IP 05-0201-CR 1 H/F USA v McQueen
Judge David F. Hamilton Signed on 4/20/06

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

USA,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	
MCQUEEN, ALVAN VANCE II,	)	CAUSE NO. IP05-0201-CR-01-H/F
	)	
Defendant.	)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CAUSE NO. IP 05-201-CR-1 H/F
	)	
ALVAN V. MCQUEEN, II,	)	
	)	
Defendant.	)	

SENTENCING ENTRY

On April 12, 2006, defendant Alvan V. McQueen, II, pled guilty to two crimes: paying a gratuity to a public official in violation of 18 U.S.C. § 201(c)(1)(A), and traveling in interstate or foreign commerce in aid of a racketeering enterprise in violation of 18 U.S.C. § 1952(a)(3)(A). The court accepted McQueen's pleas and proceeded to sentencing. The court ordered McQueen to be imprisoned for twelve months and one day, followed by one year of supervised release. The court also imposed a fine of $23,500 and ordered restitution of $80,000. Pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentence was imposed based on all relevant factors under 18 U.S.C. § 3553(a), treating the Sentencing Guidelines as advisory. The prison portion of the sentence is below the Sentencing Guideline range of 33 to 41 months in prison. The court stated its reasons orally and now states them more formally in this entry.

I. *The Offenses*

For nearly 20 years, McQueen has been the president and principal owner of Flat Rock Furniture, Inc. in Waldron, Indiana, a small town in Shelby County, southeast of Indianapolis. Flat Rock is a small company that manufactures rustic-style furniture from hickory wood. Before the transactions in this case, Flat Rock had never sold furniture to the federal government.

In November 2002, McQueen was in New York City to display Flat Rock's products at the International Hotel, Motel and Restaurant show. Steve Potoski and Mark Hendryx stopped by the display and talked with McQueen about wanting to buy furniture for the common areas of a hotel in Germany. Potoski and Hendryx were acting on behalf of the Armed Forces Recreation Center in Garmisch, Germany ("AFRC Europe"). Potoski was the contracting officer for AFRC-Europe. Hendryx was the assistant general manager.

In January 2003, Potoski contacted McQueen and scheduled a visit to Flat Rock's offices and showrooms in Waldron. Potoski came with Hendryx and with Rick LaBrune, the general manager of AFRC-Europe. The meeting seemed to go well. The AFRC-Europe representatives invited McQueen to come to Germany a week later to make a competitive presentation for furniture for 330 hotel guest rooms as well as for the common areas. They told McQueen that the other competitors were all German companies.

The day before McQueen was scheduled to leave, Potoski called to say that he had postponed any presentations by German companies until after giving McQueen the chance to make his presentation. McQueen traveled to Germany and met with Potoski, Hendryx, and design staff from Washington, D.C., among others. After some disagreements among the American and German staff of AFRC-Europe, McQueen was told to prepare design drawings for custom furniture designs for further review. The next day, Potoski told McQueen that he would be coming to the United States soon and that McQueen should be prepared to negotiate the terms of a "Not to Exceed Contract" during that visit.

In February 2003, Potoski returned to the Flat Rock offices in Waldron, Indiana. He met with McQueen for about three hours. Potoski explained how a "Not to Exceed Contract" would work. He told Flat Rock to prepare designs and concept drawings for guest room furniture, as well as prototypes that would need to be shipped to Germany for installation and evaluation. Potoski and McQueen discussed pricing. McQueen said there were a lot of uncertainties; Flat Rock had no experience with overseas shipping and installation costs. McQueen gave a cost estimate. Potoski told him he would need to come to AFRC headquarters in Arlington, Virginia to execute a contract.

In March 2003, McQueen traveled to Arlington to meet with Potoski and an AFRC attorney. They executed a contract for installation of furniture in January 2004. Flat Rock then built prototypes, and Potoski and Hendryx visited Flat Rock

in Waldron again in June to inspect them. Potoski and Hendryx also said they were going to cancel a contract with a German firm for built-in wardrobe units and would have Flat Rock build those. In July, AFRC designers came to Waldron to inspect the prototypes. The parties agreed to some changes, and Flat Rock then built another set of prototypes and shipped them to Germany.

In September 2003, McQueen returned to Germany to review the prototype furniture. At the meeting, Potoski told McQueen that Hendryx and his wife wanted to buy the prototypes, personally. McQueen proposed a price of $5,000. Potoski talked with Hendryx privately and then told McQueen that he needed a much better price. McQueen asked "you mean nothing?" Potoski said no, that Hendryx needed to pay something for his own protection. McQueen told him to pick a number, since it would cost at least $1,000 to return the prototypes to the United States. McQueen agreed to accept $275. The next day, Potoski and Hendryx told McQueen they wanted him to build 330 wardrobe units for the hotel guest rooms.

Negotiations, design work, work on prototypes, and other preparations continued. The parties agreed to another visit to Flat Rock in Waldron by Potoski and LaBrune in early December 2003. McQueen told Potoski that Flat Rock was already receiving materials for use in the project and that Flat Rock would need to start production no later than December 1, 2003 to meet the delivery schedule.

At a meeting on December 10th in Waldron, McQueen told Potoski that Flat Rock had already committed more than $500,000 to its suppliers and needed a deposit to cover costs until Flat Rock could begin shipping. Potoski and McQueen returned to the subject of pricing. At that point, the criminal problems began.

Potoski said he needed to add $55,000 to the contract price to cover costs that a Herr Kochman had incurred in building the model room and performing interior work at the hotel. (Kochman was a German contractor. McQueen had met him, but they did not share a common language.) McQueen suggested having Kochman send a bill to Flat Rock. Potoski said that Kochman wanted to be paid in cash to avoid German income taxes. Potoski also said that he would take the cash and pass it along to Kochman. McQueen agreed.

Potoski then suggested increasing the amount to $70,000 so that McQueen could keep the additional $15,000 to pay for a vacation for McQueen and his wife. McQueen told him that he could use the amount to cover travel costs on the contract, but that he did not need the money for a vacation. Potoski then went through the list of furniture items and added small amounts that added $70,000 to the overall contract price. Potoski asked for the cash that day, but McQueen told him that he did not have that much cash available. Potoski also agreed that AFRC would pay Flat Rock a $500,000 advance when a modified contract was signed. The modified contract was signed the next week, as of December 15, 2003, for a firm price of $1,896,012. Flat Rock then continued with production

and shipping of 2,650 pieces of furniture plus all the wardrobe components, which had to be assembled in Germany.

McQueen made his first cash payment to Potoski in January 2004. Over the next 19 months, McQueen made payments and provided other things of value requested by Potoski. These included approximately $43,000 in cash, plus meals, airline tickets, hotel rooms, tickets to the Indianapolis 500 for 2004 and 2005, as well as other payments and things of value. McQueen provided the cash and some of the other benefits during trips to New York, Las Vegas, and Orlando, so as to support the travel charge in count two. The race visits also included Kochman in 2004 and both Hendryx and Kochman in 2005. Potoski told McQueen throughout this period that cash payments were being passed along to Kochman. McQueen was skeptical about those assurances, but did not press the matter.

In July or August 2005, Potoski called McQueen and said he had lost his job. He wanted to meet McQueen in Indianapolis to get another $3,500 that McQueen had promised him. When Potoski said it was because he was out of work and he had a child in college, it confirmed McQueen's suspicions that the cash payments had been for Potoski rather than for any of Kochman's work on behalf of AFRC. On August 22nd, McQueen met with Potoski and gave him the last of the cash. Potoski said that his replacement would be contacting him about

another furniture project. Potoski also said that the replacement would ask for an arrangement like his.

Potoski had "lost his job" because the Army's criminal investigators had discovered his numerous schemes to extract similar payments and benefits from many contractors, both German and American. Potoski had begun making statements to Army investigators as early as June 23, 2005. Potoski was cooperating with the wider investigation by setting up the meeting between McQueen and his "replacement," who was of course actually an undercover agent.

The undercover agent contacted McQueen in late August 2005. The agent said he needed furniture to remodel an AFRC-Europe facility and to renovate staff residences. He said he was in a hurry to commit $2 million for the contract before the end of the federal fiscal year on September 30th. McQueen agreed to the general idea, and the agent then said he needed "One Hundred," which McQueen understood to be a request for $100,000 for the benefit of Potoski's replacement. The two agreed to a fraudulent inflation of the contract amount by $200,000, with cash payments of $100,000 to the undercover agent. They also agreed to a $500,000 advance payment from AFRC to Flat Rock. The undercover agent visited Indianapolis twice, on September 2nd and September 13th. McQueen drew $100,000 against a construction loan for Flat Rock, and he delivered $50,000 cash to the agent at each meeting.

McQueen was still looking for the $500,000 advance payment on the contract. The undercover agent told him to expect a fax confirming a wire transfer at 7:00 a.m. on Friday, September 16th. McQueen went to his office early that morning. What arrived was not a fax but the undercover agent and IRS agents with a search warrant. They arrested McQueen, and he immediately began talking about what he had been doing. He quickly hired defense counsel and negotiated the plea agreement that resolved this case.

II. *The Defendant*

McQueen is 57 years old. He was born and raised on a farm in Shelby County, Indiana, close to Waldron, where the Flat Rock factory is located. He was the valedictorian of his high school class and earned a bachelor's degree from Dartmouth College in 1971. He earned a law degree from the Indiana University School of Law – Indianapolis in 1977 and began practicing law in Shelbyville. In 1986, he left law practice to start Flat Rock Furniture.

McQueen has five children. Four are adults, from his first marriage. The youngest of those four is a 22-year-old son who suffers from schizophrenia. In 1996, McQueen married his wife Amy, and they have a 7-year-old son.

McQueen has no record of arrests or convictions and no history of mental health problems or treatment. He drinks alcohol once or twice a week; he tried marijuana in college but has not used illegal drugs since then.

The court received numerous letters from business associates and competitors, and from leaders and friends in the Shelbyville area. Those letters describe McQueen as an honorable and loyal man, an active participant in his community for many years, with activities ranging from coaching children's teams to making generous contributions to local charities. They describe a man who has stood by his family in difficult times, including his parents' bankruptcy and his son's mental illness.

III. *The Sentencing Guidelines*

The applicable Sentencing Guideline for the unlawful gratuity charge in count one is USSG § 2C1.2(a). It provides a base offense level of 9 for a defendant who is not a public official. The court added 2 levels under § 2C1.2(b)(1) because McQueen paid gratuities to Potoski on more than one occasion. Because the total value of gratuities exceeded $5,000, § 2C1.2(b)(2) requires consultation of the table from § 2B1.1, the guideline for theft and fraud. The total value was approximately $280,000, including the $200,000 added to the fictional contract in the the final sting operation. The court added 12 levels. See USSG § 2B1.1(b)(1)(G). The adjusted offense level for count one thus was 23.

For the foreign travel charge in count two, the applicable guideline is § 2E1.2. The base offense level is the greater of 6 or the offense level of the unlawful activity in respect to which the travel was undertaken. No other adjustments applied, so the adjusted offense level for count two was also 23.

The parties and the court agreed that the two offenses should be grouped for purposes of the multiple-count guideline provisions, so the combined offense level was 23. The court also found that McQueen was entitled to a three-level reduction under § 3E1.1 for acceptance of responsibility, for a total offense level of 20. There are no adjustments under Chapter Four of the Guidelines, such as for a mitigating or aggravating role in the offense.

McQueen has no prior criminal history and therefore falls within criminal history category I. The guidelines advise a prison sentence of 33 to 41 months for offense level 20, criminal history Category I. Both the government and McQueen agree that this calculation of the Guidelines is correct.

IV. *Other Factors Under Section 3553(a)*

Congress has instructed district courts to impose sentences that balance several different purposes. Under 18 U.S.C. § 3553(a)(2), the sentence must reflect the seriousness of the offense, promote respect for the law, provide just punishment for the offense, afford adequate deterrence to criminal conduct, protect the public from further crimes of the defendant, and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. The court "shall impose a sentence sufficient, but not greater than necessary," to serve those purposes. 18 U.S.C. § 3553(a).

In determining the sentence that is sufficient but not greater than necessary to serve those purposes, the court must consider the nature and circumstances of the offense, the history and characteristics of the offender, the kinds of sentences available, the applicable Sentencing Guidelines and policy statements by the Sentencing Commission, the need to avoid unwarranted sentence disparities among similarly situated defendants, and the need to provide restitution to any victims. *Id.*

Under *Booker*, the court must "consult those Guidelines and take them into account when sentencing." 543 U.S. at 264. In most cases, the court must make definitive findings for the correct offense level and criminal history category under the Guidelines.[1] The court must also recognize that the Guidelines are the product of extensive deliberation that reflects input from all three branches of the federal government, and they deserve careful consideration. See, *e.g.*, *United States v. Wilson*, 350 F. Supp. 2d 910, 912 (D. Utah 2005) (Cassell, J.).

It is equally clear under *Booker*, however, that the court may not calculate the applicable guideline range and then stop thinking, treating the guideline

[1]It may not always be necessary to reach a definitive finding as to all guideline issues in every case. As Judge Newman explained for the Second Circuit in *United States v. Crosby*, 397 F.3d 103, 112 (2d Cir. 2005), abrogated on other grounds by *United States v. Fagans*, 406 F.3d 138 (2d Cir. 2005), precise determinations may not be necessary in some complex matters, such as loss calculations or the precise scope of departures authorized by the Guidelines, at least where the sentencing judge has considered these issues and has fairly decided to impose a non-Guidelines sentence.

calculation as definitive. To comply with the constitutional reasoning of the merits opinion in *Booker*, the sentencing court may not act as if it is required to impose a guideline sentence. 543 U.S. at 233 ("If the Guidelines as currently written could be read as merely advisory provisions that recommended, rather than required, the selection of particular sentences in response to differing sets of facts, their use would not implicate the Sixth Amendment."). Instead, the calculation of the Guideline range must be the starting point. From that point, the court goes on to consider potential departures under the guidelines and the additional factors set forth in § 3553(a).[2]

A. *Nature and Circumstances of Offense*

Under the Guidelines, the relevant factors here are the charged offenses, the total amount by which McQueen agreed to inflate the two contracts, the fact that he paid gratuities to Potoski on more than one occasion, and his decision to plead guilty and accept responsibility for his crimes. Those bare-bone facts determine a total offense level of 20.

[2]For purposes of appellate review of sentences under *Booker*, the Seventh Circuit has adopted a rebuttable presumption that a guideline sentence is reasonable, *United States v. Mykytiuk*, 415 F.3d 606, 608 (7th Cir. 2005). That presumption does not establish, however, that a guideline sentence is the *only* reasonable sentence or that a non-guideline sentence is not reasonable. Such a stronger presumption in favor of guideline sentences would appear to run contrary to the reasoning of the Supreme Court's merits opinion in *Booker*.

There should be no doubt as to how serious the crimes were. Corruption of the government contracting process has a long history in the United States, especially with military contracts, going back to the American Revolution and the Civil War. The temptations are obvious, and detection can be difficult. When the crime is detected, punishment must be substantial and should be highly publicized, both to reflect the seriousness of the offense and to serve as a deterrent for others facing similar opportunities and temptations.

In deciding McQueen's sentence, the court recognized that the law did not require a prison sentence; probation with conditions would be legally permissible. The court also had in mind, however, the fact that the Sentencing Reform Act and the Sentencing Guidelines were written to impose more severe penalties on so-called white collar criminals, those who steal with a fountain pen rather than a pistol. See USSG § 1A1.1 commentary ¶ 4(d) (1987) ("The Commission's view is that the definite prospect of prison, though the term is short, will act as a significant deterrent to many of these crimes, particularly when compared with the status quo where probation, not prison, is the norm."); *United States v. DeMonte*, 25 F.3d 343, 348 (6th Cir. 1994), quoting Stephen Breyer, *The Federal Sentencing Guidelines and the Key Compromises Upon Which They Rest*, 17 Hofstra L. Rev. 1, 20, 22 (1988); see generally Woody Guthrie, "Pretty Boy Floyd" (song), in Alan Lomax, *The Folk Songs of North America 437* (1960) ("Some will rob you with a six gun/And some with a fountain pen."). That was a goal even where the defendant has no prior record and is highly unlikely to commit another crime, as

in this case. The court concluded that just punishment in this case requires a significant prison sentence.

How long a sentence is sufficient but not greater than necessary to serve the purposes of sentencing? A closer look at the circumstances here shows mitigating factors that are not accounted for under the Guidelines. None of these factors excuses McQueen's crimes, nor does any single factor amount to adjustments or departures under the guidelines, but they are nevertheless relevant to his overall culpability.

First is the origin of the crimes. McQueen did not go looking for government contracts, let alone for an opportunity to pay unlawful gratuities to a contracting officer. Potoski found him at the trade show in November 2002 and began luring him into what eventually became the criminal scheme. McQueen had no experience dealing with the federal government or with overseas sales and the extra complications and costs that resulted from that.

Second is the timing of the crimes. Potoski did not seek any extra cash in the deal until McQueen's company had already committed $500,000 and a great deal of time, without yet having a binding deal with the AFRC-Europe. McQueen and his company were vulnerable and over a barrel when Potoski asked for the cash. It would have been very expensive for McQueen to say no and to walk away from the deal. He should have, of course, but Potoski told him a story about

needing cash for Kochman (albeit to evade German taxes), and McQueen took the bait. He was afraid not to take it, for fear of the losses for himself and his company and its employees, so he suppressed his suspicions and understanding of what Potoski was doing. He paid the cash and kept meeting Potoski's repeated demands, for cash, plane tickets, hotels, meals, and sporting tickets.

The court does not mean to suggest that McQueen was entitled to a minor mitigating role adjustment under USSG § 3B1.2. His role in the basic crime was essential. If he had said no, there would have been no crime (at least until Potoski found a new contractor). But these circumstances persuade the court that McQueen was significantly less culpable than Potoski in this case.[3]

Third, the court takes into account the government's control over the amount of loss. Based on Potoski's inflation of the original Garmisch hotel furniture deal, the court would have added eight levels to the offense level rather than the twelve levels added after the undercover agent's videotaped deal with McQueen for an additional $200,000 in extra contract costs. There is no question of entrapment or even sentencing entrapment here. See generally *United States v. Estrada*, 256 F.3d 466, 474-76 (7th Cir. 2001) (rejecting sentencing entrapment argument). McQueen cannot argue that he was not predisposed to commit the

[3]The court recognizes that the base offense level is two levels higher for the public official who receives a gratuity than for the person who pays it. USSG § 2C1.2(a). That difference is reasonable and appropriate, given the public trust given to the public official. Potoski's greater culpability in this case also includes his role in instigating the whole scheme for his personal enrichment.

crime by late August 2005. However, he was not actively looking for opportunities to commit more crimes. In deciding how much prison time is sufficient to serve the purposes of sentencing, the government's control over the loss amount can and should serve as a mitigating factor here.

Fourth is McQueen's acceptance of responsibility, which is the transition point between consideration of the offense and the offender. McQueen's arrest came almost as a relief to him, after months of silent guilt, anxiety, and fear. He immediately began talking to the investigators and instructed his attorney to work out a resolution of the case by way of a guilty plea. For most cases, the Guidelines apply a one-size-fits-all discount of three offense levels (if the offense level is 16 or higher, and if the government supports the third level). See USSG § 3E1.1. The three-level reduction can apply when a defendant agrees to plead guilty only two or three weeks before trial, when his lawyer has finally convinced him that he is cornered. In McQueen's case, though, he immediately accepted his responsibility.

One reason for the reduction for acceptance of responsibility is that a defendant who recognizes his wrongdoing and accepts responsibility for it is more likely to learn the lesson from the experience and more likely to avoid committing future crimes. See, *e.g.*, *United States v. Lopinski*, 240 F.3d 574, 575 (7th Cir. 2001); *United States v. Cunningham*, 103 F.3d 596, 599 (7th Cir. 1996); *United States v. Pryor*, 32 F.3d 1192, 1195 (7th Cir. 1994). In other words, a guilty

defendant's immediate acceptance of responsibility is a test of character. McQueen flunked the character tests when Potoski asked for cash, but he came to his senses and immediately admitted his actions when confronted by investigators. The one-size fits-all discount in the Guidelines does not sufficiently reflect his actions in determining how much prison time is sufficient but not greater than necessary to serve the purposes of sentencing.

B. *History and Characteristics of the Offender*

Under the Guidelines, the *only* relevant information here is the fact that McQueen has no prior criminal history. See *United States v. Ranum*, 353 F. Supp. 2d 984, 986 (E.D. Wis. 2005). The full picture of McQueen, however, shows many other details and characteristics that are important in deciding how best to serve the purposes of sentencing.

McQueen is 57 years old. Until this episode, his nearly 30-year career in both law and business was honorable. When he practiced law, he earned the respect of clients, judges, and opposing counsel for honesty and diligence. He started Flat Rock Furniture from scratch in 1986. He built the business over 18 years, providing jobs and benefits for employees, and growing to establish additional facilities in relatively poor parts of eastern Kentucky and Mississippi. He is not a wealthy man; the bulk of his assets are tied up in cross-collateralization agreements with Flat Rock and its principal lender (which recently declared the loans in default, which forces Flat Rock to find alternative

financing). His competitors in the furniture industry and other business people wonder about his unusual generosity toward his employees, in terms of pay and benefits, and in terms of avoiding seasonal lay-offs when business slows down.

In the Shelbyville community, McQueen has provided leadership and support for his community and his neighbors. Also, this is not a case in which a defendant has been generous with stolen money, as in an embezzlement case. In Shelbyville and in the other communities where Flat Rock operates, McQueen has been generous in supporting local charities, including donations of furniture for charitable auctions and for direct use by the charities. He has been generous with his time, as well. The court often receives letters from friends and family concerning defendants who are to be sentenced. The letters on behalf of McQueen – commenting on his character and acknowledging his crimes – are, as a group, more detailed, more specific, and more persuasive than any this judge has seen in more than ten years. They come from competitors as well as friends and associates, and from leaders of the bench and bar and the Shelby County Sheriff. The letters help convince the court that this episode has been an aberration that is completely out of character for McQueen.

In this case, as in many, the defendant has a family that will suffer indirectly from any sentence. Those collateral effects are common. In this case, the effects are greater than is ordinary. As noted, one of McQueen's sons suffers from a serious mental illness, one that requires him to be institutionalized in the

community. McQueen provides a considerable amount of emotional support for that son. Also, he has provided considerable support for his parents after their bankruptcy and for his mother after his father's death.

In deciding how heavy a sentence is sufficient but not greater than necessary to serve the purposes of sentencing, the court has considered the danger that a long prison sentence would drive Flat Rock out of business and put its employees out of work. The government has pointed out that business crimes often produce such collateral effects. In this case, however, the danger seems greater than usual because Flat Rock is a small business and in relatively fragile condition, certainly without McQueen's leadership. For reasons the court has explained, some significant prison time is necessary in this case to reflect the seriousness of the offense and to deter other crimes. At the same time, the longer the prison term, the greater the chance that the company will go out of business and that employees will lose their jobs. Also, it is worth noting that Flat Rock's Kentucky and Mississippi facilities are in relatively poor areas where unemployment is high and jobs are scarce.

C. *Additional Factors*

In terms of the purposes of sentencing under § 3553(a)(2), little is needed here to provide correctional treatment for McQueen. He understands what he did wrong; he does not need further education, drug treatment, or special health care. Justice requires that he spend some time away from his family, friends, and work.

But in terms of the purposes of sentencing, the marginal value of a second or third year in prison approaches zero in this case.

The court has considered the applicable Sentencing Guidelines and policy statements. The individual circumstances the court has identified above do not rise to the level of supporting further adjustments in guideline calculations or specific departures under the Guidelines. For reasons explained above, however, the cumulative effect of all of these factors weighs in favor of a sentence below the applicable Guideline range.

The sentence ensures that the government receives restitution for its actual losses. That restitution is being paid, however, from the borrowed cash that McQueen brought to the undercover agent in September 2005. This factor does not affect the length of the prison sentence.

The best argument against the court's sentence is that it creates a risk of unwarranted sentencing disparities among defendants convicted of similar conduct and with similar criminal records. That factor is one more reason why courts must consider and give significant weight to the Sentencing Guidelines. That factor may not be given controlling weight, however, without risking treating the Guidelines as mandatory, as a practical matter. The court has tried to explain above the several individual features of this case whose cumulative effects have persuaded the court that ordering McQueen to spend a year and a day in prison

is sufficient but not greater than necessary to serve the purposes of sentencing.

A separate judgment imposing this sentence shall issue.

Date: April 20, 2006

DAVID F. HAMILTON, JUDGE
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Southern District of Indiana

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