

# Gowder/Heaton...from Page 1A

stand before U.S. District Judge Richard W. Story inside the U.S. Courthouse in Gainesville to receive sentences based in part on recommendations provided last week by federal prosecutors and the men's legal defense teams.

This will be the federal court's third attempt at sentencing the pair due to prior delays caused by ongoing concerns over the novel coronavirus, after a jury found Gowder and Heaton guilty on more than 100 counts each involving prescription drug fraud on Oct. 24, 2019.

Following their convictions, federal probation officers conducted extensive presentence investigations for the co-defendants to help the court arrive at "the appropriate sentence from the range of possible sentences set out in the statutes," which is standard practice according to the American Bar Association.

"The presentence investigation may consider the defendant's prior criminal record, family situation, health, work record and any other relevant factor," per americanbar.org.

U.S. attorneys filed their pre-sentencing reports alongside their sentencing recommendations with the court on April 27, and the legal defense teams for Gowder and Heaton provided separate sentencing recommendations as well.

In his recommendation, Gowder's attorney, Samuel Sadow of Atlanta, asked for five years of probation and "a lengthy term" of house detention.

Sadow wrote that Gowder's "actual conduct, possession and personal consumption of narcotic pain medication for chronic physical pain is equivalent to ... unlawful possession of a Schedule II opiate," which is a less serious crime that comes with more lenient sentencing guidelines.

Furthermore, Gowder and his attorney maintained throughout the trial that the more than 15,000 opioid pills he obtained from Heaton were due to an unfortunate addiction

brought on by chronic back pain.

"His career has been ruined by his addictions," Sadow wrote. "His stature in the community where he previously lived and worked is destroyed. (Mike Gowder has moved to Nashville, Tennessee). He is unemployed. He still suffers from severe, constant back pain. And now he is a convicted felon."

Featured in the recommendation is a suggestion that the judge take COVID-19 into account, considering the higher infection rates in many federal prisons and Gowder's risk factor for the disease as a man in his early 60s.

In a nine-page document submitted by Assistant U.S. Attorney Laurel R. Boatright and signed by U.S. Attorney B.J. Pak, the prosecution "strongly disagrees" with the defense attorney's proposal. Federal prosecutors recommended a 10-year sentence.

"The court well knows the impact of this case on the community of Blairsville and north Georgia more broadly," the federal attorneys wrote. "At trial, defendant testified that, despite his own training and experience as a DEA registrant and COO of a hospital with a pharmacy, he was unaware of pharmacy rules and regulations concerning filling multiple controlled substances at different pharmacies.

"Defendant also testified that he did not intend to mislead and deceive pharmacies when he systematically (filled) 3-4 oxycodone prescriptions in the same month, alternating different pharmacies in Georgia, North Carolina and Tennessee for the better part of three and a half years."

Prosecutors went on to call Gowder's conduct "significantly more serious than mere drug possession," writing that the illegal procurement of more than 15,000 pain pills from Dr. Heaton was "inextricably intertwined" with Gowder's position at the hospital and in the community.

"Hospital employees reported to law enforcement that working at the hospital was like 'working for the Mafia' ...

People were afraid to report his conduct because of who he was - because they were afraid of losing their jobs," they wrote.

Ultimately, the U.S. attorneys say Gowder, who as a hospital fiduciary had financial resources at his disposal, "essentially bribed a local doctor ... to supply him with illegal prescriptions."

"Moreover, the government wholeheartedly disputes that defendant personally consumed all of the pain pills he obtained," prosecutors wrote. "Trial evidence ... supported an inference that the pills were being further distributed in some way."

Heaton's Atlanta-based defense team of Don Samuel and Kristen Novay offered a different viewpoint in their sentencing memorandum.

"Dr. Heaton asks that this Court sentence him 60 months," they wrote, thereafter referencing some 70 letters of support from community and family members describing Heaton as "caring, compassionate, someone who would go above and beyond both in his medical practice or to just help a neighbor move."

The memorandum stated that Heaton "deserves the Court's mercy and compassion and to be treated as a person who exercised terrible judgment at a time in his life."

As with Gowder, prosecutors recommended 10 years for Heaton, "given defendant's illegal prescribing to more than one patient, the quantity of pills involved (and) defendant's particular abuse of his position of trust for sexual gain."

Government attorneys wrote that, despite a Georgia Composite Medical Board warning about a sexual relationship with a previous patient, Heaton "engaged in a sexual relationship" with another woman for six years while continuing to prescribe her methadone, all the while failing to conduct testing for drug abuse despite his knowledge that she was a former heroin addict.

The document pointed out that, based on the "quantity

of pills dispensed to Mike Gowder alone," a 10-year sentence would be tantamount to what other "pill mill doctors" have received.

Heaton and Mike Gowder were arrested in 2016 and were charged alongside former co-defendant Dr. David Gowder, who is brother to Mike Gowder and the former Union General Hospital emergency room director.

David Gowder pleaded guilty to one count of prescribing oxycodone to a patient without a legitimate medical reason in a negotiated agreement in March 2019, and he is scheduled to be sentenced June 10.

His defense team - Jeffrey Wolff of Dahlonega and Jeff Brickman of Atlanta - has requested a "downward variance" from the guidelines that the judge will consider when determining the sentence.

In a 29-page memorandum submitted to the court, David's attorneys pointed out his community service and work to help other addicts, stating that "a sentence of imprisonment is unnecessary."

The attorneys wrote that David has consistently accepted responsibility for his actions, is an admitted addict, and has surrendered his medical license to the Georgia Composite Medical Board, which was a condition of his plea agreement.

"David Gowder, unlike his co-defendants, went out of his way to make clear there was no question as to his guilt, that he would fully embrace the array of collateral consequences of his guilty plea," his defense wrote.

In their sentencing memorandum, federal prosecutors recommended 34

months of imprisonment.

They acknowledged that David's crime stemmed from an addiction to pain pills and recognized his acceptance of responsibility for his conduct. Still, prosecutors wrote that these factors did "not absolve him" of the consequences of his crime.

"Defendant engaged in the ongoing and continuous illegal procurement of more than 130,000 opiate pills over ... four years," the memorandum states. "Unlike other drug offenders who come from difficult family situations or poverty, defendant had every advantage - which is exactly what he abused to commit his crimes."

All three men remain free on bond pending their sentencing hearings.

# Georgia Reopens...from Page 1A

"However, moving forward, I am urging Georgians to continue to stay home whenever possible," Kemp said. "I want to thank the people of our great state who heeded public health advice, afforded us time to bolster our healthcare infrastructure, and flattened the curve. We were successful in these efforts, but the fight is far from over."

The governor also extended the public health state of emergency through June 12 "to continue enhanced testing across Georgia, ramp up contact tracing and maintain effective emergency response operations in every region."

Moreover, Kemp signed an executive order requiring "medically fragile and elderly Georgians" to continue sheltering in place through June 12.

"In addition, I will order long-term care facilities ... to utilize enhanced infection control protocols, ensure safer living conditions and protect residents and staff from coronavirus exposure," he said.

"Together, we will defeat this virus and emerge stronger. Thank you, and God Bless," Kemp concluded.

Some local restaurant

dining rooms, barber shops, nail salons and other closed businesses have opened back up in recent days, albeit with limitations.

The Union County Courthouse opened its offices on an appointment-only basis

this week, and Blairsville City Hall will re-examine opening to the public in the first part of June, though city staff remain available via phone and email. For more info, visit <http://www.blairsville-ga.gov>.

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