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7 IN THE UNITED STATES DISTRICT COURT

8 FOR THE TERRITORY OF GUAM

9 **UNITED STATES OF AMERICA,**

CASE NO. 1:15-cr-00007

10 Plaintiff,

11 vs.

12 **EUGENE J. SUNEGA,**

**UNITED STATES' OBJECTIONS TO THE
FINDINGS OF THE PRESENTENCE
INVESTIGATION REPORT**

13 Defendant.
14

15 Pursuant to Rule 32(f) of the Federal Rules of Criminal Procedure, the United States of
16 America hereby objects as follows to the findings of the Presentence Investigation Report
17 (“PSR”) filed on June 9, 2015 (Doc. 17):

18 1. ***Obstruction of Justice.*** The United States objects to the finding that there is “no
19 information to suggest that the defendant obstructed or impeded justice in this case,” as stated in
20 paragraph 32 and reflected in paragraphs 40, 41 and 44 of the PSR. According to the PSR, the
21 defendant stated to the probation officer “that he has never used any illegal drugs....” (*Id.* at
22 ¶66.)

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1 The two-level adjustment in section 3C1.1 of the Sentencing Guidelines applies where
2 “the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the
3 administration of justice with respect to the investigation, prosecution, or sentencing of the
4 instant offense of conviction, and [] the obstructive conduct related to [] the defendant’s offense
5 of conviction and any relevant conduct” U.S.S.G. §3C1.1. The application notes specify
6 that a defendant obstructs justice, warranting a two-level increase in the offense level, by
7 “providing materially false information to a probation officer in respect to a presentence or other
8 investigation for the court.” U.S.S.G. §3C1.1, Application Note # 4(H); *United States v. Donine*,
9 985 F.2d 463, 465 (9th Cir. 1993).

10 The defendant’s denial of prior illegal drug use relates directly to his conviction for
11 providing contraband methamphetamine in prison as well as to the act of providing false
12 statements to law enforcement. The defendant’s denial was material because if believed, it
13 “would tend to influence or affect” his sentence. See U.S.S.G. §3C1.1, Application Note # 6
14 (defining the term “material”). The defendant’s denial was also false. In his signed plea
15 agreement, the defendant admitted that “when questioned by federal agents charged with
16 investigating the incident, [he] provided false and misleading information by claiming he had
17 never smoked methamphetamine.” (Doc. 13 at ¶6(b).) This admission alone is sufficient to
18 support a sentencing adjustment for obstruction of justice. *United States v. Hopper*, 27 F.3d 378,
19 382 (9th Cir. 1994). Here, the adjustment is all the more applicable given the defendant’s record
20 for lack of candor.¹ See *United States v. Magana-Guerrero*, 80 F.3d 398, 400 (9th Cir. 1996)
21 (finding district court appropriately inferred from defendant’s prior use of aliases that defendant
22 consciously misrepresented facts to probation officer).

23 ¹ In addition to initially denying to law enforcement that he had ever smoked methamphetamine, the defendant
24 initially denied any knowledge that the package he attempted to smuggle into Mangilao Prison contained
methamphetamine and other illegal contraband. (Doc. 17 at ¶¶18 & 25.)

1 The defendant’s false denial of prior illegal drug use to the probation officer warrants a
2 two-level increase in the offense level.

3 2. ***Acceptance of Responsibility.*** The United States objects to the finding that the
4 defendant “qualifies for a two level decrease for acceptance of responsibility” pursuant to section
5 3E1.1(a) of the Sentencing Guidelines, as stated in paragraph 33 and reflected in paragraphs 43
6 and 44 of the PSR. The United States has agreed, as part of the plea agreement in this case, to
7 recommend that the Court apply the maximum available reduction for acceptance of
8 responsibility. (Doc. 13 at ¶8.) However, such a recommendation is contingent on the defendant
9 accepting responsibility according to the considerations set forth in section 3E1.1 of the
10 Sentencing Guidelines. (*Id.*) The United States is also free to withdraw the recommendation if
11 the defendant has engaged in any conduct between the date of the plea agreement and the
12 sentencing hearing which is inconsistent with acceptance of responsibility. (*Id.*) As previously
13 stated, the defendant falsely denied to the probation officer “that he has [ever] used any illegal
14 drugs....” (Doc. 17 at ¶66.) The United States hereby withdraws its recommendation for a
15 reduction for acceptance of responsibility.

16 The Ninth Circuit has consistently recognized that “a defendant who falsely denies, or
17 frivolously contests, relevant conduct that the court determines to be true has acted in a manner
18 inconsistent with acceptance of responsibility.” *See, e.g., United States v. Rutledge*, 28 F.3d 998,
19 1002 (9th Cir. 1994) (quoting application notes to U.S.S.G. §3E1.1); *United States v. Khang*, 36
20 F.3d 77, 79 (9th Cir. 1994) (same). The policy goals of the acceptance of responsibility
21 provision are not fulfilled by awarding a defendant the reduction even though he falsely denies
22 relevant conduct. *Rutledge*, 28 F.3d at 1002. Conduct relating to the offense and affecting the
23 offense level is considered relevant conduct. *Khang*, 36 F.3d at 79 (citing U.S.S.G. §1B1.3).

1 Absent “extraordinary” exceptions not applicable here,² “[c]onduct resulting in an enhancement
2 under §3C1.1 (Obstructing or Impeding the Administration of Justice) ordinarily indicates that
3 the defendant has not accepted responsibility for his criminal conduct.” U.S.S.G. §3E1.1,
4 Application Note # 4; *see also Magana-Guerrero*, 80 F.3d 401 (finding defendants’ obstruction
5 of justice went “a long way” toward deciding they had failed to accept responsibility).

6 The defendant’s false denial of any prior illegal drug use to the probation officer relates
7 directly to the defendant’s offense of providing contraband methamphetamine in prison,
8 constitutes a recantation of previously admitted relevant conduct, and affects his offense level.
9 As evidenced by the plea agreement in this case, the defendant has previously used illegal drugs.
10 (*See* Doc. 13 at ¶6(b).) The Court may rely on this admission alone in denying a sentencing
11 adjustment for acceptance of responsibility. *See Hopper*, 27 F.3d at 382. This case is not
12 “extraordinary” within the meaning of Application Note #4 because the defendant’s obstructive
13 conduct pending sentencing is inconsistent with acceptance of responsibility. A defendant
14 should never receive an offense level reduction for acceptance of responsibility when there is
15 obstructive conduct contradicting that acceptance of responsibility. *Id.* at 383.

16 The defendant is not entitled to any reduction in the offense level for acceptance of
17 responsibility due to his false denial of prior illegal drug use to the probation officer.

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23 ² “Extraordinary” cases in which obstruction is not inconsistent with an acceptance of responsibility only arise when
24 the defendant initially attempts to conceal the crime, but eventually accepts responsibility and abandons all attempts
to obstruct justice. *United States v. Hopper*, 27 F.3d 378, 383 (9th Cir. 1994) (citations omitted). By falsely
denying his prior illegal drug use to the probation officer, the defendant has failed to abandon all attempts to
obstruct justice.

1 For the reasons given above, the United States objects and moves to amend the PSR to
2 reflect a two-level enhancement for obstruction of justice and no adjustment (*i.e.*, no two-level
3 reduction) for acceptance of responsibility.

4 Respectfully submitted on June 22, 2015.

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