

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Case No. 16-cr-00073-CMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. JASON TIMOTHY THRONE,

Defendant.

GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION FOR DOWNWARD
VARIANCE FROM THE ADVISORY GUIDELINE RANGE

The United States of America, by and through Assistant United States Attorney Thomas M. O'Rourke, submits this response to the defendant Jason Timothy Throne's Motion for Downward Variance from the Advisory Guideline Range.

Throne has pleaded guilty to two counts of an Information pursuant to a plea agreement. The first count alleges that from December 1999 to June 2014, Throne carried out a scheme to defraud his then-employer, Hunter Douglas Inc., and an affiliate. Doc. 1 at 1-3. The second count charges that he willfully filed a false federal income tax return. *Id.* at 3-4. The plea agreement anticipated an advisory guideline range of 46 to 57 months, doc. 14 at 13, but the probation officer calculated a range of 57 to 71 months, doc. 22 at 15.

Throne has moved for a sentence of 40 months and has based that request on his "extreme remorse," the effects of his criminal conduct on his family and himself, and a

letter from the company he defrauded. Doc. 20 at 2-4. Because nothing in the defendant's situation is out of the ordinary, the government objects to a 40-month sentence.

Throne claimed that "well before criminal charges were brought" he showed remorse by settling a related civil case brought by his victim and giving up his licenses to practice law. *Id.* at 2. Throne did take those steps prior to the filing of the Information in February 2016, but he had known since at least October 2014 that he was the target of a criminal investigation. He resolved the civil case the following month, and resigned from the bars of the Patent and Trademark Office and the State of New Hampshire in March 2015.¹ In taking those steps, Throne merely bowed to the inevitable; he did nothing out of the ordinary. The Sentencing Guidelines take account of normal remorse and acceptance of responsibility, such as that which Throne has exhibited. See U.S.S.G. § 3E1.1.

Throne claimed in his motion that the news of his crimes has caused his family "pain and suffering" and he has suffered from having to witness the family's pain and suffering. Doc. 20 at 3. That pain undoubtedly is real, but it also is the natural consequence of Throne's criminal conduct being exposed. See *United States v. Ayala-Garcia*, 276 Fed.Appx. 750, 755 (10th Cir. 2008) (unpublished) (Although defendant's sentence will affect his family, "his situation . . . is all too ordinary.") Throne in effect argues that the very conduct for which he is to be sentenced should be the basis of a reduced sentence.

¹ Throne signed a settlement agreement in the civil case on November 13, 2014, and Judge Matsch entered a Stipulated Judgment eight days later. *Hunter Douglas Inc. v. Throne*, Case No. 14-cv-01807-RPM, doc. 36 (D. Colo. Nov. 21, 2014). The order accepting Throne's resignation from the New Hampshire bar is found at: <https://www.nhbar.org/publications/display-news-issue.asp?id=7867>. The Patent and Trademark Office's order accepting his resignation is at: <http://src.bna.com/d2b>.

In another reference to his family, Throne said he wants a 40-month sentence “because it is likely to enable him to attend his son’s graduation from college.” Doc. 20 at 2. He is asking, in other words, to be treated differently than similarly situated defendants who do not have college-aged children. That, of course, would run counter to the requirement that the court at sentencing consider “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” 18 U.S.C. § 3553(a)(6).

During more than fourteen years of crime, this defendant put greed above family, going so far as to involve his innocent wife in his scheme. See, e.g., doc. 14 at 9. He now cannot use his family to avoid an appropriate sentence.

Throne mentioned the letter from the victim company in a section of his motion entitled “CONCURRENCE IN THE SUBSTANCE OF THIS MOTION BY HUNTER DOUGLAS.” Doc. 20 at 4. The company’s co-president, who wrote the letter, did not concur in Throne’s request for a variant sentence; he instead suggested a sentence “within the range of the negotiated plea deal.” Doc. 22-2 at 3.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of July 2016, I electronically filed the foregoing **GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION FOR DOWNWARD VARIANCE FROM THE ADVISORY GUIDELINE RANGE** with the Clerk of the Court using the CM/ECF system, which will send a copy of such filing to the following e-mail address:

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