

IN THE
SUPREME COURT OF THE UNITED STATES

JERMALL JOHNSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for Writ of Certiorari to the United States Court of Appeals for
the Third Circuit**

APPENDIX

D. ROBERT MARION JR., ESQUIRE
Counsel of Record
CHARLTON LAW
617 S. Pike Road
Sarver, PA 16055
bobby@charltonlawyers.com
(724) 540-1161
(724) 540-1164 (Fax)

TABLE OF CONTENTS

| | <u>Page</u> |
|--|-------------|
| Order filed May 10, 2024 from the Third Circuit Court of Appeals..... | 001 |
| Order filed June 27, 2024 from the Third Circuit Court of Appeals..... | 002 |
| Judgment in a Criminal Case filed February 26, 2024..... | 003 |
| Motion for Departure filed February 26, 2024..... | 010 |
| Sentencing Memorandum filed February 26, 2024..... | 012 |

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

ACO-103

No. 24-1378

UNITED STATES OF AMERICA

v.

JERMALL JOHNSON,
Appellant

(W.D. Pa. No. 2-21-cr-00265-008)

Present: HARDIMAN, MONTGOMERY-REEVES and AMBRO, Circuit Judges

1. Motion filed by Appellee USA to enforce appellate waiver and for summary action.
2. Response filed by Appellant Jermall Johnson to motion for summary action.

Respectfully,
Clerk/JK

ORDER

The foregoing motion is GRANTED. The District Court's February 27, 2024 judgment is summarily affirmed.

By the Court,

s/ Tamika R. Montgomery-Reeves
Circuit Judge

Dated: May 10, 2024

Tmm/cc: Laura S. Irwin, Esq.

D. Robert Marion, Jr., Esq.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-1378

UNITED STATES OF AMERICA

v.

JERMALL JOHNSON
Appellant

(D.C. Criminal Action No. 2-21-cr-00265-008)

SUR PETITION FOR PANEL REHEARING

Present: HARDIMAN, MONTGOMERY-REEVES, and AMBRO, Circuit Judges

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court, it is hereby ORDERED that the petition for rehearing by the panel is DENIED.

BY THE COURT,

/s/ Tamika R. Montgomery-Reeves
Circuit Judge

Dated: June 27, 2024

kr/cc: Laura S. Irwin, Esq.
D. Robert Marion, Jr., Esq.

UNITED STATES DISTRICT COURT

Western District of Pennsylvania

UNITED STATES OF AMERICA

v.

JERMALL JOHNSON

JUDGMENT IN A CRIMINAL CASE

Case Number: 21-265

USM Number: 57030-509

D. Robert Marion

Defendant's Attorney

THE DEFENDANT:☒ pleaded guilty to count(s) a lesser-included offense of Count 1 of the Superseding Indictment☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

| <u>Title & Section</u> | <u>Nature of Offense</u> | <u>Offense Ended</u> | <u>Count</u> |
|----------------------------|---|----------------------|--------------|
| 21:846 and | Conspiracy to Distribute Quantities of Fentanyl and Cocaine | 6/30/2021 | 1s |
| 21:841(b)(1)(C) | | | |

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.☐ The defendant has been found not guilty on count(s) _____☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

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

2/26/2024

Date of Imposition of Judgment

s/Cathy Bissoon

Signature of Judge

Cathy Bissoon, United States District Judge

Name and Title of Judge

2/26/2024

Date

DEFENDANT: JERMALL JOHNSON

CASE NUMBER: 21-265

IMPRISONMENT

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

57 months for the lesser-included offense at Count 1, with credit for time served, if applicable, to be determined by the Bureau of Prisons.

☒ The court makes the following recommendations to the Bureau of Prisons:

That Defendant be allowed to participate in the Bureau of Prisons' RDAP program – if eligible; secondarily that Defendant be incarcerated at a facility as close as possible to Erie, PA that also offers the RDAP program.

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

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

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

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JERMALL JOHNSON

CASE NUMBER: 21-265

SUPERVISED RELEASE

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

3 years.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

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

DEFENDANT: JERMALL JOHNSON
CASE NUMBER: 21-265**STANDARD CONDITIONS OF SUPERVISION**

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

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

U.S. Probation Office Use Only

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

Defendant's Signature _____

Date _____

DEFENDANT: JERMALL JOHNSON
CASE NUMBER: 21-265

ADDITIONAL SUPERVISED RELEASE TERMS

1. Defendant must not use or possess any controlled substances without a valid prescription. If Defendant does have a valid prescription, he must disclose the prescription information to the probation officer and follow the instructions on the prescription.
2. Defendant must not own, possess, or have access to a firearm, ammunition, destructive device, or any dangerous weapon.
3. Defendant must participate in a mental health treatment program and follow the rules and regulations of that program. The Probation Office, in consultation with the treatment provider, will supervise Defendant's participation in the program, including but not limited to, the provider, location, modality, duration, intensity, etc. The Probation Office is authorized to release Defendant's presentence report to the treatment provider if so requested.
4. Defendant must submit to substance abuse testing to determine if Defendant has used a prohibited substances. Defendant must not attempt to obstruct or tamper with the testing methods.
5. If necessary, as determined by the Probation Office, Defendant must participate in a substance abuse treatment program and follow the rules and regulations of that program. The Probation Office will supervise Defendant's participation in the program, including but not limited to, the provider, location, modality, duration, intensity, etc.
6. Defendant must submit his person, property, house, residence, vehicle, papers, computers, other electronic communications or data storage devices or media, business or office, to a search conducted by a United States Probation Office. Failure to submit to a search may be grounds for revocation of release. Defendant must warn any other occupants that the premises may be subject to searches pursuant to this condition. The probation officer may conduct a search under this condition only when reasonable suspicion exists that Defendant has violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.
7. Defendant shall participate in the United States Probation Office's Workforce Development Program as directed by the Probation Office.
8. Defendant shall cooperate in the collection of DNA as directed by the Probation Office.

DEFENDANT: JERMALL JOHNSON
CASE NUMBER: 21-265

CRIMINAL MONETARY PENALTIES

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

| | | | | | |
|---------------|-------------------|--------------------|-------------|-------------------------|--------------------------|
| | <u>Assessment</u> | <u>Restitution</u> | <u>Fine</u> | <u>AVAA Assessment*</u> | <u>JVTA Assessment**</u> |
| TOTALS | \$ 100.00 | \$ | \$ | \$ | \$ |

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

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

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

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

| | | | | |
|---------------|----|------|----|------|
| TOTALS | \$ | 0.00 | \$ | 0.00 |
|---------------|----|------|----|------|

☐ Restitution amount ordered pursuant to plea agreement \$ _____

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

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

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

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

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

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

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

DEFENDANT: JERMALL JOHNSON
CASE NUMBER: 21-265

SCHEDULE OF PAYMENTS

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

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
- ☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
Defendant shall pay one special assessment of \$100 to the United States District Court Clerk forthwith, unless he has already done so.

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

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

☐ Joint and Several

| Case Number Defendant and Co-Defendant Names (including defendant number) | Total Amount | Joint and Several Amount | Corresponding Payee, if appropriate |
|---|--------------|-----------------------------|--|
|---|--------------|-----------------------------|--|

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

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

| | | |
|----------------------------------|---|--------------------|
| UNITED STATES OF AMERICA, | : | |
| | : | |
| v. | : | 1:21-cr-265 |
| | : | |
| JERMALL JOHNSON, | : | |
| | : | |
| Defendant. | : | |

MOTION FOR DEPARTURE

AND NOW, comes the Defendant, Jermall Johnson, by his counsel, D. Robert Marion, Jr., Esquire, who files on his behalf this Motion for Departure:

1. On or about April 27, 2023, the United States Sentencing Commission presented to Congress amendments related to the calculation of a defendant's criminal history.

2. These amendments came into effect on November 1, 2023 and will therefore apply at Mr. Johnson's sentencing in February of 2024.

3. One of the amendments to the application notes of § 4A1.3 is as follows:

a. **"Examples.** A downward departure from the defendant's criminal history category may be warranted based on any of the following circumstances...

i. The defendant received criminal history points from a sentence for possession of marihuana for personal use, without an intent to sell or distribute it to another person."

4. On, January 3, 2020, Mr. Johnson was convicted of possessing a small amount of marijuana and drug paraphernalia. (*See* PSIR, Para. 42).

5. The PSIR notes that this was a small amount of marijuana possessed for personal use. (*Id.*).

6. In addition, on June 28, 2023, Mr. Johnson plead guilty and was sentence for Disorderly Conduct in front of a Magisterial District Court and sentenced to time served in excess of thirty (30) days. (PSIR ¶ 45).

7. According to the Affidavit of Probable Cause, this offense was based on a piece of paper that was found in Mr. Johnson's cell that tested positive for synthetic marijuana. (*Id.*).

8. In other words, this case is also based on possession of marijuana for personal use.

9. Mr. Johnson is eligible for this departure and would request that this Criminal History Category is lowered from a V to a IV.

10. With the change in criminal history category, Mr. Johnson's sentencing guidelines would be forty-six (46) months to fifty-seven (57) months incarceration.

WHEREFORE, the Defendant, Jermall Johnson, respectfully requests that this Honorable Court grant a downward departure in his criminal history category from category V to category IV.

Respectfully submitted,

/s/ D. Robert Marion, Jr.
D. Robert Marion, Jr., Esquire
Pa. Id. No. 313469

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

| | | |
|----------------------------------|---|--------------------|
| UNITED STATES OF AMERICA, | : | |
| | : | |
| v. | : | 1:21-cr-265 |
| | : | |
| JERMALL JOHNSON, | : | |
| | : | |
| Defendant. | : | |

**MEMORANDUM IN AID OF SENTENCING AND REQUEST FOR
DOWNWARD VARIANCE**

AND NOW, comes the Defendant, Jermall Johnson, by and through his counsel, D. Robert Marion, Jr., Esquire, who files on his behalf, this Memorandum to aid the Court in fashioning a sentence for this Defendant. For the reasons that follow, counsel respectfully requests that the Court vary downward and sentence Mr. Johnson to forty (40) months incarceration.

I. Introduction

In 2020 and 2021, Mr. Johnson was involved in a drug trafficking conspiracy with co-defendants Quinton Pinkins and London Pinkins. On August 16, 2023, he ultimately plead guilty to a lesser included offense of Conspiracy to Distribute Quantities of Fentanyl and Cocaine. (PSIR ¶ 8). Mr. Johnson accepted responsibility for trafficking 16 grams of Fentanyl and 200 grams of Cocaine. (PSIR ¶ 21).

Mr. Johnson has accepted responsibility for his actions and respectfully requests that this Court consider the factors outlined herein and sentence Mr. Johnson to forty (40) months incarceration. As the Court will see through this memorandum, Mr. Johnson's life has been troubled from an early age and he has come to the realization that he needs to abandon his criminal behavior, or he will continue to find himself facing jail sentences.

II. The Sentencing Process and Applicable Law

Counsel is aware that this Court is well versed in the sentencing process and applicable law and will not recite boilerplate caselaw and sentencing statutes in this Memorandum.

Counsel submits that a forty (40) month incarceration sentence is “sufficient but not greater than necessary” to comply with the purposes of sentencing described in 18 U.S.C. § 3553(a).

III. The Sentencing Guidelines.

According to the PSIR, Mr. Johnson has a total criminal history score of ten (10) (PSIR, ¶ 46). A criminal history score of ten (10) places Mr. Johnson in a Criminal History Category of V. (PSIR, ¶ 48; USSG Ch. 5, Pt. A).

Mr. Johnson objects to this calculation. Specifically, he objects to the assignment of one (1) criminal history point for the 2020 conviction of Possession of Marijuana. (PSIR ¶ 42). According to the PSIR, this marijuana was possessed for personal use. (PSIR ¶ 42). Under the amended Sentencing Guidelines, a downward departure is appropriate if a “defendant received criminal history points from a sentence for possession of marihuana for personal use, without an intent to sell or distribute it to another person.” § 4A1.3, application note 3. Further, this policy statement explaining these changes states, “[t]his policy statement authorizes the consideration of a departure from the guidelines in the limited circumstances where reliable information indicates that the criminal history category does not adequately reflect the seriousness of the defendant's criminal history or likelihood of recidivism, and provides guidance for the consideration of such departures.” § 4A1.3, policy statement.

It is clear that the marijuana possessed by Mr. Johnson was for personal use. As such, it would be appropriate to depart and assign Mr. Johnson a Criminal History Category of IV instead of V. It is clear that the assignment of an additional point for a minor drug offense is an

overstatement of Mr. Johnson's criminal record and this overstatement should be corrected by a departure.

In addition, Mr. Johnson objects to the assignment of two (2) points for a 2023 conviction of Disorderly Conduct. (PSIR ¶ 45). According to the PSIR, this conviction stems from a piece of paper located in Mr. Johnson's cell that tested positive for synthetic marijuana. (PSIR ¶ 45). The same reasoning argued above applies here as well. This is clearly a case of possession of marijuana (in this case synthetic marijuana) for personal use. As such, Mr. Johnson should receive a departure.

In addition, according to the docket sheet attached as Exhibit A to this Complaint, this was a summary Disorderly Conduct. It would appear, based on the docket sheet, that the citation was filed on March 23, 2023, but Mr. Johnson did not plead guilty and a sentence was not imposed until June 28, 2023. Meaning, there was a long delay between the time of citation and the time of the guilty plea and sentencing. There is no indication on the docket as to why this delay occurred. However, Mr. Johnson was incarcerated at the time, so it was not due to his failure to appear. Invoking the Rule of Lenity, Counsel would argue that the delay should not be attributed to Mr. Johnson. As such, the only reason why this sentence is more than thirty (30) days (and thus triggering the assignment of points) is because of the delay of someone other than Mr. Johnson. For these reasons, these points should not be assigned.

United States Adult Probation has calculated the total offense level for Mr. Johnson's conduct as nineteen (19). (PSIR, ¶ 31). The offense level includes a downward adjustment of three (3) levels because Mr. Johnson has accepted responsibility for his actions. (PSIR, ¶¶ 29-30).

Thus, the applicable sentencing guideline range for a total offense level of nineteen (19)

and a Criminal History Category of V is fifty-seven months (57) to seventy-one (105) months incarceration. (PSIR, ¶ 74). However, if the Court ultimately decides that a Criminal History Category departure is appropriate, then Mr. Johnson's guidelines for a Criminal History Category of IV and a total offense level of nineteen (19) would be forty-six (46) months to fifty-seven (57) months incarceration. Further, the Court must impose a term of supervised release of at least three (3) years. (PSIR, ¶ 76; USSG §5D1.2(a)(2)).

The Court must also impose a one hundred dollar (\$100) special assessment for each count. (PSIR, ¶ 81; 18 U.S.C. §3571(b)). The Court may consider a fine between the guidelines of \$10,000.00 and \$1,000,000.00¹. (PSIR, ¶ 82).

IV. Discussion and Analysis of the 18 U.S.C. §3553(a) Factors.

(1) Nature/Circumstances of the Offense and Mr. Johnson's History and Characteristics.

a. The Offense Conduct

The offense conduct described in the PSIR (¶¶ 10-16) accurately reflects the conduct to which Mr. Johnson pleaded guilty. It is beyond discussion that the offenses for which Mr. Johnson stands convicted are serious. Since the indictment in this case, he has had ample time to reflect on the consequences of his actions on society, his family, and himself.

b. History and Characteristics of the Defendant

The Court has the benefit of the PSIR and the portions describing Mr. Johnson's Personal and Family Data (PSIR ¶¶ 53-72) and that information is therefore not recounted in full here. Counsel will highlight certain information to provide context to additional facts presented.

¹ The Sentencing Guidelines provide that "[t]he court shall impose a fine in all cases, except where the defendant establishes that he is unable to pay and is not likely to become able to pay any fine." U.S.S.G. § 5E1.2(a) (Fine For Individual Defendants). Based on the PSIR, Mr. Johnson is unable to pay a fine and Counsel would request that a fine is not imposed. (*See also* PSIR ¶ 70).

Mr. Johnson's Disadvantaged Childhood and History of Neglect

While the Guidelines treat lack of guidance as a youth and circumstances indicating a disadvantaged upbringing as forbidden departure grounds, *Booker* and its progeny free district courts to consider these factors as part of their analysis under §3553(a). *See, e.g., United States v. Samuels*, 2009 WL 875320 (S.D.N.Y. April 2, 2009) (imposing a time served sentence rather than Guideline range of 70-87 months where the defendant “was raised under poor economic circumstances with an abusive father addicted to crack”).

Mr. Johnson's childhood was difficult. He was raised primarily by his mother because his father was in and out of jail. (PSIR ¶ 56). He was raised in a neighborhood that was defined by violence and drug activity. (PSIR ¶ 56). In addition, Mr. Johnson has reported to Counsel that he personally witnessed his mother get physically abused by her significant others. He also reports that there were times when he went hungry and there was no electricity in the house. (PSIR ¶ 56). He moved around constantly and sometimes found himself living with his aunts instead of his mother. It is quite clear that Mr. Johnson's childhood was chaotic, unsupervised, and full of violence.

The effects of this childhood are made quite clear by his juvenile criminal record. The convictions reveal a person who had no supervision and was shown that violence and drug use were the answer to life's problems. Mr. Johnson is committed to reversing this mindset and pursuing a law-abiding path free of drugs and violence.

Mr. Johnson's History of Drug Abuse

Mr. Johnson has a history of substance abuse. He started consuming marijuana at the age of twelve (12) years old. At his worst, he was using up to ten (10) grams daily. He also started using extasy at the age of 21 and continued to do so on and off until 2021. Prior to his arrest on

these charges, Mr. Johnson had stopped using marijuana and was trying to rehabilitate. As such, he is determined, willing, and hopeful to continue drug rehabilitation.

(2) The Need for the Sentence Imposed

- (A) To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (B) To afford adequate deterrence to criminal conduct;
- (C) To protect the public from further crimes of the defendant;
- (D) To provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

(3) The Kinds Of Sentences and the Sentencing Range Established For The Applicable Category Of Offense Committed By the Applicable Category of Defendant As Set Forth In The Guidelines.

The PSIR sets forth the kinds of sentences available for Mr. Johnson at PSIR ¶¶ 73-83. Counsel argues that Mr. Johnson's Criminal History Category should be a level IV with a total offense level of nineteen (19) and a guideline calculation of forty-six (46) months to fifty-seven (57) months incarceration. A sentence of forty (40) months incarceration (based upon the factors set forth herein) is sufficient to provide a just punishment, allow for deterrence, protect the public, and allow for Mr. Johnson's rehabilitation.

(4) The Need To Avoid Unwanted Sentence Disparities Among Defendants.

The imposition of a forty (40) month incarceration sentence would not create any sentencing disparities. Co-defendants Khiry Whiteside and Nicholas Tantuo were sentenced to forty-six (46) and thirty (30) months incarceration respectively. In addition, as noted by the PSIR, most of the co-defendants who have been sentenced in this case have sentences below forty (40) months incarceration.

(5) The Need To Provide Restitution To Any Victims Of The Offense.

Restitution is not at issue in this case.

V. Letters of Support for Mr. Johnson

The United States Supreme Court held in *Gall v. United States*, 128 S.Ct. 586 (2007), that character letters should be considered by the sentencing court as a mitigating factor *via* the sentencing factors outlined in 18 U.S.C. § 3553(a). Counsel anticipates that letters will be provided to the Court prior to Sentencing. These letters constitute additional support for a downward variance.

VI. Additional Requests and Recommendations:

(1) Request for Recommendation into the Residential Drug Abuse Program (RDAP)

Under 18 U.S.C. § 3621, the Bureau of Prisons was authorized to provide residential substance abuse treatment. That program today is referred to as RDAP. This is a program designed to assist inmates who are struggling with substance abuse. Based on the information provided by Mr. Johnson and the information within the PSIR, it is clear that he had a serious drug addiction prior to being arrested. As such, Mr. Johnson respectfully requests that this Honorable Court recommend him (in the Court's Sentencing Order) for admission into the RDAP program.

(2) Request for Sentence to be Served in Closest Prison

The BOP strives to place prisoners within 500 miles of their designated release area. Mr. Johnson's designated release area is Erie, PA. As such, Mr. Johnson is respectfully requesting that this Honorable Court recommend him to be housed inside of a federal facility, with the RDAP Program, that is as close as possible to Erie, PA.

VII. Application of 18 U.S.C. §3553(a) Factors and sentence recommendation.

In summary, considering each of the Section 3553(a) factors outlined above, Counsel respectfully requests that this Honorable Court sentence Mr. Johnson to forty (40) months incarceration.

Counsel submits that the facts of this case (and those outlined in this memorandum) support the imposition of this sentence, as such a sentence would be “sufficient but not greater than necessary” to achieve justice and the enumerated ends of sentencing. The “history and characteristics of the defendant” have been thoroughly outlined above. As shown in the PSIR, Mr. Johnson has begun to set his life on a better path by steering away from addiction and associated criminal behaviors.

The remaining 3553(a) factors coincide with the traditional goals of sentencing (with the notable exception of *retribution*, which is rightfully no longer seen by most as an appropriate rationale for increased punishment). The goals of the 3553(a) factors are *rehabilitation*, *deterrence (specific and general)*, and *incapacitation*. Given the information set forth above, a sentence of forty (40) months of incarceration would adequately serve this purpose.

CONCLUSION

Counsel respectfully requests that the Court sentence him to forty (40) months incarceration.

Respectfully submitted,

/s/ D. Robert Marion, Jr.

D. ROBERT MARION, JR., Esquire
Pa. I.D. No. 313469

CHARLTON LAW
617 South Pike Road
Sarver, Pennsylvania 16055
Phone: 724.540.1161
Email: bobby@charltonlawyers.com