

STATE OF VERMONT

SUPERIOR COURT
Bennington Unit

CRIMINAL DIVISION
Docket [REDACTED]

STATE OF VERMONT

v.

[REDACTED]
Defendant

DEFENDANT'S SENTENCING MEMORANDUM

NOW COMES Defendant [REDACTED] by and through counsel, and hereby submits the following sentencing memorandum.

Background

Mr. [REDACTED] was born on March 24, 1966. He is nearly 58 years old. He was born in [REDACTED], NY as the second of three children. Since then, he has lived most of his life in the [REDACTED], NY area.

Mr. [REDACTED] was born into an impoverished environment, which included parents struggling with substance abuse and mental health issues. Mr. [REDACTED] father inflicted physical abuse upon him, while his mother, who was suffering with paranoid schizophrenia, was unable to protect him.

Mr. [REDACTED] has repressed many of his childhood traumas, but he can recall an incident in which his mother intentionally spilled hot water on him. The resulting harm was second degree burns, which triggered medical intervention, the hospitalization of his mother, and the intervention of child protective services. Unfortunately, Mr. [REDACTED] was placed with his alcoholic grandmother, which failed to prevent further exposures to trauma.

Upon reaching adulthood, Mr. [REDACTED] inherited and was imprinted with mental health and substance abuse issues that are not immediately reversible. Mr. [REDACTED] sister, who successfully broke the family cycle, became a psychiatric nurse at the [REDACTED] Psychiatric Center. She describes her brother as inheriting their mother's paranoia along with their father's addictive personality. Thomas Powell, Ph.D. shares that opinion. In short, Mr. [REDACTED] struggles in life are related to aspects of his personality with which he was born as well as the environmental traumas inflicted upon him. As such, Mr. [REDACTED] life has been a continuous cycle of getting sober, working, having relationships, becoming paranoid within those relationships, and relapsing with alcohol and cocaine. That pattern is at the heart of this case.

Here, Mr. [REDACTED] got and maintained his sobriety for several years leading up to the spring of 2019. He became gainfully employed, he commenced an intimate relationship with Ms. Paquin, and he engaged in counseling for his paranoia and substance abuse issues.

Unfortunately, Mr. [REDACTED] as occurs with individuals with his mental health issues, struggled to manage his paranoia and address his traumatic past. These struggles negatively impacted his intimate relationship with Ms. [REDACTED] and they engaged in couples counseling. Still, Mr. [REDACTED] continued to experience paranoia stemming from his childhood traumas.

Ms. [REDACTED] at least in part due to those issues, ended her relationship with Mr. [REDACTED] in March of 2019. A few weeks after that, Ms. [REDACTED] re-commenced the relationship by sending Mr. [REDACTED] a bus ticket to return to Vermont. But after a few weeks, Ms. [REDACTED] ended the relationship again.

Mr. [REDACTED] paranoia that Ms. [REDACTED] was unfaithful grew, and he started to relapse with both drugs and alcohol. Additionally, Mr. [REDACTED] was without his psyche medications

because they were still at Ms. [REDACTED] residence. Effectively, between March of 2019 and the assault on or about May 25, 2019, Mr. [REDACTED] became a version of himself that was unsafe and atypical, and it was that version of himself that assaulted Ms. Paquin.

Since Mr. [REDACTED] incarceration shortly after that assault, he has stabilized and improved himself mentally, physically, and spiritually. Mr. [REDACTED] engaged in treatment while incarcerated and worked his way towards being an official mentor for other inmates. Moreover, Mr. [REDACTED] has never tried to minimize his assault on Ms. Paquin. He acknowledges that he inflicted serious physical injuries upon Ms. [REDACTED]. The purpose of this memorandum is to highlight the causes that triggered Mr. [REDACTED] actions as well as note the improvements he has made personally in the intervening years.

Sentencing Analysis

I) Applicable Law

Pursuant to 13 V.S.A. § 7030, in determining an appropriate sentence, the Court shall, “consider the nature and circumstances of the crime; the history and character of the defendant; the defendant’s family and relationships; the impact of any sentence upon the defendant’s minor children; the need for treatment; and the risk to self, others, and the community at large presented by the defendant.”

Additionally, in tailoring a sentence that is particular to Mr. [REDACTED] the Court should also consider other relevant factors. State v. Rodriguez, 2023 VT 59, ¶ 14. Other factors may include the circumstances and length of Mr. [REDACTED] pretrial detention, the effect on the community of imposing a disparate sentence upon an African American, consideration of the equal protection clause of the 14th Amendment to U.S. Constitution, consideration of the

proportionality clause of Chapter II, § 39 of the Vermont Constitution, specific and general deterrence, punishment, acceptance of responsibility, etc.

In weighing all the referenced factors, the Court has discretion to impose a sentence within the statutorily authorized range, including the imposition of concurrent or consecutive sentences. However, the Court should be mindful of whether the imposed sentence is disparate to sentences imposed upon similarly situated individuals.

II) Available Sentencing Range

Following extensive negotiations, Mr. [REDACTED] plead guilty to:

1) 182-5-19 Ancr:

- a. Count 1, Aggravated Domestic Assault, First Degree, felony, 15 year max;
- b. Count 2 - Amended, Unlawful Trespass, felony, 3 year max;

2) 230-7-19 Ancr:

- a. Count 1, VAPO, misdemeanor, 1 year max;

3) 302-8-19 Ancr:

- a. Count 1, VAPO - Attempt, misdemeanor, 6 months max;

4) 21-CR-08029:

- a. Count 1, VAPO, misdemeanor, 1 year max;
- b. Count 2, VCR, misdemeanor, 6 months max

The statutory sentencing range for the referenced charges is zero (0) to twenty-one (21) years.

However, the Court should only consider a sentencing range between zero (0) and fifteen (15) years. Although the Blockburger test does not technically apply, it would be unjust and outside the standard practice to impose sentences consecutive to the Agg. DA first-degree charge. The practical reality is the conduct that should be the central focus for Mr.

■■■■■ sentencing relates to that charge. The unlawful trespass and Agg. DA first-degree are intertwined to such a degree that one could not have been committed without the other. The VAPOs are for the sending of non-threatening letters, and Mr. ■■■■■ after regaining his stability, has not sent any letters to Ms. ■■■■■. The VOCR relates to the same letter giving rise to the VAPO charge in the same docket number. Moreover, against the backdrop of all the mitigating information presented herein, even fifteen (15) years is too long of a maximum sentence.

Accordingly, the remainder of this memorandum will only focus on analyzing an appropriate sentence for the Agg. DA first-degree.

III) Sentencing Factors

a. Introduction

In the proceeding paragraphs, Mr. ■■■■■ provides information and analysis that is relevant to the referenced sentencing factors, and he requests that the Court consider it. In the summary section, all the referenced information is analyzed under the following broader categories. 1) Rehabilitation; 2) Safety of the Community; 3) Deterrence – specific and general; 4) Punishment; and 5) Equity in Sentencing

b. Statistical Data

A SAC “is a state-level organization created to collect, analyze, and report statistics on crime and justice to Federal, state, and local levels of government, and to share state-level information nationally.”¹ Vermont’s SAC was under the Vermont Center for Justice Research

¹ See Vermont’s Statistical Analysis Center (SAC) & Crime Research Group (CRG): Frequently Asked Questions, attached hereto and incorporated herein as “Exhibit A”.

(VCJR) until 2014.² It was then moved to the Vermont Department of Public Safety.³ The VT Department of Public Safety then contracted with a non-profit organization, Crime Research Group (CRG), to perform the obligations of a SAC.⁴ For context, CRG was formed in 2014 with staff from VCJR.⁵ Currently, CRG is the only organization in Vermont that focuses on crime-related data analyses, research, and evaluation.⁶

In 2020 and 2023, the defense sent requests for sentencing statistics related to Agg. DA first-degree. In 2020, the following data was obtained: 1) 2007-2019, average sentences imposed for every county in Vermont; and 2) 2018-2019, average sentences imposed for every county in Vermont.⁷ In 2023, the following data was obtained: 1) 2017-2022, every sentence imposed for Agg. DA first-degree in Vermont; and 2) 2017-2022, average sentences imposed for every county in Vermont.⁸ Additional data related to VAPO and VOCR was obtained, but it is not discussed herein for the reasons previously identified.⁹

Addison County

For Addison County, the following sentencing information is available:

² Id.

³ Id.

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Statistical Data attached hereto as “Exhibit B”.

⁸ Statistical Data attached hereto as “Exhibit C” and “Exhibit D”.

⁹ Note: the data suggests that a prison sentence is not typically imposed for VAPO and VOCR.

2007-2019 ¹⁰	Average Min. Years	Average Max Years	Average Days on Split	# of Records
Deferred	3	N/A	N/A	N/A
Incarcerated	2.2	6.6	N/A	11
Probation	1.5	4.5	N/A	2
Split Sentence	1.3	3.3	145.3	4

2017-2022 ¹¹	Average Min. Years	Average Max Years	Average Days on Split	# of Records
Deferred	0	N/A	N/A	2
Incarcerated	1.8	4.33	N/A	7
Probation	N/A	N/A	N/A	N/A
Split Sentence	N/A	N/A	N/A	N/A

Statewide, 2007-2019¹²

Across the state, three hundred and thirty-six (336) cases resulted in straight incarceration, fifty-one (51) cases resulted in probation, eighty-nine (89) cases resulted in a split sentence, and ninety-seven (97) cases resulted in a deferred sentence.

Chittenden County imposed the largest number of straight incarcerations, sixty-four (64), with an average sentencing range of two and eight tenths (2.8) of a year to six and nine tenths (6.9) of a year. Franklin County imposed the second largest number of straight

¹⁰ Exhibit B

¹¹ Exhibits C & D

¹² Exhibit B

incarcerations, forty (40), with an average sentencing range of one and seven tenths (1.7) of a year to six and one tenth (6.1) of a year.

Thirteen (13) of the fourteen (14) counties reported an average minimum sentence less than three (3) years. Orange County is the only one that reported an average minimum sentence greater than three (3) years. That number was three and one tenth (3.1) of year, and it was based on only eight (8) cases.

Ten (10) of fourteen (14) counties, which accounted for two hundred and sixty (260) of the three hundred and thirty-six (336) straight incarceration cases, reported an average maximum sentence less than seven (7) years. Windsor County imposed the highest average maximum sentence, nine and seven tenths (9.7) of a year. That average was based on only twenty-three (23) cases, and the average minimum sentence was less than three (3) years. Moreover, there was an outlier case in which a defendant received a ninety-nine (99) year maximum sentence in 2018.

Statewide 2017-2022¹³

During this period, there were three hundred and seven (307) sentences imposed for Agg. DA first degree. There is an obvious overlap with the figures reported in the previous subsection, but the data from this period tends to reflect a more even distribution of sentences imposed for Agg. DA first degree throughout the state. Orleans sentenced forty (40) defendants, Rutland and Windham sentenced thirty-six (36) defendants, and Bennington sentenced (35) defendants. However, not all the sentences imposed were straight sentences, as each county imposed a variety of sentence types (i.e., probation, split, deferred, or straight).

In terms of straights sentences, Orleans imposed an average minimum sentence of

¹³ Exhibits C & D

1.67 years and an average maximum sentence of 4.75 years. Those figures for Rutland, Windham, and Bennington were: 1) 3.21 years to 5.5 years; 2) 2.26 years to 5.48 years, and 3) 2.95 years to 5.42 years. The Court should note that the average sentences have decreased in recent years, which tends to align with society's willingness to accept that lengthier incarcerations do not solve the underlying problems leading to the crimes committed.

As it relates to all the sentences imposed throughout the state between 2017 and 2022, only fifteen (15) defendants out of three hundred and seven (307) received a minimum sentence greater than five (5) years, and only ten (10) received a maximum sentence of fifteen (15) years. It is also worth noting that several of those sentences were not straight sentences.

Summary

The historical sentencing data related to Agg. DA first-degree indicates that, if a straight incarceration sentence is appropriate, a range of two (2) to six (6) or seven (7) years should be the guiding range for that sentence. Imposing a lengthier sentence should require an additional showing that an individual is not similarly situated to almost every other person in the State of Vermont, and more specifically, Addison County. If the Court wishes to consider specific cases, the information is readily available for determining that Mr. [REDACTED] case should be treated in line with the statistical data cited herein.¹⁴

¹⁴ See State v. Cyrus Smith, 507-10-08 Ancr and 539-11-08 Ancr. (The state agreed to cap sentencing for Agg. DA, 1st Degree and VAPO at three to six years for defendant inflicting serious physical harm upon his domestic partner).

See State v. Marcell, 21-CR-09791. Defendant had prior felony conviction for domestic assault, he was initially charged with beating the victim with a tire iron and golf club, the victim suffered fractures in her, lacerations to her knees and scalp, and Defendant received straight sentence of 40 months to 18 years. Mr. [REDACTED] is distinguishable from the referenced case both in terms of the mitigating factors presented herein and Mr. [REDACTED] has a well-documented mental health history.

c. Thomas Powell, Ph.D.

Dr. Powell was retained to better understand Mr. [REDACTED] mental health issues as well as to explore a diminished capacity defense. Dr. Powell authored a ten (10) page report, which was produced to the state for consideration. The report speaks for itself, and it is attached hereto and incorporated herein as “Exhibit E”. The parties have stipulated that this report is admissible for purposes of sentencing.

In part, the report finds that Mr. [REDACTED] might benefit from programming through DOC, with an understanding that he should be released in the relatively near future. It is also an approach discussed in the pre-sentence report. Mr. [REDACTED] is open to Dr. Powell’s recommendations and believes they offer appropriate guidance for him moving forward.

d. Darcy Richardson, M.S.

Mr. [REDACTED] also retained the services of Darcy Richardson, M.S. to examine his level of intoxication at the time of the assault. The report speaks for itself, and it is attached hereto and incorporated herein as “Exhibit F”. The parties have stipulated that this report is admissible for purposes of sentencing.

Ms. Richardson determined that Mr. [REDACTED] consumed between three (3) and seven (7) Natty Daddy 25-ounce cans. Under those circumstances, Mr. [REDACTED] blood alcohol content was at a level of substantial impairment, ranging from .08 to levels more than .30.

Based on the other available evidence, including but not limited to the observations of law enforcement, Mr. [REDACTED] intoxication level was closer to .30 than .08. The Court should further consider that Mr. [REDACTED] as set forth in the factual background of this memorandum, was without his necessary psychotropic medications. They were last prescribed to him from a

provider a CSAC, and they were at Ms. [REDACTED] home as evidenced by the photographs taken by law enforcement.

e. Pre-Plea Sentencing Investigation

The pre-plea sentencing report confirms that the State of New York did not adequately help Mr. [REDACTED] address his underlying issues¹⁵, provides a risk score suggesting that Mr. [REDACTED] recidivism rate does not outweigh the positive impact that programming might have on him¹⁶, and noted that Mr. [REDACTED] is eligible for community supervision and DOC programming¹⁷. Additionally, the report confirms that Mr. [REDACTED] went approximately four years in between his last conviction in New York and his being charged with the present crimes. When he receives the proper counseling and remains sober, Mr. [REDACTED] has the ability to improve his life. Mr. [REDACTED] actions in this case are regrettable and unfortunate, but we as a society still have to acknowledge that it is possible to rehabilitate him.

¹⁵ Mr. [REDACTED] has one felony conviction for criminal contempt of court in 1998, which resulted in an eighteen-month prison sentence. As for his misdemeanor convictions, the State of New York treated him as a problem to deal with later. The record tends to indicate that Mr. [REDACTED] who has obvious mental health and substance abuse issues, was arrested, sentenced, and released for credit time served or another short-term sentence. Mr. [REDACTED] never received comprehensive interventions for the ailments that plagued him.

¹⁶ Mr. [REDACTED] risk level is moderate, while his domestic violence risk level is high. The former score was determined the Ohio Risk Assessment Tool. It does not typically provide a moderate score where a higher level of concern is warranted.

¹⁷ Mr. [REDACTED] is eligible for community supervision and mandated incarcerated services. Regarding the latter, Mr. [REDACTED] is amenable to enrolling in the Nine Month Moderate-High-Intensity incarcerated program. However, undersigned notes that Mr. [REDACTED] has been incarcerated for almost four (4) years without access to that program, because the state has persisted in pursuing an unreasonable offer. Mr. [REDACTED] does not oppose the conditions of supervision proposed by the PSR author.

f. Pretrial Detention

Mr. [REDACTED] has been incarcerated since his arrest in May of 2019. Mr. [REDACTED] has not petitioned the Court for his release during that time. While incarcerated Mr. [REDACTED] has demonstrated the type of progress that should count in his favor for purposes of sentencing.

During the early part of his incarceration, Mr. [REDACTED] struggled. He, as noted in the PSR, received three major infractions for altercations with other inmates, and he also received an additional major and minor infraction for not following the facility rules. However, the three infractions for altercations with other inmates occurred in 2019 and 2020. The other infractions occurred in March of 2021 and February of 2022, respectively. As for the conduct giving rise to Mr. [REDACTED] VAPO charges, it occurred in 2019 and 2020. In short, when you put aside Mr. [REDACTED] singular minor infraction, he has remained trouble free for approximately three (3) years.¹⁸

Moreover, Mr. [REDACTED] has made significant strides in his rehabilitation. He completed his barber training.¹⁹ He also underwent substantial training to become an “Open Ears” coach. In that role, Mr. [REDACTED] functions as a peer-to-peer mentor and life coach for other inmates. The program started in 2019, and as the Court may surmise, the selection of inmates as coaches is a careful and deliberate process. In short, [REDACTED] has demonstrated to DOC staff that he has rehabilitated himself to such a degree that he is able to offer guidance and support to other inmates. Mr. [REDACTED] hopes to offer testimony from Annie Ramniceanu, the DOC Director of Addiction and Mental Health, regarding the “Open Ears” program.

¹⁸ See Mr. [REDACTED] infraction report attached hereto and incorporated herein as “Exhibit G”.

¹⁹ See Mr. [REDACTED] certificate of completion attached hereto and incorporated herein as “Exhibit H”.

g. Societal Message Regarding Race

The public requires that we provide a well-reasoned and reliable basis for our decisions within the justice system, especially when issues of race are implicated. In stating the obvious, Mr. [REDACTED] is black, and Ms. [REDACTED] is white. We need to ensure that Mr. [REDACTED] is sentenced in line with other similarly situated defendants, because failing to do so has the potential to cast doubt on the fairness of our system in the eyes of the public. More specifically, recent research suggests that the racial bias that exists in our society is being fueled by sentencing disparities rather than sentences being impacted by racial bias.²⁰ We need to eliminate sentencing disparities that impact black individuals, because they fuel greater societal inequities by propagating negative beliefs about black criminality.

Moreover, failing to impose a sentence that is proportionate to other similarly situated defendants violates the equal protection clause of the 14th Amendment to the U.S. Constitution and the proportionality clause of the Vermont Constitution.

h. Summary

Mr. [REDACTED] has served almost double the average minimum sentence, and more than half the average maximum sentence.

Regarding punishment, Mr. [REDACTED] accepts responsibility for his conduct, and he has served almost five (5) years in prison during the pendency of this case. Mr. [REDACTED] has not requested a release on conditions. Mr. [REDACTED] has probably spent more time incarcerated before trial than almost every other inmate in the state. That is a sufficient punishment when balancing his conduct against other societal policy interests.

²⁰ See attached hereto and incorporated herein “Exhibit I” - Jelani Jefferson Exum, Sentencing Disparities and the Dangerous Perpetuation of Racial Bias, 26 Wash. & Lee J. Civ. Rts. & Soc. Just 491 (2020).

As it relates to protecting the public, Mr. [REDACTED] has provided the Court with an abundance of information. The most prominent piece of information is the report from Dr. Powell, which provides insight into Mr. [REDACTED] current mental state as well as recommends measures for protecting the public moving forward. As such, the best method for protecting the public while not over punishing Mr. [REDACTED] is a sentence that permits him to return to his sister's residence in New York.

Regarding offense conduct, Mr. [REDACTED] does not and has not ever disputed that he inflicted a serious assault upon Ms. Pacuin. The defense, however, offers the information from Dr. Powell and Ms. Richardson as a way of providing context for Mr. [REDACTED] actions. Mr. [REDACTED] who suffers from significant mental health issues, was not properly medicated and he was intoxicated to a level at which his executive functioning was impaired. Although not an excuse for his resulting behavior, it is a factor that must be balanced when determining an appropriate punishment.

As for specific and general deterrence factors. Mr. [REDACTED] has one prior felony for contempt of court in New York. He served an eighteen (18) month sentence for that crime. The fact that he has almost served five (5) years for the instant offenses is all the specific deterrence he needs. He is almost sixty (60) years old, and he does not want to spend the rest of his life in prison. Similarly, a five (5) year sentence offers general societal deterrence, because from the statistical data available, Mr. [REDACTED] has already served more than the average defendant. We also need to be mindful of the message that is sent to society by sentencing Mr. [REDACTED] an African American, to a sentence greater than other members of our community.

Lastly, regarding rehabilitation, the Court should again consider the report authored by Dr. Powell, the pre-plea sentencing report, and Mr. [REDACTED] progress while incarcerated. Mr. [REDACTED] is less likely to offend in the future, if nothing else, because he is aging. Moreover, his risk score is moderate, which indicates that he is amenable to rehabilitation.

Conclusion

Based on the foregoing, Mr. [REDACTED] requests that the Court impose a sentence of time served.

Alternatively, Mr. [REDACTED] would request a split sentence that limits the DOC's ability to detain him any longer than is otherwise necessary to complete the DOC's domestic violence program. Mr. [REDACTED] suggests a sentence of five (5) years and six (6) months to seven (7) years with all of it suspended, except for five (5) years and six (6) months. After serving that time and completing the domestic violence program, the balance of Mr. [REDACTED] sentence would be suspended on condition that he complete a lengthy period of probation with the conditions of that supervision mirroring the recommendations from Dr. Powell. Probation is preferable to furlough, because it makes the transfer of supervision to New Yorker easier. Moreover, the Court should oversee Mr. [REDACTED] supervision to ensure that we do not commit the same mistakes as the court system in New York.

At the sentencing hearing scheduled on December 13, 2023, Mr. [REDACTED] intends on using all the exhibits referenced herein.

Regarding witnesses, Mr. [REDACTED] may call the following witnesses:

- 1) Dr. Powell
- 2) [REDACTED] [REDACTED]
- 3) Gloria Moses, Mr. [REDACTED] DOC caseworker

4) Annie Ramniceanu, DOC Director of Addiction and Mental Health

DATED at Middlebury, Vermont this [REDACTED], 2023.

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