

Heather Harris (11186)
Scott C. Williams, LLC
Attorney for Defendant
43 East 400 South
Salt Lake City, Utah 84111
Telephone: (801) 220-0700
Facsimile: (801) 364-3232

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	POSITION OF DEFENDANT WITH
Plaintiff,	:	RESPECT TO SENTENCING FACTORS
v.	:	
WILLIAM JAMES VIEHL,	:	Case No. 2:09-CR-119 DB
Defendant.	:	The Honorable Dee Benson

Defendant, William James Viehl, through counsel of record, Heather Harris, hereby supplies his position with respect to the appropriate factors to be applied at sentencing in the above-captioned matter. Mr. Viehl submits herein that the low end of the United States Guideline range is a reasonable sentence in this case, 6 months. Additionally, Mr. Viehl respectfully requests that his ultimate sentence be reduced by a month and a half to provide him with some credit for time he was on house arrest¹ pre-plea (3.5 months), and believes that factors under 18 U.S.C. 3553 support such. Accordingly, Mr. Viehl is requesting that the court release

¹Though Magistrate Judge Brooke C. Wells did not order per se house arrest, Mr. Viehl was only allowed to leave his house for employment searches and other pre-approved meetings such as attorney meetings.

Mr. Viehl to be supervised by United States Probation at sentencing. He has served about 4 months and 24 days in custody.

OBJECTIONS TO PRESENTENCE REPORT CONTENT

The only current objection Mr. Viehl has to the presentence report is found at paragraphs 18 and 59, and such was communicated to United States Probation on October 21, 2009. Mr. Viehl submits that the loss value calculation may be inflated on the basis that at the time Mr. McMullin was interviewed, he indicated that it would be hard to put a dollar amount of loss because of not being able to breed the *female* mink. (A copy of Agent Replogle's report of interview on September 5, 2009 is attached hereto as Exhibit A.) However, the loss calculation provided as a result of the Fur Commission USA's formula adds future loss for the males too, and that calculation is the basis of the restitution figure in the presentence report. (A copy of the loss calculation provided by Mr. McMullin is attached hereto as Exhibit B.) Mr. Viehl has no objection to the female mink loss being multiplied out by three in that that is what Mr. McMullin was concerned about when he was interviewed initially, and it makes sense practically: the biological breeding material from male mink are in plentiful supply and the more difficult task is obtaining conception in the female mink and waiting the gestation period in order to impregnate the female mink again. In other words, more females are needed than males for optimal number-breeding, similar to that of the human species. Accordingly, Mr. Viehl submits the following calculation using the Fur Commission USA's base formula is the appropriate restitution value²:

²As of the time of this filing, the parties are attempting to resolve the dispute over restitution.

<u>Female Mink Released [Records Destroyed]:</u>	
425 mink x \$42.29 x 3 =	\$53,920.00
<u>Male Mink Released [Total Loss/Records Non-Issue]</u>	
25 mink x \$60.06 =	\$1,501.50
(so not multiplied out by 3, the 25 accounts for the death/total loss of 25)	
<u>Recovered Value at Auction:</u>	
400 females x \$42.29 =	\$16,916.00
(nothing for males because the 25 were a total loss)	
<u>Totals:</u>	
Females Released[/Records Destroyed]:	\$53,920.00
Males Released (Total Loss/Records Non Issue)	\$1,501.50
Total:	\$55,421.50
<u>Less Recovered Pelt Value at Auction:</u>	
Female pelts:	<\$16,916.00>
Male pelts:	<\$0>
<u>Total Losses to Mink: (55,421.50-\$16,916=)</u>	\$38,505.50
<u>Property damage to pens and shed:</u>	\$1000
<u>Misc. Damages:</u>	\$200
<u>Total Monetary Damages:</u>	<u>\$39,725.50</u>

ARGUMENT

I. THE CONSIDERATIONS OF U.S.C. § 3553 WARRANT A SENTENCE OF NO MORE THAN THE LOW END GUIDELINE RANGE

The primary guidance for determining a just sentence subsequent to United States v. Booker, 124 S.Ct. 738 (2005) is found at U.S.C. 18 § 3553. The Supreme Court has recently reiterated that a sentencing court cannot presume that a Guideline range is reasonable, Nelson v. United States, – U.S. –, 129 S.Ct. 890, 892 (2009), therefore this Court has the authority to issue

any sentence which is reasonable and just under the circumstances, with the possible exception of a sentence below an applicable statutory mandatory minimum.

Section 3553 provides a number of factors relevant to which a court *shall* impose sentence. The length of the sentence should be as minimal as is “sufficient but not greater than necessary” to comply with the purposes delineated in a statute. Some of the purposes, together with their application to the facts of the present case, are related below:

(a)(1) The Nature and Circumstances of the Offense, and History and Characteristics of the Defendant

Mr. Viehl is a 23 year old impressionable young man. At 18 years old, Mr. Viehl became active in the animal rights community, and at some point aligned his views with the Animal Liberation Front. Mr. Viehl ultimately became imbibed in the ideology and tactics, including direct action. However, since this case’s inception, but most particularly since the revocation of his pretrial release in June by the Honorable Brooke C. Wells, Mr. Viehl has matured quite a bit, and his family has seen these positive changes. (See a letter to the court from Mr. Viehl’s mom, Sarah Avrantinis, attached here as Exhibit C.) He has a different outlook on how he personally will present himself and behave. For example, he has (correctly) decided that he can believe in animal rights and advocate for them in legal ways. (A letter from Mr. Viehl to the court is attached here as Exhibit D.) In fact, he has gone a step further and recognized that his message is likely to be better received by people when his conduct is in line with the law. Mr. Viehl has expressed on multiple occasions that he does not want to be involved in something like this, or any illegal behavior, again. He also decided to take responsibility for his actions in this case and plead guilty even while there was a pending Motion to Suppress the search warrant which was set

for further proceedings.

Moreover, Mr. Viehl is hoping to be able to attend school starting early January, 2010. He has applied for student loans to assist him, and is working on finalizing a school schedule. His plans take into account his restitution obligation he will have to the McMullin family. Mr. Viehl has a supportive family who, though very disappointed in his choices leading to this case, desire to assist him in succeeding in the future.

The circumstances of the offense also warrant a low end Guideline range sentence, and also warrant a reduction of 1.5 months from the Guidelines to provide credit for time served on house arrest pretrial. The act in this case was against property—the release of mink, damage to their cages, and vandalism by way of spray paint that said “No more mink, no more murder...We are watching.” Granted, the latter part of the message has an intimidation tone, however nothing then or since suggests any threat to any person. And Mr. Viehl seems to be sincere in his different attitude of how to express his feelings and beliefs.

(a)(2)(B) Adequate Deterrence

A sentence around the Guideline range is an adequate deterrence for Mr. Viehl as well as someone else who contemplates acting in a similar manner.

(a)(2)(C) Protection of the Public from the Defendant and (a)(2)(D) Treatment

Mr. Viehl does not pose a risk to the public. He is ready to make amends to the McMullin family through restitution, and to abandon direct action activism for himself. He is not in need of treatment at this time.

(a)(3) The Kinds of Sentences Available

The sentence requested is available under the Guidelines.

(a)(7) Restitution

Mr. Viehl's position on restitution is discussed above, and he is ready to start making the McMullin family whole.

CONCLUSION

Based upon the foregoing, Mr. Viehl respectfully requests that this Court find that the low end of the Guideline range, 6 months, is reasonable sentence, then reduce that by 1.5 months to provide some credit for the time he spent on house arrest (3.5 months) prior to his plea. This is warranted pursuant to 18 U.S.C. §3553.

Respectfully submitted this 10th day of November, 2009.

/s/ Heather Harris

Heather Harris
Attorney for Mr. Viehl

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

John Huber
Assistant United States Attorney
185 South State Street, Suite 400
Salt Lake City, UT 84111

U.S. Probation
160 U.S. Courthouse
350 South Main Street
Salt Lake City, UT 84101

/s/ Heather Harris

Heather Harris

Exhibit A

- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 09/09/2008

LINDSEY MCMULLIN, date of birth 04/26/60, social security number 529-19-0351, who resides at 10456 South 1540 West, South Jordan, Utah 84095, telephone number 801-254-2817 was interviewed at his farm located at 10495 south 1540 West, South Jordan, Utah 84095. MCMULLIN provided the following information:

MCMULLIN stated that approximately 550 to 600 mink were released from one of the barns at his farm. To date all but about 15-20 mink had been recovered not including the mink which had been killed. Seven mink were killed by vehicles after running out into the road and another seven killed by stress. While most of the mink had been recovered, MCMULLIN stated that since the pedigree tags were taken and the mink had been released he would no longer be able to breed the female mink and they would likely have to be killed and their pelts sold. While each mink cost about \$80.00 dollars, MCMULLIN stated that it was extremely hard to place a dollar value on the loss of money that his farm would suffer from not being able to breed the female mink. He said that it could range into the thousands of dollars depending on the quality of mink produced.

MCMULLIN provided copies of the pedigree tags that he used and they are appended to this file in a 1A envelope. MCMULLIN also added that he thought whoever released the mink knew what they were doing because the individual(s) had bent back the cage lids in order to keep them opened allowing the mink to get out.

MCMULLIN stated that approximately two to three nights before one of his neighbors, JIM CUSHING, had awoken early in the morning and seen flashlights in the field next to the mink farm but did not have any further information.

MCMULLIN, stated that several days before the vandalism at his farm occurred, HUNTER GROVES MINK FARM may have been targeted by animal rights extremists. MCMULLIN added that about 15 pins had been opened up and about 114 mink had been released.

MCMULLIN also said that the Animal Liberation Front (ALF) had tipped off the press that his mink farm had been vandalized and the DESERET NEWS and SALT LAKE TRIBUNE had both published articles on the mink release.

Investigation on 09/05/2008 at Salt Lake City, Utah

File # 266I-SU-65007-11

Date dictated 09/09/2008

by SA Sean Replogle

Exhibit B

McMullin Fur Farm
Lindsey McMullin – Proprietor
10456 South 1540 West
South Jordan, Utah 84095
(801) 254-2817

Losses from the criminal mink release done to the farm in August 2008. The losses were calculated from the formula provided by the Fur Commission USA.

Female Mink Released:

425 mink x \$42.29 (5 year auction avg. price) x 3 = \$53,920.00

Male Mink Released:

225 mink x \$60.06 (5 year auction avg. price) x 3 = \$40,541.00

Recovered Value at Auction:

400 females x \$42.29 = \$16,916.00

200 males x \$60.06 = \$12,012.00

Totals:

Females Released:	\$53,920.00
Males Released:	<u>\$40,541.00</u>
	\$94,461.00

Less Recovered Pelt Value

@ Auction:

A. Female pelts \$16,916.00

B. Male pelts: \$12,012.00

Total Losses to Mink: \$65,533.00

Property Damage to pens,
Sheds, etc. \$1,000.00
(200 pens X \$5.00 est. repairs)

Misc. Damages to sheds: \$ 220.00

Total Monetary Damages: \$66753.00

Exhibit C

November 8, 2009

Judge Dee Benson
United States District Court of Utah
350 South Main Street
Salt Lake City, Utah 84101

Dear Judge Benson;

I am writing you regarding my son William 'James' Viehl and to talk a little about his personality and the progress he has made during the last few months.

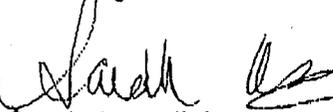
James is a good person who is very passionate about his beliefs. During the past 4 years James has been committed to a vegan diet and, a drug and alcohol free lifestyle; I am very proud of his commitment to be a healthier person and a productive member of society.

James has had a good quality employment history and is very excited to re-gain employment and return to school this coming spring quarter at Weber State University. His main focus in school will be a degree in Graphic Design with a minor in photography. James and his wife Nikki will be living with my husband and I in one of our spare bedrooms until they are able to get back on their feet again by paying off some debt and putting some money in their savings account.

During the course of the federal investigation and James's subsequent incarceration we have had many discussions about his decisions and how he could have handled this situation differently. James, myself and the entire family believe that his incarceration has been beneficial to him by forcing him to realize the extent of his crime and how his actions could ultimately influence his future. James has admitted that he regrets the damage his actions caused the McMillan family and that he does not want to ever be in trouble with the law or cause harm to another individual in the future.

The entire family is supportive of James despite the fact we are disappointed with him for causing damage and loss of income to the McMillan Mink Farm. I hope you will take my letter into consideration when contemplating your decision regarding William James Viehl's sentence.

Best Regards,



Sarah Avrantinis
2222 E 3225 N
Layton, Utah 84040

Exhibit D

10-5-09

Dear Judge Benson,

I wanted to write you a letter so I could express my regret for my actions, and to apologize to the court and to the people. I also wanted to provide additional information regarding my response to a question you asked me at my change of plea hearing.

Since being on house arrest and being incarcerated, I have had alot of time to think about my actions. I realized there are many other ways to express my beliefs than the way I have chosen, and there are many legal options that will not victimize others. I also realized I do not have to abandon my beliefs about animal rights, but that I have to concentrate my efforts in legal ways. I know these efforts will be more positively perceived amongst the public by going that route. With that said, I wanted to say I'm sorry to the court, and to the people, for my actions at the McMullin Mink Farm.

Your Honor, at my change of plea hearing, you asked me why I would do such a thing while enrolled in college, and if my actions were activist driven was extremely nervous and answered "no", so I wanted to clarify my answer: Even though I have associated with animal rights activists, my actions at the McMullin Mink Farm were my own, and were not the result of any group or organization. You said we would address that question more fully at sentencing, so I will be able to better clarify my answer if needed. I'm looking forward to seeing you at my sentencing.

Sincerely

William James Vieto