

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
FILE NO. [REDACTED]

UNITED STATES OF AMERICA :
 :
 v. : MEMORANDUM OF LAW
 : IN SUPPORT OF MOTION
 [REDACTED] : FOR SENTENCE VARIANCE
 :

NOW COMES the Defendant, moving this Honorable Court, pursuant to 18 U.S.C. Section 3553(a), to vary below the applicable Guideline range to be established at sentencing. In support hereof, the Defendant shows unto the Court the following.

FACTUAL BACKGROUND

The introductory sentence of paragraph 43 in the Defendant's Presentence Report ("PSR") captures well the Defendant's early family background. "The defendant recalled a very troubled childhood that was shaped by poverty, parental neglect, sexual assault and family tragedy." Id. Shortly after the Defendant was born, his father abandoned the family. PSR ¶ 42. While the Defendant's mother did what she could to provide for the Defendant and his two siblings, she suffered from alcoholism and often neglected her children. PSR ¶ 43. When the Defendant was five or six, he was removed from his mother's home due to her neglect and was placed in foster care. Id. Ultimately, the Defendant's maternal grandmother intervened and was designated his legal guardian. Id.

One day, when the Defendant was eight years old, he walked to his grandmother's house. On this particular day, he stopped along the way to visit a family friend. PSR ¶ 44. This "friend" took that opportunity to threaten, to imprison and to sexually assault the Defendant. Id. Apparently, this "friend" preyed upon the Defendant's younger brother in a like manner. Later into his adolescence, the Defendant would be subjected to further sexual abuse at the hands of a training school correctional officer. PSR ¶ 45.

When the Defendant was approximately nine, while he and his younger brother [REDACTED] were playing at home, the furnace malfunctioned igniting a fire that consumed the home. The Defendant was able to escape the blaze, but [REDACTED] did not and died in the fire. The Defendant felt then, and believes today, that his mother blames him for [REDACTED] death since he was the older child despite his young age at the time. PSR ¶ 46. Following [REDACTED] death, the Defendant was in and out of foster care until age 16. PSR ¶ 45. At 16, the Defendant was returned to his mother's custody briefly. The Defendant enrolled in public high school but was removed due to his behavior problems, which included a series of misdemeanor property and weapon offenses, and sent to training school. PSR ¶¶ 26-31.

As the Defendant grew out of adolescence, he, not surprisingly, became isolated and distrustful of others. PSR ¶

46. He had endured a childhood filled with abuse, neglect, and tragedy. At no time growing up was the Defendant able to obtain any mental health intervention. In what may be described as an accurate yet profound understatement, "[t]he defendant has a history of unresolved issues and significant emotional trauma."

PSR ¶ 48. The Defendant has lived his adult life without mental health therapy or understanding. The Defendant considers his 1996 assessment by the North Carolina Department of Corrections (PSR ¶ 49) a "band-aid approach" to his mental health care. DOC did not disclose to him its findings, nor, despite DOC's recommendation that he receive individual counseling, did DOC ever provide him with such counseling. Id. When offered other counseling regarding substance abuse, the Defendant engaged himself actively. PSR ¶ 50. It is not difficult to understand, especially with the aid of hindsight, the progressively serious criminal conduct—from shoplifting at age 16 to the present armed robbery—in which the Defendant has engaged due to past emotional experiences.

On a positive note, the Defendant, while detained in this case, sought mental health care. He was recently diagnosed as suffering from Post Traumatic Stress Disorder and prescribed medication. Since then, the Defendant has begun the long and painful process of coming to terms with his past. And in an

effort to make amends for his past criminal behavior, he has begun cooperating with the government.

LEGAL ANALYSIS

In Rita v. United States, 127 S. Ct. 2456 (2007), the Court recognized that, in ordinary cases, the Sentencing Commission's recommendation of sentencing ranges will "reflect a rough approximation of sentences that *might* achieve § 3553(a)'s objectives." Rita, 127 S. Ct. at 2465 (emphasis added).

The sentencing judge, on the other hand, has greater familiarity with the individual case and the individual defendant before him than the Commission or the appeals court. He is therefore in a superior position to find facts and judge their import under § 3553(a) in each particular case. In light of these discrete institutional strengths, a district court's decision to vary from the advisory Guidelines may attract greatest respect when the sentencing judge finds a particular case outside the heartland to which the Commission intends individual Guidelines to apply.

Kimbrough v. United States, 128 S. Ct. 558, 575 (2007) (internal citations and quotation marks omitted). So as not to overlook the obvious, the Defendant's past clearly falls "outside the heartland" of circumstances experienced by defendants appearing before this Court.

In this case, the Defendant, undiagnosed and unmedicated throughout his adult life, recidivated six months after his discharge from DOC in [REDACTED]. However, in the relatively short period of time this matter has been pending, the Defendant has availed himself of mental health treatment and medication and

seeks further counseling and therapy. The Defendant faces a recommended guideline range of 188-235 months and a statutory floor of 180 months imprisonment. When considering the "the nature and circumstances of [this] offense" and the "history and characteristics of" the Defendant, 18 U.S.C. § 3553(a)(1), and then placing these considerations on the Congressional scale of core sentencing purposes, 18 U.S.C. § 3553(a)(2), a variance down to the significant mandatory minimum fifteen year sentence is sufficient, but not greater than necessary.

CONCLUSION

For these reasons, and based upon the authority cited herein, the Defendant respectfully requests the Court grant his motion for downward variance and sentence him below the applicable Guideline range to be established at sentencing.

Respectfully submitted this 16th day of [REDACTED].

/s/ [REDACTED]

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CERTIFICATE OF SERVICE

I hereby certify that on [REDACTED], I filed electronically the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to [REDACTED], U.S. Attorneys Office. Additionally, I have served a copy of the foregoing upon [REDACTED] and upon USPO [REDACTED] both by email.

/s/ [REDACTED]
Attorney for Defendant