

DEFENDANT'S MEMORANDUM IN AID OF SENTENCING AND MOTION FOR DOWNWARD DEPARTURE

Defendant [REDACTED] submits this memorandum and motion for downward departure to assist the court in sentencing in this criminal contempt case.

I. ISSUES PRESENTED

This complex sentencing presents the following issues:

(A) What is the role of the sentencing guidelines in this case in light of the Supreme Court's decision in United States v. Booker, 2005 LEXIS 628 (Jan. 12, 2005)?

(B) Given that [REDACTED] failure to testify was in good faith, is the most analogous offense "failure to appear as a material witness"?

(C) If this Court determines that the most analogous offense instead is obstruction of justice, should [REDACTED] offense level be enhanced?

(1) Specifically, should the offense level be increased by three points for "substantial interference with the administration of justice"?

(2) Should the offense be cross-referenced to the accessory after the fact guideline?

(3) Should the offense level be increased by four points because [REDACTED] [REDACTED] knew or should have known that his co-defendant possessed eight to fourteen firearms?

(D) Should the court downwardly depart from the guidelines sentence?

(1) Specifically, does [REDACTED] criminal history category overstate the severity of his criminal history?

(2) Does punishment for his federal contempt offense inappropriately duplicate punishment for his related state court offense?

(3) Should [REDACTED] sentence be reduced because this proceeding has forced him to remain in state custody despite being eligible for parole?

(E) Pursuant to Booker, should this Court reduce [REDACTED] guidelines sentence so that it better serves the purposes enumerated in 18 U.S.C.A. § 3553(a)?

II. BACKGROUND

This case is extensively fused with a state court conviction for which Mr. [REDACTED] served a 2.5- to 3-year sentence.¹ On July 19, 2001 [REDACTED] and his state-court codefendant, [REDACTED], were arrested in [REDACTED], Massachusetts, in connection with a shooting. PSR at ¶ 10. A firearm located in the car driven by Mr. [REDACTED] was traced to his purchase of several firearms in Georgia a few days earlier. PSR at ¶ 13. Both defendants were charged with the shooting, and [REDACTED] pleaded guilty on a joint venture theory. PSR at ¶ 15. [REDACTED] state charges were dismissed after his case was adopted for federal prosecution. Id.

In March 2003, [REDACTED] was subpoenaed to appear before a federal grand jury investigating [REDACTED] firearms activities, including the purchase in Georgia. PSR at ¶ 19. The government also sought to question him about [REDACTED] father, [REDACTED], and [REDACTED] role in purchasing and transporting firearms. [REDACTED] was appointed counsel and received immunity for his testimony.

On April 2, 2003, [REDACTED] was called before the grand jury but refused to testify. PSR at ¶ 21. On that day, the district court found [REDACTED] in civil contempt of its order to testify. Id. Ultimately, the court ordered that he be held in federal custody until he complied with the order or until the term of the grand jury expired, whichever came first. Id. He was held in federal custody for nearly ten

¹ Mr. [REDACTED] was paroled within the past three weeks.

months, until the grand jury completed its term, and was released on January 26, 2004. PSR at ¶ 24.

██████████ suffers from Attention Deficit Disorder. See ██████████ Affidavit (attached hereto). As noted in the PSR, he is “easily distracted and . . . requires constant attention to remain focused.” PSR at ¶ 102. The Probation Department recognized that his attention span problems have affected his work history, education, and personal relationships. At the age of 24, ██████████ has held more than eighteen short-term jobs; the reasons cited for his quitting include boredom and “frustration due to his short attention span.” PSR at ¶ 106. Before dropping out of school, he manifested “behavior problems” that included threatening and abusive behavior. PSR at ¶¶ 100-103. ██████████ has a history of mental illness, including Conduct Disorder and Major Depression, requiring hospitalization and medication. PSR at ¶ 92.

Additional factual background is discussed in connection with each argument presented in this memorandum, *infra*.

III. ARGUMENT

A. Under United States v. Booker, the sentencing guidelines are merely advisory.

In United States v. Booker, 2005 LEXIS 628 (Jan. 12, 2005), the Supreme Court completed the dramatic overhaul of the federal sentencing landscape that it initiated in Apprendi v. New Jersey, 530 U.S. 466 (2000), and continued in Blakely v. Washington, 124 S.Ct. 2531 (2004). In the first part of the Booker opinion, delivered by Justice Stevens, the Court held that the Sixth Amendment is violated when a federal guidelines sentence is based on the judge's determination of a fact (other than a prior conviction) that was not found by the jury or admitted by the defendant. *Id.* at *49. In

the second part of the opinion, delivered by Justice Breyer, the Court held that 18 U.S.C. § 3553(b)(1), which makes the guidelines mandatory, must be severed and excised from the Sentencing Reform Act of 1984 (SRA). Id. at *51-52.

The modified SRA makes the guidelines effectively advisory; it requires a sentencing court to consider guidelines ranges, see 18 U.S.C. § 3553(a)(4), but permits it to tailor the sentence in light of other statutory concerns. Id. at *81. These concerns include reflecting the seriousness of the offense, promoting respect for the law, providing just punishment, affording adequate deterrence, protecting the public, and effectively providing the defendant with needed educational or vocational training and medical care. 18 U.S.C.A. § 3553(a). Section 3553(a) further directs sentencing courts to consider the nature and circumstances of the offense; the history and characteristics of the defendant; the kinds of sentences available; the need to avoid unwanted sentencing disparities among defendants with similar records who have been found guilty of similar conduct; and the need to provide restitution to any victims of the offense.

Thus, Booker directs district courts to consider certain factors that are rejected or ignored by the sentencing guidelines. See United States v. Ranum, 2005 U.S. App. LEXIS 1338 (E.D. Wis., Jan. 19, 2005), at *3-5. Sentencing courts previously were forbidden from considering, inter alia, a defendant's history and characteristics to the extent that they involved his mental and emotional condition, U.S.S.G. § 5H1.3; his education and vocational skills, id. at § 5H1.2; drug or alcohol dependence, id. at § 5H1.2; socioeconomic status, id. at § 5H1.10; or lack of guidance as a youth, id. at § 5H1.12. These factors now can support a sentence outside the guidelines. See Ranum, 2005 U.S. App. LEXIS 1338 at *15-18 (citing defendant's motive, personal history and character in imposing sentence lower than what guidelines suggested); United States v. Myers, 2005 U.S. Dist. LEXIS 1342 (S.D. Iowa, Jan. 26, 2005) at *11-

14 (taking into account defendant's personal history, good character, and benign motive for his crime in imposing probation instead of imprisonment).

After Booker, then, a sentencing court must begin by considering the guidelines. See id. at 4. If it chooses to impose a sentence outside the guidelines range, it should provide an explanation for the decision. Id. "But in so doing courts should not follow the old 'departure' methodology. The guidelines are not binding, and courts need not justify a sentence outside of them by citing factors that take the case outside the 'heartland.'" Id.; see also United States v. Huerta-Rodriguez, 2005 U.S. Dist. LEXIS 1398 (D. Neb. Feb. 1, 2005), at *3 ("Significantly, the Supreme Court neither held, nor implied, that the measure of reasonableness [in sentencing] is the Guidelines sentencing range.")

This case is rife with Booker/Blakely concerns. The indictment to which Mr.

██████████ pleaded guilty alleges simply that on specified dates, he

did unlawfully, knowingly and intentionally disobey and resist a lawful order, rule, decree and command a Court of the United States of America, to wit: an order issued by the United States District Court, District of Massachusetts (Gertner, J.), dated April 1, 2003, compelling the defendant to testify and provide other information to the grand jury, pursuant to Title 18, United States Code, Sections 6002-6003.²

Thus, to avoid implicating the Sixth Amendment, ██████████ sentence must be based solely on his refusal to testify before the grand jury. The government seeks to increase the sentence beyond that "statutory maximum" based on numerous proposed judicial findings:³ that ██████████ corruptly obstructed justice within the meaning of 18 U.S.C. § 1503(a); that he was an accessory after the fact ██████████ felony

² The statute under which ██████████ was convicted contains no maximum penalty. See 18 U.S.C. § 401(3).

³ The Blakely court held that "the 'statutory maximum' for Apprendi purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." 124 S.Ct. at 2537 (emphasis in original).

offenses; that he substantially interfered with the administration of justice by causing the premature termination of a felony investigation; and that he knew or should have known that [REDACTED] underlying offense involved 8-14 firearms. See United States v. Crosby, 2005 U.S. LEXIS 1699 (2d Cir. 2005) at **5, 43-44 (remanding case for resentencing under Booker where defendant's firearms sentence was enhanced pursuant to U.S.S.G. § 2K2.1, inter alia.)

Because the sentencing guidelines require the application of analogies and enhancements based on facts that [REDACTED] did not admit, their application is merely advisory. See id. at *28; Booker, 2005 LEXIS 628, at *51-52.⁴ Following Booker, then, this Court should begin by determining the guideline range in the usual manner. See United States v. Hughes, 2005 U.S. App. LEXIS 1189 at *10 (4th Cir. 2004). Then it should consider this range, in an advisory capacity, along with the other factors set forth in 18 U.S.C.A. § 3553(a). See id.

B. The offense most analogous to [REDACTED] contempt is failure to appear as a material witness, not obstruction of justice.

The first guidelines issue before this Court is the proper offense level for Mr. [REDACTED] contempt. The PSR premises [REDACTED] base offense level on obstruction of justice as the crime most analogous to the contempt to which Mr. [REDACTED] pleaded guilty. PSR at ¶ 36; U.S.S.G. §§ 2J1.1, 2X5.1. This erroneously presumes that [REDACTED] acted in bad faith when he declined to testify before the grand jury. The evidence shows that Mr. [REDACTED] decision was motivated not by willful interference with the [REDACTED]' prosecution, but by his concern about legal and personal repercussions. Accordingly, the most analogous offense for purposes of

⁴ Booker's remedial scheme also applies to defendants sentenced under the mandatory guidelines who did not suffer a constitutional violation. See id. at 25.

determining the base offense level is not obstruction of justice, but failure to appear as a material witness.

1. The crime of contempt must be analogized to one of three other offenses.

There is no specific sentencing guideline for the crime of contempt under 18 U.S.C. § 401. The Guidelines direct the Court to apply the “most analogous offense guideline.” U.S.S.G. § 2J1.1 (cross-referencing § 2X5.1). The application note to section 2J1.1 explains:

Because misconduct constituting contempt varies significantly and the nature of the contemptuous conduct, the circumstances under which the contempt was committed, the effect the misconduct had on the administration of justice, and the need to vindicate the authority of the court are highly context-dependent, the Commission has not provided a specific guideline for this offense.

Accordingly, contemptuous conduct yields a continuum of sentencing options, which is “defined by the defendant’s conduct and his intent.” United States v. Ryan, 964 F. Supp. 526, 529 (D. Mass. 1997).

At one end of the sentencing continuum is obstruction of justice, which is intended for the most culpable of defendants and carries a base offense level of 14. U.S.S.G. § 2J1.2; Ryan, 964 F. Supp. at 529. This guideline is appropriate for a defendant “who not only intended to avoid testifying, but who also sought in bad faith to interfere with an ongoing investigation or prosecution.” Ryan, 964 F. Supp. at 529 (citing United States v. Remini, 967 F.2d 754 (2d Cir. 1992)).

The analogous offense at the least culpable end of the continuum is failure to appear as a material witness, which carries a base offense level of 6 when committed with respect to a felony. U.S.S.G. § 2J1.5. This category best addresses those defendants who refused to testify in good faith, including “a defendant who may have feared reprisals, and who, consequently, did not intend to obstruct justice.” Ryan, 964 F. Supp. at 529.

In the middle of the continuum is misprision of a felony, for which the base offense level is nine levels less than that of the underlying offense (but in no event is less than 4 or more than 19). U.S.S.G. § 2X4.1. This category includes a defendant who simply refuses to testify without providing a reason for his refusal. Ryan, 964 F. Supp. at 529 (citing United States v. Cefalu, 85 F.3d 964 (2d Cir. 1996)).⁵

2. The most analogous offense to Mr. ██████████ contemptuous conduct is failure to appear as a material witness.

Mr. ██████████'s refusal to testify was made in good faith because he believed that his testimony might be used against him. The First Circuit addressed similar circumstances in United States v. Underwood, 880 F.2d 612, 620 (1st Cir. 1989). There, the defendant was concerned that his testimony before the district court, even if immunized, would negatively affect the court's decision to accept his plea agreement as well as his sentencing. Id. at 615. The First Circuit reasoned that § 2J1.2 was inapplicable because the defendant did not intend to obstruct justice; rather, he "simply intended not to testify." Id. at 620. Accordingly, it instead applied the base offense level for failure to appear, U.S.S.G. § 2J1.5.

In United States v. Ortiz, 84 F.3d 977 (7th Cir. 1996), the Seventh Circuit followed Underwood in affirming a sentence analogizing the defendant's contempt conviction to failure to appear. The court reasoned that defendant Hurtado's refusal to testify despite a grant of immunity was most analogous to section 2J1.2 because there were "no overt acts in the record which indicate that Hurtado intended to obstruct justice, beyond his refusal to testify." Id. at 980 (emphasis added). The court observed that, like Underwood, the defendant "did not intend to obstruct justice. He simply did

⁵ The elements of misprision of felony are: (1) the principal committed and completed the alleged felony; (2) the defendant had full knowledge of that fact; (3) the defendant failed to notify the authorities; and (4) the defendant took steps to conceal the crime. United States v. Cefalu, 85 F.3d 964, 967 (2d Cir. 1996).

not wish to testify. As noted during his sentencing, Hurtado didn't want to be known as a 'snitch or an informer.'" Id. at 982. Other decisions have confirmed that failure to appear is the appropriate analogy to contempt based on refusal to testify, even where the defendant's conduct is more culpable than Hurtado's. See, e.g., United States v. Jones, 278 F.3d 711, 716 (7th Cir. 2002) (affirming application of section 2J1.5 even where defendant's failure to testify breached cooperation agreement); United States v. Simmons, 215 F.3d 737, 742 (7th Cir. 2000) (same).

In this case, ██████████ declined to testify before the grand jury because he was concerned that his testimony would be used against him later, both by his fellow inmates and the government. Like Hurtado, he did not want to be labeled as a "snitch" while serving his prison time. See ██████████ Affidavit. Moreover, ██████████ was concerned that his grand jury testimony might expose him to a perjury prosecution.⁶ Id. He knew that he had been diagnosed with Attention Deficit Disorder and worried that this condition might interfere with his ability to testify clearly and consistently. Id. This evidence establishes that ██████████ had a good faith belief that he was not lawfully required to testify.

Moreover, as in Ortiz, there are no overt acts in the record that indicate that Mr. ██████████ "intended to obstruct justice, beyond his refusal to testify." See Ortiz, 84 F.3d at 980. He did not attempt to help ██████████ escape capture, prosecution or punishment. See id.; compare with Remini, 967 F.2d at 756 (discussed infra). In the

⁶ ██████████ grant of immunity did not, of course, protect him from a future perjury prosecution based on the immunized testimony. See United States v. Apfelbaum, 445 U.S. 115, 131 (1980). ██████████ recognizes that the possibility of a perjury prosecution is not a substantive defense to his contempt charges. See, e.g., United States v. McDougal, 97 F.3d 1090, 1094 (8th Cir. 1996). Rather, he contends that his concern that his testimony could be used against him is a crucial aspect of his intent at the time he committed the contempt, and hence is relevant to his sentencing under section 2J1.1. See Ryan, 964 F. Supp. at 529.

absence of any indicia of bad faith, [REDACTED] concerns make failure to appear the analogous crime to which this Court should look in setting the base offense level. See Ryan, 964 F. Supp. at 529. This would result in a base offense level of 6 instead of 14.⁷

OMITTED

3. [REDACTED] contemptuous conduct lacked a corrupt purpose and thus is not analogous to obstruction of justice.

There is no presumption that obstruction of justice will be the analogous offense in a contempt case. The application note to section 2J1.1 states only that “in certain cases, the [contemptuous] offense conduct will be sufficiently analogous to § 2J1.2 (Obstruction of Justice) for that guideline to apply.” U.S.S.G. § 2J1.1, cmt n.1. “Courts cannot be bound to sentence under the Obstruction of Justice Guideline any time they find an intent to obstruct justice.” Cefalu, 85 F.3d at 968. “Rather, a court may consider, inter alia, (i) whether the contumacious conduct resembles the offenses listed in the obstruction guideline and (ii) whether the lack of flexibility of the obstruction guideline is suited to adequately punishing the contempt offense.” United States v. Brennan, 2005 U.S. App. LEXIS 498, No. 03-1367 (2d Cir. Jan. 12, 2005) at *38 (citing Cefalu, 85 F.3d at 967).

The government’s analogy of [REDACTED] contempt to obstruction of justice is simply inapt, as an evaluation of the applicable statutory elements, sentencing guideline and case law makes clear. First, in order to obstruct justice within the meaning of the guidelines, conduct must meet the statutory definition set forth in 18 U.S.C. § 1503(a). United States v. Brady, 168 F.3d 574, 577 (1st Cir. 1999). That

[REDACTED]

section provides: “Whoever . . . corruptly . . . influences, obstructs, or impedes, or endeavors to influence, obstruct or impede, the due administration of justice shall be punished . . .” In the absence of a “corrupt” purpose, neither obstruction nor an endeavor to obstruct violates this statute. Id. at 578.

In the context of a refusal to testify, mere knowledge that the defendant’s silence will obstruct justice is insufficient to establish the requisite corruption. Id. Rather, the government must show that the defendant’s purpose for refusing to testify was to hinder the grand jury. Id. at 578-79. Here, as shown supra, [REDACTED] purpose was to avoid being labeled as a snitch in prison and to protect himself from a perjury prosecution, not to hinder the grand jury in its investigation of the [REDACTED].

Moreover, the Sentencing Commission’s commentary to section 2J1.2 strongly suggests that the mere failure to answer a question is insufficient to support analogy to the obstruction of justice guideline. See Cefalu, 85 F.3d at 967. The commentary cites the following examples of conduct amounting to obstruction of justice:

using threats or force to intimidate or influence a juror or federal officer; obstructing a civil or administrative proceeding; stealing or altering court records; unlawfully intercepting grand jury deliberations; obstructing a criminal investigation; obstructing a state or local investigation of illegal gambling; using intimidation or force to influence testimony, alter evidence, evade legal process, or obstruct the communication of a judge or law enforcement officer; or causing a witness bodily injury or property damage in retaliation for providing testimony, information or evidence in a federal proceeding.

U.S.S.G. § 2J1.1, comment. (backg'd). Nowhere in this section does the Commission mention failure to testify. The examples provided all describe “affirmative acts of wrongdoing” rather than the type of omission grounding [REDACTED] contempt. See Brennan, 2005 U.S. App. LEXIS 498 at *38; Cefalu, 85 F.3d at 967.

Moreover, a comparison with the leading case applying section 2J1.2 to contempt, United States v. Remini, 967 F.2d 754 (2d Cir. 1992), makes clear that [REDACTED] [REDACTED] refusal to testify warrants a less serious analogy. In Remini, the defendant

was prosecuted for contempt after disobeying a court order to testify in the prosecution of organized crime leader Thomas Gambino. 967 F.2d at 754. At sentencing, the court applied section 2J1.2 after determining that “there was an intent to obstruct justice” and not merely an intent not to testify. Id. at 756. The court based this conclusion on a taped conversation in which John Gotti, a Gambino crime family leader, told a third party that he had instructed his lawyers to “get . . . [Remini's] cell ready. And nobody is taking the stand.” Id. The district court explicitly found that “the electronic intercepted conversations between John Gotti and Mr. Remini indicated a lack of good faith on the part of Mr. Remini.” Id. No evidence in this case suggests that ██████████'s contempt was marked by this type of affirmative obstruction.⁸

OMITTED

E. This Court should consider, but not limit itself to, the guideline sentence in crafting a punishment for Mr. ██████████ that hews to the purposes of 18 U.S.C.A. § 3553(a).

While considering the possible sentences suggested by the guidelines, the Court ultimately must sentence Mr. ██████████ in a way best serves the purposes set forth in 18 U.S.C.A. § 3553(a): reflecting the seriousness of the offense, promoting respect for the law, providing just punishment, affording adequate deterrence, protecting the public, and effectively providing Mr. ██████████ with needed educational or vocational training and medical care. See Booker, 2005 LEXIS 628 at *81. Moreover, this Court must take into account the nature and circumstances of the offense; Mr. ██████████'s history and characteristics; the kinds of sentences available;

⁸ Even if ██████████ had not offered evidence of good faith motives for his contemptuous conduct, the obstruction of justice guideline still would not apply. Rather, misprision of felony would be the appropriate comparator. See Cefalu, 85 F.3d at 967 (applying misprision guideline where evidence showed neither good faith nor bad faith in refusing to testify); Ryan, 964 F. Supp. at 529 (same). This would result in a base offense level nine levels less than the relevant underlying felony. U.S.S.G. § 2X4.1.

the need to avoid unwanted sentencing disparities among defendants with similar records who have been found guilty of similar conduct; and the need to provide restitution to any victims of the offense. Id.

Following Booker, district courts have declined to impose guidelines sentences where those sentences did not sufficiently serve the purposes set out above. In Ranum, a bank fraud case, the sentencing court considered the defendant's benign motive in ordering a sentence below what the guidelines recommended; there, the defendant did not act for personal gain or intend to harm the bank. 2005 U.S. App. LEXIS 1338 at *15-17. The court also cited the defendant's favorable personal characteristics, such as his solid employment history and devotion to his family, in determining that he was not a danger to society and was unlikely to reoffend. Id. It relied on these findings in concluding that the guidelines sentence was much greater than necessary to serve the purposes of the SRA. Id. at *17.

In United States v. Jones, 2005 U.S. Dist. LEXIS 833 (D. Me. Jan. 21, 2005), Judge Hornby considered whether a downward departure was appropriate for a mentally ill defendant convicted of possessing firearms after involuntary commitment to a mental institution. He determined that the guidelines did not authorize a departure, but then held that under Booker, a shorter sentence would better serve the purposes of the SRA. Id. at *5, 9-10. His decision took into account the defendant's lack of malicious intent in retaining the weapons after his commitment and his post-offense compliance with his treatment plan. Id. at *8, 10; see also United States v. Myers, 2005 U.S. Dist. LEXIS 1342 at *11-14 (taking into account defendant's personal history, good character, and benign motive for his crime in imposing non-guidelines sentence of probation for firearms offense).

In this case, the circumstances of Mr. ██████████'s contempt are extensively tied to his personal history and characteristics, and are not adequately reflected in the

guidelines sentence. Mr. ██████'s Attention Deficit Disorder and other mental health problems have affected every aspect of his life, from his schooling to his employment to his family relationships. See PSR at ¶¶ 92, 100-103, 106; ██████ affidavit. The PSR notes that he is "easily distracted and . . . requires constant attention to remain focused." PSR at ¶ 102. This aspect of his personal background is a significant part of the context for his criminal contempt and hence should be considered in sentencing. Mr. ██████'s subjective awareness of his disability led him to worry that testifying would result in unintentional inconsistencies in testimony and expose him to a perjury prosecution. Thus, while Mr. ██████'s Attention Deficit Disorder does not provide a legal defense for his criminal contempt, it supplies important context for his conduct and should be considered in fashioning his punishment. As in Ranum and Jones, his motive and mental state are significant SRA factors that may not be adequately addressed by the guidelines in this case. Ranum, 2005 U.S. App. LEXIS 1338 at *15-17; Jones, 2005 U.S. Dist. LEXIS 833 at *8-10.

A sentence of six months (less time elapsed since his parole eligibility date) would adequately account for Mr. ██████'s characteristics and the nature of his offense while still serving the statutory purposes of reflecting the seriousness of the offense, promoting respect for the law, and providing just punishment. See 18 U.S.C.A. § 3553(a); Ranum, 2005 U.S. App. LEXIS 1338 at *17 (sentence of twelve months "was sufficient to promote respect for the law and account for the defendant's serious abuse of trust . . ."). The state sentence Mr. ██████ recently served was his first imprisonment. He is not seeking to avoid prison time altogether for his federal offense; he acknowledges that his refusal to testify warrants meaningful redress. The unique circumstances of his contempt make it highly unlikely that he will reoffend.⁹

Finally, the Court should recognize that Mr. ██████ recently has made meaningful and personally unprecedented strides toward rehabilitation. He participated in a substance abuse treatment program while in prison and is interested in continuing treatment after completing his sentence. PSR at ¶¶98. During his incarceration, he also has earned good time credits for completing courses in Anger Management, Re-Entry/Adjustment, and Pre-Employment/Life Skills. PSR at ¶¶105. Despite his learning disability, he is interested in completing his GED. PSR at ¶¶104. Mr. ██████ and his family members have expressed their commitment to his successful readjustment into the community; further lengthy incarceration would subvert this goal. See PSR at ¶¶79, 86, 93 addendum (letters).

In sum, the objectives of the SRA are best served by a short sentence, even if that requires the Court to sentence him below the range recommended by the guidelines. The parsimony principle demands that Mr. ██████'s sentence be "sufficient, but not greater than necessary" to comply with the relevant statutory purposes. See 18 U.S.C.A. § 3553. Here, a sentence of longer than six months would serve no SRA purpose, and would simply defer his reintegration into lawful society.

IV. CONCLUSION

This memorandum presents the Court with multiple possible avenues that arrive at a fair and legal sentence for Mr. ██████. Any of the following options, alone or in combination, would effect 18 U.S.C.A. § 3553(a)'s directive to "impose a sentence sufficient, but not greater than necessary to comply with the purposes" of sentencing:

(1) The Court could impose a base offense level of 6 for failure to appear as a material witness. With a two-point deduction for acceptance of responsibility and a CHC of I or III, this would result in a 0-6 month sentence.

(2) The Court could apply the obstruction of justice offense guideline, without the cross-reference for accessory after the fact, for a base offense level of 14. With a two-level deduction for acceptance of responsibility, this would result in a 10-16 month sentence at CHC I or a 15-21 month sentence at CHC III. This result could also be reached by applying the obstruction of justice offense guideline and cross-reference for accessory after the fact but rejecting the four-point enhancement based on ██████████'s purported knowledge of 8-14 firearms.

(3) The Court could apply the obstruction of justice offense guideline and cross-reference for accessory after the fact at the offense levels suggested in the PSR, but reduce Mr. ██████████'s CHC to I, thereby resulting in a sentence of 12-18 months. Alternatively, the Court could reduce Mr. ██████████'s sentence by the 10 months his state sentence was extended for a sentence of 8-14 months.

(4) The Court could decline to follow the sentencing guidelines under the unusual circumstances of Mr. ██████████'s motive and mental disability, and reduce the sentence accordingly.

In addition, as described in section III(D)(3), Mr. ██████████ requests that his sentence be shortened by the number of days elapsed since his parole eligibility date.