

NO.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2022

RYAN HAYES

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

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

APPENDIX: PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEAL
FOR THE FIRST CIRCUIT

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November 7, 2022

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Appendix A

United States Court of Appeals For the First Circuit

No. 20-2121

UNITED STATES,

Appellee,

v.

RYAN HAYES,

Defendant - Appellant.

Before

Thompson, Kayatta and Gelpí,
Circuit Judges.

JUDGMENT

Entered: August 10, 2022

We have reviewed the record and the parties' submissions. We allow the government's motion for summary disposition, and we affirm. By failing to address the appeal waiver in his opening brief, the appellant, Ryan Hayes ("Hayes"), has forfeited his right to challenge the enforceability of the waiver or to argue that it does not apply. See United States v. Milano, 480 F.3d 605, 608 (1st Cir. 2007). Our discretion to overlook such a forfeiture is to be exercised sparingly and "only when doing so is necessary in order to avoid a clear and gross injustice." Id. (citation omitted). We see no reason to exercise that discretion here, given that: 1) Hayes received a substantial downward variance notwithstanding the sentencing court's rejection of his arguments, and 2) the sentencing court emphasized that it would have imposed the same sentence even if it had accepted those arguments.

Affirmed. See 1st Cir. R. 27.0(c). The motion for leave to file an oversized pleading is allowed.

By the Court:

Maria R. Hamilton, Clerk

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cc:

William Stuart Maddox
Ryan Hayes
Joel B. Casey
Benjamin M. Block

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Appendix B

1

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MAINE

3
4 UNITED STATES OF AMERICA)
5) CRIMINAL ACTION
6 vs.) Docket No.
7 RYAN HAYES) 1:19-cr-134-LEW-11
8 Defendant.) SENTENCING

9

10
11 PARTIAL TRANSCRIPT OF PROCEEDINGS

12 Pursuant to notice, the above-entitled matter came on
13 for **Sentencing Via Zoom** held before THE HONORABLE
14 LANCE E. WALKER, District Judge, in the
15 United States District Court, Bangor, Maine, on the 12th
16 day of November, 2020, at 10:08 a.m.

17

18 APPEARANCES:

19 For the Government: Raphaelle A. Silver, Esquire

20 For the Defendant: William S. Maddox, Esquire

21

22

23 Melissa L. Merenberg, RPR
24 Official Court Reporter

25 Proceedings recorded by mechanical stenography; transcript
produced by computer.

PP-APP-1

1 (All participants via Zoom. Defendant present.)

2 THE COURT: Good morning, everyone. We're here in
3 the matter of United States v. Ryan Hayes. This is case
4 number 19-cr-134. I would like to have counsel introduce
5 themselves for the record, starting with Ms. Silver.

6 Good morning.

7 MS. SILVER: Good morning. Raphaelle Silver for the
8 United States, Your Honor.

9 MR. MADDOX: Bill Maddox with the defendant, Ryan
10 Hayes, Your Honor.

11 THE COURT: Great. Good morning.

12 Good morning, Mr. Hayes. I'm Judge Walker. The
13 sentencing today is being conducted pursuant to the findings
14 and authorizations of the so-called CARES Act. Any persons
15 who may have been granted remote access to observe or
16 participate in today's proceeding are reminded of the rule
17 against recording or rebroadcasting any federal court
18 proceeding in any fashion or forum whatsoever. Violation of
19 that rule will be met with Court sanctions.

20 Mr. Maddox, have you had an opportunity to discuss with
21 Mr. Hayes his decision to waive his right to be physically
22 present for today's proceeding?

23 MR. MADDOX: Yes, Your Honor. We went over that
24 colloquy.

25 THE COURT: And based on your discussion with

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1 Mr. Hayes, is it your understanding that he intends to waive
2 his right to be physically present?

3 MR. MADDOX: Yes, Your Honor.

4 THE COURT: And do you believe any such waiver by
5 him will be a knowing and voluntary waiver of that right?

6 MR. MADDOX: Yes, I do.

7 THE COURT: Great.

8 Mr. Hayes, if at any time during today's hearing you
9 would like to speak with Mr. Maddox, all you need to do is let
10 me know and I'm happy to give you that opportunity. We have
11 the ability to move you and Mr. Maddox into a virtual room by
12 yourselves so you can have a private conversation. Do you
13 understand?

14 THE DEFENDANT: I do.

15 THE COURT: Okay. Do you understand, sir, that
16 you're not required to be sentenced by video conferencing, but
17 instead could insist on your right to be physically present?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand, Mr. Hayes, that if
20 you decide today that you've changed your mind about being
21 physically present, you could still assert that right?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand that if you decided to
24 appear in person, I would continue, meaning postpone, today's
25 hearing to a future date?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: So if that happened, Mr. Hayes, I would
3 not be able to tell you as we sit here today when that hearing
4 would go forward. We would have to evaluate when it would be
5 safe and reasonable given the Coronavirus pandemic to schedule
6 you for an in-person, in-court proceeding. Do you understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Have you discussed -- Mr. Hayes, have
9 you discussed with Mr. Maddox your decision to appear by video
10 conferencing for your sentencing as opposed to being
11 physically present?

12 THE DEFENDANT: Yes.

13 THE COURT: Did you have enough time to do that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And did Mr. Maddox describe to you your
16 right to be physically present?

17 THE DEFENDANT: He did.

18 THE COURT: And did he answer all of your questions
19 you may have had to your satisfaction?

20 THE DEFENDANT: Yes.

21 THE COURT: So I understand from Mr. Maddox that
22 you've decided to waive, meaning give up, your right to be
23 physically present for your sentencing; is that true?

24 THE DEFENDANT: Yes.

25 THE COURT: Has anyone made you any promises in

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1 order to get you to give up that right?

2 THE DEFENDANT: No, sir.

3 THE COURT: Mr. Hayes, has anybody threatened you or
4 pressured you in an effort to get you --

5 THE DEFENDANT: No.

6 THE COURT: -- to give up that right?

7 THE DEFENDANT: No, sir.

8 THE COURT: Mr. Hayes, do you understand that your
9 family members and other supporters have the right to attend
10 this proceeding and that we have, in fact, made arrangements
11 for them to dial into today's proceeding?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you understand that the mere fact
14 that this proceeding is conducted by video conference does not
15 diminish, meaning it does not lessen its legal significance?

16 THE DEFENDANT: Yes.

17 THE COURT: So do you understand that you will be
18 bound by what happens during today's proceeding?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: So, Mr. Hayes, you're appearing in front
21 of me by video conference, and as a natural result, I'm not
22 able to see everyone and everything in the room with you right
23 now. Is there anyone or anything currently exerting any
24 influence over you to get you to give up your right to be
25 physically present?

1 THE DEFENDANT: No, sir.

2 THE COURT: Very good. Mr. Hayes, considering all
3 that I have just described to you, do you still wish to give
4 up your right to be physically present for sentencing this
5 morning?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And do you wish to instead proceed by
8 video conference?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Thank you, sir.

11 Ms. Silver, what's the position of the Government
12 regarding Mr. Hayes's desire to participate in his sentencing
13 via video?

14 MS. SILVER: Yes, Your Honor. The Government joins
15 in the defendant's request to be sentenced via video. This
16 case has been pending for some time. The Government believes
17 in the interest of justice this case would be best served by
18 proceeding via video today.

19 THE COURT: Thank you.

20 MS. SILVER: Thank you.

21 THE COURT: Mr. Maddox, anything to add?

22 MR. MADDOX: No, Your Honor, just that -- we believe
23 it is in the interest of justice to proceed by this manner.
24 And for the Court's information we have ten people who have
25 dialed in to listen to the hearing, six of whom are at one

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1 location. And I can give you those names now or later.

2 THE COURT: Let's wait for that for just a moment.
3 In fact, the only -- I can see six names in front of me on the
4 screen right now, but when we get to that part of the
5 proceedings, maybe you can introduce the others, okay?

6 MR. MADDOX: Thank you.

7 THE COURT: All right. I conclude that Mr. Hayes
8 has voluntarily and knowingly waived his right to be
9 physically present for sentencing because under Section
10 15002(b) (4) of the CARES Act, Mr. Hayes has consented to
11 proceeding by video after consultation with Mr. Maddox. I
12 find in this particular case and for the following specific
13 reasons that the sentencing of Mr. Hayes cannot be further
14 delayed without doing serious harm to the interest of justice,
15 and those reasons are a speedy and final resolution of the
16 defendant's case, which has been pending for some time, and
17 the Court's inherent authority to control and manage its own
18 docket. Accordingly, I'm authorizing Mr. Hayes to appear and
19 participate for his sentencing today via video conference.

20 Mr. Hayes, I have a -- I'll have several questions for
21 you, as you probably know in preparing for today's proceeding.
22 I'm sure that Mr. Maddox has described generally what happens
23 today. Before we start, I just want to orient you to the
24 overall purpose of today's hearing, which ultimately is, of
25 course, to sentence you based on your conviction. To that

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1 end, I am going to hear from the lawyers and from you, if you
2 wish, as well as from any other witnesses who may be presented
3 to speak.

4 I'm going to be asking you and Mr. Maddox a series of
5 questions to ensure that you have read and understand the
6 revised presentence report. I also want to make sure that
7 there is nothing that interferes with your ability to
8 understand what's taking place today. And overall and perhaps
9 most obviously, I want to make absolutely certain that you
10 understand the sentence that I have imposed and the reasons
11 that I've imposed it. Does that make sense to you, Mr. Hayes?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. So my first question is, are
14 you currently taking any medications?

15 THE DEFENDANT: Yes.

16 THE COURT: What are you taking?

17 THE DEFENDANT: Zoloft and Remeron.

18 THE COURT: And are you taking those medications in
19 their prescribed amounts?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And what are you taking those
22 medications for?

23 THE DEFENDANT: Anxiety and depression.

24 THE COURT: All right. Do those medications, either
25 alone or in combination with each other, make it more

1 difficult for you to understand what's happening here today?

2 THE DEFENDANT: No, sir.

3 THE COURT: Are you taking any other medications?

4 THE DEFENDANT: No, sir.

5 THE COURT: Other than those two medications you
6 listed for me, Mr. Hayes, have you consumed any drugs in the
7 last 24 hours?

8 THE DEFENDANT: No, sir.

9 THE COURT: Have you consumed any alcohol in the
10 last 24 hours?

11 THE DEFENDANT: No, sir.

12 THE COURT: How far did you go in school?

13 THE DEFENDANT: Twelfth grade.

14 THE COURT: I'm sorry, did you say twelfth grade?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. Is there anything that you can
17 think of, Mr. Hayes, that might interfere with your ability to
18 hear or understand what's being said today?

19 THE DEFENDANT: No, sir.

20 THE COURT: And do you authorize Attorney Maddox to
21 act and speak on your behalf throughout today's proceeding?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Very good.

24 Mr. Maddox, have you had an opportunity to read and
25 discuss with Mr. Hayes the revised presentence report?

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1 MR. MADDOX: Yes, Your Honor, we have.

2 THE COURT: And are you satisfied he understands
3 that report?

4 MR. MADDOX: Yes, Your Honor.

5 THE COURT: Apart from the issues in dispute, which
6 we'll get to in just a moment, does the defendant object to
7 any other portion of the report?

8 MR. MADDOX: No, Your Honor.

9 THE COURT: Mr. Hayes, have you, in fact, read the
10 revised presentence report in its entirety?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And do you feel you understand the
13 contents of that report?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Did you have enough time to discuss the
16 that report with Mr. Maddox?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Apart from the issues in dispute, which
19 I'm going to discuss with the attorneys in just a moment, is
20 there anything set forth in the report that you believe is in
21 any way inaccurate or incorrect?

22 THE DEFENDANT: No, sir.

23 THE COURT: So do you agree that apart from those
24 issues that are in dispute the report is otherwise accurate
25 and correct in all other respects?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: Very good.

3 All right. Ms. Silver, I take it that there are no
4 objections to the report from the Government's perspective?

5 MS. SILVER: That's correct, Your Honor.

6 THE COURT: Mr. Maddox, I would like to drill down
7 on exactly what it is that's objected to from the defendant's
8 perspective. I, a few days ago, was reviewing the addendum to
9 the report and noticed that you had initially lodged several
10 objections, but I also note that most of those objections come
11 in the form of questions that aren't really objections to the
12 report at all. I think what I understand, and you tell me,
13 that the only remaining objection to the report has to do with
14 whether I should give a role adjustment to Mr. Hayes; is that
15 also your understanding?

16 MR. MADDOX: Yes, Your Honor. That's the legal
17 issue.

18 THE COURT: Okay. Well, are there any other
19 objections to the report?

20 MR. MADDOX: The Court has noted where we have
21 questioned one of the facts and that is whether it was two or
22 three deliveries, but we can get into that at some future
23 point.

24 THE COURT: All right. Do you have anything else to
25 add regarding the legal objection to the report as it -- as it

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1 pertains to a role adjustment?

2 MR. MADDOX: Not at the moment, Your Honor.

3 THE COURT: All right. Ms. Silver, is there
4 anything you would like to add because I'm about to rule on
5 that objection?

6 MS. SILVER: No, Your Honor. Thank you.

7 THE COURT: All right.

8 MR. MADDOX: Your Honor, I'm sorry. I thought we
9 were going to go into a sidebar to discuss the role
10 adjustment.

11 THE COURT: Go ahead, Ms. Silver, did you want to
12 say something.

13 MS. SILVER: I did. The Government will be asking
14 for a virtual sidebar, but it was not specifically to deal
15 with the role adjustment issue.

16 THE COURT: That was my understanding, as well.

17 So -- so, Mr. Maddox, if you think there's another reason
18 that I can't think of why I would need to hear the role
19 adjustment at sidebar, I'm going to address that issue right
20 now. I understand that there may be some confidential issues
21 that we'll address at sidebar that are separate and apart from
22 the role adjustment issue.

23 MR. MADDOX: Your Honor, what -- I can go forward as
24 we are now.

25 THE COURT: All right. Is there anything you would

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1 like to add regarding your argument that there should be a
2 role adjustment since it's the defendant's burden to persuade
3 me?

4 MR. MADDOX: Yes, Your Honor. One of the primary
5 sources of the facts that the defense has been presented have
6 been reprinted in the document numbers that were submitted
7 yesterday, the interviews of Angela Doody and her description
8 of the relative placements within the hierarchy of the offense
9 and then Probation Officer Kuhn's description of that
10 hierarchy and her assessment as to the relative equivalencies
11 of the different participants in the events. And I would
12 suggest that Angela Doody and Mr. Ryan's (sic) statements,
13 which have been reprinted by the probation officer and are in
14 additional materials, correspond with each other.

15 So -- and so I think that given his place in the
16 hierarchy, as I stated in the memo, in addition to a -- an
17 analysis of those two sources reflect that Mr. Ryan Hayes was
18 a minimal participant, and I have changed that from minimal to
19 minor. I understand there's a jurisdictional issue maybe
20 because I only had objected in the PSR as to minor adjustment
21 and I know Assistant U.S. Attorney Raphaelle Silver has
22 questioned whether I was going for a two-point or four-point
23 reduction, so I revised that to the two-point, which is what
24 we told Probation Officer Kuhn.

25 THE COURT: Ms. Silver, anything else to add?

1 MS. SILVER: No, Your Honor. Thank you.

2 THE COURT: All right. I am going to overrule the
3 objection as it relates to a role adjustment precisely for the
4 reasons outlined in the Government's memorandum in the aid of
5 sentencing, which I -- the rationale, which I adopt in its
6 entirety.

7 All right. Let's address the sidebar issue right now.
8 So, Julie, if you could place, Ms. Silver, Mr. Maddox,
9 Mr. Hayes, and Melissa in a sidebar, please.

10 (Sealed sidebar.)

11 THE COURT: All right. Let's see. Ms. Silver,
12 would you like to be heard on sentence?

13 MS. SILVER: Yes, Your Honor. Thank you. The
14 Government would take note that Mr. Hayes participated in the
15 conspiracy for approximately 40 weeks, which is not an
16 insignificant amount of time. He also, while being an addict,
17 his drug of choice was opiates, and so the Government would
18 submit to the Court that he engaged in dealing with
19 methamphetamine primarily to profit from that distribution.
20 That being said, it is also clear that Mr. Hayes has strived
21 during these months to turn over a new leaf to address his
22 substance abuse issues, as well as his mental health issues,
23 and in reviewing Mr. Maddox's sentencing memorandum and
24 reviewing the letters of support for Mr. Hayes, it's clear
25 that he does have a very good support system within his family

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1 and friends. And that Mr. Hayes, while making some pretty
2 serious bad life choices, for lack of a better word, also has,
3 through the course of his life, proven to be a person that
4 people can count on, that is helpful within his community and
5 strives to be a good partner and parent. So in recognizing
6 all of that, the Government would recommend a sentence that is
7 commensurate with both his criminal activity, but also
8 recognizes all of the strides that Mr. Hayes has made and
9 that, as taken as a whole, Mr. Hayes has, I hope, a very good
10 and bright future within his community once released.

11 THE COURT: Thank you.

12 MS. SILVER: Thank you.

13 THE COURT: Mr. Maddox, would you like to be heard
14 on sentence?

15 MR. MADDOX: Yes, Your Honor. I think the Assistant
16 U.S. Attorney's presentation was exceptionally well-phrased
17 and accurate and fair, so --

18 THE COURT: She has a reputation for those things,
19 Mr. Maddox.

20 MR. MADDOX: I think you're right. So that's a very
21 good point.

22 So we would -- we would point to several things in
23 addition that we have submitted, and one is the last letter of
24 support I filed is somewhat irregular to have this --
25 defendant's own letter be introduced as a letter, but this was

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1 a statement to his mother and so obviously when he wrote it,
2 he wasn't -- it wasn't in anticipation of allocution or
3 anything else. It was a sincere statement to his mother and
4 so that's why I included that in.

5 The other part is that his mother, who I wanted to
6 actually address the number of people who are here as
7 Assistant U.S. Attorney Raphaelle Silver has indicated there
8 is a strong support network. And they include Kristen Young
9 and Steve Young, who are friends of the family, Heather
10 Beaulieu, who is Ryan's sister, Kellyn McGillan, who is Ryan's
11 girlfriend, and then there were six people in one of the boxes
12 that's labeled Carla Hayes, that's his mother, but his father,
13 David Hayes, is there, as well as his Aunt and Uncle Mark and
14 Narda Guiou and Pastor Granville Lamb and Pastor Janice Lamb
15 are also in that block. So there are 10 people actually in
16 the video conference in support of Ryan, which I'm sure he
17 finds very helpful.

18 I had suggested to the 10 participants that they all
19 could speak. I think -- I know some of them are just very shy
20 and don't want to. I think that they're going to rest on
21 their letters of support. And I don't know when I should ask
22 Carla Hayes if she would like to speak. This may be a good
23 time. I don't know.

24 THE COURT: Well, it's completely up to you. If you
25 have anything else to tell me about your sentencing

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1 recommendation, I would invite you to do that now and then we
2 can invite Ms. Hayes and others to speak.

3 MR. MADDOX: Okay. The only other thing I would say
4 is that as far as a genuine interest in rehabilitation is that
5 the defendant had tried to get out into a rehabilitative
6 facility last September, and there were difficulties and
7 issues with that, but he has -- it's something that he has
8 adamantly maintained, that this is what he wants to do. And,
9 in fact, he had attended a program up in Aroostook County
10 called Life By Design, and his mother, Carla Hayes, has been
11 in touch with the administrator, his counselor, and she is
12 willing to continue with Ryan once he's released. So I think
13 that that's also a -- part of a plan that we have once he's
14 released and that the probation office can monitor.

15 So other than that, I would rest on our submissions. Oh,
16 I would say that whatever level the Court chooses to impose,
17 we would think that the lowest level of that range is
18 applicable.

19 THE COURT: Great. Does Ms. Hayes wish to speak,
20 Mr. Maddox?

21 MR. MADDOX: I don't know, Your Honor. I see that
22 her box is muted. I can send her a text.

23 THE COURT: I can see you now. Good morning. I'm
24 Judge Walker. You must be Carla Hayes?

25 THE WITNESS: Morning. I am.

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1 THE COURT: The reason I know that is because your
2 name is right on the box where I am seeing your face. That's
3 how smart I am.

4 Ms. Hayes, the floor is yours.

5 THE WITNESS: Well, Your Honor, I really feel that,
6 you know, everything has been said that could really be said,
7 other than the fact that I, as his mom, want to stress that
8 we're here for him. We support him. We will do whatever it
9 takes to help him in the days ahead, that he's got great value
10 to bring to his community, a lot to bring to the table, and
11 his children need him. We all need him. And we see the
12 success he's made while he's there, and we believe that Ryan
13 will continue do that.

14 THE COURT: Well, I think he is going to need you
15 all too, so that seems like a good -- a good start.

16 Where are you speaking from this morning?

17 THE WITNESS: Right from our home here in Easton.

18 THE COURT: Easton, Maine?

19 THE WITNESS: Yes.

20 THE COURT: It's my favorite part of the state.

21 THE WITNESS: Ours too.

22 THE COURT: I used to ride motorcycles with the
23 former Chief Justice Dan Wathen up in that neck of the woods.

24 THE WITNESS: Good place.

25 THE COURT: I'm from the southern -- I was born and

1 raised south of there, quite a bit south of there, in the
2 metropolis of Dover-Foxcroft.

3 THE WITNESS: Yeah. Okay.

4 THE COURT: And now I live in southern Maine, and we
5 won't say anything about that.

6 THE WITNESS: We won't either.

7 THE COURT: Thank you, Ms. Hayes.

8 THE WITNESS: Thank you.

9 THE COURT: Mr. Maddox, anyone else you would like
10 to speak?

11 MR. MADDOX: Yes, Your Honor, I have advised Ryan
12 Hayes of his right to allocution. I believe that he did wish
13 to speak.

14 THE COURT: All right. Just want to make sure that
15 there's nobody in Carla Hayes's group there that wishes to
16 speak.

17 MR. MADDOX: Good point, Your Honor.

18 THE COURT: Okay. I think -- I couldn't hear
19 Ms. Hayes, but I think she said all set. All right.

20 Ms. Hayes, can you just mute your video? Perfect. Thank
21 you.

22 All right. Mr. Hayes, as a defendant before the Court
23 for sentencing, you, of course, have the constitutional right
24 to speak to the Court at this time. You are not obligated to
25 say anything, but if you'd like to address me, this is the

1 time to do it.

2 THE DEFENDANT: I'd like to start -- I'd like to
3 start by thanking everybody for being here today, taking the
4 time out for me.

5 Drug addiction has affected not just me, it's affected
6 everyone around me one way or another. It's affected my work,
7 my friendships, my relationships, especially my family. My
8 mom and dad -- I hope you can forgive me for all the sleepless
9 nights you've had wondering where I was or what I was doing or
10 if I was just okay.

11 My daughter, I missed her graduation. And my grandson,
12 I'm not there for either. I'm just very sorry for not being
13 there when she needs me.

14 My son called, and I'm sorry I haven't been there to go
15 for a ride on the side-by-side when you've asked for me, you
16 know, sleep in a tent outside or go on that big adventure
17 you've always wanted to go on. It breaks me heart to think I
18 ever let drugs control the way I live my life. I put drugs
19 before my kids and my family. And I hope you all can please
20 forgive me. These are just a few of the things that I've
21 thought about and have bothered me.

22 I'm definitely ready to do -- get whatever help I need
23 and never go down this road again. The last 16 months have
24 been hard, being away from family, probably the hardest thing
25 I've ever done. Please forgive me for all my actions. I love

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1 you guys.

2 Mr. Maddox, you have done a great job. I want to thank
3 you for that. That's it.

4 THE COURT: Thank you, Mr. Hayes.

5 All right. Let me have a moment to visit with Probation
6 Officer Kuhn. Julie.

7 (Judge Walker and Probation Office Kuhn confer off the
8 record.)

9 THE COURT: All right. Anything else from the
10 Government, Ms. Silver?

11 MS. SILVER: No, Your Honor. Thank you.

12 THE COURT: Yeah, thank you.

13 Mr. Maddox, anything else from you, sir?

14 MR. MADDOX: No, Your Honor. Thank you.

15 THE COURT: Very good.

16 I reviewed, in preparation for today's hearing, the
17 revised presentence report. I adopt the revised presentence
18 report in its entirety as constituting the sum total of my
19 findings.

20 As for the guideline calculations, under the applicable
21 provision of the sentencing guidelines, I find that the total
22 offense level for the defendant's offense is 25. The
23 defendant's criminal history category is I. That results in a
24 guideline sentencing range of 57 to 71 months. Supervised
25 release of 1 to 3 years. A fine range of \$20,000 to 1 million

PL-AFP-21

1 dollars.

2 Are there any objections to those findings from the
3 Government, Ms. Silver?

4 MS. SILVER: No objection, Your Honor.

5 THE COURT: And, Mr. Maddox?

6 MR. MADDOX: No objection, Your Honor.

7 THE COURT: Thank you.

8 Mr. Hayes, I have carefully reviewed the revised
9 presentence report in its entirety, and I take the content of
10 that report into account when I'm thinking about a fair and
11 just sentence in your case. I've also considered what I've
12 heard from counsel both today and at the presentence
13 conference and, of course, I have considered what I have heard
14 from your mother today, as well as from you.

15 And, Mr. Maddox, were there any exhibits that you wanted
16 moved into evidence?

17 MR. MADDOX: Your Honor, I suppose that I should be
18 asking to move the letters of support, as well as the two
19 certificates that Mr. Hayes has earned at the Somerset County
20 Jail.

21 THE COURT: And I believe those came to us marked;
22 did they not?

23 MR. MADDOX: Yes, they did, Your Honor, as Exhibits
24 1 and 2.

25 THE COURT: Very good.

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1 Any objection to Defendant's 1 and 2, Ms. Silver?

2 MS. SILVER: None, Your Honor. Thank you.

3 THE COURT: Those are admitted, and I've also read
4 those in preparation for today's sentencing hearing.

5 In determining sentence, Mr. Hayes, let me just explain
6 to you that I have to do a couple of things and those things I
7 have, in fact, done. I first consider the sentencing range
8 established by the sentencing guidelines. Those are the
9 numbers that I just announced a moment ago. And I'm also
10 required to consider all other sentencing factors, which are
11 listed in a federal statute. And I have, in fact, considered
12 each and every one of those factors.

13 Mr. Hayes, as you know, you've pled guilty to one count
14 of conspiracy to distribute -- to possess with the intent to
15 distribute controlled substances. I generally like to expand
16 a bit on a couple of issues at this point in the sentencing.
17 One is my key findings regarding the nature and circumstance
18 of the particular offense. I won't belabor the point, which
19 has already been made artfully by Ms. Silver, who represents
20 the Government, you understand, and I think have gained some
21 insight into the fact that you have played a role in a very
22 morbid marketplace, which is responsible for killing many
23 thousands of Mainers and many thousands of Americans all
24 around the country. It's responsible for destroying families
25 in Maine, in Easton, in Portland, and everywhere else across

1 our country. So in my view, Mr. Hayes, it can hardly be
2 overstated the nature and seriousness of your particular
3 offense when you played a role in providing the supply chain
4 for that morbid marketplace.

5 However, my findings regarding your personal history and
6 characteristics are mitigating to me. You are relatively
7 young. You are clearly earnest and smart and because you are
8 from Easton, Maine, you clearly have a work ethic, which I
9 think is going -- you are going to find you can tuck this away
10 for later and write me a letter to tell me how right I was,
11 that work ethic is going to provide you a lot of salvation in
12 your life, you are going to have to lean on it heavily like
13 you never have before as if perhaps your life depended on it
14 because I think it does. You should take it that seriously.

15 When defendants appear before me for sentencing, one of
16 the key things I focus on is whether, of course, they are
17 truly insightful and contrite and understand their criminal
18 conduct because I think that portends one way or the other as
19 to what we might predict of that particular defendant after
20 they're released from custody. And I think you've shown a
21 level of insight that gives me some hope.

22 The other thing I think is important, to me anyway as a
23 sentencing judge, is whether you have good support around you,
24 support that comes by way of friends who got you in this
25 predicament in the first place, don't count as support, but

1 people exemplified by your mother, who spoke today, do
2 represent the type of support that I'm relying on when I think
3 about a fair sentence for you, and you are going to have to
4 rely on heavily after you are released from custody.

5 It appears, building on something Ms. Silver said, that
6 you have willfully treated for some mental health issues that
7 have beset you, which is important to me. I think those are
8 all mitigating factors for you, Mr. Hayes, and I am going to
9 accept them as such when I think about your sentence.

10 In considering the nature of the crime and your history,
11 Mr. Hayes, to arrive at a sentence that is sufficient but not
12 greater than necessary to correspond to the need for the
13 sentence, the criteria I find to be most important in your
14 case are as follows: the seriousness of the offense, to
15 promote respect for the law, to provide just punishment for
16 the offense, to provide adequate deterrence, both generally
17 and specifically. And what I mean by that, Mr. Hayes, is to
18 provide deterrence for you to persuade you to not commit any
19 further crimes, that's specific deterrence, and generally
20 deter the community who will learn about your sentence, that
21 participating in this type of conduct in this state before me
22 on federal charges is a very, very bad idea. I also am
23 considering the importance to provide correctional treatment
24 in the most effective manner possible to you.

25 I am going to accept the Government's recommendation for

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1 an equivalent of a two-level variant sentence based on your
2 agreement to participate in your sentencing today by video.
3 I'm also taking into consideration, at my discretion, and as I
4 deem appropriate a variant sentence for all of the other
5 reasons that we have discussed on the record.

6 Counsel, have I addressed each of your contentions
7 regarding sentence? Ms. Silver?

8 MS. SILVER: Yes, Your Honor. Thank you.

9 THE COURT: Mr. Maddox?

10 MR. MADDOX: Yes, Your Honor. Thank you.

11 THE COURT: All right. Mr. Hayes, based on all of
12 these considerations, I conclude that a just and fair sentence
13 is as follows: the defendant is committed to the custody of
14 the United States Bureau of Prisons to be imprisoned for a
15 total term of 40 months.

16 Upon release from imprisonment, the defendant shall be on
17 supervised release for a total term of three years.

18 Mr. Hayes, I trust that you've reviewed the conditions of
19 your supervised release with Mr. Maddox? They were part of
20 the revised presentence report; is that right?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you have any objections to those
23 conditions?

24 THE DEFENDANT: No, sir.

25 THE COURT: Do you require that I read those

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1 conditions to you or are you satisfied if I just make
2 reference to them?

3 THE DEFENDANT: No, I'm good. Thank you.

4 THE COURT: All right. Mr. Maddox, any objections
5 to the conditions?

6 THE DEFENDANT: No, Your Honor. Thank you.

7 THE COURT: And I find those conditions necessary
8 for the findings -- based on the findings made in the revised
9 presentence report.

10 I impose a special of assessment \$100. I find that
11 Mr. Hayes does not have the ability to pay a fine. I waive
12 the fine in this case.

13 I have carefully considered Mr. Maddox's objections to my
14 guidelines analysis as they would have affected Mr. Hayes's
15 overall offense level. And even if I had accepted those
16 objections, the sentence I've announced today is completely
17 untethered from the guidelines. I would impose the same
18 sentence even if the applicable sentencing guideline range
19 would have been reduced by any or all of Mr. Maddox's
20 objections.

21 Mr. Hayes, although you waived your right to appeal any
22 sentence of imprisonment of 108 months or less in your plea
23 agreement, if you feel you have a basis to appeal, to exercise
24 your right to appeal your conviction and this is sentence, you
25 must file with the clerk of court within 14 days of today and

1 not thereafter a written notice of appeal. Do you understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: If you fail to timely file a written
4 notice of appeal, you will have given up your right to appeal
5 this sentence and conviction. Do you understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And if you cannot afford to file the
8 appeal, you can appeal without cost to you. On your request,
9 the clerk will immediately prepare and file a notice of appeal
10 on your behalf. Do you understand?

11 (No response.)

12 THE COURT: Mr. Hayes?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: The defendant is remanded to the custody
15 of the United States marshal in execution of the sentence
16 imposed.

17 Is there anything else from the prosecution, Ms. Silver?

18 MS. SILVER: No, Your Honor. Thank you.

19 THE COURT: Mr. Maddox?

20 MR. MADDOX: Yes, Your Honor, two points, one is in
21 terms of placement, if we could have Mr. Hayes be placed in a
22 facility as close to Maine as possible. That would be
23 acceptable. I think given his history with Lyme disease, I
24 think Devens might be an acceptable choice, but it's my
25 understanding that the best way for the defense to present

1 that is to ask for a place as close to Maine as possible.

2 And the other thing is, I understand, and this may have
3 changed, people, others may have a better opinion on this or
4 be more up-to-date, but the RDAP program has been suspended
5 because of Covid-19, but -- so I would request that as an
6 intense a program as RDAP or RDAP equivalent would be
7 justified. Thank you, Your Honor.

8 THE COURT: Right. Thank you.

9 Ms. Silver, do you know anything about -- well, first of
10 all, let me ask, does the Government take a position on my
11 indicating in the judgment and commitment that Mr. Hayes be
12 placed as close to Maine as possible?

13 MS. SILVER: The Government does not object to that,
14 Your Honor.

15 THE COURT: And do you have any insight on the BOP
16 and the RDAP program and whether it's still happening?

17 MS. SILVER: I don't, Your Honor.

18 THE COURT: Okay. And I'm sorry to say that I don't
19 either, Mr. Maddox, but you peaked my curiosity, so I am going
20 to try to find out, but in the meantime, let's do this, I'm
21 going to order that Mr. Hayes be placed in a facility as close
22 to Maine as possible.

23 I'm also going to recommend Mr. Hayes for the 500-hour
24 comprehensive residential drug treatment program or its
25 equivalent if the RDAP program isn't being conducted right

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1 now.

2 Anything else, Mr. Maddox?

3 MR. MADDOX: No, Your Honor, but I would like to say
4 that I think the or part of that last sentence is appropriate
5 because Mr. Hayes may not qualify in terms of total length of
6 sentence for the RDAP, so I think that it's important. So I
7 appreciate that, Your Honor.

8 THE COURT: Of course.

9 Mr. Hayes, I know it doesn't feel much like this at the
10 time -- at this particular moment for you, but I hope you
11 understand a couple of things, and I just want to drive them
12 home before we conclude today. Number one, I hope you
13 understand the great opportunity you've been given. You were
14 looking at a much longer sentence than the sentence I actually
15 imposed. That's number one.

16 Number two, I hope you reflect and have some gratitude
17 about a few things. First, I hope you have gratitude about
18 the splendid job and representation done by your lawyer,
19 Mr. Maddox. I hope you have a lot of gratitude by the federal
20 prosecutor, who is smart and earnest and does her job, but
21 also understands that humans are complicated. And I hope that
22 you also take advantage of the fact that after you are
23 released from incarceration, here in Maine, you will be --
24 have the resources of the best probation office in the
25 country. And they can be your very best friend or your worst

1 enemy. They will be your best friend if you make every level
2 effort and do your very, very best to comply with all of the
3 conditions. They can be your worst enemy if you willfully
4 flout those conditions such that it draws my attention. Does
5 that make sense to you?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: I know it's a tough one right now, but I
8 think you will come to learn that once you have something to
9 aim for, that's going to give you a transcendent point of
10 purpose. Without something to aim at, you don't have that.
11 The first step in hitting what you aim for is actually aiming.
12 I think you have begun that process now. You're going to have
13 help from your family to continue to aim at your target. You
14 are not always going to hit it, that's life. But it's in the
15 aiming that keeps you out of trouble and the chaos and the
16 darkness that you've experienced. Make sense?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Good. Good luck to you, Mr. Hayes.

19 THE DEFENDANT: Thank you, sir.

20 THE COURT: Court's in recess.

21 (Court was recessed at 11:23 a.m.)

22

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CERTIFICATION

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I certify that the foregoing is a correct transcript from

3

4

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6 /s/ Melissa L. Merenberg
7 Melissa L. Merenberg, RPR
Official Court Reporter

3/08/2021
Date

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Appendix C

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

2019-01-16 P 1:42

UNITED STATES OF AMERICA

)

v.

)

Crim. No. 1:19-cr-00134-LEW-11

)

RYAN HAYES

)

AGREEMENT TO PLEAD GUILTY
(WITH STIPULATIONS AND APPEAL WAIVER)

The United States of America, by and through Halsey B. Frank, United States Attorney for the District of Maine, and Raphaelle A. Silver, Assistant United States Attorney, and Ryan Hayes (hereinafter "Defendant"), acting for himself and through his counsel, William Maddox, Esquire, enter into the following Agreement based upon the promises and understandings set forth below.

1. Guilty Plea. Defendant agrees to plead guilty to Count One of the Indictment herein pursuant to Rule 11 of the Federal Rules of Criminal Procedure (Fed. R. Crim. P.). Count One of the Indictment charges Defendant with Conspiracy to Distribute and to Possess with Intent to Distribute Controlled Substances.

2. Sentencing/Penalties. Defendant agrees to be sentenced on the charge described above. Defendant understands that the penalties that are applicable to the charge described above are as follows:

- A. A maximum prison term of twenty years;
- B. A maximum fine of \$1,000,000;
- C. A mandatory special assessment of \$100.00 for each count of conviction which Defendant agrees to pay at or before the time that he enters a guilty plea; and

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D. A term of supervised release of not less than three years and not more than life. Defendant understands that his failure to comply with any of the conditions of supervised release may result in revocation of supervised release, requiring Defendant to serve up to two years for any such revocation of supervised release pursuant to 18 U.S.C. § 3583.

3. Agreements Regarding Sentencing. The parties agree to make the following non-binding recommendation to the Court:

A. That the Court find that the Defendant has accepted responsibility for the offense of conviction, and that the Court should reduce the Defendant's Adjusted Offense Level by three levels under U.S.S.G. § 3E1.1. The Government reserves the right not to recommend a reduction under U.S.S.G. § 3E1.1 if, at any time between his execution of this Agreement and sentencing, the Defendant: (a) fails to admit a complete factual basis for the plea; (b) fails to truthfully admit his conduct in the offense of conviction; (c) engages in conduct which results in an adjustment under U.S.S.G. § 3C 1.1; (d) falsely denies or frivolously contests relevant conduct for which the Defendant is accountable under U.S.S.G. § 1B1.3 or previous convictions that the Defendant has sustained; or (e) engages in new criminal conduct.

The parties expressly agree and understand that should the Court reject the recommendation of the parties, Defendant will not thereby be permitted to withdraw his plea of guilty. The parties agree and understand that the Court has the discretion to impose any lawful sentence.

4. Appeal Waivers. Defendant is aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Knowing that, Defendant waives the right to appeal the following:

A. Defendant's guilty plea and any other aspect of Defendant's conviction in the above-captioned case; and

B. A sentence of imprisonment that does not exceed 108 months.

Defendant's waiver of his right to appeal shall not apply to appeals based on a right that has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review.

The number of months mentioned in this paragraph does not necessarily constitute an estimate of the sentence that the parties expect will be imposed.

5. Consequences of Breach. If Defendant violates or fails to perform any obligations under this Agreement ("a breach"), the United States will be released from its obligations hereunder and may fully prosecute Defendant on all criminal charges that can be brought against Defendant. With respect to such a prosecution:

- A. The United States may use any statement that Defendant made pursuant to this Agreement, including statements made during plea discussions and plea colloquies, and the fact that Defendant pleaded guilty, and Defendant hereby waives any claim under Rule 410 of the Federal Rules of Evidence or Rule 11(f) of the Federal Rules of Criminal Procedure that such statements and guilty plea are inadmissible.
- B. Defendant waives any and all defenses based on the statute of limitations with respect to any such prosecution that is not time-barred on the date that this Agreement is signed by the parties.

If the United States chooses to exercise its rights under this paragraph, the determination of whether Defendant has committed a breach shall be made by the Court upon an appropriate motion. In a proceeding on such motion, the United States shall have the burden to establish Defendant's breach by a preponderance of the evidence.

6. Speedy Trial Waiver. Defendant agrees to waive, and hereby does waive, any and all rights he might have under the Speedy Trial Act, 18 U.S.C. §§ 3161-64, from the date of the execution of this Agreement and continuing thereafter through and including the date upon which sentence is imposed. In the event that the Court determines that Defendant has breached

this Agreement, as set forth in Paragraph 5 of this Agreement, then the waiver described in this Paragraph shall continue through and including the date on which the Court determines that such a breach has occurred. Defendant expressly consents to the entry of an Order by the Court excluding such periods of time from such consideration.

7. Validity of Other Agreements; Signature. This Agreement supersedes any prior understandings, promises, or conditions between this Office and Defendant. However, in the event that Defendant fails to enter his guilty plea or is allowed to withdraw his guilty plea entered hereunder, and the Court determines that Defendant has not breached this Agreement, then any proffer agreement between the parties shall remain in effect. No additional understandings, promises, or conditions will be entered into unless in writing and signed by all parties. The signature of Defendant in the space designated signifies his full and voluntary acceptance of this Agreement.

I have read this Agreement and have carefully reviewed every part of it. I understand it and I have voluntarily agreed to it.

Date: 11/5/19



Ryan Hayes, Defendant

I am legal counsel for Ryan Hayes. I have carefully reviewed every part of this Agreement with Ryan Hayes. To my knowledge, Ryan Hayes' decision to enter into this Agreement is an informed and voluntary one.

Date: 11/5/19



William Maddox, Esquire
Attorney for Defendant

FOR THE UNITED STATES:

Halsey B. Frank
United States Attorney

Date:

1/16/2020

Raphaelle A. Silver
Assistant U.S. Attorney

Approved:

Raphaelle A. Silver
Supervisory Assistant U.S. Attorney

Halsey B. Frank

Revised 1/26/18

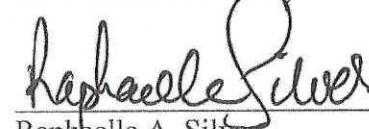
UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2020, I manually filed the document(s) with the Clerk of Court and mailed copy to:

William Maddox, Esq.

Halsey B. Frank
United States Attorney



Raphaelle A. Silver
Assistant United States Attorney
United States Attorney's Office
202 Harlow Street, Suite 111
Bangor, ME 04401
(207) 945-0373

Appendix D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

UNITED STATES OF AMERICA)
) DEFENDANT'S
v.) SENTENCING MEMORANDUM
)
) Docket No. 1:19-cr-134-LEW-11
RYAN HAYES)
Defendant)

DEFENDANT'S SENTENCING MEMORANDUM

Ryan Hayes believes that a review of 18 U.S.C. § 3553(a) factors and applicable adjustments will form the basis for a sentence of time served.

I 18 U.S.C. § 3553(a) Factors

The defendant, Ryan Hayes, is a 44 year-old lifelong resident of Maine. In January 2020, Ryan pled guilty to Count 1 of the indictment, pursuant to the terms of a written plea agreement. He's taken full responsibility for his actions and has expressed genuine remorse for his behavior. Ryan qualifies for the safety valve

and has also fulfilled the terms of his plea agreement with the government.

The following mitigating factors, including Ryan's early acceptance of responsibility and lack of a criminal record, argue for a time served or variant sentence. Although Ryan's personal and family background is discussed in detail in the Pre-sentence Report [hereinafter "PSR"], defendant draws the court's attention to the most compelling attributes.

A. Personal and Family Background

As elucidated in the PSR, Ryan's childhood and home environment were generally positive. He was born in Caribou, and is a lifelong resident of Maine. Yet, Ryan faced certain challenges in his life which were difficult.

Ryan experienced a traumatic event when he was in his early teens. He was an avid fisherman, and often went fishing with a family friend, sometimes on overnight fishing trips. On the last of these trips, the man, who was considerably older than Ryan, tried to touch him inappropriately. Ryan ran away from the man, ending the unwanted encounter, and called his mother. Ryan's mother opines that the incident left Ryan with some unresolved anger.

Ryan faced another event which was both complex and had a significant negative impact on Ryan's life. Ryan and his older sister were raised by Carla and

David Hayes. Ryan had no reason to doubt that Carla and David were his biological parents. Because they were both loving and supportive, and because there was no violence or abuse in his childhood home, Ryan experienced a positive upbringing. In his early twenties, however, Ryan was shocked to learn that David was not his biological father. Ryan's parents were divorced for a time, during which time Ryan's mother became pregnant with Ryan. Ryan's parents remarried shortly thereafter. Learning about this caught Ryan by complete surprise. Through much effort and soul-searching, Ryan finally came to accept this unexpected turn of events in his heritage. Ryan, however, made the effort to visit with his biological father on a number of occasions before this man passed away from the sequella of a car accident.

Although feeling somewhat misled by his parents, Ryan has maintained a strong and positive relationship with both his mother and David. Ryan is especially close with his mother and Ryan still considers David his father. While incarcerated, Ryan has maintained almost daily contact with his parents. Unfortunately, David suffered a traumatic brain injury when he was involved in a serious traffic accident. Carla believes that this accident has caused Ryan additional stress.

In 2001 Ryan married Karen. They enjoyed a good marriage for many

years, but eventually “grew apart” and were divorced in 2015. Ryan and Karen still have a very civil relationship and are in regular contact. The stress associated with the dissolution of his marriage, was one of the primary reasons Ryan’s consumption of alcohol spiked in 2015. The conviction for OUI noted in paragraph 28 of the PSR, was Ryan’s first criminal matter, occurring at this difficult time.

Ryan and Karen’s marriage produced two children, Alexis and Cole. Ryan is close with both of his children and continues to be active in their life. Ryan has voluntarily provided financial support for both children, although not court ordered to do so, since the divorce. Ryan has maintained regular contact with both children as well as with Alexis’ infant son. As noted in the PSR, separation from Cole has been difficult for Ryan. Cole is autistic and requires one-on-one schooling as well as occupational and speech therapy.

Since 2016, Ryan has been involved with Kellyn, who owns her own hair salon and lives in Presque Isle. Ryan considers Kellyn to be a “good influence” for him. In particular, Kellyn is opposed to drug use. Ryan and Kellyn plan to continue their relationship after this case is resolved. They also have enjoyed almost daily contact since Ryan has been detained.

B. Physical Health

Ryan enjoyed good health since 2014, when some serious problems began to surface. The first was a bout of Lyme disease. After experiencing significant discomfort and pain which resulted in a trip to the emergency room, Ryan traveled to New York to consult with a Lyme disease specialist. He was then prescribed medication and underwent a battery of tests, which were inconclusive.

Around this same time, Ryan was suffering from intense pain due to torn meniscus in both knees. Ryan's doctors prescribed opiates to alleviate this pain. Ryan underwent knee surgery in 2015, but experienced ongoing pain. His doctors continued to prescribe pain medication, which resulted in Ryan becoming addicted to opiates. See below.

C. Mental Health

As noted in the PSR, Ryan began to experience anxiety and depression in approximately 2014. These mental health issues were likely exacerbated by the combination of Ryan's failed marriage, his bout of Lyme disease, and the intense knee pain he was experiencing. As a consequence, Ryan sought treatment at "Life by Design" in Presque Isle.

Records confirm that Ryan was diagnosed with an anxiety disorder. Ryan

enjoyed a good rapport with his therapist, and he attended treatment on multiple occasions between 2014 and 2017. In fact, Ryan's mother is currently in contact with the therapist in hopes that Ryan can resume treatment after his release. Ryan feels that this treatment was beneficial to him, and he is desirous of continuing treatment on supervised release or with the BOP. Attached to this memo are two certificates Ryan has obtained while at Somerset County Jail in Substance Abuse and Skill Building. Ryan also attend Moral Reconation Therapy (MRT) which was cut short when the COVID-19 pandemic struck.

D. Substance Abuse

Although Ryan experimented with marijuana and Ecstasy for a short time in his youth, these episodes were recreational in nature. Ryan, therefore, did not have a drug problem until he became addicted to prescription opiates in his 40s. Ryan's legitimate medical problem became a serious drug problem.

At the height of his addiction, Ryan was using 6 Percocet on a daily basis. As reported in the PSR, on several occasions Ryan went to his parent's home to try to detox off pills, but those efforts were not successful. Like many opiate addicts, Ryan eventually began to use heroin instead of prescription drugs, because heroin was cheaper and easier to find. Ryan became addicted to heroin

and smoked the substance on a daily basis prior to his arrest on this matter. During this time, he also used methamphetamine, which he smoked in combination with the heroin. Over time, the cost of his drug habit was beyond his financial means. Thus, he committed the instant offense to support his drug habit which Ryan now truly regrets.

Since his arrest, Ryan has made a sincere effort to address his substance abuse issue through treatment. While at Somerset County Jail, he has completed the following: the Life Skills program; the Intensive Outpatient Substance Abuse Program; and Relapse Prevention classes.

As noted above, Ryan almost completed the Moral Reconation Therapy or MRT program. Ryan was one or two classes short when the COVID-19 pandemic struck, and staffing shortages caused the program to be suspended. Ryan is very proud of his efforts in this program, because it relies on group sessions, which was quite hard for him as he is a very private person. Ryan hopes to complete the Moral Reconation Therapy when he can, if it becomes available at the Somerset County Jail, Ryan plans to continue substance abuse programs while on supervised release or with the BOP. His interest is driven by his awareness that in order to return to the productive life he enjoyed prior to 2015, he must attain long-term sobriety.

E. Criminal Record and History of Incarceration

As reported in the PSR, Ryan has a very limited criminal history. For that reason, he qualified for the original version of the safety-valve, which has more stringent criteria than the newer version contained in the First Step Act. Ryan did not accrue a criminal history until age 40 when his alcohol use spiked due to the combination of stress from his divorce and persistent knee pain. Additionally, Ryan's only prior jail sentence was for 48 hours for his OUI. Unlike many defendants who appear in Federal court, Ryan has almost no experience of incarceration. He has not been subjected to incremental types of punishment.

Because his negative law enforcement contacts occurred in 2015 or after, it is reasonable to conclude that his criminal record is a direct result of his substance abuse issue. Consequently, if he overcomes his drug problem, it is very likely Ryan not commit further crimes. Ryan's recent hard work in completing programs while at the Somerset County Jail, as well as his participation in Moral Reconation Therapy, makes it likely he will return to the pro-social and productive life he led until the age of 40. For all of these reasons, a sentence within the guideline range is not required for him to achieve the goals of sentencing.

F. Future Employment Plans

As indicated in the PSR, Ryan was a successful carpenter/contractor before he began collecting on a disability insurance policy in late 2014. Ryan recognizes that it is unlikely that he can return to work full-time or participate in certain activities associated with his former work, such as climb tall ladders or try to carry or lift heavy objects. In spite of this, Ryan wishes to be active and utilize his good work ethic. He hopes to work part-time at first doing finish work, remodeling kitchens/bathrooms or similar jobs which require low impact labor. In fact, Ryan's girlfriend Kellyn, has advised him that several people in Presque Isle have spoken with her about work they would like Ryan to undertake once he is released. Ryan feels that returning to work is an important step for his regaining the productive life he enjoyed for most of his adult years.

G. Summary 18 U.S.C. § 3553(a) Factors

There are multiple factors in Ryan's background which individually and cumulatively warrant mitigation and a sentence well below the guideline range. In particular is the support and love Ryan receives from both of his parents. The difficult issues in his childhood have strengthened his relationship with both parents, especially with his mother. Ryan has affirmatively determined to continue this kind of love and support with his own children and their children.

The combination of adverse life circumstances from 2015 onward have taught him the value of living a productive substance-free life.

II Role Reduction for Minimal Participant U.S.S.G §3B1.2

Pursuant to §3B1.2(a) in the “Role in the Offense” Adjustments in the sentencing guidelines, Ryan argues that given the totality of the circumstances of this conspiracy, he should receive a four level reduction as a minimal participant. Ryan’s placement in the indictment as the last named participant was not by accident. Assigning his role in the hierarchy of this conspiracy as a minimal participant is supported by the guidelines. In order to be considered for this role reduction the defendant must “prove that he was less culpable than his cohorts....[which] can be located on a continuum.” United States v. Arias-Mercedes, 901 F.3d 1, 8 (1st Cir. 2018). Defendant asserts that his place in the indictment establishes this location.

The Introductory Commentary to Part B – Role in the Offense ,states that “[w]hen an offense is committed by more than one participant,...§3B1.2...may apply.” Section 3B1.2 states that if a defendant was a “minimal participant” in the

subject activity decrease by 4 levels, and if the defendant was a “minor participant” in the subject criminal activity, decrease by 2 levels. U.S.S.G. §3B1.2. Section 3B1.2 “provides a range of adjustments for a defendant who plays a part in committing the offense that makes him substantially less culpable than the average participant in the criminal activity.” Application Note 3(A) §3B1.2.

In Application Note 3(C) to U.S.S.G. §3B1.2, the guidelines state that “[t]he determination whether to apply subsection (a) [a 4 level minimal participant adjustment] or subsection (b) [a 2 level minor participant adjustment], or an intermediate [3 level] adjustment, is based on the totality of the circumstances and involves a determination that is heavily dependent upon the facts of the particular case.” U.S.S.G. §3B1.2, app. n. 3(C). In determining whether to apply a mitigating role adjustment, the Sentencing Commission stated the court should consider the following non-exhaustive list of factors:

- (i) the degree to which the defendant understood the scope and structure of the criminal activity;
- (ii) the degree to which the defendant participated in planning or organizing the criminal activity;
- (iii) the degree to which the defendant exercised decision-making authority or influenced the exercise of decision-making authority;
- (iv) the nature and extent of the defendant’s participation in the commission of the criminal activity, including the acts the defendant performed and the responsibility and discretion the defendant had in performing those acts;
- (v) the degree to which the defendant stood to benefit from the criminal

activity.

Id. See United States v. Arias-Mercedes, supra at 8.

The First Circuit has written that

Among this pool of defendants eligible for an adjustment, a defendant “who plays a minimal role in the criminal activity” – that is, one “who [is] plainly among the least culpable of those involved in the conduct of the group” – is considered a minimal participant. U.S.S.G. § 3B1.2 cmt. n. 4. A minor participant, on the other hand, is a defendant who is substantially “less culpable than most other participants in the criminal activity, but whose role could not be described as minimal.” US.S.G. § 3B1.2 cmt. n. 5; see United States v. Arias-Mercedes, 901 F.3d 1, 5-6 (1st Cir. 2018). In this context, “participant” means “a person who is criminally responsible for the commission of the offense, but need not have been convicted.” U.S.S.G. § 3B1.2 cmt. n. 1; § 3B1.1 cmt. n. 1.

United States v. Mendoza-Maisonet, 962 F.3d 1, 23 91st Cir. 2020). For guidance, the First Circuit wrote that “determining one’s role in an offense is a fact-specific inquiry.” Id.

Amendment 794, amending the Commentary to §3B1.2 Application Note 3(A) points out that an award of a 2, 3, or 4 point mitigating role reduction, is made by a court upon consideration of comparing the defendant under discussion with others participating in the same criminal activity. See Amend. 794. Additionally, Amendment 794 “provides, as an example, that a defendant who does not have a proprietary interest in the criminal activity and who is simply being paid to perform certain tasks should be considered for a mitigating role

adjustment.” U.S.S.G. § 3B1.2 app n. 3(C); Amend 794.

Ryan states: 1) he did not understand the scope and structure of the larger criminal activity; 2) he did not participate in the planning or organizing of the larger criminal activity; 3) he did not possess decision-making authority nor did he influence the exercise of decision-making authority; 4) even though he let one conspirator use his home as a delivery location, he did not possess discretion in how the first ten named indicted participants performed in the criminal activity; and 5) Ryan’s derived benefit was in furtherance of his own medical issues. Additionally, he lacked a proprietary interest in the criminal activity and was involved in the conspiracy for an amount of time less than the entire duration of the conspiracy.

Given the foregoing, Ryan argues that he was a minimal participant in the conspiracy and argues for a four level reduction. U.S.S.G. § 3B1.2. “[T]he relevant comparison in determining which of the § 3B1.2 adjustments to grant a given defendant is to the conduct of co-participants in the case at hand. United States v. Cantrell, 433 F.3d 1269, 1283 (9th Cir. 2006)(citations omitted).

Ryan, therefore, requests a sentence of time served.

Dated: November 5, 2020

Respectfully Submitted,

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Defendant
By his attorney
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CERTIFICATE OF SERVICE

I, William S. Maddox, hereby certify that on November 5, 2020, I electronically filed Defendant's Sentencing Memorandum with the Clerk of Court using the CM/ECF system which will send notification of such filing to Assistant United States Attorney Raphaelle Silver, and I hereby certify that on November 2, 2020, I will have hand delivered this document by November 12, 2020, to the following non-registered participant: Ryan Hayes.

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Mr. Ryan Hayes

Dated: November 5, 2020

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