

SENTENCING SCRIPT – CORPORATION
(revised 8/2015)

THE COURT HAS BEFORE IT AT THIS TIME FOR DETERMINATION AND IMPOSITION OF SENTENCE THAT OF UNITED STATES V. A.B., Inc. DOCKET NUMBER _____.

- 1) WILL COUNSEL PLEASE ENTER AN APPEARANCE.

[Ask the prosecutor if s/he has provided reasonable, accurate and timely notice of the proceeding to any victim(s) as required by the Justice for All Act of 2004. 18 U.S.C. section 3771.]

- 2) MR./MS. _____, WOULD YOU PLEASE STAND?

- 3) WHAT IS YOUR NAME?

- 4) [TO NON-LAWYER REPRESENTATIVE], ARE YOU AN AUTHORIZED OFFICER OF AGENT FOR _____?

- 5) ARE YOU AUTHORIZED BY A VOTE OF THE BOARD OF DIRECTORS/SHAREHOLDERS TO SPEAK AND ACT ON ITS BEHALF THROUGHOUT THIS PROCEEDING?

[Make a record regarding entry in evidence of a certified resolution of the Board of Directors or Consent of the Shareholders.]

- 6) HAVING REVIEWED THE CORPORATE AUTHORIZATION, I FIND THAT A.B., INC. HAS DULY AUTHORIZED _____, ITS [PRESIDENT/TREASURER/ATTORNEY] TO ACT AND SPEAK ON ITS BEHALF DURING THIS SENTENCING HEARING.

- 7) IS THERE ANY OBJECTION TO THIS FINDING ON THE PART OF THE GOVERNMENT? ON THE PART OF DEFENDANT A.B, INC.?

- 8) THE PURPOSE OF THE HEARING TODAY IS FOR ME TO SENTENCE A.B., INC., BUT BEFORE I DO THAT, I'M GOING TO HEAR FROM A.B., INC.'S LAWYER, I'M GOING TO HEAR FROM THE PROSECUTOR, AND I'M GOING TO HEAR FROM YOU IF YOU WISH TO SPEAK TO ME ON BEHALF OF A.B., INC.
- 9) I'M GOING TO START BY ASKING SOME QUESTIONS OF YOU AND YOUR LAWYER, BECAUSE I NEED TO BE SURE THAT YOU HAVE READ AND DISCUSSED WITH HIM/HER THE PRESENTENCE REPORT AS AMENDED.
- 10) I ALSO NEED TO MAKE SURE THAT YOU ARE COMPETENT TO ACT ON BEHALF OF A.B., INC. TODAY.
- 11) MR./MS. _____, YOU ARE THE [PRESIDENT/TREASURER] OF A.B., INC., IS THAT CORRECT?
- 12) HOW FAR DID YOU GO IN SCHOOL?
- 13) HAVE YOU USED ALCOHOL OR DRUGS WITHIN 24 HOURS? [IF YES, INQUIRE OF BOTH LAWYERS CONCERNING COMPETENCE].
- 14) DO YOU UNDERSTAND WHY A.B., INC. ARE HERE TODAY?

(I FIND MR./MS. _____ IS COMPETENT TO REPRESENT A.B., INC. AT THE SENTENCING TODAY.)

15) YOU UNDERSTAND THAT A.B., INC. IS REPRESENTED HERE TODAY BY ITS COUNSEL, _____?

16) DO YOU AUTHORIZE A.B., INC.'S COUNSEL TO ACT AND SPEAK FOR A.B., INC. AT THE SENTENCING HEARING TODAY?

PRESENTENCE REPORT

17) DEFENSE COUNSEL, HAS A.B., INC. RECEIVED A COPY OF THE WRITTEN PRESENTENCE REPORT AND HAVE YOU HAD ENOUGH TIME TO DISCUSS IT WITH THE [OFFICERS, DIRECTORS. SHAREHOLDERS] OF A.B., INC.?

18) MR./MS. _____, HAVE YOU READ THE PRESENTENCE REPORT ON BEHALF OF A.B., INC. IN ITS ENTIRETY? HAVE YOU HAD ENOUGH TIME TO DISCUSS IT WITH YOUR ATTORNEY?

19) DO YOU KNOW AND UNDERSTAND EVERYTHING CONTAINED IN THIS PRESENTENCE REPORT?

1. DO YOU UNDERSTAND THAT TO THE EXTENT THAT I ACCEPT THE CONTENTS OF THE REPORT AS TRUE, THEY WILL FORM PART OF THE BASIS UPON WHICH I WILL DETERMINE THE SENTENCE TO BE IMPOSED ON A.B., INC.?

2. IS THERE ANYTHING SET FORTH IN THIS REPORT THAT YOU BELIEVE IS IN ANY WAY INACCURATE OR INCORRECT?

OPTION: (DEFENSE COUNSEL) DOES THE DEFENDANT UNDERSTAND THAT NO FORMAL OBJECTIONS WERE FILED TO THE CONTENTS OF THE REPORT?

OPTION: (DEFENDANT), DO YOU UNDERSTAND THAT A.B. INC.'s COUNSEL HAS NOT FILED ANY OBJECTIONS TO THE CONTENTS OF THIS REPORT IN YOUR BEHALF?

AREAS IN DISPUTE

ARE COUNSEL AWARE OF ANY ISSUE THAT THEY BELIEVE I SHOULD RESOLVE PRIOR TO DETERMINING SENTENCING IN THIS CASE?

THE ONLY ISSUES OUTSTANDING ARE:

- 1.
- 2.
- 3.

ACCEPT EVIDENCE ON DISPUTED ISSUES IF APPROPRIATE.

WITNESSES RE: SENTENCE

ALLOCUTION

(U.S. ATTORNEY), YOU MAY ADDRESS THE COURT.

(DEFENSE COUNSEL), YOU MADE ADDRESS THE COURT.

DEFENDANT), AS A REPRESENTATIVE OF A CORPORATE DEFENDANT BEFORE THE COURT FOR DETERMINATION AND IMPOSITION OF SENTENCE, YOU ARE ENTITLED AND HAVE A CONSTITUTIONAL RIGHT TO ADDRESS THE COURT AT THIS TIME ON BEHALF OF A.B. INC. DO YOU HAVE ANYTHING YOU WISH TO SAY TO ME AT THIS TIME?

ANYTHING FURTHER FROM THE GOVERNMENT?

ANYTHING FURTHER FROM THE DEFENSE?

HEAR VICTIM ALLOCUTION IF CRIME OF VIOLENCE OR SEX CRIME.

DOCUMENTS ON WHICH COURT MAY RELY REGARDING SENTENCE

1. CORRESPONDENCE
2. MEDICAL RECORDS
3. IMMUNIZED MATERIAL (IDENTIFY)
4. OTHER

DOES COUNSEL WHICH TO COMMENT ON THIS MATERIAL? (SEE RULE 32(i)(1)(B))

PLEA AGREEMENTS

OPTION COURT: I WILL ACCEPT THE PLEA AGREEMENT IN THIS CASE. I FIND THAT THE REMAINING CHARGES ADEQUATELY REFLECT THE OFFENSE. SEE GUIDELINE 6B1.2(a) AND UNITED STATES V. PLAZA-GARCIA, 914 f.2D 345, 348.

OPTION: I REJECT THE PLEA AGREEMENT. YOU ARE ADVISED THAT A.B. INC. HAS THE RIGHT TO WITHDRAW ITS PLEA. IF A.B., INC. PERSISTS IN THE GUILTY PLEA, THE DISPOSITION OF THE CASE MAY BE LESS FAVORABLE THAN THAT CONTEMPLATED IN THE GUILTY PLEA. DO YOU UNDERSTAND THAT? DO YOU WISH TO WITHDRAW THE GUILTY PLEA ON BEHALF OF A.B. INC.?

OPTION: THERE IS NO PLEA AGREEMENT IN THIS CASE.

OPTION: DISCLOSE ANY DOCUMENTS (e.g., LETTERS) NOT IN PRESENTENCE REPORT, BUT THAT MAY BE CONSIDERED IN SENTENCING AND PROVIDE OPPORTUNITY TO RESPOND. SEE UNITED STATES V. CURRAN, 926 F.2d 59, 63-64 (1st Cir. 1991).

DISCLOSE ANY CONFIDENTIAL INFORMATION IN PRESENTENCE REPORT (SEE FED. RULES OF CRIM. PROCEDURE 32 (c)(3)(A) FOR METHOD.)

FINDINGS

THE COURT:

THE COURT HAS CAREFULLY REVIEWED THE CONTENTS OF THE WRITTEN PRESENTENCE INVESTIGATION REPORT, AND TAKES THOSE CONTENTS INTO ACCOUNT IN DETERMINING SENTENCE IN THIS CASE.

THE COURT HAS ALSO CONSIDERED WHAT IT HAS HEARD FROM COUNSEL IN THE COURSE OF THESE PROCEEDINGS AND IN THE PRESENTENCE CONFERENCE, THE EVIDENCE PRESENTED AT THIS HEARING, AS WELL AS THE CONTENTS OF THE ALLOCUTION OF THE AUTHORIZED REPRESENTATIVE OF THIS DEFENDANT.

FINDINGS

1. MAKE FINDINGS ON DISPUTED ITEMS; OR
2. INDICATE IF NO FINDING IS NECESSARY BECAUSE THE CONTROVERTED MATTER WILL NOT BE TAKEN INTO ACCOUNT; OR
3. NO FINDING IS NECESSARY BECAUSE THE CONTROVERTED MATTER WILL NOT AFFECT SENTENCING.

COURT GUIDELINE CALCUATIONS

THE COURT MAKES THE FOLLOWING GUIDELINE CALCULATIONS:

- 1.

- 2.
- 3.

IS THERE ANY OBJECTION TO THESE FINDINGS?

DEPARTURE

OPTION: I FIND THAT [IN THE ABSENCE OF ANY REQUEST FOR AN UPWARD DEPARTURE BY THE GOVERNMENT AND IN THE ABSENCE OF ANY REQUEST FOR A DOWNWARD DEPARTURE], THERE IS NO BASIS UNDER THE GUIDELINES TO JUSTIFY A DEPARTURE FROM THE GUIDELINE RANGE OF SENTENCE.

OPTION: DEAL WITH UPWARD OR DOWNWARD DEPARTURES IF APPROPRIATE.

OPTION: DO GUIDELINE CALCULATIONS AGAIN IF THERE ARE OTHER INDICTMENTS.

REASONS FOR SENTENCE

(rev. 04.18.2006)

THE COURT'S REASONS FOR THE SENENCE ARE AS FOLLOWS:

1. I HAVE DETERMINED THAT THE SENTENCE I AM IMPOSING IS SUFFICIENT, BUT NOT GREATER THAN NECESSARY TO EFFECUTATE THE GOALS OF 18 U.S.C. § 3553(a).

2. IN SETTING SENTENCE, I HAVE CAREFULLY CONSIDERED THE SENTENCING RANGE SET FORTH IN THE ADVISORY SENTENCING GUIDELINES. (I GIVE THE GUIDELINES NO CONTROLLING WEIGHT).

OPTION 1: I BELIEVE THE SENTENCE IN THIS CASE IS COMPATIBLE WITH THE GUIDELINE SENTENCE RANGE BECAUSE OF THE CIRCUMSTANCES OF THIS CASE.

OPTION 2: THE COURT DOES NOT BELIEVE THAT THE SENTENCE RANGE SET FORTH IN THE GUIDELINES IS APPROPRIATE BECAUSE OF THE CIRCUMSTANCES OF THIS CASE.

3. I HAVE TAKEN INTO ACCOUNT THOSE FACTORS SET FORTH IN 18 U.S.C. § 3553(a).

FACTORS:

THE COURT, IN DETERMINING THE PARTICULAR SENTENCE IN THIS CASE HAS CONSIDERED:

- A. THE NATURE AND CIRCUMSTANCES OF THE OFFENSE(S).
 - B. THE HISTORY AND RECORD OF THE DEFENDANT.
 - C. THE SERIOUSNESS OF THE OFFENSE(S).
 - D. THE NEED TO PROMOTE RESPECT FOR THE LAW.
 - E. JUST PUNISHMENT.
 - F. DETERRENCE (GENERAL AND SPECIFIC).
 - G. PROTECTION OF THE PUBLIC FROM FURTHER CRIMES OF THE DEFENDANT.
 - H. THE NEED TO AVOID UNWARRANTED SENTENCE DISPARITIES.
 - I. RESTITUTION.
 - J. THE IMPACT OF THE CRIME ON THE VICTIM.
 - K. PROSPECTS OF REHABILITATION OF THE DEFENDANT.
 - L. THE NEED TO PROVIDE EDUCATIONAL OR VOCATIONAL TRAINING, MEDICAL CARE OR OTHER CORRECTIONAL TREATMENT FOR THE DEFENDANT.
4. I FIND THE FOLLOWING § 3553(a) FACTORS TO BE OF PARTICULAR SIGNIFICANCE IN THIS CASE: **(EXPLAIN WHY THEY ARE OF PARTICULAR SIGNIFICANCE, INCLUDING FACTORS OUTSIDE OF 18 U.S.C. § 3553(a)).**

5. I HAVE CAREFULLY CONSIDERED THE ARGUMENTS OF THE PARTIES REGARDING SENTENCE. **(EXPLAIN WHICH CONTENTIONS YOU ACCEPT OR REJECT AND WHY.)**

6. COUNSEL: HAVE I DISCUSSED EACH OF YOUR CONTENTIONS REGARDING SENTENCE?

REASONS FOR SENTENCE

THE COURT'S REASONS FOR THE SENTENCE IS AS FOLLOWS:

1. I HAVE TAKEN INTO ACCOUNT THOSE FACTORS SET FORTH IN 18 U.S.C. § 3553.

2. I HAVE SPECIFICALLY TAKEN INTO ACCOUNT THE REQUIREMENT UNDER § 3553(a) THAT THE SENTENCE BE SUFFICIENT, BUT NOT GREATER THAN NECESSARY, TO COMPLY WITH THE PURPOSES OF THE STATUTE.

IN SETTING SENTENCE IN THIS CASE, I HAVE CAREFULLY CONSIDERED THE SENENCING RANGE SET FORTH IN THE SENTENCING GUIDELINES.

OPTION #1: I BELIEVE THAT THE SENTENCE IN THIS CASE IS COMPATIBLE WITH THE GUIDELINE RANGE.

OPTION #2: THE COURT DOES NOT BELIEVE THAT THE PUNISHMENT (SENTENCE RANGE) SET FORTH IN THE GUIDELINES IS APPROPRIATE FOR THE CIRCUMSTANCES OF THIS OFFENSE BECAUSE:

FURTHER, IN SETTING SENTENCE IN THIS CASE, I HAVE CONSIDERED THE GOVERNMENT'S ARGUMENTS AND THE DEFENDANT'S ARGUMENTS, AND I HAVE ADDRESSED / WILL ADDRESS EACH:

HAS THE COURT ADDRESSED EACH GOVERNMENT ARGUMENT?

HAS THE COURT ADDRESSED EACH DEFENDANT ARGUMENT?

JUDGMENT

MR./MS. _____ WOULD YOU PLEASE STAND ON BEHALF OF THE DEFENDANT.

PURSUANT TO THE SENTENCING REFORM ACT OF 1984, IT IS HEREBY ADJUDGED THAT ON THE INDICTMENT [INFORMATION] ON DOCKET NUMBER CR-_____-JAW HEREIN, THIS DEFENDANT, _____ BE AND HE IS HEREBY COMMITTED TO THE CUSTODY OF THE UNITED STATES BUREAU OF PRISONS TO BE IMPRISONED FOR A TERM OF _____ MONTHS.

OPTION: THIS COURT HEREBY ORDERS THAT NO ASSESSMENT BE MADE AGAINST THE DEFENDANT TO DEFRAY OR REIMBURSE FOR THE COSTS OF INCARCERATION.

ANY OBJECTION TO THE TERMS OF SUPERVISED RELEASE?

DOES COUNSEL KNOW OF ANY REASON, (OTHER THAN THAT PREVIOUSLY ARGUED) WHY SENTENCE SHOULD NOT BE IMPOSED AS STATED?

RIGHT TO APPEAL

(BY THE COURT): (DEFENDANT), I MUST ADVISE YOU THAT A.B., INC. HAS A RIGHT TO APPEAL THIS CONVICTION AND SENTENCE IF IT WISHES TO DO SO AND IN ORDER TO EFFECTIVELY EXERCISE THAT RIGHT OF APPEAL, A.B., INC. MUST CAUSE TO BE FILED WITH THE CLERK OF TIS COURT WITHIN 14 DAYS OF TODAY, AND NOT AFTER THAT, A WRITTEN NOTICE OF APPEAL. DO YOU UNDERSTAND THAT?

AND I ADVISE YOU THAT, IF A.B., INC. FAILS TO TIMELY FILE THAT WRITTEN NOTICE OF APPEAL, THAT IT WILL HAVE GIVEN UP ITS RIGHT TO APPEAL THIS SENTENCE AND CONVICTION. DO YOU UNDERSTAND THAT?
(SEE * IF APPEAL RIGHTS WAIVED)

IF A.B, INC. CANNOT AFFORD TO FILE THE APPEAL, IT MAY HAVE THE RIGHT TO APPEAL WITHOUT COST. DO YOU UNDERSTAND?

***IF APPEAL RIGHTS WERE WAIVED IN PLEA AGREEMENT:**

A.B, INC. HAS ENTERED INTO A PLEA AGREEMENT THAT WAIVES SOME / ALL OF ITS RIGHTS TO APPEAL THE SENTENCE. SUCH WAIVERS ARE GENERALLY ENFORCEABLE. IF YOU BELIEVE A.B., INC.'s WAIVER IS UNENFORCEABLE, YOU MAY PRESENT THAT ARGUMENT TO THE COURT OF APPEALS.

***IF SENTENCE IS AFTER A NOT GUILTY PLEA.**

ADVISE RIGHT TO APPEAL CONVICTION.

[DOES THE GOVERNMENT MOVE TO DISMISS UNDER PLEA AGREEMENT?]

COURT: ANYTHING FURTHER MR. (MS.) _____?

COURT: ANYTHING FURTHER FROM THE DEFENSE?

COURT: THANK YOU. COURT WILL STAND IN RECESS.