

## PART A. THE OFFENSE

### Charge(s) and Conviction(s)

1. On October 6, 2011, a Federal Grand Jury for the District of Maryland, Baltimore Division, returned a 27-count Indictment against James Sweeney and 22 codefendants under Docket No. 1:11CR0547. On January 13, 2012, the defendant appeared with appointed counsel before U.S. Magistrate Judge Paul W. Grimm in Maryland for an initial appearance and arraignment. He pled not guilty to the counts in which he was named, and was remanded to the custody of the U.S. Marshals Service.
2. On March 29, 2012, a Federal Grand Jury for the District of Maryland, Baltimore Division, returned a 27-count Superseding Indictment against the defendant and 22 codefendants, charging them with various Racketeering charges, including Murder, Distribution and Possession With Intent to Distribute Drugs, Conspiracy to commit those offenses, as well as firearms offenses, and aiding and abetting. Sweeney was named only in Counts 1 and 27. Count 1 charges him and all of his codefendants with Conspiracy to Engage in Racketeering Activity, in violation of 18 U.S.C. § 1962(d). Count 27 charges the defendant and all his codefendants with Distribution and Possession With Intent to Distribute Cocaine, Cocaine Base, Oxycodone, Buprenorphine, Heroin, and Marijuana, in violation of 21 U.S.C. § 846. Both offenses occurred from in or about 2000 through March 29, 2012.
3. On September 25, 2012, the defendant consented to transfer his case to the Eastern District of Texas, Beaumont Division for his plea and sentence. His case was assigned Docket No. 1:12CR00105-1.
4. On September 26, 2012, the defendant appeared with counsel before U.S. District Judge Marcia A. Crone. Pursuant to a written, sealed, **Rule 11 (c)(1)(C) binding Plea Agreement**, the defendant pled guilty to Count 1 of the Superseding Indictment in Docket No. 1:11CR0547, District of Maryland. **The Plea Agreement was adopted and accepted**, and the defendant was adjudged guilty. He was remanded to the custody of the U.S. Marshals Service, pending completion of the Presentence Report and sentencing.
5. The parties have agreed to the following factors that affect the sentence in this case:
  - The parties agree that, pursuant to USSG §2E1.1(a)(2), the base offense level is the offense level for the most serious provable underlying racketeering activity, which is narcotics trafficking. Pursuant to USSG §2D1.1, the parties agree the base offense level is 32, as all of the drugs that were foreseeable to the defendant is equivalent to more than 1,000 kilograms of marijuana.
  - A reduction of three levels for acceptance of responsibility under USSG §3E1.1 applies; however, the Government may oppose an adjustment for acceptance of responsibility if the defendant fails to admit each and every item in the factual stipulation; denies any involvement in the offense; gives conflicting statements about his involvement in the offense; is

untruthful with the Court, the U.S. Attorney's Office, or the U.S. Probation Office; obstructs or attempts to obstruct justice prior to sentencing; engages in any criminal conduct between the date of the agreement and the date of sentencing; or attempts to withdraw from his plea of guilty.

- The defendant understands there is no agreement as to his criminal history or criminal history category, and that his criminal history could alter his offense level if he is a career offender or if the instant offense was part of a pattern of criminal conduct from which he derived a substantial portion of his income.
  - With respect to the calculation of the advisory guidelines range and application of the 18 U.S.C. § 3553(a) factors, no other offense characteristics, sentencing guidelines factors, potential departures or adjustments set forth in the U.S. Sentencing Guidelines or 18 U.S.C. § 3553(a) will be raised or are in dispute.
  - The parties stipulate and agree that a sentence of Life imprisonment and no fine is the appropriate disposition of this case. This agreement does not affect the Court's discretion to impose any lawful term of supervised release or fine or to set any lawful conditions of probation or supervised release. In the event the Court rejects the Plea Agreement, either party may elect to declare the agreement null and void. Should the defendant so elect, he will be afforded the opportunity to withdraw from his guilty plea.
6. The defendant has agreed to pay a special assessment of \$100 prior to sentencing. As of this writing, the special assessment had not been paid.

#### The Offense Conduct

7. Information regarding the offense conduct was extracted from the Superseding Indictment and Plea Agreement filed in this case. No other information or investigative material was provided. In or about 2000, a violent criminal organization was formed, and it was called Dead Man Incorporated, also known as DMI. DMI operated inside and outside the prisons of Maryland and elsewhere, and its members committed acts of violence, including conspiracy to commit murder, murder, murder for hire, assault, and armed robbery. Members also engaged in the distribution of controlled substances. The defendant, James Sweeney, was one of the founders of DMI, and he became its "Supreme D." The DMI hierarchy was organized with approximately five "elders" located in various prisons, and it was closely allied to another prison gang known as the Black Guerilla Family, or BGF. DMI members often obtained controlled substances from BGF and performed services in exchange, such as assaulting prisoners with unpaid drug debts to BGF.
8. DMI had "units" at various prison and jail facilities, and each "unit" had several "seats," or leadership positions. The "seats" were known as a) Commander, Capricorn, or C; b)

Lieutenant Commander, LC, or LT; c) Field General or FG; d) Accountant or Finance; and d) Sergeant-at-Arms or SOA.

9. By 2006, DMI began expanding its membership by recruiting members and associates outside of prison, including women. The new members and associates were also organized into units. Elders outside of prison were created to coordinate between the units, the Supreme Commander and other leaders. The number of elders by that time grew well beyond the original number of five. Members of each unit who were not "seats" were called "dawgs," which stands for "DMI against world government." Female members were called "diamonds."
10. Between 2006 and 2008, DMI became independent of BGF, but the two organizations continued to work in alliance in some prisons. DMI has gone through sporadic periods of open conflict with other gangs, including the Bloods and BGF, both in prisons and on the streets.
11. DMI members were required to follow a strict code of conduct, and, members who violated the code or who disobeyed an order from a superior were subject to disciplinary measures called "sanctions," which included physical beatings, stabbings, and murders. Among the purposes of the enterprise were the following: enriching the members and associates and promoting their activities through, among other things, murder, murder-for-hire, armed robbery, assault, extortion, distribution of controlled substances, and money laundering; preserving and protecting the power, territory, and profits of the enterprise both inside and outside prisons, and retaliating against individuals and organizations through the use of intimidation, bribery, assault, threats of violence, and murder; preventing and obstructing the arrest and prosecution of members and associates through obstruction of justice, witness intimidation, assault, threats of violence, and murder; and supporting incarcerated members by supplying them with money, controlled substances, cell phones, and other contraband, and by carrying out various missions for incarcerated members.
12. As previously mentioned, the defendant was a founder of DMI and became its "Supreme D." Prior to his transfer to Federal custody, the defendant was incarcerated in several state prisons in Maryland and oversaw the activities of DMI. He announced to others that DMI was available to do "hits" for hire in order to raise money and also to enable white prisoners to retaliate against black gangs and cliques. He was aware of and participated in the smuggling of drugs into prisons by members of DMI and on behalf of DMI. The smuggled drugs included heroin, cocaine, crack cocaine, marijuana, and prescription drugs. Both in Maryland and while in Federal custody in Texas, the defendant ordered numerous "hits" in furtherance of DMI, including conspiracies to commit murder and assaults. He therefore agreed with other members of DMI to engage in the affairs of DMI through a pattern of racketeering activity that including multiple acts of narcotics trafficking and conspiracy to commit murder. He has agreed that he is responsible for the equivalent of more than 1,000 kilograms of marijuana.

Victim Impact

13. There are no identifiable victims.

Adjustment for Obstruction of Justice

14. The probation officer has no information indicating the defendant impeded or obstructed justice.

Adjustment for Acceptance of Responsibility

15. The defendant was interviewed by the probation officer and provided a statement wherein he admitted involvement in the offense. The defendant stated he was the nationwide leader of DMI, and he started it as a support system for inmates. He initially called it POA, which stands for "Power over all." His intent was to teach others how to be "smart" criminals. He wrote all of the literature, and participated in murders, assaults, and smuggling drugs.

Offense Level Computation

16. The 2012 Guidelines Manual, incorporating all guideline amendments, was used to determine the defendant's offense level. USSG §1B1.11.

Count 1: Conspiracy to Engage in Racketeering Activity

17. **Base Offense Level:** The guideline for 18 U.S.C. § 1962(d) offenses is found in USSG §2E1.1 of the guidelines. That section provides that the base offense level is the offense level applicable to the underlying racketeering activity. In this case, the parties have stipulated that the most serious provable underlying offense is narcotics trafficking. The defendant has agreed that he is responsible for a total quantity of drugs that has a marijuana equivalent of more than 1,000 kilograms of marijuana, pursuant to USSG §2D1.1 comment. (n.10(D)). An offense involving more than 1,000 kilograms of marijuana has a base offense level of 32. USSG §2D1.1(c)(4). 32
18. **Specific Offense Characteristics:** Pursuant to USSG §2D1.1(b)(4), if the object of the offense was the distribution of a controlled substance in a prison, correctional facility, or detention facility, increase by two levels. Because the object was the distribution of illegal drugs into prisons, two levels are added. 2
19. **Victim Related Adjustment:** None. 0
20. **Adjustment for Role in the Offense:** Pursuant to USSG §3B1.1(a), if the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive, increase by four levels. In this case, the defendant was a founder of DMI and was known as the "Supreme D." He recruited numerous inmates and people outside of prison into his criminal

- organization. There were many leaders in many different "units," but he was the ultimate organizer and leader. As such, four levels are added. 4
21. Adjustment for Obstruction of Justice: None. 0
22. Adjusted Offense Level (Subtotal): 38
23. Chapter Four Enhancement: None. 0
24. Acceptance of Responsibility: The defendant has demonstrated acceptance of responsibility for the offense. Accordingly, the offense level is decreased by two levels. USSG §3E1.1(a). -2
25. Acceptance of Responsibility: The defendant has assisted authorities in the investigation or prosecution of the defendant's own misconduct by timely notifying authorities of the intention to enter a plea of guilty. Accordingly, the offense level is decreased by one additional level. USSG §3E1.1(b). -1
26. Total Offense Level: 35

**PART B. THE DEFENDANT'S CRIMINAL HISTORY**

Juvenile Adjudication(s)

27. None.

Adult Criminal Conviction(s)

28. The defendant's criminal convictions were verified by court records provided by the U.S. Probation Office, District of Maryland, Baltimore Division. Pursuant to Maryland Rule 719 or Rule 4-213, all defendants are entitled to notice of the right to be represented by counsel and to have counsel appointed if indigent for all felony charges since September 1, 1967, and for all lesser offenses since July 1, 1977.

	<u>Date of Arrest</u>	<u>Conviction/Court</u>	<u>Date Sentence Imposed/Disposition</u>	<u>Guideline</u>	<u>Pts</u>
29.	09/14/1994 (Age 17)	Count 1: Felony Theft/Circuit Court, Baltimore City, Maryland; Case No.: 294264002	01/04/1995: 4 years imprisonment, suspended to 3 years probation, \$127.02 restitution.  11/14/1996: Revoked; 4 years imprisonment.	4A1.1(a)	3

The defendant was represented by counsel and pled guilty. The defendant was charged in a Criminal Information with seven counts, as follows: Counts 1 and 2, Felony Theft;

Count 3, Unauthorized Use of Livestock, Boat or Vehicle; Count 4, Unlawful Tampering With a Vehicle; Counts 5 and 6, Malicious Destruction of Property; Count 7, Rogue and Vagabond. The defendant pled guilty to Count 1, and the other counts were dismissed. According to the Criminal Information with regards to Count 1, on September 2, 1994, the defendant stole a 1991 Pontiac Grand Am.

The defendant was also charged in a second Criminal Information in Case No. 294264001 with similar offenses as reflected in 294264002. That case involved the theft of a 1991 Honda on August 12, 1994. Other information is unknown, and it is presumed the case was dismissed, though no records were available to confirm it was dismissed.

30.	01/23/1995 (Age 17)	Count 1: Felony Theft/Circuit Court, Baltimore City, Maryland; Case Nos.: 295023019 and 295023020	07/18/1995: 7 years imprisonment, suspended to 5 years probation on both cases, \$750 restitution.	4A1.1(a)	3
			12/10/1996: Revoked; 7 years imprisonment, consecutive to any and all other sentences.		

The defendant was represented by counsel and pled guilty. The defendant was charged in a Criminal Information in two separate similar cases. In Case No. 295023019, he was charged with three counts, as follows: Count 1, Attempted Theft; Count 2, Felony Theft; and Count 3, Unauthorized Use of Livestock, Boat of Vehicle. That case involved the theft of a 1985 Pontiac and occurred on June 18, 1994. In Case No. 295023020, he was charged with the same three offenses, that case involved the theft of a 1993 Toyota on May 22, 1994. Both cases were consolidated into one judgment at sentencing, and the defendant pled guilty to Count 1 in both cases. The other counts were dismissed.

31.	09/08/1995 (Age 18)	Count 1: 2nd Degree Murder; Count 2: Use of a Handgun in the Commission of a Felony or Crime of Violence/Circuit Court, Baltimore City, Maryland; Case No.: 195286017	10/09/1996: Count 1: 30 years imprisonment, 15 years suspended. Count 2: 20 years imprisonment, 5 years suspended, consecutive to Count 1.	4A1.1(a)	3
			12/02/2011: Violation warrant issued, remains outstanding.		
			03/08/2032: Projected release date, with a full term expiration date of		

11/07/2032.

The defendant was represented by counsel and pled guilty. According to a police report, on August 28, 1995, at approximately 3:43 a.m., officers were dispatched to an area in Baltimore in reference to a shooting. The victim, Ellie Selby, was found deceased from a gunshot wound to the chest. Several witnesses who lived in the area of the shooting reported seeing two male subjects get out of a station wagon and accost the victim. The victim was heard stating, "Man, I ain't got nothin'." At that point, the victim was shot by one of the male subjects. On September 8, 1995, the defendant was interviewed and provided a statement admitting to being present during the murder. He stated he was armed but denied knowledge of who actually shot the victim. He was with more than one codefendant at the time. After learning the police had obtained the tag number of the "get away" vehicle and had questioned the owner, the defendant and his codefendants dumped the "get away" vehicle in water off a pier in Baltimore.

While incarcerated in Maryland, the defendant became involved in the instant offense and founded DMI. He committed violent offenses, and, in 2007, he was transferred into the custody of the Bureau of Prisons. Since his incarceration in the Bureau of Prisons, he has been sanctioned for the following offenses: mail abuse; destruction of property; interfering with security devices; possession of an unauthorized item; phone abuse; possession of a dangerous weapon; and assault with serious injury. He also has a pending murder charge, as reflected in paragraph 38.

32.	02/18/1998 (Age 21)	Assault on a DOC Employee/Circuit Court, Somerset County, Maryland; Case No.: 98-CR- 05617	11/04/1998: 60 days confinement, consecutive to any other term.	4A1.1(b)	2
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The defendant was represented by counsel and pled guilty. Details of the offense are unknown.

33.	12/04/2001 (Age 24)	Count 4; 2nd Degree Assault on a DOC Employee, Etc./Circuit Court, Anne Arundel County, Maryland; Case No.: 02K02000542	09/10/2002: 2 years imprisonment, consecutive to any other sentence.  03/06/2012: Nolle prosequi in post conviction relief hearing, and case vacated.	4A1.2 comment. (n.6)	0
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The defendant was represented by counsel and pled guilty. The defendant was charged with seven counts, as follows: Count 1, Attempted 1<sup>st</sup> Degree Murder; Count 2, Attempted 2<sup>nd</sup> Degree Murder; Count 3, 1<sup>st</sup> Degree Assault on a DOC Employee, Etc.;

Count 4, 2<sup>nd</sup> Degree Assault on a DOC Employee, Etc.; Count 5, Possession of a Dangerous Weapon; Count 6, Conceal a Dangerous Weapon; and Count 7, Reckless Endangerment. Records reflect that on June 5, 2001, the defendant repeatedly stabbed another inmate, Gary Carpenter, with a knife while both inmates were in a dayroom. He was ordered to drop the weapon and lay on the floor, but he refused to comply. Officers had to spray chemical agents into the dayroom, at which time the defendant complied. Gary Carpenter had at least 10 to 15 stab wounds on his body and was transported via helicopter to a hospital outside the prison for treatment. The defendant pled guilty to Count 4; however, on March 6, 2012, this case was vacated in a post conviction relief hearing. Therefore, no criminal history points were assigned.

Criminal History Computation

- 34. The criminal convictions above result in a subtotal criminal history score of 11.
- 35. The defendant committed the instant offense while under a criminal justice sentence in Case No.: 195286017, Circuit Court, Baltimore City, Maryland. Therefore, two points are added. USSG §4A1.1(d).
- 36. The total criminal history score is 13. According to the sentencing table in USSG Chapter 5, Part A, a criminal history score of 13 establishes a criminal history category of VI.

Other Criminal Conduct

- 37. None.

Pending Charges

<u>Date of Arrest</u>	<u>Charge</u>	<u>Agency</u>	<u>Disposition</u>
38. 05/17/2011 (Age 34)	Count 1: Murder; Count 2: Conspiracy to Commit Murder; Count 3: Second Degree Murder; Case No.: 0540 1:11CR00062-2	U.S. Marshals Service; Beaumont, TX	Pending.

The defendant is represented by counsel. According to investigative material on February 12, 2008, Harry Lee Napper and the defendant, both inmates in the Special Housing Unit (SHU) at the Bureau of Prisons in Beaumont, Texas, were housed together in a two-man cell. Sometime prior to that date, prison officials began placing three people in some of the cells. Napper and the defendant were not happy about having a third person placed in the cell with them and voiced their objections to officers. Together, they decided that if a third inmate was placed in the cell with them, they would beat the inmate until officers removed the inmate. On February 12, inmate Ronald Joseph was placed in the cell with Napper and the defendant. At the time Joseph was



placed in the cell, neither Napper nor the defendant made an objection, nor did Joseph indicate he was fearful of being placed in a cell with them.

Soon after lunch was served, Napper and the defendant looked at one another and nodded, acknowledging their agreement. The defendant struck Joseph twice in the head with his fists, and Napper placed Joseph in a headlock, thereby choking Joseph. As Napper choked Joseph, the defendant held Joseph's feet so Joseph could not fight back. After a short period of time, Joseph's body went limp, and he was placed face down on the floor. The defendant then attempted to break Joseph's neck by forcibly rotating his head, but was unsuccessful. The defendant then used a t-shirt to strangle Joseph. Later, Joseph began to make "gurbling" noises, and because Napper was not sure if Joseph was alive or dead, he told the defendant to make Joseph stop. The defendant then tied a strip of cloth made from a bed sheet and tied it tight around Joseph's neck.

Following the murder of Joseph, Napper and the defendant moved Joseph a few times around the cell so officers would not suspect anything had occurred. The cell was cleaned and the strip of cloth used to tie around Joseph's neck was flushed down the toilet. When dinner trays were handed out, a tray was accepted for Joseph. The following morning, on February 13, 2008, as breakfast was being served, Napper informed staff that Joseph had not moved since the previous day. Joseph was observed lying face down on a mattress on the floor, and he was covered to his neck with bed linens. He was motionless and did not respond to officers. He was placed on a gurney and transported to a local hospital where he was pronounced dead.

In exchange for the defendant's guilty plea in the instant offense, the Government has agreed to dismiss this case; however, at the time of this writing, this case was still pending disposition.

Other Arrests

	<u>Date of Arrest</u>	<u>Charge</u>	<u>Agency</u>	<u>Disposition</u>
39.	10/30/1994 (Age 17)	Loiter in Front of Public Place; Case No.: 3B00004385	Unknown	12/13/1994: Nolle prosequi.
	The circumstances for this case are not available.			
40.	01/04/1995 (Age 17)	Count 1: Theft Less than \$300; Count 2: Unauthorized Use of Livestock, Boat, or Motor Vehicle; Case No.: 5B00031071	Unknown	07/27/1995: Dismissed.

The circumstances for this case are not available.

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|-----|------------------------|---|---------|--------------------------------|
| 41. | 01/12/1995<br>(Age 17) | Count 1: Theft Over<br>\$300; Count 2:<br>Unauthorized Use of<br>Livestock, Boat, Motor<br>Vehicle; Case No.:<br>6B00044568 | Unknown | 12/16/1995: Nolle<br>prosequi. |
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The circumstances for this case are not available.

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|-----|------------------------|---|---------|--------------------------------|
| 42. | 08/29/1995<br>(Age 18) | Count 1: Assault With<br>Intent to Commit<br>Murder; Count 2:<br>Maim, Assault, and<br>Beat; Count 3: Deadly<br>Weapon-Intent to<br>Injure; Counts 4 and 5:<br>Assault; Count 6:<br>Battery; Case No.:<br>195291016 | Unknown | 10/09/1996: Nolle<br>prosequi. |
|-----|------------------------|---|---------|--------------------------------|

According to a police report, on August 29, 1995, officers were dispatched to a residence in Baltimore in reference to a burglary in progress. Upon arrival, several male subjects were observed exiting the basement of the residence. A chase ensued, and officers stopped two of three subjects in an alley, one of which was the defendant. The victim was located inside the residence, and the victim was bleeding from the head. The victim's hands and neck were bound together with electric tape. The victim stated that he was asleep when he heard a lot of footsteps. When he looked up, seven or eight subjects started beating on him and throwing him across the bedroom. The victim identified the defendant as one of the assailants, and stated the defendant hit him in the head with a pair of wire cutters while the other subjects continued to beat on him. The victim was asked where his drugs and money were, and told him if he called the police they would kill him. When the victim did not tell them where the drugs and money were located, one of the subjects used the wire cutters to squeeze his finger.

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| 43. | 08/29/1995<br>(Age 18) | Count 1: 1st Degree<br>Burglary; Count 2: 3rd<br>Degree Burglary;<br>Count 3: 4th Degree<br>Burglary; Case No.:<br>195291019 | Unknown | 10/09/1996: Nolle<br>prosequi. |
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The circumstances for this case are not available.

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|-----|------------------------|--|----------|--------------------------------|
| 44. | 09/08/1995<br>(Age 18) | Count 1: Robbery With<br>a Deadly Weapon;<br>Count 2: Assault With | Unknown, | 10/09/1996: Nolle<br>Prosequi. |
|-----|------------------------|--|----------|--------------------------------|

Intent to Rob; Count 3:  
Assault; Count 4:  
Handgun on Person;  
Count 5: Use of a  
Handgun in the  
Commission of a  
Felony or Crime of  
Violence; Case No.:  
195286020

The circumstances for this case are not available.

45.	06/25/1998 (Age 21)	2nd Degree Assault; Case No.: 98-CR- 05423	Unknown	06/25/1998: Nolle prosequi.
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The circumstances for this case are not available.

## PART C. OFFENDER CHARACTERISTICS

### Personal and Family Data

46. James Michael Sweeney was born February 9, 1977, in Baltimore, Maryland, to the marriage of Michael Sweeney, Sr., and Deborah Newman, nee Adkins. The defendant reported that his parents divorced when he was approximately eight years old. Following the divorce, he primarily lived with his mother, but stayed with his father frequently. Both of his parents were addicted to heroin and/or cocaine, and the defendant was exposed to drugs as a child. He stated he had a good childhood despite the fact that his parents abused drugs, and he was raised in a bad neighborhood. Currently, his father resides in Aberdeen, Maryland, and is disabled due to a bad back and blindness in one eye. His mother resides in Glen Burnie, Maryland, and is unemployed.
47. The defendant has a full brother, Michael Sweeney, Jr., age 37. Michael lives in Maryland, but the defendant was unaware of the city in which his brother lives. His brother is a construction worker. The defendant also has a paternal half sister, Tammy Sweeney, age 31. Tammy resides in Baltimore, Maryland, but the defendant was unaware of her occupation. According to the defendant, both his parents and his siblings have criminal histories and abuse drugs.
48. The defendant has never married or fathered any children. His mother was contacted, and she verified his personal and family data, though she reported that the defendant was two years old when she and his father separated and divorced.

### Physical Condition

49. The defendant stands 5 feet 9 inches tall, weighs 185 pounds, and has hazel eyes and brown hair, though his head is currently shaved. He has seven tattoos on his body, as follows:

Right arm: 3 triangles with "White Pride;" and "DMI"

Left arm: Grim Reaper holding a tiger; "Dead Man, Inc.;" 3 triangles, one containing the letter "S," one containing the letter "C," and one containing the letters "KOD"

Right thigh: Iron cross

Left thigh: Bio hazard symbol

50. The defendant reportedly was diagnosed with hepatitis C approximately two months ago, but that information has not been verified. He stated he has no other history of medical problems.

#### Mental and Emotional Health

51. The defendant reportedly has never been diagnosed or treated for any mental illnesses. During the presentence interview, the defendant appeared to behave appropriately with no indication of any mental or emotional dysfunction; however, he has a history of violence and a disregard for human life.

#### Substance Abuse

52. The defendant reported that he started drinking alcohol and abusing drugs at age 12 or 13. He has been in continuous custody since the age of 18, and he denied using any drugs since that time. He stated that prior to his incarceration, he drank alcohol and used marijuana, PCP, heroin, and Xanax on a daily basis. He also used cocaine, LSD, Percocet, and Valium occasionally and when available. He has never participated in treatment and did not indicate if he is interested in any treatment.

#### Educational, Vocational and Special Skills

53. The defendant reported that he completed the eighth grade at Francis Scott Key Middle School in South Baltimore, Maryland. He quit school because he "got caught up on the streets selling drugs." He has never attempted to obtain a General Educational Development (GED) certificate.

#### Employment Record

54. The defendant has been in custody since the age of 18. He stated he never worked under Social Security covered employment, but did work a few jobs such as laying brick and roofing wherein he was paid in cash. He also sold drugs for income.

#### Financial Condition: Ability to Pay

55. The defendant has been in custody since the age of 18 and has no assets, debt, or income. He is facing Life imprisonment, thus, he does not have the ability to pay a fine.

## PART D. SENTENCING OPTIONS

### Custody

56. **Statutory Provisions:** The maximum term of imprisonment on Count 1 is Life. 18 U.S.C. § 1963(a).
57. **Guideline Provisions:** Based upon a total offense level of 35 and a criminal history category of VI, the guideline imprisonment range is 292 months to 365 months.
58. Pursuant to U.S.S.G. § 5G1.3(a), if the instant offense was committed while the defendant was serving a term of imprisonment or after sentencing for, but before commencing service of, such term of imprisonment, the sentence for the instant offense shall be imposed to run consecutively to the undischarged term of imprisonment.

### Impact of Plea Agreement

59. Had the defendant pled guilty to both counts of the Superseding Indictment in which he was named, his guideline imprisonment range would remain the same; however, he would have been subject to an additional statutory fine of not more than \$10,000,000 and an additional \$100 special assessment.
60. Had the defendant pled guilty to the three-count Indictment filed in the Eastern District of Texas, Beaumont Division, which is currently pending, his guideline imprisonment range would be 360 months to Life, and his guideline fine range would be \$25,000 to \$250,000.

### Supervised Release

61. **Statutory Provisions:** The Court may impose a term of supervised release of not more than 5 years on Count 1. 18 U.S.C. § 3583(b)(1).
62. **Guideline Provisions:** Since the offense for Count 1 is a Class A felony, the guideline range for a term of supervised release is 2 years to 5 years. USSG §5D1.2(a)(1).

### Probation

63. **Statutory Provisions:** The defendant is ineligible for probation on Count 1 because the instant offense is a Class A felony. 18 U.S.C. § 3561(a)(1).
64. **Guideline Provisions:** The defendant is ineligible for probation on Count 1 because the instant offense is a Class A felony. USSG §5B1.1(b)(1).

### Fines

65. **Statutory Provisions:** The maximum fine for Count 1 is \$250,000.00. 18 U.S.C. § 3571(b)(3).

66. A special assessment of \$100.00 is mandatory for Count 1. 18 U.S.C. § 3013.
67. **Guideline Provisions:** The fine range for this offense is from \$20,000 to \$200,000. USSG §5E1.2(c)(3).
68. -Costs of prosecution shall be imposed on the defendant as required by statute. USSG §5E1.5. In determining whether to impose a fine and the amount of such fine, the Court shall consider, among other factors, the expected costs to the government of any term of probation, or term of imprisonment and term of supervised release imposed. USSG §5E1.2(d)(7) and 18 U.S.C. §3572(a)(6). These costs may include drug and alcohol treatment, electronic monitoring, and/or contract confinement costs. The most recent advisory from the Administrative Office of the United States Courts, dated June 3, 2011, provides the following monthly cost data:

	<u>Bureau of Prisons Facilities</u>	<u>Community Correction Centers</u>	<u>Supervision by Probation Officer</u>
Daily	\$79.16	\$71.68	\$9.41
Monthly	\$2,407.78	\$2,180.27	\$286.11
Annually	\$28,893.40	\$26,163.20	\$3,433.37

**Restitution**

69. **Statutory Provisions:** Restitution is not applicable in this case. 18 U.S.C. § 3663.
70. **Guideline Provisions:** Restitution is not applicable in this case.

**Denial of Federal Benefits**

71. **Statutory Provisions:** None.
72. **Guideline Provisions:** None.

**PART E. FACTORS THAT MAY WARRANT DEPARTURE**

73. Pursuant to USSG §5K2.21, the Court may depart upward to reflect the actual seriousness of the offense based on conduct (1) underlying a charge dismissed as part of the Plea Agreement in the case, or underlying a potential charge not pursued in the case as part of a Plea Agreement or for any other reason; and (2) that did not enter into the determination of the applicable guideline range. The defendant's guideline calculations were determined based upon the underlying controlled substance offense, but the defendant has also been involved in assaults and murders during the conspiracy. Further, he has a pending murder charge in the Eastern District of Texas which was not considered. This conduct may be considered by the Court in determining whether a departure is warranted. It is noted that the Court has accepted the Rule 11(c)(1)(C) Plea Agreement which calls for a sentence of Life imprisonment and is higher than the guideline imprisonment range.

Respectfully Submitted,

Jon W. Johnson  
Chief U.S. Probation Officer

By: Deanna Splawn  
U.S. Probation Officer

Approved:

V. Eric Heinlein  
Supervising U.S. Probation Officer

SENTENCING RECOMMENDATION

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
UNITED STATES V. JAMES SWEENEY, DKT. 0540 1:12CR00105-1

TOTAL OFFENSE LEVEL 35  
CRIMINAL HISTORY CATEGORY VI

	<u>Statutory Provisions</u>	<u>Guideline Provisions</u>	<u>Recommended Sentence</u>
CUSTODY:	0 years-Life	292 months-365 months	Life *
SUPERVISED RELEASE:	0 years-5 years	2 years-5 years	5 years
PROBATION:	Ineligible	Ineligible	N/A
FINE:	\$250,000	\$20,000-\$200,000	\$0
RESTITUTION:	Not Applicable	Not Applicable	N/A
SPECIAL ASSESSMENT:	\$100	\$100	\$100

*\*Pursuant to a binding plea agreement.*

Date: November 29, 2012