

sentence. He was sentenced to prison for the first time in 1985, on a conviction for an assault with a deadly weapon with intent to kill. Since that time, he has been arrested on misdemeanor alcohol violations in North Carolina, felony untaxed liquor violations in Tennessee (mentioned above), and four offenses that were dismissed including burglary, larceny, and alcohol-related offenses.

The United States has downloaded videos from the Internet that Sutton made including one on how to manufacture alcohol and one of Sutton bragging about his possession of firearms. Sutton has lived his life without respecting the law by committing violent and controlled substances offenses in addition to his numerous alcohol-related offenses. Sutton seems to be proud of his disregard for the law and no sentence thus far has deterred him from his continuing criminal activities.

3. The need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law and to provide just punishment for the offense.

As previously noted, Sutton has never been deterred from criminal activity by any of the previous sentences. He was on probation at the time he committed this offense and has not only spent his life with no respect for the law, but has encouraged it in others through his moonshining enterprise and his Internet activities concerning both alcohol and firearms.

4. To afford adequate deterrence to criminal conduct.

Sutton has repeatedly been given probation for violent, drug and alcohol offenses. Probation has afforded no deterrence to his continuing criminal conduct. Sutton's previous state arrest occurred when a still he was operating caused a fire.

5. To protect the public from further crimes by the defendant.

Defendant's possession of firearms after numerous convictions, as well as the burning of his previous still, along with his violent and drug-related convictions show that he continues to be a danger to the public. This should be a factor that weighs heavily toward a sentence of incarceration. The United States would note that the defendant did not receive criminal history points for many of his convictions because of the ages of the convictions. His criminal history category of III does not accurately reflect his numerous arrests and convictions.

Based upon all these factors and the factors outlined in the Presentence Report, it is the position of the United States that Sutton should be incarcerated for the period established in the advisory guideline range of 24-30 months. To sentence Sutton as defendant requests – to time served – would require the Court to ignore the factors outlined in §3553 as well as the defendant's repeated refusal to obey the laws of the United States, the state of Tennessee, and the state of North Carolina.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2008 a copy of the foregoing Sentencing Memorandum was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other interested parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

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