

No.

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IN THE  
*Supreme Court of the United States*

OCTOBER TERM, 2019

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ROBERT JODOIN,  
*Petitioner*,  
v.

UNITED STATES OF AMERICA,  
*Respondent*.

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**On Petition for a Writ of Certiorari to the  
United States Court of Appeals  
For the Eleventh Circuit**

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**PETITION FOR WRIT OF CERTIORARI**

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**STATEMENT OF THE ISSUE(S)**

- I. WHETHER A ONE HUNDRED THIRTY MONTH PRISON SENTENCE FOR A NON-VIOLENT, DRUG DEALING, FIFTY (50) YEAR OLD, MILITARY VETERAN IS UNREASONABLE.**

## **LIST OF PARTIES**

All parties appear in the caption of the case on the title page.

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The Petitioner, **Robert Jodoin**, respectfully prays that a Writ of Certiorari issue to review the Judgment and Opinion of the United States Court of Appeals for the Eleventh Circuit, entered in the above entitled proceeding on June 12, 2020.

**OPINION BELOW**

The Opinion of the Court of Appeals for the Eleventh Circuit (App., infra,

1a-6 a) is unpublished.

## **JURISDICTION**

The Petitioner **Robert Jodoin** was prosecuted by an Indictment alleging violation of Federal Criminal Laws in the United States District Court for the Middle District, convicted and sentenced to 70 Months as to Court 1-4 as to drug convictions and a statutory mandatory minimum of 60 Months consecutively to his Sentence on Courts 1-4; resulting in a total Sentence of 130 Months' imprisonment. He appealed his Sentence to the Eleventh Circuit Court of Appeals invoking the Court's jurisdiction under 28 U.S.C. § 1291. (Doc. 64) His Sentence was affirmed by an Order entered June 12, 2020. (Doc. 79)

The jurisdiction of this Court to review the Judgment of the Eleventh Circuit Court of Appeals is invoked under 28 U.S.C. § 1254(1).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

*No person shall be held to answer for a Capital, or Infamous Crime, unless on presentment or indictment of a Grand Jury, except in Cases arising in the Land or Naval Forces, or in the Militia, when in actual Service in time of War or Public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of Law; nor shall private property be taken for public use, without just compensation.* Fifth Amendment to the United States Constitution.

*In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district where in the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.* Sixth Amendment to the United States Constitution.

*Excessive Bail shall not be required, nor excessive Fines imposed, nor cruel and unusual punishments inflicted.* Eighth Amendment to the United States

Constitution.

## **STATEMENT OF THE CASE AND FACT**

### **Course of the Proceedings and Dispositions in the Court Below<sup>1</sup>**

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

On June 13, 2018, the Federal Grand Jury in the Middle District of Florida, Jacksonville Division, returned a Five-Count Indictment alleging violations of the Federal Drug Laws against Defendant, Robert Richard Jodoin. (Doc. 16)

On October 10, 2018, The Federal Grand Jury in the Middle District of Florida, Jacksonville Division, returned a Five-Count Superseding Indictment against Mr. Jodoin. (Doc 38)

Count 1 of the Indictment charged that on or about April 16, 2018, in the Middle District Of Florida and elsewhere, Mr. Jodoin, knowingly and intentionally imported and attempted to import, into the United States, a mixture and substance containing a detectable amount of Gamma- Hydroxybutyric Acid, also referred to as “GHB”, a Schedule I controlled substance, in violation of 21 U.S.C. §§ 952(a), 960(a)(1), 960(b)(3), and 963 (Doc. 16)

Count 2 of the Indictment charged that on or about April 26, 2018, in the Middle District Of Florida and elsewhere, Mr. Jodoin knowingly and intentionally

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<sup>1</sup>

Most of the facts were adopted from the PSR unless where defendant objected; the facts were tailored to the issue(s) on Appeal. Additionally, the following facts are supported by the Record on Appeal, but, are not necessarily conceded as true by Mr. Jodoin. (Docs. 54, 56 and 58)

distributed Methoxyacetylentanyl, a Schedule I controlled substance, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C). (Doc. 16)

Count 3 of the Indictment charged that on or about June 6, 2018, in the Middle District of Florida and elsewhere, Mr. Jodoin knowingly and intentionally possessed, with intent to distribute, Cathinone, a Schedule I controlled substance, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C). (Doc. 16)

Count 4 of the Indictment charged that from approximately May 11, 2018 through June 6, 2018, in the Middle District of Florida and elsewhere, Mr. Jodoin knowingly used and maintained, and, caused the use and maintaining of a residence located at 5906 John Anderson Highway in Flagler Beach, Florida, whether permanently or temporarily, for the purpose of distributing any controlled substance, in violation of 21 U.S.C. §856. (Doc. 16)

Count 5 of the Indictment charged that on or about June 6, 2018, Mr. Jodoin, in the Middle District Of Florida and elsewhere, knowingly possessed a firearm in furtherance of a drug trafficking crime for which he may be prosecuted in a Court of the United States, specifically, using and maintaining a place for the purpose of distributing any controlled substance, as alleged in Count Four, in violation of 18.U.S.C. §924(c)(1)(A)(i). (Doc. 16)

The Indictment contained a forfeiture provision pursuant to 21 U.S.C. §853, 18.U.S.C. §981(a)(1)(C), and, 28 U.S.C. § 2461(c), specifically seeking the forfeiture of (a) the domain name PRIMALVISIONS.NET, registered with Web.com, which had its headquarters at 12808 Gran Bay Parkway West,

Jacksonville, 32258, and, (b) a Cobra Enterprises of Utah, Model CA-380 pistol, serial number CP125046.

On October 10, 2018, a Federal Grand Jury in the Middle District of Florida, Jacksonville Division, returned a Five-Count Superseding Indictment against Mr. Jodoin. (Doc. 38) Count One of the Superseding Indictment charged that on or about April 16, 2018, in the Middle District Of Florida and elsewhere, Mr. Jodoin, knowingly and intentionally imported and attempted to import, into the United States, a mixture and substance containing a detectable amount of Gamma- Hydroxybutyric Acid, also referred to as “GHB”, a Schedule I controlled substance, in violation of 21 U.S.C. §§ 952(a), 960(a)(1), 960(b)(3), and 963 (Doc. 38)

Count Two of the Superseding Indictment charged that on or about April 26, 2018, in the Middle District Of Florida and elsewhere, Mr. Jodoin knowingly and intentionally distributed Benzoyl Fentanyl, a Schedule I controlled substance, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C). (Doc. 38)

Count Three of the Indictment charged that on or about June 6, 2018, in the Middle District of Florida and elsewhere, Mr. Jodoin knowingly and intentionally possessed, with intent to distribute for human consumption, a mixture and substance containing a detectable amount of N-Ethylhexedrone, an analogue of pentedrone, which is a Schedule I controlled substance, in violation of 21 U.S.C.

§§ 841(a)(1) and 841(b)(1)(C), and, 813. (Doc. 38)

Count 4 of the Superseding Indictment charged that from approximately May 11, 2018 through June 6, 2018, in the Middle District of Florida and elsewhere, Mr. Jodoin knowingly used and maintained, and, caused to be used and maintained a residence located at 5906 John Anderson Highway in Flagler Beach, Florida, whether permanently or temporarily, for the purpose of distributing any controlled substance, in violation of 21 U.S.C. §856.

Count 5 of the Superseding Indictment charged that on or about June 6, 2018, in the Middle District Of Florida and elsewhere, Mr. Jodoin, knowingly possessed a firearm in furtherance of a drug trafficking crime for which he may be prosecuted in a Court of the United States, specifically, using and maintaining a place for the purpose of distributing any controlled substance, as alleged in Count Four, in violation of 18.U.S.C. §924(c)(1)(A)(i). (Doc. 38)

The Superseding Indictment contained a forfeiture provision pursuant to 21 U. S. C. §853, 18.U.S.C. §981(a)(1)(C), and, 28 U.S.C. § 2461(c), specifically seeking the forfeiture of (a) the domain name PRIMALVISIONS.NET, registered with Web.com, which had its headquarters at 12808 Gran Bay Parkway West, Jacksonville, 32258, and, (b) a Cobra Enterprises of Utah, Model CA-380 pistol, serial number CP125046.

On February 6, 2019, Mr. Jodoin appeared before United States Magistrate Judge James R. Klindt and entered a plea of Guilty to Counts One through Five of

the Superseding Indictment. (Doc. 47)

On February 25, 2019, United States District Judge Marcia Morales Howard accepted Mr. Jodoin's Plea and adjudged him Guilty. Pursuant to a Written Plea Agreement, the Government agreed to recommend a Three Level reduction for Acceptance of Responsibility, pursuant to USSG §3E1.1. (Doc. 52) This was conditioned upon Mr. Jodoin clearly demonstrating acceptance of responsibility for the offense, and assisting authorities in the investigation or prosecution of the misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Government and the Court to allocate their resources efficiently. (Doc. 52)

The Revised Final PSR recommended imprisonment of 87-108 Months, plus 60 Months consecutive as to Count 5 imprisonment. (Doc. 58, ¶130) The Plea Agreement was accepted and sentencing was held on May 13, 2019 when the District Court Judge sentenced Mr. Jodoin to, *inter alia*, 130 Months imprisonment. (Doc. 63) Defendant is currently incarcerated in the Federal Prison System.

### **Plea Agreement**

The Parties agreed that Mr. Jodoin would plead guilty to Counts One through Five of the Superseding Indictment. (Doc. 48) As to Count 1, Mr. Jodoin

faces a maximum twenty year term of imprisonment, at least three years supervised release, a \$1,000,000 fine and a \$100 special monetary assessment. (Doc. 69)

The Government agrees not to file any further criminal proceedings against the defendant arising out of the same transaction or occurrences to which Mr. Jodoin has pled. The parties agreed that the sentence to be imposed be left solely to the discretion of the Court, which is required to consult the United States Sentencing Guidelines and take them into account when sentencing Mr. Jodoin. The Parties further understand and agree that the District Court's discretion in imposing Sentence is limited only by the statutory maximum sentence and any mandatory minimum sentence prescribed by statute for the offense.

Supplement to the Plea Agreement (Cooperation): As to the Supplement to the Plea Agreement, the government has agreed that, should Mr. Jodoin's cooperation rise to the level of substantial assistance, a motion for a reduction of sentence may be filed.

### **The Offense Conduct**

In 2017 the Drug Enforcement Administration (DEA) received information that Robert Richard Jodoin (Mr. Jodoin) was marketing controlled substances and controlled substance analogues via the World Wide Web through its website

WWW.PRIMALVISIONS.NET. During the course of the investigation, the DEA received information from Homeland Security Investigations (HSI) that U. S. Customs and Border Protection (CBP) has intercepted a package inbound to the United States from overseas addressed to Mr. Jodoin at a Post Office Box located at the Flagler Beach Post Office (P. O. Box 1) in Flagler County, Florida.

Investigation of P. O. Box 1 by the United States Postal Inspection Service revealed that P. O. Box 1 had been opened in the name of Mr. Jodoin, and, his business, Primal Vision. On July 21, 2017, a DEA agent attempted an undercover purchase of 500 mg of "Bulk Butylone (MDMA analog)," 500 mg of "2-methyl-maf — RC Opiate Powder," 100 mg of "CDB Oil 15 ml" and one gram of "4-MPD Crystal" via the Primal Vision website. The agent placed the order and received a confirmation email but was unable to pay. On July 24, 2017, the agent received an email saying his order had been canceled. He then exchanged online messages with Mr. Jodoin about how to pay for his order.

On November 3, 2017, the DEA received information concerning an overdose that occurred in Johnson City, Tennessee. The individual who overdosed told Tennessee Law Enforcement that he became sick and overdosed after taking drugs he ordered from PRIMALVISIONS.NET. The individual provided Law Enforcement with two small bags containing unknown drugs. Subsequent DEA laboratory analysis revealed the bags contained N-Ethylhexedrone (an analogue of pentedrone, a synthetic cathinone), 4-Chloro-alpha-PVP (a synthetic cathinone)

and Methoxyacetyl Fentanyl (a Schedule 1 controlled substance).<sup>2</sup>

On December 26, 2017, CBP searched a letter addressed to Jodoin at P. O. Box 1. The letter felt lumpy and spongy. Inside the envelope, Law Enforcement discovered a small, black envelope labeled "Analytic Sample; LSD" (Lysergic Acid Diethylamide). The LSD weighed 2.5 milligrams.

On January 8, 2018, CBP in New York seized a package addressed to Mr. Jodoin at P. O. Box 1. The package had been shipped from China. Law Enforcement searched the package and discovered 152 grams of 4 Methylpentedrone HCl (an analogue of Pentedrone, a synthetic cathinone).

On March 22, 2018, a Postal Inspector in Denver, Colorado, contacted a Postal Inspector in Jacksonville, Florida, regarding a man in Colorado who had overdosed on methamphetamine. The man's stepfather informed the Postal Inspector Inspector that his stepson was expecting additional shipments of Methamphetamine via the mail. The Postal Inspector obtained the parcel, which was postmarked March 14, 2018, from Flagler Beach, Florida. The package's return address was P. O. Box 1. The package contained a small plastic bag of light brown powder, a small plastic bottle containing a clear liquid, and two small bags containing a white powder. The bag of light brown powder was labeled "Mystery Chem." Investigation revealed this package had been sent from Flagler Beach as part of a two-package transaction. The second package was mailed to a man in Tylertown, Mississippi. The contents of that package are unknown.

On April 16, 2018, a Special Agent with HSI was alerted that CBP

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<sup>2</sup> The package sent by Mr. Jodoin contained user quantities of illicit substances. Unless otherwise noted, the Probation Office did not have evidence establishing the exact quantities of the substances in the packages mailed by Mr. Jodoin.

intercepted a package addressed to Mr. Jodoin at P. O. Box 1. The package had been mailed from the Netherlands. The package was subjected to a border search, which revealed it contained 1200 ml of Gamma-Hydroxybutyric Acid (GHB) a Schedule I controlled substance. The identity of the substance was confirmed by CBP laboratory analysis. While at the Post Office, a Postal Employee provided the Special Agent with a parcel addressed to Mr. Jodoin that had been shipped from Kazakhstan. The parcel contained a torn, empty bag with an invoice from NEORCS Research Chemicals. The invoice was addressed to Mr. Jodoin and documented a purchase of 100 grams of "A-PVP," a synthetic Cathinone. After the search, the parcel was scanned as delivered, and, retrieved from the Post Office by Mr. Jodoin.

On April 23, 2018, HSI intercepted a package destined for Jodoin. The package had been shipped from China. A search of the package revealed 106.9 grams of Pentedrone, a synthetic Cathinone.

On April 24, 2018, HSI intercepted a package destined for Mr. Jodoin. A search of the package revealed 108 grams of a substance initially believed to be 3,4-Methylenedioxymethamphetamine (MDMA), a Schedule I controlled substance commonly known as ecstasy. Subsequent laboratory analysis revealed the substance was actually bk-DMBDB, a positional isomer of Pentyline (a synthetic cathinone), and thus a Schedule 1 controlled substance.

Also, on April 24, 2018, Law Enforcement received a report from the Acushnet Police Department in Massachusetts. The report was dated July 28, 2017, and detailed Law Enforcement responding to a drug overdose. The mother of the man who overdosed advised her son purchased the substance he overdosed on via the internet. The man was revived using Narcan. He told Police that he had ingested Fentanyl, Methamphetamine, and, Ketamine. During a follow-up

interview, the man told Law Enforcement that he purchased the drugs from PRIMALVISIONS.NET. He told the Law Enforcement Officers he believed the drugs he purchased were safe and legal because he obtained them online. He told the Officers he purchased MAF 500 mg (2-mthy 1-maf )- RC Opiate Powder for \$49.95, and, DCK Pure 98% Powder (Descholoroketamine) - 100 mg for \$12.50. Included in his purchase was a gift labeled "New PEA-5 gram-Pure 99% Short Acting Dopamine Uptaker Sim Effects as E-Hex but in Oral Only." The man advised, on the night of his overdose he ingested 10-12 milligrams of DCK and PEA. After not feeling well for a few ours, he took a 10-12mg dose of MAF.

On April 25, 2018, Special Agents conducting surveillance at the Flagler Beach Post Office observed Mr. Jodoin mail five (5) parcels destined for Philadelphia, Pennsylvania; Quakertown, Pennsylvania; Brockton, Massachusetts; Fairfax, California; and, Portland, Oregon. The Special Agents seized the packages and obtained Search Warrants. The Philadelphia parcel contained a glass smoking pipe and a baggie labeled as "10 Gram Hex".

The substance in the bag tested positive for 4-Methylpentedrone. The Quakertown parcel contained a baggie with two doses of LSD.<sup>3</sup> The Brockton parcel contained a baggie labeled "100 MR 3MEO" and a baggie labeled "Hex." Laboratory analysis revealed the bag labeled "Hex" did not contain a controlled substance; however, laboratory analysis revealed the other baggie contained .036 grams of 3-Methoxyphencyclidine, a controlled substance. The Fairfax parcel contained a glass smoking pipe, a baggie labeled "2qR Hex," a baggie labeled "100mg 3MEO," and, a baggie containing 21 unidentified pink pills. The substance labeled 2qR Hex tested positive for 4-Methylpentedrone (Synthetic Cathinone). The substance labeled "100mg 3MEO" tested positive for 3-Me0-PCP

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<sup>3</sup> As indicated in Notes to the Drug Quantity Table found at USSG §2D1.1, note (g), each dose of LSD is equal to four (4) milligrams of LSD.

(analogue of a Phencyclidine). The Portland parcel contained a glass smoking pipe, a baggie labeled "FLUB" that contained 10 pink pills, and, a baggie labeled "2QR HEX." The pills tested positive for Clonazolam (an analogue of a controlled substance) and, the substance labeled "2QR HEX" tested positive for 4-Methylpentedrone.

On April 26, 2018, a Flagler Beach Post Office Employee observed Mr. Jodoin as he entered the Post Office and mailed four parcels. The parcels were secured by the Postal Employee and retrieved by a Postal Inspector for further investigation. One of the parcels was addressed to an individual in Portland, Oregon, with a return address of P. O. Box 1. A Search Warrant was obtained to search the parcel which was found to contain 4 grams of Benzoyl Fentanyl, a Schedule I controlled substance. The identity of the substance was confirmed by DEA laboratory analysis. The other packages were bound for Hayward, California; Erie, Pennsylvania; and Rogors, Arkansas. The Rogors parcel contained 27 pink pills of an unknown chemical makeup. The Hayward parcel contained a baggie of unknown brown powder, a baggie of Cathinone, and a bag containing 21 pink pills. The Erie parcel contained a baggie of 4-Methylpentedrone, another baggie of a white crystal substance, and 30 pink pills.

On May 8, 2018, law enforcement intercepted an international parcel addressed to Mr. Jodoin. A search of the package revealed 119.2 grams of Cathinone.

From May 11, 2018, through June 6, 2018, Law Enforcement conducted periodic surveillance of Mr. Jodoin. On May 11, 2018, Law Enforcement established surveillance in the area of Mr. Jodoin's residence located at 5906 John Anderson Highway in Flagler Beach, Volusia County, Florida. The Agents observed Mr. Jodoin depart his residence on the afternoon of May 11, 2018 and

travel directly to the Flagler Beach Post Office where he checked P. O. Box 1.

On May 14, 2018, Postal Employees contacted Law Enforcement after Mr. Jodoin mailed three parcels from the Flagler Post Office. Law Enforcement seized the packages which were bound for Tuscaloosa, Alabama; Lyford, Texas; and Rogers, Arkansas. A search of the Tuscaloosa parcel revealed a vial labeled as Hemp Oil, two baggies containing .8 grams of Dimethyltryptamine, and two plastic baggies labeled Hex. Those bags contained 2.1 grams of a white powder. The Lyford parcel contained 22 pink pills which field tested as Clonazolam (a Benzodiazepine). The Rogers parcel contained a vial labeled Hemp Oil and a baggie labeled "Super Red" that contained 97.1 grams of a brown powder.

On May 14 and 15, 2018, an Undercover Special Agent with Immigration and Customs Enforcement (ICE) conducted a controlled purchase of N, N-Dimethyltryptamine, a Schedule I controlled substance, from Mr. Jodoin. The Agent conducted the controlled purchase via Mr. Jodoin's website, WWW.PRIMALVISIONS.NET, and text messages exchanged with Mr. Jodoin. The Undercover Agent used Bitcoin to pay Mr. Jodoin for N, N-Dimethyltryptamine on May 15, 2018. Mr. Jodoin texted the Undercover Agent that his package would be mailed overnight. On May 15, 2018, Law Enforcement established surveillance in the area of Mr. Jodoin's residence and observed Mr. Jodoin leave his residence and travel to the Flagler Beach Post Office. Undercover Agents at the Post Office watched Mr. Jodoin check P.O. Box 1, then walk to the Customer Service Counter where he paid cash to mail two parcels. One of the parcels was addressed to the Undercover Special Agent. A CBP laboratory determined the parcel contained six grams of N-Dimethyltryptamine, a Schedule I controlled substance. The second parcel was bound for Brooklyn, New York, and contained a vial labeled Hemp Oil, a baggie labeled Hex that contained 1.7 grams

of white powder, and a baggie labeled NEP that contained .7 grams of white powder.

On May 16 and 17, 2018, Law Enforcement visited the PRIMALVISIONS.NET Website and discovered Mr. Jodoin had posted an advertisement offering a \$1,300 reward for beating Kelly Siderov. The advertisement gave a physical description of Ms. Siderov along with information about her vehicle. Mr. Jodoin characterized Ms. Siderov as "wanted dead or alive" and encouraged his customers to "beat the fuck out of her." Ms. Siderov was Mr. Jodoin's girlfriend and she helped him run his online drug business. In his advertisement, Mr. Jodoin indicated Ms. Siderov stole from his business and turned in the names of his customers. During this time, an Undercover Agent exchanged text messages with Mr. Jodoin concerning the purchase of Fentanyl. Mr. Jodoin advised the price was \$100 per gram but he only had three grams available for purchase. During the exchange, Mr. Jodoin solicited the Undercover Agent to "take out" Ms. Siderov.

On May 21, 2018, Mr. Jodoin opened a second Post Office Box (P.O. Box 2) at the Flagler Beach Post Office. On the application for P.O. Box 2, Mr. Jodoin listed his name and "Primal Visions."

On May 22, 2018, Law Enforcement again conducted surveillance of Mr. Jodoin's residence and observed him depart the residence and travel directly to the Flagler Beach Post Office. At the post office, Mr. Jodoin mailed a parcel addressed to a recipient in Somerville, Massachusetts. A Postal Inspector seized the parcel and obtained a Search Warrant. The parcel contained two grams of a substance that field tested positive for Methamphetamine/Fentanyl.<sup>4</sup>

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<sup>4</sup> For Guideline purposes, this mixture/substance is treated as Fentanyl.

On May 26, 2018, a Flagler Beach Post Office Employee notified a Postal Inspector that a parcel from China had arrived at the Post Office addressed to "PRIMAL VISIONS" at P.O. Box 2. A border search of the parcel revealed 101.8 grams of N-Ethylhexedrone. Mr. Jodoin intended to sell the N-Ethylhexedrone on his website, WWW.PRIMALVISIONS.NET, and had advertised the substance as being for human consumption for the purpose of getting high.

On June 6, 2018, the package containing the N-Ethylhexedrone was scanned as available for pickup in the postal service tracking system, and a delivery notice slip was placed into P.O. Box 2. That day, Law Enforcement Officers conducting surveillance of Mr. Jodoin observed him leave his residence and travel to the Flagler Beach Post Office. When he arrived, Mr. Jodoin checked P.O. Box 2, removed the delivery notice slip, and proceeded to the Customer Service Counter where he retrieved the parcel containing N-Ethylhexedrone. Law Enforcement arrested Mr. Jodoin after he exited the Post Office with the parcel.

Mr. Jodoin participated in an interview with Law Enforcement. During the interview, Mr. Jodoin stated that he ran the PRIMALVISIONS.NET website and sold "chemicals" to his customers via the site.

Also on June 6, 2018, Law Enforcement Officers executed a Federal Search Warrant at Mr. Jodoin's residence. Inside the residence, Officers discovered a drug packaging table that included a mortar and pestle used for grinding drugs, a drug scale, large quantities of United States Postal Service free mailing materials, and drug dosing spoons and pipes similar to those that had been recovered from packages mailed by Mr. Jodoin. Additionally, assorted powders were strewn about on the table. On a table next to the drug packaging table, Officers located a Cobra Enterprises of Utah .380 caliber pistol. The pistol was loaded with five rounds of ammunition, including one round in the chamber. The pistol was in plain view and readily accessible. In close proximity to

the packaging table and the table with the pistol were various bottles and containers of powders and substances. The residence also contained a number of drug ledgers reflecting purchases and sales of controlled substances and controlled substance analogues that had been conducted by Jodoin, primarily via the internet, from his residence. The drugs reflected in the ledgers included "MAF," which in the course of his operation Mr. Jodoin had represented to be Methoxyacetyl Fentanyl, an analogue of Fentanyl. In total, the ledgers reflected purchases of 170 grams of "MAF"<sup>5</sup> and sales of 79.3 grams of "MAF" by Mr. Jodoin. The ledgers also documented sales of Cialis and Ketamine.

Based on seized amounts and drug ledgers maintained by Mr. Jodoin, he was held accountable for 170 grams of Methoxyacetyl Fentanyl, 687.9 grams of synthetic cathinone, .036 grams of PCP, 1200 milliliters of GHB, 6.8 grams of DMT and 3.3 milligrams of LSD.

### **Victim Impact**

This is a Title 21 offense and there is no identifiable victim.

### **Adjustment for Obstruction of Justice**

The Probation Officer had no information indicating Mr. Jodoin impeded or obstructed justice.

### **Adjustment for Acceptance of Responsibility**

Mr. Jodoin was interviewed by the Probation Officer and provided a statement wherein he admitted involvement in the offense. Mr. Jodoin stated he began his online business after he had trouble securing employment. Initially, he sold holistic supplements but switched to recreational drugs to generate more profit.

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<sup>5</sup> This figure includes the 4 grams of Benzoyl Fentanyl seized by Law Enforcement on April 26, 2018.

## **Offense Level Computation**

Due to *ex post facto* considerations, the 2016 Guidelines Manual, incorporating all guideline amendments, was used to determine Mr. Jodoin's offense level. USSG §1B1.11

Pursuant to USSG §3D1.1(b)(1), Count Five is excluded from the application of USSG §§3D1.2-3D1.5. The guideline for a violation of 18 U.S.C. § 924(c)(1)(A)(i) is USSG §2K2.4. The guideline sentence is the term of imprisonment required by statute. Chapters Three (Adjustments) and Four (Criminal History and Criminal Livelihood) shall not apply to this count of conviction. USSG §2K2.4(b)

Counts 1, 2, and 3 are grouped for guideline calculation purposes because the offense level is determined largely on the basis of the quantity of a substance involved. USSG §3D1.2(d).

Count 4 is grouped with Counts 1, 2, and 3 because one of the Counts (Count 4) embodies conduct that is treated as a specific offense characteristic in, or other adjustment to, the guideline applicable to another of the counts (Counts 1-3). USSG §3D1.2(c).

Pursuant to USSG §3D1.3, the offense level applicable to a Group is determined by the guideline for the most serious of the counts comprising the Group and/or the offense guideline that produces the highest offense level. In this case the guideline applicable to One, USSG §2D1.1, is used to determine the offense level for the Group.

### **Count Group 1: Importing gamma-Hydroxybutyric Acid, a Schedule I Controlled Substance.**

**Base Offense Level:** The guideline for a violation of 21 U.S.C. § 952(a) is USSG §2D1.1. According to the drug quantity table located at USSG §2D1.1(c), if the offense involved at least 400 kilograms, but less than 700 kilograms of marijuana, the base offense level is 26. As reflected in the chart below, the defendant is accountable for the equivalent of 698.01 kilograms of marijuana; and therefore, the base offense level is 26. USSG §§2D1.1(a)(5) and (c)(7). 26

<b><u>Drug Name</u></b>	<b><u>Drug Quantity</u></b>	<b><u>Marijuana Equivalency</u></b>
Gamma-Hydroxybutyric Acid	1200.0 ml	10.56 kg.
Synthetic Cathinone	687.9 gm	261.40 kg.
D-Lysergic Acid Diethylamide/Lysergide/LSD	3.3 mg.	0.33kg.

Phencyclidine/PCP	0.036 gm	36.00 gm
Dimethyltryptamine/ DMT	6.8 gm	680.00 gm
Methoxyacetyl Fentanyl <sup>6</sup>		
	Total	698.01 kg

**Specific Offense Characteristics:** If the defendant, or a person for whose conduct the defendant is accountable under §1B1.3 (Relevant Conduct), distributed a controlled substance through mass-marketing by means of an internet computer service, increase by 2 levels. Mr. Jodoin marketed and distributed drugs via the internet and operation of a website. Therefore, two levels are added. USSG §2D1.1(b)(7). +2

**Specific Offense Characteristics:** If the defendant maintained a premises for the purpose of manufacturing or distributing a controlled substance, increase by 2 levels. Mr. Jodoin maintained a premise for distributing a controlled substance and pleaded guilty to the same. Therefore, 2 levels are added. USSG 2D1.1(b)(12). +2

**Victim Related Adjustment:** None. 0

**Adjustment for Role in the Offense:** None 0

**Adjustment for Obstruction of Justice:** None. 0

**Adjusted Offense Level (Subtotal):** 30

**Acceptance of Responsibility:** The defendant has clearly demonstrated acceptance of responsibility for the offense. Accordingly, the offense level is decreased by two levels. USSG §3E1.1(a). -2

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<sup>6</sup> Using the 2016 Guidelines Manual, Methoxyacetyl Fentanyl is converted at a rate of 1 gram =2.3 kilograms of Marijuana, as Fentanyl is the most analogous controlled substance.

**Acceptance of Responsibility:** The defendant has assisted authorities in the investigation or prosecution of the defendant's own misconduct by timely notifying authorities of the intention to enter a plea of guilty. Accordingly, the offense level is decreased by one additional level. USSG §3E1.1(b). -1

**Total Offense Level:** 27

## **ARGUMENT**

### **WHETHER A ONE HUNDRED THIRTY (130) MONTHS PRISON SENTENCE FOR A NON-VIOLENT, DRUG DEALING, FIFTY(50) YEAR OLD, MILITARY VETERAN, IS REASONABLE.**

#### **A. Booker and Its Progeny: Reasonableness at Sentencing in an Advisory Guidelines System**

The remedial portion of United States v. Booker, 543 U.S. 220, 125 S. Ct. 738, 764 (2005), excised the portions of the Sentencing Guidelines which made them mandatory, and held that District Courts should consider the Guidelines, but are not bound by them. The Supreme Court later clarified that the Guidelines should be "the starting point and the initial benchmark," but that ultimately, the sentence imposed must be procedurally and substantively reasonable. Gall v. United States, 552 U.S. 38, 49-50 (2007); Rita v. United States, 551 U.S. 338, 127 S. Ct. 2456 (2007). See also United States v. Campbell, 491 F.3d 1306, 1314

(11th Cir. 2007). The Supreme Court has held that if the sentence is within the applicable voluntary guideline range, the Appellate Court may apply a presumption of reasonableness to the sentence. See Rita, 551 U.S. at 347-51. However, the Eleventh Circuit has decided not to apply that presumption, instead concluding that in that Circuit, a guideline sentence is not presumptively reasonable. See, e.g., Campbell, 491 F.3d at 1313

If this Court finds that the District Court made no procedural errors at sentencing, it must determine whether, considering the totality of the circumstances, the sentence was substantively unreasonable. Id. A review of the substantive reasonableness of a sentence requires a determination as to whether the sentence is supported by the factors laid out in 18 U.S.C. § 3553(a). Gall, 552 U.S. at 56. See also United States v. Pugh, 515 F.3d 1179, 1191 (11th Cir. 2008). Section 3553(a) "requires Judges to take into account the Guidelines together with other sentencing goals" in fashioning an appropriate sentence. See Booker, 543 U. S. at 259-60. Section principle, directing Courts to impose a sentence "sufficient, but not greater than necessary," to comply with the purposes of sentencing set forth in § 3553(a)(2). See id; see generally ABA Standards Of Criminal Justice § 18-24 (sentences imposed), taking into account the gravity of

the offense, should be no more than necessary to achieve the social purposes for which they are authorized). This provision requires the District Court to consider each of the following seven relevant factors in imposing sentence:

- (1) the nature and circumstances of the offense and the history and characteristics of Mr. Jodoin;
- (2) the need for the sentence imposed-
  - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
  - (B) to afford adequate deterrence to criminal conduct;
  - (C) to protect the public from further crimes of Mr. Jodoin; and
  - (D) to provide Mr. Jodoin with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) the kinds of sentences available;
- (4) the applicable sentencing guideline range];
- (5) any pertinent [sentencing guidelines] policy statement;
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and,

(7) the need to provide restitution to any victim of the offense.

Id.

After Booker, the District Court must properly calculate the sentencing guideline range and consider any upward or downward departure motions. Then, the District Court must consider the Guidelines, along with the other §3553 factors, and impose a reasonable sentence. "In short, after Booker, 'the District Courts, while not bound to apply the Guidelines, must consult those Guidelines, and take them into account when sentencing.'" United States v. Crawford, 407 F.3d 1174, 1178 (11th Cir. 2005) (quoting Booker, 125 S. Ct. at 767). After taking the Guidelines into account, the Court is free to impose a more severe or less severe sentence than called for by the Guidelines as long as the sentence is reasonable. Crawford, 407 F.3d at 1179. The sentencing court may not presume that a guideline sentence is reasonable. Nelson v. United States, 129 S. Ct. 890, 892 (2009). A sentence is substantively unreasonable if, in light of the §3553(a) factors, it is somehow outside the range of reasonable sentences available for the offense and the offender. Pugh, 515 F.3d at 1191. This is what has occurred in Mr. Jodoin's case.<sup>7</sup>

The Eleventh Circuit Court of Appeals has affirmed numerous below

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<sup>7</sup> The District Court had no discretion as to Departure or Variance downwards as to Count Five (5), which involved a Statutory minimum term of imprisonment of Five (5) years, running consecutive to all other Counts - PSR, ¶¶ 128-130.

Guideline sentences since Booker, even without cooperation with the Government.

See, e. g., United States v. Montgomery, \_\_\_ F.3d \_\_\_ (11<sup>th</sup> Cir. February 7, 2006)

[8 month sentence for bank fraud] [unpublished]; United States v. Gray, 2006 WL 1752372 (11<sup>th</sup> Cir. June 28, 2006) [affirming 72 month sentence even though low

end of the Guidelines was 151 months; United States v. Halsema, 2006 WL

1229005 (11<sup>th</sup> Cir. May 9, 2006) [unpublished] [affirming 24 months sentence even

though Guidelines were 57 to 71 months, and, even though grounds for variance

would not have supported departure and United States v. Williams, 435 F.3d 1350

(11<sup>th</sup> Cir. 2006) [90 months imprisonment was sufficient, but greater than necessary

to punish, deter and rehabilitate defendant even though low end of Guidelines was

188 months.

Now that the Guidelines are advisory only, they are simply “one sentencing factor among many.” United States v. Reinhart, 442 F.3d 857, 864 (5<sup>th</sup> Cir. 2006); United States v. Duhon, 440 F.3d 711, 715-716 (5<sup>th</sup> Cir. 2006). Accordingly, the Court below had full discretion to sentence Mr. Jodoin way below the advisory range without a Motion for Departure as long as the resulting sentence was reasonable for the drug related charges [Counts One (1) to Four (4)]. See Williams, *supra* at 1363.

Mr. Jodoin’s Sentence of 70 Months as to the drug counts imprisonment is substantively unreasonable. Although it is true that the 70 Months Sentence was

slightly within reach of the applicable Guideline Range, the Sentence is not presumptively reasonable. United States v. Hunt, 459 F.3d 1180 (11th Cir. 2006); United States v. Talley, 431 F.3d 784 (11th Cir. 2005). Indeed, the Eleventh Court and others have held that a Sentence in the Guideline Range can produce an unreasonable result. United States v. Hunt, 459 F.3d 1180, 1184 ("There are, however, many instances where the Guideline Range will not yield a reasonable Sentence"); United States v. Jimenez-Beltre, 440 F.3d 514, 518 (1st Cir. 2006) (en banc); United States v. Lazenby, 439 F.3d 928 (8<sup>th</sup> Cir. 2006). See also Nelson, 129 S. Ct. at 892. In Jimenez-Beltre, the First Circuit explained:

Yet the guidelines are still generalizations that can point to outcomes that may appear unreasonable to sentencing Judges in particular cases. Some of the guidelines in particular cases were not reflections of existing practice but were deliberate deviations or turned tendencies into absolutes. Others have been affected by directions from Congress. Booker's remedial solution makes it possible for courts to impose non-guideline sentences that override the guidelines, subject only to the ultimate requirement of reasonableness Jimenez-Beltre, 440 F.3d at 518 (citation omitted).

In light of this authority, the fact that Mr. Jodoin's Sentence is slightly within the Guideline Range does not make it reasonable. In Rita v. United States, 551 U.S. 338 (2007), the Supreme Court held that Courts of Appeals may adopt an Appellate presumption that a Sentence in the Guideline Range is reasonable. 551 U.S. at 346-47. However, the Court did not require the Courts of Appeals to

create and apply such a presumption. Since the Eleventh Court has already rejected such a presumption and the decision in Rita does not mandate the presumption, there is no Appellate presumption that the guideline sentence is reasonable in this Case. Hunt, 459 F.3d at 1185.

### **B. Mr. Jodoin's Sentence Was Substantively Unreasonable**

As argued to the District Court, a Guidelines Sentence, or any Prison Sentence close to it, in this case was substantively unreasonable. Mr. Jodoin was literally a first time felony offender and the Sentencing Commission itself acknowledges that the Guidelines could be lower for true first offenders, as opposed to those who are in Category I for Criminal History because their convictions are too old to count.

The Sentencing Commissions's 2004 Report on Recidivism indicates that "[p]ossible sentencing reductions for 'first offenders' are supported by the recidivism data and would recognize their lower re-offending rates." Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines

[http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2004/200405\\_Recidivism\\_Criminal\\_History.pdf](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2004/200405_Recidivism_Criminal_History.pdf), at 15.

Rather than following the parsimony principle and imposing a sentence sufficient to meet the goals of sentencing, the District Court instead imposed a sentence which was longer than necessary to accomplish those goals. The sentence imposed by the District Court in this case was substantively unreasonable, and this Court should vacate that sentence and remand the case to the sentencing Judge for resentencing. Given Mr. Jodoin's personal history and characteristics, the statutory

directives contained in 18 U.S.C. § 3553(a) would be satisfied by a below guideline Sentence and the imposed Sentence of 70 Months on the drug charge was unreasonable.

### **Statistical Information**

The Sentencing Commission (“Commission”) maintains statistics on a combination of variables impacting the actual Sentences imposed within the Nation, the Circuit, and, the District that largely define the comparative configurations of those sentences. A synopsis of the data is instructive in determining what constitutes a conventional range for the “heartland” of sentences imposed for particular offenses. With regard to the length of sentences by Criminal History Category and Primary Offense Guideline (i.e., USSG §2D1.1), for Fiscal Years 2014 through 2016, there were only 58,579 Cases nationally sentenced under this Guideline with a Criminal History Category I. The Median Sentence imposed for those Cases was 33 Months of imprisonment.<sup>8</sup> Although the Sentences were higher within the 11th Circuit and in the Northern District of Florida, none of the Statistical Sentences approaches the Advisory Guideline Sentence in this Case of 46 to 57 Months imprisonment for a putative First Time Offender who is otherwise safety valve eligible. [emphasis added]

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<sup>8</sup> U.S. Sentencing Commission, 2014-2016 Datafiles, USSCFY2014-2016.

## **Status as “True” First Time Offender**

The Sentencing Reform Act of 1984 requires that the Guidelines reflect the appropriateness of imposing a Sentence other than imprisonment for the First-time Offender who has not been convicted of a crime of violence or otherwise serious offense.<sup>9</sup> The Sentencing Commission has determined that those who, like Mr. Jodoin, are not only “putative” First-time Offenders under the Guidelines, but who also have no prior (substantial) arrests are the least likely to commit further offenses.<sup>10</sup> They have the lowest recidivism rate at 6.8 percent, and are described in the Commission’s Report as “easily the most empirically identifiable group of Guideline Federal Offenders who are the least likely to re-offend.”<sup>11</sup> Consequently, any consideration that the Court may have regarding most of the factors listed at 18 U.S.C. § 3553(a)(2), such as the need to afford adequate deterrence, is very likely satisfied by the fact of Mr. Jodoin’s status as a “true” First-time Felony Offender whose present attitude and reflections demonstrate his rectification over the prior

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<sup>9</sup> Alternative Sentencing in the Federal Criminal Justice System, from World Wide Web, [http://www.ussc.gov/research\\_and\\_statistics/research\\_projects/alternatives/2009020206\\_alternatives.pdf](http://www.ussc.gov/research_and_statistics/research_projects/alternatives/2009020206_alternatives.pdf), p.4,Jan. 2009.

<sup>10</sup> United States Sentencing Commission, *Recidivism and the “First Offender”* (May 2004), at 17. Available at [www.ussc.gov/publicat/Recidivism\\_FirstOffender.pdf](http://www.ussc.gov/publicat/Recidivism_FirstOffender.pdf). The Committee notes that there are two other groups that, under the Guidelines, are technically first offenders, those who have arrests and no convictions and those who have convictions which, for one reason or another, are not counted. Both have higher recidivism rates than those who have never been arrested.

<sup>11</sup> *Id.* at 16-17.

11 Months on successful and admirable detention; there were no reports of disciplinary infractions nor incidents, while institutionalized on detention

Based on a thorough review of the nature and circumstances of the offense, as well as the history and characteristics of Mr. Jodoin, Mr. Jodoin's status as a putative First-time Felony Offender warrants strong consideration in this Case. Should the Court conclude that either a departure, or, a variance from the advisory Guideline System, or both, is warranted, alternatives to imprisonment may range from a Sentence of Probation with appropriate special conditions to Probation with appropriate term of Home Detention, to a Sentence of Time-served to be followed by an appropriate period of time on Supervised Release.

Mr. Jodoin is 50 years old. PSR ¶ 73. His Parents are married. Id. Mr. Jodoin has a somewhat close relationship with both Parents. The paternal relationship is fraught with buggery, sexual abuse, and, domestic violence. (Id. at 76). Due to the lack of any meaningful, positive contact ,or, relationship, with his Natural Father and the documented sexual abuse by his own Natural Father, Mr. Jodoin subsequently became distant and depressed. PSR ¶¶ 76, 87-92.

As is typical with depressed individuals, Mr. Jodoin began to “self-medicate” his depression with alcohol and some street drugs, when he was 12 (Id. at 95). Subsequently, Mr. Jodoin developed an “extreme addiction” to marijuana,

methamphetamine and amphetamines, among others. PSR ¶¶ 95-104.

Mr. Jodoin has a 32 year history of significant and sustained drug abuse. When he committed his first drug crime he was addicted to marijuana and that addiction provided much of the motivation for his crime herein.

The current guideline calculations recommend a Sentence of 87 to 108 Months on Counts 1-4, consecutive to 60 Months on Count 5. The Offense Levels based on drug quantities found in USSG § 2D1.1 apply to persons who have sold drugs solely for profit. [emphasis supplied] They also apply to those who sold for a profit and to support their own drug habits, and, to those who sold solely to support their addiction. Mr. Jodoin' addiction places him on the lower end of this scale away from those who sell solely to make a profit. (e. s.) Given that, it is reasonable the likelihood of him succeeding as a responsible member of society will be enhanced by him spending significantly less than 87 to 108 months away from these drugs, especially were he to participate in an effective drug treatment program such as the Bureau of Prison's Residential Drug Abuse Treatment Program (RDAP).<sup>12</sup> That will, in turn, reduce the likelihood of Mr. Jodoin committing new crimes, thereby, offering

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<sup>12</sup> "Inmates are released into RDAP based on their proximity to their release date, to ensure that every inmate who volunteers and is eligible for RDAP received the full course of treatment prior to community release. Inmates in the residential program are housed together to create a treatment community. Treatment is provided for a minimum of 500 hours, over a 9 to 12 month period. Required RDAP components also include a transitional drug program, when the inmate is returned to general population and participation in a community-based drug treatment , when the inmate is released to an RRC." U. S. Department of Justice, Legal Resource Guide To The Federal Bureau of Prisons (2008) at 23-24, available at: [www.bop.gov/news/PDFs?legal\\_guide.pdf](http://www.bop.gov/news/PDFs?legal_guide.pdf)

protection to “the public from further crimes of the defendant.” 18 U.S.C. § 3553(a)(2)(C). Therefore, a sentence below the guideline range calculated by the Probation Office for the drug counts (or indeed, a sentence at the minimum mandatory of 60 months on Count 5) would be “sufficient, but not greater than necessary” to achieve the congressionally established goals of sentencing. 18 U.S.C. § 3553(a).

District Courts may determine the weight to give to the guidelines in any given case:

The District Court may determine on a case-by-case basis the relative weight to give the Guidelines in light of other U.S.C. § 3553(a) factors. In some cases it may be appropriate to defer to the Guidelines ; in others not.

United States v. Lozano, 490 F.3d 1317, 1324 (11<sup>th</sup> Cir. 2007). Specific characteristics of individual defendants, which District Courts were once prohibited or discouraged from considering may now be considered. *See Rita v. United States*, 127 S. Ct. 2456, 2473 (2007) (Matters such as age, education, mental, or, emotional condition, medical condition (including drug or alcohol addiction), employment history, lack of guidance as a youth, family ties, or, military, civic, charitable, or public service are not ordinarily considered under the Guidelines... These are, however, matters that § 3553(a) authorizes the sentencing Judge to consider.”); United States v. Lazenby, 439 F.3d 928, 933 (8<sup>th</sup> Cir. 2006) (“The other factors cited by the District Court, though discouraged or prohibited departure factors under the

mandatory guidelines, may also be considered in applying the § 3553(a) factors under Booker.”).

Mr. Jodoin’ drug addiction is part of his “history and characteristics.” 18 U.S.C. § 3553(a). His efforts at selling methamphetamines and other drugs mostly to support that addiction is part of the “nature and circumstance of the offense.” *Id.* Sentencing Courts have the authority to and have imposed below-guideline sentences on the basis of an individual’s drug addiction. *See, e.g. United States v. Mack*, 331 Fed. Appx. 157, 158 (3d Cir. 2009) (unpublished) (where the Court imposed a 36-month variance based on a variety of factors including the Defendant’s addiction to controlled substances”); United States v. Parson, No. 07-3767, 2009 U.S. App. LEXIS 20036, \*4 (8<sup>th</sup> Cir. Sept. 8, 2009) (unpublished) (“The Government concedes...that the case should be remanded for the Court to consider whether Parson’s drug addiction would justify a further downward variance under § 3553(a); United States v. Sanders, No. 09-1454, 2009 U.S. App. LEXIS 25672, \*2 (7<sup>th</sup> Cir. Nov. 23, 2009) (unpublished) (“... the Court imposes a below-guidelines sentence of 60 months to acknowledge Sanders’s community work and the role that his own drug addiction to crack played in his crime”). United States v. Jackson, 537 F. Supp. 2d 990, 993 (E. D. Wis. 2008) (“Defendant’s prior convictions were suggestive of an addict with possession offenses and other petty criminality often associated with

addiction.”); United States v. Richardson, No. 03cr474, 2008 U.S. Dist. LEXIS 92059, \*1-2 (N.D. Ill. Nov. 13, 2008) (unpublished) (“Taking into account the Defendant’s age, her drug addiction, and, the lack of violent behavior despite the presence of guns, the Court imposed a sentence substantially below the guideline range...”). Considering the role Mr. Jodoin’s “extreme” drug addiction has played in his life and the offense, his addiction similarly justifies a below-guidelines sentence.

Mr. Jodoin is an addict. He has had a very troubling life; he is the eldest of two (2) children by his natural parents. Mr. Jodoin was born into a family where there are obvious issues of buggery, incest, control, and dominance on the paternal side.

Mr. Jodoin was a good student in High School in West Palm Beach, Florida. He was on the wrestling team and did not miss any practice sessions.

After graduating Mr. Jodoin applied to Norwich University, The Military College of Vermont, similar to West Point and was accepted. Mr. Jodoin attended one year and then came back home; he then joined the Army and did Basic Training followed by Combat Engineer School which he graduated, and, was then sent to his assigned Combat Engineer Battalion in Germany. Mr. Jodoin applied and was accepted into the French Commando School in Eastern France, graduated with honors and received an award from the U. S. Army for having the highest score of an

American taking this rigorous course. Mr. Jodoin returned to his Unit in Germany and following the invasion of Kuwait by Saddam Hussein volunteered to be sent to the front lines during the invasion of Iraq. Being a Combat Engineer, Mr. Jodoin was part of a team that spearheaded the clearing of mines from roads for tanks

Mr. Jodoin had sustained complete desert darkness which was blanketed by dark thick black smoke from the hundreds of burning oil wells set on fire by Saddam's Army. As a result of these actions, Mr. Jodoin sustained PTSD, Bipolar Disorder, and, swelling of his fingers from exposure to the days of burning oil wells. After Desert Storm Mr. Jodoin returned to Germany with his unit.

When Mr. Jodoin returned home to the United States, his personality had completely changed; he was irritable, could not stand groups and had difficulty with relationships, etcetera.

Moving forward to recent history, Mr. Jodoin liked solitude, lived in a remote rented cabin, and, his only communication with the outside world was through the internet. Mr. Jodoin could not hold a job therefore he made a meager living selling products over the internet which led him to his present situation.

Based on the above, the Appellant suggests a below-guidelines sentence in the range of one day consecutive to the sixty (60) months on Count 5 would be appropriate in this case and for this particular Defendant. (emphasis supplied).

## **CONCLUSION**

Mr. Jodoin's Sentence should be vacated and the cause remanded for re-sentencing, to a different District Judge with instructions to apply the guidelines Constitutionally and with due regards for the precedent set by the United States Supreme Court and the Eleventh Circuit.

Respectfully submitted,

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