

MARIA E. STRATTON
Federal Public Defender
MICHAEL GARCIA
AYELET WALDMAN
Deputy Federal Public Defenders
Suite 1503, United States Courthouse
312 North Spring Street
Los Angeles, California 90012-4758
Telephone (213) 894-2854

Attorneys for Defendant
DARRYL STREET

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	NO. CR 95-657-GHK
)	
Plaintiff,)	DEFENDANT'S POSITION RE:
)	SENTENCING FACTORS <u>UNDER SEAL</u>
v.)	
)	
DARRYL STREET,)	
)	
Defendant.)	
)	

DARRYL STREET, by and through his attorneys of record Deputy
Public Defenders Michael Garcia and Ayelet Waldman, submits the
attached position paper with respect to sentencing.

Respectfully submitted,

MARIA E. STRATTON
Federal Public Defender

DATED: December 12, 1995

By _____
AYELET WALDMAN
Deputy Federal Public Defender

I.

INTRODUCTION

On October 19, 1995, Darryl Street pleaded guilty to Counts 1 and 4 of an indictment charging him with fraud in connection with access devices and conspiracy in violation of 18 U.S.C. §§ 1029 (a) (1) and 371.

The plea agreement requires the government to recommend a two-level reduction in the guideline offense level for acceptance of responsibility. The plea agreement also requires the government not to object to a split-sentence or to a sentence at the low end of the applicable guideline range. Finally, the plea agreement stipulates specifically that the offense level shall be increased by no more than 5 levels because the loss was between 40,000 and 70,000 dollars.

On November 13, 1995 Darryl Street was interviewed by United States Probation Officer Patricia A. Foster who wrote the presentence report ("PSR"). The PSR suggests that Darryl Street's offense level be fixed at 10 with a criminal history category of I. The resulting guideline range is 6 to 12 months. The PSR recommends a sentence of probation with the special condition that the first six months be spent on electronic monitoring.

Darryl Street submits that the appropriate offense level is 9 and the resulting guideline range is 4 to 10 months because the loss stipulated by the parties in the plea agreement exceeds \$40,000 but is less than \$70,000. He also seeks a downward

1 departure because of the aberrant nature of his behavior in
2 committing this crime.

3 II.

4 FACTUAL BACKGROUND

5
6 In August and September of 1991, Darryl Street's life hit
7 bottom. His loss of confidence and sense of worthlessness had
8 become so overwhelming that he lost sight of the values that had
9 shaped his life and behaved in a manner completely out of
10 character. Darryl, a young man who had succeeded in all his
11 endeavors, found himself all but flunking out of Howard University.
12 He had gone off to college two years before, full of promise and
13 excitement, and found he couldn't cut it. Perhaps he was too
14 immature, perhaps he was overwhelmed by experiencing complete
15 independence for the first time. Making matters much much worse,
16 Darryl's father became seriously ill. He suffered a stroke
17 complicated by the open-heart surgery he had undergone two years
18 before. As Darryl writes in his letter to the Court, "because of
19 my lack of success and other personal and emotional problems I
20 became disillusioned and decided to drop out of school and get a
21 full time job." See Letter of Darryl Street ("Street Letter")
22 attached to PSR.

23
24 Darryl got a job at First Federal Bank as a teller. He then
25 was approached and encouraged to engage in the illegal activity at
26 issue in this indictment. Darryl knew that it was wrong. He knew
27 that it was illegal. And he did it anyway. Darryl felt like such
28 a failure, he felt so worthless, that he decided to prove to

1 himself and the world that he was just as bad as he thought. Not
2 only was he a college drop out, but he was a criminal too. In the
3 demoralized, depressed state he was in, this seemed like a fitting
4 end to his bright prospects.

5
6 Lucky for Darryl, the moral values instilled by his parents
7 would not allow him to spiral further into the abyss of criminal
8 conduct. He had a rude awakening when he was fired from his job.
9 He had made change for someone he recognized, and ended up with a
10 drawer full of counterfeit bills. A secret service investigation
11 found no wrongdoing, but the bank fired him. He knew that he
12 wasn't supposed to make change for people without accounts, but he
13 did it anyway.

14
15 This slap in the face finally woke Darryl up. He applied to
16 Loyola Marymount and went on to earn his degree in business
17 management. He pulled himself together, and achieved the bright
18 promise all who knew him believed him capable of. He was selected
19 from a pool of 300 applicants for Pioneer Electronics management
20 training program. Darryl has excelled at Pioneer, earning high
21 praise from his supervisors in every department he has been rotated
22 through.

23
24 It is a testament to his upbringing and character that Darryl
25 has never before committed a crime. He comes from a loving family
26 so supportive that, even in the face of such a remarkable deviation
27 from the behavior they have come to expect from their children, his
28 parents have expressed complete support. See Letters attached to

1 PSR. The probation officer also agrees that Darryl's conduct since
2 the time of the instant offense has been exemplary. Ms. Foster
3 writes, "The defendant's behavior prior to his arrest suggests that
4 he had already begun to take rehabilitative steps to redirect his
5 life." PSR at p. 2.

6
7 III.

8 MR. STREET'S POSITION

9
10 A. THE COURT SHOULD UPHOLD THE PLEA AGREEMENT AND SENTENCE MR.
11 STREET BASED ON THE STIPULATED LOSS.

12
13 As part of the plea agreement, the government and Mr. STREET
14 stipulated that the loss was \$50,600. This leads to an offense
15 level increase of 5. The PSR, however, computes the loss as
16 including all the transactions, even those involving other
17 individuals at other banks, and recommends a 6 level increase. The
18 Court should, in the interests of justice, hold in accordance with
19 the plea agreement.

20
21 B. THE ABERRANT NATURE OF DARRYL STREET'S CONDUCT JUSTIFIES A
22 DOWNWARD DEPARTURE.

23
24 The Federal Sentencing Guidelines do not often provide the
25 Court with an opportunity to do justice by considering the specific
26 characteristics and needs of an offender and how they can best be
27 integrated with the interests of the community. Most often, the
28 Court is forced to apply a rigid numerical guideline that removes

1 all aspects of judicial discretion and allows only the
2 consideration of criminal history and offense level.

3
4 In this instance, however, the Court has the opportunity to
5 use the departure provisions of the Guidelines to account for and
6 reward exactly the kind of real change in the life of an offender
7 that should be the goal of criminal punishment. At the same time,
8 Darryl has already proved to the Court that the community can be
9 assured that it will be protected from any repeat offenses. Since
10 1991, Darryl has had 4 years of offense-free, exemplary conduct.
11 If the Court encourages him and allows him to continue his career,
12 he will continue on this path of success and honest endeavor.

13
14 The Federal Sentencing Guidelines allow a court to grant a
15 downward departure all the way to probation based upon a
16 defendant's aberrant behavior. United States Sentencing
17 Commission, Guidelines Manual, Ch. 1A, ¶ 4(d) at 7. This power has
18 been recognized and approved by the Ninth Circuit in numerous
19 cases. See United States v. Lam, 20 F.3d 999, 1003 (9th Cir. 1994)
20 ("when a person's behavior can be called aberrant, the person may
21 well be taken out of the heartland and into the borderlands where a
22 departure would be appropriate"); United States v. Fairless, 975
23 F.2d 664 (9th Cir. 1992) (downward departure based on aberrant
24 behavior from a range of 51-63 months to 30 months for a defendant
25 convicted of bank robbery); United States v. Dickey, 924 F.2d 836,
26 838-839 (9th Cir. 1991) (remanding for resentencing, identifying
27 aberrant behavior as a ground for downward departure); United
28 States v. Takai, 941 F.2d 738, 742-743 (9th Cir. 1991) (downward

1 departure to home detention).

2
3 The cases speak of a spectrum by which aberrance should be
4 evaluated. See Fairless, 975 F.2d at 667; Dickey, 924 F.2d at 839;
5 Takai, 941 F.2d at 743. The "terminal points" of the spectrum
6 range from a single, spontaneous decision to take money to a
7 fifteen-month check-kiting scheme. Dickey, 924 F.2d at 839. "A
8 'whole series of actions,' planned in some detail, may constitute a
9 single aberrant act." United States v. Stanfield, 35 F.3d 573,
10 1994 WL 503852 (9th Cir. (Cal.)) citing Takai, 941 F.2d at 743.
11 Even behavior that is thoughtfully planned can be considered
12 aberrant if it is odds with the character of the individual
13 defendant. United States v. Guarino, 61 F.3d 913, 1995 WL 421898
14 **1 (9th Cir. (Wash)) ("Contrary to the government's suggestion,
15 this court has never held that aberrant behavior must be
16 unplanned.").

17
18 Darryl Street, over the course of a very short period of time,
19 engaged in the only criminal activity of his life, other than two
20 minor traffic violations.¹ During a two month period, he allowed
21 the codefendants to present and receive fraudulent cash advances.
22 These actions were part of the same depressed act of aberrant
23 behavior.

24
25
26 1 Because "aberrant behavior and first offense are not
27 synonymous," the fact that Mr. Street has two prior minor traffic
28 violations should not impact the Court's decision. Lam, 20 F.3d at
1004 (citations omitted); see also United States v. Morales, 972
F.2d 1007 (9th Cir. 1992).

1 Like the defendant in Lam, Darryl has a background of "honest
2 and law-abiding behavior" other than and despite his drug
3 addiction. Lam, 20 F.3d at 1003. Since the crimes were committed
4 in 1991, his life has been exemplary. He graduated from Loyola
5 Marymount College and was selected from 300 candidates to
6 participate in Pioneer Electronics Management Training Program. He
7 has earned the praise of employers who called him "an excellent
8 role model for young African-American males" and "a very focused,
9 responsible, career oriented adult". Letter of Eric Holoman,
10 President Holoman Food Service, Inc., attached to PSR. His
11 employees at Pioneer call him "forthright, intelligent, cooperative
12 and fully committed to his career pursuits and responsibilities at
13 Pioneer.

14
15 Like the defendant in Fairless, the combination of factors
16 including his subsequent behavior and strong letters of support
17 from family and employers justify downward departure. Fairless,
18 975 F.2d at 668; see also United States v. Cook, 938 F.2d 149, 153
19 (9th cir. 1991) (approving the principle that a combination of
20 factors may warrant downward departure, even if each standing alone
21 is insufficient).

22
23 C. THE PROBATION OFFICER'S FAILURE TO RECOMMEND A DOWNWARD
24 DEPARTURE DOES NOT MEAN A DEPARTURE IS INAPPROPRIATE.

25
26 The PSR does not recommend a downward departure despite
27 the compelling evidence of Darryl Street's aberrant behavior. This
28 may be, however, because the Probation Office is not the entity

1 best equipped to judge the propriety of departure. Probation
2 officers develop expertise in two areas: (1) computing and applying
3 the specialized body of regulations known as Sentencing Guidelines;
4 and (2) gathering and presenting factual information regarding an
5 offense and the defendant's characteristics.

6
7 Courts, on the other hand, have the legal training and social
8 responsibility for the exercise of judicial discretion and legal
9 analysis which is inherent in a judgment of whether a departure
10 from the guideline range is appropriate. A departure from the
11 guideline range, unlike the simple computation of a range and the
12 collection of information, requires the judgment and implementation
13 of legal and social values which are inherently a judicial
14 function. As such, it is reasonable to view that judgment as one
15 for the Court, not the Probation Office.

16
17 This Court must, therefore, independently apply judicial
18 judgment in deciding the question of departure. Darryl Street
19 respectfully submits that a downward departure is warranted here.

20 \

21 \

22 \

23 \

24 \

25 \

26 \

27 \

28 \

IV.

CONCLUSION

For the reasons stated above, Darryl Street respectfully requests that the Court grant a downward departure because of the aberrant nature of his conduct. Further, he requests that the Court uphold the plea agreement's stipulation as to loss.

Respectfully submitted,

MARIA E. STRATTON
Federal Public Defender

DATED: December 12, 1995

By _____
AYELET WALDMAN
Deputy Federal Public Defender

N:\Waldman\Street\Sentenci.ppr