IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

UNITED STATES OF AMERICA

vs. **CASE NO. XXXXX**

WILFRED TAYLOR,

Defendant.
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SENTENCING MEMORANDUM

Wilfred Taylor is a twenty-eight-year old man who is gravely mentally ill. He has spent more than a year in one of two federal medical centers resolving the issue of his competency to stand trial. When he was brought for his initial appearance on February 9, 2012, he was brought from Florida State Hospital where he had been for a month following a commitment by a Leon County Circuit Court Judge. His case consists of a series of crack cocaine sales to undercover police officers on the streets of Tallahassee, with the combined total of all the sales equaling 1.13 grams. Given these circumstances, a sentence significantly less than the advisory guideline range of 151 to 188 months would be "sufficient, but not greater than necessary" to fulfill the goals of sentencing established by Congress. 18 U.S.C. § 3553(a).

Mr. Taylor' History of Mental Illness

A Tallahassee Police officer arrested Mr. Taylor on September 16, 2011, for what was apparently an unprovoked assault. Mr. Taylor "punch[ed the victim] in the face and head several times." PSR ¶ 46. On December 7, 2011, pursuant to a court order entered by Leon County Circuit Court Judge Jackie Fulford, a Tallahassee psychologist, Terence Leland, conducted a psychological examination of Mr. Taylor. Ex. 1, p. 1. Dr. Leland found the cuffed and shackled Wilfred Taylor "wild eyed and smiling maniacally":

> Mr. Taylor was cuffed and shackled throughout the current evaluation, due to his behavioral unpredictablity and obviously psychotic mental state. Wild eyed and smiling maniacally, his demeanor was loud, boisterous, and playfully defiant. He was hyperverbal, rambling, and frequently nonsensical. He claimed to be a "Pharaoh . . . from Egypt," and reported that he and his father "landed a jet in New York City." He also made repeated confusing references to "calling on my spirit," "being Satan-ass," and "killing Elizabeth." Mood and emotional expressions were elevated. Self-view was grandiose. Thinking was clearly disorganized. He did not appear to be malingering.

Id. at 2. Dr. Leland concluded that Mr. Taylor was incompetent to stand trial. *Id.* at 3.

Records from Florida State Hospital show that Mr. Taylor was subsequently found incompetent to stand trial and that he was admitted to the hospital on January 25, 2012. Ex. 2, p. 1[1]. Upon his arrival at the hospital, Mr. Taylor, for no apparent reason, attacked one of his fellow patients. Hospital staff subsequently "determined [the attack] was in response to [Taylor'] delusional thinking and auditory hallucinations." *Id.* Following the incident, hospital staff placed Mr. Taylor

[1]For the sake of brevity, the undersigned has included only the individual referenced pages from the Florida State Hospital records. The undersigned has the records in their entirety and will be happy to make them available if either the Government or the Court wishes to see them.

in seclusion and observed him to be suffering from "delusional beliefs of grandiose and religious themes":

> OBSERVATIONS UPON ADMISSION: Mr. Taylor physically attacked another resident when he arrived on the pod. The attack was observed to be unprovoked and caused injury to the victim. Given this behavioral presentation, his lack of medication compliance in jail, and his history of aggression, Mr. Taylor was placed in seclusion and the team members interviewed him through the window. He denied current and past suicidal attempts. He was observed to be agitated with congruent affect and he endorsed a multitude of delusional beliefs of grandiose and religious themes. When queried about his current charges and reason for commitment he reported some statements about his brother and he "almost killing each other" and [*sic*] father being a variety of famous and historical figures (e.g. King Tut).

Ex. 2, p. 2. A nurse practitioner at the hospital diagnosed Mr. Taylor as suffering from, among other mental health problems, schizophrenia. *Id.* at 1.

Records from the hospital show the January 2, 2012, admission to be Mr. Taylor' second admission to Florida State Hospital. *Id.* at 3. Records from Tallahassee's Apalachee Center, Inc., show two prior commitments to the Center's Positive Alternative to Hospitalization (PATH). The first was on December 18, 2006. Ex. 3, p. 1.[2] During that stay, a social worker diagnosed Mr. Taylor as suffering from a "psychotic disorder." *Id.* He was held at PATH from December 18, 2006, until December 20, 2006. *Id.* He told staff that he had made a "platinum record" just the night before that was "all over the radio," and that he had "bought a new birth date and social security number for $250,000 to protect his identity":

> Client states that he doesn't no [*sic*] why he is here. "Man I made a platinum record last night, its [*sic*] all over the radio." Client says that he was trying to explain his accomplishments to his family, but "she (mother) think I'm going crazy." Client has changed his name several times during the assessment, his [*sic*] that he is the famous

[2]For the sake of brevity, the undersigned has included only the individual referenced pages from the Apalachee Center records. The undersigned has the records in their entirety and will be happy to make them available if either the Government or the Court wishes to see them.

> Booker T. Washington. He also says that he bought a new birth date and social security number for $250,000 to protect his identity. Client does admit to drinking 3 Budweisers and ½ pint of Wild Irish today. He also admits to cocaine and marijuana use.

Id. at 2. His next admission to PATH was in 2007. He stayed from March 20, 2007, to April 3, 2007. *Id.* at 3. Notes from PATH, again, show the degree of Mr. Taylor' impairment:

> Client making statements that are not coherent. Incoherent statements concerning Christ, devil, rituals, voodoo, taking different "forms," being ancient, married to famous singers, in music industry. "All the songs on the radio are mine."

Id. at 4. The social worker diagnosed Mr. Taylor as "psychotic." *Id.* at 4.

This Court's finding that Mr. Taylor was incompetent to stand trial, resulted in him being sent to the Federal Detention Center in Miami. There, in a May 31, 2012, report, a Bureau of Prisons Psychologist, Lisa Feldman, found that Mr. Taylor' insight into his legal status was impaired, and described Mr. Taylor' "highly unusual and bizarre beliefs":

> Mr. Taylor' insight into his legal status was impaired. When discussing his legal situation, the defendant verbalized highly unusual and bizarre beliefs. For example, Mr. Taylor discussed "calling on the spirit" and frequently experiencing "spirit jumps." While the defendant's elaboration was difficult to follow, he explained that "all of the sudden, [he] gets jumped to the skin of another person. Mr. Taylor also posed a number of illogical questions to the examiner, including "If nothing had a voice would you trust it?"

Ex. 4, p. 7.

Dr. Feldman also found Mr. Taylor to be in the "Borderline Range of Intellectual Functioning":

> Mr. Taylor also meets the criteria for a diagnosis of Borderline Intellectual Functioning. This classification is used when the focus of clinical attention is associated with a level of intellectual functioning , as measured on standardized intelligence tests, in the 71 to 84 IQ range. During the present evaluation, the defendant obtained a score in this range, as measured on WASI. Consequently, a diagnosis of Borderline Intellectual Functioning was assigned.

Id. at 11. She found Mr. Taylor to be suffering, as well, from a "Psychotic Disorder Not Otherwise Specified," "Polysubstance Dependence, In a Controlled Environment," and "Personality Disorder NOS with Antisocial Features." *Id.* at 9. She concluded that Mr. Taylor was not competent to stand trial. *Id.* at 13.

Subsequently, the Bureau of Prisons transferred Mr. Taylor to the Medical Center in Springfield, Missouri, and this Court ordered that Mr. Taylor be forcibly medicated. From that point, Mr. Taylor' condition improved significantly. As it turned out, Mr. Taylor agreed to take the prescribed medication, and there was no need to forcibly medicate him. Ex. 5, p. 3. By May of this year, Mr. Taylor was in an open population, actively participating in his competency restoration, and cooperative:

> He transitioned to an open housing unit on May 2, 2013, and has remained in open population with no reported or observed problems since then. Open population allows inmates to move freely throughout the institution to attend the main cafeteria or other appointments as needed between the hours of 6:00 am and 10:00 pm. While in open population, he has been observed attending outdoor recreation on his unit and socializing appropriately with other inmates. Correctional staff report that he is cooperative to requests, interacts appropriately with them, adheres to scheduled appointments without reminders, attends the medication pill line for his unit, and presents with no behavioral management problems. He has also presented with adequate sleep, good appetite, no agitation, and no aggression. He has also requested assistance as needed. Overall, he has followed the unit routine. His response to medication has been favorable, and as a result, he has been able to function independently on his unit without staff assistance.
>
> Soon after moving to the open unit, Mr. Taylor began participating in the competency restoration group. The group leader described him as an active participant and noted he completed his homework, and often answered questions correctly.
>
> Mr. Taylor was interviewed on June 24, 2013, to evaluate his current level of competency to proceed to trial. During this interview, he was cooperative. His speech was of normal tone, and he had no difficulty answering questions posed to him. His hygiene was adequate. His mood was calm and stable with congruent affect.

Id. at 4. By July, the staff at the Bureau of Prisons concluded that Mr. Taylor was competent. *Id.* at 7. He left the Federal Medical Center in Missouri with the diagnosis of "Schizophrenia, Paranoid Type" and "Polysubstance Abuse, In a Controlled Environment." *Id.* at 5. In August, this Court conducted a competency hearing and found that Mr. Taylor was competent to proceed to trial.

The Offense

Mr. Taylor has been in either state or federal custody for more than two years, having been initially arrested by the Tallahassee Police Department on September 16, 2011. PSR ¶ 46. The offenses for which he is being sentenced preceded that arrest, covering a time period between June 30, 2011, and August 11, 2011. In that there were six separate sales that totaled 1.13 grams of crack cocaine, PSR ¶ 16, each sale averaged less than two tenths of a gram. There was nothing complicated about catching Mr. Taylor. The undercover officers simply drove to areas where they knew street-level dealers were selling small amounts of cocaine and they, dependably, found Mr. Taylor.

Criminal History and Guidelines Range

Mr. Taylor' guideline range is as high as it is because he qualifies for sentencing as a career offender.[3] The career offender guideline increases the lower end of the guideline range by a factor of six, increasing the range from 24 to 30 months to 151 to 188 months.[4]

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[3]In years past, Mr. Taylor' guideline range would be even higher, but the Government, presumably giving heed to recent directives issued by Attorney General Holder, chose not to file the enhancement pursuant to 21 U.S.C. § 851.

[4]As calculated in the Presentence Investigation Report, the adjusted offense level would have been 12 had Mr. Taylor' guideline range been calculated on the basis of USSG § 2D1.1. PSR ¶ 27. With the two level reduction for acceptance of responsibility, Mr. Taylor' total offense level would have been 10. Coupled with his criminal history category of VI, the advisory range would have been 24 to 30 months.

Mr. Taylor has a significant criminal history, but his designation as a career offender is based upon an aggravated battery that he committed when he was seventeen years old and the sale of $20 worth of crack cocaine to an undercover police officer. PSR ¶¶ 33, 40. Then, too, Mr. Taylor' mental illness surely played a role in his criminal history. There were two misdemeanor cases, in fact, in 2006, where he was found incompetent and the cases were terminated. PSR ¶¶ 37, 38. To the extent that he has a history of violence, there is the 2001 aggravated battery offense. The aggravated battery charge for which he was arrested in September 2011, as is true of the aggravated battery on a law enforcement officer that occurred while he was in the Leon County Jail, occurred within a month of each other and, shortly thereafter, Mr. Taylor was committed to Florida State Hospital. The proximity of events to his commitment to the Hospital, as well as the incident that occurred once he arrived at Florida State Hospital, suggest that his mental illness played a significant role in the incidents.

Basis for a Below-Guidelines Sentence

The Sentencing Guidelines recognize that mental and emotional conditions "may be relevant in determining whether a departure is warranted, if such conditions, individually or in combination with other offender characteristics, are present to an unusual degree and distinguish the case from the typical cases covered by the guidelines." USSG § 5H1.3.[5] Given the magnitude of Mr. Taylor' mental health difficulties, it is a condition that is "present to an unusual degree" and that "distinguish[es] the case from the typical cases covered by the guidelines."

[5]The current language of the provision reflects a 2010 amendment. *See* USSG App. C, Vol III at 348 (Amendment 739). Prior to the amendment, the provision stated that mental and emotional conditions were "not ordinarily relevant in determining whether a departure is warranted." *See* United States v. Ferguson, 942 F.Supp.2d 1186, 1192 (M.D. Ala. 2013).

The harder question is whether he would also qualify for a downward departure on the basis of USSG § 5K2.13. That provision requires that "the defendant committed the offense while suffering from a significantly reduced mental capacity," and that "the significantly reduced mental capacity contributed substantially to the commission of the offense." Then, too, the court may not depart if "the defendant's criminal history indicates a need to incarcerate the defendant to protect the public."

In his October 19, 2012, report to the court, Bureau of Prisons Psychiatrist, Robert Sarrazin, explained that schizophrenia is a chronic condition where there are periods of remission, but with almost inevitable relapse, particularly for those who are not taking their medication:

> However schizophrenia is a chronic illness with periods of exacerbation and remission. In regards to studies of multi-episode patients without treatment, 60% to 70% of patients with schizophrenia relapse within one year and almost 90% relapse within two years. There is a risk of relapse of 30% per year even in patients who are compliant with a prescribed antipsychotic medication during the stable phase of this chronic relapsing illness.

Ex. 6, p. 6. The recordings of the drug transactions made available to the defense do not show that Mr. Taylor was observably psychotic when he was conducting the drug transactions. It is difficult to see, though, how his limited intellect and his long standing mental health illness could not have affected his judgment. Surely, the two conditions affected his opportunity for employment and his life style to the extent that selling drugs on the street corner was an attractive option for Mr. Taylor. As for the argument that Mr. Taylor must be incarcerated to protect the public, Mr. Taylor acknowledges that some of his criminal history gives rise to that argument. Nonetheless, especially given Mr. Taylor' positive response to his current medication, the risk he presents is considerably reduced so long as he is properly monitored and receives his medication.

To the extent that Mr. Taylor' limited intellect and mental illness contributed to the offense, a lesser sentence is justified by the recognition that those who commit offenses due to mental illness or deficits of intellect are less culpable:

> Together, the amendments and policy statements [of the Guidelines] reflect the principle that "punishment should be directly related to the personal culpability of the criminal defendant." Penry v. Lynaugh, 492 U.S. 302, 319, 109 S. Ct. 2934, 106 L. Ed. 2d 256 (1989), abrogated on other grounds, Atkins v. Virginia, 536 U.S. 304, 307, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (2002). A few "exceptionally" mentally ill defendants may be found incompetent to stand trial or judged not guilty by reason of insanity; however, there also exists a spectrum of mental deficits and diseases that lessen, but do not erase, a person's responsibility for her crimes. See Jennifer S. Bard, Re-Arranging Deck Chairs on the Titanic: Why the Incarceration of Individuals with Serious Mental Illness Violates Public Health, Ethical, and Constitutional Principles and Therefore Cannot Be Made Right by Piecemeal Changes to the Insanity Defense, 5 Hous. J. Health L. & Pol'y 1, 4-5 (2005). "[E]vidence about [a] defendant's background and character is relevant" to the sentencing decision, "because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background, or to emotional and mental problems, may be less culpable than defendants who have no such excuse." Penry, 492 U.S. at 319 (quoting California v. Brown, 479 U.S. 538, 545, 107 S. Ct. 837, 93 L. Ed. 2d 934 (1987) (O'Connor, J., concurring)).

United States v. Ferguson, 942 F.Supp.2d 1186, 1192-1193 (M.D. Ala. 2013). Even if it cannot be said that Mr. Taylor' impairments contributed to the offense, the usual rationale for punishment has less meaning when applied to those who are as impaired as Mr. Taylor:

> In addition, the traditional rationales for punishment have less force when applied to mentally ill and cognitively limited defendants. Cantu, 12 F.3d at 1516; United States v. Poff, 926 F.2d 588, 595 (7th Cir. 1991) (en banc) (Easterbook, J., dissenting), cert. denied, 502 U.S. 827, 112 S. Ct. 96, 116 L. Ed. 2d 67 (1991). "Desert (blameworthiness) loses some bite because those with reduced ability to reason, or to control their impulses, are less deserving of punishment than those who act of viciousness or greed," Cantu, 12 F.3d at 1516; "Deterrence has less value ... because people with reduced capacities are less susceptible to a system of punishment and reward." Id.; see also Bard, Re-Arranging Deck Chairs, 5 Hous. J. Health L. & Pol'y at 12-13. The remaining rationale—incapacitation to protect the public safety—does not justify incarcerating mentally ill, intellectually disabled defendants unless they are violent. Cantu, 12 F.3d at 1516; USSG §5K2.13.

Id. at 1193.

There is a growing recognition, too, that prisons are not a solution in the case of those who are mentally ill, that prisons are not the most effective place for treatment, and that both the defendant and the public are better served by treatment alternatives:

> The amended guidelines also reflect the growing recognition that treating mentally ill criminal defendants rather than imprisoning them better serves both the defendants and society. See, e.g., United States v. Bannister, 786 F. Supp. 2d 617, 656-67 (E.D.N.Y. 2011) (Weinstein, J.); Policy Topics: The Criminalization of People with Mental Illness, National Alliance on Mental Illness, http://www.nami.org (last visited February 18, 2013); W. David Ball, Mentally Ill Prisoners in the California Department of Corrections and Rehabilitation: Strategies for Improving Treatment and Reducing Recivisim, 24 J. Contemp. Health L. & Pol'y 1, 34-37 (2007). Prison is not an appropriate setting for mentally ill defendants to receive treatment, as such individuals may be more vulnerable to difficult living conditions and abuse from other prisoners. Human Rights Watch, Ill-Equipped: U.S. Prisons and Offenders with Mental Illness 56, 59 (2003). This is because, "[f]or mentally disordered prisoners, danger lurks everywhere":
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> > "They tend to have great difficulty coping with the prison code—either they are intimidated by staff into snitching or they are manipulated by other prisoners into doing things that get them into deep trouble.... [M]ale and female mentally disordered prisoners are disproportionately represented among the victims of rape. Many voluntarily isolate themselves in their cells in order to avoid trouble. Prisoners who are clearly psychotic and chronically disturbed are called 'dings' and 'bugs' by other prisoners, and victimized. Their anti-psychotic medications slow their reaction times, which makes them more vulnerable to 'blind-siding,' an attack from the side or from behind by another prisoner."
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> Id. at 56-57 (quoting Terry Kupers, Prison Madness: The Mental Health Crisis Behind Bars and What We Must Do About It 20 (1999)). Providing comprehensive, effective treatment for those mentally ill defendants whose disorder drives their criminality will more likely protect the public from suffering future crime—and that treatment does not come from incarceration.

Id. at 1193-1194..

The same reasoning that supports a departure in Mr. Taylor' case would also justify a variance. *See, e.g.*,United States v. Lovato, 798 F.Supp.2d 1257, 1259 (D.N.M. 2011); *Id.* at *21;

United States v. Flowers, ___ F.Supp.2d ___, 2013 WL 2250611, *4 (M.D. Ala. 2013); United States v. Winston, 2013 WL 1729365, *7 (N.D. Ind. 2013).

The Career Offender Guideline

United States District Judge Mark Bennett in United States v. Newhouse, 919 F. Supp. 2d 955 (N.D. Iowa 2013), criticized the career offender guideline for a number of reasons. One of them was his conclusion that the provision was capable of producing what he described as "unwarranted sentencing uniformity." *Id.* at 967. That's the case because it "does not distinguish between defendants, convicted of the same drug offense, based on either the seriousness of their current offense or their prior convictions." *Id*. Career offenders who sell 2 grams of cocaine fall in the same guideline range as those who sell much larger quantities. The defendant who has two prior sales of $10 worth of crack cocaine qualifies as a Career Offender just as does the defendant who has multiple 5 kilogram sales of cocaine.

Because, as in Mr. Taylor' case, the predicate offenses for a high percentage of career offenders are based on street-level drug sales, which involve a high percentage of minority individuals in poor neighborhoods, the provision appears to be disproportionately applied to African-American defendants:

> *In 2000, there were 1,279 offenders subject to the career offender provisions, which resulted in some of the most severe penalties imposed under the guidelines. Although Black offenders constituted just 26 percent of the offenders sentenced under the guidelines in 2000, they were 58 percent of the offenders subject to the severe penalties required by the career offender guideline. Most of these offenders were subject to the guideline because of the inclusion of drug trafficking crimes in the criteria qualifying offenders for the guideline. (Interestingly, Hispanic offenders, while representing 39 percent of the criminal docket, represent just 17 percent of the offenders subject to the career offender guideline.) Commentators have noted the relative ease of detecting and prosecuting offenses that take place in open-air drug markets, which are most often found in impoverished minority neighborhoods (Tonry, 1995), which suggests that African-Americans have a higher risk of conviction for a drug trafficking crime than do similar White drug traffickers (Tonry, 1995; Blumstein, 2000).*

U.S. Sentencing Commission, Fifteen Years of Guideline Sentencing, 133-34 (Nov. 2004). See also Newhouse, at 990 n.37 ("The Career Offender guideline has had a disturbing, grossly disparate impact on African-Americans.").

The Sentencing Commission has also questioned whether the Career Offender guideline has any appreciable effect on the sales of drugs when it is applied to low-level drug sellers:

> *The question for policymakers is whether the career offender guideline, especially as it applies to repeat drug traffickers, clearly promotes an important purpose of sentencing. Unlike repeat violent offenders, whose incapacitation may protect the public from additional crimes by the offender, criminologists and law enforcement officials testifying before the Commission have noted that retail-level drug traffickers are readily replaced by new drug sellers so long as the demand for a drug remains high. Incapacitating a low-level drug seller prevents little, if any, drug selling; the crime is simply committed by someone else.*

U.S. Sentencing Commission, Fifteen Years of Guideline Sentencing, 134 (Nov. 2004).

Mr. Taylor' case does not involve the "low-level pill smurfer," drug addicted defendant that was the subject of Judge Bennett's opinion in Newhouse, *id.* at 957, but his history of mental illness is no less compelling. In cases such as Mr. Taylor', Judge Bennett was right when he concluded that the guideline was due less deference, something demonstrated by the imposition of below guideline sentences in more than sixty percent of career offender cases. *Id.* at 977.[6] Indeed, Judge Bennett,

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[6]Judge Bennett provided the details in his opinion:

> The Sentencing Commission reported that in fiscal year 2011, only 39.9% of defendants subject to the Career Offender guideline were sentenced within it. Only 1.1% were sentenced above the range. Judges departed or varied below the range in 26.6% of cases without a prosecution motion, and in 38.4% of cases with a prosecution motion. The high rate of below-guideline sentences indicates widespread dissatisfaction with the severity of the Career Offender guideline by both judges and prosecutors.

in imposing a below-guideline sentence in Newhouse, wrote that he was joining "the growing course of federal judges who have rejected applying the career offender guideline in certain cases", and cited a number of those cases:

> United States v. Whigham, 754 F.Supp.2d 239, 247–48 (D.Mass.2010) (granting downward variance on a number of grounds and noting that "there is also no question that the career offender guidelines are flawed."); United States v. Merced, No. 2:08–cr–000725, 2010 WL 3118393, at *4 (D.N.J. Aug. 4, 2010) (granting variance from Career Offender guideline based on defendant's specific circumstances rather than as a policy based variance); United States v. Woody, No. 8:09CR382, 2010 WL 2884918, at *9 (July 20, 2010) (declining to apply Career Offender guideline because its application resulted in a sentence "excessively harsh" given defendant's offense conduct and criminal history); United States v. Patzer, 548 F.Supp.2d 612, 617 (N.D.Ill.2008) (declining to apply Career Offender guideline where its application overstated the seriousness of the defendant's prior convictions and was in excess of that required for deterrence); United States v. Moreland, 568 F.Supp.2d 674, 688 (S.D.W.Va.2008) (granting variance from Career Offender guideline where defendant was not "the 'repeat violent offender' nor 'drug trafficker' targeted by the career offender guideline enhancement," had not demonstrated a "pattern of recidivism or violence," and applying the Career Offender guideline resulted in unwarranted sentencing uniformity); United States v. Malone, No. 04–80903, 2008 WL 6155217, at *4 (E.D.Mich. Feb. 22, 2008) (granting downward variance from Career Offender guideline because sentence under it would punish defendant "greater than necessary to achieve the objectives of sentencing" and would have an "unwarranted impact" on minority groups " 'without clearly advancing a purpose of sentencing.' ") (quoting U.S. Sentencing Comm'n, Fifteen Years of Guidelines Sentencing, An Assessment of How Well the Federal Criminal Justice System Is Achieving the Goals of Sentencing Reform 134 (2004)); United States v. Fernandez, 436 F.Supp.2d 983, 988–90 (E.D.Wisc.2006) (declining to apply Career Offender guideline because, based on defendant's specific circumstances, it produced a guideline range "greater than necessary to satisfy the purposes of sentencing."); United States v. Naylor, 359 F.Supp.2d 521, 524 (W.D.Va.2005) (declining to impose Career Offender guideline due to defendant's young age when he committed the predicate offenses); United States v. Serrano, No. 04CR.424–19(RWS), 2005 WL 1214314, at *8 (S.D.N.Y. May 19, 2005) (imposing "non-guideline sentence" where defendant's Career Offender predicate offenses were all minor drug offenses for which defendant had never spent more than one year in prison); United States v. Carvajal, No. 04CR222AKH, 2005 WL 476125, at *5 (S.D.N.Y. Feb. 22, 2005) (finding Career Offender guideline resulted in sentences "excessive, in light of the

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United States v. Newhouse, at 977.

> nature of [defendant's] recidivism, for the Guidelines for Career Offenders are the same regardless of the severity of the crimes, the dangers posed to victims' and bystanders' lives, and other appropriate criteria."); cf. United States v. Poindexter, 550 F.Supp.2d 578, 580–81 (E.D.Pa.2008) (noting that sentencing court did not apply Career Offender guideline because it "determined that the career offender designation 'overrepresents the total offense level in this case' ").

United States v. Newhouse, at 967-968.

18 U.S.C. § 3553(a)

There are, then, given Mr. Taylor' mental illness, his limited intellect, and the nature of his offenses, compelling reasons to include him in the majority of career offender sentences that fall below the advisory guideline range. Both his "history and characteristics" and "the nature and circumstances of the offense," justify a below-guidelines sentence. 18 U.S.C. § 3553(a)(1).

Of the goals set out in 18 U.S.C. § 3553(a)(2), the Government and surely the Court consider carefully the need for the sentence to "reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;" the need "to afford adequate deterrence to criminal conduct;" the need "to protect the public from further crimes of the defendant," and "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(2). Excessively long sentences under the career offender guideline, though, do not "provide just punishment." United States v. Williams, 481 F.Supp.2d 1298, 1304 (M.D. Fla. 2007). Such sentences can "offend[] the very notion of justice," and do "not promote respect for the law." *Id*.

In considering deterrence, Judge Presnell in Williams recognized that proportionality entered into the analysis: "It seems appropriate to consider the deterrence factor in light of the seriousness of the offense: the deterrent effect of a harsh sentence should be reserved for those serious crimes where society's need for protection is greatest." *Id.* at 1304. In urging this consideration, Mr. Taylor

does not intend to minimize the nature of his offense or his criminal history. Nonetheless, both the nature of his offense and the nature of the his criminal history play a role in the determination.

The need to avoid sentencing disparity is, of course, always due careful consideration. The concern, though, is with those disparities that are *unwarranted*. United States v. Owens, 464 F.3d 1252, 1256 (11th Cir. 2006); 18 U.S.C. § 3553(a)(6) ("...the need to avoid *unwarranted* sentence disparities...")(emphasis added); United States v. Duncan, 479 F.3d 924, 929 (7th Cir. 2007) ("18 U.S.C. § 3553(a)(6) does not instruct district courts to avoid all differences in sentencing, only unwarranted disparities."). To impose the same sort of sentence on Mr. Taylor as those who are free from mental illness, who have average intelligence, whose offense is far more serious, and whose criminal histories are either more violent or more extensive than Mr. Taylor' is a false equality that ignores the facts. *See* United States v. Ennis, 468 F.Supp.2d 228, 235 (D. Mass. 2006) ("Treating offenders who are not equally culpable the same is a false equality, not at all consistent with the admonition 'to avoid unwarranted sentence disparities among defendants with similar records who have been guilty of similar conduct.'").

Conclusion

When United States Attorney General Eric Holder addressed the annual meeting of the American Bar Association's House of Delegates in San Francisco on August 12, 2013, he told them "that too many Americans go to too many prisons for far to long, and for no truly good law enforcement reason." He questioned, too, whether the "war on drugs" had been effective, noting that the purposes of incarceration required more than warehousing and forgetting those who had been convicted of crimes:

> As the so-called "war on drugs" enters its fifth decade, we need to ask whether it, and the approaches that comprise it, have been truly effective – and build on the

> Administration's efforts, led by the Office of National Drug Control Policy, to usher in a new approach. And with an outsized, unnecessarily large prison population, we need to ensure that incarceration is used to punish, deter, and rehabilitate – not merely to warehouse and forget.

(The entirety of the Attorney General's remarks are available at the Department of Justice's web page at: http://www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-130812.html.)

In that Mr. Taylor is gravely disabled by his mental illness, that he has a limited intellect, and that he sold a total of only 1.13 grams of crack cocaine, the sentence called for by the advisory guideline range of roughly 12 ½ to more than 15 ½ years is far greater than necessary to fulfill the goals of sentencing established by Congress and the need to punish, deter, and rehabilitate mentioned by Attorney General Holder. Such a sentence would only accomplish what Attorney General Holder says a sentence should not do, "warehouse and forget." Mr. Taylor, therefore, requests that this Court impose a sentence significantly below the advisory guideline range with appropriate sanctions to ensure that Mr. Taylor receives the necessary treatment and monitoring.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic delivery to the Office of Assistant United States Attorney, Jason R. Coody, this 19th day of November, 2013.

Respectfully submitted,

s/Randolph P. Murrell

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For reasons of privacy, a fictional name has been substituted for the real name of the defendant.