UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

UNITED STATES OF AMERICA	)	
	)	**1:24-cr-52**
v.	)	
	)	**McDonough/Lee**
JAQUAN ANDRE SMITH	)	

SENTENCING MEMORANDUM AND REPLY TO GOVERNMENT'S RESPONSE TO DEFENDANT'S OBJECTIONS TO THE PSR

FACTS

While he is the only child of the union of his parents, Jasmine McCrary and Zachary Terrell Smith, Jaquan Smith has two paternal half-siblings and four maternal half-siblings. While the defendant was growing up, his maternal grandmother helped his mother make ends meet and opened her home to the immediate family. When he was five years old, Mr. Smith's paternal grandmother petitioned Hamilton County Juvenile Court for his custody, citing as grounds his mother's lack of electricity in the home due to nonpayment of the electric bill, the general uncleanliness of the defendant and the inappropriate clothing he was forced to wear to keep him warm during the winter months. At one point, he lived with the paternal grandparents for at least a month. Apparently, his mother and his maternal grandmother, who smoked marijuana while caring for him, thought it more important to go to clubs than to care for him. More likely than not, the defendant observed his mother and his grandmother smoking marijuana and he emulated them, smoking as many as two blunts a day at the time of his arrest at 18 years of age.

While Jaquan Andre Smith told United States Probation Officer Kaniqua Kelly that both of his parents played significant roles in his early years, his father's influence was not a positive one in that his father was convicted of the unlawful transport of firearms by this Honorable Court

in 2011 and sentenced to 51 months in the Bureau of Prisons when Mr. Smith was only 7 years old. Following three revocations of supervised release which resulted in a 2015 nine-month prison sentence, a 2017 seven-month term of imprisonment and a 2018 thirteen-month term of imprisonment, the court released the defendant's father from supervised release. However, on September 29, 2025, the defendant's father was sentenced to 120 months of imprisonment by this Honorable Court for the Unlawful Transport of Firearms, with three years of supervised release to follow. Apparently, his father's fascination with firearms set the stage for Mr. Smith's possession of the weapon in the instant case. It is doubtful that his father was a positive influence in his life when he was out of custody as, indeed, his father was convicted of charges very similar to the offense for which the court is to sentence Mr. Smith.

Mr. Smith is in a committed relationship with TaKayla Robinson, with whom he has a daughter, one-year old A'Kauri Smith. He also has a one-year old son, Ke'Onie Smith, from a relationship with Brionna Washington. Although both children live with their mothers, he has maintained a close relationship with both children, whom he desires to help raise when he is released from custody. To be a positive influence in his children's lives, he understands that he must take steps to improve himself. He asked for help from the RDAP program and he wants to learn from the opportunities he will be afforded by the Bureau of Prisons through its vocational programs.

Mr. Smith indicated to United States Probation Officer Kaniqua Kelly that he began smoking marijuana at age 17 and smoked two blunts of marijuana daily at the time of his arrest. Even though officials at the Howard School reported his use of substances while on school grounds, they did not specify the types of substances he used. Realizing that his smoking of two

blunts of marijuana a day caused him significant problems, he has expressed an interest in receiving drug treatment while incarcerated.

While Mr. Smith has no employment history, he was only 18 years old at the time he committed the crime for which this Honorable Court will sentence him and was incarcerated shortly thereafter. Knowing that he has children to support and looking to the future to provide support for his children and for himself, he has expressed that he is interested in tradesman skills in addition to his interest in obtaining a Commercial Driver License to allow him to drive trucks. Those skills he can acquire in many of the vocational training programs offered by the Bureau of Prisons.

LAW AND ARGUMENT

Courts' impositions of punishments far exceeding the gravity of crimes committed by individuals in countries from which our forefathers emigrated terrified the brave founders of our country. When early drafts of our Constitution circulated, members of the Constitutional Convention would not ratify those early drafts because they did not include, inter alia, provisions protecting those convicted of crimes from punishments far exceeding the gravity of those crimes. While the 8th Amendment was not included in early rough drafts of the United States Constitution, those men who were concerned about imposition of unduly harsh punishment prevailed and the later-included 8th Amendment defined the sentencing power of trial courts, directing them to impose terms of imprisonment which did not constitute cruel and unusual punishment. *See* U.S. Const., Amend VIII. Thus, taking into consideration the facts of a particular crime, the drafters of the Constitution sought to ensure that the punishment for any crime fit the particulars of the offense of conviction. Members of the Constitutional Convention ratified the new Constitution only when the 8th Amendment and other basic rights protections were included in its final draft.

By insisting on the passage of the 8th Amendment to the United States Constitution, our founding fathers foresaw the necessity of defining, and thus limiting, the sentencing power of trial courts. The goal of fair sentencing became the guiding light for all sentencing judges and remains a steadfast and important tenet of American criminal jurisprudence. Significantly, Congress was careful to include a parsimony provision in its sentencing scheme. To guide the courts in their sentencing determinations following the 8th Amendment mandate of our founding fathers, Congress enacted Title 18, *United States Code*, § 3553(a), which mandates that "the court shall impose a sentence sufficient, **but not greater than necessary**", to comply with purposes it then enumerated in subsection(a)(2) of the same statute. *See*, 18 *U.S.C.* § 3553(a)(2). (Emphasis supplied). In limiting the power of sentencing courts to impose periods of confinement sufficient, **but not greater than necessary** to effectuate the purposes of sentencing, Congress specifically enumerated the following factors, *inter alia*, to be considered in sentencing:

(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.

18 *U.S.C.* § 3553(a). (Emphasis supplied).

The defendant previously filed his objections to the PSR[1] at Document 35, opining that Jaquan Andre Smith should be sentenced to 37 – 46 months and setting forth Mr. Smith's rationale for that opinion. Subsequent to that filing, the Government filed its Response to

[1] All references to PSR or Revised PSR are to the PSR revised on October 27, 2025.

Defendant's Objections to PSR at Document 43. The defendant now files the instant sentencing memorandum wherein he concedes that the proper sentencing range of punishment is 46-57 months, but also explains why the factors outlined in 18 *U.S.C.* § 3553, including the parsimony provision outlined in 18 *U.S.C.* § 3553(a), direct this court to impose a sentence of 46—57 months, a sentence sufficient, but not greater than necessary, to effectuate the remaining provisions of that statute.

Defense counsel has read and studied the government's Response to Defendant's Objections to PSR in its entirety and has researched the case law, the statutory law and the United States Sentencing Guidelines provisions cited in that pleading. The defendant agrees with the prosecution that an attempt to commit murder requires a specific ***intent*** to kill. See, Response to Defendant's Objections to PSR, Doc. 43, at page 2, citing with approval from *United States v. Grant*, 15 F.4th 452, 457-458 (6th Cir. 2021) (citing *Braxton v. United States*, 500 U.S. 344, 351 (1991). *See also*, *United States v. Kwong*, 14 F.3d 189, 194 (2d Cir. 1994). Indeed, in *Braxton*, *supra*, the landmark United States Supreme Court case requiring the prosecution to prove an ***intent*** to kill in order to prove the offense of ***attempted*** murder, the high court had occasion to hear a case in which the it opined that "[e]ven if one could properly conclude that the stipulation in that case 'specifically established' that Braxton had shot 'at the marshals,' it would also have to establish that he did so with the intent of killing them." *Id*. at 350-351. In finding that the stipulation did not support the government's argument that Braxton attempted to murder the marshals, Justice Scalia quoted from the language of Braxton's defense counsel and observed:

> "Of course there is lurking in the background the allegation of an attempted murder. You can gather from Mr. Braxton's position, and probably from [the Government's] statement of facts, that Mr. Braxton admits he assaulted someone and used a handgun, but, obviously, is not admitting that he attempted to murder anyone." (Citation omitted.) Braxton claims to have intended to frighten the

> marshals, not shoot them, and that claim is certainly consistent with the stipulation before us.
>
> We of course do not know what actually happened that morning in June, but that is not the question before us. The only issue for resolution is whether a stipulation that at best supports two reasonable readings – one that Braxton shot across the room at the marshals when they entered, and one that he shot across the room before they entered to frighten them off—is a stipulation that "specifically establishes" that Braxton attempted to murder one of the marshals. ***It does not.***

Id. at 351. (Emphasis supplied). *See id.* at 351 n*. And, very significantly for purposes of the instant case, the high court in Braxton included a footnote quoted not only from 4 Torcia, Wharton's *Criminal Law* § 743, p. 572 (14th e. 1981) which established that "[a]lthough a murder may be committed without an intent to kill, ***an attempt to commit murder requires a specific intent to kill,"*** but also included references to R. Perkins & R. Boyce, *Criminal Law* 637 (3d ed. 1982 and W. LaFave & A. Scott, *Criminal Law* 428-429 (1972), as well. (Emphasis supplied). Moreover, the Sixth Circuit Court of Appeals has held that even if a defendant has the ability to form the intent to kill, such ability is not the equivalent of a finding that he actually formed that intent so as to warrant application of an attempted murder cross reference. *See, U.S. v. Morgan*, 667 F.3d 688, 697 (6th Cir. 2012). And, although only persuasive because the case was decided by a different circuit court of appeal, the language of Circuit Court Judge Seymour in *United States v. Brooks*, 67 F.4th 1244 (10th Cir. 2023), which quotes with approval from *Braxton*, *supra*, and *Morgan*, *supra*, also opined that "acting with malice by committing a ***reckless*** and wanton act without also intending to kill the victim is not sufficient for conviction" of the crime of attempted murder. *Brooks*, *supra*, at 1249 (quoting from *United States v. Currie*, 911 F.3d 1047, 1054 (10th Cir. 2018). (Emphasis supplied).

Notably, Defendant Smith's plea agreement contains language at Paragraph 4 (d), that "the defendant fired multiple shots from a pistol while hanging out of the rear driver's side of the Audi sedan" and that "[t]he defendant fired ***in the direction of*** two individuals that had just exited Dick Sporting Goods." *Plea Agreement*, Doc. 24, Page ID # 63 at Paragraph 4(d). (Emphasis supplied).The Court in *Braxton, supra*, found that the defendant did not admit that he shot at anyone and concluded that "any such inclusion is an inference at best, and an inference from ambiguous facts." *See*, *Braxton, supra*, at 35.

The same is true in the instant case. On April 29, 2023, Jaquan Andre Smith did not own a car. On that day, he caught a ride to Hamilton Place Mall in the gold Honda with a friend, but was expecting another friend to pick him up after he shopped. Mr. Smith went to the parking lot to retrieve his cell phone from the gold Honda automobile and to await his friend in the Audi so that he could assure that he had a ride home that afternoon after he finished shopping at the mall. When his friend in the Audi arrived, Smith entered the Audi's back seat so that he could change out of the pants he had been wearing for 5 days.

His reckless act of shooting a 9 mm handgun with a switch rendering it fully automatic occurred thereafter. He did not plan, he did not intend, to kill anyone that day. While rounds fired from the weapon that day struck other vehicles in the parking lot, no rounds struck individuals who had just exited Dick's Sporting Goods or their vehicle, nor did they strike any individuals. And since the weapon was fully automatic, **one** reckless pull of the trigger, **one** reckless action, was capable of producing and, in fact, did produce a volley of shots from a magazine capable of holding multiple rounds of ammunition until the magazine was empty. If two volleys were fired, Defendant Smith contends that he re-entered the car after hanging out of the window to regain his balance and squeezed the trigger only once more. By this time the two individuals in the other

vehicle were too far from the vehicle in which Mr. Smith rode for Mr. Smith to have hit them with the bullets from the 9 mm machine gun pistol.

Nowhere in his plea agreement narrative did Mr. Smith admit to attempting to murder anyone, or that he had the intent to murder anyone. The defendant in the instant case never intended to murder anyone. As a matter of fact, early in defense counsel's representation of the defendant, the defendant informed counsel that, as in *Braxton*, *supra*, he intended only to frighten those individuals. Indeed, if he had intended to kill them, he easily could have done so when those individuals exited Dicks Sporting Goods since the Audi was parked as close to the traffic lane in front of Dicks Sporting Goods as the car could be parked; he had a clear shot as the individuals exited the store into the parking lot and yet, he did not shoot those individuals.

To quote in pertinent parts from a case cited by the prosecution in its aforementioned response, *State v. Kimbrough*, 924 S.W. 2d 888, 891, 892 (Tenn. 1996), the Tennessee Supreme Court noted:

> In addition, the legislature has created the offense of reckless endangerment, which can be charged in those cases in which reckless conduct exposes others to the threat of death or to serious bodily injury. Tenn. Code Ann. § 39-13-103.
>
> . . .
>
> . . . it is illogical that someone could intend to cause someone else's death through negligence or even recklessness. . . it does not make sense to say that a defendant intended to kill the victim by being reckless.
>
> We conclude that one cannot intend to accomplish the unintended.

Id. Defendant Smith is guilty of committing a reckless act without intending to kill anyone, but the commission of such a reckless act criminalized as reckless endangerment does not rise to the level of attempted murder.

With the foregoing argument that his actions constituted reckless endangerment, not attempted murder, the defendant now returns to objections previously made in Document 35.

Referencing Page 10, Paragraph 37, of the Revised PSR dated October 27, 2025, the defendant withdraws his objection that subparagraphs (a) and (b) appear to be the same offense, and after investigation, concedes that the convictions listed at those subparagraphs are separate offenses.

Referencing Page 11, **Offense Level Computation, Count Two: Possession of a Machine Gun, Base Offense Level**, Paragraph 42, withdraws his objection, agrees that the guideline for a violation of *U.S.C.* § 922(o) is §2K2.1 and further agrees that the base offense level is 20. However, he avers that U.S.S.G. § 2K2.1(a)(4)(B)(II) more appropriately applies to his case as the offense involved a "firearm that is described in 26 U.S.C. § 5845(a) and that he was a prohibited person at the time he committed the instant offense.

Referencing Page 11, **Offense Level Computation, Count Two: Possession of a Machine Gun, Offense Level Pursuant to 2K1.1**, Paragraph 44, the defendant objects and avers that his offense is not subject to a cross reference and that, therefore, his **Offense Level Pursuant to USSG §2K2.1** should be 24. The defendant agrees with the provisions of Paragraphs 54 and 55 that his offense level should be decreased by three levels, but objects to the provisions of Paragraph 56 that assess his **Total Offense Level** at 30, and instead avers instead that his **Total Offense Level** should be 21.

The defendant withdraws his previous objection to the assessment of two additional criminal history points in Paragraph 61 as the convictions listed in **Adult Criminal Conviction(s),** Paragraphs 60 and 61 are convictions for two separate offenses. Thus, the defendant agrees with United States Probation Officer Kaniqua Kelly in **Criminal History Computation**, Paragraph 64

that the criminal convictions result in a subtotal criminal history score of 6. The defendant agrees that his criminal history category of III is correct. [See **Adult Criminal Convictions(s)** Revised PSR, at Paragraph 66].

With a Total Offense Level of 21 and a Criminal History Category of III, Jaquan Andre Smith contends that the U.S.S.G. range of punishment is 46 –57 months.

The first consideration in sentencing is an analysis of "the nature and circumstances of the offense and the history and characteristics of the defendant." *See*, 18 *U.S.C.* § 3553(a)(1). Unfortunately for Jaquan Smith, the role models he had to follow as he grew into adulthood were not the pillars of society, with his mother and grandmother prioritizing their marijuana smoking and their frequenting clubs over his welfare. His mother was unable or unwilling to provide adequate housing for young Jaquan because the electricity at his home was routinely turned off due to nonpayment. The defendant's mother failed to keep him clean and she sent him to school in shorts in the winter season. Unfortunately, the defendant also witnessed violence between his mother and his mother's boyfriend. He fared no better with his father as his father often was jailed on weapons charges and supervised release violations. These are the examples Jaquan Smith had to follow as he grew to the age of majority, which he attained only 7 months prior to the events which gave rise to the instant charge and which place him before the court for sentencing.

Witnessing his mother and his grandmother smoking marijuana, Jaquan Smith followed in their footsteps. Indeed, at his PSR interview, Mr. Smith admitted to the probation officer who prepared his PSR that he began smoking marijuana as a 17-year old, but that his marijuana smoking had quickly escalated to the point at which he was smoking two blunts a day. *See*, PSR, **PART C. OFFENDER CHARACTERISTICS** **Substance Abuse**, at Paragraph 87, Page 23. Realizing that marijuana had become a problem for him, he informed the probation officer that he is interested in receiving treatment for his dependence on drugs, specifically marijuana.

The court also must consider the directives of 18 *U.S.C.* § 3553(a)(2) in determining the proper number of months to which to sentence Mr. Smith. That statutory subsection directs this Honorable Court to consider the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense. *See*, 18 *U.S.C.* § 3553 (a)(2)(A). A young man, Jaquan Smith enjoys a committed relationship. He has two one-year old children, from whom any absence will result in a loss of his ability to bond with them in a meaningful way. A parsimonious sentence of 46 – 57 months, which Mr. Smith contends is the appropriate sentence for reasons previously discussed, will provide just punishment, but will not prevent a total loss of his ability to bond with his two young children. It will reflect the seriousness of the reckless conduct in which the then 18-year old defendant engaged and promote respect for the law. While reckless and dangerous, the conduct did not rise to the level of attempted murder because Jaquan Smith did not intend to kill anyone when he fired the machine pistol, but only intended to scare the occupants of the distant vehicle.

His willingness to enroll in and successfully complete the Bureau of Prisons' 500-hour residential drug treatment program and his desire to obtain his CDL (commercial driver license) and to enroll in anti-recidivism, vocational trades-based programs while in the custody of the Bureau of Prisons verify his amenability to rehabilitation. A sentence of incarceration in the range of 46 – 57 months sentencing guidelines range which Mr. Smith contends is the guidelines range properly reflecting punishment for his offense is sufficient to promote respect for the law and to provide just punishment in the instant case because the defendant truly has exhibited a willingness to atone for his behavior and to learn from his mistakes. Such a parsimonious sentence will comply with the sentencing considerations outlined in 18 *U.S.C.* § 3553 (a)(2)(A). A reasonable

period of supervised release coupled with drug treatment, drug testing and further counseling will further ensure that Jquan Smithj does not recidivate.

Congress also thought important the requirement that sentencing courts must consider whether imposed sentences afford adequate deterrence to criminal conduct. *See*, 18 *U.S.C.* § 3553 (a)(2)(B). Empirical research has disclosed no relationship between sentence length and deterrence. Michael Tonry, *Purposes and Functions of Sentencing*, 34 *Crime and Justice: A Review of Research* 28-29 (2006). "[F]or many crimes . . . , removing individual offenders does not alter the structural circumstances conducing (sic) to the crime." *Id*. *See also*, U.S.S.G., Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform, at 134 (Nov. 2004).

Furthermore, three years later, Mark W. Lipsey and Francis T. Cullen published their very informative research article in which they opined that harsher punishment can actually increase the likelihood of recidivism, not foster specific deterrence. The authors opined:

> Research does not show that the aversive experience of receiving correctional sanctions greatly inhibits subsequent criminal behavior. Moreover, a significant portion of the evidence points in the opposite direction—such sanctions may increase the likelihood of recidivism. The theory of specific deterrence inherent in the politically popular and intuitively appealing view that harsher treatment of offenders dissuades them from further criminal behavior is thus not consistent with the preponderance of available evidence.

Mark W. Lipsey and Francis T. Cullen, *The Effectiveness of Correctional Rehabilitation: A Review of Systematic Reviews*, 3 Ann. Rev. L. Soc. Sci. 297, 302 (2007), available at http://cjjr.georgetown.edu/pdfs/ ebp/lipsey_cullen2007.pdf; see also Don M. Gottfredson, National Institute of Justice, *Effects of Judges' Sentencing Decisions on Criminal Cases, Research in Brief 9* (Nov. 1999) ("confinement or increased length of incarceration served the crime control

purpose of incapacitation but had little or no effect as a 'treatment' with rehabilitative or specific deterrent effects"), available at http://www.ncjrs.gov/ pdffiles1/nij/178889.pdf. Finally, in 2010, Valerie Wright published *Deterrence in Criminal Justice: Evaluating Certainty v. Severity of Punishment 7* (2010), which reiterated the view that prison sentences are an ineffective method of fostering deterrence and thus reducing recidivism. In that article, she observed in pertinent part:

> Among low-risk offenders, those who spent less time in prison were 4% less likely to recidivate than low-risk offenders who served longer sentences. Thus, when prison sentences are relatively short, offenders are more likely to maintain their ties to family, employers, and their community, all of which promote successful reentry into society. Conversely, when prisoners serve longer sentences they are more likely to become institutionalized, lose pro-social contacts in the community, and become removed from legitimate opportunities, all of which promote recidivism.

Valerie Wright, Sentencing Project, *Deterrence in Criminal Justice: Evaluating Certainty v. Severity of Punishment* 7 (2010), available at http://www.sentencingproject.org/ doc/Deterrence%20Briefing%20.pdf.

According to the above-cited research, then, a sentence of imprisonment may only serve the purpose of severing Mr. Smith's ties to TaKayla Robinson with whom he is in a committed relationship, to his two children, and to productive members of society. Any lengthy prison sentence could very likely cause him to be become institutionalized. He is likely to lose pro-social contacts in his community and he is more likely to become removed from legitimate educational and employment opportunities. Instead of promoting deterrence and preventing recidivism, a lengthy prison sentence may be counter-productive as specific deterrence, only serving to reinforce Mr. Smith's former anti-social behavior, to embitter this very impressionable young man and to normalize those anti-social lessons he learns from other inmates with whom he is incarcerated. The Court's imposition of a parsimonious sentence will send a clear message to the public in

general, and to Jaquan Smith, in particular, that engaging in activities that brought him before the court for sentencing in this case will result in substantial periods of incarceration isolating those who violate the law from their committed relationships and from their children who depend on them.

Drafters of 18 *U.S.C.* § 3553 also expressed the intention that sentences must be structured to protect the public from further crimes of the defendant. *See,* 18 *U.S.C.* § 3553(a)(2)(C). This defendant has requested that he receive drug treatment for dependence on marijuana he acquired in a relatively short period and as a result of watching his mother and his grandmother abuse the substance at the expense of his health and safety. He further has requested that he be allowed to enroll in and complete anti-recidivism vocational programs while he is incarcerated, with a special emphasis on obtaining his CDL so that he can support his dependents. If this Honorable Court grants his request to receive drug treatment under the Bureau of Prisons' 500-hour residential drug treatment program, he will resolve to complete that program. His successful completion of the Bureau of Prisons' 500-hour RDAP program and his enrollment in and completion of anti-recidivism vocational programs while incarcerated will further reinforce his resolve to be a productive member of society who understands that his future involvement with firearms, with drugs or with any other illegal activity will serve no purpose other than to remove him not only from society, but from his loved ones, as well. While the defendant understands that he must be punished for his involvement in the subject conspiracy, he contends that a parsimonious sentence, coupled with the Bureau of Prisons' 500-hour residential drug treatment program while incarcerated, his acquisition of marketable job skills while enrolled in vocational programs while incarcerated and the imposition of a term of supervised release requiring drug testing and further drug treatment, if necessary, will deter him from committing future crimes. Once released from

incarceration, the lessons he learned from his completion of the BOP's 500-hour residential drug treatment program and from the anti-recidivism programs offered by the BOP and his removal and isolation from the dependents who so desperately need him and whom he has disappointed by his actions will serve as a lifelong reminder that he must remain weapons and drug-free. This Honorable Court's imposition of the aforementioned 46 – 57 month parsimonious sentence followed by the imposition of a reasonable period of supervised release with drug-testing and drug treatment components, if necessary, will serve the purposes of 18 *U.S.C.* § 3553(a)(2)(C).

And finally, 18 *U.S.C.* § 3553(a)(2)(D) provides that a sentencing court must consider the need for the sentence imposed to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. As noted above, Mr. Smith now recognizes that his life was spiraling out of control. He is willing to participate in and complete any drug treatment or counseling program this Honorable Court and/or his probation officer deem(s) appropriate. His desire to enroll in and complete the Bureau of Prisons vocational anti-recidivism programs will bolster his chances of successfully returning to society as a productive, contributing citizen. Surely the imposition of a parsimonious sentence of 46 – 57 months, coupled with the recommendation that he receive the benefit of the BOP's 500-hour residential drug treatment program (RDAP), that he be allowed to enroll in the above-referenced anti-recidivism vocational programs and the imposition of a period of supervised release which includes further drug screening and further drug treatment, if necessary, will satisfy the directives of 18 *U.S.C.* § 3553(a)(2)(D).

Surely the imposition of a parsimonious sentence of incarceration between 46 and 57 months is a fair punishment for this youthful offender. Jaquan Smith's poor decisions are behind him. Recognizing that he will have to spend time away from his dependents and from his

committed relationship, knowing that he will be unable to support his children and realizing that he will miss bonding time with them while in prison have reinforced his understanding of the penalties he realizes he must face for his involvement in the activities which bring him before the court for sentencing. They have strengthened his resolve to return to society as a law-abiding, productive citizen. He is not likely to commit future crimes. While penal laws can be harsh, prison sentences should not be excessive. A parsimonious sentence of 46-57 months will promote respect for the law in that society will view such a sentence as a recognition that while criminal behavior must be punished, society does not throw away its offenders and abandon them to a life behind bars. A 46 – 57 month sentence will best serve the parameters of sentencing outlined by 18, *United States Code*, § 3553 and by the *United States Sentencing Guidelines*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing pleading on counsel for all interested parties by emailing a copy to opposing counsel or by mailing a copy of same in the U.S. Mail with sufficient postage attached thereon to reach its destination. This document is not filed and thus served directly on ecf since I have filed a motion to file the document under seal.

This 13th day of February, 2026.

s/Paul Bergmann, III
Paul Bergmann, III