

No. 18-_____

In the
Supreme Court of the United States,

TIFFANY A. PRINCE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to
The United States Court of Appeals
For the Sixth Circuit

**APPENDIX TO THE
PETITION FOR WRIT OF CERTIORARI**

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**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Deborah S. Hunt
Clerk

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Filed: September 13, 2018

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Re: Case No. 17-6004, *USA v. Tiffany Prince*
Originating Case No. : 2:17-cr-00001-4

Dear Counsel,

The Court issued the enclosed opinion today in this case.

Sincerely yours,

s/Cathryn Lovely
Opinions Deputy

cc: Mr. Robert R. Carr

Enclosure

Mandate to issue

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

File Name: 18a0470n.06

Case No. 17-6004

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,)
)
 Plaintiff-Appellee,)
)
 v.)
)
 TIFFANY A. PRINCE,)
)
 Defendant-Appellant.)

FILED
Sep 13, 2018
DEBORAH S. HUNT, Clerk

BEFORE: WHITE, DONALD, and LARSEN, Circuit Judges.

BERNICE BOUIE DONALD, Circuit Judge. Defendant-Appellant Tiffany A. Prince facilitated the purchase of heroin for “B.R.” from her dealer. B.R. ingested the drugs immediately after purchase and soon experienced an overdose. Paramedics revived him, and he refused further medical assistance. Prince pleaded guilty to aiding and abetting the distribution of heroin and fentanyl. At sentencing, the district court found that B.R.’s overdose was a “significant physical injury” under the Guidelines and departed upwards. Prince now appeals, arguing that B.R. suffered no significant injury. For the reasons that follow, we **AFFIRM**.

I.

On September 6, 2016, the victim in this case, B.R., asked Prince to assist him in obtaining heroin. Prince drove B.R. to a co-defendant’s home, a location where she had obtained narcotics for personal use in the past. Once there, B.R. gave Prince \$40 and she returned with two bindles

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of heroin. Prince warned that the drugs were “powerful.” At the time, neither knew how prescient Prince’s warning was—the heroin was laced with fentanyl. B.R. snorted the drugs. Prince then drove B.R. to a local grocery store.

Once inside the store, B.R. suffered a drug overdose. After falling unconscious, store employees contacted emergency medical services. Seeing emergency responders, Prince left the scene. Upon arrival, medical personnel identified suppressed respiration and diagnosed B.R. accordingly. They provided two doses of Narcan—a medication used to block the effects of opioids in case of overdose. B.R. regained consciousness and his breathing returned to normal.

Id. B.R. refused further medical attention and left the scene without medical assistance.

Prince and the suppliers were indicted for distributing heroin laced with fentanyl. Prince pleaded guilty to aiding and abetting the distribution of heroin and fentanyl, in violation of 21 U.S.C. § 841(a)(1). Prince’s Presentence Investigation Report (“PSR”) indicated a criminal history category of V and a total offense level of 10. Her Guideline’s range was 21 to 27 months. The PSR also indicated that Prince’s conduct caused a “significant physical injury,” thus warranting an upward departure under U.S.S.G. § 5K2.2—which Prince timely objected to.

At sentencing, the district court heard testimony from DEA Agent Anderson Muse regarding B.R.’s overdose. Agent Muse confirmed that Prince warned B.R. that the drugs were “pretty powerful” and, based on his review of B.R.’s medical records and interviews with responding paramedics, confirmed that B.R.’s respiration rate was six, and that a respiration rate under eight requires intubation. Agent Muse further stated that the first responders believed that, absent their intervention and administering Narcan, B.R. would have died. The district court found “that a heroin overdose is a significant physical injury for purposes of the guideline” and that “without the administration of Narcan, B.R. would have run the risk of permanent oxygen

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deprivation and likely would have died.” The court also rejected Prince’s argument that § 5K2.2 required a permanent injury and noted that B.R.’s recovery “goes to the extent of the departure, versus the fact that this guideline applies to begin with.” Further, it explained that B.R.’s injury was a knowing risk because, “[a]s an addict herself, the defendant knew the potential risk of the heroin” and “she knew the heroin was powerful, and she had warned [B.R.] to be careful.”

The court overruled Prince’s objection and departed upwardly by three offense levels, which resulted in an effective Guideline range of 30 to 37 months. The court acknowledged that Prince did not act intentionally, but negligently, warranting a less substantial departure and sentenced Prince to 36 months’ imprisonment. This timely appeal followed.

Prince now appeals the district court’s upward departure under § 5K2.2, arguing that B.R.’s suppressed breathing after overdosing does not constitute “significant physical injury.” Instead, Prince argues, B.R.’s overdose—and the effects therefrom—are neither an injury, nor significant, alternatively likening the symptoms to that of a common cold.

II.

We review sentencing determinations “under a deferential abuse-of-discretion standard.” *Gall v. United States*, 552 U.S. 38, 41 (2007). Our review of a district court’s decision to depart upward from the Guidelines is also for abuse of discretion. *See United States v. O’Georgia*, 569 F.3d 281, 287 (6th Cir. 2009). “In reviewing a district court’s application of the Sentencing Guidelines, this court must ‘accept the findings of fact of the district court unless they are clearly erroneous and . . . give due deference to the district court’s application of the guidelines to the facts.’” *United States v. Simmelman*, 850 F.3d 829, 832 (6th Cir. 2017) (quoting 18 U.S.C. § 3742(e)).

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Prince argues, however, that determination of the non-defined term “significant physical injury” under § 5K2.2 is a legal interpretation that must be reviewed de novo. But the “abuse-of-discretion standard includes review to determine that the discretion was not guided by erroneous legal conclusions.” *Koon v. United States*, 518 U.S. 81, 100 (1996). Thus, we review for an abuse of discretion.

III.

The sole issue for us to determine is whether the district court abused its discretion in finding that B.R.’s heroin and fentanyl overdose constituted a “significant physical injury” under § 5K2.2. As the parties briefed, there is surprisingly little instructive precedent to guide our inquiry. There are no opinions—published or otherwise—that directly address this issue from our Circuit. As for our sister circuits, there is a similar dearth of interpretation. Even were we to adopt the reasoning of one of the few cases that have addressed this subject, that reasoning would not be wholly dispositive of the issue before us.

Still, several factors compel us to find that—under the specific facts of Prince’s case—the district court did not abuse its discretion in departing upward due to a significant physical injury. We begin with the language of § 5K2.2. As stated, “significant physical injury” is not defined. However, recently, we have determined that “[t]he term ‘physical injury’ *typically* means ‘bodily injury,’ which in turn is defined as ‘[p]hysical damage to a person’s body.’” *United States v. Camp*, No. 17-1879, slip op. at 13 (6th Cir. Sept. 5, 2018) (emphasis added) (citing *Black’s Law Dictionary* (10th ed. 2014)); *see United States v. Edling*, 895 F.3d 1153, 1158 (9th Cir. 2018) (stating that Guidelines “[p]rovisions that refer to ‘physical injury’ standing alone use the term, as does Black’s Law Dictionary, as synonymous with bodily injury to a person”). In this instance, the language of § 5K2.2 suggests that the drafters were only concerned about injury to a person,

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and not some other type of physical injury, such as damage to property. *See* § 5K2.2 (requiring the court to consider “the degree to which [the injury] may prove permanent” and whether “the victim suffer[ed] a major, permanent disability”) (stating that “the same considerations apply as in § 5K2.1,” which authorizes an upward departure if death resulted). Therefore, “physical injury” is synonymous with “bodily injury” in this context.

The Guideline’s commentary elsewhere defines “bodily injury” as “any significant injury; e.g., an injury that is painful and obvious, or is of a type for which medical attention ordinarily would be sought.” *See* U.S.S.G. § 1B1.1, cmt. 1(B). The Guideline’s commentary also defines elsewhere “serious bodily injury” as “injury involving extreme physical pain or the protracted impairment of a function of a bodily member, organ, or mental faculty; or requiring medical intervention such as surgery, hospitalization, or physical rehabilitation.” *Id.* at cmt. 1(L). “Significant physical injury,” therefore, seems to fall somewhere in between the two.¹ But to answer the question presented in this case, we need not further define the term. Both “significant injury” and “serious bodily injury” include pain or any injury for which medical attention would be sought or is required. Here, we have testimony that supports the necessity of medical attention. While not as intensive or protracted as surgery or hospitalization, the district court heard testimony that, absent emergency intervention and the administration of an opioid suppressant, B.R.’s respiratory rate would have continued to decline, resulting in his death. This testimony was

¹ Merriam Webster’s online dictionary defines “serious” as “having important or dangerous possible consequences.” Merriam-Webster Online, <https://www.merriam-webster.com/dictionary/serious> (last visited July 2, 2018). Its synonyms include “dangerous, grave, grievous, hazardous, jeopardizing, menacing, parlous, perilous, risky, threatening, unhealthy, unsafe, and venturesome. *Id.* On the other hand, “significant” is defined as “having meaning,” with listed synonyms of “big, consequential, earth-shattering, eventful, historic, important, major, material, meaningful, momentous, monumental, much, substantial, tectonic, and weighty.” Merriam-Webster Online, <https://www.merriam-webster.com/dictionary/significant> (last visited July 2, 2018). These definitions intimate that “serious” is more severe than “significant.” *See also United States v. Ramirez*, 557 F.3d 200, 207 (5th Cir. 2009) (noting that New Jersey’s laws delineate crimes with intent to cause “serious bodily injury” and “significant bodily injury,” with the former classified as the greater offense).

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sufficient to establish that B.R. suffered a “significant physical injury” and, thus, we will not find an abuse of discretion in its application.

The language in § 5K2.2 evidences an intent to allow for a flexible, factual inquiry into the extent of the increase. Indeed, as briefly mentioned above, § 5K2.2 states that “[t]he extent of the increase ordinarily should depend on the extent of the injury, the degree to which it may prove permanent, and the extent to which the injury was intended or knowingly risked.” U.S.S.G. § 5K2.2. Moreover, § 5K2.2 states that when “the victim suffers a major, permanent disability and when such injury was intentionally inflicted, a substantial departure may be appropriate. If the injury is less serious or if the defendant (though criminally negligent) did not knowingly create the risk of harm, a less substantial departure would be indicated.” *Id.* Such language strongly implies that, contrary to Prince’s argument here, the section is intended to apply where there is an injury that is temporary or unintentional but that such a case warrants a lesser departure. Common sense as to the plain language of the statute demands the same conclusion. In common parlance, a drug overdose would not be an insignificant injury.

Next, we look to any available guiding precedent. Though this is a matter of first impression, all cases provided suggest that the district court did not abuse its discretion in applying the sentence. *See United States v. Roberts*, 670 F. App’x 901 (8th Cir. 2016) (affirming sentence that included upward departure under § 5K2.2 due to two heroin overdoses that required the use of Narcan, albeit where the defendant only argued improper sentencing disparity); *United States v. Pacheco*, 489 F.3d 40, 47 (1st Cir. 2007) (finding that district court did not commit clear error “in finding that significant physical injury resulted from ketamine supplied by the defendant” when victim overdosed, albeit where causation was the only issue and the defendant did not dispute that the victim’s injuries were significant).

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Finally, as the Government points out, the district court maintained the authority—under 18 U.S.C. § 3553(a)—to give additional weight to the overdose, even if § 5K2.2 did not apply. *See United States v. Hubbard*, 589 F. App'x 809, 811 (8th Cir. 2015). In *Hubbard*, the defendant sold heroin to multiple victims who later overdosed and were revived by paramedics using Narcan. *Id.* at 810. At sentencing, the defendant objected to a departure under § 5K2.2. *Id.* The district court overruled the objection and departed upward three offense levels because both victims were “significantly physically injured as a result of defendant’s distribution of heroin.” *Id.* (internal citation omitted). However, the district court also stated that “[i]f the Eighth Circuit Court of Appeals does not agree with my interpretation of 5K2.2, then I would vary upward to the same level to reflect that defendant’s heroin distribution resulted in an injury involving a substantial risk of death that did require medical intervention.” *Id.* On appeal, the Eighth Circuit found it unnecessary to determine whether the overdoses constituted “significant physical injury,” because “any potential error . . . was harmless” as the district court “was authorized under § 3553(a) to give weight to the fact that [the defendant’s] distribution of heroin was a but-for cause of episodes in which two persons required emergency medical attention to avoid death or permanent injury.” *Id.* at 810-11. So too here.

In Prince’s case, the district court stated that, even if it “completely agreed” with Prince’s objection to the application of § 5K2.2, the overdose was “an independent reason for the Court to vary” and that Prince’s sentence was “in essence [] going to be a three-level departure/variance.” Thus, just as our sister circuit found in *Hubbard*, the district court provided a clear statement on the record that it would have imposed the same sentence, regardless of whether B.R.’s overdose technically fell under § 5K2.2. Indeed, it described the sentence as a “departure/variance.” *Id.* Though the district court was not as explicit regarding a potential appeal, it is equally as clear that

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Prince's sentence would be the same with or without § 5K2.2. *Hubbard* is not binding but is persuasive precedent providing an alternative reason to affirm. *See also United States v. Schock*, 862 F.3d 563, 569 (6th Cir. 2017) (noting that there are times when reliance on an incorrect range is harmless "because the record reflects that the district court 'thought the sentence it chose was appropriate irrespective of the Guidelines range.'") (quoting *Molina-Martinez v. United States*, 136 S. Ct. 1338, 1346-47 (2016)).

Prince's only arguments contrary to a finding of significant injury are unavailing. In short, Prince cannot separate and compartmentalize the symptoms of the overdose to reduce the severity of the injury. True, the paramedics diagnosed B.R.'s overdose via, at least, reduced respiratory rate and unconsciousness. But those symptoms do not define his condition. Take, for example, a heart attack. While the outward manifestations of a heart attack may include similarly mundane symptoms such as chest discomfort, shortness of breath, and nausea, and though medical intervention may prevent death and further injury, this does not alter the severity of the underlying condition. Lastly, as made clear in the policy statement, a lack of permanent injury does not negate an upward departure under § 5K2.2. *See, e.g., United States v. Evans*, 285 F.3d 664, 676 (8th Cir. 2002) (finding district court did not abuse its discretion in granting motion for upward departure under § 5K2.2 where victims had significant physical injuries but were not admitted to the hospital or disabled permanently).

IV.

We need not and do not find that a drug overdose is *per se* a significant physical injury under § 5K2.2. Nor do we attempt to further define that term. Instead, we hold that the district court's conclusion that B.R. suffered a significant physical injury was soundly based on testimony from Agent Muse's description of the overdose, which included the impressions and findings of

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the responding paramedics. Though we cannot know what would have occurred had B.R. not been found unconscious inside the grocery store, there is no doubt that “something serious [was] afoot.” *Singleton*, 917 F.2d at 413-14 (noting that significant injury “fairly exudes the impression that something serious is afoot” and that it should be “something more than the ordinary scratches, scrapes and bruises”). Regardless, the district court had ample discretion to depart on other grounds and provided explicit statement that it would. Thus, the district court did not abuse its discretion. We **AFFIRM**.

UNITED STATES DISTRICT COURT
Eastern District of Kentucky – Northern Division at Covington

UNITED STATES OF AMERICA

v.

Tiffany A. Prince

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:17-CR-1-DLB-4

USM Number: 21373-032

Edward L. Metzger, III

Defendant's Attorney

Eastern District of Kentucky

FILED

THE DEFENDANT:

pleaded guilty to count(s) 3

pleaded nolo contendere to count(s) _____ which was accepted by the court.

was found guilty on count(s) _____ after a plea of not guilty.

AUG 25 2017

AT COVINGTON
ROBERT R. CARR
CLERK U.S. DISTRICT COURT

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21:841(a)(1) and 18:2	Aiding and Abetting in the Distribution of Heroin and Fentanyl	09/06/2016	3

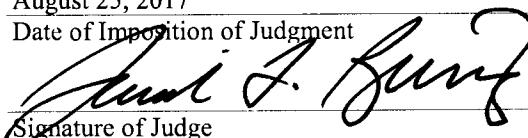
The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____

Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

August 25, 2017
Date of Imposition of Judgment


Signature of Judge

Honorable David L. Bunning, U.S. District Judge
Name and Title of Judge

August 25, 2017
Date

DEFENDANT: Tiffany A. Prince
CASE NUMBER: 2:17-CR-1-DLB-4

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

THIRTY-SIX (36) MONTHS

The court makes the following recommendations to the Bureau of Prisons:
It is recommended that the defendant participate in the 500-Hour RDAP Program and any additional treatment programs for which she would qualify.
It is recommended that the defendant participate in a job skills and/or vocational training program.
It is recommended that the defendant participate in a mental health program.
Recommended that the defendant be designated to FPC Alderson

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:
 at _____ a.m. p.m. on _____.
 as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 before 2 p.m. on _____.
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Tiffany A. Prince
CASE NUMBER: 2:17-CR-1-DLB-4

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

FIVE (5) YEARS

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(Check, if applicable.)*
4. You shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
5. You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(Check, if applicable.)*
6. You must participate in an approved program for domestic violence. *(Check, if applicable.)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Tiffany A. Prince
CASE NUMBER: 2:17-CR-1-DLB-4

Judgment—Page 4 of 7

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: Tiffany A. Prince
CASE NUMBER: 2:17-CR-1-DLB-4

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall abstain from the excessive use of alcohol.
2. The defendant shall participate in a substance abuse treatment program and shall submit to periodic drug and alcohol testing at the direction and discretion of the probation officer during the term of supervision. Said program may include one or more cognitive behavioral approaches to address criminal thinking patterns and antisocial behaviors. The defendant shall pay for the cost of treatment services to the extent she is able as determined by the probation officer.
3. The defendant shall refrain from obstructing or attempting to obstruct or tamper, in any fashion, with the efficiency and accuracy of any prohibited substance testing which is required as a condition of release.
4. The defendant shall attend and successfully complete any mental health diagnostic evaluations and treatment or counseling programs as directed by the probation officer. The defendant shall pay for the cost of treatment services to the extent she is able as determined by the probation officer.
5. The defendant shall provide to the USPO, within 7 (seven) days of release from the custody of the Bureau of Prisons, a written report, in a form the USPO directs, listing each and every prescription medication in Defendant's possession, custody or control. The list shall include, but not be limited to, any prescription medication that contains a controlled substance and encompasses all current, past and outdated or expired prescription medications in a Defendant's possession, custody, or control at the time of the report.
6. The defendant shall notify the USPO immediately (i.e. within no later than 72 hours) if Defendant receives any prescription for a medication containing a controlled substance during the period of supervised release. Defendant shall provide the USPO such documentation and verification as the USPO may reasonably request and in a form the USPO directs.
7. The defendant must comply strictly with the orders of any physician or other prescribing source with respect to use of all prescription medications.
8. The defendant shall report any theft or destruction of her prescription medications to the U.S. Probation Officer within 72 hours of the theft or destruction.
9. The defendant shall submit her person, residence and curtilage, office or vehicle to a search, based upon reasonable suspicion of a violation of supervised release, at the direction and discretion of the United States Probation Office.

DEFENDANT: Tiffany A. Prince
CASE NUMBER: 2:17-CR-1-DLB-4

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$ N/A	\$ Waived	\$ Community Waived

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	---------------------	----------------------------	-------------------------------

TOTALS \$ _____ \$ _____

Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Tiffany A. Prince
CASE NUMBER: 2:17-CR-1-DLB-4

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A Lump sum payment of \$ 100.00 due immediately, balance due
 not later than _____, or
 in accordance with C, D E, or F below; or

B Payment to begin immediately (may be combined with C, D, or F below); or

C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:

Criminal monetary penalties are payable to:
Clerk, U. S. District Court, Eastern District of Kentucky
35 West 5th Street, Room 289, Covington, KY 41011-1401

INCLUDE CASE NUMBER WITH ALL CORRESPONDENCE

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The defendant shall pay the cost of prosecution.
 The defendant shall pay the following court cost(s):
 The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION at COVINGTON

UNITED STATES OF AMERICA, : Docket No. 17-CR-01-4
Plaintiff, : Covington, Kentucky
versus : Friday, August 25, 2017
TIFFANY PRINCE, : 9:00 a.m.
Defendant. :

TRANSCRIPT OF SENTENCING
BEFORE DAVID L. BUNNING
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

13 For the United States: ANTHONY J. BRACKE, ESQ.
14 U.S. Attorney's Office
207 Grandview Drive
Suite 400
Ft. Mitchell, KY 41017
15
16 For the Defendant: EDWARD L. METZGER, III, ESQ.
17 Adams Stepner Woltermann & Dusing
40 West Pike Street
P.O. Box 861
18 Covington, KY 41012-0861
19 Court Reporter: LISA REED WIESMAN, RDR-CRR
20 Official Court Reporter
35 W. Fifth Street
Covington, KY 41011
21 (859) 291-4410

Proceedings recorded by mechanical stenography,
transcript produced by computer.

1 (Proceedings commenced at 8:58 a.m.)

2 THE COURT: Madam Clerk, if you would call the matter
3 set for 9:00.

4 DEPUTY CLERK: Covington Criminal 17-1, United States
5 v. Tiffany A. Prince.

6 THE COURT: We have Defendant 4, Ms. Prince.
7 Counsel?

8 MR. BRACKE: Tony Bracke for the United States, Your
9 Honor.

10 MR. METZGER: Lee Metzger for Tiffany Prince, Your
11 Honor, seated to my left.

12 THE COURT: Ms. Prince, you have previously pled
13 guilty before Magistrate Judge Smith, and Judge Thapar had
14 accepted that plea and then the case was reassigned to me.
15 Judge Thapar has moved on to the Court of Appeals so your case
16 was assigned to me.

17 Were there any issues during the plea colloquy with Judge
18 Smith that we need to take up?

19 MR. BRACKE: No, Judge. I think it was very thorough
20 and took care of everything that needed to be done.

21 MR. METZGER: I agree, Your Honor.

22 THE COURT: All right. Well, we have the presentence
23 report that was prepared by Probation. Before we get into any
24 objections here, ma'am, I just want to confirm that you
25 received a copy of that; is that right?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And did you review that with your lawyer?

3 THE DEFENDANT: Yes, I did.

4 THE COURT: Okay. Now, he submitted on your behalf a
5 letter to Probation, dated July 7, setting forth a couple of
6 objections, and one was to a lack of a role adjustment, and
7 then the second one was to the recommendation regarding a
8 variance or departure based upon the overdose.

9 Mr. Metzger, I have received word from Probation that at
10 least as it relates to the role adjustment, you are
11 withdrawing your objection to that; is that right?

12 MR. METZGER: Yes, Your Honor. That was noted in our
13 sentencing memo. We concede the United States' point on that,
14 and we think it's well taken.

15 THE COURT: Okay. Well, so we're left with the
16 objection to an upward variance or, I'm sorry, an upward
17 departure, if you will, pursuant to 2K2.2.

18 One of the things that I have recently seen and, of
19 course, Mr. Bracke in his sentencing memo references the
20 *Beavers* case. That's a case that went to trial. Defendant
21 was acquitted of the more serious count and was
22 convicted of the lesser included offense.

23 The individual who received the fentanyl-laced heroin was
24 revived, one dose of Narcan, and was observed in the hospital
25 for a couple of hours and then was released.

1 I did vary upward in that case. There have been a couple
2 of other situations.

3 So, Mr. Metzger, the lack of a permanent injury does not
4 necessarily preclude a departure under 5K2.2. Do you have
5 any -- I know some of the cases you cite discuss the
6 distinctions that you're asking the Court to draw, but neither
7 the guideline nor the cases require an actual lasting
8 significant injury. I mean, they do talk about the permanent
9 nature is a factor I have to consider and whether or not, if I
10 decide to vary, the extent of the variance. But do the cases
11 actually require a permanent injury?

12 MR. METZGER: Your Honor, I don't think that the
13 cases are explicit on it one way or the other, which is why we
14 cited the cases that we did, because the cases typically show
15 that it is intentional conduct that leads to --

16 THE COURT: Well, intentional or knowingly risk the
17 injury.

18 I mean, obviously, in an intentional conduct, any
19 departure would be way higher. I mean, if she intentionally
20 is going to provide fentanyl to somebody, knowing it's going
21 to kill somebody or has a high propensity to kill somebody,
22 that's a far different situation than we have here.

23 I think that's even recognized by Mr. Bracke. In fact, I
24 recognize that in Beavers. I recognized that in -- who was
25 the other case just recently?

1 MR. BRACKE: Mason.

2 THE COURT: Mason, the co-defendant here. So I
3 recognize that under 5K2.2 -- make sure I have the right
4 guideline, because I wrote it down -- if significant physical
5 injury resulted, you're pretty much, in reviewing your
6 sentencing memo and the objection, you are asking the Court to
7 find that there was no significant physical injury so we don't
8 even get to the extent of the increase.

9 MR. METZGER: That's correct, Your Honor. I'm not
10 prepared to concede that this is even considered an injury.

11 THE COURT: You're arguing it's not an injury?

12 MR. METZGER: I'm arguing it's not an injury. If it
13 is an injury, it's not significant.

14 THE COURT: I understand that. How is it not an
15 injury? Hypothetically -- and I don't have any expert
16 testimony in this record. I know from cases of similar nature
17 what happens when someone overdoses and they get a blast of
18 Narcan from them physiologically and what that does to
19 someone.

20 Now, this record doesn't contain that. Now, if you want
21 to put on a witness or something to that, we certainly can
22 supplement this record.

23 MR. BRACKE: That's one of the reasons I have Agent
24 Muse here. We'd like to call him. He's investigated multiple
25 overdose cases. I do think maybe to put some things in the

1 *MUSE - Direct*

6

1 record, what the respiration rate was of the person who
2 overdosed, I think Agent Muse is in a position to offer some
3 testimony.

4 THE COURT: I think that might be helpful. There's
5 no plea agreement. I think we need to create a record. The
6 fact of the injury itself, since you're making that argument,
7 I think it would probably be helpful to do that.

8 Do you object to that?

9 MR. METZGER: No, Your Honor. To the extent that he
10 might be offering any sort of expert testimony, I don't know
11 that that was ever disclosed, but I have no objection to him
12 being called as a witness as to what actually happened.

13 THE COURT: He can testify based upon his training
14 and experience and the facts as they've been relayed to him.
15 This is sentencing. It isn't a trial. The rules are
16 relatively relaxed.

17 I'm not going to let him testify to whether or not North
18 Korea is likely to drop a nuclear bomb in the next week.
19 That's beyond the scope of his expertise.

20 Go ahead and call your witness.

21 MR. BRACKE: United States calls Anderson Muse.

22 ANDERSON MUSE, GOVERNMENT'S WITNESS, SWORN

23 DIRECT EXAMINATION

24 BY MR. BRACKE:

25 Q. Would you identify yourself and your occupation.

MUSE - Direct

7

1 A. Anderson Lee Muse. I'm currently a task force agent with
2 the DEA.

3 Q. How long have you been a police officer?

4 A. For over 22 years.

5 Q. During that -- those 22 years, for how long have you
6 focused your attention on drug investigations?

7 A. About 12 of those years.

8 Q. Specifically speaking, have you focused attention on
9 overdose investigations for a period of time?

10 A. Yes. The supervisor there assigned me to do overdose
11 cases.

12 Q. How long, approximately, have you been working on
13 overdose cases?

14 A. Probably a couple years specifically now.

15 Q. Specifically speaking, in relation to this particular
16 case involving Ms. Prince, did you take this case on as the
17 case agent?

18 A. Yes, I did.

19 Q. In the course of the investigation, did you interview
20 both Ms. Prince as well as the individual identified by the
21 initials B.R. in this particular case? Did you interview
22 them?

23 A. I interviewed both of them, yes.

24 THE COURT: B.R. is the individual who overdosed?

25 MR. BRACKE: That's correct.

MUSE - Direct

8

1 Q. In the course of interviewing those individuals -- first
2 of all, just for the record, can you outline the conduct that
3 led to the overdose?

4 A. The information obtained was that Ms. Prince and B.R.,
5 how they ended up meeting up was that Ms. Prince was looking
6 for this individual to help her find something at the store to
7 help beat a drug test, a drug screen.

8 So they end up meeting up together. B.R. inquired if
9 Prince had a connection to get some drugs, which led to
10 Ms. Prince contacting Ms. Bellamy on the phone. They arrived
11 out to her residence in Orangeburg.

12 THE COURT: In Mason County?

13 THE WITNESS: In Mason County.

14 Ms. Prince goes inside the residence, obtains \$40 worth
15 of suspected heroin, comes back out to the vehicle, and then
16 provides that -- those drugs to B.R.

17 B.R. explains that he was warned to be careful because
18 it's pretty powerful.

19 BY MR. BRACKE:

20 Q. Who warned him?

21 A. Ms. Prince.

22 Q. What did B.R. do with --

23 A. B.R., I guess, ingests the drugs there while they're
24 there, and then they proceed to go to Kroger, which is
25 probably, I don't know, approximately four or five miles from

MUSE - Direct

9

1 the point where they were at.

2 Once they arrive at Kroger, Ms. Prince stays in the
3 vehicle. B.R. goes inside of Kroger and collapses there.
4 That's when the personnel inside Kroger contact the
5 emergency --

6 Q. Did you have occasion to do some investigation into the
7 medical response to B.R.'s overdose, his collapse inside of
8 Kroger's?

9 A. Yes, I ended up talking -- or I ended up getting the
10 medical record, the run sheet first from the ambulance, the
11 fire department, and talking to the paramedic there. B.R.'s
12 respiration rate was at 6, which means -- anything 8 and
13 below, they have to start breathing for you.

14 Q. In other words, intubate somebody?

15 A. Yes.

16 THE COURT: That's 6 before they did anything?

17 THE WITNESS: Yeah, that was 6 before they did
18 anything. They had to administer Narcan, obviously, after
19 that.

20 BY MR. BRACKE:

21 Q. In fact, based upon the medical records and your
22 interview, how many times did they have to introduce -- have
23 to administer Narcan?

24 A. I believe it was twice.

25 Q. They had to administer Narcan twice to B.R.?

MUSE - Cross

10

1 A. Yes.

2 Q. Now, ultimately, did he recover?

3 A. Ultimately, yes, he did recover from that point. But
4 during that period of time, Ms. Prince observed the ambulance
5 and police show up so she decided to leave his vehicle and
6 find another way home.

7 Q. Based upon the medical records and your interviews with
8 the medical personnel in this particular matter, what was the
9 impression given by the responders? What would happen if
10 Narcan had not been administered to B.R.?

11 A. B.R. would have passed away because as the respiration
12 would have kept getting lower, he would have eventually
13 stopped breathing.

14 MR. BRACKE: No further questions, Judge.

15 THE COURT: Cross.

16 CROSS-EXAMINATION

17 BY MR. METZGER:

18 Q. Agent Muse, my name is Lee Metzger. I represent
19 Ms. Prince. I don't think we've met before. Good morning.

20 You had mentioned that there was \$40 worth of suspected
21 heroin purchased, correct?

22 A. That's correct.

23 Q. And that would be a relatively small amount of heroin,
24 correct?

25 A. That's correct. It would be probably two bindles' worth.

MUSE - Cross

11

1 THE COURT: Two bindles?

2 THE WITNESS: Yes.

3 BY MR. METZGER:

4 Q. Now, you used the term, when describing B.R., to say that
5 he collapsed in Kroger. Have you seen any of the footage from
6 what happened at Kroger that day?

7 A. No, I did not go into Kroger to look at any of their
8 footage, no.

9 Q. Isn't it accurate that Mr. -- excuse me, that B.R. was
10 actually just sitting on a bench inside Kroger?

11 A. I don't know if he was sitting on a bench or not. I
12 didn't -- like I said, I didn't look at the footage on the
13 Kroger thing.

14 Q. So when you use the term "collapse," you don't know if he
15 fell to the ground or if he was just sitting on the bench
16 nodding in and out?

17 A. That's correct.

18 Q. Okay. Now, you also told us that his breathing rate had
19 slowed down.

20 A. That's correct.

21 Q. And he was given Narcan?

22 A. That's correct.

23 Q. And then he completely recovered, right?

24 A. He ended up -- I believe he refused to go to the hospital
25 after he was revived and they did what they had to do there.

MUSE - Cross

12

1 Q. And that was going to be my next question is he did not
2 go to the hospital?

3 A. Yes, he refused. Refused to go to the hospital.

4 Q. Did not leave in the ambulance, was never seen by a
5 doctor?

6 A. No.

7 Q. Now, you had mentioned that his breathing had slowed.
8 Have you ever had a cold?

9 A. I have, yes.

10 Q. Nose clogged up, difficulty breathing?

11 A. Yes.

12 Q. Okay. Did you consider yourself to be injured at that
13 time?

14 A. No.

15 MR. METZGER: Those are all the questions I have,
16 Your Honor.

17 THE COURT: Any redirect?

18 MR. BRACKE: No, Your Honor.

19 THE COURT: You may step down. Thank you.

20 MR. BRACKE: No further proof, Your Honor.

21 THE COURT: Do you wish to put on proof?

22 MR. METZGER: No, Your Honor.

23 THE COURT: Argument, Mr. Bracke?

24 MR. BRACKE: Judge, I think probably the best way to
25 look at this is to look at how Congress defined a serious

1 bodily injury for purposes of the statute. They talk about,
2 among other things, a permanent injury, something that affects
3 your ability of life or an injury or a condition that is
4 likely to cause death. I think the testimony in this
5 particular case is that the respiration had dropped to a point
6 where it is not consistent with life.

7 THE COURT: He got Narcan and was fine. That's what
8 he's saying. Not permanent.

9 MR. BRACKE: And anybody who gets poisoned gets an
10 antidote and they're fine. That doesn't mean they wouldn't
11 have died without the administering of the medical aid. The
12 question is what would the condition have resulted in without
13 the medical intervention.

14 The testimony is that the condition would have resulted
15 in death. In fact, there's evidence to support that, because
16 breathing had been suppressed beyond a point where it was
17 consistent with life.

18 THE COURT: What is normal? I recall in other trials
19 what normal is. 90?

20 MR. BRACKE: I thought he said 12.

21 THE COURT: I'm thinking of oxygenation, normal is
22 90.

23 MR. BRACKE: Correct. I think Agent Muse testified
24 12. I've heard 12 testified in other cases in this particular
25 matter. Anything below 8, I know I've heard testimony in

1 multiple trials, anything below 8, intubate. That's one of
2 the sayings. Below 8, intubate. That's a paramedic's word.

3 In this particular case, if there had not been
4 administration of the drugs, there would have been death.
5 There would have been brain injury and then death. That's
6 what would have inevitably have resulted. That's what
7 overdoses do. That's what happened to Mr. R [REDACTED]. His
8 condition was not consistent with life when the paramedics
9 responded.

10 Based upon that, even though he recovered, there was a
11 serious injury.

12 Now, is it a different injury or is there different level
13 of enhancement that would have applied had he not recovered?
14 Sure.

15 THE COURT: Absolutely. The guideline is different
16 too. And I think you view that -- I view that differently. I
17 think any objective sentencing judge would have to view that
18 differently.

19 MR. BRACKE: Absolutely. But if we simply look at
20 the point of did they recover as the guideline, then anybody
21 who gets stabbed and has surgery and recovers --

22 THE COURT: Well, but stabbed, you're in the hospital
23 for a long time and you've got a permanent scar, you have to
24 take a lot of drugs. The permanency of a stabbing or a
25 shooting, even though you recover, and I'm sure I'm

1 anticipating what Mr. Metzger is going to say, is different
2 than somebody who gets zapped with Narcan, and magically
3 they're back to normal.

4 MR. BRACKE: Well, but they're not magically back to
5 normal.

6 THE COURT: I say magically, but I mean medically
7 back to normal.

8 MR. BRACKE: The poison is neutralized by the
9 antidote. Frankly, that's the clearest line here. This isn't
10 really different than poisoning somebody. It's a poison. If
11 the antidote is administered, you get better. If the antidote
12 is not administered, you die. That's, in essence, what
13 happened here.

14 And to simply say because someone recovered relatively
15 easily, if they had not received that treatment, they would
16 have died. So we do think that the enhancement applies. We
17 think it's a different enhancement than for different kinds of
18 conduct. But we do think, much like a poisoning, this conduct
19 did result in a medical condition that would have caused death
20 if it had not been for treatment.

21 THE COURT: Why isn't he right?

22 MR. METZGER: Your Honor, first, he's focusing on the
23 term of the statute, serious bodily injury. That's not what
24 we're talking about right now. The language in the guideline
25 is significant physical injury. That's not defined in the

1 guidelines --

2 THE COURT: Significant. How would you define
3 significant?

4 MR. METZGER: That's where I was going next, Your
5 Honor. If we break down the terms, I don't know that we can
6 consider --

7 THE COURT: It is bodily. We'll take that out, if
8 it's bodily. It occurred in his body. So we have significant
9 and injury.

10 MR. METZGER: As far as injury, I couldn't find any
11 definition of that in the guidelines, but if I take --

12 THE COURT: If I sprain my ankle -- last year, I
13 broke both of my heels. I was injured. I was in a wheelchair
14 for two months. I had surgery. It was an injury.

15 My son plays football. If he, knock on wood, sprains his
16 ankle, he's out for a few games. He's injured.

17 If I take heroin laced with fentanyl or even heroin, for
18 that matter, and I overdose, and I'm laying up here or I don't
19 collapse out of my chair, I'm sitting in my chair and I'm like
20 this and I sit here and -- for an hour or ten minutes or what
21 have you and breathing slows to the point where I'm no longer
22 able to breathe on my own and someone comes in and says, "Oh,
23 my gosh, Judge Bunning has overdosed" and they give me Narcan
24 and I wake up if and I've got a really bad headache but I'm
25 able to survive, under your theory, I have not been injured.

1 MR. METZGER: Correct, Your Honor. Black's Law
2 Dictionary defines physical injury, which is what's at issue
3 in this guideline, as bodily injury. Bodily injury is defined
4 as physical damage to a person's body. There was no damage to
5 the victim's body --

6 THE COURT: Does there have to be? If there had not
7 been any intervention, would there have been damage?

8 MR. METZGER: We don't know, Your Honor. We don't
9 know.

10 THE COURT: He testified that -- you don't know. I
11 think the testimony of Agent Muse and, medically, if you stop
12 breathing and your body suppresses your breathing because of
13 the impact of the opioid, I'm not an expert, but if you stop
14 breathing, your functions shut down and you die.

15 So I appreciate the fact that there is this wonderful
16 drug that is administered that enables people to not die.
17 It's administered in countless -- on countless occasions every
18 day.

19 And some would say it's an enabling drug, but some would
20 say it needs to be administered so people can live. But here,
21 we don't know. I mean, I guess hypothetically, we don't know.
22 He could have just recovered on his own. But the medical --
23 well, we don't have medical evidence in this record. But the
24 testimony of Agent Muse, the respiratory level of B.R. was
25 below what someone can survive on their own without intubation

1 or assistance.

2 Why can't I look at that and say, gosh, if there's been
3 no Narcan, he would have died.

4 MR. METZGER: I think we should look at this by
5 analogy to what would happen in a civil case when we've got
6 people that are claiming injuries.

7 When we've got, for example, a car wreck, somebody that's
8 claiming that they were hurt, we punish the defendant for the
9 damage that they caused.

10 THE COURT: It is similar in that it's the
11 preponderance of the evidence standard or that's -- I mean,
12 that's kind of the civil standard.

13 MR. METZGER: Right. And in a civil case, we're
14 never going to punish a defendant for damage that could have
15 been caused but has not. That's in cases of negligence, which
16 is similar to what went on here. We don't have an intentional
17 act of trying to harm this person. We have the act of giving
18 him the drugs he wanted.

19 THE COURT: Let me ask this. Even if I agree with
20 you under 5K2.2, isn't this something that, under the *Koon*
21 case, takes this case outside the heartland of types of
22 distribution cases?

23 Her guidelines are, in essence, based upon the fact that
24 she distributed two bindles of heroin, and she got acceptance,
25 and that's what her guidelines are. There's no -- the

1 guidelines don't recognize, under 2D, anything at all related
2 to the fact that what she distributed caused someone to
3 overdose.

4 I could consider it under variance purposes, even if I
5 completely agree with you. Agree?

6 MR. METZGER: You could, Your Honor. I think I would
7 disagree with the assertion that the guidelines don't
8 contemplate this.

9 THE COURT: Where don't they contemplate it?

10 MR. METZGER: That's why there's the range
11 contemplated under the guidelines. We haven't asked for a low
12 end guideline sentence in this case because we understand the
13 Court needs to take into account there was an overdose here,
14 which makes the conduct somewhat different than the ordinary
15 drug --

16 THE COURT: You think it moves the needle from maybe
17 the bottom to the middle to somewhere toward the top?

18 MR. METZGER: Correct, Your Honor.

19 THE COURT: Fair enough.

20 MR. METZGER: Our position is this does not fit the
21 definition of injury because there was no damage. Agent Muse
22 testified this gentleman got the Narcan, got up. He was fine.
23 He never even saw a doctor. Yes, he had difficulty breathing.
24 Agent Muse testified he has difficulty breathing when he has a
25 cold too.

1 THE COURT: You can't really legitimately compare an
2 overdose to a cold.

3 MR. METZGER: No. They're different in kind. But if
4 someone has a cold, it certainly takes them longer than a snap
5 Narcan administration to bring their breathing back to normal.
6 I would submit to the Court --

7 THE COURT: How do we know that? Has there been
8 proof?

9 MR. METZGER: Proof of?

10 THE COURT: If someone has a cold, it takes more
11 Narcan to revive them. Is that part of the record?

12 MR. METZGER: Narcan is a bad example. I don't know
13 of any medicine -- and I don't think in terms of our common
14 experience, common sense, any of us can take medicine that we
15 are snapped out of a cold. It takes time. It's got to run
16 its course.

17 THE COURT: It's certainly an antidote. Narcan is --
18 I used the word magical just in jest, but it is widely
19 accepted that if you have an opioid overdose and administer
20 Narcan, in the absence of your body developing a resistance to
21 it over time, it works, and you get revived, and you can go
22 out to live another day, overdose again.

23 MR. METZGER: Again, the point I'm making is not to
24 compare a cold and an overdose in terms of equal danger, so to
25 speak, but one is certainly going to take longer to recover

1 from, and the cold is not going to be considered an injury. I
2 don't think any of us would consider --

3 THE COURT: I agree with that analogy. Certainly a
4 cold is not an injury. You're sick.

5 MR. METZGER: By analogy, difficulties breathing, I
6 think we can say there is no injury here as well. There was
7 no damage to this person. Could there have been? Perhaps.

8 THE COURT: You think in a civil case, if B.R. sued
9 your client and Mr. Jett and others, perhaps, for causing him
10 to overdose, there could be a duty breach and causation, but
11 no damage?

12 MR. METZGER: Correct, Your Honor.

13 THE COURT: How do you respond to that? That's an
14 interesting argument. I don't know how successful it is. If
15 he testified that I had a headache, I did stop breathing,
16 under Kentucky law, I think damages are fairly loosey-goosey.
17 It's not a legal term, but I've had that word used before.

18 MR. BRACKE: Judge, I would respond, first of all, by
19 saying this is a false analogy. This isn't a civil lawsuit
20 for recovery of money. Criminal conduct is regularly
21 penalized because of the damage it might do. If you take a
22 gun and shoot it at somebody, intending to kill them, and miss
23 them, you are still liable for attempted murder, for wanton
24 endangerment and related charges, even though no one got hurt.
25 So criminal conduct is regularly penalized based upon the

1 potential for damage that that conduct has caused.

2 THE COURT: Intended loss. We use that all the time
3 under 2B.

4 MR. BRACKE: Exactly.

5 THE COURT: No one got -- that's probably a good --
6 now that I think about it, that would be a good analogy under
7 2B1.1, Mr. Metzger.

8 Why wouldn't intended loss, if someone tries to defraud a
9 company out of a million dollars and they stop it before, the
10 company didn't lose anything. The civil lawsuit, they didn't
11 lose anything. They're getting no recovery. But the person
12 intended to defraud them.

13 Now, your client didn't intend the overdose. I think we
14 all agree with that. That's the second issue of 2K2 -- or
15 5K2.2. But this idea of intended loss, doesn't that kind of
16 buttress your argument somewhat?

17 MR. METZGER: As the Court pointed out, that is what
18 distinguishes this case. There was no intended loss here.
19 There was no intended harm here.

20 THE COURT: Now we're figuring out whether or not it
21 can be an injury to begin with, before we get to the second
22 question.

23 MR. METZGER: Right. I think that this is more
24 comparable to a situation where, as you pointed out, if
25 Mr. R█████ -- or, excuse me, if B.R. were to sue my client, I

1 don't think there would be any recovery for damage. There was
2 no damage here.

3 THE COURT: Would a jury be allowed to assess
4 anything, as a matter of law, based upon him actually having
5 his breathing stopped and having to have the intervention of
6 medical personnel and the administration of Narcan?

7 MR. METZGER: I think that he would be able to, in
8 that case, try to sue for his damages for the cost of medical
9 treatment. I don't think that he could get any sort of pain
10 and suffering because of the idea that if he is overdosed, if
11 he's unconscious, you don't have any conscious pain and
12 suffering. I don't think he could recover.

13 THE COURT: How about, gosh, the darn headache that
14 Narcan causes.

15 MR. METZGER: Maybe he could try to get some money
16 for a headache.

17 THE COURT: I've heard they're pretty bad headaches.
18 I've never had Narcan, but I understand they leave you with a
19 splitting headache.

20 MR. METZGER: I think that would probably be --

21 THE COURT: Probably not a case that Adams,
22 Stepner --

23 (Indiscernible crosstalk.)

24 MR. METZGER: -- based on a headache.

25 THE COURT: Anything else?

1 MR. BRACKE: For the record, we have the EMS run
2 report that contains the notation that he was unconscious. It
3 contains the breathing rate, the respiratory rate that it was
4 6 at the time. I'd like to submit that under seal because it
5 is a medical document.

6 THE COURT: We'll file that under seal. Any
7 objection?

8 MR. METZGER: No, Your Honor.

9 THE COURT: That will be Government Exhibit 1, filed
10 under seal.

11 MR. BRACKE: I didn't put a sticker on it, if we
12 could do that.

13 THE COURT: Those are B.R.'s medical records from the
14 run report from the ambulance?

15 MR. BRACKE: The EMS report. I think that's
16 sufficient.

17 THE COURT: Very well. Certainly, I think with the
18 volume of cases that we're seeing, this is going to be an
19 issue that comes up often. Now that I think about it, I think
20 at some point, I may write something on it. At this point,
21 given the fact that I'm sentencing Ms. Prince this morning,
22 I'm not going to formally enter a written order. I think what
23 I will do is ask the court reporter to transcribe my findings,
24 and those findings will be the Court's order for any reviewing
25 court.

1 MR. BRACKE: Judge, I think there was an inadvertent
2 reference to B.R.'s last name. If we could have the court
3 reporter redact that automatically, it will save the Court
4 some trouble.

5 THE COURT: I think it was --

6 MR. BRACKE: Mr. Metzger inadvertently --

7 MR. METZGER: Please redact that.

8 THE COURT: Just refer to the overdosee as B.R.

9 The defendant's objection to the upward departure
10 pursuant to 5K2.2 is going to be overruled, and I'll explain
11 why.

12 First, the Court concludes that a heroin overdose is a
13 significant physical injury for purposes of the guideline.

14 While I appreciate the reference of Mr. Metzger to
15 Black's Law Dictionary and his definitions, as a matter of
16 fact, the Court can conclude that without the administration
17 of Narcan, B.R. would have run the risk of permanent oxygen
18 deprivation and likely would have died.

19 In this case, B.R. did fully recover after Narcan was
20 administered on two different occasions.

21 As referenced by the sealed Government Exhibit 6, which
22 is the ambulance run report for B.R., his respiration rate was
23 6. The testimony of Agent Muse and the arguments reflect that
24 anything under 8 requires intubation. So I think that
25 individual, absent the administration of Narcan, would have

1 likely died.

2 There are no cases that the Court has been able to find
3 under this particular section, 5K2.2, which requires a
4 permanent injury. The language of the guideline contemplates
5 injuries that are less than permanent.

6 In fact, looking at those factors in 5K2.2, the Court
7 concludes that two of the three factors do support an upward
8 departure, to some extent. The extent of the injury, and I
9 understand that Mr. Metzger says there was no injury here, but
10 the Court found otherwise, and that the injury itself was
11 knowingly risked.

12 The fact that the injury to B.R. was not permanent and he
13 fully recovered goes to the extent of the departure, versus
14 the fact that this guideline applies to begin with.

15 As an addict herself, the defendant knew the potential
16 risk of the heroin, and she had overdosed herself multiple
17 times. As stated by Agent Muse, as well as the PSR reference,
18 she knew the heroin was powerful, and she had warned him to be
19 careful.

20 So based upon that testimony, the injury to B.R. was
21 knowingly risked by Ms. Prince.

22 However, because the injury was less serious than loss of
23 limb or disfigurement or that the defendant likely committed
24 it intentionally, which the Court finds she did not -- it was
25 more negligent, if you will -- she knowingly created a risk by

1 giving it to him, knowing it was powerful, warned him of its
2 strength, I think a less substantial departure is indicated,
3 and that's consistent, I think, with Section 5K2.2.

4 So for all of these reasons, the defendant's objection to
5 the departure is overruled.

6 The Court also finds that while Mr. Metzger's argument
7 that the guideline range itself does contemplate things that
8 would perhaps not be specific offense characteristics under
9 2D1.1, it should be taken into consideration during the
10 range -- where within the range the Court falls.

11 The Court does find that under the *Koon* case, this case
12 is outside the heartland of these types of cases because there
13 really is no provision, from a specific offense
14 characteristic, that considers whether or not someone
15 overdoses. If they die, it's a different matter.

16 Perhaps that's something that our commission
17 representative, Judge Reeves, might take up at some point as
18 part of the Sentencing Commission. But for now, it's not in
19 the specific offense characteristics so that's an independent
20 reason for the Court to vary.

21 The Court is going to depart three levels upward based on
22 the fact that B.R. overdosed. The Court concludes that the
23 5K2.2 departure is warranted for all of these reasons.

24 So after acceptance of responsibility, the Court is going
25 to apply a total offense level of 13, John, as opposed to a

1 10. You can just reflect in the Statement of Reasons that the
2 Court has -- you can check 5K2.2, as well as a variance.

3 There's not going to be an additional upward variance.
4 I'm finding that the three levels, when I use the variance
5 language in addition to the departure language, it in essence
6 is going to be a three-level departure/variance.

7 PROBATION OFFICER D'ALESSANDRO: Yes, sir.

8 THE COURT: The effective guideline range, after the
9 Court's determination, is 30 to 37 months.

10 And one additional thing for record purposes. This will
11 be the end of where you need to transcribe, Lisa. The
12 Koon-type departure is warranted because this case is outside
13 the heartland of cases in Section 2D1.1(c)(14), and that's a
14 section of the guidelines.

15 Now, I have received, on your client's behalf, quite a
16 bit of information. I've received numerous letters; from her
17 mother, her father, nieces, a sister, a cousin, director of
18 The Healing Place there in Louisville, her fiancé and a couple
19 of friends. All of the individuals are similar in what they
20 request, the fact that she has two relatively small children,
21 I think, ages 10 and 13.

22 I've had a chance to review those as well as your
23 sentencing memo. If you'd like to be heard any further, you
24 can.

25 MR. METZGER: I don't want to belabor the point on

1 those, because I know that the Court has read them. Just
2 wanted to hit on some of the highlights.

3 THE COURT: That's fine.

4 MR. METZGER: Much like many people who come before
5 this Court on similar charges, she has had a difficult
6 background. Grew up fairly poor. She has had sexual abuse
7 trauma due to a rape when she overdosed. She was pressed into
8 having an abortion by the father of one of her children, which
9 sent her into a downward spiral, and I think that's fairly
10 clear from letters that were submitted.

11 It wasn't until recently, when she was in The Healing
12 Place, that she was finally able to start addressing that
13 issue as well as the drug issues that occurred as a result.

14 She was doing very, very well when she was at The Healing
15 Place. That's where she was when she was picked up by the
16 marshals for this offense, and she would certainly like to go
17 back there whenever she gets released. I don't know if that
18 would be acceptable as part of her supervised release to go
19 back to that particular facility, but she was doing
20 extraordinarily well there and trying to turn her life around.

21 I think the Court would also note the letters that were
22 submitted by her fiancé and his friends that all described the
23 mental health issues that he's had throughout his life and
24 also his thoughts of suicide, which she's been kind of able to
25 help him through, unlike anybody else has ever before.

1 So I think those are all things that are in her favor.

2 As far as the nature and circumstances of this offense, I
3 know we've gone into a lot of it already this morning. I just
4 want to emphasize the point that I know is not lost on the
5 Court that this is not a person who was selling drugs for
6 profit, unlike many --

7 THE COURT: Without question. I mean, we're seeing
8 that a lot, especially in situations like this, where we have
9 overdoses. People are sharing needles, people are sharing
10 dope. It's not a money-making endeavor. This isn't the
11 source of supply -- she is the source of supply. Actually,
12 Jett was the source of supply. She was the conduit between
13 the source of supply and B.R. So she was supplying him, but
14 it wasn't money-making endeavor. I appreciate that.

15 MR. METZGER: To the extent of her involvement, this
16 was -- she ran inside, got two bindles, as Agent Muse
17 testified to.

18 THE COURT: Something that happens all over the
19 place, unfortunately.

20 MR. METZGER: Right. And then the final point I
21 wanted to make, I know the Court has made its ruling on the
22 departure, but just to highlight the sentencing disparities
23 that this could create. Out of the statistics that came out
24 last year, only two individuals out of this entire district
25 received an upward departure from the guidelines. Nationally,

1 there were only six cases where the Court departed upward
2 based on physical injury under 5K2.2. So I think it's the
3 exception rather than the rule.

4 THE COURT: I've now had three in six months so those
5 figures are going to be different in the next cycle, based
6 upon the fact that these cases are now being prosecuted and
7 they weren't before. We didn't see them before. I think that
8 explains why those numbers are so low.

9 MR. METZGER: The only other thing that I would like
10 to add, Your Honor, is Ms. Prince is requesting a
11 recommendation from the Court that she serve her time at FPC
12 Alderson in West Virginia.

13 THE COURT: I'll make that recommendation.

14 MR. METZGER: And she participate in RDAP if she's
15 eligible.

16 THE COURT: Depending on the sentence, I don't know
17 that she would be eligible. What I'm not going to do is
18 sentence her to more time so she can get it. That's just been
19 rejected out of hand, and I think that that's -- while she
20 certainly needs it, and I would hope she can get back to The
21 Healing Place, in the absence of the Court varying upward from
22 the guideline range that I have determined to be the
23 appropriate one, given the facts and circumstances, I don't
24 know if she would be eligible.

25 At the high end, she might be possibly. But because

1 she's getting credit for the time she's been in, I don't think
2 that would be something she would be able to do. There are a
3 number of other lesser -- less intensive programs in the BOP.
4 Alderson is an excellent facility. I've heard all kinds of
5 good things about it.

6 MR. METZGER: I want to clarify, our request, we
7 certainly want whatever drug treatment is available. That's
8 why the request is for a recommendation for the RDAP if she is
9 eligible.

10 THE COURT: I'll make that request. I don't think
11 she'll be eligible based on the amount of imprisonment the
12 Court is likely to impose.

13 MR. METZGER: She does wish to exercise her right to
14 allocution.

15 THE COURT: Sure, I would expect so.

16 Ma'am, you have a right to address the Court, if you
17 wish.

18 THE DEFENDANT: Yes. I wrote it down because I have
19 memory problems or whatever so I wanted to make sure I got it
20 out right. Throughout my life, I learned through trial and
21 error. Rarely did I yield to the God-given signs of the
22 warning of the path I was going down.

23 When the pain gets great enough, we seek help. During
24 the time of my crime, I was suffering in the grips of
25 addiction. I finally asked for help, and I was sent to The

1 Healing Place from my probation officer.

2 While being there in Louisville, I grasped the higher
3 concept of a higher power. I live so much happier since I've
4 been sober. I know my journey is just yet to begin. Serving
5 time isn't something to look forward to, by any means, but
6 this time has been the most difficult by far.

7 I also have conceded to understand the harm that I placed
8 myself and others in at a low point in my life. I know we
9 usually ask forgiveness, more possibility we will make the
10 same mistake again. But if I repent, the risk decreases on a
11 spiritual aspect.

12 I've asked God for his forgiveness, and today I'm
13 stronger than I have been in a long time. For one who has
14 survived the middle of an epidemic, I want nothing more than
15 to be a factor towards ending it. I want the opportunity to
16 help someone like myself to avoid landing directly in the same
17 path.

18 The program of Alcoholics Anonymous and the controlled
19 environment of The Healing Place has helped save me and
20 restored me to a healthy, functioning member of society, while
21 God had restored my sanity, opened doors of opportunity, and
22 closed doors of failure.

23 Most important, it's given me purpose. I ask nothing
24 more than just mercy of the system so I can explore God's will
25 instead of my own.

1 All of my life, I felt out of place up until I went to
2 The Healing Place. I felt normal, I was doing really well,
3 working the 12 steps, building a support group, and going to
4 meetings every day.

5 THE COURT: Can you slow down just a bit? I'm having
6 a hard time hearing you, you're reading so fast.

7 THE DEFENDANT: Sorry. I was doing really well
8 there. I was working the 12 steps. I built a support group,
9 and I was going to meetings every single day.

10 I just kept doing the next right thing, and God did the
11 rest. I built the relationship back with my children, my
12 family, my parents, and I want to keep doing so. I was
13 finding out who I was while going through the program.

14 Going through addiction for 12 years, you lose sight of
15 who you are, and the program helped me find that again.

16 That's all I've got.

17 THE COURT: Thank you. Mr. Bracke, response, sir.

18 MR. BRACKE: Judge, I'll be brief. I think there are
19 some reasons you should go toward the high end of the range
20 and impose a sentence of 36 months, primarily that the
21 defendant's demonstrated a history of violations of conditions
22 of supervision.

23 I think that -- and I hope that the Tiffany Prince we see
24 here today is very, very different than the Tiffany Prince
25 that has been in court so many times before, but we do have to

1 look at the past for guidance.

2 And if we look at her 2006 conviction for, essentially,
3 not taking care of her child, she was convicted of that crime
4 in March of 2006, was put on conditional discharge for two
5 years.

6 In January of 2008, she was arrested for wantonly
7 endangering her children and for possession of drugs. She was
8 put in prison, given shock probation, violated the conditions
9 of her shock probation, was revoked.

10 In 2011, convicted of not supporting her kids. That was
11 revoked as well.

12 In 2012, she was again convicted of drug offenses, and
13 that probation was revoked as well. In fact, she was on
14 parole for those offenses when she committed this particular
15 crime.

16 So I think in this particular case, there is cause for
17 concern, and I think a longer period of incarceration than
18 just going to the low end of the guidelines is appropriate,
19 and perhaps even a slightly longer period of supervised
20 release might be appropriate, given her history.

21 I'm very glad to hear that the most recent treatment has
22 been successful, at least so far, but she's been locked up
23 most of the time, and we know treatment in the past has not
24 been successful for her.

25 I also think, just given the gravity of the offense,

1 again, even without the enhancement, her range would have been
2 20 to 27 months so going up a year from the middle of the
3 guideline I think is an appropriate reflection of the severity
4 of the conduct, and it also reflects her history of violations
5 and a need for some additional treatment, time away. Time
6 away from the situation that hasn't served her very well.

7 For those reasons, we ask you impose a sentence of
8 perhaps 36 months and maybe five years of supervised release
9 instead of three.

10 THE COURT: All right. Well, Ms. Prince, these are
11 difficult cases. I can tell you almost on a weekly basis
12 now -- perhaps not weekly. Three out of every four weeks of
13 the month, I'm sentencing someone who is an addict of some
14 sort. And it is a daily grind, if you will, something you'll
15 have to deal with every day. You've made steps in the right
16 direction.

17 Now, unfortunately, I've always been a baseball fan, and
18 I've got baseball cards and we look at -- the back of the card
19 kind of explains something about someone. Unfortunately, the
20 back of your card is filled with problems.

21 Now, you're 31 years old. You are still a young woman
22 who can make positive changes. Your history shows you haven't
23 been able to do that. It is something that is reasonable for
24 the Court to look at in determining what the appropriate
25 sentence is, though.

1 Now, am I hopeful that you'll be able to turn the corner
2 and kind of tear the rearview mirror off of your car and not
3 look back? I'm hopeful. Is that kind of a pie in the sky
4 thing to look at? Maybe a little because of your past.

5 So with a little bit of trepidation, I think that maybe
6 you can be successful. You do have family support. I take it
7 you had family support before.

8 Heroin is a terrible thing. We all agree. We drive
9 through Northern Kentucky and see these red signs, Northern
10 Kentucky Hates Heroin. It's a problem. It destroys families.
11 It destroys lives. It doesn't completely take you out of a
12 situation where you can be successful in the future, though.
13 Hopefully, the time you've been in, the time at The Healing
14 Place, the remaining time you're going to have to serve where
15 you can completely stay clean and sober in a forced way -- I
16 mean, I know you want to when you get out. There will be
17 demons and things that want you to not do that, and you'll
18 have to have strong family support in a way perhaps you didn't
19 have before, that people can kind of shake you and say, no,
20 no, no. You can't do that.

21 I mean, sometimes the most effective thing is to hit the
22 very bottom and only have one way to go but up, and I think
23 you've kind of reached that point. This is your first federal
24 offense.

25 There are programs within the BOP. I'm not saying state

1 programs don't work. State probation officers have been there
2 to help you. I'm sure they've tried. But you're going to
3 have access to some programs within the BOP; drug programs,
4 mental health programs, job skills programs, things that you
5 can take advantage of so when you get out, you'll be at least
6 better prepared to make better choices. That's all we can
7 hope for.

8 The facts and circumstances of this case, I've already
9 talked about them ad nauseam. The individual, B.R., you
10 provided the two bindles to him. You were a regular purchaser
11 of heroin. You warned him about it. You kind of knew it was
12 powerful stuff because you'd probably received it yourself,
13 maybe not exactly what he'd gotten that day.

14 So the facts and circumstances are serious, and they're
15 unfortunately something we're seeing over and over and over,
16 and I think it's just going to continue. And I bring that up
17 because I think the reference your lawyer made to the lack of
18 upward departures under this section, I think, are primarily
19 because we haven't had these types of cases prosecuted until
20 recently. I think we've probably had a dozen in the last year
21 on our docket alone, including -- well, the whole Eastern
22 District. I've had five or six. I know Judge Thapar has had
23 a few. This was his case before.

24 This is your fourth felony conviction, unfortunately. I
25 bring that up because I talk about the back of the baseball

1 card analogy. You were put on shock probation, violated.

2 What Mr. Bracke says is correct. You have had a
3 significant history of violating probation and parole,
4 committed this offense while on state parole. So there is an
5 uphill battle here, but hopefully you can kind of work your
6 way through it.

7 No question your past history, the circumstances with
8 yourself, the abortion, the drug use, all of that, kind of
9 look at it and I'm not surprised that you're sitting where you
10 are. Hopefully, with help, you can kind of put this behind
11 you at some point.

12 Due to the defendant's history of violating the
13 conditions of probation and parole, the fact that she wasn't
14 able to take advantage of the prior breaks that she had been
15 given in state court, the Court is going to stay within the
16 guidelines, but I am going to impose a sentence that is within
17 the higher end of that range.

18 It will be the judgment of the Court that the defendant,
19 Tiffany Prince, is hereby committed to the custody of the
20 Bureau of Prisons to be imprisoned for a term of 36 months.
21 I'm going to recommend that you participate in the RDAP
22 program, if eligible. If not, any other treatment programs
23 for which you qualify.

24 I'm going to recommend you participate in a mental health
25 program.

1 I'm going to recommend you participate in a job skills
2 and/or vocational training program.

3 I do agree with Mr. Bracke that perhaps an extended
4 period of supervised release would be appropriate now. If you
5 are compliant with the conditions, I will certainly look
6 favorably on a motion or a petition by Probation to terminate
7 your probation early or your supervised release early.

8 I'm not going to have you write an essay or anything like
9 that, and we're not going to have hearings, periodic hearings
10 to see how you're doing. If Probation identifies you as
11 someone who they think should be eligible for an early
12 termination, I'll go ahead and grant that. Generally, those
13 are unopposed.

14 Now, if you get out, hopefully you can go to a halfway
15 house, go to The Healing Place, which will help you on your
16 path to sobriety. But this is going to be a daily problem,
17 and I hope that you're successful.

18 Five years of supervised release.

19 Within 72 hours of release from the custody of the Bureau
20 of Prisons, you shall report in person to the probation office
21 in the district to which you are released.

22 While on supervised release, you must not commit another
23 federal, state or local crime, must comply with the mandatory
24 and standard conditions set forth in the judgment and
25 commitment order that have been adopted by our Court and must

1 comply with the following additional conditions.

2 First, the defendant must not possess a firearm,
3 destructive device, ammunition or dangerous weapon.

4 Second, she must refrain from any unlawful use of a
5 controlled substance.

6 She must submit to one drug test within 15 days of
7 release from imprisonment and at least two periodic drug tests
8 thereafter.

9 Additionally, she shall comply with the following special
10 conditions adopted by this Court.

11 She shall abstain from the excessive use of alcohol.

12 She shall participate in a substance abuse treatment
13 program and shall submit to periodic drug and alcohol testing
14 at the direction and discretion of the probation officer
15 during the term of supervision.

16 Such program may include one or more cognitive behavioral
17 approaches to address criminal thinking patterns and
18 antisocial behaviors.

19 She shall pay for the cost of such treatment to the
20 extent she is deemed able by Probation.

21 The defendant shall refrain from obstructing or
22 attempting to obstruct or tamper in any way with the
23 efficiency or accuracy of any prohibited substance testing,
24 which is required as a condition of release.

25 She shall attend and successfully complete any mental

1 health diagnostic and treatment or counseling programs as
2 directed by Probation.

3 She shall pay to the cost of such treatment services to
4 the extent she is deemed able by Probation.

5 Because of the defendant's history of addiction, the
6 Court will also impose some conditions relating to any
7 prescription medications.

8 She shall provide Probation, within seven days of release
9 from the custody of the Bureau of Prisons, a written report,
10 in a form directed by Probation, listing each and every
11 prescription medication in her possession, custody or control.

12 The list shall include but not be limited to any
13 prescription medication that contains a controlled substance
14 and encompasses all current, past and outdated or expired
15 prescription medications in her possession, custody or control
16 at the time of the report.

17 She shall notify Probation immediately if she receives a
18 prescription for a medication containing a controlled
19 substance during the period of supervised release.

20 She shall provide Probation such documentation and
21 verification as Probation may reasonably request and in a form
22 directed by Probation.

23 She must strictly comply with the orders of any physician
24 or other prescribing source with respect to the use of all
25 prescription medications.

1 She shall report any theft or destruction of her
2 prescription medication to the U.S. probation officer within
3 72 hours of a theft or destruction.

4 Based upon her substantial criminal history and the
5 offense of conviction, the Court finds that a search condition
6 is warranted in this case. She shall submit her person,
7 residence, curtilage, office or vehicle to a search based upon
8 reasonable suspicion of a violation of supervised release at
9 the direction and discretion of Probation.

10 Based upon her current financial situation, the Court
11 will waive a fine. However, I must order that she pay to the
12 United States a special assessment of \$100, which shall be due
13 immediately.

14 I will also recommend that she serve her sentence at the
15 federal prison camp at Alderson, West Virginia.

16 That will be the judgment of the Court. Does either side
17 have any legal objection to the sentence just pronounced that
18 was not previously raised?

19 MR. BRACKE: No, Your Honor. Thank you.

20 MR. METZGER: I think I've preserved the argument
21 under 5K2.2 for appeal, Your Honor.

22 Just wanted to, if I hadn't said it already, point out
23 that I don't think any Sixth Circuit opinion has ever done
24 that for a non-fatal overdose before, departed upward under
25 5K2.2.

1 THE COURT: Very well. We'll be filing the
2 transcript which will set forth the Court's reasons for the
3 departure/variance.

4 Any counts to dismiss?

5 MR. METZGER: This was the only count she was charged
6 with.

7 THE COURT: That's what I thought, okay.

8 Madam Clerk, if you would notify her of her right to
9 appeal the sentence, please.

10 (The form entitled "Court's Advice of Right to
11 Appeal" was read aloud in open court by the
12 clerk, and said form was signed by the defendant.)

13 THE COURT: Mr. Metzger, are you part of the panel
14 over at the Sixth Circuit?

15 MR. METZGER: I don't know that I'm technically
16 considered part of the panel, but I do handle appeals.

17 THE COURT: Will you continue to represent her on
18 appeal, then?

19 MR. METZGER: I will, Your Honor.

20 THE COURT: Very well. So I would anticipate the
21 judgment being entered, if not today, sometime Monday, and
22 then you'll have the 14 days to file the Notice of Appeal.

23 MR. METZGER: Thank you, Your Honor.

24 THE COURT: Very well. There's a copy there for you
25 to keep, ma'am.

1 Anything else we need to take up regarding Miss Prince's
2 case?

3 MR. BRACKE: No, Your Honor. Thank you.

4 MR. METZGER: No, Your Honor. Thank you.

5 THE COURT: Defendant will be remanded to custody of
6 the marshal pending designation by the Bureau of Prisons.

7 We'll be in recess.

8 (Proceedings concluded at 9:58 a.m.)

9 - - -

10

11 C E R T I F I C A T E

12 I, LISA REED WIESMAN RDR-CRR, certify that the
13 foregoing is a correct transcript from the record of
proceedings in the above-entitled case.

14

15 \s\ Lisa Reed Wiesman
LISA REED WIESMAN, RDR-CRR
Official Court Reporter

16 October 8, 2017
Date of Certification

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
AT COVINGTON

CRIMINAL ACTION NO.: 2:17-CR-1-DLB-CJS

UNITED STATES OF AMERICA

PLAINTIFF

v.

TIFFANY PRINCE

DEFENDANT

DEFENDANT TIFFANY PRINCE'S SENTENCING MEMORANDUM

The Defendant, Tiffany Prince, by and through counsel, for her Sentencing Memorandum, hereby states as follows:

I. GUIDELINES RANGE

Ms. Prince's Guidelines range is 21 to 27 months. Presentence Investigation Report ("PSR") ¶ 65. This range is based on a Criminal History Category of V and a total offense level of 10. *Id.* ¶¶ 24, 37. Ms. Prince respectfully submits that a sentence of 24 months would be sufficient, but not greater than necessary, to achieve the aims of 18 U.S.C. § 3553(a)(2). The upward departure the Government has requested is wholly inappropriate in light of the facts of this case, the Guidelines, and the relevant case law.

II. UNRESOLVED OBJECTIONS TO THE PSR

A. Objection No. 1 - Mitigating Role Reduction

Ms. Prince objected to Paragraph 19 of the PSR, which neglects to give her a mitigating role reduction pursuant to U.S.S.G. § 3B1.2. That objection is hereby withdrawn.

B. Objection No. 2 – Departure Under U.S.S.G. § 5K2.2

Ms. Prince also objected to Paragraph 79 of the PSR, which mentioned a potential upward departure pursuant to U.S.S.G. § 5K2.2. The language of that guideline and the pertinent case law both confirm that an upward departure would be improper here.

Under § 5K2.2, “*If significant physical injury resulted, the court may increase the sentence above the authorized guideline range*” (emphasis added). “The Guidelines do not define what constitutes ‘significant physical injury.’” *United States v. Singleton*, 917 F.2d 411, 413 (9th Cir. 1990). But “it is clear that a ‘significant’ physical injury must be something more than physical contact that is merely offensive. Moreover, it must mean something more than ‘physical injury’ standing alone.” *Id.* Not just any damage of a physical kind can satisfy the Guidelines, as that would encompass every type of physical injury. *Id.* “Rather, the injury should be of some importance before it is considered significant.” *Id.*

The “overdose” of B.R. cannot be viewed as a “significant physical injury” in this context. Medical personnel administered Narcan to him, and he was fine thereafter. As the Probation Officer explained in the Addendum to the PSR, permanent serious physical injury was avoided. In fact, according to both the Government’s interview with B.R. and his medical records, he refused to be transported to the hospital. His condition never required treatment by a physician. In light of these facts, it is plain that he did not suffer a “significant” physical injury.

The case law from this jurisdiction compels the same conclusion. There are no published opinions from the Sixth Circuit in which the appellate court has considered a

non-fatal drug overdose to be a significant physical injury under § 5K2.2. Likewise, there are no published cases from this circuit in which a defendant has received an upward departure under § 5K2.2 for a non-fatal drug overdose.

Instead, this Circuit's cases involving § 5K2.2 suggest that the departure applies when a defendant acts violently toward a victim – which is decidedly not the case here. *See, e.g., United States v. Roush*, 572 Fed. App'x 349 (6th Cir. 2013) (applying § 5K2.2 for shooting a law enforcement officer); *United States v. Levy*, 250 F.3d 1015 (6th Cir. 2001) (applying § 5K2.2 for throwing sulfuric acid on a witness); *United States v. Cross*, 121 F.3d 234 (6th Cir. 1997) (applying § 5K2.2 for torturing a victim); *United States v. Calloway*, 116 F.3d 1129 (6th Cir. 1997) (applying § 5K2.2 for beating victims with a hammer). Because this case is different in kind, the departure should not apply.¹

The Government's arguments to the contrary are unavailing. The Government relies predominantly on cases affirming departures imposed pursuant to U.S.S.G. § 5K2.1 – a different departure provision that can be applied when death results from a defendant's conduct. Because death did not occur as a result of Ms. Prince's conduct, the Government's reliance on § 5K2.1 is misplaced.

¹ Moreover, even if a non-fatal drug overdose were to be considered a significant physical injury, the text of § 5K2.2 lists factors that a sentencing court should consider in determining the extent of the increase above the guideline range, including (a) the extent of the injury; (b) the degree to which it may prove permanent; and (c) the extent to which the injury was intended or knowingly risked. Here, the supposed injury was minimal, as B.R.'s breathing slowed, and was restored to normal after Narcan was administered. B.R. has not suffered any permanent impairment as a result. Further, the injury was not knowingly risked, as Ms. Prince had no idea that the substance she acquired from co-defendant Kristian Bellamy contained fentanyl. Under these circumstances, even if a non-fatal overdose were to be considered a "significant physical injury" – and it should not be – the Guidelines mandate that a "less substantial departure would be indicated." U.S.S.G. § 5K2.2.

Ms. Prince recognizes that the Court has imposed an upward departure on co-defendant Anthony Mason,² who was sentenced to 60 months despite a Guidelines range of 24-30 months. But again, the facts applicable to Ms. Prince's situation are appreciably different in kind than Mr. Mason's: his victim died of her drug overdose, and his departure was based on § 5K2.1, not § 5K2.2. Death is - obviously - an irreparable harm, which explains the rationale for an upward departure in Mr. Mason's case. But there has been no irreparable harm as a result of Ms. Prince's conduct. That is a critical, meaningful distinction between her case and Mr. Mason's.

Contrary to the Government's arguments, a within-Guidelines sentence would provide adequate punishment here. A sentence of 24 months, which is at the exact midpoint of the applicable Guidelines range, would sufficiently take into account the non-fatal "overdose" that occurred as a result of her conduct.

III. SENTENCING FACTORS

As this Court is well aware, the Guidelines are only the starting point for a proper sentencing analysis. *Kimbrough v. United States*, 552 U.S. 85, 108 (2007). Other factors must be considered to arrive at a sentence that is "sufficient, but not greater than necessary." 18 U.S.C. § 3553(a)(1). The relevant factors for the Court's consideration

² The Government also argues that a defendant named Gregory Beavers, in an unrelated case, distributed controlled substances that resulted in a non-fatal overdose, and received an upward departure. It is difficult for Ms. Prince to respond to these allegations, as she does not have any knowledge of the specifics of Mr. Beavers' case or the relevant facts germane to his 18 U.S.C. § 3553(a) sentencing factors. She expressly objects to the Court relying on Mr. Beavers' case when fashioning her sentence, as federal law requires sentencing to be individualized. *Duncan v. United States*, 552 F.3d 442, 444 (6th Cir. 2009) ("[D]efendants have the right to individualized sentencing in light of the statutory sentencing factors, 18 U.S.C. § 3553, because 'as a general matter, courts may vary from Guidelines ranges based solely on policy considerations, including disagreements with the Guidelines'"') (quoting *Kimbrough v. United States*, 552 U.S. 85 (2007)).

include (a) the history and characteristics of the defendant, (b) the nature and circumstances of the offense; (c) the kinds of sentences available and the need to avoid unwarranted sentencing disparities; (d) the need for the sentence imposed to afford adequate deterrence to criminal conduct and to protect the public from further crimes of the defendant; (e) the need to reflect the seriousness of the offense, promote respect for the law, and provide just punishment; (f) the need to provide restitution to any victims of the offense; and (g) the need for the sentence imposed to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. 18 U.S.C. § 3553(a). Consideration of these factors in Ms. Prince's case demonstrates that a sentence at the midpoint of the Guidelines is most appropriate.

A. History and Characteristics of the Defendant

Tiffany Prince is Jesse and Sherrie Prince's middle child. Character letter from Sherrie Prince, attached as Exhibit 1. She is the mother of two, a girl and a boy. PSR ¶ 43. She has a huge heart, and loves her children dearly. Exhibit 1; Character letter from Jesse Prince, attached as Exhibit 2. She is smart, funny, and has much potential. Exhibit 2. She is also a hard worker. Character letter from Dwayne Rice, attached as Exhibit 3. She has been employed on a number of occasions with Blue Jay Car Wash, and has also worked for Arby's, Kentucky Fried Chicken, and Wendy's. PSR ¶ 61.

Her nieces adore her, describing her as a great aunt who gives great hugs. Character letter from Hannah Covert, attached as Exhibit 4. She is a great cook, never misses birthdays, and makes memories with her nieces by doing things like taking them

trick-or-treating for Halloween. *Id.* She spoils them, and they notice how she puts the needs of others before her own. Character letter of Ciara Covert, attached as Exhibit 5.

Ms. Prince grew up poor, and she began having children at an early age. PSR ¶ 41. She had her first child, a daughter, when she was just 17 years old. Character letter of Heather Prince, attached as Exhibit 6. The child's father, Troy Cord, was in the military, and was often absent. *Id.* Shortly after the birth of their daughter, Ms. Prince got pregnant again while Mr. Cord was on military leave. When he learned of the pregnancy, he curtly informed her that he did not want to have another child at that time, and talked her into having an abortion. *Id.*; PSR ¶¶ 46, 52. After that, she was never the same. Exhibit 6.

Ms. Prince was not mentally prepared to handle the abortion, nor the accompanying emotional and spiritual stress. PSR ¶ 52. Unable to cope with her pain and loss, she turned to drugs. *Id.* She used these substances to stay numb from the abortion. Exhibit 6. She started using powder cocaine at the age of 19, and gradually moved on to other drugs. PSR ¶¶ 52-53. She eventually became addicted to narcotics after being prescribed opiates following the birth of her second child, a son. *Id.* at ¶ 53. Once prescription pills became scarce, she turned to heroin, and wound up a daily user. *Id.*

Rather than solving her problems, her drug use just led to more suffering, more pain, and more loss. In January 2008, after she had overdosed on cocaine and methadone, she was raped by a family friend. *Id.* at ¶ 53. Instead of prosecuting the rapist, law enforcement arrested her and charged her with drug possession. *Id.* at ¶ 31.

And it continued to get worse. In November 2009, she accidentally overdosed on methadone, suffered a stroke, and was hospitalized for approximately one month. PSR ¶ 47. She suffers from long term memory and cognition problems as a result. *Id.*

Following the incident underlying this case, her state probation officer ordered her to attend drug treatment at The Healing Place, an in-patient rehabilitation facility in Louisville. *See* PSR ¶ 56. It was a blessing, as she was finally able to get some of the help she had desperately needed for so long. She enrolled at The Healing Place on November 7, 2016. Letter from Marlene Kohner attached as Exhibit 7. At the time of her arrest on the instant federal charges, she had been participating in The Healing Place's treatment program for over two months. PSR at ¶ 56. She was doing remarkably well. She had made "good progress and [wa]s in compliance with all guidelines." Exhibit 7.

She would like to return to The Healing Place after she completes whatever sentence is imposed in this case. When she was there, she was in a good place in her life. Exhibit 6. She was on the right track, and was facing her abortion and her addictions. *Id.*

She has taken other steps to turn her life around, as well. She is now engaged. Letters in support were written by her fiancé, Wesley Jones, and his friends and family members. Mr. Jones has explained that he has suffered from anxiety and depression throughout his life, but once he met Ms. Prince, "her bubbly attitude and one of a kind personality seemed to defeat all of [his] mental health issues." Character letter of

Wesley Jones, attached as Exhibit 8. This assertion has been confirmed by some of the other character letters that have been submitted.

Ms. Prince has told Mr. Jones about her desire to help curb society's drug epidemic, and also about her plans to enroll in a cosmetology school. *Id.* She treats him with respect and kindness. *See* character letter of Justin Perry, attached as Exhibit 9. And she has helped him overcome his past tendencies to contemplate suicide. Character letter of Natasha Warner, attached as Exhibit 10.

The character letters submitted on Ms. Prince's behalf (attached hereto) should give the Court a more complete picture of who she really is. She is a mother, a daughter, a sister, an aunt, a friend, and a fiancé. She is loved by many. Her family and friends are aware of the darkness and the trials she has endured – the rape, the abortion, the drug addiction, the overdoses – and she has their support as she puts that chapter of her life behind her.

B. Nature and Circumstances of the Offense

Ms. Prince is not a "drug dealer." Not in the common sense of the term, anyway. She is not someone who sells drugs on the streets for profit. Rather, she is a heroin addict who had a terrible lapse in judgment, acting as a courier for a friend.

One day last September, she needed to go to Kroger, and her friend, B.R., had offered her a ride. On the way there, he said that he wanted to get some heroin, and so they stopped at co-defendant Kristian Bellamy's residence. As they pulled in, B.R. was on the phone with his wife, so he handed Ms. Prince some money to go inside and pick up his order. She got out of his truck, entered Bellamy's residence, exchanged the

money for the drugs, and returned to the truck. She had no idea that what she had been given contained fentanyl. She handed it to B.R., who snorted the substance and then drove to Kroger. B.R. had her wait in the vehicle while he went into the store. Shortly thereafter she heard sirens. EMTs arrived on scene and administered Narcan to B.R., and he was fine thereafter. He did not suffer any permanent injury as a result of his use.

The key points here are (1) that Ms. Prince was not selling drugs for profit; (2) that she only had the drugs very briefly, and distribution of heroin is not a pattern of behavior for her; and (3) B.R. has not sustained any permanent injury as a result of the use of those drugs. Thus, the nature and circumstances of Ms. Prince's offense demonstrate that a within-Guidelines sentence is appropriate.

C. Need to Avoid Unwarranted Sentencing Disparities

Departing above the Guidelines range, as the Government has requested, would create an unwarranted sentencing disparity. According to the United States Sentencing Commission's 2016 Sourcebook,³ last year there were 439 defendants sentenced in the Eastern District of Kentucky. Only *two* of them received an upward departure from the Guidelines range. *United States Sentencing Commission's 2016 Sourcebook of Federal Sentencing Statistics*, at Table 26 (attached as Exhibit 11). Nationally, there were only six cases in all of the United States where courts departed upward based on physical injury under U.S.S.G. § 5K2.2. *Id.* at Table 24 (attached as Exhibit 12).

Plainly, upward departures based on U.S.S.G. § 5K2.2 are used sparingly. They are the exception, rather than the rule. This is not an exceptional case, and imposition

³ Available at: <https://www.ussc.gov/research/sourcebook-2016>.

of an upward departure here would therefore create an unwarranted sentencing disparity. A sentence within the Guidelines range should therefore be imposed.

D. Need for Sentence Imposed to Afford Adequate Deterrence to Criminal Conduct and Protect the Public from Further Crimes of the Defendant

A within-Guidelines sentence of 24 months will afford adequate deterrence to criminal conduct. Unlike many who are convicted of drug offenses in federal court, Ms. Prince was not engaged in an ongoing pattern of distribution. Her crime was a momentary lapse in judgment, where she transported heroin from co-defendant Bellamy's residence to her friend's truck in the driveway. She had a very small quantity. And she did not profit from this activity. Given the limited nature of her involvement, a sentence of 24 months, which is at the midpoint of the Guidelines, provides ample deterrence to future criminal conduct.

Moreover, a sentence of this sort will adequately protect the public from further crimes of the Defendant. In addition to whatever federal time she serves for this offense, she is likely have to have her parole revoked by the Commonwealth of Kentucky, meaning she will likely have to serve out the remainder of a state sentence, as well.

The greatest way to protect the public from further crimes is through the requirement of additional drug treatment. Ms. Prince was doing quite well at The Healing Place in Louisville, which shows that she is the sort of person who can benefit from treatment. It would be appropriate for the Court to recommend drug treatment while she is in BOP custody, and to require it as a condition of her supervised release.

E. Need to Reflect the Seriousness of the Offense, Promote Respect for the Law, and Provide Just Punishment

The United States Sentencing Guidelines reflect the seriousness of federal offenses and identify sentencing ranges that adequately promote respect for the law and provide just punishment. A within-Guidelines sentence here would be both appropriate and presumptively reasonable. *United States v. Young*, 682 Fed. App'x 420 (6th Cir. 2017) ("[A] within-guidelines sentence is presumptively reasonable").

F. Need to Provide Restitution to Any Victims of the Offense

Restitution is not an issue in this case. PSR ¶ 12 ("[R]estitution is neither appropriate nor practical").

G. Need for the Sentence Imposed to Provide the Defendant with Needed Educational or Vocational Training, Medical Care, or Other Correctional Treatment in the Most Effective Manner

Ms. Prince was doing well while in drug rehab at The Healing Place in Louisville. The Court should require, as a condition of her supervised release, that she return there (or a similar facility) once a bed becomes available.

IV. CONCLUSION

For the reasons stated herein, Ms. Prince respectfully requests that the Court impose a sentence of 24 months, with a recommendation that she be given credit for time served since January 2017. She further requests that the judgment and commitment order recommend that she serve her time at FPC Alderson, if eligible.

Respectfully submitted,

ADAMS, STEPNER, WOLTERMANN
& DUSING, PLLC

/s/ Edward L. Metzger III

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Counsel for Defendant,
Tiffany Prince

CERTIFICATION

On August 18, 2017, I electronically filed this document through the CM/ECF system, which will send the notice of electronic filing to all counsel of record.

/s/ Edward L. Metzger III

Edward L. Metzger III

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Exhibit 1

Judge Thapar,

6-12-17

Hi! My name is Sherrie Prince. I am Tiffany's mother. I have been through so much with Tiffany. As much as I know there is bad, there is a lot of good also. Tiffany is a big part of our family. She is my middle child. I have three children. Tiffany was always much more into things than my other two.

Tiffany has a huge heart. She loves her kids. Tiffany makes her son feel good about himself. He suffers from ADHD and needs help from time to time. Her daughter is growing up without her and she is running out of time. I believe if she misses any more her children will lose what they have for her. They have suffered so much with their split family and troubled parents.

Tiffany can be a good worker. She used to work for me where I manage a car wash business. She likes to work and earn a income so she can help provide for her kids. She spends her time with her kids on her court assigned days and some that are not assigned. I help her get to where she needs to go with her kids.

Tiffany loves her family and we love her. Its hard not having her around. I just want her to have a good life with her kids and family.

Sincerely,

Shawn Prince

Exhibit 2

Judge Thaper,

Tiffany Prince is my daughter. I am writing this letter to hope you can better understand . . . despite all the bad you know, she is a good person. She is good in the sence that she loves her kids. She can be a hard worker and she loves her family. Tiffany tries her best to be a good mother. When she is clean and sober she does everything for them. She does what mothers are supposed to do. Clean thier rooms, cook for them and be ther when they need her. Her kids suffer when she is away. All kids need thier mother. With choices she chose , and the people she chose to be around has made her family suffer severe consequences of having to live with out her. Tiffany is smart, funny and has so much potential. Being a father is the hardest job I have ever had. Its hard to think maybe you failed your child some way. Tiffany has a bright future when she comes home. Her whole family is waiting for her. Tiffany is one of a kind person and has a huge heart. We need her back home.

Sincerely,

Jesse Prince

Exhibit 3

Judge Amul Thaper,

I am writing a letter to you on behalf of Tiffany Prince, Tiffany is my cousin. Tiffany is hard worker, with great intentions and a good heart. I know Tiffany can be a great provider for her family. She has good ethics, very smart, can accomplish anything she puts her mind too. Tiffany kids need her, they need a home life with Tiffany, they need their mother to be home with them. Tiffany has a big loving family waiting on her to be home. I wish Tiffany the best and hope to see her soon.

Thank you, Dwayne Rice

Exhibit 4

Dear Judge Thapar,

6-12-17

Hello my name is Hannah Covert, I am Tiffany's niece. I am nine years old. Now about Tiffany, She's a great aunt her kids miss her a lot so do I. we spent the night with her and her kids (are Cousins). My Sister and I have so much fun with her. Shes a really great hug giver. She went trick-or-treating with us once and it was a lot more fun with her then with out her. Shes a  great person with great personality's. She loves her family. Shes a hard worker for I know. She never misses any birthdays. One good thing is she always makes me laugh and smile. Shes a great cook. She is always looking so pretty. She always writes a letter back to me. Tiffany's whole family loves her to death and she loves her whole family too.

Sincerely,
Hannah Covert

Exhibit 5

Dear Judge Amul Thapar,

6-12-17

I am writing on behalf of Tiffany Prince. I am her niece, Ciara Covert. Tiffany has done bad and good. I know mostly the good, you know mostly the bad. A good thing she has done is that she always spoils her kids and nieces & ne phews. She is very kind and spoils us because she would rather spend her values on somebody ~~else~~. When she does shes kind, lovable, sharing, smart and very funny. She always puts people before her and she admires her kids very well. Whenever I hang out with her she always makes sure I'm happy and that we're having fun. I miss her a lot, her whole family does. Her kids, Kaitley Cord and Troy Cord, miss her the most. Her family wants her back home. I have ~~had~~ very few aunts, but Tiffany is my favorite. I miss her and we need her home.

I am her niece and I'm 11 years old.

Sincerely,

Ciara Covert.

Exhibit 6

Dear Judge Thapar,

Hi, my name is Heather Prince and I am writing you on the behalf of my sister Tiffany Prince. We and Tiffany are just two years apart but are very close. When we were younger that was a different story. It took us years of growing up and many mistakes to realize what we meant to each other.

As we got older and were teenagers Tiffany became pregnant. She was 17 and scared. She was in a relationship that would soon help her spiral out of control. She had her daughter Kailey Ann Cord on June 7th 2004. We all loved her. Kailey's father was married to another women and going through a divorce. When that came to a end Kailey's father Troy Cord was in the military. He was in and out for weekends and getting ready for deployment. Tiffany fell pregnant again. Troy was away in New York and talked Tiffany in having a abortion. Saying he didn't want another baby at that time.

Tiffany didn't tell anyone and did this on her own. None of us knew until after she had been to the clinic.

That decision was the onset for self destruction. We are a strong willed family and very close. We would have never approved of the abortion. We would have helped her raise the baby.

After that she was never the same. Drinking and drugs is what she turned to and it stole her life away from her kids and family.

I say kids because Troy come home from deployment and she got pregnant again. On November 26th 2004. She welcomed a healthy baby boy. Troy Jr. He was so beautiful. We loved him. This made her pull back and she again turned to drugs. Troy left for another deployment of his choice. He was quick to leave his responsibilities. As much as one wanted a family he was quick to leave her behind.

She would be okay when he was home and around and when he leave her, the thought of it made her want turn to drugs. I think she did then to stay numb from the abortion. It made her a different person.

With all the bad there were a lot of good. When Tiffany is clean she is an amazing mother. She is hands on and attentive. She is great with my kids and our family. Tiffany would help me get to my daughters doctor's appointments. I do not drive well in the city. My daughter was born with cleft lip/palate. Tiffany was there for my first daughter and second daughter for their first day of school. Tiffany will attend the girls musicals for school.

We would always get together and take all of our kids to the park or pool, when they were younger.

I have three children and I can say in 2006, 2007, 2013 when my kids were born she didn't miss a birth. That was so important to me for her to be there.

Tiffanys kids are now 13 and 10 and I have to say her addiction has caused her to miss out on a lot of things. She won't get back. I just know before her being taken from The Healing Place she was on the right track to make sure she didn't miss her future. She was in a good place in her life. She was facing her abortion, her addiction. She was facing other traumas in her life.

that we alone couldnt help her through. Tiffany's been raped and traumatized by a lot of dark in her life. Her kids being taken from her and Troy just dumping her in the street with nothing when she needed his support and love.

Tiffany is strong, shes a survivor of many things, including herself. She wants a future with her kids and family.

I hope you have it in your heart to help her have a future she deserves. The more time shes away the more she misses out on. It wont be a easy road, it never is. I believe in her to do good and be who she needs to be when she comes home. Her hard work and dedication will get her there.

Sincerely,
Heather Prince

Exhibit 7



THE HEALING PLACE

January 20, 2017

To: United States District Court Eastern Division
Attn: Candace Smith
Re: Tiffany Prince
D.O.B: [REDACTED]
SSN# [REDACTED]

This letter is to verify that Tiffany Prince was accepted to The Healing Place and the OTS-1 segment of the program on November 7, 2016. On January 17, 2017 Ms. Prince was moved to the OTS-2 segment of our program. Ms. Prince continues to make good progress and is in compliance with all guidelines at this time. She currently resides at [REDACTED] Louisville, Ky. 40210.

The Healing Place is a 6-9 month inpatient, peer driven, social model recovery program. Clients are required to attend recovery base classes and Alcoholic Anonymous meetings inside and outside our facility. Clients are not permitted to have a job, drive a vehicle, or have a cell phone while in our program. The Healing Place works with probation and parole offices in many areas to ensure that clients receive the help they so desperately need, as well as fulfill all legal and other obligations. The Healing Place has a 75% success rate which is five times the national average.

Any questions, comments, or concerns please call 502-357-1977.

Sincerely,

Marlene Kohner
Program Director Assistant
The Healing Place

Exhibit 8

Dear Honorable Judge,

My name is Wesley Jones and I am Ms. Prince's fiance with every single intention of marrying her as soon as she comes home. The impact that Tiffany has on my life and well being is tremendous. I am a life long sufferer of depression and anxiety. When she came into my life her bubbly attitude and one of a kind personality seemed to defeat all of mental health issues that have plagued me throughout my life. Along with her humanitarian ways, her perseverance through a rough childhood home life as well as a tragic young adulthood has won over my heart, and has made me want her as my wife.

Tiffany has two children of the ages 13 and 10. They adore her and she has always done everything in her power to be a good parent whether it be financially or emotionally. She attends all cheerleading and school functions they're involved in and

goes all out with effort during birthdays. With her daughter recently becoming a teenager Tiffany has shown the utmost attention to the changes and difficulties shes having and going through.

My family accepted Tiffany very quickly and constantly reminds me of the differences she has made in my life which have remained positive.

With Tiffany constantly speaking about the future about her wanting to become active with helping societies addiction epidemic and enrolling in a cosmetology school I couldn't be more proud to be her man. Watching her grow as a woman inspires and motivates me daily as well.

Tiffany Ann Prince has not only brought out the loyalty from me, but her strength and positivity with her outlook on life without a doubt effects everyone who crosses her path in life. I cannot wait to have my future wife with me again, to help her continue to

find her way in life and help
her reach her full potential
as a productive member to our
society.

Thank You for your time,
Wesley Jones

Exhibit 9

Dear Judge, I am writing hereto and my name is Justin Perry, and I am the best friend of Wesley Jones and I have had the opportunity to become just as close to Ms. Tiffany Prince. They are my favorite couple and she sets the example for how we all wish our girlfriends/fiances were. and I want to say how

Tiffany is just like one of us the guys. If we work on things that require mechanic natured work she constantly asks questions and maintains genuine interest. The way that she treats Wesley a man could ask for no more from their better half.

Shes very caring, constantly making sure that everyone has eaten, never needs anything to drink, and even encourages us all to take vitamins.

She also loves her children very much and from the outside looking in they are extremely happy when under her care. Wesley doesn't like to speak on it much but he

emotional problems he faces seem to be eliminated by her. She helps him focus and know his potential. The amount of effort he puts in out for her have turned her into a much better person, and all they have is time and room to continue growing. We all would love to have Tiffany home as soon as possible into Wesley's care.

He's got her on the phone with

new brother Stephen Oliver but

whether or not they're still

→ Justin Penny

last year at this time they

too close now is really start to

but still isn't work now as not

friendly brother, since just work

now, not the end anymore but the

now, 11/16 of 2016 of 2016 seem

in this list of the 2016 negatives

and negatives now several calls and

filled obstacles the next day when

→ support planned and just in

that period was not 2016 many

at that time to be steps at 2016

Exhibit 10

Hello Honorable Judge: My name is Natasha Harper and I am the Aunt of Wesley Jones and Tiffany's Fiance.

Wesley has never been more excited about having a special woman in his life. The first day I met ms. Tiffany her beautiful smile which went right along with his, letting me know right away they were truly happy together. Wesley has suffered from extreme depression since birth.

No one has ever been able to help him the way Tiff has and will continue to for the rest of their lives.

She stopped all of his anxiety attacks in large numbers in public places, the mental breakdowns when facing pressure at work, and most important of all his past tendencies to contemplate suicide. Tiffany's value is truly priceless for my Nephew.

He has helped her understand self worth and the results are extremely positive. Her importance to

him, and her family are evident.

The future is bright for this budding young couple. Thank you for your time.

Truly and sincerely - Natasha Warner

Probation Officer - United States

SENTENCES RELATIVE TO THE GUIDELINE RANGE BY CIRCUIT AND DISTRICT¹
Fiscal Year 2016

CIRCUIT District	TOTAL	WITHIN GUIDELINE RANGE		UPWARD DEPARTURE ²		UPWARD DEPARTURE W/ BOOKER ²		ABOVE RANGE W/ BOOKER ²		REMAINING ABOVE RANGE	
		N	%	N	%	N	%	N	%	N	%
TOTAL	66,961	32,519	48.6	317	0.5	102	0.2	1,131	1.7	67	0.1
D.C. CIRCUIT	255	71	27.8	1	0.4	1	0.4	2	0.8	0	0.0
District of Columbia	255	71	27.8	1	0.4	1	0.4	2	0.8	0	0.0
FIRST CIRCUIT	2,046	1,001	48.9	7	0.3	7	0.3	79	3.9	6	0.3
Maine	201	75	37.3	1	0.5	1	0.5	3	1.5	1	0.5
Massachusetts	495	136	27.5	2	0.4	0	0.0	5	1.0	0	0.0
New Hampshire	177	82	46.3	2	1.1	1	0.6	8	4.5	0	0.0
Puerto Rico	1,083	680	62.8	2	0.2	5	0.5	62	5.7	5	0.5
Rhode Island	90	28	31.1	0	0.0	0	0.0	1	1.1	0	0.0
SECOND CIRCUIT	3,407	946	27.8	12	0.4	2	0.1	30	0.9	0	0.0
Connecticut	304	81	26.6	2	0.7	2	0.7	3	1.0	0	0.0
New York											
Eastern	796	176	22.1	2	0.3	0	0.0	10	1.3	0	0.0
Northern	306	155	50.7	0	0.0	0	0.0	1	0.3	0	0.0
Southern	1,350	300	22.2	1	0.1	0	0.0	12	0.9	0	0.0
Western	463	196	42.3	7	1.5	0	0.0	4	0.9	0	0.0
Vermont	188	38	20.2	0	0.0	0	0.0	0	0.0	0	0.0
THIRD CIRCUIT	2,090	813	38.9	3	0.1	3	0.1	28	1.3	2	0.1
Delaware	71	18	25.4	0	0.0	0	0.0	0	0.0	0	0.0
New Jersey	667	258	38.7	0	0.0	1	0.1	4	0.6	1	0.1
Pennsylvania											
Eastern	584	173	29.6	0	0.0	0	0.0	11	1.9	0	0.0
Middle	305	158	51.8	2	0.7	0	0.0	2	0.7	0	0.0
Western	404	160	39.6	1	0.2	2	0.5	10	2.5	1	0.2
Virgin Islands	59	46	78.0	0	0.0	0	0.0	1	1.7	0	0.0
FOURTH CIRCUIT	5,210	2,880	55.3	35	0.7	13	0.2	108	2.1	10	0.2
Maryland	707	216	30.6	5	0.7	4	0.6	29	4.1	2	0.3
North Carolina											
Eastern	569	333	58.5	3	0.5	6	1.1	12	2.1	2	0.4
Middle	423	242	57.2	2	0.5	0	0.0	10	2.4	0	0.0
Western	655	339	51.8	3	0.5	0	0.0	10	1.5	1	0.2
South Carolina	626	341	54.5	9	1.4	2	0.3	6	1.0	0	0.0
Virginia											
Eastern	1,406	964	68.6	9	0.6	1	0.1	19	1.4	2	0.1
Western	311	147	47.3	2	0.6	0	0.0	10	3.2	2	0.6
West Virginia											
Northern	310	184	59.4	1	0.3	0	0.0	6	1.9	1	0.3
Southern	203	114	56.2	1	0.5	0	0.0	6	3.0	0	0.0

Table 26 (cont.)

CIRCUIT District	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		DOWNWARD DEPARTURE ³		DOWNWARD DEPARTURE W/ BOOKER ³		BELOW RANGE W/ BOOKER ³		REMAINING BELOW RANGE	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
TOTAL	7,443	11.1	5,960	8.9	5,479	8.2	1,321	2.0	547	0.8	11,684	17.4	391	0.6
D.C. CIRCUIT	59	23.1	2	0.8	45	17.6	15	5.9	10	3.9	43	16.9	6	2.4
District of Columbia	59	23.1	2	0.8	45	17.6	15	5.9	10	3.9	43	16.9	6	2.4
FIRST CIRCUIT	204	10.0	33	1.6	265	13.0	41	2.0	19	0.9	371	18.1	13	0.6
Maine	46	22.9	0	0.0	8	4.0	1	0.5	6	3.0	59	29.4	0	0.0
Massachusetts	44	8.9	6	1.2	136	27.5	15	3.0	4	0.8	143	28.9	4	0.8
New Hampshire	17	9.6	0	0.0	27	15.3	4	2.3	3	1.7	33	18.6	0	0.0
Puerto Rico	92	8.5	27	2.5	74	6.8	21	1.9	6	0.6	100	9.2	9	0.8
Rhode Island	5	5.6	0	0.0	20	22.2	0	0.0	0	0.0	36	40.0	0	0.0
SECOND CIRCUIT	736	21.6	25	0.7	237	7.0	91	2.7	70	2.1	1,237	36.3	21	0.6
Connecticut	55	18.1	0	0.0	29	9.5	25	8.2	6	2.0	101	33.2	0	0.0
New York														
Eastern	223	28.0	4	0.5	44	5.5	35	4.4	33	4.1	258	32.4	11	1.4
Northern	47	15.4	5	1.6	6	2.0	3	1.0	3	1.0	83	27.1	3	1.0
Southern	269	19.9	16	1.2	52	3.9	23	1.7	25	1.9	646	47.9	6	0.4
Western	110	23.8	0	0.0	54	11.7	0	0.0	1	0.2	90	19.4	1	0.2
Vermont	32	17.0	0	0.0	52	27.7	5	2.7	2	1.1	59	31.4	0	0.0
THIRD CIRCUIT	523	25.0	6	0.3	188	9.0	13	0.6	16	0.8	480	23.0	15	0.7
Delaware	14	19.7	0	0.0	16	22.5	0	0.0	1	1.4	22	31.0	0	0.0
New Jersey	189	28.3	1	0.1	48	7.2	2	0.3	3	0.4	159	23.8	1	0.1
Pennsylvania														
Eastern	187	32.0	4	0.7	50	8.6	6	1.0	5	0.9	140	24.0	8	1.4
Middle	65	21.3	1	0.3	7	2.3	5	1.6	5	1.6	57	18.7	3	1.0
Western	65	16.1	0	0.0	65	16.1	0	0.0	2	0.5	98	24.3	0	0.0
Virgin Islands	3	5.1	0	0.0	2	3.4	0	0.0	0	0.0	4	6.8	3	5.1
FOURTH CIRCUIT	737	14.1	18	0.3	378	7.3	55	1.1	40	0.8	914	17.5	22	0.4
Maryland	152	21.5	1	0.1	164	23.2	5	0.7	7	1.0	120	17.0	2	0.3
North Carolina														
Eastern	131	23.0	0	0.0	1	0.2	5	0.9	4	0.7	69	12.1	3	0.5
Middle	62	14.7	1	0.2	5	1.2	5	1.2	4	0.9	92	21.7	0	0.0
Western	157	24.0	2	0.3	38	5.8	3	0.5	2	0.3	99	15.1	1	0.2
South Carolina	94	15.0	4	0.6	44	7.0	1	0.2	3	0.5	120	19.2	2	0.3
Virginia														
Eastern	42	3.0	2	0.1	55	3.9	24	1.7	18	1.3	262	18.6	8	0.6
Western	63	20.3	0	0.0	30	9.6	11	3.5	2	0.6	43	13.8	1	0.3
West Virginia														
Northern	14	4.5	5	1.6	33	10.6	0	0.0	0	0.0	63	20.3	3	1.0
Southern	22	10.8	3	1.5	8	3.9	1	0.5	0	0.0	46	22.7	2	1.0

Table 26 (cont.)

CIRCUIT District	TOTAL	WITHIN GUIDELINE RANGE		UPWARD DEPARTURE ²		UPWARD DEPARTURE W/ BOOKER ²		ABOVE RANGE W/ BOOKER ²		REMAINING ABOVE RANGE	
		N	%	N	%	N	%	N	%	N	%
FIFTH CIRCUIT	15,900	10,038	63.1	83	0.5	21	0.1	288	1.8	11	0.1
Louisiana											
Eastern	337	183	54.3	0	0.0	1	0.3	5	1.5	0	0.0
Middle	162	76	46.9	1	0.6	2	1.2	2	1.2	1	0.6
Western	225	148	65.8	0	0.0	0	0.0	5	2.2	2	0.9
Mississippi											
Northern	161	86	53.4	1	0.6	0	0.0	7	4.3	0	0.0
Southern	235	161	68.5	0	0.0	0	0.0	5	2.1	0	0.0
Texas											
Eastern	827	555	67.1	7	0.8	1	0.1	21	2.5	0	0.0
Northern	1,372	867	63.2	14	1.0	6	0.4	52	3.8	1	0.1
Southern	6,479	3,713	57.3	36	0.6	9	0.1	67	1.0	1	0.0
Western	6,102	4,249	69.6	24	0.4	2	0.0	124	2.0	6	0.1
SIXTH CIRCUIT	4,497	1,928	42.9	10	0.2	7	0.2	75	1.7	8	0.2
Kentucky											
Eastern	439	264	60.1	1	0.2	1	0.2	11	2.5	0	0.0
Western	332	139	41.9	2	0.6	0	0.0	3	0.9	0	0.0
Michigan											
Eastern	895	302	33.7	1	0.1	1	0.1	10	1.1	0	0.0
Western	330	185	56.1	3	0.9	2	0.6	8	2.4	1	0.3
Ohio											
Northern	583	255	43.7	1	0.2	0	0.0	9	1.5	2	0.3
Southern	502	144	28.7	2	0.4	1	0.2	6	1.2	4	0.8
Tennessee											
Eastern	748	361	48.3	0	0.0	2	0.3	15	2.0	0	0.0
Middle	206	56	27.2	0	0.0	0	0.0	4	1.9	1	0.5
Western	462	222	48.1	0	0.0	0	0.0	9	1.9	0	0.0
SEVENTH CIRCUIT	2,269	817	36.0	6	0.3	5	0.2	39	1.7	3	0.1
Illinois											
Central	259	82	31.7	1	0.4	2	0.8	11	4.2	0	0.0
Northern	640	169	26.4	0	0.0	2	0.3	6	0.9	0	0.0
Southern	314	196	62.4	2	0.6	0	0.0	3	1.0	2	0.6
Indiana											
Northern	300	146	48.7	0	0.0	0	0.0	4	1.3	0	0.0
Southern	330	124	37.6	1	0.3	0	0.0	7	2.1	1	0.3
Wisconsin											
Eastern	301	57	18.9	0	0.0	0	0.0	8	2.7	0	0.0
Western	125	43	34.4	2	1.6	1	0.8	0	0.0	0	0.0
EIGHTH CIRCUIT	4,728	2,092	44.2	31	0.7	7	0.1	108	2.3	5	0.1
Arkansas											
Eastern	372	178	47.8	1	0.3	0	0.0	13	3.5	0	0.0
Western	253	113	44.7	0	0.0	0	0.0	10	4.0	0	0.0
Iowa											
Northern	348	214	61.5	10	2.9	2	0.6	9	2.6	1	0.3
Southern	353	97	27.5	0	0.0	1	0.3	2	0.6	0	0.0
Minnesota	494	148	30.0	1	0.2	2	0.4	5	1.0	2	0.4
Missouri											
Eastern	740	341	46.1	4	0.5	0	0.0	16	2.2	0	0.0
Western	826	340	41.2	4	0.5	1	0.1	35	4.2	0	0.0
Nebraska	541	276	51.0	0	0.0	0	0.0	11	2.0	0	0.0
North Dakota	361	121	33.5	2	0.6	0	0.0	3	0.8	1	0.3
South Dakota	440	264	60.0	9	2.0	1	0.2	4	0.9	1	0.2

Table 26 (cont.)

CIRCUIT District	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		DOWNWARD DEPARTURE ³		DOWNWARD DEPARTURE W/ BOOKER ³		BELOW RANGE W/ BOOKER ³		REMAINING BELOW RANGE	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
FIFTH CIRCUIT	1,209	7.6	621	3.9	536	3.4	673	4.2	56	0.4	2,244	14.1	120	0.8
Louisiana														
Eastern	58	17.2	3	0.9	9	2.7	2	0.6	7	2.1	68	20.2	1	0.3
Middle	23	14.2	1	0.6	3	1.9	2	1.2	0	0.0	51	31.5	0	0.0
Western	17	7.6	0	0.0	3	1.3	1	0.4	1	0.4	44	19.6	4	1.8
Mississippi														
Northern	27	16.8	0	0.0	7	4.3	2	1.2	0	0.0	31	19.3	0	0.0
Southern	34	14.5	0	0.0	5	2.1	0	0.0	0	0.0	30	12.8	0	0.0
Texas														
Eastern	34	4.1	5	0.6	165	20.0	3	0.4	0	0.0	35	4.2	1	0.1
Northern	193	14.1	3	0.2	49	3.6	13	0.9	3	0.2	171	12.5	0	0.0
Southern	422	6.5	398	6.1	109	1.7	513	7.9	36	0.6	1,169	18.0	6	0.1
Western	401	6.6	211	3.5	186	3.0	137	2.2	9	0.1	645	10.6	108	1.8
SIXTH CIRCUIT	947	21.1	8	0.2	474	10.5	42	0.9	45	1.0	940	20.9	13	0.3
Kentucky														
Eastern	35	8.0	0	0.0	32	7.3	0	0.0	2	0.5	93	21.2	0	0.0
Western	70	21.1	2	0.6	69	20.8	1	0.3	2	0.6	43	13.0	1	0.3
Michigan														
Eastern	196	21.9	0	0.0	57	6.4	7	0.8	14	1.6	305	34.1	2	0.2
Western	49	14.8	0	0.0	6	1.8	5	1.5	9	2.7	62	18.8	0	0.0
Ohio														
Northern	136	23.3	0	0.0	21	3.6	9	1.5	2	0.3	143	24.5	5	0.9
Southern	98	19.5	5	1.0	128	25.5	13	2.6	10	2.0	91	18.1	0	0.0
Tennessee														
Eastern	229	30.6	0	0.0	57	7.6	3	0.4	4	0.5	76	10.2	1	0.1
Middle	49	23.8	0	0.0	63	30.6	2	1.0	0	0.0	30	14.6	1	0.5
Western	85	18.4	1	0.2	41	8.9	2	0.4	2	0.4	97	21.0	3	0.6
SEVENTH CIRCUIT	305	13.4	4	0.2	222	9.8	61	2.7	71	3.1	715	31.5	21	0.9
Illinois														
Central	45	17.4	0	0.0	31	12.0	3	1.2	3	1.2	81	31.3	0	0.0
Northern	68	10.6	4	0.6	30	4.7	27	4.2	50	7.8	270	42.2	14	2.2
Southern	18	5.7	0	0.0	35	11.1	4	1.3	3	1.0	51	16.2	0	0.0
Indiana														
Northern	41	13.7	0	0.0	31	10.3	1	0.3	0	0.0	72	24.0	5	1.7
Southern	74	22.4	0	0.0	40	12.1	4	1.2	1	0.3	78	23.6	0	0.0
Wisconsin														
Eastern	50	16.6	0	0.0	49	16.3	0	0.0	1	0.3	134	44.5	2	0.7
Western	9	7.2	0	0.0	6	4.8	22	17.6	13	10.4	29	23.2	0	0.0
EIGHTH CIRCUIT	646	13.7	56	1.2	478	10.1	46	1.0	54	1.1	1,182	25.0	23	0.5
Arkansas														
Eastern	39	10.5	0	0.0	13	3.5	2	0.5	3	0.8	120	32.3	3	0.8
Western	45	17.8	1	0.4	6	2.4	3	1.2	4	1.6	69	27.3	2	0.8
Iowa														
Northern	54	15.5	0	0.0	7	2.0	2	0.6	1	0.3	48	13.8	0	0.0
Southern	59	16.7	1	0.3	85	24.1	1	0.3	3	0.8	103	29.2	1	0.3
Minnesota														
Missouri	74	15.0	0	0.0	32	6.5	9	1.8	18	3.6	202	40.9	1	0.2
Eastern	84	11.4	1	0.1	115	15.5	1	0.1	6	0.8	170	23.0	2	0.3
Western	119	14.4	0	0.0	90	10.9	3	0.4	2	0.2	229	27.7	3	0.4
Nebraska														
24	4.4	34	6.3	67	12.4	4	0.7	9	1.7	109	20.1	7	1.3	
North Dakota														
135	37.4	16	4.4	30	8.3	2	0.6	3	0.8	47	13.0	1	0.3	
South Dakota														
13	3.0	3	0.7	33	7.5	19	4.3	5	1.1	85	19.3	3	0.7	

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Table 26 (cont.)

CIRCUIT District	TOTAL	WITHIN GUIDELINE RANGE		UPWARD DEPARTURE ²		UPWARD DEPARTURE W/ BOOKER ²		ABOVE RANGE W/ BOOKER ²		REMAINING ABOVE RANGE	
		N	%	N	%	N	%	N	%	N	%
NINTH CIRCUIT	13,149	4,609	35.1	99	0.8	21	0.2	244	1.9	16	0.1
Alaska	177	64	36.2	0	0.0	0	0.0	4	2.3	0	0.0
Arizona	5,540	2,414	43.6	70	1.3	13	0.2	165	3.0	6	0.1
California											
Central	964	294	30.5	2	0.2	4	0.4	7	0.7	1	0.1
Eastern	669	286	42.8	6	0.9	1	0.1	10	1.5	1	0.1
Northern	464	174	37.5	0	0.0	0	0.0	10	2.2	0	0.0
Southern	2,847	423	14.9	10	0.4	1	0.0	8	0.3	7	0.2
Guam	67	40	59.7	0	0.0	0	0.0	0	0.0	0	0.0
Hawaii	141	59	41.8	0	0.0	0	0.0	1	0.7	0	0.0
Idaho	259	112	43.2	1	0.4	0	0.0	1	0.4	1	0.4
Montana	317	105	33.1	1	0.3	1	0.3	5	1.6	0	0.0
Nevada	399	204	51.1	1	0.3	1	0.3	8	2.0	0	0.0
Northern Mariana Islands	22	15	68.2	1	4.5	0	0.0	0	0.0	0	0.0
Oregon	447	140	31.3	0	0.0	0	0.0	6	1.3	0	0.0
Washington											
Eastern	303	106	35.0	7	2.3	0	0.0	7	2.3	0	0.0
Western	533	173	32.5	0	0.0	0	0.0	12	2.3	0	0.0
TENTH CIRCUIT	7,456	4,130	55.4	23	0.3	5	0.1	32	0.4	3	0.0
Colorado	482	182	37.8	4	0.8	0	0.0	8	1.7	0	0.0
Kansas	473	201	42.5	0	0.0	2	0.4	9	1.9	1	0.2
New Mexico	4,970	3,169	63.8	8	0.2	1	0.0	7	0.1	1	0.0
Oklahoma											
Eastern	100	72	72.0	0	0.0	1	1.0	0	0.0	0	0.0
Northern	211	73	34.6	1	0.5	0	0.0	1	0.5	0	0.0
Western	327	159	48.6	0	0.0	0	0.0	5	1.5	0	0.0
Utah	677	185	27.3	8	1.2	0	0.0	1	0.1	1	0.1
Wyoming	216	89	41.2	2	0.9	1	0.5	1	0.5	0	0.0
ELEVENTH CIRCUIT	5,954	3,194	53.6	7	0.1	10	0.2	98	1.6	3	0.1
Alabama											
Middle	152	78	51.3	1	0.7	1	0.7	3	2.0	0	0.0
Northern	359	195	54.3	0	0.0	0	0.0	3	0.8	1	0.3
Southern	317	191	60.3	1	0.3	0	0.0	2	0.6	0	0.0
Florida											
Middle	1,414	642	45.4	0	0.0	1	0.1	16	1.1	0	0.0
Northern	253	107	42.3	0	0.0	3	1.2	7	2.8	0	0.0
Southern	2,174	1,273	58.6	1	0.0	4	0.2	51	2.3	2	0.1
Georgia											
Middle	354	248	70.1	1	0.3	0	0.0	4	1.1	0	0.0
Northern	527	147	27.9	1	0.2	1	0.2	10	1.9	0	0.0
Southern	404	313	77.5	2	0.5	0	0.0	2	0.5	0	0.0

Table 26 (cont.)

CIRCUIT	§5K1.1		§5K3.1		OTHER		DOWNWARD		DOWNWARD		BELOW		REMAINING			
	SUBSTANTIAL ASSISTANCE		EARLY DISPOSITION		GOVT SPONSORED		DEPARTURE ³		DEPARTURE ³		W/ BOOKER ³		W/ BOOKER ³		BELOW RANGE	
District	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%
NINTH CIRCUIT	995	7.6	3,663	27.9	1,639	12.5	202	1.5	94	0.7	1,474	11.2	93	0.7		
Alaska	29	16.4	0	0.0	36	20.3	0	0.0	1	0.6	43	24.3	0	0.0		
Arizona	123	2.2	1,869	33.7	525	9.5	25	0.5	11	0.2	307	5.5	12	0.2		
California																
Central	158	16.4	50	5.2	161	16.7	41	4.3	33	3.4	187	19.4	26	2.7		
Eastern	113	16.9	27	4.0	50	7.5	16	2.4	4	0.6	150	22.4	5	0.7		
Northern	55	11.9	15	3.2	45	9.7	6	1.3	6	1.3	148	31.9	5	1.1		
Southern	178	6.3	1,637	57.5	283	9.9	98	3.4	15	0.5	152	5.3	35	1.2		
Guam	22	32.8	0	0.0	1	1.5	0	0.0	0	0.0	3	4.5	1	1.5		
Hawaii	43	30.5	0	0.0	8	5.7	0	0.0	0	0.0	30	21.3	0	0.0		
Idaho	56	21.6	6	2.3	12	4.6	3	1.2	6	2.3	61	23.6	0	0.0		
Montana	60	18.9	0	0.0	20	6.3	3	0.9	2	0.6	118	37.2	2	0.6		
Nevada	39	9.8	10	2.5	57	14.3	6	1.5	5	1.3	67	16.8	1	0.3		
Northern Mariana Islands	3	13.6	0	0.0	1	4.5	0	0.0	1	4.5	1	4.5	0	0.0		
Oregon	56	12.5	2	0.4	149	33.3	0	0.0	5	1.1	84	18.8	5	1.1		
Washington																
Eastern	34	11.2	25	8.3	72	23.8	3	1.0	0	0.0	49	16.2	0	0.0		
Western	26	4.9	22	4.1	219	41.1	1	0.2	5	0.9	74	13.9	1	0.2		
TENTH CIRCUIT	338	4.5	1,506	20.2	646	8.7	37	0.5	29	0.4	686	9.2	21	0.3		
Colorado	76	15.8	26	5.4	93	19.3	5	1.0	5	1.0	81	16.8	2	0.4		
Kansas	67	14.2	8	1.7	129	27.3	6	1.3	4	0.8	46	9.7	0	0.0		
New Mexico	65	1.3	1,242	25.0	204	4.1	13	0.3	13	0.3	229	4.6	18	0.4		
Oklahoma																
Eastern	17	17.0	0	0.0	2	2.0	0	0.0	0	0.0	8	8.0	0	0.0		
Northern	46	21.8	0	0.0	14	6.6	1	0.5	2	0.9	73	34.6	0	0.0		
Western	24	7.3	0	0.0	12	3.7	2	0.6	1	0.3	123	37.6	1	0.3		
Utah	30	4.4	208	30.7	141	20.8	9	1.3	1	0.1	93	13.7	0	0.0		
Wyoming	13	6.0	22	10.2	51	23.6	1	0.5	3	1.4	33	15.3	0	0.0		
ELEVENTH CIRCUIT	744	12.5	18	0.3	371	6.2	45	0.8	43	0.7	1,398	23.5	23	0.4		
Alabama																
Middle	29	19.1	1	0.7	11	7.2	0	0.0	1	0.7	27	17.8	0	0.0		
Northern	65	18.1	0	0.0	15	4.2	2	0.6	1	0.3	77	21.4	0	0.0		
Southern	42	13.2	1	0.3	13	4.1	0	0.0	0	0.0	67	21.1	0	0.0		
Florida																
Middle	262	18.5	15	1.1	45	3.2	8	0.6	13	0.9	408	28.9	4	0.3		
Northern	50	19.8	0	0.0	1	0.4	2	0.8	2	0.8	81	32.0	0	0.0		
Southern	141	6.5	1	0.0	80	3.7	23	1.1	18	0.8	563	25.9	17	0.8		
Georgia																
Middle	50	14.1	0	0.0	7	2.0	3	0.8	1	0.3	39	11.0	1	0.3		
Northern	59	11.2	0	0.0	189	35.9	6	1.1	6	1.1	108	20.5	0	0.0		
Southern	46	11.4	0	0.0	10	2.5	1	0.2	1	0.2	28	6.9	1	0.2		

¹ Of the 67,742 cases, 781 were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. The information needed to determine the relationship between the sentence imposed and the guideline range was missing in five percent or more of the cases received from: Eastern North Carolina (12.6%), Western Louisiana (10.7%), Southern West Virginia (6.5%), and Middle Tennessee (6.4%). Descriptions of variables used in this table are provided in Appendix A.

² See Tables 24-24B for a list of departure reasons comprising these categories.

³ See Tables 25-25B for a list of departure reasons comprising these categories.

SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.

Exhibit 12

Table 24

**REASONS GIVEN BY SENTENCING COURTS FOR UPWARD
DEPARTURES FROM THE GUIDELINE RANGE¹
Fiscal Year 2016**

REASONS	N	%
Criminal history issues	170	33.9
Dismissed and uncharged conduct (§5K2.21)	91	18.1
Pursuant to plea agreement	79	15.7
General aggravating circumstances (§5K2.0)	36	7.2
General guideline adequacy issues	13	2.6
Extreme conduct (§5K2.8)	12	2.4
Death (§5K2.1)	11	2.2
Propensity for violence	7	1.4
Physical injury (§5K2.2)	6	1.2
Weapons/dangerous instrumentalities (§5K2.6)	5	1.0
Violent street gang (§5K2.18)	5	1.0
Insufficient documentation provided on SOR to determine reason	5	1.0
Public welfare (§5K2.14)	4	0.8
Ongoing nature of activity	4	0.8
Disruption of government function (§5K2.7)	3	0.6
Role in the offense	3	0.6
Conduct while on release, bond, or supervision	3	0.6
Criminal history issues in application of §2L1.2	3	0.6
Increase over similar prior's sentence	3	0.6
Extreme psychological injury (§5K2.3)	2	0.4
Terrifying the victim	2	0.4
Abuse of trust/skill	2	0.4
Other	33	6.6
TOTAL	502	100.0

¹ Of the 67,742 cases, 317 received an upward departure from the guideline range. Courts may cite multiple reasons for sentencing outside the guideline range; consequently, the total number of reasons cited generally exceeds the total number of cases. In this table, 502 reasons were cited for the 317 cases. In five cases where the SOR was received, there was insufficient documentation provided to determine some of the reasons for the sentence. The "Other" category includes all reasons cited fewer than two times among relevant cases. Descriptions of the variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, 2016 Datafile, USSCFY16.