UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Docket No. 5:01-CV-83-2-V**
	)	**(5:98-CR-164-11-V)**
DANETTE LAVAINE MAYFIELD	)	
	)	
Defendant.	)	
	)	

DEFENDANT'S SENTENCING MEMORANDUM

Defendant Danette Lavaine Mayfield, by and through her attorneys, submits this memorandum in aid of sentencing. For the reasons explained below, we respectfully request that this Court impose on Ms. Mayfield a sentence of time served.

INTRODUCTION

In June 1999, this Court sentenced Ms. Mayfield to 292 months' imprisonment, the bottom of the range this Court believed was correct under the then-mandatory federal Sentencing Guidelines. See Judgment (Dkt. 196). After correction of Ms. Mayfield's criminal history category and amendment of the Sentencing Guidelines, the bottom end of the amended Guidelines range has proven to be 188 months. See Supp. PSR (Dkt. 371). There is no reason to give Ms. Mayfield any higher sentence, but there are substantial reasons to give her a lower one.

As even the Government acknowledges, Ms. Mayfield was a minor player in a regional drug conspiracy, a "fourth level participant[]" in a "four-tiered organization." PSR ¶ 26. Although the conspiracy began in the summer of 1995, she did not become

involved until late 1997 or early 1998 when she began a romantic relationship with its leader, Marquis Taylor. By August 12, 1998, it was all over; Ms. Mayfield was arrested, and, with the exception of a short period of pretrial release in 1999 to care for her gravely ill son, she has been in prison ever since.

For her conduct during those eight or nine months in 1998, Ms. Mayfield has already served over eleven years in prison; she was originally sentenced to serve another thirteen. None of her co-conspirators received a sentence nearly as long, and of those who were still incarcerated when the recent amendments to the crack sentencing guidelines took effect, only one remains in prison today. Taylor, the leader of the conspiracy, has been free for over a year. Yet, despite her relatively insignificant role in the conspiracy, the Guidelines would give Ms. Mayfield a sentence substantially longer than any other member.[1]

These vast disparities will persist if Ms. Mayfield is sentenced within the amended Guidelines range. Fortunately, she need not be. In imposing sentence, this Court is not bound in any respect by the Sentencing Guidelines. The Supreme Court has stated that this Court may not presume that the Guidelines range reflects an appropriate balance of the factors listed in 18 U.S.C. § 3553(a) and that this Court has a duty to choose a sentence based on its own independent assessment of those factors. See *Rita* v. *United States*, 551 U.S. 338, 351 (2007). It must fashion a sentence that is "sufficient, but not greater than necessary" to accomplish the purposes described in § 3553(a). We respectfully suggest that any sentence greater than time served would contravene that statutory command.

[1] See note 7, below.

Eleven years in prison are enough—enough to provide just punishment for Ms. Mayfield's offense; enough to promote respect for the law; enough to deter Ms. Mayfield from ever engaging in drug activity again; and enough to provide her with vocational training and correctional treatment, both of which she has utilized extensively, see Supp. PSR Attachments (Dkt. 371). This is particularly true in light of the decision of some district courts to sentence crack violations as they would violations for powder cocaine, see, *e.g.*, *United States* v. *Lewis*, 623 F. Supp. 2d 42, 45 (D.D.C. 2009), a decision that would have left Ms. Mayfield with the mandatory minimum sentence of 120 months—less time than she has served already.[2] In addition, the amended Guidelines calculation still overstates the severity of Ms. Mayfield's crime and her criminal history. Coupled with the disparity between the amended Guidelines range and the treatment afforded to her co-conspirators, these factors all counsel in favor of sentencing Ms. Mayfield to time served.

FACTUAL BACKGROUND

In the autumn of 1998, Ms. Mayfield pleaded guilty to participating in a drug distribution conspiracy run by Marquis Taylor, a man with whom she had recently become romantically involved. The PSR calculated her base offense level under § 2D1.l of the Sentencing Guidelines to be thirty-eight. See PSR ¶ 33.[3] After various

[2] This figure was calculated using the 2009 Sentencing Guidelines, 1.5 kilograms of powder cocaine (which equates to an Offense Level of 25), and a Criminal History Category of II. Those values result in a Guidelines sentencing range of 63–78 months, but the mandatory minimum is 120 months, see 21 U.S.C. § 841(b)(1)(A)(iii).

[3] According to the PSR, Ms. Mayfield had in her possession approximately nine ounces of crack when she was arrested. PSR ¶ 23. Nevertheless, the PSR stated that "[t]he Government's evidence shows the amount of cocaine base that was known to or reasonably foreseeable to Ms. Mayfield was 1.5 kilograms." *Id.* at ¶ 27. Nowhere does the PSR identify the evidence that underlies this statement, however, and there are no facts in the record supporting it. To the extent that the drug quantity was calculated by extrapolating from (1) the amount of drugs involved in the conspiracy, (2) Ms. Mayfield's position in the conspiracy, and (3) the duration of her involvement, Ms. Mayfield believes that the drug quantity should be decreased. This

adjustments, including an adjustment for acceptance of responsibility, her total offense level came to rest at thirty-seven. *Id.* at ¶ 50. When combined with a criminal history score of seven (an erroneous one, as it turns out), that offense level resulted in a Guidelines range for imprisonment of 292–365 months. *Id.* at ¶ 80. In the summer of 1999, this Court adopted the PSR and sentenced Ms. Mayfield to 292 months—what it understood to be the lowest term possible within the Guidelines range. See Sentencing Hearing Tr. at 49, 57 (June 30, 1999) (transcript filed September 3, 1999); Judgment (Dkt. 196).

On November 1, 2007, an amendment to § 2D1.1 of the Sentencing Guidelines took effect. That amendment reduced base offense levels for possession of most quantities of crack, including the quantity attributed to Ms. Mayfield in the PSR. See U.S.S.G. § 2D1.1; PSR ¶ 33. Then, on January 2, 2008, the Sentencing Commission gave notice of its decision to make the amendment of § 2D1.1 retroactive effective March 3, 2008, through an amendment to § 1B1.10. See 73 Fed. Reg. 217-01 (2008); U.S.S.G. § 1B1.10 (Supp. March 3, 2008). This decision empowered sentencing courts to reconsider past sentences for crack possession as an ameliorative measure in light of the Sentencing Commission's judgment regarding the inequity of the disparities between sentences imposed for possession of crack and powder cocaine.[4]

Court has now found that her involvement lasted only a quarter of what was thought at the time the original PSR was written. As this Court found in November, see Evidentiary Hearing Tr. at 62 (attached as Ex. A), Ms. Mayfield was involved in the Taylor conspiracy from late 1997 or early 1998 until her arrest in August of 1998, *not* from the summer of 1995 (as the original PSR maintained, see PSR ¶ 8) until her arrest.

[4] See *Kimbrough* v. *United States*, 552 U.S. 85, 96–100 (2007) (discussing the Sentencing Commission's longstanding judgment that the so-called 100-to-1 sentencing ratio was unwarranted and the Commission's efforts to reduce the crack/powder cocaine ratio); see also United States Sentencing Commission, *Report to Congress: Cocaine and Federal Sentencing Policy*, 6–9 (May 2007), available at http://www.ussc.gov/r_congress/cocaine2007.pdf (recommending a reduced sentencing ratio); United States Sentencing Commission, *Report to Congress: Cocaine and Federal Sentencing Policy*, viii (May 2002), available at http://www.ussc.gov/r_congress/02crack/2002crackrpt.pdf (same); United States

As these changes were happening, Ms. Mayfield was pursuing several federal *habeas* claims. This Court held an evidentiary hearing regarding one of those last November, finding that Ms. Mayfield joined the Taylor conspiracy in late 1997 or early 1998, and that her counsel at sentencing was constitutionally ineffective for failing to object to the Probation Office's incorrect calculation of Ms. Mayfield's criminal history score. See Evidentiary Hearing Tr. at 62, 64 (attached as Ex. A). Her original criminal history score had improperly taken into account two juvenile convictions, raising Ms. Mayfield's criminal history category from II to IV. The November findings led to this resentencing proceeding.

CONTROLLING LEGAL PRINCIPLES

In *Rita* v. *United States*, 551 U.S. 338 (2007), the Supreme Court explained the process and substantive standards that govern sentencing in the post-*Booker* landscape:

> The sentencing judge, as a matter of process, will normally begin by considering the presentence report and its interpretation of the Guidelines. He may hear arguments by prosecution or defense that the Guidelines sentence should not apply, perhaps because (as the Guidelines themselves foresee) the case at hand falls outside the "heartland" to which the Commission intends individual Guidelines to apply, perhaps because the Guidelines sentence itself fails properly to reflect [18 U.S.C.] § 3553(a) considerations, or perhaps because the case warrants a different sentence regardless. . . . [T]he sentencing court does not enjoy the benefit of a legal presumption that the Guidelines sentence should apply.

Id. at 351 (citations omitted).[5]

Sentencing Commission, *Special Report to Congress: Cocaine and Federal Sentencing Policy*, 2 (April 1997), available at http://www.ussc.gov/r_congress/newcrack.pdf (same).

[5] Ms. Mayfield recognizes that the Fourth Circuit has held that the Sentencing Guidelines are binding when a pre-*Booker* sentence is re-opened under 18 U.S.C. § 3582(c). See *United States* v. *Dunphy*, 551 F.3d 247 (4th Cir. 2009). She believes that the Fourth Circuit's precedent will be overturned by the Supreme Court in the pending case *Dillon* v. *United States*, No. 09-6338, and hereby preserves this issue for appeal. But because her resentencing is primarily a result of her *habeas* proceeding, she is entitled to a "full resentencing" under advisory Guidelines regardless of the outcome of the *Dillon* case. See, *e.g.*, *United States* v. *Morgan*, 284 Fed. App'x 79, 86 (4th Cir. 2008) (remanding for a second resentencing because district court simply reinstated the prior, mandatory Guidelines sentence in a post-*Booker habeas*

Rita held that appellate courts may adopt a presumption that sentences within a properly calculated Guidelines range are reasonable, but made clear that the sentencing judge must independently determine what sentence would be appropriate and should *not* presume that a sentence within the Guidelines range satisfies the requirements of § 3553(a). Indeed, it is only because the sentencing court must exercise its own, independent judgment in setting the appropriate sentence that *Rita* permits the appellate presumption. See *ibid.* ("[W]hen the judge's discretionary decision accords with the Commission's view of the appropriate application of § 3553(a) in the mine run of cases, it is probable that the sentence is reasonable."). Therefore, while the Court may consider the PSR and the reasoning that underlies the Guidelines, the sentence ultimately must reflect the Court's own assessment of the sentence that is required under § 3553(a). And the command of § 3553(a) is clear: consistent with the principle of parsimony, the sentence must be "sufficient, but not greater than necessary" to comply with the purposes set forth in § 3553(a)(2). The excessive sentence that the Probation Office would have the Court impose on Ms. Mayfield—even after amendment—would undermine that important goal.

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resentencing); *United States* v. *Pasquantino*, 230 Fed. App'x 255, 258 (4th Cir. 2007) (unpublished) (affirming *habeas* resentencing in which district court, after considering the § 3553(a) factors, did not sentence within the Guidelines range).

ARGUMENT

I. The § 3553(a) Factors Counsel in Favor of Immediate Release

Before imposing a sentence upon Ms. Mayfield—inside the Guidelines range or out—this Court must consider the § 3553(a) factors. All of them have been satisfied by the time Ms. Mayfield has already served.[6]

Section 3553(a)(2) requires the sentencing court to consider 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 education or vocational training, medical care, or other correctional treatment in the most effective manner. See 18 U.S.C. § 3553(a)(2)(A)–(D). Furthermore, the court should consider the nature and circumstances of the offense, the history and character of the defendant, and the kinds of sentences available. See *id.* at § 3553(a)(1), (3)–(4).

A. Seriousness of the Offense, Respect for Law, and Just Punishment

Ms. Mayfield does not dispute that drug offenses—even those, like hers, with no identifiable victim, see PSR ¶ 28—should be taken seriously or that she should have

[6] Although Ms. Mayfield stands to benefit from the adjustment of her sentence permitted by § 3582(c)(2), it was her *habeas* action that led to her resentencing, therefore this memorandum is not organized around that statute. Nevertheless, all the § 3582(c)(2) considerations are discussed in this memo and Ms. Mayfield believes she is entitled to the two-level reduction in offense level afforded by the 2007 amendments to the crack sentencing guidelines. (To adjust a sentence under § 3582(c)(2), the sentencing court should first determine what the Guidelines range would have been had the amendment in question been in effect at the time the defendant was sentenced. See U.S.S.G. § 1B1.10(b)(1). Then, to determine whether and how great a sentence reduction is warranted, the court should consider (i) the factors set forth in 18 U.S.C. § 3553(a), (ii) the nature and seriousness of the danger that may be posed by a reduction in the defendant's term of imprisonment, and (iii) the defendant's post-sentencing conduct. See *id.* at § 1B1.10 Application Note 1(B)(i)-(iii); see also 18 U.S.C. § 3582(c)(2) (stating that the court must consider the § 3553(a) factors and determine whether a reduction is consistent with applicable policy statements issued by the Sentencing Commission).)

been punished for her part in the Taylor conspiracy. But if Ms. Mayfield's offense was serious, it was no more serious than the offenses committed by her co-conspirators, all but one of whom are free today. Even Taylor, whose 168-month sentence was dwarfed by Ms. Mayfield's 292-month sentence, was released in December of 2008 after the amendments to the Sentencing Guidelines reduced his sentence to time served (approximately 110 months). See Dkt. 348.

In the end, only two of the Taylor conspirators received sentences that exceeded Ms. Mayfield's mandatory minimum (120 months) by more than a few months.[7] Myriad factors could have affected these sentences, of course, but at root, all these defendants committed some version of the same crime. *Cf.* § 3553(a)(6) (admonishing sentencing

[7] The chart below compares the sentences received by the conspirators, organized by their level in the conspiracy (see PSR ¶ 26), before and after the amendment to the Sentencing Guidelines took effect. (Some conspirators have no amended sentence. Judging from their original sentences, those conspirators were released from prison before the Guidelines were amended.) The approximate entries for defendants whose amended sentences were for time served represent the difference in time between the sentencing and date of the order amending the sentence. This measure understates the amended sentence by any amount of time spent in prison awaiting sentencing, but even when those numbers are inflated somewhat, the differential between Ms. Mayfield's sentence and those of her co-conspirators remains vast.

Level	Conspirator	Original Sentence	Amended Sentence	Relevant Dkt. Entry
1	Marquis Taylor	168 months	Time served (approx. 110 months)	Dkt. 348
2	Taj Stewart	121 months	120 months	Dkt. 329
	Semmaj Taylor	75 months	N/A	Dkt. 227
	Alesacia Williams	121 months	N/A	Dkt. 228
3	Jacqueline Lowery	180 months	144 months	Dkt. 353
	Dawn Montague	60 months	N/A	Dkt. 194
4	Talmadge Brown	78 months	N/A	Dkt. 232
	James Linney	168 months	100 months	Dkt. 288
	Leonard Holland (brother)	120 months	N/A	Dkt. 264
	Johnny Lee Shade, Jr.	18 months	N/A	Dkt. 230
	Clifton Mayfield (no relation)	210 months	168 months	Dkt. 362
	Danette Mayfield	**292 months**		
	Larry Dale Woods, Jr.	140 months	Time served plus 10 days (approx. 113 months)	Dkt. 363

courts to consider "the need to avoid unwarranted sentence disparities among defendants . . . who have been found guilty of similar conduct"). It is utterly implausible that the seriousness of the offense committed by a person at the bottom of the conspiracy could so far exceed that of the offense committed by the conspiracy's leader or of, for example, Taj Stewart, a man who "worked closely with top management" and "was known to be the one who gave orders" when Taylor was out of town (a fair percentage of the time, as Taylor lived in Florida), see PSR ¶ 25. No theory of just punishment demands only ten years of these men's lives but over fifteen years of Ms. Mayfield's. Section 3553(a)(2)(A) certainly does not; only the Sentencing Guidelines do.

As her PSR recognized, Ms. Mayfield was a minor player in a regional drug conspiracy, an instrument used by Taylor and the other conspirators. See PSR ¶¶ 1, 23, 26. She operated on the lowest of four levels and was not involved in the importing of drugs or in any violent activity. See PSR ¶ 23, 26. And as this Court has found, Ms. Mayfield did not join the conspiracy until its last days, approximately two and one half years after it began, and only eight or nine months before it was broken up. See Ex. A at 62; PSR ¶ 8. If ten years constitutes just punishment for the leaders of the conspiracy, who were involved from start to finish, why not for its bottom rung?

B. Adequate Deterrence and Protection From Further Crimes

The same logic applies to the other § 3553(a) factors. Just as time served would be sufficient to reflect the seriousness of Ms. Mayfield's offense and provide just punishment for it, time served would adequately deter any future criminal conduct on her part, a consideration under § 3553(a)(2)(B) and (C). Ms. Mayfield has now spent a third of her life in prison for participating in Taylor's conspiracy. She will not make such a

mistake again. And any claim that a longer sentence is necessary to deter *other* potential criminals is undermined by the ten- and eleven-year sentences awarded to Ms. Mayfield's co-conspirators, especially those at the head of the conspiracy. Sentencing the thirteenth conspirator significantly more harshly than the other twelve will hardly impact the deterrent effect that the Court's punishments will have on the community, and any conceivable marginal effect will be greatly outweighed by the outsized consequences the sentence will have for the thirteenth conspirator. Rest assured: a sentence of time served would adequately deter Ms. Mayfield and others from repeating her mistake and would provide a sufficient (if not excessive) punishment for her offense.

C. Nature of the Offense and Characteristics of the Defendant

Section 3553(a) also requires the sentencing court to consider the history and character of the defendant, and the nature and circumstances of the offense. See § 3553(a)(1). Ms. Mayfield reports being raised by her grandmother in an environment "dominated by drugs and alcohol," with little contact with her parents during her formative years. PSR at ¶ 69. She found herself embroiled in Taylor's drug conspiracy primarily as a result of her romantic involvement with the man, and, by the government's own admission, never ascended above the lowest tier in his organization. See *id.* at ¶¶ 23, 26. From that post, her principal task was simply to ferry money generated by Taylor's agents in Statesville back to her boyfriend when she visited him in Winston-Salem. Although by no means excusable, Ms. Mayfield's conduct is hardly the most reprehensible in the conspiracy. She did not cultivate her own distribution network, as Talmadge Brown did, see *id.* at ¶ 22, or trade guns for drugs, as her brother did, see *id.* at ¶ 19. For the most part, she shuttled money between other conspirators.

When Ms. Mayfield met Taylor and began helping him, she was a young, uneducated mother of two in need of money to support her children. Today, she is much older, has received an education while in prison, see Supp. PSR Attachments (Dkt. 371), and her children have found support with members of their extended family, see Family Letters of Support (attached as Ex. B). As her cousin, Denise Holland, writes in her letter of support, Ms. Mayfield is "an intelligent and driven woman." See Ex. B. Her drive for self-improvement (discussed in Part III, below) can be seen in the many courses and programs in which she enrolled as a federal inmate, see Supp. PSR Attachments (Dkt. 371), and in her attempts to better herself even while being held in Mecklenburg Jail in connection with these proceedings, see Certificate of Completion (attached as Ex. C). Ms. Mayfield's participation in the Taylor conspiracy was not evidence of a flaw in her character, but of a mistake in her judgment aggravated by the conditions in which she was then living. Those conditions have changed, as has she.

II. The Guidelines Range Overstates the Seriousness of Ms. Mayfield's Offense and Her Criminal History

There simply is no way to reconcile § 3553(a)'s admonition that sentences be "sufficient, but not greater than necessary" with the sentence recommended in Ms. Mayfield's Supplemental PSR. Although a marked decrease from her original sentence, even the low end of the amended range (188 months) overstates the seriousness of Ms. Mayfield's offense and her criminal history. The PSR makes her out to be a manager of her fellow conspirators and someone with a relatively serious history of past crimes. She was neither.

A. Ms. Mayfield Was Not a Manager

Built into the Supplemental PSR's offense level calculation is the unsupported assertion that Ms. Mayfield was a manager of the Taylor conspiracy, a fact that, if true, would merit a two-level increase in offense level. See PSR ¶ 36 ("The defendant is viewed as a manager in this conspiracy."). The PSR offers no reasons why Ms. Mayfield should be viewed as a manager, which ought not to be surprising: there are none. In order to qualify for the managerial adjustment, a defendant in a conspiracy prosecution "must have been the organizer, leader, manager, or supervisor *of one or more other participants*." U.S.S.G. § 3B1.1 Application Note 2 (emphasis added).[8] But as the PSR says itself, Ms. Mayfield was a fourth-tier participant in a four-tiered conspiracy. See PSR ¶ 26. With no one below her in the conspiracy, whom did she manage?

Any sentencing calculation that treats Ms. Mayfield as a manager under § 3B1.1 overstates the seriousness of her offense, and the effect of that overstatement is large. With the two-level managerial adjustment removed, Ms. Mayfield's offense level would fall from 35 to 33. Even with no changes to her criminal history category, that change in offense level would decrease her Guidelines range from 188–235 months to 151–188 months. This Court should not condemn three years of a person's life on the Probation Office's bare (and erroneous) declaration that she "is viewed as a manager."

[8] This provision of the Guidelines was amended in 1993. Prior to 1993, "extensive management responsibilities over property, assets, or activities of the criminal organization" was enough to trigger the managerial adjustment. See *United States* v. *Chambers*, 985 F.2d 1263, 1268 (4th Cir. 1993). The second Application Note to § 3B1.1 appears to have been revised in response to the *Chambers* decision specifically in order to clarify that the managerial adjustment requires management responsibilities over a *person*, not over property or activities. See U.S.S.G. § 3B1.1 Historical Notes, 1993 Amendments; see also *United States* v. *Capers*, 61 F.3d 1100, 1109 (4th Cir. 1995) (recognizing that control over property, including money and the delivery of drugs, was not sufficient for a managerial adjustment under the post-1993 Guidelines).

B. Ms. Mayfield's Criminal History Category Should be Reduced to I

Although now correctly calculated under the Guidelines, Ms. Mayfield's criminal history score dramatically over-represents the seriousness of her past offense and the likelihood that she will commit further crimes. As a result, she ought to receive a downward departure under U.S.S.G. § 4A1.3(b) from category II to category I.[9] That downward departure, on its own, would decrease the Guidelines range by twenty months.[10]

Ms. Mayfield is now left with three criminal history points, putting her in criminal history category II. Two of those three points are the result of a penalty imposed because she was on supervised release for her prior offense when she joined the Taylor conspiracy. See PSR ¶ 61 (citing U.S.S.G. § 4A1.1(d)). Her prior crime, committed three and a half years before she met Taylor, is described in the PSR as Felony Public Assistance Fraud, see PSR ¶ 56, 61, but the underlying facts are far less nefarious than that title suggests.

In 1994, Ms. Mayfield was involved in a car accident, which led to her receipt of an insurance payment of several hundred dollars. At the time, she was receiving public assistance from the state of North Carolina to help her raise her newborn son. She did not appreciate the relationship between her insurance payment and the public assistance, and consequently did not report the insurance payment to the state. When her mistake was brought to her attention, she lacked the means to repay the $642 she owed. Nearly two years later, the state imposed as punishment a sentence of 60 days' imprisonment and two

[9] We should not be surprised that the criminal history metric is imperfect. The background commentary to § 4A1.3 "recognizes that the criminal history score is unlikely to take into account all the variations in the seriousness of criminal history that may occur." U.S.S.G. § 4A1.3 Application Notes.

[10] This figure was calculated using the Supplemental PSR's offense level of 35 and reducing Ms. Mayfield's criminal history category to I, resulting in a range of 168–210 months.

years of probation. See PSR ¶ 56. She had about six months of probation left when she met Marquis Taylor. Compare PSR ¶ 56 with Ex. A at 62.

Ms. Mayfield should have reported her insurance payment—of that there is no doubt—but the fact that she did not hardly bears on the calculation of the punishment she should receive for her drug offense or on the likelihood that she will commit more crimes in the future. *Cf.*, *e.g.*, *United States* v. *Summers*, 893 F.2d 63, 67 (4th Cir. 1990) (affirming a downward departure under § 4A1.3 for a drug trafficking crime where the criminal history was exaggerated by convictions of driving without a license). When she committed her fraud (such as it was), Ms. Mayfield was an uneducated, twenty-year-old first-time mother in need of financial assistance from the state to support her son. *Cf.*, *e.g.*, *United States* v. *Hammond*, 240 F. Supp. 2d 872, 880 (E.D. Wis. 2003) (considering the circumstances of the defendant's life at the time of prior convictions, including socio-economic status, in decision whether to depart downward); *United States* v. *Wilkerson*, 183 F. Supp. 2d 373, 375 (D. Mass. 2002) (departing downward when defendant's criminal history involved theft as a young man to support abandoned siblings). The circumstances that led to her error do not exist anymore: her children are both in the custody of others who support them; and should she ever find herself in need of public assistance again, Ms. Mayfield has learned from hard experience to verify carefully what must be reported.

For her failure to report the insurance payment, the state of North Carolina sentenced Ms. Mayfield to two months in prison, yet the federal government would sentence her to twenty. Because her two-year period of probation extended beyond the date on which Ms. Mayfield joined the Taylor conspiracy, the Guidelines call for a two-

point increase in criminal history, bumping her from criminal history category I to category II. See U.S.S.G. § 4A1.1(d). That six-month overlap—more a reflection on the speed of the administration of justice in North Carolina than on Ms. Mayfield's criminality—means the difference between a Guidelines range that starts at 168 months and one that starts at 188.[11]

When the managerial adjustment is removed (as discussed above), bringing the offense level to 33, and the criminal history category is shifted down to I, the Sentencing Guidelines recommend a sentence of between 135 and 168 months. The bottom of that range—a little over eleven years—is almost *exactly* time served.

C. The Guidelines Range is Founded Upon A Rejected Policy Judgment

There is still another reason the Guidelines range overstates the seriousness of Ms. Mayfield's offense: her offense level is calculated solely in reference to her possession of a quantity of crack, see PSR ¶ 33, and the Sentencing Guidelines continue to punish possession of crack disproportionately harshly. As part of its evaluation of an appropriate sentence, this Court should consider the disparity in Guidelines sentences for possession of crack and possession of powder cocaine, especially in light of the trend toward punishing possession of the two drugs equivalently. See *Spears* v. *United States*, 129 S. Ct. 840 (Jan. 21, 2009); *Kimbrough* v. *United States*, 552 U.S. 85, 100–111 (2007); *Lewis*, 623 F. Supp. 2d at 45; *United States* v. *Gully*, 619 F. Supp. 2d 633, 646 (N.D. Iowa 2009).

If Ms. Mayfield were sentenced using a one-to-one crack-to-powder cocaine ratio, the Guidelines would call for a sentence between 63 and 78 months, a range dramatically lower than even the *amended* Guidelines range for an equivalent amount of crack (188–

[11] Both of these calculations assume an offense level of 35.

235 months) and far below the time she has already served.[12] For the reasons given in the opinions of those courts that have adopted the one-to-one sentencing ratio, crack and powder cocaine should be treated alike for sentencing purposes. A Guidelines sentence for crack possession will not treat them that way, and will therefore overstate the seriousness of the underlying offense, a fact that is particularly troubling in light of the heavy penalty the Guidelines would impose on Ms. Mayfield relative to her co-conspirators. *Cf. Kimbrough*, 552 U.S. at 87 (citing the argument in the Sentencing Commission's 1995 report that "the crack/powder disparity is inconsistent with the [Anti-Drug Abuse Act of 1986's] goal of punishing major drug traffickers more severely than low-level dealers").

Even the Department of Justice rejects the crack/powder cocaine sentencing disparity. See May 1, 2009 DOJ Memo by David Ogden re Department Policies and Procedures Concerning Sentencing for Crack Cocaine Offenses at 1, available at http://www.fd.org/pdf_lib/DOJ%20crack%20memo.pdf ("The President and Attorney General believe Congress should eliminate the sentencing disparity between crack cocaine and powder cocaine."). Congress has yet to act on the Department's recommendation (at least one bill is in the works), but in the meantime, federal prosecutors have been given departmental authority not to object to "a reasonable variance in an average case." *Id.* at 2. Whether or not the Government chooses to object to the application of the one-to-one ratio in this case, the Department's position regarding

[12] For the calculation of this 63–78-month range, see note 1. It is worth noting here that the other, non-drug offense to which Ms. Mayfield pleaded guilty in 1998 will not affect the Court's sentencing calculations. The PSR gives an Adjusted Offense Level of 30 for that count, see PSR ¶ 45, which means that Ms. Mayfield's total offense level would be 27 if that count's offense level controlled, see PSR ¶ 47 (reducing the Adjusted Offense Level by three points for acceptance of responsibility). An offense level of 27 combined with a Criminal History Category of II results in a Guidelines range of 78–97 months, well shy of the time Ms. Mayfield has already served.

the crack/powder disparity highlights the inequity of the Guidelines range, which is premised upon a twenty-to-one ratio, and offers yet another reason to reject it in favor of a sentence of time served.

III. Ms. Mayfield's Post-Sentencing Conduct Demonstrates that a Sentence of Time Served is Warranted

In contrast to the poor choices she made before entering prison, while serving her sentence, Ms. Mayfield has participated in a variety of professional and personal courses designed to help her lead a successful life as a member of the community she rejoins. See generally Supp. PSR Attachments (Dkt. 371). When recalculating Ms. Mayfield's sentence, this Court should consider not only Ms. Mayfield's youth at the time she committed her crime and the offenses reflected in her criminal history, but also her rehabilitation. See *Gall* v. *United States*, 552 U.S. 38, 58 (2007) (approving a sentencing court's consideration of a defendant's youth when evaluating his criminal history and offense conduct, and approving the court's conclusion that the defendant's "later behavior [w]as a sign that he had matured and would not engage in such impetuous and ill-considered conduct in the future"); see also *Johnson* v. *Texas*, 509 U.S. 350, 367 (1993) (requiring that a capital sentencing jury be permitted to consider a defendant's youth as a mitigating circumstance); U.S.S.G. § 1B1.10 Application Note 1(B)(iii) (permitting the court to consider a defendant's post-sentencing conduct in resentencing proceedings under 18 U.S.C. § 3582(c)(2)).

The Court may decrease Ms. Mayfield's sentence without fear for the safety of any person or the community resulting from her release. Her PSR shows no convictions for violent crimes and recognizes that the crime for which she is now imprisoned had no identifiable victims. See PSR ¶¶ 28, 53–56. If released immediately, Ms. Mayfield

would emerge from prison having completed numerous courses readying her for a successful professional and personal life upon release. She has completed drug education and anger management courses, and the reviews of her professional skills are overwhelmingly positive. Ms. Mayfield has "demonstrated excellent work habits," has a "cooperative attitude," and "is considered to be fully employable." Supp. PSR Attachments (Dkt. 371). She is ready to rejoin her community, and as the attached collection of signatures and petitions demonstrates, her community is ready to take her back. See Community Letters of Support (attached as Ex. D). She will not be alone when she gets out; her cousin Denise Holland, who has raised Ms. Mayfield's son these past eleven years, has pledged to give her the support she needs as she finds her feet upon her release. See Ex. B.

In the years she has been in prison, Ms. Mayfield has behaved well and taken full advantage of the opportunities for self-improvement made available to her. Her records demonstrate a pattern of ambition and achievement of the sort that validates the existence of the programs in which she has participated. Ms. Mayfield has completed college courses in business management and obtained vocational training that includes instruction in business mathematics and English, business law, accounting, and computer applications. In 2002, the Commonwealth of Virginia certified her as qualified to seek employment as a Data Entry Clerk, Word Processor Operator, and Administrative Clerk. In addition to these achievements, Ms. Mayfield provided substantial assistance to the Metro-Dade Police Department Homicide Bureau in its investigation of the illegal activities of Avonda Dowling Jackson in 2000 (another fact not reflected in the Guidelines calculation). See Ex. E. Reducing her sentence to time served—at the very

least, placing it somewhere below the disproportionately high mark called for by the Sentencing Guidelines—would be a just recompense for this and her other good conduct.

CONCLUSION

For the reasons set forth above, we respectfully request that the Court impose a sentence of time served.

Dated: January 6, 2010

Respectfully submitted,

/s Michael L. Waldman
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CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to registered CM/ECF users who have made an appearance in this case, including Assistant United States Attorney Adam Morris.

/s Brian Pérez-Daple

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