NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

KARO BROWN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent,

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Second Circuit

APPENDIX TO THE PETITION FOR CERTIORARI

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20-2787-cr
United States of America v. Karo Brown

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 8th day of November, two thousand twenty-one.

PRESENT: JOHN M. WALKER, JR.,
WILLIAM J. NARDINI,
STEVEN J. MENASHI,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

v. No. 20-2787-cr

KARO BROWN, AKA KIKE, AKA KITE, AKA SEALED DEFENDANT #4,

Defendant-Appellant,

CORY EDWARDS, AKA WIGGLES, AKA SEALED DEFENDANT #1, CHARLES MYLES, AKA BOSSMAN, AKA SEALED DEFENDANT #2, ANTONIO OWENS, AKA O'HEAD, AKA SEALED DEFENDANT #3, RASUE BARNETT, AKA WILD THANG, AKA SEALED DEFENDANT #5, WALIEK BETTS, AKA LEEK, AKA SEALED DEFENDANT #6, AKIM BETSEY, AKA KOON, AKA KIMY, AKA SEALED DEFENDANT #7, CHARLES BROWN, AKA TADDA, AKA TATA, AKA SEALED DEFENDANT #8, TERRENCE EDWARDS, AKA JAQUAN, AKA SILK, AKA SEALED DEFENDANT #9, DUDLEY HARRIS, AKA DUD, AKA SEALED DEFENDANT #10, RODNEY HILL, AKA HOT ROD, AKA SEALED DEFENDANT #11, CHRISTOPHER

HOLBDY, AKA NUTS, AKA SEALED DEFENDANT #12, ANTHONY JACKSON, AKA CAPONE, AKA SEALED DEFENDANT #13, AKA TONE, LANCE JOHNSON, AKA L-A, AKA CLUE, AKA SEALED DEFENDANT #14, RIDWAN OTHMAN, AKA WIGWAM, AKA BLITZ, AKA SEALED DEFENDANT #15, LONDON RICE, AKA GRAMS, AKA SEALED DEFENDANT #16, CHEIRON THOMAS, AKA SLAB, AKA SEALED DEFENDANT #17, EDWARD THOMAS, AKA POPPY, AKA ESCO, AKA SEALED DEFENDANT #18, DAVID TRAPPS, AKA DIRTY DAVE, AKA SEALED DEFENDANT #19, JAMONTAE WALLACE, AKA MONTY, AKA SEALED DEFENDANT #20, ROBERT SHAW, AKA SEALED DEFENDANT #21, ERIC DUNBAR, AKA SEALED DEFENDANT #22, TOMMIE BRISCOE, AKA SEALED DEFENDANT #23, LEROY ANTWAIN WALKER, AKA LEROY WALKER STOKES, AKA SEALED DEFENDANT #24, LEONARD HOLBDY, AKA SEALED DEFENDANT 25, CHRISTIAN WILLIAMS, AKA SEALED DEFENDANT 26,

Defendants.*

For Appellee: RAJIT S. DOSANJH, Steven D. Clymer, Assistant United States Attorneys, *for* Antoinette T. Bacon, Acting United States Attorney, Northern District of New York, Syracuse, NY

For Defendant-Appellant: MOLLY K. CORBETT, Assistant Federal Public Defender, *for* Lisa Peebles, Federal Public Defender, Northern District of New York, Albany, NY

On appeal from the United States District Court for the Northern District of New York (Norman A. Mordue, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the order of the district court entered on August 7, 2020, is **AFFIRMED**.

Defendant-Appellant Karo Brown appeals from an order entered by the district court on August 7, 2020, denying his motion for a sentence reduction under Section 404 of the First Step

* The Clerk of Court is directed to amend the caption as set forth above.

Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194. On August 3, 2004, after trial, a jury returned a guilty verdict for Brown's role in a racketeering conspiracy, in violation of 18 U.S.C. § 1962(d), and found that the racketeering activity attributable to him involved: (1) more than one act involving murder, attempted murder, or conspiracy to commit murder, in violation of New York Penal Law sections 125.25, 110.00, and 105.17; (2) more than one act involving conspiracy to distribute and possess with intent to distribute 50 grams or more (specifically, 1.5 kg or more) of cocaine base (crack) in violation of 21 U.S.C. §§ 841(b)(1)(A) and 846; and (3) the use or attempted use of a person less than eighteen years of age to commit the racketeering activity or to assist in avoiding detection of, or apprehension for, the racketeering activity. On February 10, 2005, after finding that the Sentencing Guidelines suggested a range of 360 months to life in prison, the district court sentenced Brown to 480 months of incarceration followed by a four-year term of supervised release "given the violent nature of much of [Brown's] criminal record and the need to protect the public from further crimes . . . ." App'x at 14–15, 115. We affirmed Brown's conviction and sentence. *See United States v. Edwards*, 214 F. App'x 57, 66 (2d Cir. 2007). Brown sought sentencing relief under 18 U.S.C. § 3582(c) in 2008 and 2012, as well as under 28 U.S.C. § 2255 in 2018. The district court denied relief each time. We assume the reader's familiarity with the record.

On appeal, Brown argues that the district court abused its discretion when it denied his request for a sentence reduction because the district court: (1) did not conduct a "full review" of his motion; (2) failed to provide him with a hearing or other opportunity to object to the district court's calculation of his Guidelines range; and (3) made certain errors in calculating Brown's Guidelines range and in considering the 18 U.S.C. § 3553(a) factors. In response, the Government argues that the district court did not abuse its discretion—or otherwise err—in denying sentencing relief to Brown.

We review the denial of a motion for sentence reduction for abuse of discretion. *United States v. Holloway*, 956 F.3d 660, 664 (2d Cir. 2020). Even if a defendant is eligible for relief under the First Step Act, the statute makes clear that "[n]othing in [Section 404] shall be construed to require a court to reduce any sentence pursuant to this section." First Step Act, § 404(c). The First Step Act also does not require a district court to follow "any particular procedures" during its review, "except for those changes that flow from Sections 2 and 3 of the Fair Sentencing Act of 2010." *United States v. Moore*, 975 F.3d 84, 91–92 (2d Cir. 2020).

Brown has not shown procedural error in how the district court considered his motion. "[A] district court is not categorically required to hold a hearing at which the defendant is present before denying a motion for a sentence reduction under" the First Step Act. *United States v. Smith*, 982 F.3d 106, 113 (2d Cir. 2020); *see also Moore*, 975 F.3d at 91. As to the district court's Guidelines calculations, the only errors Brown raises in his opening brief that would have affected his Guidelines range are the district court's use of his murder-related offense conduct as the predicate offense for § 2E1.1, and the district court's calculation of the offense level for that conduct. But because Brown's conviction was for a racketeering conspiracy, § 2E1.1 applies to

substitute the murder-related conduct for the drug-related conduct to establish the base offense level as a matter of course, where the base offense level for drug-related conduct is lower. *See* U.S.S.G. § 2E1.1 (providing that the applicable base offense level for RICO offenses is "19; or … the offense level applicable to the underlying racketeering activity"); *see also id.* § 2E1.1 cmt. n.1; *id.* ch. 3, pt. D (describing the method for calculating the offense level for composite offenses that, like racketeering, consist of multiple underlying offenses). And though Brown contends that the resulting offense level for his murder-related conduct should not have been 41, that was the offense level calculated for his murder-related conduct in the original PSR. Brown has not pointed to any change to the Guidelines governing the calculations for that conduct that "flow from Sections 2 and 3 of the Fair Sentencing Act of 2010." *Moore*, 975 F.3d at 92.[1]

Lastly, Brown has not shown that the district court erred in its consideration of the § 3553(a) factors in denying a sentence reduction so as to require reversal. While he claims that the district court "sought to diminish" his post-sentencing conduct, that contention is belied by the record. Appellant's Br. 30. Although not required to do so, before denying Brown's motion the district court considered the section 3553(a) factors and post-sentencing legal and factual developments. Having considered those factors, the district court denied relief because Brown's "criminal conduct remains unchanged." App'x at 226. The district court emphasized Brown's "callous disregard for human life," citing multiple specific violent incidents threatening human life, and declined to exercise its discretion to reduce Brown's sentence because "a sentence of 480 months is still appropriate . . . to reflect the seriousness of [Brown's] offenses, promote respect for the law, provide just punishment, and protect the public . . . ." *Id.* at 226–27. Even when a district court is required to consider each § 3553(a) factor (i.e., when imposing sentence), "the weight given to any single factor is a matter firmly committed to the discretion of the sentencing judge and is beyond our review." *United States v. Capanelli*, 479 F.3d 163, 165 (2d Cir. 2007) (internal quotation marks omitted). It was not an abuse of discretion for the district court to decide, based on Brown's criminal conduct, that the § 3553(a) factors weighed against a sentence reduction, his post-sentencing conduct notwithstanding.

We have considered Brown's remaining arguments and conclude that they are without merit. For the foregoing reasons, the order of the district court is **AFFIRMED**.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

[1] In his reply brief, Brown suggests that the district court did not correctly apply U.S.S.G. § 5G1.1 in calculating his sentencing range. Because Brown failed to raise that argument in his opening brief, we do not address it. *See JP Morgan Chase Bank v. Altos Hornos de Mexico, S.A. de C.V.*, 412 F.3d 418, 428 (2d Cir. 2005).

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v. **5:03-CR-243-4 (NAM)**

KARO BROWN,

Defendant.

APPEARANCES:

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Karo Brown
Inmate No. 58105-066
FCI Allenwood Medium
P.O. Box 2000
White Deer, PA 17887
Defendant

Hon. Norman A. Mordue, Senior U.S. District Court Judge:

MEMORANDUM-DECISION AND ORDER

I. INTRODUCTION

Now before the Court is Defendant's motion to reduce his sentence pursuant to the First Step Act of 2018. (Dkt. Nos. 1104, 1111). The Government has responded to the motion, and Defendant has filed a reply. (Dkt. Nos. 1112, 1115). The parties have also provided supplemental briefing on the applicability of the Second Circuit's recent decision in *United*

States v. Johnson, 961 F.3d 181 (2d Cir. 2020). (Dkt. Nos. 1124, 1125). Defendant's motion is denied, for the reasons that follow.

II. BACKGROUND

On July 1, 2004, a federal grand jury returned the Third Superseding Indictment charging Defendant for his alleged role in a racketeering conspiracy, in violation of 18 U.S.C. § 1962(d). (Dkt. No. 344). The Indictment alleged that Defendant was a member of the Boot Camp street gang in Syracuse, New York, and as a member, he knowingly and intentionally conspired with other gang members to commit racketeering activities including: "(1) murder, in violation of New York Penal Law sections 125.25, 110.00 and 105.17; (2) conspiracy to possess with intent to distribute, possession with intent to distribute, and distribution of, marijuana and more than 50 grams of cocaine base (crack), in violation of Title 21, United States Code, Sections 841(b)(1)(A) and 846; (3) obstruction of justice, in violation of Title 18, United States Code, Section 1503; and (4) witness tampering, in violation of Title 18, United States Code, Section 1512(b)(3)." (Dkt. No. 344, p. 7).

Defendant elected to go to trial, and on August 3, 2004 he was convicted by a jury for his role in the racketeering conspiracy. (Dkt. Nos. 392, 585). As part of the verdict, the jury found that the racketeering activity attributable to Defendant involved: (1) more than one act involving murder, attempted murder, or conspiracy to murder; (2) conspiracy to distribute and possess with intent to distribute 1.50 kilograms or more of cocaine base (crack); and (3) the use of a person less than eighteen years of age to commit the racketeering activity or to assist in avoiding detection or apprehension. (Dkt. No. 392, pp. 3–5).

Before sentencing Defendant, the Court considered the Presentence Investigation Report ("PSR"), which described Defendant as a "senior member" of the Boot Camp gang and explained Defendant's various contributions in furtherance of the gang's racketeering activities,

including the sale and distribution of crack cocaine and acts of violence against members of rival gangs. (PSR, ¶¶ 8–36). The PSR also detailed Defendant's extensive criminal history, which included numerous convictions involving violence and firearms. (*See* PSR, ¶¶ 50–75).

In making its recommendation, the Probation Office applied Section 2E1.1 of the 2003 edition of the United States Sentencing Guidelines Manual ("U.S.S.G.") to calculate Defendant's sentencing range. (PSR, ¶ 41). Section 2E1.1 in this case advised using the offense level applicable to the underlying racketeering activities relating to drugs and murder. (PSR, ¶ 41). The Probation Office concluded that Defendant's sentence should be based on his drug-related racketeering activity because the resulting offense level for the drug offenses (offense level 42) was greater than the offense level for the murder conspiracy (offense level 41). (PSR, ¶ 41). With an offense level of 42 and a criminal history category of V, the resulting guideline range was 360 months to life imprisonment. (PSR, ¶¶ 40–49, 55–58, 90).

On February 10, 2005, the Court sentenced Defendant to 480 months imprisonment for his role in the Boot Camp gang's racketeering conspiracy. (Dkt. No. 585). At sentencing, the Court adopted Probation's assessment and found that Defendant's Guidelines range was 360 months to life imprisonment. (Dkt. No. 639, p. 45). The Court stated that it "imposed a sentence above the low end of the Guidelines range given the violent nature of much of the defendant's criminal record and the need to protect the public from further crimes of the defendant . . . ." (*Id.*). Defendant's conviction and sentence were later affirmed on appeal. *See United States v. Edwards*, 214 F. App'x 57, 62 (2d Cir. 2007). Defendant is now 40 years old and is being held at FCI Allenwood with a projected release date of October 4, 2038.[1]

[1] Federal Bureau of Prisons, https://www.bop.gov/inmateloc/ (last visited August 7, 2020).

III. STANDARD OF REVIEW

In general, a federal district court may only modify a term of imprisonment once it has been imposed, except "to the extent otherwise expressly permitted by statute." 18 U.S.C. § 3582(c)(1)(B).

One such statute is the First Step Act of 2018, which affects certain provisions of the earlier Fair Sentencing Act of 2010. Pub. L. No. 111-220, 124 Stat. 2372 (2010). The latter "altered the threshold drug quantities that trigger the varying penalty ranges for crack cocaine offenses located in 21 U.S.C. § 841(b)(1)." *United States v. Holloway*, 956 F.3d 660, 662 (2d Cir. 2020). As relevant here, the threshold quantity for conviction under Section 841(b)(1)(A) was increased from 50 to 280 grams of crack cocaine. *Id.* These changes were to be applied prospectively to defendants sentenced after August 3, 2010, and thus Defendant could not benefit from the reduced penalties at that time.

The First Step Act of 2018 provides that, "[a] court that imposed a sentence for a 'covered offense' may, on motion of the defendant . . . impose a sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 were in effect at the time the covered offense was committed." *See* Section 404(b), Pub. L. No. 115-391, 132 Stat. 5194. A "covered offense" means a violation of a Federal criminal statute that was modified by Section 2 or 3 of the Fair Sentencing Act. *Id.* at § 404(a). Thus, the First Step Act "effectively authorizes a district court to give retroactive effect to the statutory penalty provisions of the Fair Sentencing Act of 2010 . . . and thereby reduce a crack cocaine defendant's sentence." *United States v. Powell*, 360 F. Supp. 3d 134, 138 (N.D.N.Y. 2019). As the statute makes clear, even if a defendant is eligible for a reduced sentence, such relief is discretionary. *Holloway*, 956 F.3d at 662–63.

IV. DISCUSSION

Defendant now seeks a reduced sentence pursuant to Section 404(b) of the First Step Act, arguing that a reduction is warranted because: (1) he was convicted of a "covered offense," the penalties for which were modified downward by the Fair Sentencing Act of 2010 and made retroactive by the First Step Act; and (2) a reduction is warranted because his post-sentencing conduct reflects his acceptance of responsibility and his commitment to personal improvement. (*See generally* Dkt. Nos. 1104, 1111, 1115).

A. Eligibility for Relief

Defendant argues that he is eligible for relief because his "RICO conviction is a 'covered offense' because the statutory penalties for his conviction '[were] modified by Section 2 or 3 of the Fair Sentencing Act of 2010.'" (Dkt. No. 1104, p. 4). Defendant points out that the statutory maximum is no longer life for his drug crimes involving 50 grams of crack cocaine. (*Id.*). Defendant contends that the 20-year statutory maximum under Section 1963(a) would now apply, thus prohibiting any sentence above 240 months. (*Id.*, pp. 7–8). Through counsel, Defendant further argues that his RICO conviction should be considered a covered offense because its penalties "are inseparable with the incorporation of other statutory sentences." (Dkt. No. 1111, p. 9; *see also* Dkt. No. 1115, pp. 2–4). Defendant claims that the connection is "evident in the Sentencing Guidelines' reliance on 'the offense level applicable to the underlying racketeering activity' to determine the base offense level for the RICO offense." (*Id.*) (citing U.S.S.G. § 2E1.1)). Defendant asserts that "the Court's [resentencing] discretion is limited solely by the statutory mandatory minimums and maximum that would have applied to [Defendant's] charges 'as if' they were subject to the 2010 Fair Sentencing Act." (*Id.*, p. 13).

In response, the Government argues that Defendant is ineligible for relief under the First Step Act because the racketeering activity involving murder provided the Court with an

independent basis for sentencing Defendant to life imprisonment, and Defendant's "sentencing guidelines range would have been the same—360 month[s] to life—had his offense level been calculated solely by use of the murder object (offense level 41) instead of the drug trafficking object (offense level 42)." (Dkt. No. 1112, pp. 15–16).

To be eligible for a sentence reduction, a defendant is "required to demonstrate that he was sentenced for a particular 'violation of a Federal criminal statute,' and that the applicable statutory penalties for that violation were modified by the specified provisions of the Fair Sentencing Act." *Holloway*, 956 F.3d at 664. Recently, in *United States v. Johnson*, the Second Circuit determined that "it is a defendant's statutory offense, not his or her 'actual' conduct, that determines whether he has been sentenced for a 'covered offense' within the meaning of Section 404(a), and is consequently eligible for relief under Section 404(b)." 961 F.3d 181, 190 (2d Cir. 2020). After this decision, the Government conceded that the facts underlying Defendant's cocaine base racketeering activity "do not matter for purposes of determining whether he is eligible for a sentencing reduction." (Dkt. No. 1124, pp. 2–3). Nonetheless, the Government maintains its position that the murder object of the RICO conspiracy means that Defendant's offense is not covered by the First Step Act. (*Id.*).

A growing number of district courts have determined that defendants are eligible for relief under the First Step Act if they were convicted of both covered and non-covered offenses, where their ultimate "conviction was premised, at least in part, on [a] violation of 21 U.S.C. § 841(b)(1)(A)." *United States v. Jones*, No. 99-CR-264-6, 2019 WL 4933578, at *10, 2019 U.S. Dist. LEXIS 173430, at *28 (D. Conn. Oct. 7, 2019) (rejecting the government's position that a RICO defendant was ineligible for resentencing because the Fair Sentencing Act did not change the statutory penalties under 18 U.S.C. § 1963(a)); *see also United States v. Mothersill*, 421 F. Supp. 3d 1313, 1318–20 (N.D. Fla. 2019) (finding that a defendant was eligible for a sentence

reduction on RICO *and* non-RICO counts "[b]ecause the crack offenses clearly affected [the] sentences on [the RICO counts]"); *United States v. Mazzini*, No. 95-CR-538, 2020 WL 2467900, at *4–6, 2020 U.S. Dist. LEXIS 84265, at *18–20 (D.N.M. May 13, 2020) (finding that the First Step Act permits courts to impose a reduced sentence for a RICO defendant "[b]ecause the crack penalties in effect at the time of [ ] sentencing [ ] impacted his sentence on all counts").[2]

The Court agrees with the reasoning in these decisions, and finds that Defendant is eligible for relief under the First Step Act because his sentence was premised on his violation of Section 841(b)(1)(A) (via his RICO drug-related conspiracy violation), which was modified by Section 2 and 3 of the Fair Sentencing Act, and later made retroactive by the First Step Act. (*See* PSR, ¶ 41; *see also* Dkt. No. 392-2, pp. 3–4). This interpretation is consistent with the First Step Act's remedial purpose to retroactively address sentencing disparities between defendants convicted of offenses involving cocaine versus cocaine base. And it is also consistent with the Sentencing Guidelines, which draw no material distinction between a crack cocaine violation of 21 U.S.C. § 841(b)(1)(A) and a violation of 21 U.S.C. § 841(b)(1)(A) via 18 U.S.C. § 1962. And further, as this Court has previously stated, it would be inequitable to deny sentencing review to defendants who were convicted under the RICO statute but effectively sentenced based on Section 841(b)(1)(A) offenses. *See United States v. Thomas*, No. 05-CR-322-13, 2019 WL 6330356, at *3, 2019 U.S. Dist. LEXIS 207851, at *7 (N.D.N.Y. Sept. 10, 2019).

Simply put, Defendant is eligible for relief because the term of his imprisonment was premised on a violation of 21 U.S.C. § 841(b)(1)(A) involving crack cocaine.

[2] The Second Circuit has not yet addressed the issue of eligibility for defendants who were convicted of racketeering activity under 18 U.S.C. § 1962, but whose sentences were largely driven by the penalties for violating 21 U.S.C. § 841(b)(1)(A).

B. Scope of Relief

Next, having found that Defendant is eligible for relief pursuant to the First Step Act, the Court must now decide whether a reduction of his sentence is warranted. Defendant argues that a reduction is appropriate because he has now accepted responsibility for his past conduct, and he has made strides to improve himself through educational and job-preparedness programs while incarcerated. (Dkt. No. 1111, pp. 16–18). In response, the Government contends that the Court should deny Defendant's request due to his long criminal history, which was marked by violence and drug dealing. (Dkt. No. 1112, pp. 18–20).

To decide whether relief is warranted, the Court will look again at the jury's findings and apply the current Sentencing Guidelines (2018), which account for the amended drug quantities implemented through the Fair Sentencing Act. The jury found that Defendant engaged in the conspiracy based on drug trafficking involving 50 grams or more of cocaine base, and specifically, that Defendant was responsible for conspiring to possess and distribute more than 1.50 kilograms of cocaine base. (Dkt. No. 392-2, pp. 3–4). The jury also found that Defendant was responsible for multiple acts in furtherance of the Boot Camp gang's conspiracy to murder rival gang members. (*Id.*, p. 3).

Notably, using the current Guidelines, a conviction for drug-related racketeering activity would result in a substantially lower sentence today than in 2005. However, the Guidelines for 18 U.S.C. § 1962 still direct that a defendant should receive a sentence based on the racketeering activity with the greatest offense level. *See* U.S.S.G. § 2E1.1. In this case, the jury found that Defendant's pattern of racketeering activity also involved multiple acts of murder in violation of New York Penal Law sections 125.25, 110.00, and 105.17. (Dkt. No. 392-2, p. 3).[3]

[3] The RICO statute provides that whoever violates any provision of Section 1962 is subject to a maximum sentence of 20 years or "life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment." 18 U.S.C. § 1963(a). And, as was the case at sentencing,

Based on this murder-related racketeering activity, Defendant's offense level would be 41. With a criminal history category of V, Defendant's Guidelines range would still be 360 months to life.[4] Thus, an application of the current Guidelines suggests that, at most, Defendant's 480 month sentence might be reduced to 360 months.

However, the Court finds that the sentencing factors set forth at 18 U.S.C. § 3553(a) do not support a reduction. In particular, the severity of Defendant's criminal conduct remains unchanged. At sentencing, the Court considered Defendant's criminal record, which includes a long history of serious violent crime and demonstrates a callous disregard for human life. (*See* PSR, ¶¶ 50–75). The Court considered evidence that Defendant was involved in a number of shootings directed at protecting the Boot Camp gang's territory for their drug trade. (*See* Dkt. No. 639, pp. 45–48). During one of those incidents, Defendant directed a teenager to shoot at a rival gang member, and one of the bullets fired struck a school bus that was transporting 40 children. (PSR, ¶ 10). Further, the Court considered Defendant's role in the shooting of Curtis Paige (April 1995); the use of a gun to shoot at members of the Lexington gang at Thornden Park (June 1996); the use of a semiautomatic weapon to fire at a group of people (December 1996); and the shooting of Terrell Porch (March 1997). (Dkt. No. 639, pp. 45–48). The Court also considered Defendant's violent threats to a police officer and his family, his use of violence

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Defendant's murder conspiracy conviction still carries a maximum penalty of life imprisonment. *See* N.Y. Penal Law § 70.00 (2020); *see also Minicone v. United States*, 353 F. Supp. 2d 316, 318 (N.D.N.Y. 2005) (finding that Guidelines Section 2E1.1 requires application of the guideline for the most analogous federal offense, which in the case of underlying racketeering activity of murder in violation of New York Penal Law §§ 125.25, 100.10, 20.00 and 105.15 was first degree murder at Section 2A1.1).

[4] The Court notes that the PSR reduced Defendant's offense level for the murder conspiracy by 2 points for his "minor role" in the Boot Camp gang's murder conspiracy, which reduced his sentencing exposure downward from an offense level 43 (life) to an offense level 41 (360 months to life). (PSR, ¶ 41). At sentencing, Defendant's attorney argued that Defendant's offense level for the murder conspiracy should be reduced by 4 points, rather than 2, because he was a "minimal participant" not a "minor participant." (*See* Dkt. No. 639, p. 18). The Court notes that even if Defendant was credited with a 4 point "minimal role" reduction, his offense level would be 39, and with his category V criminal history, his sentencing range would still be 360 months to life.

against women, and his bragging about his gang activity to the local news media. (*Id.*; *see also* PSR, ¶¶ 50–75).

Therefore, after considering the nature of Defendant's conduct and the sentencing factors set forth at 18 U.S.C. § 3553(a), the Court declines to exercise its discretion to reduce Defendant's sentence. Although Defendant has presented evidence that he has made positive efforts toward his personal improvement (*see* Dkt. Nos. 1104-3, 1111-1), a sentence of 480 months is still appropriate under these circumstances to reflect the seriousness of Defendant's offenses, promote respect for the law, provide just punishment, and protect the public from further crimes by Defendant.

V. CONCLUSION

Wherefore, it is hereby

ORDERED that Defendant's motion to reduce his sentence (Dkt. No. 1104, 1111) is **DENIED**; and it is further

ORDERED that the Clerk of the Court is directed to serve copies of this Order in accordance with the Local Rules for the Northern District of New York.

IT IS SO ORDERED.

Dated: August 7, 2020
Syracuse, New York

Norman A. Mordue
Senior U.S. District Judge

APPENDIX C

Court Exhibit 3
7/28/2004

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

****

UNITED STATES OF AMERICA,

v.

(4) KARO BROWN,
a/k/a Kike, Kite, Cal,
Calvin and .40 Cal,

Defendant.

No. 03-CR-243 (NAM)

THIRD SUPERSEDING INDICTMENT

Vio: 18 U.S.C. § 1962(d)

****

THE GRAND JURY CHARGES:

COUNT ONE

THE ENTERPRISE

At various times and material to this indictment:

1. Defendant

KARO BROWN, a/k/a Kike, Kite, Cal, Calvin and .40 Cal,

and others, were members and associates of a criminal organization in Syracuse, New York known as Boot Camp, whose members and associates engaged in murders, attempted murders, drug trafficking,

robberies, witness tampering, and other crimes within the Northern District of New York and elsewhere.

2. The Boot Camp, including its leadership, members, and associates, constituted an "enterprise" as defined by Title 18, United States Code, Section 1961(4), that is, a group of individuals associated in fact. The enterprise was engaged in, and its activities affected, interstate and foreign commerce. The enterprise constituted an ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise.

MANNER AND MEANS OF THE ENTERPRISE

3. The Boot Camp operates within a specifically defined geographic area on the south side of the City of Syracuse, New York. Boot Camp members routinely guard that territory and resort to acts of violence, if necessary, to insure that no rival gang members encroach upon their territory to sell drugs, or for any other reason. If a non-Boot Camp member attempts to sell drugs within Boot Camp territory without the sanction of one or more Boot Camp members, they will be dismissed from the area immediately. If the person does not leave the area immediately, they will be physically assaulted, stabbed, or shot. Rival gang members have been assaulted, stabbed or shot if they were seen in Boot Camp territory, even if they were not dealing drugs. By tightly controlling their defined geographic area, Boot Camp members

maintain an exclusive territory within which only Boot Camp members or those they sanction can distribute their crack cocaine.

4. The more senior members of Boot Camp routinely utilize younger members of Boot Camp to sell crack cocaine for them on the streets of Syracuse. This is done so that the more senior Boot Camp members can be insulated from exposure to criminal liability. After these younger individuals sell the crack cocaine for the older Boot Camp members, they keep a portion of the proceeds as a profit for themselves and return the majority of the proceeds back to the more senior members of Boot Camp. The more senior members of the Boot Camp routinely pool their money and make trips to New York City on a regular basis to obtain additional quantities of crack cocaine. The younger individuals who are enlisted to sell crack cocaine on the street for the more senior members of Boot Camp are often referred to as the "212 gang" or "LBC", which means "Little Boot Camp", and typically range in age from 13 to 16 years old.

5. Boot Camp members are expected to project a violent attitude in order to insure that the gang's territory is protected. Gang members are also expected to retaliate with acts of violence when rival gang members commit acts of violence against one or more Boot Camp members. Boot Camp members believe that if this projection of violence and strong retaliation when acts of violence are committed against one of their members is not done, then their

stature within the gang community in Syracuse would be lessened and their territory would be threatened. If their territory is threatened, their drug trade would also be threatened.

6. The letters "MC" are the call sign for Boot Camp. These letters represent "Midland and Colvin", a key intersection that is considered the heart of Boot Camp territory and a place where crack sales are prevalent. "MC" also stands for "Murder Capitol", which originated in 1996 after rival Lexington gang member Lee Scott was murdered during a shootout with Boot Camp members. Boot Camp members routinely use a hand sign forming an "M" to represent gang identity.

7. Boot Camp members have been known to dress in camouflaged patterned clothing to include bandanas, belts, fatigues and army jackets. More recently, the Boot Camp members have decreased their use of camouflaged clothing in en effort to avoid police scrutiny. Many Boot Camp members also have tattoos, which identify themselves as Boot Camp members. These tattoos include "Jeffrey Conner RIP SKII" which commemorates the murder of Boot Camp member Jeffrey Conners, a tattoo in the form of a street sign with the streets Midland and Colvin on them, and "Larry Lewis RIP", which commemorates the death of Boot Camp member Larry Lewis. Boot Camp related graffiti is also placed throughout Boot Camp territory to identify the territory and to signify its control over the community in that geographic area.

8. Many factors contribute to becoming a fully-associated member of the Boot Camp, including: familial affiliation with a current gang member, seniority in the gang, and "earning your stripes" by demonstrating an ability to sell crack cocaine on the street and showing a willingness to engage in violent behavior to further the gang's drug trafficking activities and to protect its territory.

9. In addition to meeting on a regular basis to pool their drug money so that senior Boot Camp members can travel to New York City to obtain additional quantities of crack cocaine, Boot Camp members hold informal meetings when significant events within the gang occur. These meetings often center around issues such as retaliation against rival gang members and planning various criminal activities. The meetings take place at various gang members houses as well as at parks and other outdoor areas located within Boot Camp territory. These meetings typically are led by individuals within the gang who have gained status based upon numerous factors including longevity within the gang, success in drug sales, and a willingness and propensity to project a violent attitude to further the gang's criminal activities.

10. Boot Camp members routinely arm themselves with firearms in order to protect their territory, to protect their drug trade, to project a violent attitude to rival gang members, and to

retaliate against any rival gangs who committed acts of violence against Boot Camp members.

11. On or about June 27, 2003, in Syracuse, in the Northern District of New York,

LEONARD HOLBDY, a/k/a Shaky and Shanky; and
CHRISTIAN WILLIAMS, a/k/a Blast, Bless and Chris,

and others known and unknown, with intent to cause the death of a another person, to wit: Demetrious Elmore, caused the death of such person, by means of shooting him with a .45 caliber handgun, in violation of Sections 125.25 and 70.00(2)(a) of the Penal Law of the State of New York.

THE RACKETEERING CONSPIRACY

The Grand Jury incorporates by reference paragraphs 1 - 11 as though fully restated and realleged herein.

Beginning in or about 1995, the exact date being unknown to the grand jury, and continuing thereafter up to the date of the indictment, in the Northern District of New York and elsewhere, the defendant,

KARO BROWN, a/k/a Kike, Kite, Cal, Calvin and .40 Cal,

together with others known and unknown to the grand jury, being a person employed by and associated with the enterprise known as Boot Camp, described in paragraphs 1 through 11 of this indictment, which enterprise engaged in, and the activities of which affected, interstate and foreign commerce, unlawfully, knowingly and

intentionally, did combine, conspire, confederate, and agree together and with each other and with others known and unknown to the grand jury, to violate Title 18, United States Code, Section 1962(c), that is, to conduct and participate, directly and indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity, as that term is defined in Title 18, United States Code, Sections 1961(1) and 1961(5), consisting of multiple acts involving:

(1) murder, in violation of New York Penal Law sections 125.25, 110.00 and 105.17; and

(2) conspiracy to possess with intent to distribute, possession with intent to distribute, and distribution of, marijuana and more than 50 grams of cocaine base (crack), in violation of Title 21, United States Code, Sections 841(b)(1)(A) and 846.

It was part of the conspiracy that each defendant agreed that a conspirator would commit at least two acts of racketeering activity in the conduct of the affairs of the enterprise.

OVERT ACTS

In furtherance of the conspiracy and in order to affect the objects thereof, the defendants and their co-conspirators, known and unknown to the grand jury, committed and caused to be committed

the following overt acts, among others, in the Northern District of New York and elsewhere:

3. On or about July 23, 1996, in the vicinity of the 1500 block of Midland Avenue, in Syracuse, New York, CHEIRON THOMAS, a/k/a Slab, threw 41 bags of cocaine base (crack) to the ground when fleeing from police.

6. On or about October 29, 1996, CHARLES MYLES a/k/a Bossman; CHEIRON THOMAS, a/k/a Slab; WALIEK BETTS, a/k/a Leek, among others, were in the 1700 block of Midland Avenue in Syracuse, New York, when they saw a member of the Brighton Brigade gang drive by in a vehicle, and they shot at him.

7. On or about October 29, 1996, CHARLES MYLES, a/k/a Bossman; CHEIRON THOMAS, a/k/a Slab; WALIEK BETTS, a/k/a Leek, and another person, attempted to trade a 10 millimeter handgun for a .38 caliber handgun and two boxes of ammunition at a gun shop in the City of Syracuse.

12. On or about June 17, 1998, CORY EDWARDS, a/k/a Wiggles, DUDLEY HARRIS, a/k/a Dud, DAVID TRAPPS, a/k/a Dirty Dave, WALIEK BETTS, a/k/a Leek, and another person, armed themselves with handguns in response to information they had received that a "110 gang" member was coming into Boot Camp territory.

13. On or about June 17, 1998, DUDLEY HARRIS, a/k/a Dud and DAVID TRAPPS, a/k/a Dirty Dave, went to 139 Hatch Street in Syracuse, New York, and opened fire on two persons they believed to be members of the 110 gang, killing one of them, Robert Smith, and injuring the other.

14. On or about June 17, 1998, subsequent to the shooting of Robert Smith, CORY EDWARDS, a/k/a Wiggles, DUDLEY HARRIS, a/k/a Dud, DAVID TRAPPS, a/k/a Dirty Dave, WALIEK BETTS, a/k/a Leek, and another person, went to CORY EDWARDS' house, where EDWARDS collected all of the firearms they possessed that evening, and hid them in the hole in the floor of a bathroom in the house and covered them up so that they would not be detected by police officers.

21. On or about May 26, 2000, at the corner of Midland and Colvin Street, in Syracuse, New York, RIDWAN OTHMAN, a/k/a Wigwam or Blitz, and LONDON RICE, a/k/a Grams, together sold a quantity of cocaine base (crack) to an undercover officer.

22. On or about June 27, 2000, CHARLES MYLES, a/k/a Bossman, ANTONIO OWENS, a/k/a O'Head, and KARO BROWN, a/k/a Kike, Kite, Cal, Calvin and .40 Cal, were in a vehicle in rival Elk Block gang territory when KARO BROWN, a/k/a Kike, Kite, Cal, Calvin and .40 Cal, from the rear seat of the vehicle, shot William Robinson, a member of the Elk Block gang, in a gang dispute.

25. On or about August 4, 2000, in the vicinity of 1528 Midland Avenue, in the City of Syracuse, EDWARD THOMAS, a/k/a Esco or Poppy, distributed cocaine base (crack) to a customer and possessed an additional quantity of cocaine base (crack).

31. Beginning in or about July 2001, through and including December 2001, CHARLES MYLES, a/k/a Bossman, WALIEK BETTS, a/k/a Leek, CHRISTOPHER HOLBDY, a/k/a Nuts, CORY EDWARDS, a/k/a Wiggles, RODNEY HILL, a/k/a Hot Rod, ANTHONY JACKSON, a/k/a Tone or Capone, AKIM BETSEY, a/k/a Koon or Kimy, CHARLES BROWN, a/k/a Tadda and Tata, agreed with others known and unknown to collect proceeds in Syracuse which were used to purchase large quantities of high-grade hydroponic marijuana, which was shipped to Cincinnati, Ohio, where it was sold for substantial profit.

37. On or about May 10, 2002, KARO BROWN, a/k/a Kike, Kite, Cal, Calvin and .40 Cal, directed 17 year old S.G. to shoot at a rival gang member who had come onto Boot Camp gang territory, with one of the errant bullets shot hitting a school bus containing elementary school children.

38. On or about August 27, 2002, at the corner of Midland and Colvin Streets in Syracuse, RODNEY HILL, a/k/a Hot Rod, possessed approximately 3.5 grams of cocaine base (crack) in his vehicle.

39. On or about November 22, 2002, in the 1400 block of Midland Avenue, in Syracuse, New York, LONDON RICE, a/k/a Grams, possessed 19 silver tinted ziploc baggies, each containing a quantity of cocaine base (crack).

41. On or about April 13, 2003, in Syracuse, New York, RODNEY HILL, a/k/a Hot Rod, who was with CORY EDWARDS, a/k/a Wiggles, and numerous other members of Boot Camp, precipitated a major clash with the Elk Block gang by confronting an Elk Block gang member, Jerrawn Thomas, who had recently been released from prison after serving time for the shooting death of Boot Camp gang member, Jeffrey Conners, a/k/a Skii.

42. On or about June 8, 2003, RODNEY HILL, a/k/a Hot Rod, and CHRISTOPHER HOLBDY, a/k/a Nuts, while in a vehicle driven by KARO BROWN, a/k/a Kike, Kite, Cal, Calvin and .40 Cal, being chased at a high rate of speed by Syracuse Police Officers on Route 690, threw two 9 millimeter handguns out the window and, once the vehicle crashed and they began to flee on foot, HOLBDY and HILL discarded a .38 caliber handgun and rubber gloves.

45. On June 27, 2003, on Midland Avenue, just south of the corner of Midland and Colvin, LEONARD HOLBDY, a/k/a Shaky and Shanky, drove his vehicle into position, and front seat passenger

CHRISTIAN WILLIAMS, a/k/a Blast, Bless and Chris, shot and killed Elk Block gang member Demetrious Elmore with a 45 caliber handgun.

46. On or about October 28, 2003, in an effort to continue the criminal activities of Boot Camp while they were fugitives, KARO BROWN, a/k/a Kike, Kite, Cal, Calvin and .40 Cal, WALIEK BETTS, a/k/a Leek, CHARLES MYLES, a/k/a Bossman, and ANTONIO OWENS, a/k/a O'Head, possessed approximately 9 ounces of cocaine base (crack) at their apartment at 51 Blackhall Street, New London Connecticut.

All in violation of Title 18, United States Code, Section 1962(d).

Dated: July 1, 2004

A TRUE BILL,

_____
FOREPERSON

GLENN T. SUDDABY
UNITED STATES ATTORNEY

by: _____
John M. Katko
Assistant U.S. Attorney
Bar Roll No. 502457

APPENDIX D Redacted Original – To be Signed by Foreperson

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

03-CR-243 (NAM)

(4) KARO BROWN,
a/k/a Kike, Kite, Cal, Calvin and .40 Cal,

Defendant.

U.S. DISTRICT COURT - N.D. OF N.Y.
FILED
AUG – 3 2004
AT _____ O'CLOCK
Lawrence K. Baerman, Clerk - Syracuse

VERDICT SHEET

PLEASE NOTE - Each Juror will be provided with a Verdict Sheet and a copy of the indictment in order to facilitate understanding of the charges and to aid in deliberation. HOWEVER, YOUR VERDICT SHOULD BE REPORTED TO THE JUDGE ON ONLY ONE VERDICT FORM WHICH IS SIGNED BY THE JURY FOREPERSON. The remaining Verdict Sheets should be returned to the courtroom deputy unsigned. Each question must be answered unanimously.

ALSO, please carefully follow the bold-type directions accompanying each question.

WE, THE JURY, unanimously find, beyond a reasonable doubt, as follows:

COUNT 1 - RICO CONSPIRACY (18 U.S.C. § 1962 (d))

KARO BROWN

GUILTY ✓ NOT GUILTY _____

Turn to Page 3.

If you found KARO BROWN guilty of Count 1, proceed to answer the following questions. If you found KARO BROWN not guilty of Count 1, you are finished with your deliberations, please remember to sign and date your verdict sheet.

1. Do you also find that the pattern of racketeering activity agreed to by the defendant or reasonably foreseeable to him included any act(s) involving murder, attempted murder, or conspiracy to commit murder, in violation of New York Penal law sections 125.25, 110.00 and 105.17, as instructed earlier by the court?

YES ✓ NO_____

If yes, do you find that it was:

One such act? YES_____ NO_____

More than one such act? YES ✓ NO_____

2. Do you also find that the pattern of racketeering activity agreed to by the defendant or reasonably foreseeable to him included any act(s) involving drug trafficking in violation of federal law as instructed earlier by the court?

YES ✓ NO_____

If yes, do you find that it was:

One such act? YES_____ NO_____

More than one such act? YES ✓ NO_____

A. If the answer to question (2) is "NO," do not answer questions B-E below, skip to question no. 3.

B. If the answer to question (2) is "YES," do you also find that the pattern of racketeering activity agreed to by the defendant included conspiracy to distribute and possession with intent to distribute 50 grams or more of cocaine base (crack), in violation federal law as instructed earlier by the court?

YES ✓ NO _____

C. If the answer to question B. above is "YES," which of the following quantities of a mixture and substance containing a detectable amount of cocaine base (crack) do you find that the government proved, beyond a reasonable doubt, the defendant agreed a conspirator would conspire to distribute and possess with intent to distribute in the conduct of the affairs of the enterprise?

1.50 kilograms or more of cocaine base (crack) ✓
at least 500 grams but less than 1.50 kilograms of cocaine base (crack) ____
at least 150 grams but less than 500 grams of cocaine base (crack) ____
at least 50 grams but less than 150 grams of cocaine base (crack) ____

D. If the answer to question B. above is 'NO," which of the following quantities of mixture and substance containing a detectable amount of cocaine base (crack) do you find that the government proved, beyond a reasonable doubt, the defendant agreed a conspirator would conspire to distribute and possess with intent to distribute in the conduct of the affairs of the enterprise?

at least 35 grams but less than 50 grams of cocaine base (crack) ____
at least 20 grams but less than 35 grams of cocaine base (crack) ____
at least 5 grams but less than 20 grams of cocaine base (crack) ____
less than 5 grams of cocaine base (crack)] ____

E. If the answer to question (2) is "YES," do you also find that the pattern of racketeering activity agreed to by the defendant included conspiracy to distribute and possession with intent to distribute a mixture or substance containing a detectable amount of marijuana, in violation federal law as instructed earlier by the court?

YES _____ NO ✓

3. Do you find that KARO BROWN was an *organizer or leader* of any criminal activity, described in Count 1, that involved five or more participants or was otherwise extensive.

YES_____ NO ✓

If your answer to question 3 is "YES," do not answer question a, but skip to question 4.

a. If your answer to question 3. was "NO," do you find that KARO BROWN was a *manager or supervisor* (but not an *organizer or leader*) of any criminal activity, described in Count 1, that involved five or more participants or was otherwise extensive.

YES_____ NO ✓

4. Do you find that KARO BROWN used or attempted to use any person less than eighteen years of age to commit any criminal activity described in Count 1 or to assist in avoiding detection of, or apprehension for, one or more of those offenses.

YES ✓ NO_____

SIGN AND DATE THE VERDICT SHEET AND REPORT YOUR VERDICT TO THE MARSHAL.

DATED: August 3, 2004

[redacted]
Foreperson

APPENDIX E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
----------x
UNITED STATES OF AMERICA

vs. 2003-CR-243

KARO BROWN,

Defendant.
----------x

Transcript of a Sentencing held on February 10, 2005, at the James Hanley Federal Building, 100 South Clinton Street, Syracuse, New York, the HONORABLE NORMAN A. MORDUE, United States District Judge, Presiding?

A P P E A R A N C E S

For The Government: UNITED STATES ATTORNEY'S OFFICE
P.O. Box 7198
100 South Clinton Street
Syracuse, New York 13261-7198
BY: JOHN M. KATKO, ESQ.
Assistant U.S. Attorney

For Defendant: WILLIAMS, HEINL, MOODY & BUSCHMAN, P.C.
Attorneys at Law
11 Court Street
Auburn, New York 13021
BY: SIMON K. MOODY, ESQ.

(Open Court, 4:15 p.m.)

THE COURT: Will the clerk please call the case, have counsel note their appearances for the record.

THE CLERK: 2003-CR-243, United States of America versus Karo Brown, please note your appearances for the record.

MR. KATKO: Good afternoon, your Honor, John Katko for the United States along with John Cox.

THE COURT: Mr. Katko, Mr. Cox.

MR. COX: Good afternoon, your Honor.

MR. MOODY: Good afternoon, your Honor, Simon Moody, good to see you again, I'm here with Karo Brown.

THE COURT: Mr. Moody, good afternoon. All right, this case is on for sentencing this afternoon. Let me first inquire, do counsel have the presentence report dated October 29th, 2004, and the addendum dated December the 27th, 2004, and the second addendum dated January the 14th, 2005?

MR. KATKO: The Government does, your Honor.

MR. MOODY: As does the defense, your Honor.

THE COURT: Did you share it with your client?

MR. MOODY: Yes.

THE COURT: Okay. Do counsel have any objections to the facts as stated in the presentence report?

MR. KATKO: Yes, your Honor.

THE COURT: Okay. What do you want --

MR. KATKO: I mean, excuse me, your Honor, no your Honor, I do not.

THE COURT: Mr. Moody, as to the facts?

MR. MOODY: No, your Honor.

THE COURT: Do counsel have any objections to the offense level calculations as reflected in the presentence report?

MR. KATKO: None from the Government.

MR. MOODY: Yes.

THE COURT: All right. Let's address those.

MR. MOODY: Your Honor, I've had an opportunity to review the sentencing memorandum that was filed in connection with this case, I'll refer your Honor initially --

THE COURT: I think, if I could address maybe Mr. Moody, you contend the information in the report, you're referring to paragraphs 8 through 36, does not accurately describe the nature of the relationship between the defendant and other members of the Boot Camp or the purpose of their association, and in your sentencing memorandum you argue that members of Boot Camp engaged in their criminal conduct independent of their association with the gang. Now, is there anything you would like to add to that argument at this time?

MR. MOODY: With respect to that, clearly this

is a sentencing proceeding, your Honor, the only matters that I wish to address specifically relate to the role that my client played which was addressed not only by the department of probation but also by the Government with respect to his role as either a leader, organizer, manager, or supervisor.

THE COURT: Well, in that regard, I submitted that question to the jury for them to find beyond a reasonable doubt, whether or not he was a leader, organizer, manager, or supervisor. They did not feel there was sufficient evidence to show that and they did not find that to be the case. I am not going to use that factor in my sentencing here.

MR. MOODY: I appreciate that, your Honor.

THE COURT: Okay.

MR. MOODY: Otherwise, your Honor, the jury did rule, they did come back with a verdict of guilty with respect to the RICO charge, much of my argument really was addressed to the application for a judgment of acquittal. Your Honor having denied that application, I cannot at this stage of the proceeding argue the jury verdict, but I won't add any more than I've already submitted to the Court in my memorandum.

THE COURT: All right. You next are arguing under paragraph 41 role in the offense, you contend that the evidence presented at trial did not establish beyond a

reasonable doubt the defendant distributed or possessed with the intent to distribute more than 1.5 kilograms of cocaine base. Defense counsel submitted the two, submits that a two-level reduction for minor role is appropriate for your client on the basis that he was a minor participant in the drug dealing attributed to the combined members of Boot Camp. Is there any more you want to add to your argument on that?

MR. MOODY: Well, yes, your Honor.

THE COURT: Go ahead.

MR. MOODY: The Government contends that certainly 23 individuals were indicted in this case, that there were other members of Boot Camp that were not indicted and the Government presented evidence regarding rampant drug possession and drug sales within the geographically defined area as submitted by the Government by numerous individuals. My client was only one of a multitude of different individuals who were selling or possessing or alleged to have sold and possessed cocaine, in that area, within the time frame which is set forth in the indictment. Clearly my client is one person and if this conspiracy, including not only the 23 defendants but also the other unindicted members of Boot Camp, were all selling and that was certainly the Government's position, then my client's sales or alleged sales and possessions must be considered minor having regard for the combined operations of this alleged enterprise. That

would be the basis of that contention, your Honor.

THE COURT: Mr. Katko.

MR. KATKO: Yes, your Honor, briefly. Your Honor, you have to analyze this in several different ways. First of all, that he sold, and second of all, what others involved in the conspiracy sold through the reasonable foreseeability doctrine. First of all, with respect to what he sold, there's evidence at trial that he was a drug dealer, there was evidence at trial that he sold crack cocaine, there was evidence at trial that that was a sole source of income, there was evidence at trial that he had substantial amount of income derived from drug trafficking. Based on the videotape alone, trip to Florida, his obviously very expensive diamond watch, the drug dealing, drugs found in Connecticut, the testimony about the drugs he gave the younger members of Boot Camp to sell for him. So the evidence was ample at trial that he himself was a very significant drug dealer, as far as from the age of 15 back in 1995 right around the time he shot his first person.

On top of that, on top of all the evidence at trial we have his own admissions in a recent newspaper article that he was selling crack almost every day, he had never had any source of legitimate income through this entire time period, it's a logical inference to see that he had substantial means and 1.5 kilos of coke dealt by anyone over

a ten-year period is a very small amount in comparing the lifestyle he led and the things he did.

Now you add into that, your Honor, through the reasonable foreseeability doctrine what the others sold within the conspiracy. They looked at a six-month time period from January 1st of 1996 to about the middle of 1996 alone, that one six-month time period, I don't know how many witnesses talked about that, they sold upwards of 35 or 40 kilos of crack cocaine in that small period alone. By that time he was a thriving member of the Boot Camp gang, and it never stopped. Every time someone sold drugs within the territory which he so thoroughly protected, those drugs can be attributed to him.

So for all those reasons, your Honor, I would submit to you that the jury's verdict was more than ample with respect to the 1.5 kilograms and that a minor role for him in this case would be tantamount to absurdity.

MR. MOODY: May I reply, your Honor?

THE COURT: Yes, sir.

MR. MOODY: The Government makes various allegations, none of which were specifically addressed by the jury. In particular, the Government did not establish beyond a reasonable doubt what exact quantity my client possessed or sold or indeed what quantities were possessed or sold by any of the defendants or indeed any unindicted member of Boot

Camp. Now there was no --

THE COURT: Wasn't there testimony as to how many kilos they were bringing in a week?

MR. MOODY: There was testimony as to approximately how much.

THE COURT: Well, I only have to find, I only have to -- I don't have to find beyond a reasonable doubt the exact amount, I only have to find that it's 1.5 kilos of cocaine base or more.

MR. MOODY: I understand that, your Honor, but when you actually take the combined operation and if each of these members were selling or possessing in excess of 1.5 kilograms, even if you multiply that 1.5 by 20, then clearly my client's share of that at best is 1/23rd of the combined operations of this alleged enterprise. Now 1/23rd, I would submit, is minor in comparison to the combined operations, bearing in mind we're dealing with a charge based upon an entire enterprise.

THE COURT: I think your client -- entire enterprise and I think your client indicated in the July 19, 2005 news article, he talked to the Post-Standard reporter in which he admits to joining Boot Camp in '95 and selling crack cocaine on a daily basis with the Boot Camp until he was apprehended.

MR. MOODY: Again, your Honor, the evidence

was so did everybody else, so did everybody else, and that, if one assumes that everybody else was doing exactly the same thing that he was, that still would not change my client's share in terms of the enterprise from 1/23rd, whether it was 1.5 or whatever it was, the evidence elicited by the Government was that everyone was pretty much doing the same thing. That still means my client is at 1/23rd interest as it were at best in the combined operations of the alleged enterprise. 1/23rd, I would submit, is minor.

THE COURT: Okay. I have presided over the case and I heard the testimony and I find that 1.5 kilograms cocaine base is certainly an adequate figure for the Government to plea in this case against your client, and I don't find anything that makes your client less, substantially less culpable than the average participant in this RICO conspiracy.

Your next area was paragraph 41, about the firearms, specific offense characteristic, you contend an adjustment is not warranted as there's no evidence that the defendant, of the defendant possessing firearms during his involvement in drug trafficking activities.

MR. MOODY: That is correct, your Honor.

THE COURT: Anything more you want to add to that?

MR. MOODY: Only, your Honor, to ask that you

again review the evidence with respect to the issue of drug trafficking and there was no evidence, I would submit, presented to the jury upon which they could make a finding beyond a reasonable doubt.

THE COURT: Well, isn't part of the drug trafficking being able to hold down the block? Isn't that part of it?

MR. MOODY: Your Honor, I don't know that that was a question that was presented to the jury in a finding beyond a reasonable doubt.

THE COURT: Well, I don't know that that had to be presented to the jury in light of the *Crosby* case and in light of the -- what's after *Blakely? Fanfan, Booker*.

MR. MOODY: Well, your Honor, the case was obviously tried before that decision, so --

THE COURT: Yes.

MR. MOODY: I didn't have a crystal ball as to how that would come about, but I would submit, your Honor, if one looks at it within the framework of the Guidelines as they then existed --

THE COURT: How about the block guns, the testimony about block guns that were available for use?

MR. MOODY: By members of the alleged enterprise, yes, your Honor, but in terms of what was the function of that gun, was the function of the gun to be used

in connection with drug trafficking or was it a function of that gun to be used for purposes of protection.

THE COURT: Well, I think part of the drug trafficking could exist, the way -- as I heard the proof, they controlled the block territory, 10-block area, and they did it through violence, threats, fear, and they did acts of violence to keep people out of their territory. One person, 15-year-old that was killed for "slipping", he just happened to be in there to see his grandmother and he's dead because he dared to violate your Boot Camp territory, where the drugs were sold.

MR. MOODY: Not my territory.

THE COURT: I don't want to -- Mr. Katko, do you wish to be heard on this?

MR. KATKO: No, your Honor, I think you've adequately addressed the issue.

THE COURT: They even had the killing of Darone Scott on the corner of Midland and Fage, that shooting. That was just part of the gang reprisals, he was in their territory.

MR. MOODY: Should note here, your Honor, the contention used by the probation department was guns used in drug trafficking. Certainly the evidence here was that guns were used and that people died or were shot or simply that the gun was available, but there was no evidence that the gun

was an essential component of the drug sales. Bear in mind, your Honor, the proof as I heard, and I would submit that the transcript would bear this out, that every witness said that they would need protection to protect themselves and to protect their friends from violence from other members, not in order to advance their own possession or sale of drugs. We know from the proof, your Honor, that there were numerous acts of violence committed by different individuals against others from various gangs, which do not appear from the proof to be directly related to drug sales, but -- and the Government I would submit did not establish that beyond a reasonable doubt nor was that issue specifically put to the jury. But guns were there, guns were pervasive, violence was pervasive, but the question here for that enhancement, I would submit, your Honor, is that guns were used in the -- in the act of possession of cocaine and in the act of sale of cocaine and that simply wasn't addressed at trial, I would submit.

MR. KATKO: Just briefly, your Honor, two quick things, *Booker* and *Fanfan* did not change the law with respect to preponderance of the evidence with respect to Guideline findings, they simply said now instead of the Guidelines being mandatory, they're advisory, but you can still find by preponderance of the evidence at sentencing certain enhancement factors, including this one. This one is

enhance it by two levels. That's number one.

Number two, central theory of the case, indeed the central reason for Boot Camp's existence is the drug trade. Testimony at trial was ample that the drug territory was protected by the ruthless acts of violence to ensure the sanctity of the drug trade. None of these guys have jobs and the only reason they had a territory was so they could protect it and sell drugs, benefit from it. So therefore, every time they used a gun when someone came through the territory, any time there was a community gun in the territory, it was there because of the drug trade, and it was there to protect the drug trade. And therefore, this is an appropriate imposition of the two-point enhancement which I'll note every single defendant in this case has been given.

THE COURT: Thank you, sir.

MR. MOODY: I didn't know what arguments were presented by other defendants, your Honor, the fact that they may have been imposed for them, I would submit is not relevant to my client. If the same arguments weren't made, I don't know whether there was any argument as to that, the applicability of that enhancement.

THE COURT: All right, thank you, Counsel. All right. I find the firearm adjustment is warranted in this case pursuant to Sentencing Guideline 2D1.1, comment note 3, "The adjustment should be applied if a weapon was

present unless it's clearly improbable that the weapon was connected with the offense."

Now under the provisions of relevant conduct set forth in Sentencing Guideline 1B1.3(a)(1)(B), a defendant is accountable for conduct, that is acts and omissions of others that is both, 1, in furtherance of the jointly undertaken criminal activity; and 2, reasonably foreseeable in connection with that criminal activity. It is the Court's opinion given the circumstances and evidence in this case it was reasonably foreseeable to the defendant that his co-conspirators possessed and used guns as part of their jointly undertaken criminal activity of trafficking crack cocaine. Boot Camp members routinely armed themselves with firearms in order to protect their territory, to protect their drug trade, to project a violent attitude to rival gang members, and to retaliate against any rival gangs who committed acts of violence against Boot Camp members.

Among other witnesses, Ridwan Othman, Rodney Hill testified that Boot Camp members controlled the territory wherein they exclusively trafficked in drugs. Both of these witnesses testified that gang members engaged in shootings to protect their territory and their drug trade, and I point to the murder of Darone Scott who was shot on Midland and Fage in Boot Camp territory, plus the shooting that took place the day the defendant was present when the

school bus windshield was struck. So I'm going to keep the two-point enhancement there.

Next was paragraph 41 you were concerned with, use of a person less than 18 years of age.

MR. MOODY: Yes, your Honor.

THE COURT: Would you like -- go ahead, sir.

MR. MOODY: Your Honor, there were specific questions put to the jury regarding enhancement. One of those questions related to the use of a minor. Now, I would submit, your Honor, although the jury did not answer this specifically, that the jury's concern was regarding the shooting of the bus incident that you've just referred to. I would submit to you, your Honor, there was no evidence that Mr. Brown used a minor in the function of drug trafficking. That would be an issue that would require a jury to return, I would submit, an answer beyond a reasonable doubt on that issue. No such enhancement question was presented to the jury, and I will submit to your Honor that there is no evidence beyond a reasonable doubt returnable from the jury that would allow that enhancement to apply.

Now clearly, the enhancement question concerning use of a minor was directed at the bus incident and no more. I think the Government per -- is stretching that impermissibly to try to incorporate an additional enhancement which simply isn't warranted on the facts of the

case.

THE COURT: Okay. Mr. Katko.

MR. KATKO: Yes, briefly, your Honor. Two reasons. The first reason is the same, is very much related to the last argument. They were protecting the territory. The evidence at trial was clear, Martwan Chance was a rival gang member, came through the gang territory, Karo Brown instructed a minor to go shoot that guy, and you know what the facts were after that. Protecting the territory, protecting the drug trade just as before, they're inextricably intertwined.

Second thing is that there was ample evidence at trial from which a jury could make this finding of this enhancement based upon the fact that Karo Brown routinely gave drugs to individuals like Shaheem Grady, Christian Williams, and others that were underage. Either way you slice it, your Honor, either the direct giving of drugs to minors by Karo Brown or the Chance incident itself are both ample grounds which a jury can find beyond a reasonable doubt this enhancement applies, and obviously the Court need only find that by a preponderance.

MR. MOODY: By way of brief response, your Honor, the questions that were posed of these witnesses, again, we're dealing with co-conspirators who had obvious motives when it comes to their testimony, I would submit.

That was not a specific issue that the Government addressed. There was certainly no evidence as to how, when, and where this alleged passing of cocaine by my client to unknown individuals occurred. Nor was there any testimony from these individuals that they actually saw any of these young individuals selling cocaine on behalf of my client. And if so, who.

THE COURT: Do you recall the testimony about the Little Boot Camp gang and the 212 gang, and then you would, if you earned your stripes, did enough work, put in enough work, then you could be elevated to be an actual member of the Boot Camp.

MR. MOODY: I heard that, your Honor, I disagree with it entirely.

THE COURT: Oh, okay.

MR. MOODY: I heard witnesses say that, my interpretation of that testimony may be different from the Government's and it was not a question that this jury answered. Now we don't know what the jury's interpretation of that issue was because they weren't asked that question.

THE COURT: Thank you, Counsel. Anything further, Mr. Katko?

MR. KATKO: No, sir.

THE COURT: All right. The evidence at trial included information of how the defendant used or attempted

to use one or more persons less than 18 years of age to commit criminal activity described in Count 1. By way of example, Ridwan Othman testified Karo Brown used flunkies including Shaheem Grady in drug trafficking activity to include perpetrating acts of violence in order to protect and preserve Boot Camp's drug trade in their territory. So I find that that enhancement should be there.

Next area was paragraph 41 regarding role in the offense. You submit four-level reduction for minimal role is appropriate for the defendant in regard to the underlying murder activity, you contend that the adjustment should apply as there's no evidence the defendant had any role in the murders. I would say this, I'm not going to address that one, I'm not going to comment because I'm using the drug RICO conspiracy for the sentencing purposes.

MR. MOODY: Thank you, your Honor, we don't need to address that further, then.

THE COURT: All right. That takes care of that matter. I believe at this time I'm ready to impose the sentence in this matter. Government, do you move sentence?

MR. KATKO: I do move sentence, your Honor, and a bit out of the normal procedure here, I would respectfully request I would be allowed to go last to preserve the Court's time because I know there's some things I'd like to respond to I'm sure from what the --

THE COURT: You know how I do it, you go first, you go second, you go third and then I'll go fourth.

MR. KATKO: Can I go fifth too? Just kidding.

THE COURT: Get it all laid out.

MR. KATKO: I understand, your Honor.

THE COURT: Okay.

MR. KATKO: Thank you, your Honor. I will not belabor the Court, I know it's been a very long day for the Court already today with other matters, but I do think it's important to note for a few moments the reasons why the Government is asking for the maximum sentence here. As you know, at trial, the defendant was convicted of being involved in racketeering conspiracy, in that the part -- the predicate acts were murders, attempted murders, witness intimidation, witness tampering, and drug dealing. There's four primary reasons why we move for life sentence in this case, and the first one starts with Mr. Brown's own criminal conduct which is only one component of what the Court should take in consideration with a charge such as this.

From the time he was 15 years old, Karo Brown has been engaged in shooting people, trying to kill them. From 15 years of age, he's been associated with a gang that not only shot people but killed people. At 15 years of age, in April of 1995, he shot someone in the shoulder, Curtis Paige.

On June 29th of 1996, Thornden Park, he shot at a rival gang member who happened to be leader of that gang, Lexington gang, that precipitated a gang-on-gang clash with Boot Camp, in which Lee Scott was murdered. There's testimony at trial that Karo Brown was one of the four individuals shooting at the Lexington gang members that night and we don't know if his bullet caused the death of Lee Scott, we only know that Lee Scott died and we know that Cory Brumfield watched him die.

We know that a short time after that, March 1997, he went up to a car where a rival gang member was, pistol whipped the guy, tried to kill him by his own accounts from the article in the paper, and shot him in the stomach as the guy came out of the car. He then stood over him and tried to pump more bullets into him and but for the gun jamming, he would have been dead. He was clearly trying to kill him. He went to prison for that.

He's out 13 days in June of 2000, points a gun at the chest of William Robinson trying to kill him. How do we know that? He pled guilty to it. There's some speculation that others may have done it. Karo Brown admitted it only in court, we have to take that as fact.

In May of 2002 shortly after he got out of prison again, he was now at such a status within the gang that he was able to direct others to do shootings and he did.

Shaheem Grady, we know what happened there. We know that a bus full of children, kindergarten to fourth grade, whose lives were totally innocent were shattered because of what he did, and the spiderweb on the windshield from the bullet hitting just below where the bus driver was.

We know that in January of 2003 he told a police officer, he's so bold by this time, "I'll shoot both of you in the head and then I'm going to kill myself."

We know that in May of 2003 he says to another police officer, "I'm going to shoot you and the vest isn't going to do you any good. I'll kill you and your kids. It's going to be a long summer for the police, I'm going to make it a long summer and none of you cops are safe."

On June 8th of 2003, police got lucky, they stopped him before he actually pulled the trigger, he's on 690, car chase, throwing guns out the window, chasing him through neighborhoods and who's driving the car, who's leading the violence? Karo Brown. He had young members in the car with him, and if you recall, your Honor, many guns were tossed out the window. One gun was so vicious and so powerful looking, so scary looking, that seasoned officers were afraid to touch it. And whose gun was that? We know from trial it was Karo Brown's. He had rubber gloves on, they had a stolen car, they were on their way to do another shooting. That wasn't speculation, that was trial testimony

by people that were in the car with him.

On June 27th of 2003, Karo Brown's protege Christian Williams, 18 years old, snuck up behind someone and shot him in the back killing him probably before he hit the ground. It was a .45-caliber gun. Do we know it was the same gun that Karo Brown gave Christian Williams earlier that week or the week before? We don't know for sure, but we know this much and trial testimony made it clear, Christian Williams was one of Karo's flunkies, he was one of Karo's proteges, one of the guys Karo raised to be the criminal he became. We know that.

Every time he went to jail, and I won't go through his criminal history because we'll be here all evening, but it never deterred him. He got right back out, got right back into the criminal conduct. Nothing stopped him. There was no deterrent whatsoever for him.

Now, the crack finding alone in this case is more than 1.5 kilos, that alone gives him a sentence of 360 months to life in prison. A quirk in the Guidelines, albeit they're advisory, but still must take them into consideration and I ask -- I submit that the Court should do that here. Level 38, criminal history category V is 360 to life, if you add the other enhancements, he was up to level 42, still 360 to life because of a quirk in the Guidelines.

I submit to your Honor respectfully if you

sentence at 30 years, and not at the high end of that range, that you're really not taking into account all of this criminal conduct, and the Guidelines basically want you to do that, the law wants you to do that, and the statutes provide for that, with a life sentence.

The violence of others. As I said in my sentencing memorandum, and I submit to you again today, Karo Brown was the primary architect of the violence for Boot Camp. I think it's clear that were it not for Karo Brown --

MR. MOODY: I must object to that, your Honor, in light of the jury's findings concerning that specific issue as to manager, organizer, supervisor, or director of the affairs of the alleged enterprise. I don't think that that's a proper --

MR. KATKO: It doesn't matter whether he's a leader or not, different people have different functions within the gang. His function was to be violent, and back as early as 1995 he was shooting people. Jahmal Morgan said he was the one guy that everyone else was leery of, the one guy that was violent way back then when they were trying to quell the violence, when Cav died and the earlier leaders died.

Karo Brown gained a status that he wanted to because of the violence he engaged in. The LBCs and the 212s emulated him, they wanted to be like him, they looked at him as kind of the man in the gang, and the more he engaged in

violence, the more they were compelled to do the same. Earn their stripes, put in their work, hold down the block, all those terms, all those terms came as primary result of him.

Major gang leaders in this case such as Cory Edwards never got involved in the amount of violence or degree of violence that Karo did, in fact no one in this case that I've come across has had more violent incidences where he got caught than Karo Brown, and it was because of him that the young guys did the violence they did. It's because of him that guys like Christian Williams were bred, and Karo Brown perpetuated that and fueled that getting him to do his dirty work for him, particularly after he got out of prison after his second shooting in 2002.

And the RICO laws are designed, your Honor, to punish people not only for the conduct they did themselves, but for the conduct that they had assumed in their association in the gang. He was associated with criminals. He was associated with killers, but much worse than that, he wasn't your typical gang member. He caused those guys to become the shooters and the killers that they were, particularly the younger ones.

Another thing, your Honor, another fact I think the Court should consider is his complete lack of remorse. At no time during the course of this trial did he show remorse, at no time after the trial did he show remorse.

Even after he saw all the discovery, he saw the charges, he saw the evidence, he saw his comrades testify against him in more than half a dozen, he saw the police officers, the jury made a resoundingly loud verdict against him, even after all that, what does he tell the newspaper? I have no regrets. Bragging, I'm too smart for them, yeah, I tried to kill Terrell Porch. That's what he told them in January of 2005, knowing that the 360 to life sentence was hanging over his head. There's no remorse whatsoever in this man's body.

If you go to the sentencing factors, your Honor, set forth in Title 18, United States Code, 3553(a)(2), and you apply those to the facts of this case, I challenge you to find a more compelling case to give someone a life imprisonment. The seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense, that's the first factor. To afford adequate deterrence to criminal conduct, important point here. The community deserves to see him go away for life. It will have deterrent effect on others contemplating similar conduct within the community. It's already had an effect on people. We've continued investigating gangs in this city and I can tell you, your Honor, firsthand and so can all the officers in the back of this courtroom, this case is making gang members think twice. And I think, your Honor, it would be a resoundingly strong deterrent message to give him life to

show that you can engage in the kind of violent pathological violence that this man did, that the only adequate place for you is in prison, and society needs to be protected from you.

And that's the third factor, protect the public from further crimes of the defendant. There's virtually no chance that this defendant will get out and lead a law-abiding life again. He never has before and don't buy the fact that he's a youthful guy, he's 25 years old. He's an adult. People tried to intervene with him, people tried to help him, people tried to make his life better, some of those people I suspect are in the courtroom today. And he turned his back on all of them. He turned his back on his aunt who tried to raise him and give him a good life. This guy is going to commit crimes again and you have the unique opportunity to protect society from this individual permanently. And I implore you to do so.

The other factor, I won't even get into, your Honor.

The Government takes no special joy in asking for this. I've had to ask for life sentences on others before and it's never been a pleasant thing to do, but I would be very comforted and I think society would be very comforted and the police officers who have to risk their lives every day dealing with people like him on the street would be very comforted to know that someone who tells cops,

I'm going to kill you after all he's been through and after all the shootings he's done are going to know that this guy's never going to get out again. That's where comfort comes from, your Honor.

The laws provide for it, the facts mandate it, the community deserves it. For all those reasons, your Honor, I ask that you sentence him to life imprisonment.

THE COURT: Thank you.

MR. MOODY: Thank you --

THE COURT: Counsel.

MR. MOODY: Thank you, your Honor. Your Honor, first I'd like to concede one very important point. It has never been submitted to this court or anyone else that Karo Brown has not committed serious crimes. It has never been submitted to this court nor have I ever advocated that Karo Brown was not a person whose life revolved around criminal activity, and I certainly make no excuse and it's difficult for me as an attorney to stand and make arguments based upon his criminal history for leniency, and I don't intend to do that, although I would point out that my client only has three criminal convictions, and those are set forth in the report by probation. Three criminal convictions.

Now Mr. Katko has indicated that if he was to go through his criminal history, we'd be here all evening, but the fact remains there's only three convictions and I

think that's a very important point. When going through his criminal history, one sees numerous arrests, and looking at the probation report, we go through that, it's dismissed, dismissed, dismissed, dismissed, dismissed, dismissed. One particular occasion, 19 separate charges, six or seven felonies, arising out of eight separate incidents consolidated, and one plea is entered, and with respect to the sentence imposed on that plea, it's not even the maximum.

Now, I think that an important point, your Honor. It's an important point because although there are numerous arrests and on some of these occasions we have charges pending before a court and not once or twice or three times but four times on occasion Mr. Brown is arrested while there are charges pending before a court, but somehow or another, and I don't understand this, but he's released on bail. He's alleged to have committed another offense, comes back before the court, he's again released, comes back before the court, is again released all while charges are pending. And I find that remarkable. It may be -- it may be that there was an insufficient basis for the arrest or it may be related to the prosecution of those charges. I don't know, and I'm not here to point fingers. Certainly as far as the police officers that I've encountered in this case, as I indicated in my closing remarks, that I was very impressed by them. I was impressed by the way in which they approached

their job and I would reendorse those remarks now, in particular Detective Gossin and Stonecypher, who both, Stonecypher's testified, and I think his testimony is important for the issues that I addressed within my sentencing submissions regarding the urban culture, the gang culture that permeates and still permeates the south side of Syracuse, and other cities across this nation. Because there are serious questions, serious issues that are not being addressed within the existing framework, and it's not just the problem of the criminal justice system. Your Honor will no doubt recall and was shocked as I was to learn that of all of the 13-year-olds in the south side of Syracuse, when asked, you know, how many of them are committing crimes, the response was all of them. All of them. That's a remarkable situation. But that is the same environment that my client came from.

Now there are any number of different ways that interdiction or intervention could have been sought through Family Court, PINS petitions, Child Protective Services that didn't involve necessarily the arrest and prosecution. And even now those options are available, but certainly something needs to be done before we create another generation of young men like my client who grow up within a society that is just permeated with crime. And the police can't provide all the answers, no one suggests that you just

arrest them and that's going to resolve it and I know that they appreciate that. They know how difficult it is, and even if you were arrested, what's to say that the person's not going to be back out on the street again. And that's a problem. Because you've got these young guys, young guys who are allowed to continue to exist in this environment without appropriate therapeutic intervention, and that's the environment.

I make that argument, your Honor, and it certainly was misinterpreted by me in the article that appeared in the paper, but the argument I make, and I'm sure your Honor, having looked at the entire sentencing submission, can appreciate is that something needs to be done. It is the environment which my client grew up, he meets all of the same criteria as many of these young men and today, single parents, problem parents, lack of supervision, lack of intervention, I don't know how many times Child Protective Services were called to find out why a young man like Karo Brown was out on the street and doing, as the Government alleges, selling drugs at night, at all times of the day, and they're still doing it. All of these 13-year-olds out there selling drugs and still no intervention. I'd be interested to see what the Family Court records indicate, how many PINS petitions have been initiated, either through the high schools or through some

other medium. And maybe something like that needs to be done, if arrest and prosecution is not the answer.

And I certainly appreciate the difficulties when you have a reasonable doubt standard. I make that argument, your Honor, for two reasons. One, because I think that is such an important factor in the life of Karo Brown. And one thing leads to another. As he is surrounded by crimes, so too are others. People are getting shot. I wonder if we could put up that big picture again and just put an X over all the people in the Boot Camp gang, people that live in that area who have died, who have died. In many cases, no arrests have been made, other people have died in other neighborhoods, and it is difficult to make an arrest, when people feel they're protecting their own and even when they're the victim, they don't want to say anything. But if you're in that environment, and you can be shot, and you're not sure that you can rely upon the normal safety mechanisms that we in other neighborhoods have, then you have to take certain measures into your own hands and that's not right, it's not right.

And I don't offer it as any form of excuse for the conduct of my client, but that's the environment, and that's the point here, your Honor, the environment. This urban culture, this gang culture. And we heard about it, how it's actually promoted in media, and on the way over here

today on NPR they were talking about hiphop music and the promotion of misogyny and violence. It is just amazing to me how it's not only accepted but promoted, and how great that sells. And how many people buy that. That's the environment, that's the culture. And you can't ignore that. You can't look at Karo Brown and his life and what he has done through rose-colored glasses about how it should be, you have to get into the trenches to know how deep the mud is.

And I offer that to your Honor, and you certainly are allowed to step outside the Guidelines now, *Booker* and *Fanfan* allow you to do that. Having regard for the Guidelines certainly as advisory as Mr. Katko has noted, and to step outside that because not only is urban culture I submit a factor that the federal Sentencing Guidelines Commission did not consider, but now you can consider many of the factors that were otherwise prohibited, socioeconomic issues. And they are so very relevant in this case. I would ask that your Honor step outside the Guidelines, step outside the Guidelines, impose a sentence that is less than 30 years, because although very important and life-forming experience that he had, without the appropriate intervention that could have not only allayed many of the crimes that my client either committed or was alleged to have committed, look at this one, but perhaps also, having regard for these remarks, maybe someone will hear and another approach will be taken to

try to address these social ills which are the problem of all of us.

But your Honor, I'd also make that submission because there are people who have actually admitted to killing people, shooting and killing people, and that is an admission that my client was not required to make because he has never killed anyone. And it would be grossly unfair, I would submit, to impose a sentence on my client that is more severe than someone who has actually murdered someone.

Now my client has admitted, and there was questions regarding the circumstances surrounding that admission regarding Will Robinson, anyway, and he did his time. He entered a plea and he did his time, two to four years. He entered a plea to the shooting of Terrell Porch and he did his time. And to impose a more severe sentence on my client relating to those charges and certainly other, there are other issues, but for those charges having regard for the fact that he's already been sentenced, I think would be unfair, and particularly unfair if he should receive a more severe sentence from a murderer.

So I ask you to consider those issues, your Honor, in addition to the other remarks that I've made in my sentencing submission, I'd ask that you exercise your discretion, and depart from the Guidelines in this case, and impose a sentence of not more than the sentence that you

would impose on someone who has killed someone within this case, even though that person cooperated with the Government. Because simply to say, well, I'm going to cooperate against Karo Brown and then somehow get consideration for the death of another human being or possibly even immunity against state prosecution for that very crime is grossly unfair, and I would submit a miscarriage of justice. I would ask that your Honor take those issues into account.

I'd also take this opportunity if I may, your Honor, to again thank you for the manner in which the case was handled, it was a great experience for me and I also compliment my colleagues across the bar, and again, the detectives that I was involved with and having the pleasure to meet you in the case, I thank you.

THE COURT: Thank you, Counsel. Mr. Katko.

MR. KATKO: Yes, briefly, your Honor. We're here to address and punish defendant's conduct, not speculate as to its causes. There's much talk about the environment in which he grew up, but as you heard at trial, Cheiron Thomas I believe spoke about this. There are people in the neighborhood who weren't involved in violence, weren't involved in gangs, they went to school, they got educations, they graduated, they got jobs, they did the right thing. There were other people in the community who had to put up with individuals like him on a daily basis and still

succeeded, so it wasn't -- to blanketly say that every single person is a criminal is wrong.

MR. MOODY: Your Honor, I object, I did not say that.

MR. KATKO: Thirteen-year-olds. The gang violence that still permeates the south side, I can tell you talking to the officers, the south side's a different place. The gang violence isn't there, there's been no vacuum filled in Boot Camp territory by anyone. There is no gang presence there anymore. Something that needs to be done, say all you can do -- he said something needs to be done about individuals like Karo Brown, PINS petitions or whatever. Well, all I can do is give them a chance, he got chance after chance after chance, and not only did he get a chance as far as breaks in sentencings and helping him out maybe because he was a youth, he had people helping him out, trying to get him straightened out and he denied that help. What else more can you do?

And something you got to take into consideration is the deterrent factor here, and that's something that's not talked about. The deterrent factor is working and a life sentence here would add to that deterrent factor. You're allowed to step out of the Guidelines of course, and the only way you should step out of the Guidelines here is to go higher than the Guidelines which you

don't have to do. You're well within your range here in the Guidelines. To go below them would be a completely unreasonable sentence under all the factors of this case.

With respect to the shooting and killing of people, trying to derive a difference between shooting someone and killing someone, what's the difference between someone who points a gun at someone's chest and pulls a trigger and kills a guy versus someone who points a gun at someone's chest and doesn't kill him? The intent is exactly the same. You're trying to kill him. Miraculously, no one Karo Brown shot that we know of died. Did he try to kill them? Yes. Did his gun jam when he was standing over Terrell Porch when he already shot him in the torso trying to shoot him again? Yes. That's the only reason he's not a killer. And did a bullet ricochet off Will Robinson's arm before it hit his chest because he turned when he got shot? Is that the only reason he's not dead? Of course. There's no difference, and to draw a difference between Karo Brown and the other shooters in this case is ridiculous.

But the one thing that's particularly important here is even the individuals who murdered people in this case had nowhere near the level of violence that this individual has had and nowhere near the number of serious shootings that this individual was involved in. There's no difference, in fact he's worse, and the sentence should

reflect that.

MR. MOODY: Very briefly, your Honor. I would submit that to say that there is no difference between someone who attempts to shoot someone and that person on the ground lives is a remarkably different situation than the person who dies. Certainly there's a huge difference for the person who was the victim. Now quite frankly, I would quite prefer to be the one who was on the ground and the gun jammed than the one who is dead, but there is certainly a difference, but moreover, your Honor, criminal statistics show that people who are simply incarcerated, their recidivism rates are higher than those who receive treatment. New York and courts across this country and across the world have established boutique courts, what they call boutique courts, treatment courts to try to address issues, and they did that because those treatment courts were effective, they were effective in greatly reducing recidivism rates. We've got drug courts, we've got domestic violence courts, all of these courts specifically designed to address particular issues.

Now to say that my client had opportunities is like saying that, okay, if you're an alcoholic and you get a break, that therefore you should be able to go cold turkey. We know that is not true, we know that alcoholics require treatment, require intervention. So in that respect, your

Honor, I would ask that you disregard Mr. Katko's commentary in that way.

But certainly there is a remarkable difference between someone who shoots someone and kills them than someone who shoots them and then is convicted of assault in the second degree, for which he received a sentence of two to four years, and that happened on two occasions. Two to four on assault second. Not attempted murder, not murder. Assault second. Thank you, your Honor.

THE COURT: Thank you. Anything further?

MR. KATKO: No, sir, your Honor.

THE COURT: Karo Brown, anything you want to say before I pronounce sentence?

THE DEFENDANT: Yes.

THE COURT: Go ahead.

THE DEFENDANT: I know these issues might not concern you but they concern me and it's my turn to speak so I'm going to address some issues.

First of all, this RICO indictment came on me when I was 23 years of age. I have a son, your Honor, he's six years old. He's really intelligent and he's progressing very well thanks to his mother, but I very seriously doubt that he's smart enough to understand that his father is going to go to jail for murder and never killed anyone. Or that his father's going to go to jail for being in a corrupt

organization that never existed. And throughout my trial, I sat here and I watched the District Attorney, the prosecutor, frustrate the jury with Miami videotape, photos, or my watch with all the diamonds in it, and they took a different point of view at that type of stuff as to my lifestyle and what we lived for, kind of things that interest us.

As for the prosecutor's witnesses, main witnesses, they got up on the stand and they solely agrees with the defense saying that there was no such thing as a corrupt organization, everybody acted as an individual, no one told anyone to do anything. Everybody in the inner city neighborhood where we live has problems with different people that I neither knew about or my friends knew about so everybody protected themselves as an individual such as me, as in the Terrell Porch shooting. Which I'm blessed that Terrell Porch did not die, I thank God every day, but as I'm sitting here and I'm focusing on witnesses and I got to seeing Cheiron Thomas and Ridwan, I got to seeing everybody talking about how they did it on their own and wasn't nothing organized, my focus shifted from them to the four words that's posted above your panel, and it reads "In God We trust." And when I read that, I'm sitting back and I'm thinking, that's not only something that I adore but that's something that I live by, whether it's here in this federal courtroom or in my community in Syracuse, New York.

And I know that what type of individual I am. I'm a real kind individual when I would give my life to someone who need it, and I pick a bone up off the street and help him out, but when you try to breach security on myself and take me away from my mom's, my son's, my aunts, uncles, that's something I will not tolerate.

So I sit back and I -- and throughout the trial I see that they, they cooperate with the defense, but the jury just doesn't get it. You know, I think it just flew right over they head, they just didn't get it.

So this trial didn't change my life literally, it changed it for a few reasons. It showed me a couple reasons, it showed me, one, that the prosecutor, the federal government can do whatever they want, whenever they want, however they want. And it showed me that I'm smarter than this case, and I'm smarter than any inner city youth that's my age going through the same thing I'm going through, or anybody to cop to a charge that they didn't do. Pretty much smarter than them, and my sense of pride and my smartness, I should be on somebody's college campus doing something really to progress my life for my son. And last but not least it showed me that I love my family, and how much my family love me, and for me to cop out to 20 years, that's telling them that I don't love them, that I don't want to be around, I don't want to try show y'all the right way to go and I don't

want to be there to show you not to go the way. That's why I couldn't do it. I am presuming my innocence to this day. I presume that I am not guilty even though a guilty verdict has been came back for the jury.

And I would like to say that, I thank all of my family and friends for coming and showing me love. That's the most up respect and I'd do it again if I had the chance to do it again for the same crime again, I'd do it again.

I keep hearing them talk about gang, gangs, gangs, gangs, gangs, it's over 5,000 gangs in the United States, Bloods, Crips, Latin Kings, any south side inner city neighborhood you would find a gang, it's not hard, go on any corner store, you'll find a gang, just ask, what gang you down with. But here it is, I'm not sitting here for a gang charge that carries the most of five years, I'm sitting here for racketeering, that means involved with a corrupt organization, leading somebody to do something or having something to do with an act such as a murder that I was in Jamesville, I knew nothing about neither nor agreed with, would have told him don't do it, you're stupid, but that ain't my place, that's just another way for the prosecutor to come up with a way to send 25 young men to prison.

And I just would like to say I'm not here for no gang charge. If I was here for a gang charge and it carries five years at the max, I would plead guilty, I would

say, okay, my name is Karo Brown and I was in a gang called Boot Camp. But I'm not here for a gang charge. And by me knowing my friends and my community and by just being with them every day and just cold kickin' it with them, you know, as life goes on, that leads me to a RICO charge? I don't understand. I still don't get it.

And like my lawyer, like my lawyer said, we don't talk about the friends that I lost or the family members that I lost or how many people, how many of my friends I seen get shot in the head, we don't talk about that, or should we talk about that in church? It's just amazing, it's despicable, it's amusing how I'm being treated, I'm not saying it's you, your Honor, and I have nothing negative to say to you and I think -- and I have nothing negative to say on my behalf or to the prosecutor or to anybody in this courtroom. I have nothing negative to say, I'm just expressing how I feel to the truth of my hurt, that if I would have known that hanging with my friends that I grew up with will get me 25 years in prison, just hanging with somebody, I wouldn't have hanged with them, I'd have been in school.

But then again, I wasn't thinking like that 'cause as an individual, everybody act on they own. I can't tell him if he got problems with somebody on the west side to don't go over there later on at night while I'm home asleep,

he went over there and did whatever he did, okay, he got caught for it, okay, he's going to prison, I'm at home sleeping, you kicking in my door saying I was involved with it and I have something to do with it. I didn't have nothing to do with anything, I would have told him don't do it. My last shooting was in '97 I would like to say. The Will Robinson shooting I admitted to it but I did not do it and he knows the details behind that. And I -- the last shooting in '97, I paid for that, I went to prison for two to four years, I came home, I paid for that. And that's a whole 'nother story about the 2002 story, Will Robinson and how the detectives get slick and just cold pinned on me one day. He say he don't know who did it when he's in ambulance, next day he gets in the hospital, now he knows who did it? How did that -- I thought detectives work as investigation, why didn't you investigate why he lied the day before? That didn't come about, we don't care about that, all we know is he mentioned Karo Brown right here and right here today.

That type of stuff makes me feel that the justice system has failed me, it makes me feel that I have no chance whatsoever because, as you explained to the jury, that being at this charge is on me, the prosecution does not have one up, I think that that flew over their head too, that they didn't hear that part because they took it as they do got one up. They took it as the jury, the Miami tape, the photos

since I was 15 years old, they took it as all that as if I was some terrible killer and here it is I never killed anyone, your Honor. I don't, I don't -- I don't think I should get over nine years, what Rodney Hill got, and he actually shot somebody seven times. I can't see that happening. I can't -- to this day I will not do it. I lived a rough life and I lived in a rough community and I still will protect myself by any means and I have to grope to get out of that community so I won't be around that type of negativity. And I know how to do that now, but as of years ago and two or three years ago, I never killed anyone, your Honor, so I don't see a sentence imposing upon me that will hurt me to say that disregard what did you do or what you didn't do, you took it to trial and they didn't. That hurts me and I don't think that that's right.

So I know that I'm blessed and I would like to say God bless you, too, you have a good thing and I want to thank all my family and friends that support me, I love all you, I love you, Big Boy. Nothing else.

THE COURT: Okay. All right. The Court has reviewed and considered all of the pertinent information including but not limited to the presentence investigation report, the submissions by counsel, the factors outlined in 18 U.S.C. 3553, and the Sentencing Guidelines, and I further adopt the factual information contained in the presentence

investigation except as stated in the record.

The Court finds total offense level to be 42, your criminal history category is V, therefore, your guideline range of imprisonment is 360 months to life.

Upon your conviction by jury trial of Count 1 of the second superseding indictment, it is the judgment of this court that you are hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of 480 months. The Court has imposed a sentence above the low end of the Guidelines range given the violent nature of much of the defendant's criminal record and the need to protect the public from further crimes of the defendant, and I can reflect upon the presentence report, it lays out and I need not go through it all here, it starts at age 14 when you had a dog actually attack Latosha Lenton, you allowed your dog to bite her repeatedly and injure her.

When you were 15, you used a gun to shoot Curtis Paige in the right shoulder.

June of 1996, you again used a gun to shoot at members of the Lexington gang at Thornden Park. There was a car load of people there, two rounds actually struck the vehicle.

On December 4th, '96, police were summoned to West Corning Avenue and Cannon Street regarding shootings there. Witnesses observed you approaching a group of six

males, you attempted to fire at them with a semiautomatic weapon that misfired.

On February the 21st of '97, you went to the residence of a 19-year-old male and you sprayed him in the face with mace. When he ran into his house, you and several others pursued him. When the victim's mother attempted to intercede, you then punched her in the face before you fled.

In March 16th of '97, you went to the residence of a 20-year-old female whom you had given a necklace for her birthday, you demanded she give it back. She went into her home, you pushed your way inside the house, you got into a fight, you picked the victim up, you threw her to the ground. Her sister tried to stop the fight, demanded you leave, you again at that time refused and then you punched the victim in the face and fled. These are women.

March 28th, 1997, you shot and wounded Terrell Porch near the intersection of South Salina and Colvin Streets. When the gun misfired, you quickly chambered another cartridge and you attempted to shoot him in the stomach. And after he fell to the ground, he was wounded, you attempt to fire again at him. According to your own statements to the press, the Post-Standard January 19th, 2005, you stated, quote, that you have no regrets for shooting Porch, "That day I was trying to kill him."

On May 29th, 2003, you made a statement to the

police while being transported to police headquarters, you told Officer Hilton, "I'm going to shoot you and that vest isn't going to do you any good. I'll kill you and all your kids. It's going to be a long summer for the police. I'm going to make it a long summer, and none of you cops are safe."

On January the 19th, 2005, again, in the article in the Post-Standard, you basically bragged about the fact you joined the Boot Camp in 1995 and you sold crack on a daily basis in the Boot Camp as long as you belonged to it.

In that same article, you claimed the police had targeted you as a leader and the most violent member because they knew you would be the toughest to bring down. The article quotes you saying, "They know I'm one of the smartest, I don't make stupid mistakes. I don't make stupid moves. I take care of my moves. They feel I am an obstacle. They feel they can't overcome me. They can't put pressure on me. They can't get me to tell on anyone or lie or say what they want me to say what -- they want me to say to get a conviction. They can't rule me."

It kind of shows, this article I read was in January the 19th, 2005, at a point when you're facing a sentence before me, and it shows you have no remorse for anything and that's why I sentenced you to 10 years above the minimum.

So upon your release from imprisonment, you shall be placed on supervised release for -- by the way, it's 480 months to life.

Upon your release from imprisonment, you shall be placed on supervised release for a term of four years. While on supervised release, you shall not commit another federal, state, or local crime, and you shall comply with the standard conditions that have been adopted by this court and you shall comply with the following special conditions: You shall participate in a program for substance abuse which shall include testing for drug and alcohol use, it may include inpatient and outpatient treatment. That program should be approved by United States Probation office. You shall contribute to the cost of any evaluation, testing and/or treatment services rendered in an amount to be determined by the probation officer. That will be based on your ability to pay or the availability of third-party payments.

It is further ordered you shall pay to the United States an assessment of $100 which shall be due immediately.

I find that based on your financial resources, your projected earnings, and your other income as well as the financial obligations that you have and in light of the sentence I have imposed, you do not have the ability to pay a

fine, therefore the fine is waived.

I remand you at this time to the custody of the United States Marshal in accordance with the terms of this sentence. Both parties do have the right to appeal this verdict and sentence in certain limited circumstances. Please talk to your attorney about filing your appeal. Would you assist him in that regard?

MR. MOODY: Certainly, your Honor.

THE COURT: Thank you, Counsel.

MR. MOODY: Your Honor, I do have one request to make on behalf of my client. He has -- my client has requested that he be placed at the Otisville facility, his grandfather is located there, Clarence Stokes, Mr. Stokes is 68 years of age.

THE COURT: I'll do that.

MR. MOODY: Thank you.

THE COURT: Let the record reflect I'm recommending defendant be placed at Otisville if the Bureau of Prisons has an opening there open for him, make an accommodation.

MR. MOODY: I appreciate that, thank you, your Honor.

THE CLERK: Court stands adjourned.

(Court Adjourned, 5:20 p.m.)

C E R T I F I C A T I O N

I, JODI L. HIBBARD, RPR, CRR, CSR, Official Court Reporter in and for the United States District Court, Northern District of New York, DO HEREBY CERTIFY that I attended the foregoing proceedings, took stenographic notes of the same, and that the foregoing is a true and correct transcript thereof.

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JODI L. HIBBARD, RPR, CRR, CSR
Official U.S. Court Reporter