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U.S. DISTRICT COURT
04 OCT -4 PM 4:49
REC'D _____
CLERK CAMERON S. BURKE
IDAHO

Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 DICK E. BUTCHER,)
)
 Defendant.)
 _____)

Case No. 04 - 0064 - S - EJL

DEFENDANT'S MOTION FOR
DOWNWARD DEPARTURE

COMES NOW, the Defendant, DICK E. BUTCHER, by and through his attorney of record, John C. DeFranco, and respectfully submits his MOTION FOR DOWNWARD DEPARTURE outside the applicable sentencing guideline range pursuant to U.S.S.G Section 5K2.0. The Defendant is scheduled for sentencing on October 25, 2004, in Boise, Idaho.

This motion is based upon the attached memorandum, the files and records in the above entitled cause, and any and all other matters that may be brought to the attention of the Court prior to, or at the time of the hearing on this motion

RESPECTFULLY SUBMITTED this 4th day of October, 2004.


John C. DeFranco
Attorney for Defendant

CERTIFICATE OF SERVICE

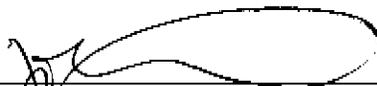
I hereby certify that on the 4th day of October, 2004, I served a true and correct copy of the within and foregoing document by the method indicated below an addressed to the following:

Assistant United States Attorney
George W. Breitsameter
Wells Fargo Center, Suite 201
877 West Main Street, Boise, ID 83702

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Stephen M. Cedros
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UNITED STATES OF AMERICA,)
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MEMORANDUM IN SUPPORT
OF MOTION FOR DOWNWARD
DEPARTURE

COMES NOW, the Defendant, DICK E. BUTCHER, by and through his attorney of record, John C. DeFranco, and respectfully submits the following memorandum in support of his motion for downward departure pursuant to U.S.S.G. Section 5K2.0.

ARGUMENT

In Koon v. United States, 518 U.S. 81.93 (1996), the Supreme Court clarified that the only bases for departure that are categorically forbidden are those specifically proscribed by the Sentencing Guidelines. Outside of those forbidden categories, the sentencing judge is authorized to examine the particular facts of a case and decide whether there are mitigating circumstances of a kind or degree that take the case out of the heartland of the guidelines and thus warrant a departure. Id. at 94.

Based on the Koon case and its progeny, the Defendant seeks a downward departure due to an overrepresentation of his criminal history. Specifically, he is seeking a downward departure of one criminal history level, i.e., to a Criminal History

Level II, from Criminal History Level III. The Guidelines permit the Court to grant a downward departure on the Criminal History Level axis when the court concludes that a defendant's criminal history category significantly over represents the seriousness of a defendant's criminal history. In this case, Mr. Butcher's criminal history points place him at a Level III, but this significantly over represents the seriousness of his offenses for the reasons set forth below.

Two of Mr. Butcher's six total criminal history points arise from a status offense, Failure To Register As A Sex Offender. Mr. Butcher plead guilty to a sex offense in Idaho. He registered as a sex offender in Ada County. He found it difficult to find employment in Idaho, so he moved out of state. He properly transferred his probation to the state of California. Mr. Butcher states he met with his California probation officer, and he said he was unsure whether Mr. Butcher had a duty to register. Mr. Butcher was told to wait for an answer from his probation officer regarding registration. He waited thinking the registration requirement was not a paramount issue. He believed this because he was informed by his officer that the issue was being examined, and he was being supervised while the question was pending. Later, following his arrest he learned that the registration was a big issue. He plead to the felony offense, and was subsequently placed on probation.

CONCLUSION

Mr. Butcher has had a difficult time putting his life back together following his prosecution for the sex offense in Ada County. It destroyed his marriage, precipitated the sale of his business to Mitch McBride, and resulted in him having to leave his native state for employment. He understands his conduct is the source of his misfortune, but he remains optimistic regarding his future. He wants to maintain status quo, and keep his current job. This Court, assuming it is willing to provide the relief Mr. Butcher is seeking, may help Mr. Butcher protect what little he has left by decreasing the time he may spend in custody.

RESPECTFULLY SUBMITTED this 4th day of October, 2004.



John C. DeFranco
Attorney for Defendant

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