UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA	**)**	
	)	
VS.	**)**	**Docket No. 2:22-CR-0012-006-JDL**
	)	
GLENN ROBBINS, et al,	**)**	
DEFENDANT	**)**	

JASON PARENT'S SENTENCING MEMORANDUM

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A sentence of no incarceration with one years of probation is appropriate based on the history and characteristics of Jason Parent…….

BACKGROUND

1. Agreement for Purposes of Sentencing

There is a plea agreement in this matter calling for a joint recommendation of no incarceration, a sentence of probation of not less than 12 months and nor more than 24 months, community service of up to 50 hours during the period of probation, and restitution to the IRS in the amount of $21,157. *ECF* #506.

2. Pre-Sentence Report and Advisory Guidelines

The Presentence Investigation Report (hereinafter 'PSR') establishes a total offense level of ten and a criminal history category of I, with an advisory Guideline sentencing range of six to twelve months in Zone B, which may be satisfied by a term of probation. *PSR* ¶45.

3. Summary of Position

The maximum term of imprisonment for count one is six months. 16 U.S.C. § 1859(b) and one year for count two. 26 U.S.C. § 7203 and 18 U.S.C. § 3571(b)(5). Pursuant to USSG § 1B1.9, the sentencing guidelines do not apply to count one since it is a Class B misdemeanor. The appropriate guideline range is six to ten months incarceration. We ask the Court to sentence Mr. Parent to a sentence of zero months incarceration, with one year of probation. This sentence 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. We further ask that the Court to find extraordinary circumstances exist and waive any fine or community service requirement.[1]

[1] It is within the Court's jurisdiction to modify the fine or the community service requirement. *United States v. Poseley* 2013 U.S. Dist. LEXIS 6587 (D. AZ 2013).

4. Introduction to Jason Parent

Jason Otis Parent was born in Dover, New Hampshire on August 28, 1972 to Arthur and Juanita Parent now of Northport, Maine. He has three siblings and maintains a close relationship to two of them as well as his parents. Jason recalls his very good childhood, stating growing up in South Berwick, Maine on a 400-acre farm in front of their property and a 700-acre farm behind them. He was a very good athlete in the football devoted community of Marshwood, something he attributes to farm-life as a child.

"I was incredibly strong and a lot of that was because I was doing farm work as a boy." He also loved dirt biking and playing with friends.

"Other kids were always at our house, probably because of the huge area, there was so much to do. We were always playing some sport on the farm and had makeshift football and baseball fields. Long before Field of Dreams[2], we had cornstalks as our homerun."

His family remained in South Berwick until he was a sophomore in high school when they moved to Canada because his father took over a church on Grand Manan Island, in the province of New Brunswick. That was really hard on Jason.

"Until then, I had been in the same place since I was a toddler, was really popular, and had a great life at Marshwood. I really don't remember much about Canada as I think I kinda blocked it out."

[2] In the hit movie from 1989, starring Kevin Costner, the corn stalks had various meanings, but in a poignant scene, the ballplayers and the writer played by James Earl Jones, disappear in them.

His family remained in Canada for two years before coming back to South Berwick where he graduated high school.

“I was so happy to be back. It was like I never left. I had my friends and was playing football again although I missed our state championship in 1989.”

Jason graduated from Marshwood High School in South Berwick in 1990. He went to Bridgton Academy to play football for an extra year before attending school at University of Maine in Orono (UMO). Although he originally intended on trying to play football there, he ended up dealing with some physical injuries and decided not to pursue football any further. He graduated from UMO in 1995 with a business degree.

After graduation, he moved to New Hampshire. Although he graduated with a degree in business, what he was really good at was cooking. For several years, he worked the business and cooking angle, in various roles at restaurants and smaller fine food stores. It was during this time that he met his future wife, Kesh when she was managing a Weathervane Seafood Restaurant in Kittery, Maine. They knew each other in high school and then reconnected. It was at this time that a friend of his came up with a perfect idea that fit Jason’s skillset; they would open a prepared food butcher shop. The business was a rousing success. With a successful career blooming, Jason decided it was the right time to get married to his childhood crush.

“I had always loved Kesh, even back in high school. She was and is the nicest person to everyone.”

Within a four-year period, Jason opened eight The Meat House locations before franchising. At its peak, he had 33 locations. But unfortunately, it overextended, and the business fell apart. For the first time in his life, Jason experienced significant failure.

“It was really depressing. I think I made a lot of business mistakes. I simply didn’t have the expertise to run multiple businesses. I was really good at one where I could cook and have control over the food. I was scared for my family including my young daughters.”

When the business closed, he moved back to Maine to be close to his and Kesh’s family. It also gave him the opportunity to reflect. He had a wonderful wife and two very young daughters, who meant the world to him.

“My daughters, like my wife, are just perfect human beings. They are respectful, sweet, smart and super talented.”

In 2015, Jason started working on fishing boats. He can do all areas of work but his cooking talents, work ethic, and strength are perfect for the modern role on a fishing vessel. He began to work part time on the Western Sea, eventually moving to a full-time role when there were crew changes.

“Because I am the newest crew member, I still have the tasks that no one wants. I clean the bathroom and cooking area. But I also am the cook so much of my time is in that role. As Neil Herrick noted, Jason’s cooking helps make an otherwise difficult few days, that much easier.

"I love my crew. It's funny though. We are like brothers when we are at sea, but don't really spend time together when we are back at home. Those guys are the best though," says Jason about his crewmates.

"I have a great life. I have a wonderful wife and two children who I couldn't be more proud of."

And Jason does have much to be happy about. He doesn't have physical or mental health issues nor substance abuse problems. Today, his family lives on a farm in Kittery, Maine with rescue animals. His wife works part time helping her mother run a sandwich shop. He is very much looking forward to the final resolution of the criminal case.

"I made very serious mistakes and I fully acknowledge them. I truly am a good person and more importantly, my wife and daughters are better people and I don't want my mistakes to hurt them."

5. Non-Guideline or Variant Sentence

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). 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)). Courts need not adhere to the rigidity of the Sentencing Guidelines. *United States. v. Booker*, 543 U.S. 220 (2005). In fact, the district judge may not simply rely upon the Sentencing Guidelines. *Gall v. United States*, 552 U.S. 38, 39 (2007); *Peugh v. United States*, 133 S.Ct. 2072, 2080 (2013).

A departure and/or variant 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, medical care, or other correctional treatment in the most effective manner.*

ARGUMENT

I. A Sentence of Zero Months Incarceration is Appropriate Based on the History and Characteristics of Jason Parent

A. Jason Parent should receive a departure on count one due to a minor role.

Mr. Parent was a 'minor participant' in count one under USSG § 3B1.2(b).[3] This section provides an adjustment of 2, 3, or 4[4] levels if the defendant is "substantially less culpable than the average participant." *Id.* This only needs to be shown by a preponderance of evidence. See *United States v. Vargas*, 560 F.3d 45, 50 (1st Cir. 2009).

The Sentencing Commission amended the commentary in this provision to agree with the Seventh and Ninth Circuits that the defendant is to be compared with the other participants "in the criminal activity," *see e.g., U.S. v. Benitez*, 34 F.3d 1489, 1498 (9th Cir. 1994); *U.S. v. Cantrell*, 433 F.3d 1269, 1283 (9th Cir. 2006); *U.S. v. DePriest*, 6 F.3d 1201, 1214 (7th Cir. 1993), thus abrogating cases that compare to persons participating in *similar* crimes. *See U.S. v. Santos*, 357 F.3d 136, 142 (1st Cir. 2004) and *U.S. v. Rahman*, 189 F.3d

[3] *Arguendo*, Mr. Parent could actually be considered a 'minimal participant,' however *United States v. Rodriguez-Guerrero*, 278 Fed. Appx. 2 (Cir. 2008) seems to weaken this position, while strengthening that he was a 'minor participant. In that matter, the court found the Defendant was a minor participant after stating "{h}ere, the record shows a plausible basis for believing that the appellant was more than a minimal participant. She registered the minivan used to transport the contraband in her own name, drove it to the Dominican Republic, waited while the drugs were loaded aboard, and then tried to smuggle them into the United States. This course of conduct, coupled with the quantity and type of drugs -- upwards of two kilograms of heroin -- argues convincingly against a finding of minimal participation." *Id.* While that matter was a drug case, it showcases that one was a minor participant by operating the vehicle and had direct knowledge of the illegality. This would parallel these facts, even though no testimony established that Mr. Parent operated the boat.

[4] It is understood that count one does not factor into the sentencing guidelines, so any reduction would be based on the Court's cumulative sentence.

88, 159 (2nd Cir. 1999). The Commission also amended the commentary to provide that "the fact that a defendant performs an essential or indispensable role in the criminal activity is not determinative" and does not bar a mitigating role adjustment, thus abrogating *U.S. v. Skinner*, 690 F.3d 772, 783-84 (6th Cir. 2012), *U.S. v. Panaigua-Verdugo*, 537 F.3d 722, 725 (7th Cir. 2008), *U.S. v. Deans*, 590 F.3d 907, 910 (8th Cir. 2010), and *U.S. v. Carter*, 971 F.2d 597, 600 (10th Cir. 1992). The mitigating role is applied inconsistently and more sparingly than the commission intended. Supp. Appendix C (November 1, 2016).

To qualify as a minor participant, a defendant must prove that he is both less culpable than his cohorts in this criminal endeavor[5] and less culpable than the majority of those within the universe of persons participating in similar crimes. *United States v. Santos*, 357 F.3d 136, 142 (1st Cir. 2004). Mr. Parent was not present for many of the trips that are alleged to contain underreported fish. His name never appeared on any signature related to fish reporting. He has completely acknowledged his complicity in cashing checks and dividing cash among his crewmates although he had less checks that were provided to him than the co-defendants that proceeded to trial. Finally, he had no involvement whatsoever with Captain R. Herring. It simply cannot be said that Mr. Parent had any essential role.[6]

[5] "[S]ection 3B1.2 focuses on the role of a defendant with respect to the offense(s) of which he was convicted." *United States v. Neal*, 36 F.3d 1190, 1211 (1st Cir.1994).

[6] The Court may also recall that an entire day of testimony was presented without Jason Parent's name being mentioned and with two Government witnesses stating on cross examination that they did not know who Jason Parent was.

B. Variant Factors

1. Variant Factor- Cost of Incarceration Instead of Supervision

The annual cost of detaining federal prisoners before trial and after sentencing is significantly higher than the cost of supervision in the community, according to figures compiled by the Administrative Office of the U.S. Courts. This was the subject of an extensive study just seven years ago. In the last major study on the issue, it found that in fiscal year 2016, detaining an offender before trial and then incarcerating him post-conviction was roughly eight times more costly than supervising an offender in the community. Placing an offender in a residential reentry center was about seven times more costly than supervision. United States Courts, published on August 17, 2017, found at http://www.uscourts.gov/news/2017/08/17/incarceration-costs-significantly-more-supervision.

This is also summarized (and updated) in the PSR. *PSR* ¶*57*As the graph shows, it would cost over $3700 more per month to incarcerate Jason as opposed to supervising him. *Id.* See also Speech of Former Attorney General Eric Holder delivered on August 12, 2013 before the ABA convention in San Francisco: "Our current incarceration polity "imposes a significant economic burden — totaling $80 billion in 2010 alone — and it comes with human and moral costs that are impossible to calculate." found at http://www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-130812.html.

To calculate specifically, a six-month sentence in this matter would cost $24882.00 while a one-year period of probation would cost $4,387.00 *PSR ¶60.*

Courts that have addressed this issue have cited these findings when imposing sentences. See *United States v. Moreland*, 366 F.Supp.2d 416, 422 (S.D.W.Va. 2005)(imposition of guideline sentence would cost the taxpayers an enormous amount of money) *remanded on other issue; United States v. Angelos*, 345 F.Supp.2d 1227 (D. Utah 2004) ("Given that holding a person in federal prison costs about $23,000 per year… . [M]oney could also be spent on other law enforcement or social programs that in all likelihood would produce greater reductions in crime and victimization"); *United States v. Chavez*, 230 F.3d 1089, 1092 (8th Cir. 2000) (Bright, J., concurring) ("It costs the United States government and its taxpayers approximately $22,000 per year to keep a federal offender in prison. Therefore, it will cost the taxpayers $836,000 for his incarceration. This sentence is a waste of time, money, and more importantly, a man's life. These unwise Sentencing Guidelines put nonviolent offenders in prison for years, they ruin the lives of the prisoners, their families, and they also hurt our economy and our communities by draining billions of dollars from the taxpayers and keeping potentially productive members of society locked up. The opportunity costs imposed by the Sentencing Guidelines are staggering")[7]; *United States v. Bernier*, 758 F.Supp. 195 (S.D.N.Y. 1991)(sentencing distortion "produces an economic as well as personal

[7] It is noteworthy that Jason, like Mr. Chavez, was convicted of a non-violent offenses.

consequence"); *United States v. Hughes,* 825 F.Supp. 866, 868 (D.Minn.,1993) ("[L]engthy incarceration substantially diminishes the likelihood that the defendant will be able to become a productive member of society upon his release. Second, the monetary cost to the American taxpayer of this incarceration will exceed $270,000. Further, the non-rehabilitation purposes of incarceration-retribution, deterrence and incapacitation-would all be more than adequately served by a far shorter sentence. Both society and the defendant will pay a dear cost for this sentence and receive very little in return.")

a. Incarceration in this matter will not serve as a deterrence

Empirical studies show there is no relationship between sentence length and general or specific deterrence. See Andrew von Hirsch *et al.*, *Criminal Deterrence and Sentence Severity: An Analysis of Recent Research* (1999); Michael Tonry, *Purposes and Functions of Sentencing*, 34 Crime and Justice: A review of Research 28–29 (2006); David Weisburd *et al.*, *Specific Deterrence in a Sample of Offenders Convicted of White-Collar Crimes*, 33 Criminology 587 (1995); Donald P. Green & Daniel Winik, *Using Random Judge Assignments to Estimate the Effects of Incarceration and Probation on Recidivism among Drug Offenders*, 48 Criminology 357 (2010) (all concluding there is no correlation between sentence length and crime rates).

Incarceration can be deleterious to public safety for individuals like Jason whose convictions are non-violent. *See, e.g., United States Sentencing Commission*, Sentencing Options Under the Guidelines (1996) (recognizing the "criminogenic effects of imprisonment which include contact with more serious offenders, disruption of legal employment, and weakening of family ties"); Justin Murray, *Reimagining Criminal Prosecution*, 49 American Criminal Law Review (2012) at 1565 ("Rather than rehabilitating prisoners, modern incarceration tends to make prisoners more violent, antisocial, and prone to criminality"). "Most who study prison life believe there are significant brutalizing effects to imprisonment that impair prisoners' inclination to conform to the law." *Id*. quoting Dina R. Rose & Todd R. Clear, *Incarceration, Social Capital and Crime: Implications for Social Disorganization Theory*, 36 Criminology 442, 465 (1998). See *also United States v. Bannister*, 786 F.Supp.2d 617 (E.D.N.Y., 2011) ("Recidivism may be promoted by the behavior traits prisoners develop while incarcerated." To survive, they "tend to develop characteristics institutionally selected for survival: circumspection, canniness, coldness, and cruelty.") Furthermore, according to "the best available evidence, . . . prisons do not reduce recidivism more than noncustodial sanctions." Francis T. Cullen *et al., Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science*, 91 Prison J. 48S, 50S–51S (2011).

Courts across the country are recognizing the value to the defendant and the public of treatment instead of incarceration. They are acknowledging that for certain offenders,

probation or home detention with cognitive treatment is the appropriate sentence. *United States v. Duhon*, 541 F.3d 391 (5th Cir. 2008) (where defendant convicted of possession of child pornography and guidelines called for 33–40 months prison, district court's sentence to probation reasonable in part because of district court's "strong emphasis on [defendant's] general need for treatment"); *United States v. Whitehead*, 532 F.3d 991 (9th Cir. 2008)(in matter where guidelines of 41-51 months, court's sentence of probation not an abuse of discretion); *United States v. Vega***,** 545 F.3d 743 (9th Cir. 2008) ("We agree with the Seventh Circuit that the imposition of … conditions will further the statutory goal of providing 'the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.") *United States v. Autery*, 555 F.3d 864 (9th Cir. 2009) (where defendant convicted of possession of pornography and where guidelines 41-51 months, court's *sua sponte* variance to probation not unreasonable in part because in light of district court's 'stern warning' of maximum sentence to follow any violation "improbable that the district court's stern warning will be an ineffective deterrent in this case.")

Finally, in this matter, Jason will be sentenced five years from the date of the last criminal activities. "The deterrent value of any punishment is, of course, related to the promptness with which it is inflicted." *Coleman v. Balkcom*, 451 U.S. 949, 952 (1981)(*Stevens, J.*, concurring in denial of cert.)

2. Variant Factor- Post-Arrest Conduct

"In determining the sentence to impose within the guideline range, or whether a departure from the guidelines is warranted, the court may consider, *without limitation*, any information concerning the background, character and *conduct of the defendant*, unless otherwise prohibited by law. *See* 18 U.S.C. §3661." *USSG §1B1.4* (2010)(emphasis added). In *Pepper v. United States*, the Supreme Court stated that "fundamentally, evidence of Pepper's conduct since his release from custody in June 2005 provides the most up-to-date picture of Pepper's history and characteristics." 562 U.S. 476 (2011).

Jason's criminal conduct was between eight and five years ago. Since that time, he has avoided any legal issues, release violations, positive drug or alcohol tests, and has continued to provide for his family. He has remained actively employed. His conduct while on pretrial release clearly shows that there is minimal chance of recidivism.[8] See *United States v. Munoz-Nava*, 524 F.3d 1137 (10th Cir. 2008)(defendant's "behavior while on a year-and-a-half pretrial release, which the district court found to be exemplary" shows defendant unlikely to reoffend); *United States v. Baker,* 502 F.3d 465 (6th Cir. 2007)(where defendant pled guilty to possession of unregistered firearm arising from altercation with wife during which gun accidentally discharged and guideline range was 27-33 months, below-guideline sentence of probation with one year

[8] See *Section I(B)(1)(a), supra.*

house arrest proper in part because he behaved "exceedingly well" while under supervision of pretrial services).

In *United States v. Clay*, the Court sentenced the Defendant to 1/3 of the low end of the guidelines. 483 F.3d 739 (11th Cir. 2007). The Court held that considerations of post offense rehabilitation are appropriate when a district court evaluates the history and characteristics of the defendant and the need to protect the public from further crimes specifically stating that "a departure for post offense rehabilitation reflects that, unlike some other defendants, Clay had fundamentally changed since his offense, poses a lesser risk to the community, and does not require incarceration for too long." *Id.* at 743. These factors all exist in this matter. See *U.S. v. Johnson* 588 F.Supp.2d 997 (S.D. Iowa 2008)("The Court views Defendant's behavior during the three-year period between the seizure of his computer and his indictment as a good indication of what society can expect from him after he completes his sentence [and is a factor court considers in imposing sentence]"); *United States v. D.M.* , 942 F.Supp.2d 327 (E.D.N.Y. 2013) (Weinstein, J.)(guidelines 78-90 months, sentence of probation warranted in part because "[e]vidence of a defendant's efforts at rehabilitation is persuasive. It is indicative of the likelihood that a defendant will not reoffend and will not cause harm to the public"); Brenda L. Tofte, *Booker at Seven: Looking Behind Sentencing Decisions: What Is Motivating Judges?*, 65 Ark. L. Rev. 529, 572-73 (2012) ("[W]hen it comes to sentencing, judges look at what offenders have done to rehabilitate themselves when deciding what kinds of sentences to assign. Accordingly, in the data set . . . sentencing

judges were swayed by offenders' rehabilitation efforts almost as much as they were swayed by offenders' family obligations and family support.")

3. Variant Factor- Impact on Innocent Dependents

Jason's family very much rely upon him for financial support. Any jail sentence would have a significantly detrimental impact on them. Courts have addressed the issue of sentences based on family circumstances. A departure can be warranted based on children of the offender, an issue examined in *United States v. Pereira*, 272 F.3d 76 (1st Cir. 2001). The Court found that the relevant question is the impact of incarceration on innocent dependents. *Id.* The *Pereira* Court held that a defendant must be found to be "irreplaceable" to his or her family before the Court can depart downward under this section. *Id*. Jason is clearly irreplaceable as his wife only has part-time work.

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 his absence on his family would be financially devastating and thus, an "extraordinary circumstance." See also *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. Jan. 17, 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); *United States v. Pauley*, 511 F.3d 468 (4th Cir. 2007) (where client pled to possession of child porn. and guidelines 78-97 months, court's downward variance to 42 months affirmed in part because defendant "is a good parent" which is a "valid consideration under § 3553(a).")

4. Variant Factor- Employment History

Jason remains employed as a fisherman, a position he has held since 2015. Previous to this position, he was always actively employed or ran his business. Numerous courts have considered current and past employment as a factor for consideration in sentencing. In *United States v. Ruff*, 535 F.3d 999, 1001 (9th Cir. 2008), the circuit court affirmed the district court's consideration of the defendant's "history of strong employment" in granting a variance from 30-37 months' imprisonment to one day of imprisonment followed by three years' supervised release (to be partially served in a community confinement facility), in part so that the defendant could continue to work. *Id.* In a case involving heroin trafficking, the Tenth Circuit affirmed a below guideline sentence under 18 U.S.C. § 3553(a) of one year and a day in prison, plus a year of home confinement and five years of supervised release, where the guidelines called for a sentence of 63-78 months. See *United States v. Munoz-Nava*, 524 F.3d 1137 (10th Cir.

2008). Among other things, the district court considered the defendant's stable employment history as evidence that he was unlikely to reoffend. *Id*. at 1148-49. The Third Circuit affirmed a below-guideline sentence of probation, community service, restitution, and fine on a conviction for tax evasion, which was based in part on the defendant's employment record. *United States v. Tomko*, 562 F.3d 558, 571 (3rd Cir. 2009) (*en banc*) ("{t}his variance took into account his negligible criminal history, his employment record, his community ties, and his extensive charitable works as reasons for not incarcerating the defendant.")

II. Mr. Parent Does Not Have the Ability to Pay a Fine and the Court Should Order No Community Service

In ¶ 43 of the PSR, Probation states that "it does not appear [Mr. Parent] will be able to pay a fine either immediately or on an installment basis." Mr. Parent agrees with this assessment and adds he could not afford to pay a fine in the future as well. Under 18 U.S. Code § 3572, "In determining whether to impose a fine, and the amount, time for payment, and method of payment of a fine, the court shall consider, in addition to the factors set forth in section 3553(a)—(1) the defendant's income, earning capacity, and financial resources; and (2) the burden that the fine will impose upon the defendant, any person who is financially dependent on the defendant, or any other person (including a government) that would be responsible for the welfare of any person financially

dependent on the defendant, relative to the burden that alternative punishments would impose … ."

As noted in ¶ 35 of the PSR, Mr. Parent is a provider for his family, thus his children and wife are financially dependent upon the earnings he provides. "The 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). "In determining whether and to what extent to impose a fine, the district court must consider not only the § 3553(a) factors, but also the fine-specific factors set forth in 18 U.S.C. §§ 3571 and 3572, and U.S.S.G. § 5E1.2(d)." *United States v. Zakharia*, 418 F. App'x 414, 424 (6th Cir. 2011) This requires the district court to assess: "(1) the defendant's income and earning capacity, (2) his financial resources, (3) the burden on the defendant and his dependents, (4) whether restitution is ordered and the amount of restitution, (5) the need to deprive the defendant of illegal gains, and (6) the need to promote respect for the law." *United States v. Jackson-Randolph*, 282 F.3d 369, 387 (6th Cir. 2002).

Additionally, Mr. Parent has been assigned counsel in this matter. "The fact that a defendant is represented by assigned counsel is a significant indicator of present inability to pay a fine. In conjunction with other factors, [it] may also indicate that the defendant is not likely to become able to pay any fine." U.S.S.G. § 5E1.2 cmt. n.3. *United States v. Healy*, 553 Fed. Appx. 560 (6th Cir. 2014).

Based on these factors, there are better financial options than ordering the payment of a fine. See *United States v. Sager* 227 F.3d 1138 (9th Cir. 2000)("Moreover,

under section 5E1.2(e), if a defendant establishes inability to pay a fine in either a lump sum or through an installment plan, or if the fine would unduly burden the defendant's dependents, a court may impose a lesser fine or waive the fine, and must consider "alternative sanctions [such as community service] in lieu of all or a portion of the fine."") Additionally, Mr. Parent has a mandatory amount due to the IRS as restitution. Tax debt is a factor for the Court in determining the ability to pay a fine. See *United States v. Wood*, 384 Fed. Appx. 698 (10th Cir. 2010)

Additionally, Mr. Parent would ask that the Court not order community service. The Court retains the authority to order a specific amount or none at all. The plea agreement allows for probation to make this determination but for the same reasons addressed above, Mr. Parent seeks the Court to order no community service.

SUMMARY

"If ever a man is to receive credit for the good he has done, and his immediate misconduct assessed in the context of his overall life hitherto, it should be at the moment of his sentencing, when his very future hangs in the balance. This elementary principle of weighing the good with the bad, which is basic to all the great religions, moral philosophies, and systems of justice, was plainly part of what Congress had in mind when it directed courts to consider, as a necessary sentencing factor, "the history and characteristics of the defendant." *United States v. Adelson*, 441 F.Supp.2d 506 (S.D.NY

2006). Jason has lived a life overwhelmingly free of legal difficulties. He has a wonderful family and has maintained employment and community ties during this difficult period. We ask the Court to consider all these factors when affixing sentence.

REQUESTED SENTENCING RECOMMENDATIONS

Based on the foregoing, Jason makes the following requests for Judicial recommendations at sentencing:

1) Jason be sentenced to zero months incarceration;
2) Jason be placed on probation for a period of one year with the conditions proposed in PSR ¶63, 65.
3) The Court find extraordinary circumstances exists and order no fine or community service. In the alternative, order a $100.00 fine as opposed to any community service.

Dated in Portland, Maine this 25th day of June 2024.

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. 2:22-CR-0012-006-JDL**
	)	
GLENN ROBBINS, et al,	**)**	
DEFENDANT	**)**	

CERTIFICATE OF SERVICE

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

1. Joyce, David (USAME) David.Joyce@usdoj.gov
2. All other attorneys of record in this matter.

Dated in Portland, Maine this 25th day of June 2024.

Respectfully submitted,

s/David J. Bobrow, Esq.

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