

**IN THE UNITED STATE DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 15-CR-115-CVE
)	
MICHAEL CHASE MORRIS,)	
)	
)	
Defendant.)	

DEFENDANT’S SENTENCING MEMORANDUM IN OPPOSITION

TO AN UPWARD DEPARTURE

The Defendant, Michael Chase Morris (“Morris”), by through his appointed counsel of record, Martin G. Hart, and submits the following in opposition to the upward departure apparently being urged by the probation office, stating in support as follows:

Mental and Emotional Health

The PSIR advocates to the Court that an upward departure or variance may be warranted in this matter, in essence based upon his past criminal history and activities. In essence, Counsel believes it is being suggested that because this person is mentally, he should be imprisoned for longer than the sentencing guidelines suggest. It is respectfully submitted that the defendant’s past criminal history and criminal activities are the hallmark classic symptoms of mental illness, and in this matter, bipolar disorder. An upward departure is not warranted and the advisory Sentencing Guideline range of 63 to 78 months is appropriate and is sufficient but not greater than necessary to achieve the sentencing goals of 18 U.S.C. §3553(a)(2).

As noted in the Presentence Investigation Report (hereinafter referred as “PSIR”) at ¶41

“Mental and Emotional Health”, Mr. Morris was diagnosed with bipolar disorder in 1996, and with similar type diagnoses since 1984. Morris also reported a history of sexual abuse at 12 years of age that has never been addressed as noted in Mayo Clinic records previously furnished to USPO, dated December 8, 2015. According to the Mayo Clinic Records he first sought out psychiatric outpatient care in college at the urging of his mother for “manic symptoms”. It is clear that he has been mentally ill for quite some time. As of the date of this writing a psychiatric evaluation has been ordered through the probation office but has not yet been performed or disclosed. Bipolar disorder, also known as manic-depressive illness, is a brain disorder that causes unusual shifts in mood, energy, activity levels, and the ability to carry out day-to-day tasks.¹ Sometimes a mood episode includes symptoms of both manic and depressive symptoms. This is called an episode with mixed features. People experiencing an episode with mixed features may feel very sad, empty, or hopeless, while at the same time feeling extremely energized.

Bipolar disorder is a lifelong illness. Episodes of mania and depression typically come back over time. Between episodes, many people with bipolar disorder are free of mood changes, but some people may have lingering symptoms. Long-term, continuous treatment helps to control these symptoms. Treatment helps many people, even those with the most severe forms of bipolar disorder—gain better control of their mood swings and other bipolar symptoms. An effective treatment plan usually includes a combination of medication and psychotherapy.

It is clear that Mr. Morris has suffered from serious mental health issues for quite some time. No rational person would continue his course of conduct without some degree of mental health

¹National Institutes of Mental Health, at <https://www.nimh.nih.gov/health/topics/bipolar-disorder/index.shtml>;

issues. People do not become mentally ill because they want to, such as voluntary intoxication. Mr. Morris's repeated offenses are not proof that his prior sentences have failed to deter future criminal activity but are instead the consequence of his mental illness. Longer sentences for persons with mental illness because they are mentally ill will neither help the rehabilitation process nor protect the public.²

Morris has a well-documented medical history establishing the existence of a recognized organic mental illness that causes severe mood swings and impairs judgment. Loss of impulse control is a clinical symptom of that medical disease.

It's a tough disorder, hard to treat even with the best medications available, hard to diagnose, and really hard to understand. Bipolar is a brain disease marked by radical mood swings, from severe depression to extreme mania, and it's in that manic state, especially if it veers into manic psychosis, that people can get into trouble with the law. The exact number of bipolar individuals in the criminal justice system is unknown, but by all accounts it's probably high. The single most important reason for this, clinically speaking, is a symptom that characterizes mania: loss of impulse control. But what do we do in the case of bipolar, where one might very well know the nature of the act, and know that it is wrong, but be unable to keep from doing it?

United States v. Pinson, 542 F.3d 822 (10th Cir. 2008) addressed the issue and concern that courts use upward variances to increase the incarceration time for those who might pose a risk to the public because of their mental health problems. *Pinson* stops short of prohibiting

²The journal of the American Academy of Psychiatry and the Law, Vol.38, No.1, 2010 at 124;

courts from considering whether a defendant's mental illness justifies an upward variance because it causes him to pose a risk to the public, at 839. But the Court noted that there is another method/avenue/tool available, 18 U.S.C. §4246, which provides for further commitment of a person in BOP custody whose sentence is about to expire who is suffering from a mental disease or defect and his release would create a substantial risk of injury to another or serious damage to the property of another. The Court went on to say:

“When a district court enhances a sentence because the defendant's mental illness prevents him from controlling his actions, thereby increasing the risk he poses to the public, the district court in effect circumvents the civil commitment procedure and the procedural and substantive protections that go along with it: specifically, the clear and convincing evidence standard is replaced by the lower, preponderance of the evidence standard. This is particularly troubling given that the use of § 4246 provides for evaluation of the defendant's risk after he has received treatment during incarceration; the prediction of the risk the defendant will pose to the public upon release, made before treatment, is far more imprecise.” Pinson at 838.

In this matter it seems Morris's punishment is being sought to be increased because of present and past bad acts as advocated by the probation office. Mr. Morris engages in this behavior because of his mental illness. Specifically because he suffers from bipolar disorder, (and probably PTSD) and one of its symptoms is lack of or poor impulse control and manic states. The Court is urged to consider the defendant's mental illness and not depart or vary upward. It is respectfully suggested to the Court that an appropriate disposition in this matter should include a long-term treatment plan of medication and psychotherapy.

Bipolar Disorder, PTSD and Loss of Child

Chase Morris, the sixteen (16) year old son of the defendant, died of sudden cardiac arrest on May 20, 2013 in Grove, Oklahoma where he lived with his mother and brothers. Essentially, Chase's heart stopped. It's called sudden cardiac arrest (SCA), and it is the abrupt loss of heart function. While often confused with a heart attack, the conditions are actually quite different. SCA is akin to a problem with the heart's electrical functions, whereas a heart attack is more of a plumbing problem – that is, the blood supply to vital tissues is blocked.

Around midnight at the end of a busy day, 16-year-old Chase Morris felt a bit dizzy. So even though friends were still hanging out and playing ping pong outside, Chase headed inside to sleep. A few minutes later, a friend found Chase on the ground and unresponsive. While his mother called an ambulance, Chase's 21-year-old brother Taylor and a friend performed CPR. Another brother, 14-year-old Reagan, called their dad Michael, who was remarried and living 70 miles away.

News of Chase's death spread quickly through the community of less than 7,000 residents. That night, the hospital waiting room and parking lot filled with friends and neighbors. And law enforcement. The circumstances around Chase's death prompted officials to treat it as a crime. Officers tried keeping the family from his body. A hospital chaplain persuaded the sheriff to allow the family to see Chase, but they were allowed to get no closer than five feet. The investigation originally was expected to take six months. At the urging of local legislators, it was finished in about two months, clearing a cloud of suspicion and providing some answers to the family. Except for one: how could they have known of Chase's condition in time to have done

something about it?”

SCA occurs in people who may or may not have been diagnosed with heart disease. Chase and his family had no inkling. He was an active teen, competing in tennis at school and everything from volleyball and basketball with friends at church and ping pong with his brothers at home. An autopsy revealed that Chase had hypertrophic cardiomyopathy, an often inherited cause of sudden cardiac arrest,. The condition causes the heart muscle cells to become enlarged and thicken the walls of the ventricles, making it harder for them to pump blood effectively, causing arrhythmias disrupting the heart’s electrical system.

The psychological impact of bereavement can be substantial, especially in the case of child death. The death of a child is a disaster, and human reactions to disaster are very complex, with emotional, cognitive, and biological effects. In this matter there can be no doubt that the defendant also suffers from Post Traumatic Stress Disorder based upon the death of his son and perhaps due to Morris’s unaddressed sexual abuse at age twelve (12). Prolonged bereavement is also noted in Morris’s previously furnished Mayo Clinic records.

The death of a child has been referred to as the most painful and intense loss possible (Nelson and Frantz, 1996³) and has been noted as one of the losses most likely to lead to complicated grief. ⁴ Many parents consider the bond between child and parent to be sacred and

³Nelson, B. J., & Frantz, T. T. (1996). Family interactions of suicide survivors and survivors of non-suicidal death. *Omega*, 33, 131-146.

⁴Rando, T. A. (1993). *Treatment of complicated mourning*. Champain, IL: Research Press.

thereby irreplaceable.⁵ The death of a child is an uncontrollable event, but parents often feel as though they should have been able to protect their child better. “None of it made any sense to us,” said Michael Morris. “We didn’t know why he died. There were no warning signs. Not that day, not ever.”

The occurrence of the death of a child defies the perceived natural order of life events, as parents expect their children to outlive them. This experience shakes the very foundations of parents’ ideologies and basic assumptions about life. It changes the parent in fundamental ways. For example, although the experience may foster a period of personal growth, more typically it serves to alienate the individual from the external world. In fact, many parents subjectively describe the event as devastatingly life-altering. There appears to be a general experience in which bereavement, particularly one’s emotional response to the loss, causes negative psychological outcomes. Newly bereaved parents exhibit more depression, somatic symptoms, poorer self-esteem, and a lower sense of control in their life compared to non-bereaved parents.⁶ For example, Morris gained 70-75 pounds after the death of his son.

Coupled with an already existing condition of bipolar disorder his son’s death was devastating for Mr. Morris. “When your child dies, you wonder about it every day,” Michael Morris said. But something good came from this tragic death. Morris lobbied lawmakers to pass measures requiring cardiac screenings for student athletes, creating the Chase Morris Sudden

⁵Klass, D., & Marwit, S. (1989). Toward a model of parental grief. *Omega*, 19, 31-49.

⁶Videka-Sherman, L., & Lieberman, M. A. (1985). The effects of self-help groups and psychotherapy after a child dies: The limits of recovery. *American Journal of Orthopsychiatry*, 55, 70-82.

Cardiac Arrest Prevention Act in 2015. The bill signed last year, requires CPR classes in high schools, requires local school districts to give parents information about the risks of cardiac arrest, as well as preventative measures. It also requires annual cardiac arrest training for school athletic coaches. Chase was such a giving young man who would do anything for his friends and community, so we want to honor his life,” Michael Morris said at the time the bill was signed into law. “If we can save one child’s life, then it will be worth it all.”

Guideline Level Overstates Seriousness of Offense,

(2B1.1 Application Note 20(C)) and Weighs Against an Upward Departure:

(C) Downward Departure Consideration.—There may be cases in which the offense level determined under this guideline substantially overstates the seriousness of the offense. In such cases, a downward departure may be warranted.

The amount of loss in this matter, \$1,641,885.11, overstates the seriousness of the offense based upon the dollar amount loss which drives the offense level (+16, §2B1.1(b)(1)(I)). As a result a downward departure may be warranted as noted in Application Note 20(C), or at the very least an upward departure not be imposed in this matter. All the losses appear to be borne by bank or credit card companies, in essence all were businesses.

For example, the overall losses in this matter seems substantial and two in particular, \$1,323,024.72 to Tri-lakes Petroleum Company, LLC and \$84,876.79 to Quad, LLC d/b/a Fuels & Supply (PSIR at ¶59). Those debts were incurred while the Stampede Convenience stores were being operated by Mr. Morris and those losses related gasoline being supplied to the stores for retail sale. They were also matters of litigation and resulted in civil monetary judgments against

the defendants.

In Tulsa County District Court (Quad lawsuit, CJ-2013-1077) the Quad lawsuit (filed 2-28-13) and loss seemed to be based upon the defendant's failure to pay for 3 loads of fuel, two were delivered to Pinnacle's stores in Stillwell, Oklahoma on 2-6-13 and 2-12-13 and a load of fuel to Pinnacle's store in Ozark, Missouri on 2-9-13 for a total amount owed of \$84,876.79, according to the Petition filed in the civil matter. Quad entered into a credit agreement with Morris and Pinnacle based upon misrepresentation by Morris as to the solvency of Pinnacle and Stampede and related personal guarantees. A short period of time that elapsed between the initial delivery of fuel (2-6-13) to the time Quad filed their lawsuit in Tulsa County (2-28-13, CJ-2013-1077) (22 days).

The Tri-Lakes matter was initially filed in the Northern District of Oklahoma, 14-cv-5-CVE-FHM, Tri-Lakes, LLC v. Kristi L. Brooks) but was dismissed by this Court based upon jurisdiction and/or venue issues. A review of the Complaint (Dkt. #1 in that matter) indicates Stampede convenience stores bought gas from Tri-Lakes approximately May 2013 to November 2013. That lawsuit was re-filed in Missouri state court, presumably a judgment was obtained against Kristi L. Brooks there, and an action to enforce the foreign judgement of \$1,323,024.72 was filed in Tulsa County as CV-2015-114.

Over a 7 month period of time Tri-Lakes sold gas to Stampede, according to the Complaint in 14-cv-5-CVE-FHM. Based upon a review of Exhibit 2 attached to Dkt. #1-1 in that lawsuit, things began to go wrong in September 2013. Beginning September 26, 2013 Stampede's checks were being returned for insufficient funds and on one occasion they issued a

stop pay order on a check It seems sales ended on October 24, 2013 with payment being due November 3, 2013. One can only speculate that Stampede was suffering severe financial difficulties during that time frame. It appears the losses occurred from September 26, 2013 to November 3, a span of approximately 38 days.

Obviously by not paying their bills Stampede was not contributing to the success of Tri-Lakes. When this happens, a company will normally be better off by refusing to do business with the problematic non-paying customer. One would cut their losses. If someone owes you money and will not pay, you are entitled to do a number of things, such as to demand payment and stop doing business with them. Don't do more work for the debtor until they pay the outstanding invoice. At first glance it would seem that when bills are not paid or are returned for insufficient funds, that Tri-Lakes would almost immediately stop doing business with Stampede, instead of continuing to supply them with gas. One would think the same would be true with Quad. One might argue that anyone doing business with Michael Morris should do their due diligence, and at the very least run his name and the companies he has been associated with through credit, civil and criminal indexes that are readily available to the public or a business. However, as noted in both the Quad and Tri-Lakes matters, losses occurred rather quickly through the sales of gasoline. In the Quad case the losses occurred in about 20 days and in Tri-Lakes matter about 38 days. Given the short time in which these losses occurred, it might be understandable that the businesses did not investigate or do searches on Morris or his companies.

Though the amount of loss was large in the Tri-Lake matter, the period of time was relatively short, approximately 30 days (September 26, 2013 to November 3, 2013). An ACH Draft in September 2013 was returned on September 30, 2013 with a "Stop Payment" notation.

Twenty-one additional ACH Drafts in October 2013 were returned for “Insufficient Funds”.

Payment on the last invoice date October 24, 2013 was due November 3, 2013 and was not paid.

If one were to deduct the loss from Quad and Tri-Lake losses because they occurred so quickly and may overstate the seriousness of the offense, the amount of loss in this matter would be approximately \$234,013.60 (add 10 to offense level, §2B1.1(b)(1)(F)). If the Security Bank loss were also deducted (\$110,744.09), as they have a secured interest in a property Morris/Chase Realty/Investments had remodeled and is actively trying to sell (and Security will surely get their money back when the property is sold) the loss in this matter would be \$123,269.51, and would result in a increased offense level of 8, rather than the 16 found in the PSIR at ¶17. Even with the enhancements as calculated by the PSIR (Defendant objections to ¶18), using +8 for the loss, the guideline range in this matter would be 16. Combined with a criminal history of III, his advisory guideline range would be 27-33 months.

Closing

Mr. Morris is no stranger to the criminal justice system, and there are many system and personal failures along his bumpy road. The present matter seems to have occurred when he was without treatment or medication, part of the time aggravated by the loss of his son, and financial problems, he, unfortunately, went back to old patterns. He was able to revert to his previous knowledge of financial institutions, and their own system failures, with their lack of due diligence. One could argue the financial institutions and businesses did not do their homework, and Mr. Morris was able to take advantage of their business practices.

It would appear Mr. Morris does exhibit predictable behaviors due to his untreated

mental illness. With the loss of his son, Chase, in May, 2013, business failures, and criminal charges, he may also suffer from PTSD and Depression, to add to his preexisting mental health issues.

Mr. Morris has been convicted of similar criminal charges. Mr. Morris has previously been diagnosed with mental health issues, specifically Impulse Control Disorder (1984, PSIR ¶41), Atypical Anxiety Disorder (1987), Narcissistic Personality Disorder (1988), Bipolar Disorder (1996), and Mr. Morris currently states he suffers from Depression. Mr. Morris has been treated with medication in the past, self-medicating and is now has been prescribed Abilify for Bipolar Disorder. He did successfully complete the BOP Residential Substance Abuse Treatment Program while in custody after 2001, which included mental health counseling. It appears he discontinued his medication and counseling, after release from BOP. Historically, Mr. Morris has been reluctant to admit his mental health issues, and, typically, when on medication, and feels better, stops the medication, or does not like the side-effects of the medication.

In this matter it seems Morris's punishment is being sought to be increased because of present and past bad acts as advocated by the probation office. Mr. Morris engages in this behavior because of his mental illness. Specifically because he suffers from bipolar disorder (and possibly PTSD) and one of its symptoms is lack of or poor impulse control and manic states. The Court is urged to consider the defendant's mental illness and not depart or vary upward.

The Court is also asked to consider whether the amount of loss in this matter over represents the seriousness of the offense. The combination of these issues ameliorate against any upward departure in this matter.

Respectfully submitted,
s/Martin G. Hart
MARTIN G. HART-OBA #3941
406 South Boulder Avenue, # 451
Tulsa, Oklahoma 74113
(918) 398-5669, (918) 928-5293
(918) 582-6106 Facsimile
Martin.Hart.Attorney@gmail.com

CERTIFICATE OF SERVICE

I, MARTIN G. HART, hereby certify that on the 13TH day of June 2016, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Charles Martin McLoughlin
United States Attorney's Office (Tulsa)
110 W 7TH ST STE 300
TULSA, OK 74119-1013
918-382-2700
918-560-7954 (fax)
charles.mcloughlin@usdoj.gov

S/Martin G. Hart
MARTIN G. HART