

24
25 Mr. Maasen graduated from Arizona State University in 1993, spending his time as ASU
26 student body president and working diligently to advance student issues on campus. After becoming
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1 a lawyer, he immediately went into public service as a Deputy Maricopa County Attorney. At
2 MCAO, he prosecuted hundreds of criminal cases ranging from general street crimes to specialized
3 vehicular felonies. He always strived to do right and recognized that the prosecutor held a special
4 position within the justice system. He knew that with great power comes even greater responsibility,
5 and his prosecutorial reputation was one of honesty and fairness. Through it all, he was always a
6 friend, an entertainer, and the one who lifted the spirits of his colleagues.

8 In 2000, Mr. Maasen left MACO and started his own legal practice. But what the PSR fails to
9 illustrate is that he literally started with nothing. Based on his experience at MCAO he eventually
10 secured contracts providing indigent defense. He didn't begin his practice in a multimillion-dollar
11 Scottsdale office building, but in a dingy, closet-sized office where he worked diligently providing
12 legal services to his clients. His efforts, reputation and successes over time resulted in a flourishing
13 practice. Eventually, Mr. Maasen employed a staff of nearly 20, often with between six and ten
14 lawyers providing client services. His financial success was primarily the result of his hard work and
15 dedication to clients. It cannot be overlooked that Mr. Maasen spent years helping hundreds and
16 possibly even thousands of clients who were often experiencing the very worst stretch of their lives.

18 Mr. Maasen is also the father of two beautiful young daughters who are his world. The
19 circumstances surrounding this case have stripped him of everything. Yet, his love for his daughters
20 is what helps him get up in the morning and move forward. He strives to be a good example for them
21 and is devastated to think about the impact his actions in this case have had on them. Though
22 difficult at times, Mr. Maasen has accepted responsibility for what he has done because it is the right
23 thing to do, and is the right example to set for his daughters.

25 A probation sentence adequately takes into account the nature and circumstances of this
26 offense and reflects an appropriate recognition of Mr. Maasen's history and characteristics as
27

1 enumerated in § 3553(a)(1). The facts surrounding this case are but a small blip on the radar of Scott
2 Maasen's life.

3
4 *2. To reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense per § 3553(a)(2)(A).*

5 A probation sentence satisfies the considerations of § 3553(a)(2)(A). The conviction in this
6 matter is very serious, but a sentence incorporating incarceration will not instill a greater respect for
7 the law in Mr. Maasen. He is devastated by his actions. He understands that being a lawyer means
8 that he is held to a higher standard and failing to live up to that standard will haunt him for the rest of
9 his life. This Court has many sentencing options: prison, home detention and probation among
10 others. What this Court cannot do is over punish Mr. Maasen. He has lost everything—his career is
11 over as he will no longer have a license to practice law. If by some miracle he is reinstated to the bar,
12 he may nonetheless never reclaim the success he once had because he may never be able to repair the
13 reputation and trust that he destroyed. He has lost his family—he no longer has custody of his
14 daughters, and only sees them irregularly with significant oversight. No sentence imposed by the
15 Court will punish Mr. Maasen to the extent that he has punished himself as a result of his deeds.
16

17
18 Regardless of the sentence imposed on November 13, 2018, it will eventually end. But Mr.
19 Maasen's actions have resulted in a self-imposed life sentence that will forever burden him. Here,
20 probation is appropriate. Probation provides incentive and assistance for Mr. Maasen to start over
21 and work to make amends. It provides assurances to this Court through oversight of Mr. Maasen, and
22 punitive recourse in the event he fails to do as he should. A probation sentence adequately reflects
23 the considerations enumerated in § 3553(a)(2)(A).
24

25 *3. To afford adequate deterrence of criminal conduct per § 3553(a)(2)(B).*
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1 There is no need for further deterrence of Mr. Maasen. As such, a prison sentence is
2 inappropriate under § 3553(a)(2)(B). He has lost everything that he worked for his entire life. The
3 ramifications of this case not only remove the desire to re-offend but also remove the ability to do so.
4 Mr. Maasen will never again be in a position to commit an offense like this. A probation sentence
5 holds him accountable for his actions while providing the needed opportunity for him to rebuild and
6 improve his life and the lives of those he's hurt.

8 4. *To protect the public from further crimes of defendant per § 3553(a)(2)(C).*

9 The public does not need protection from Mr. Maasen as provided in § 3553(a)(2)(C). He
10 poses no threat to the community. In fact, to the contrary, he has always contributed to society.
11 Though he will likely never practice law again, a probation sentence allows him to move on and use
12 his skills and intelligence to contribute to society in some other manner.

14 5. *To provide defendant with needed educational and or vocational training per
§ 3553(a)(2)(D).*

15 Mr. Maasen is highly educated. Though education or technical training is likely unnecessary,
16 probation could still prove highly beneficial. Mr. Maasen reached a professional pinnacle during his
17 legal career and now finds himself with nothing. Probation services would help him get back on his
18 feet and ensure that he meets his responsibilities moving forward.

20 When wholly applying the statutory sentencing factors to Mr. Maasen it becomes clear that
21 probation is an appropriate sentence and likely the best sentence to meet the sentencing goals
22 Congress intended when passing 18 U.S.C. § 3553.

23 **C. Unusually High Guidelines Calculations**

24 Although advisory, the sentencing guidelines are still to be considered by a court for
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1 sentencing purposes. *Booker*, 543 U.S. at 258–65. According to the PSR, after application of
2 acceptance of responsibility, Mr. Maasen’s final offense level is 21. There is one significant number
3 that makes up his total offense level—a 14-level enhancement was applied because of the calculated
4 intended loss, pursuant to U.S.S.G. § 2B1.1 (1)(H). Bankruptcy case loss is difficult to determine and
5 can significantly affect guideline ranges. Mr. Maasen has objected to the PSR (Dkt. # 115) and will
6 not re-argue the matter in this memorandum, but points out the dramatic ramification a single loss
7 calculation has on overall guideline determinations. Mr. Maasen respectfully requests this Court to
8 consider the unusual circumstances of this particular case, which has resulted in the high offense level
9 calculation, when imposing a reasonable sentence under 18 U.S.C. § 3553.

11 **III. CONCLUSION:**

12 For the reasons stated herein, Defendant Scott A. Maasen respectfully requests this
13 Court to impose a probation sentence of three to five years.

14 RESPECTFULLY SUBMITTED this 9th day of November 2018.

15 **KURT M. ALTMAN, P.L.C.**

16 *s/ Kurt M. Altman*

17 _____
18 KURT M. ALTMAN
19 Attorney for Defendant

20 I hereby certify that on the 9th day of November 2018,
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