

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

*Plaintiff,*

Case No: CR-03-328

v.

SCOTT SNYDER,

*Defendant.*

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**DEFENDANT SNYDER'S STATEMENT WITH  
RESPECT TO SENTENCING FACTORS**

Dated: Buffalo, New York  
July 22, 2005

Respectfully submitted,

s/ Barry Nelson Covert  
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**TO: DEBRA NEWMAN, ESQ.  
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## **I**

### **INTRODUCTION**

We respectfully submit to this Court this memorandum and the attached materials for the purpose of assisting the Court with respect to its determination as to the appropriate and just sentence for Scott Snyder.

As this court is aware, on October 1, 2003, the defendant entered a plea of guilty to Count One in satisfaction of the five count indictment before this Honorable Court. The charge was one violation of 18 U.S.C. §§371, 545, 2342, and 2320, namely, to Conspiracy to Smuggle Cigarettes into the United States, and to Traffic In Contraband Cigarettes, and to Traffic in Counterfeit Goods. Scott is currently awaiting sentencing on August 5, 2005 before the Honorable Raymond J. Dearie.

## **II**

### **BACKGROUND**

By way of background, Scott is a 42 year old Native American male. He resides with his significant other, Marie Williams and their six year old daughter, Scotia, in Irving, New York on the Seneca Nation Indian Reservation.

Scott was born to the legal union of Barry and Deanna Snyder, of the Seneca Nation Indian Reservation. Growing up on the reservation, Scott played with his older brother, Barry and younger brother, Ryan. Barry Snyder, Sr. served two terms as President of the Seneca Nation and five terms as Tribal Counselor.

When Scott was eleven, he witnessed a traumatic car accident that left his brother, Barry hospitalized for quite some time. Barry was hit by a car, flew threw the air, and when he finally landed, his leg was almost severed from his body. Scott cried and cried for days, thinking his older brother was going to die. Soon after this incident,

Scott's parents divorced. Barry, Sr. remarried. Deanna moved in with a Town of Brandt police officer. However, a few years later, Barry and Deanna reunited, gave birth to another son, Ryan, and have been happily together ever since.

Scott attended Silver Creek high school, where he excelled at football and basketball. Never attending college, Scott held various jobs. He did construction work for three years, worked with his father at Seneca Hawk for several years, and worked with his brother, Barry, for two years before striking out on his own.

While working, Scott held a number of prestigious positions within the Nation, including Police Marshall for two years and Seneca Party Chairman for six months. In addition, Scott also coached and ran several sports teams on the reservation. Scott was president of the Seneca Sackems football team for two years and coached them for seven years. Scott's love of sports extended to basketball and lacrosse. Scott coached basketball for three years, including at the North American Indigenous Games in 2002 in Winnipeg. Scott's lacrosse team played all over North America.

Scott has three children of his own. Scott married Beverly John in 1981. Prior to their divorce in 1985, they had two children, Michael, 22, and Alyssa, 15. Both children reside with their mother in Gowanda, New York. The children remain supportive of their father in these troubling times.

Currently, Scott and Marie Williams, 37, are raising their six year old daughter, Scotia. Marie also remains supportive, standing by Scott.

### **III**

#### **MEDICAL EVALUATIONS**

Scott suffers from spinal stenosis, a congenital and degenerative condition. Spinal stenosis is a condition wherein the spinal canal narrows because of excessive

growth of bone and/or tissue. As a result of the excessive growth, the space between the spinal bones is lessened, which irritates the nerve roots and possible the spinal cord itself. Five of Scott's vertebrae are herniated as a result, causing him tremendous discomfort.

Consequently, Scott experiences extreme and debilitating pain throughout his lower extremities. Scott has fought through most of this pain and attempted to have a normal life style. Over the last few years, however, it has impacted him and caused him to slow down a bit. Being motionless for prolonged periods of time causes pain. In fact, Scott has been waking up in the middle of the night because of extremely painful leg and toe cramps connected with this condition (See, letter by Gregory Castiglia, M.D., dated November 20, 2003, attached in Exhibit A, p.1.).

Therapy has not helped his condition. Neither pain management nor physical therapy has any significant effect. The greatest impact is that it prohibits Scott from carrying his daughter for prolonged periods of time. Scott notes that it is especially painful to carry her to put her to bed for the night. As a result, a more progressive course of treatment has been suggested: surgery on the left side of the L3-4 and L4-5 in the form of foraminotomies and discectomies.

#### **IV**

#### **LETTERS OF SUPPORT**

Attached are numerous character letters written on behalf of Scott (attached in Exhibit B). The authors include family, friends, neighbors, and business associates. As this court will surely note, these letters were written after the authors were made aware of the charges against Scott. Nonetheless, these people remained supportive.

As explained above, Scott suffers from a debilitating spinal condition that causes him pain and discomfort on a daily basis. Pushing his personal pain aside, Scott drew on his love of athletics and his desire to help others to donate countless hours coaching various youth sports teams. The past President of the Seneca Nation of Indians, Rickey L. Armstrong, draws the court's attention to how he met Scott,

I came to know Scott during the time he was coaching the youth of the Cattaraugus Territory; or organized football. He spent many volunteer hours meeting the countless needs of his youth organization. This is truly an indicator of Scott's true personality.

(letter, dated December 16, 2003). In another letter, this one authored by George and Eileen Molnar, friends of the entire Snyder family, Scott's devotion to promoting sportsmanship and athleticism is evident.

Scott is very interested in the Seneca Nations Sports Activities, as well as pursuing improvement to all causes that further the livelihood of the Seneca members. He has told us all about this year's past games in Canada and how well his people performed in the games. He is looking forward to assisting the Senecas when they host the games in Buffalo in 2004 and had great plans to insure more success for the Senecas during their meets in 2004.

(letter, dated December 20, 2003). Scott's father, Barry E. Snyder, Sr. states it most simply, "A life long member of the Cattaraugus Indian Reservation Community. Scott's participation in his community as a leader and coach in Indian sports programs. This has been one of his goals mentoring young Indian athletes," (letter, dated December 15, 2003).

Not only does Scott mentor the youth of the community, he also advocates for the sovereignty integrity of the Seneca Nation. His advocacy will benefit the Seneca Nation for years to come, as well as Native Americans in general, as reflected in a letter authored by Joseph F. Crangle, Esq.

Since I have known Scott for several years I believe it might be helpful in your determining his sentence to relay to you the excellent reputation with which he has enjoyed over the years because of his civic involvement in the affairs of the Seneca Nation, and importantly, as well as his personal reputation for integrity and as an outstanding father to his children. His civic involvement has always been to advocate the unique legal status of the Seneca Nation, its Customs, Laws and Traditions. His public concerns and his active involvement in various community affairs, however, have not interfered in his obligation as an outstanding and responsible father to his children.

(letter, dated December 24, 2003).

It is clear that his involvement in civic and athletic endeavors make Scott a valuable and integral part of the community. Richard T. Seneca has known Scott since he was a child and can attest to his civic achievements.

Scott's involvement in and for the betterment of the community goes above and beyond most community members achievements. His personal involvement with the Recreation Department, for over 2 decades, has favorably affected the lives of many young adults. Scott has displayed responsibility & dependability as he conducted himself in a professional manner which earned him the respect of the community and his peers. Also, more recently, as his performance of duties as chairman of a local political party, the "Seneca Party", of the Seneca Nation of Indians, has been very successful as the community has reaped the financial benefits of this party's goals.

(letter, dated January 31, 2004).

The Honorable Maurice John, Appellate Court Judge with the Seneca Nation Judicial Branch, has known Scott since he was in high school. As an officer of a court, he understands the conflicts that one faces when making a determination such as this. While this is a tragic situation, he offers a solution that will benefit the entire Seneca Nation.

We know that ignorance of the law is no excuse. In this case, I am sure that Scott has had the unfortunate experience of making a poor choice in judgment regarding business laws. I am assured that

Scott can better teach other Seneca businessmen the law, if he is given a lenient sentence at this time. Sometimes, we have to learn by example. This heart-breaking time for his family, will surely serve to teach all Senecas, the need to be ever vigilant against bad influences that may affect our way of life....He just needs to be given another chance to show that he has learned valuable life lessons.

(letter, dated December 9, 2003).

Nancy Williams, Scott's sister-in-law, writes the most poignant letter of all, detailing the monumental impact Scott has on the life of her son, Frankie and Scott's daughter, Scotia. The time Scott spends with these young, impressionable youth is invaluable. At the ages of two and three, these children are learning the fundamentals of life, love and trust. Scott gives this and more to them. He is their rock, playing with them, tickling them, hugging and kissing them.

When reading these letters, it is imperative to recognize that these are heartfelt, genuine letters. All too often people submit letters either exalting the person's virtue beyond belief or the letters are cursory and obviously reluctantly written. That is not the case here. These letters attest to Scott's good character, his devotion to family, his involvement in the community, and his overall qualities of honesty and peacefulness. These are lifelong attributes, continuing to guide Scott and his decisions to the present day

## V

### **THE SENTENCE**

For reasons set forth herein, we respectfully request that the Court sentence Scott Snyder to a non-Guidelines sentence with a term of imprisonment for 366 days, to run concurrent with the sentence imposed by the Western District Court of Texas, after reviewing the factors listed in 18 U.S.C. § 3553 (a).

## **The Plea Agreement**

Pursuant to the plea agreement signed before this Honorable Court, on October 1, 2003, Scott pled guilty to Count One of the indictment for the above-captioned case. The plea agreement is attached as exhibit C. Applying the Sentencing Guidelines found in the November 2002 manual, the agreement sets forth the following calculation.

Base Offense Level § 2B5.3 (a)	8
§ 2B5.3 (b) (2) (importation)	+2
§ 2B1.1 (b) (1) (J) (more than \$1 million)	+16
Total	26
§3E1.1(a) and (b) (acceptance of responsibility)	-3
§ 5K2.0 (global)	-2
Total	21

With a total offense level of 21 and a criminal history category of I, the resultant Guideline sentence is a term of imprisonment for 37 to 46 months. Significantly, the issue of valuation was not settled at the time of the plea agreement. Pursuant to ¶ 3, “the government has agreed before sentencing to hear from defense counsel as to the defendant’s view of the correct Guidelines calculation,” (see, exhibit C).

## **The Pre-Sentence Report**

The PSR, dated March 24, 2005, is in accordance with the plea agreement with the following exceptions. The PSR fails to account for a two level reduction for a global disposition, incorrectly applies a two point enhancement for conscious or reckless risk of bodily harm, and wrongfully includes an enhancement based on the government’s valuation of the infringing cigarettes.

For the reasons set forth below, it is respectfully requested that the aforementioned enhancements for increased bodily risk and valuation not be included in your determination of an appropriate sentence for Scott.

**A TWO POINT DOWNWARD DEPARTURE IS JUST AND APPROPRIATE IN LIGHT OF A GLOBAL DISPOSITION**

The government also supports a two point reduction pursuant to § 5K2.0 as indicated in the Plea Agreement. In favor of judicial economy, the government offered a two point reduction if several of the defendants entered into plea agreements before October 1, 2003. The government has not indicated that it no longer supports such a departure. Consequently, Scott respectfully requests a two point downward departure.

**THE GOVERNMENT CONCEDES THAT A TWO POINT ENHANCEMENT FOR RECKLESS RISK OF BODILY INJURY IS UNWARRANTED**

In the Government's letter dated March 10, 2005, the government unequivocally concedes, "the government has no evidence that the specific counterfeit cigarettes in this case contained arsenic, contrary to the PSR, the government does not assign a 2 level increase for reckless risk of bodily injury, per U.S.S.G. §2B5.3 (b) (4)," (attached as exhibit D).

Accordingly, following the doctrine of the law of the case, Scott respectfully requests that the two point enhancement be excised, thereby excluding it from the Court's determination of a just and appropriate sentence.

**THE ISSUE OF VALUATION IS GOVERNED BY YOUR HONOR'S DECISION AT THE SENTENCING OF CO-DEFENDANTS SIMON MOSHEL AND MICHAEL MOSHEL**

It is well settled that under the doctrine of the law of the case, a decision made at one stage of a case becomes binding at further stages of the same case. *In re PHC Assocs.*, 949 F.2d 585, 592 (2d Cir. 1991). The decision governs the issue throughout the

remainder of the case. This doctrine serves two important functions. First, it maintains consistency and avoids unwarranted and unjust disparities that would otherwise arise. Second, it conserves valuable judicial resources by precluding reconsideration of an issue that has already been determined. *Id.*

Your Honor made a determination as to the issue of valuation of the infringing cigarettes: that the actual value is indecipherable. Applying this decision to the sentencing of Simon Moshel, his plea agreement range of 46 to 57 months was significantly reduced to an imposed sentence to a term of twenty months. Moreover, this Honorable Court imposed a sentence of 366 days to Michael Moshel. Pursuant to the law of the case doctrine, the determination that the valuation is indecipherable applies to the case of Scott Snyder. This is supported by the facts that Scott participated in the same course of conduct at issue, that Scott participated in only three of the controlled purchases, and that Scott was never in a supervisory role.

It is respectfully requested that the Honorable Court maintain consistency and justly disregard the government's valuation on the infringing cigarettes. Consequently, such an application warrants an excision of the 16 level upward departure pursuant to § 2B5.3 (b) (1) (B).

**SCOTT SUFFERS FROM A PHYSICAL HANDICAP WARRANTING A DOWNWARD DEPARTURE**

At this time, Scott respectfully requests the Court to grant a downward departure based on his extraordinary physical condition pursuant to U.S.S.G. § 5H1.4. Although a defendant's physical condition is not usually relevant to determine a just and appropriate sentence, however when the physical condition is of such a nature to constitute an extreme impairment, it may be accounted for when departing below the

Guidelines range. *U.S. v. Rioux*, 97 F.3d 648, 662 (2d Cir. 1996), citing [\*U.S. v. Altman\*, 48 F.3d 96, 104 \(2d Cir.1995\)](#). As indicated above, the spinal stenosis renders Scott physically handicapped and requires corrective surgery. Most of the time he tries to fight it, however overcoming the pain is getting more and more difficult. Scott underwent surgery in April, 2004. The surgery carried significant risks of infection, brain damage, nerve damage and potential paralysis. However, the surgery and subsequent therapy are not relieving the debilitating pain, nor have they improved any of the symptoms. Scott's mobility will be further compromised. Moreover, without continued therapy, Scott's condition will rapidly deteriorate leaving him an invalid.

**SCOTT'S ACCEPTANCE OF RESPONSIBILITY WARRANTS A THREE POINT DOWNWARD DEPARTURE PURSUANT TO THE GOVERNMENT'S RECOMMENDATION**

Although the decision whether to award a downward departure remains with the Court's discretion, the Government has indicated that it supports a three point departure due to Scott's acceptance of responsibility.

**SCOTT HAS PROVIDED THE TEXAS AUTHORITIES SUBSTANTIAL ASSISTANCE**

Pursuant to the Plea Agreement in the Texas case, Scott has provided substantial assistance to aid law enforcement authorities. Scott has been debriefed by the Texas authorities when he provided truthful and complete information regarding his own conduct, but the conduct of others as well.

**IT IS JUST AND APPROPRIATE TO RUN THE INSTANT SENTENCE CONCURRENT WITH THE UNDISCHARGED SENTENCE IMPOSED BY THE WESTERN DISTRICT OF TEXAS**

At this time, we respectfully request any term of imprisonment imposed by this Court for the instant offense run concurrent with Scott's undischarged term arising from the Texas conviction. On December 11, 2003, while the instant case was ongoing, the

Grand Jury for the Western District of Texas returned an indictment charging several defendants with violating several provisions of the United States Code prohibiting trafficking in contraband cigarettes. On January 14, 2004, Scott entered a plea of guilty to Count One of the indictment, to wit, 18 U.S.C. §§ 371, 545, 2342, and 2320 (conspiracy to smuggle cigarettes into the United States, traffic in contraband cigarettes and traffic in counterfeit goods). The remaining charges were dismissed. The Honorable Philip R. Martinez of the Western District of Texas issued the judgment of conviction on April 14, 2005 (attached as Exhibit E).

As a result of his conviction, the Honorable Martinez sentenced Scott to a term of imprisonment for twenty-seven months and two years of supervised release after termination of his prison term. Additionally, the court ordered Scott to pay \$100.00 special assessment and \$861,260.00 in restitution. Due to his inability to pay, the Court declined to issue a fine.

The criminal history category of II takes into account Scott's conviction in the Eastern District of New York. In fact, the instant proceedings resulted in the one level increase to the criminal history category. However, after giving due consideration to all the applicable factors, the court unequivocally stated that it "does not object" to running the sentences concurrently (see exhibit E).

The two codefendants whose conduct runs most similar to Scott's are Donald Deland and Timothy Farnam. Similar conduct is attributed to these three individuals in the Eastern District of New York and the Western District of Texas. Deland also plead guilty to Count One of the Texas indictment. The Honorable Martinez imposed a sentence of a term of imprisonment of 24 months with two years of supervised release, a \$100.00 special assessment, and restitution in the amount of \$861,260.00 (same as

Scott's) on defendant Deland. Timothy Farnam plead guilty to count one of the indictment and received a sentence to a term of imprisonment of eighteen months with three years of supervised release and a special assessment of \$100.00. These three men plead to the same count of the same indictment for essentially the same conduct, and received similar sentences, with twenty seven months being the maximum term of imprisonment.

In the instant case before this Honorable Court, the conduct at issue is primarily the same, a violation of 18 U.S.C. § 371. Here, Scott engaged in criminal conduct with Donald Deland, Timothy Farnam, and others. Consequently, the criminal conduct and its participants are part of a similar plan and course of conduct. When analyzing the indictment and subsequent plea to the charges in Texas, the Probation Office for the Eastern District of New York concluded that the conviction in Texas to be relevant conduct to the instant offense. Accordingly, they should be treated the same, and thus have similar sentences imposed on them to run concurrently. The United States Attorney for the Western District of Texas has indicated that the government does not object to running the sentences concurrently. Moreover, the Honorable Martinez of the Western District of Texas does not oppose to running the sentences concurrently.

Pursuant to U.S.S.G. § 5G1.3 (c), in the event that the defendant is subject to an undischarged term of imprisonment and the other offense is relevant conduct, but not a basis for an offense level adjustment, the sentencing court has discretion to impose a concurrent, partially concurrent, or consecutive sentence to achieve a just and appropriate sentence for the instant offense. As set forth above and considered by the Probation Department of the Eastern District of New York, Scott's conduct resulting in

his conviction in Texas constitutes relevant conduct to the instant offense but does not increase his offense level.

The purpose of U.S.S.G. § 5G1.3 is to provide prevent unwarranted disparity when determining sentences and ultimately arrive at a reasonable and just punishment. *U.S. v. Brennan*, 395 F.3d 59, 69 [2d Cir. 2005]. To achieve a just and fair sentence, the court should consider the factors set forth in 18 U.S.C. § 3584 (referencing 18 U.S.C. § 3553(a)). These factors include: the nature and circumstances of the offense and the history and characteristics of the defendant; the need for the sentence to reflect the seriousness of the offense, to promote respect for the law, to provide a just punishment, to provide adequate deterrence to society, and to protect society from future crimes by the defendant; to provide unwarranted disparities among defendants with similar records and courses of conduct; and finally, to provided needed restitution to any victims. 18 U.S.C.A. § 3553 (a).

A concurrent sentence will best serve the interests of justice. By taking Scott's New York conviction into account in its criminal history category computation and imposition of sentence, the Eastern District of Texas meted out its punishment in a fair and equitable matter thereby arriving at a sentence that serves to deter similar future conduct in society and Scott, as well as provide amply opportunity for Scott to make restitution. This Honorable Court should do no different.

## **THE IMPLICATIONS OF *BOOKER***

As this court is well aware, the Supreme Court decision in *United States v. Booker* made the Sentencing Guidelines are no longer mandatory, yet they must be consulted. The once mandatory sentencing guidelines are simply another factor among many to be considered and analyzed when determining an individualized sentence that best serves the interests of justice. *United States v. Booker*, 125 S.Ct. 738, 2005 WL 50108 (2005). *See also United States v. Ameline*, \_\_\_ F.3d \_\_\_, 2005 WL 350811 (9th Cir. 2005). Regardless of the method of determining the sentence, the sentence imposed shall not be greater than necessary to comply with the purposes of sentencing (retribution, rehabilitation, deterrence, and incapacitation).

## **VI**

### **CONCLUSION**

We sincerely appreciate the Court's time and consideration. In light of Scott's medical condition, devotion to his family and community, and efforts to improve conditions for the Seneca Nation of Indians, we respectfully request the Court to sentence Scott to 366 days of incarceration.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 22, 2005 I electronically filed the foregoing with the Clerk of the District Court using the CM/ECF system.

I hereby certify that on July 22, 2005 a copy of the foregoing was also delivered to the following via CM/ECF.

Debra Newman, Esq.  
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Dated: Buffalo, New York  
July 22, 2005

s/ Jeanne Carr Johnson  
Jeanne Carr Johnson