

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

UNITED STATES OF AMERICA)	
)	
VS.)	Docket No.: 2:18-CR-00124-JDL
)	
GREGORY MARTIN)	

MR. MARTIN’S SENTENCING MEMORANDUM

<u>TABLE OF CONTENTS</u>	<u>PAGE</u>
 BACKGROUND	
1. Summary of Position	2
2. Agreement for Purposes of Sentencing	3
3. Pre-Sentence Report and Advisory Guidelines	3
4. Introduction to Gregory Martin	3
5. Non-Guideline or Variant Sentence.....	10
 ARGUMENT	
A. A Departure is Appropriate Because Mr. Martin's Career Offender Designation Overrepresents His Criminal History and due to His History and Characteristics	11
B. A Sentence of 60 Months Incarceration in Appropriate Based on the History and Characteristics of Mr. Martin	21
1. Variant Factor - Childhood of Mr. Martin.....	21
2. Variant Factor - Impact on Innocent Dependents	23

3. Variant Factor - Age of Mr. Martin at Prior Convictions	26
4. Variant Factor - Sentencing Guidelines are too High	29
Requested Sentencing Recommendations.....	29

BACKGROUND

1. Summary of Position

The Guideline range for Mr. Martin according to the amended Pre-Sentence Report (hereafter ‘PSR’) is 188 to 235 months of incarceration. Absent the career offender designation, the range is 84 to 105 months incarceration. The minimum mandatory sentence is 60 months. We ask the Court to sentence Mr. Martin to a below-guideline sentence minimum mandatory 60 months, with four years of supervised release. A five-year period of incarceration is “sufficient but not greater than necessary” based on application of the sentencing factors set out in 18 U.S.C. §3553(a) and in particular, the nature and circumstances of the offense and the characteristics of the offender.

2. Agreement for Purposes of Sentencing

There is no specific plea agreement for the purposes of sentencing.

3. Pre-Sentence Report and Advisory Guidelines

The aforementioned amended PSR, establishes an offense level 31 and a criminal history category of VI, with an advisory Guideline range of 188 to 235 months incarceration. Absent the career offender designation, the guideline range is 84 to 105 months incarceration based on the offense level of 25 and a criminal history category of IV.

4. Introduction to Gregory Martin

If one was to meet Gregory without having any knowledge of his current situation, it would be impossible to believe he was a severely abused 8th grade dropout facing a lengthy prison sentence. He is a gregarious, sensitive, articulate, and intelligent young man who looks younger than his current age. He is affectionately known in the jail as Monsieur Martin and described not only as the above, but the type of person everyone wants to be around. Bonnie Bedard, a former partner and currently his closest friend, also is effusive with her praise of him.

“Gregory is one of the kindest people I have ever met.” She further details some of her favorite qualities in him in her own words:

- Ambitious – Gregory’s strong desire and determination to succeed has been aspiring as well as given me hope and faith that he will achieve his future goals.

- Confident – Gregory’s confidence in himself has been an inspiration to me. I am confident that because of his self-assurance, he will achieve the results needed in making positive decisions for his future. I believe he has grown and learned from his experiences and knows that he never wants to be incarcerated again. I am excited to see this confidence continue on the outside after his release and I am certain he will do well.,
- Respectful – Gregory constantly shows admiration for others. His way of listening well, not making excuses, and his willingness to change has been extremely helpful in his journey thus far and what he has to face ahead. His respect for himself as well as for others is displayed in the attitude he puts forth every day. He embraces life and provides encouragement to others.
- Ownership – Gregory has taken responsibility for his actions whether in times of success or times of defeat. He has demonstrated accountability in many aspects of his life. I cannot image him ever not being this way. He will stand up for what he believes in full heartedly and with strength and encouragement of a true survivor. His life has not always been a simple path. No matter what, not once has he blamed he who is today because of his past. He only now mentions it because in order for one to understand some of the choices he has made, he needs to explain where he comes from. He has taken ownership of not only the choices he has made in life, but of his responsibilities as a father to his sons.

- Compassionate – Gregory is the definition of a compassionate person. He has been one of my rocks at the same time and given me wings when needed. He constantly reassures others to live their dream and to look at the positive side of life. His concern and caring for others has not always been reciprocated. But no matter what, he stills gives unconditionally and with understanding love. He has both sympathy and empathy. He cares about the results of his actions and where his life is headed and how he treats others.
- Strength – Gregory is one of the strongest people I know. Not only before this experience but even more so now. Strength only comes from continuous growth and I know he is strong enough to continue his journey to obtaining a better life. I truly believe he has the strength and courage to face what he needs to and stay on the right path.

As alluded to, Gregory Martin had the type of childhood that one watches in afterschool specials. It included physical abuse, hunger, being used by a parent to beg for money, living on the streets at a young age, and death. Greg was born to Gregory Martin and Linda Haygood in Manhattan, NY on January 26, 1979. He has one full biological sister, Kisha Martin, who was born one year before him. Greg has no memories of his parents together. His earliest memories do recall being with his sister.

“I remember we switched roles. She was protective of me as she was older, then I was protective of her. It was that way until I left home,” Greg recalls.

Greg's first real family memories involve his mother and various men in her life.

"We lived in Harlem and my Aunt Linda was the one usually home. I don't know where my mom was but when she was around, it was with men who were mean and violent. I was around the age of 8 and one of her boyfriends beat me up pretty bad with a belt. Family services was involved and we went to live with my dad. That wasn't any better."

Unfortunately, Greg's father was an addict. Greg and his sister went from physical violence, but having a roof over his head, to living on the street, begging for money to help their father's addiction and food to feed themselves. They bounced between his father's house and their grandparent's house for about a year before going to live with their Aunt Louise, who was a correctional officer in New York. Lost in all of this lack of consistency was schooling; Greg never really attended as his priority was survival over education. Greg never finished high school, in fact, he isn't even sure he finished 8th grade.¹ By the time his Aunt tried to install security and consistency to his life, it was too late. Greg was already involved in the lifestyle of using and selling drugs and left his Aunt's home to reside on the streets, the only life that felt familiar and comfortable. But that only came after the most tragic moment in Greg's life...the death of his grandmother in 1993. Even to this day, Greg has trouble talking about it without getting emotional.

¹ As Greg recalls, he was in 8th grade when he moved and never finished. He thinks he started high school without finishing the 8th grade.

“She was there time and time again, doing the best she could to be there for us. She was the best person I ever met. Her biggest regret I think is that she did not bring us to live with her when we were really young. I bet my life would have been really different.”

Greg has put together a summary of his early life (see attachment A), through the eyes that lived it...his. What is a pleasant surprise for the reader is the natural introspect, existing despite Greg’s limited education.

“I know I can write. I can cook, write, and speak. I like writing because I can express feelings that I would normally keep hidden.”

It should not be a surprise that with limited education, no real family, and living on the streets that Greg turned to drugs. As he recalls, his first experience using drugs occurred when he was 12.

“I don’t think I ever craved drugs like I did alcohol although when I was 17, I was using cocaine daily.” It was at that age that Greg first started selling drugs. “I also want to be clear that I didn’t necessarily sell drugs to support my habit. It was more for street survival.”

Three times in three years, Greg was arrested and convicted for selling a usable quantity of cocaine to an undercover law enforcement officer. He does not dispute the accuracy of the descriptions in the PSR, but does take issue with the conviction for selling within 1000 feet of a school. See PSR ¶ 30.

“It makes it sound like I sold to kids which is completely not true. I don’t think there is any area of the Bronx that isn’t close to a school.” And it is worth noting that Greg was arrested for selling to an undercover officer, not a child. *Id.*

Greg would have two further arrests and convictions in 1999 and 2000, both for selling a usable amount of cocaine. For this conviction, Greg spent a year in prison. He was released at the age of 22, without money, any real family, education, and being a convicted felon. His opportunities to showcase his natural talents were abysmal. The cyclical nature of drug involvement led his final drug-related arrest (before this one) in 2004, this time for possession of a usable amount of crack. This coincided with him becoming a father to Matthew Martin.

“When I was younger, I swore I never would be the type of father I had. I would be around for my children. Then I disappeared from Matthew’s life exactly like my father did from mine.” Greg was released from custody in 2005 but had numerous parole violations, although none for drug offenses. He was involved in Matthew’s life when he was not incarcerated.

“That was really important to me. I wanted him to know he had a father and it wasn’t his fault I wasn’t around. I always felt like it was my fault my father wasn’t around.”

In 2013, Greg moved to Maine and met Megan Rollins. They had a child together, Janiel, in 2015. Although Greg had absconded from New York, he lived a law-abiding life until 2018.

“I did a lot of reconnecting with my half-siblings. I worked for my brother painting as well as numerous other cash-based jobs like welding and cleaning. I enjoyed being a father and spending time with Janiel. I was living the quiet life I always wanted except it was hard to make ends meet and I wanted to provide financial help for my sons. I didn’t want to turn myself in to New York and face time away from Janiel but could not gain any meaningful employment because I was wanted. I have no excuses for getting involved in selling again but those are the reasons.”

Greg has come to terms with his past and childhood. He has learned to embrace each day and make the most of his life. He has used his current time incarcerated to take classes, enroll in the SMART recovery program, and find religion. See attachments B.

“Life is precious, man. Each day is a gift. I’ve made a lot of mistakes in my first 41 years. I’ve had a lot of anger at what life handed me. Now I know I can use my past and my mistakes to make me better and stronger as a person and for my family. I have a lot of gifts. I think I’m lucky.”

5. Non-Guideline or Variant Sentence

The Supreme Court stated in *Pepper v. United States* that "[i]t has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue." 562 U.S. 476 (2011) quoting *Koon v. United States*, 518 U.S. 81, 113, 116 S. Ct. 2035, 135 L. Ed. 2d 392 (1996)). Court's need not adhere to the rigidity of the Sentencing Guidelines. *United States v. Booker*, 543 U.S. 220 (2005).

A non-guideline sentence is appropriate in this matter based on the application of the sentencing factors in 18 U.S.C. §3553(a) which provides in pertinent part:

"The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The Court, in determining the particular sentence to be imposed shall consider-

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;*
- (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; and*

(D) to provide the defendant with needed educational or vocational training,

The United States Supreme Court held that it is impermissible to presume that the Sentencing Guidelines are reasonable. *Nelson v. United States*, 555 U.S 350, 129 S.Ct. 890 (2009).

ARGUMENT

A. A Departure is Appropriate Because the Career Offender Designation Overrepresents Mr. Martin's Criminal History and Based on the History and Characteristics of Mr. Martin

In *United States v. Smith*, 289 F.3d 696 (11th Cir. 2002) the Court stated that Sentencing Guidelines distinguish between two categories of departures; guided and unguided. 289 F.3d at 710 (citing *United States v. Collins*, 915 F.2d 618, 620 (11th Cir. 1990); *United States v. Fayette*, 895 F.2d 1375, 1377 (11th Cir. 1990)). Guided departures, which are governed by U.S.S.G. § 4A1.3, "are those departures specifically provided for in the Guidelines," and have been "explicitly and adequately considered by

the Sentencing Commission." *Id.* Departures based on likelihood of recidivism or overrepresentation of criminal history fall into this category. *Id.* "[Section] 4A1.3 departures must proceed on only the horizontal axis and not the vertical axis" of the Sentencing Table. *Id.* at 711 (citing *United States v. Mogel*, 956 F.2d 1555, 1558-60 (11th Cir. 1992)). In addition, " [t]he extent of a downward departure under this subsection for a career offender within the meaning of § 4B1.1 (Career Offender) may not exceed one criminal history category." *U.S.S.G. § 4A1.3(b) (3) (A)* (2005). When granting a departure under this subsection, "the district court must discuss each criminal history category it passes over ... to the category that adequately reflects the defendant's past criminal conduct." *Smith*, 289 F.3d at 711 (citing *United States v. Dixon*, 71 F.3d 380, 382 (11th Cir. 1995); *United States v. Johnson*, 934 F.2d 1237, 1239 (11th Cir. 1991); *Collins*, 915 F.2d at 620-21). *United States v. Mishoe*, 241 F.3d 214, 218-19 (2nd Cir.2001) ("horizontal" departure from the Guideline criminal history category may be "based on an individualized consideration" of whether that Guideline "significantly over-represents the seriousness of [defendant's] criminal history [and/]or the likelihood that [he] will commit further crimes", quoting U.S. S.G. § 4A1.3(b)(1)). A district court, however, may impose a sentence outside the range called for by the Career Offender Guideline by any legal means through a departure and/or variance. *United States v. Sanchez*, 517 F.3d 651, 664-65 (2nd Cir.2008). This would obviously allow for a vertical departure.

In *United States v. Mishoe*, the Second Circuit set forth a non-exclusive list of factors a sentencing court should consider when deciding whether to grant a downward departure from the career offender guideline. 241 F.3d 214 (2nd Cir. 2001). The factors include: "the amount of drugs involved in [the defendant's] prior offenses, his role in the offenses, the sentences previously imposed, and the amount of time previously served compared to the sentencing range called for by placement in [Criminal History Category] VI." *Id.* at 219; see also *United States v. Perez*, 160 F.3d 87, 89 & n. 4 (1st Cir. 1998).

Greg's instant offense involves the possession of 263 grams of cocaine. See PSR ¶ 11. He is a career offender based on the two convictions for the sale of a usable amount of cocaine to undercover officers. *Id.* at ¶ 30-33. As these convictions were for direct street-level sales, there is no evidence that Greg had possessed any large quantities for these convictions. *Id.* There have never been weapons nor violence in Greg's previous criminal endeavors. There was never a grand scheme or criminal enterprise. Effectively, the difference between a case that begs for the mandatory minimum of five years incarceration and a guideline range of 15-20 years is the fact that at the young age², Greg made two street-level drug sales to undercover officers.³

In a celebrated opinion, United States District Judge Mark W. Bennett summarized much of the criticism that has been directed at the career offender guideline.

² Discussed *infra*.

³ It is further noteworthy that the date of these convictions would normally be outside the scope of convictions that could be factored into a career offender designation but for the parole violations.

United States v. Newhouse, 919 Fed. Supp. 2d 955, 2013 WL346432 (N.D. Iowa 2013).

He concluded that “the Sentencing Commission strayed from its institutional role with the career offender guideline.” *Id.* at 969. Among the criticisms in that opinion was the “unwarranted double counting” that results from the application of the drug enhancement provisions found in 21 U.S.C. § 851. *Id.* (quoting *U.S. Sentencing Guidelines Manual* App. C, amend. 506) (1994). In this matter, the double counting comes from the increase in both the adjusted offense level and criminal history as a result of the same convictions.

Judge Bennett further noted that the Sentencing Commission did not use empirical data of average sentences, pre-guidelines, as the starting point for the Career Offender guideline. See 28 U.S.C. § 994(m); S. Rep. No. 98-225, at 116 (1983) (noting that under the sentencing guidelines “the average time served should be similar to that served today in like cases.”) Instead, as the Sentencing Commission said, “much larger increases are provided for certain repeat offenders, consistent with legislative direction” than under pre-guidelines practice. See *U.S. Sentencing Commission, Supplementary Report on the Initial Sentencing Guidelines and Policy Statements* 44 (1987), available at http://www.src-project.org/wp-content/pdfs/reports/USSC_Supplementary%20Report.pdf. As a result, the Career Offender sentencing ranges were set at or near the maximum term, regardless of whether the resulting sentences met the purposes of sentencing, created unwarranted disparity, or conflicted with the “parsimony provision” of § 3553(a), which directs judges to impose a sentence that is “sufficient, but not greater than necessary” to accomplish the goals of sentencing. *Newhouse*, at 973. These concerns

and others led Judge Bennett to “find that the Career Offender guideline result from an imprecisely implemented Congressional mandate and is entitled to considerably less deference than those guidelines where the Sentencing Commission has exercised its institutional expertise and utilized empirical analysis.” *Id.* at 974. Judge Bennett concluded, almost as if he was looking at the exact facts in this case, that “when particularly applied to *low level, non-violent drug addicts*, it all too often arrives at a sentencing range that is in acuminous conflict with the § 3553(a) factors and with a just and fair sentence.” *Id.* (*emphasis added*); see also *United States v. Williams*, 78 F.Supp.2d 189 (S.D.N.Y. 1999)(Williams was "a street seller of narcotics--the lowest level on the distribution chain. Not only did this make him the least significant member of the distribution chain, but it made him the person most likely to be arrested and convicted since he was out on the street where he could be easily observed and approached by the police. For this reason, his record of convictions should be considered less significant for sentencing purposes than that of others in the distribution chain who do not expose themselves so readily to the risk of arrest and conviction. To equate two or three convictions for street level sales of narcotics with two prior convictions for distributing wholesale quantities of narcotics would seriously overrepresent the seriousness of the street seller's criminal history.") Empirical evidence supports these contentions as defendants who receive the career offender enhancement based “solely upon prior (street level) drug convictions are significantly less likely to reoffend.” *United States Sentencing Commission, Fifteen Years of Guidelines Sentencing; An Assessment of How well the*

Federal Criminal Justice System is Achieving the Goals of Sentencing. Reform134

(Nov.2004). In a concurring opinion, Judge Lynch also noted his concerns on how the career offender guidelines created ranges that were highly disproportionate:

“What drove Preacely's guideline recommendation to a level more than double that severe guideline outcome is his treatment as a “career offender.” In ordinary English, “career offender” is a reasonable description of Jamar Preacely. Although he is still a young man, to the point of his arrest on the present charge the only “career” he ever had seems to have been selling drugs. But in the technical jargon of the Guidelines, Preacely qualifies as a “career offender,” and therefore earns an extraordinary sentence for a relatively mundane offense, based merely on two prior narcotics offenses. To put those offenses in perspective, the most serious of all his prior crimes resulted in a sentence of two to four years, but that record now puts him in line to have an already sharp seven-year prison term escalated to nearly sixteen years. There is a significant debate about the desirability of this sort of “three-strikes” sentencing, which dramatically escalates a sentence that is not only already severe, but that has in fact already been substantially increased by reason of Preacely's criminal record. (A level 23 offense would draw a recommended sentence starting at only 46 months for a first offender; the 84-month recommendation that would apply to Preacely absent the “career offender” enhancements already adds more than three years to a less than four-year jail term in recognition of the

increased risk of recidivism posed by someone with his criminal history.)” *United States v. Preacely*, 628 F.3d 72, 84 (2nd Cir. 2010).

It is further noteworthy that the guidelines do not distinguish between defendants. Career Offenders who have a prior felony drug conviction and sell 28 grams of crack cocaine have a base offense level of 37, the same as those who traffic in 280 grams or more of crack cocaine. The defendant who has two prior street transactions, like Greg, qualifies as a Career Offender same as the defendant who has multiple five-kilogram sales of cocaine.

The Sentencing Commission itself has questioned whether the Career Offender guideline has any appreciable effect on the sales of drugs when it is applied to low-level drug sellers. *U.S. Sentencing Commission, Fifteen Years of Guideline Sentencing*, 134 (Nov. 2004). The question for policymakers is whether the career offender guideline especially as it applies to repeat drug traffickers, clearly promotes an important purpose of sentencing. Unlike repeat violent offenders, whose incapacitation may protect the public from additional crimes by the offender, criminologists and law enforcement officials testifying before the Commission have noted that retail-level drug traffickers are readily replaced by new drug sellers so long as the demand for a drug remains high. Incapacitating a low-level drug seller prevents little, if any, drug selling; the crime is simply committed by someone else. *Id.* Judge Bennett further detailed that Judges also are not inclined to adopt the Career Offender guidelines as he noted that in “fiscal year

2011, only 39.9% of defendants subject to the Career Offender guideline were sentenced within it. Only 1.1% were sentenced above the range. ... The high rate of below-guideline sentences indicates widespread dissatisfaction with the severity of the Career Offender guideline by both judges and prosecutors.” *Newhouse*, at 977.

Many other Courts have reached the same conclusions that the Career Offender guidelines are simply disproportionate. See *United States v. Moore*, 209 F.Supp.2d 180, (2002) (after carefully considering the nature of Moore's previous felony offenses and the small quantity of drugs involved in those offenses, the approximately four years in between the commission of the previous offenses and the instant offense, the relative length and nature of his previous sentences in comparison with the sentence prescribed by the Guidelines and the extreme effect of the career offender status on Moore's sentencing range, the Court finds that the career offender status significantly over-represents his criminal history); *United States v. Crews*, Criminal Action 06-418 (W.D. PA 2019)(departure of 136 months below the minimum guidelines number of 324 to 405 months); *States v. Willis*, CR 02-120-RE (D. Oregon 2009)(minimum mandatory 120 months was appropriate as Judge ignored career offender status); *United States v. Brooks*, 708 F.Supp.2d 23, (D.C. 2010)(Court multiplied the amount of crack cocaine for which Mr. Brooks acknowledged he was accountable (98.9 grams) by 20, yielding 1,978 grams, and then added the amount of powder cocaine (398.8 grams), yielding a total amount of powder cocaine of 2,376.8 grams. That put Mr. Brooks at Offense Level 25 (after a three-level downward adjustment for acceptance of responsibility) and Criminal History

Category V, for a Guidelines sentencing range of 100 to 125 months. Upon consideration of the factors set forth in 18 U.S.C. § 3553(a), the Court sentenced Mr. Brooks at the high end of that range (120 months) to reflect the seriousness of the offense and his “very, very serious” prior convictions, ignoring the career offender designation); *United States v. Whigham*, 754 F.Supp.2d 239, 247–48 (D.Mass.2010) (granting downward variance on a number of grounds and noting that “there is also no question that the career offender guidelines are flawed”); *United States v. Merced*, No. 2:08–cr–000725, 2010 WL 3118393, at *4 (D.N.J. Aug. 4, 2010) (granting variance from Career Offender guideline based on defendant's specific circumstances rather than as a policy based variance); *United States v. Woody*, No. 8:09CR382, 2010 WL 2884918, at *9 (July 20, 2010) (declining to apply Career Offender guideline because its application resulted in a sentence “excessively harsh” given defendant's offense conduct and criminal history); *United States v. Patzer*, 548 F.Supp.2d 612, 617 (N.D.Ill.2008) (declining to apply Career Offender guideline where its application overstated the seriousness of the defendant's prior convictions and was in excess of that required for deterrence); *United States v. Moreland*, 568 F.Supp.2d 674, 688 (S.D.W.Va.2008) (granting variance from Career Offender guideline where defendant was not “the ‘repeat violent offender’ nor ‘drug trafficker’ targeted by the career offender guideline enhancement,” had not demonstrated a “pattern of recidivism or violence,” and applying the Career Offender guideline resulted in unwarranted sentencing uniformity); *United States v. Malone*, No. 04–80903, 2008 WL 6155217, at *4 (E.D.Mich. Feb. 22, 2008) (granting downward

variance from Career Offender guideline because sentence under it would punish defendant “greater than necessary to achieve the objectives of sentencing” and would have an “unwarranted impact” on minority groups ‘without clearly advancing a purpose of sentencing.’ quoting *U.S. Sentencing Comm’n, Fifteen Years of Guidelines Sentencing, An Assessment of How Well the Federal Criminal Justice System Is Achieving the Goals of Sentencing Reform* 134 (2004); *United States v. Fernandez*, 436 F.Supp.2d 983, 988–90 (E.D.Wisc.2006) (declining to apply Career Offender guideline because, based on defendant’s specific circumstances, it produced a guideline range “greater than necessary to satisfy the purposes of sentencing.”); *United States v. Naylor*, 359 F.Supp.2d 521, 524 (W.D.Va.2005) (declining to impose Career Offender guideline due to defendant’s age when he committed the predicate offenses); *United States v. Serrano*, No. 04CR.424–19(RWS), 2005 WL 1214314, at *8 (S.D.N.Y. May 19, 2005) (imposing “non-guideline sentence” where defendant’s Career Offender predicate offenses were all minor drug offenses for which defendant had never spent more than one year in prison); *United States v. Carvajal*, No. 04CR222AKH, 2005 WL 476125, at *5 (S.D.N.Y. Feb. 22, 2005) (finding Career Offender guideline resulted in sentences “excessive, in light of the nature of [defendant’s] recidivism, for the Guidelines for Career Offenders are the same regardless of the severity of the crimes, the dangers posed to victims’ and bystanders’ lives, and other appropriate criteria.”)

B. A Sentence of 60 Months Incarceration is Appropriate Based on the History and Characteristics of Mr. Martin

1. Variant Factor-Childhood of Mr. Martin

There is little doubt that Greg experienced a traumatic and disadvantaged childhood, which directly and indirectly, has led to his involvement in the criminal justice system. Following his parent's separation, Greg bounced around, staying with his mother, then father. He was subjected to significant abuse from his mother's boyfriends and neglect from his mother, only to then be exposed to his father's addictions and life on the street. By the time he even had a measure of stability, he had experienced significant trauma.

There is no question that later involvement with the law was a direct correlation to these dysfunctional early childhood experiences. Courts have consistently considered childhood factors as a basis for a variance. *United States v. McBride*, 2007 WL 4555205 (11th Cir. Dec. 28, 2007) (finding non-guideline sentence of 84 months, a departure from a term of 151-188 was sufficient but not greater than necessary. Among the factors considered was the severe physical abuse defendant suffered and having been shuffled

between foster homes until adulthood); *United States v. Lopez*, 938 F.2d 1293, 1297-99 (D.C.Cir. 1991) (remanded for district court to consider a departure from 51 month sentence imposed in drug case because defendant was exposed to domestic violence as a child, his mother's murder by stepfather, his need to leave town due to threats, and having grown up in slums of New Martin and Puerto Rico); *United States v. Ruiz*, 2009 WL 636543 (S.D. N.Y., March 11, 2009) (judge imposed 96 months rather than guideline range of 140-175 months for crack offenses in part due to defendant's difficult childhood with abusive mother and largely absent father who was incarcerated and a heroin addict, and the absence of any prior substance abuse assistance); *United States v. Samuels*, 2009 WL 875320 (S.D. N.Y. April 2, 2009) (time served imposed rather than guideline range of 70-87 months for young woman from abused background who was embarrassed by her drug sales and did not tell her family though she sold them to support them); *United States v. Handy*, 2008 WL 3049899 (E.D.N.Y. 2008) (court imposed 30 month sentence rather than guideline range of 37-46 months for 20-year-old who was effectively abandoned as an infant and separated from siblings,); *United States v. Santa*, 2008 WL 2065560 (E.D. N.Y. 2008) (court imposed 120 months as a variance from a guideline term of 262-327 months for a mentally ill defendant based on difficult childhood and life); *United States v. Germosen*, 473 F. Supp. 2d 221 (D. Mass 2007) (where guideline range was 37-46 months for conspiracy involving heroin importation, a sentence of 2 years of probation with six months home confinement was warranted partly because

defendant had dealt with and was prepared to overcome difficult circumstances of his youth).

In *United States v. Shift*, the district court departed ten months from the guideline range and imposed the mandatory minimum sentence, finding that defendant's lack of youthful guidance, and acceptance of responsibility indicated that ten additional months of incarceration would serve no deterrent or retributive purpose to defendant or to general public. 2008 WL 2906884 (N.D.Ind. 2008). Perhaps no argument better summarizes the situation as it relates to Greg. What would be gained by a longer sentence? Would eight years or more in prison versus five serve as a greater deterrence? Would it impose a more appropriate punishment?

In *United States v. Patzer*, the court imposed a sentence of less than one-half the guideline range taking into account the defendant's difficult childhood and that the defendant, like Greg, was never properly treated for the trauma associated with his childhood. 548 F.Supp.2d 612 (N.D.Ill. 2008). Greg has never received any form of treatment related to his childhood. Only prison.

2. Variant Factor- Impact on Innocent Dependents

Many of those who appear for sentencing before this court are fathers. Most, if not all of them profess their love for their children, but their words ring hollow because they

have little active involvement in their lives. There are also those fathers who make little to no effort to contribute to their children's financial well-being at any time, even when required to do so by court order. Greg has been absent from his children's lives only due to incarceration. When he is not incarcerated, he has been involved with his children physically, emotionally, and financially.

Courts have often addressed the issue of variant sentences because of family circumstances. A variance is warranted based on children of the offender, an issue examined in *United States v. Pereira*, 272 F.3d 76 (1st Cir. 2001). That Court found that the relevant question is the impact of incarceration on innocent dependents. *Id.* The *Pereira* Court held if a defendant is "irreplaceable" to his or her family a downward departure is appropriate. *Id.*

In *United States v. Schroeder*, 536 F.3d 746 (7th Cir. 2008), the Court remanded for resentencing when the sentencing court did not address defendant's claim of extraordinary family circumstances holding "[w]hen a defendant presents an argument for a lower sentence based on extraordinary family circumstances, the relevant inquiry is the effect of the defendant's absence on his family members." *Id.* It is clear that Greg's absence in his children's lives presents not only an "extraordinary circumstance," (collecting cases) (see *United States v. Lehmann*, 513 F.3d 805 (8th Cir. 2008) (affirming a downward variance to probation where the district court found that a prison sentence would negatively affect the defendant's disabled young son); *United States v. Mateo*, 299 F. Supp. 2d 201 (S.D.N.Y. 2004) (downward departure granted in heroin case where

defendant's two young children were thrust into the care of relatives who reported extreme difficulties raising them); *United States v. Antonakopoulos*, 399 F.3d 68 (1st Cir. 2005) (on remand of bank fraud case, district court may consider defendant's role as caretaker for brain-damaged son even though alternative means of care existed); *United States v. Dominguez*, 296 F.3d 192 (3rd Cir.2002) (district court erred in concluding it could not depart four levels in bank fraud case for defendant who resided with elderly parents, who were physically and financially dependent on her); *United States v. Owens*, 145 F.3d 923 (7th Cir. 1998) (departure from 169 to 120 months under § 5H1.6 for defendant who maintained good relationship with his children and court believed his active role raising and supporting his family was atypical for crack dealer and imprisonment may have forced wife on public-assistance and defendant also spent time with brother with Downs Syndrome); *United States v. Lehmann*, 513 F.3d 805 (8th Cir. 2008) (sentence of probation affirmed where justified by the atypical nature and circumstances of the felon in possession case and by the defendant's need to care for her nine year-old developmentally-disabled son); *United States v. Bailey*, 369 F. Supp. 2d 1090 (D. Neb. 2005) (post-Booker departure from 24-27 months to probation for defendant convicted of possessing child porn justified by expert testimony showing his presence was critical to his own child's recovery from molestation by a boyfriend of the child's mother, and there was reasonable expert assurance that Bailey was not dangerous to the public (including children), and the benefit to the public of incarcerating Bailey was outweighed by the harm it would cause to his daughter), but Greg is irreplaceable as

the father of his sons. They have no other paternal family. A lengthy absence from their lives only exposes them to the same absenteeism that Greg experienced from his own father.

3. Variant Factor - Age of Gregory Martin at the Time of the Underlying Convictions

U.S.S.G. § 4A1.3 recognizes that “[t]here may be cases where the Court concludes that a defendant's criminal history category over-represents the seriousness of a defendant's criminal history” (discussed *supra*). This is exactly one of those cases. The convictions that elevate this matter from a range of a seven to nine-year sentence to over double occurred when Greg was very young.

The Supreme Court has discussed the relationship of age and maturity to improper conduct. In *Roper v. Simmons*, the Court stated that “today our society views juveniles ... as categorically less culpable than the average criminal. ... Lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions. ... The susceptibility of juveniles to immature and irresponsible behavior means “their irresponsible conduct is not as morally reprehensible as that of an adult. ... The relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the

impetuousness and recklessness that may dominate in younger years can subside.” 125 S. Ct. 1183 (2005).

This view was expanded in *Gall*, *supra* where the Court noted that “youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage.” *Gall v. United States*, 128 S. Ct. 586, 601-2 (2007).

Greg was only 17 years-old when he was first convicted of drug offenses. He was then 19, 21, and 25 when he received the convictions which led to his extreme Career Offender enhancement. Experience tells us that many people, especially males, have negative contacts with police during their teenage years and into their 20s. That is especially true if the individual grew up in a dysfunctional home and was exposed to substance abuse and criminal behavior at a young age, which is certainly the case with Greg. See *Gall v. United States*, 128 S. Ct. 586, 593, 601 (2007) (discussion of defendant’s immaturity during the commission of the offense, as evidenced by his post-offense rehabilitation).

This Court has obviously encountered numerous defendants falling within each of the six criminal history categories. The question that now confronts this Court is whether, given its experience, Greg’s criminal history, which occurred long ago when Greg was young and immature, is representative of the seriousness of his current criminal propensity enough to be considered a category VI when compared to those whose

criminal activity is more recent and/or occurred at a more mature age. It is hard to see in any scenario how such offenses should double Greg's range. A downward departure pursuant to U.S.S.G. § 4A1.3 is not to say, of course, that Greg's prior convictions should be ignored. Rather, it implements the Sentencing Commission's recognition that in some case a defendant's criminal history category over-represents the seriousness of his or her criminal history especially when the convictions are outdated and occurred at a young and formidable age.

Even if the Court does not consider this as a separate departure, it is still a basis for a variance. Courts may vary from the guidelines to avoid the strict requirements of §4A1.3 and impose an outside-the-guidelines sentence based on the inadequacy of the defendant's criminal history category. *United States v. Collington*, 461 F.3d 805 (6th Cir. 2006) (post-*Booker*, a sentencing court has "greater latitude" to sentence outside the guideline range, and in "appropriate cases" may conclude that the criminal history category overstates the severity of the defendant's criminal history or that a lower sentence would still comply with and serve the mandates of section 3553(a)); *United States v. McGhee*, 512 F.3d 1050 (8th Cir. 2008) (*per curiam*).

4. Variant Factor – The Sentencing Guidelines are Too High in This Matter

The guideline sentence in this matter calls for 15-20 years for possession of 263 grams of cocaine. Various factors of the prescribed criminal activity suggest this sentence is extraordinarily high. There were no weapons or violence ever involved nor alleged.

There are no allegations of threats or intimidation, subordinates or an enterprise by Greg.

The minimum guidelines in this matter call for a sentence which is more than five times the average federal drug sentence. <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/11/prison-time-surges-for-federal-inmates>. A policy disagreement with the sentencing guidelines is a basis for a variance. *Kimbrough v. United States*, 552 U.S. 85, 101 (2007).

REQUESTED SENTENCING RECOMMENDATIONS

Based on the foregoing, Mr. Martin makes the following requests for Judicial recommendations at sentencing:

- 1) Mr. Martin be sentenced to 60 months' total incarceration with a supervised release period of four years;
- 2) Mr. Martin be housed at the Federal Correctional Institute in Otisville so that he may resolve his outstanding warrant in New York, with the additional

recommendation that he transfer to the Federal Correctional Institute in Berlin so he may be close to his family as possible for visitation purposes;

- 3) The Court recommend that Mr. Martin be placed in the 500-hour comprehensive drug treatment program;
- 4) That fines be waived and the minimum assessment be ordered in this matter.

Dated this 24th day of February 2020 at Portland, Maine.

Respectfully submitted,

/s/ David J. Bobrow, Esq.
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**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

UNITED STATES OF AMERICA)	
)	
VS.)	Docket No.: 2:18-CR-00124-JDL
)	
GREGORY MARTIN)	

CERTIFICATE OF SERVICE

I, David J. Bobrow, Esq., hereby certify that I have caused to be served via ECF Gregory Martin's Sentencing Memorandum on the following individuals:

1. Johnathan Nathans, Esq. at Johnathan.Nathans@usdoj.gov;
2. All other attorneys of record in this matter.

Dated this 24th day of February 2020 at Portland, Maine.

Respectfully submitted,

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