IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

*

THE UNITED STATES OF AMERICA *

v. * Criminal No. WMN-97-0130

L.E.C.

* * * * *

**DEFENDANT'S SENTENCING MEMORANDUM**
**AND MOTION FOR DOWNWARD DEPARTURE**

The Defendant, through his attorneys, James K. Bredar, Federal Public Defender for the District of Maryland, and Gary W. Christopher, Assistant Federal Public Defender, respectfully submits this memorandum with respect to his sentencing scheduled for August 29, 1997. For the reasons stated below, counsel for Mr. C. moves that the Court depart downward under the authority conferred by the United Sentencing Guidelines and impose a aggregate sentence on Counts One and Two of 121 months.

## INTRODUCTION AND BACKGROUND

On June 30, 1997, Mr. C. entered a plea of guilty to Counts One and Two, charging bank robbery and using a firearm in connection with a crime of violence, respectively . The plea was entered pursuant to an agreement which, in summary, contemplated (a) that a 10-year mandatory sentence would be imposed Count Two; as to Count One that the applicable base offense level of 20 (pursuant to USSG §2B3.1(a) should be adjusted upwards two levels pursuant to §2B3.1(b)(1) (financial institution), two more levels pursuant to §2B3.1(b)(6) (loss greater than $50,000), and downward three levels USSG §3E1.1, reflecting Mr. C.'s acceptance of responsibility. The agreement precluded neither party from moving for an appropriate departure. The government

agreed to recommend imposition of a sentence at the low end of the guideline range determined by the Court to be applicable.

Mr. C. has reviewed the Presentence Investigation Report prepared in connection with the case and has no changes or corrections to suggest with regard to Part A, relating to the offense conduct. He agrees with United States Probation Officer's assessment of his criminal history in Part B and with his computation in Paragraphs 11 through 19 of the pre-departure offense level. The purpose of this Memorandum is to supplement and clarify the information about Mr. C. set forth in Part D of the Report and to set forth grounds for the downward departure which he seeks.

## ADDITIONAL FACTUAL INFORMATION

In addition to Mr. C.'s children mentioned in ¶ 35 of the Report, Mr. C. had a daughter Tonya, who was murdered in 1992 at the age of 24. His grandson Troy was shot and seriously wounded in the same incident.

While ¶¶ 39 and 40 of the Report recount Mr. C.'s public service employment, the Court should also be aware that for over thirty years, Mr. C. has been a community organizer and has been very active in Baltimore City political and public service activities. The letters attached hereto as an Appendix to this Memorandum are from people who have known Mr. C. in that connection.

## ARGUMENT

### I. The Extraordinary Level of Community Service Rendered by Mr. C. Over a Period of Thirty Years Justifies a Downward Departure.

Mr. C.'s life has been characterized by selfless devotion to his community. For over thirty years his caring and compassion have been legendary among the communities of East Baltimore. He has been a civil rights advocate, a determined fighter for the disadvantaged, a friend of virtually

anyone who has needed help. The extraordinary extent and quality of Mr. C.'s charitable work and community service plainly distinguishes him from the heartland of offenders and justifies the Court's downward departure.

In addition to the brief testimony which the Defense expects to adduce at the sentencing hearing, the letters attached as an Appendix to this Memorandum contain many references to Mr. C.'s many contributions :

> "He was and is a person who always gave 100% of himself to the community, especially to the poor, the downtrodden, and the dispossessed, with no expectation of personal gain or reward." Letter of William H. Murphy, Esquire.
>
> "Mr. C. has worked tirelessly to help improve the lives of residents in the community. He has always shown a great concern with citizens' personal issues and achievements, community issues, and the improvement of Baltimore City." Letter of Hon. Robert L. Douglass, Baltimore City Council.
>
> "Mr. C. loved working on projects with the young kids in the area, working with the neighborhood group." Letter of Terry Coleman.
>
> "[A] helpful, considerate, compassionate person who was active in politics in his neighborhood and the City. * * * . . . honest and beyond reproach. " Letter of Julian L. Lapides, Esquire.
>
> "Mr. C. was extremely helpful to this Community. He was always available and is held in high regard by everyone. He was consistent in his attempts to correct community related problems . . . ." Letter from Lakewood Chase Community Association.
>
> "Mr. C. has always been a kind, thoughtful, and loving servant of his community. We had worked together in the nonviolent civil rights movement, taken a strong stand against crime, and promoted integrity in politics." Letter of Hon. Clarence Day.
>
> "I have seen Mr. C. work way past his regular work hours to render service to the community." Letter of Melvin J. Davis, President, Friendly Neighborhood Improvement Association.

Under USSG §5H1.11, a defendant's civic, charitable, or public serve, . . . and similar good

works" are a discouraged (but not forbidden) sentencing factor, which imports that such activity may constitute grounds for a departure "if the factor is present to an exceptional degree or in some other way it makes the case different from the ordinary case where the factor is present." *Koon v. United States,* 116 S. Ct. 2035, 2045 (1996). In order to determine whether a defendant's prior charitable works or community service was "exceptional," the Court must view it in the context of other cases where defendants have offered their prior good works for sentencing consideration. *United States v. DeMasi*, 40 F.3d 1306, 1324 (1st Cir. 1994).

Many offenders remind the court of their prior good works at sentencing, and are entitled to have those good works taken into account in determining where the sentence should be on the applicable sentencing range. USSG, Ch.5, Pt.H., intro.comment. The "ordinary" good works of offenders in such cases cannot constitute departure grounds. But precisely because the extent and nature of the good works done by Mr. C. over his lifetime are so profoundly and qualitatively different, his situation is indeed outside the heartland contemplated by the United States Sentencing Commission, and warrants an appropriate downward departure.

## II. The Bank Robbery Committed by Mr. C. is a Single Act of Aberrant Behavior.

Apart from a misdemeanor conviction 22 years ago, for which he was placed on probation, Mr. C.'s prior record is spotless. The witnesses who will appear at sentencing will testify that they have never known Mr. C. to have ever engaged in any untoward behavior. The following excerpts from the letters submitted to the Court (Appendix A, infra) confirm that the robbery was wholly out of character for Mr. C., an aberration:

"a gentle amiable person . . . without exception honest, dependable, responsible, and

conscientious. * * * [The crime] was one anomaly in a lifetime, one stray step from the path of righteousness." Letter of Barry C. Steel, Esquire.

"The fact that he is being charged with a violation of the law shocks me. To me, it goes completely against his character. Even as I write this letter, I am still trying to take in the fact that it is on Leonard's behalf that I am writing. The Leonard I know is basically a good person. I am still trying to come to grips with the fact that he is in this type of situation." Letter of Charles Duvall.

"[A] decent, hard-working and reliable citizen. This recent revelation of his involvement in something illegal comes as a surprise to me." Letter of Hon. Kurt Schmoke, Mayor of Baltimore.

"[E]verything I have known about him is counter to his actions in this case. * * * [A]ll of us who know him read of [the crime] with astonishment." Letter of Hon. Thomas Ward.

"This offense is totally out of character for him." Hon. Paula Johnson Branch, Baltimore City Council.

"Upon hearing of Mr. C.'s arrest for bank robbery, I, my family, and all our mutual friends were in a state of shock. In fact there are those who refuse to believe me when I tell them "it was Leonard." The act and the person we know represents the greatest contradiction I have ever encountered." Letter of Hon. Clarence Day.

"This report of his being charged with a crime seems entirely out of character to me." Letter of Sister Margaret Gardner

"[T]his action was so unlike him." Letter of Terry Coleman.

"This offense is truly out of character for Mr. C. . . . ." Letter of Melvin J. Davis, President, Friendly Neighborhood Improvement Association.

"I would never have expected this kind of behavior from Mr. C.." Letter of Hon. Bernard C. Young, Baltimore City Council.

"I believe it to be truly out of character for him to be a part of any crime." Letter of Leroy Kirkland, Sr.

It is clear that if an offender's criminal act may reasonably be characterized as a single act of aberrant behavior, the sentencing court is authorized to depart downward. USSG Ch.1,

Pt.A.(4)(d). This ground for departure may be available to offenders, regardless of the seriousness of the offense. *United States v. Duerson*, 25 F.3d 376, 380 (Sixth Cir. 1994) (aberrant behavior departure may be available for robbery and like offenses where offenders inevitably face prison sentence). It is, indeed, an encouraged factor within the meaning of *United States v. Koon*, 116 S.Ct. at 2045, with the consequence that the sentencing court is fully authorized to depart if the applicable Guideline does not already take it into account. *Id.* To be characterized as aberrant, conduct must not be "the result of a continued reflective process," but is instead typically the product of impulse. *United States v. Glick*, 946 F.2d 3353 (4th Cir.) (where conduct over a ten-week period involved several actions and extensive planning, aberrant conduct departure not upheld). It is clear that the conduct in this case satisfied those requirements.

The factual similarity between this case and *United States v. Fairless*, 975 F.2d 664 (9th Cir. 1992) is compelling. In *Fairless,*

> "[the defendant] entered a bank wearing a ski mask and brandishing an unloaded nine-millimeter gun. Fairless ordered everyone but the bank tellers to lie on the floor. He then approached each teller and ordered him or her to put money into a brown paper bag. Fairless left the bank with $10,652.00 He was arrested in the parking lot of his apartment shortly thereafter."

*Id.*, 975 F.2d at 665. Taking into account the defendant's lack of a prior record, the desperate financial situation in which he found himself, letters submitted by friends and associates for whom the offense was "a complete shock," and the defendant's "crazed" aggressive behavior within the bank, the sentencing court found the conduct to have been within the spectrum of aberrant behavior, and awarded a downward departure, which the Court of Appeals upheld. *Id.*, 975 at 666-669.

Mr. C.'s desperate act, while undeniably serious and deserving of punishment, was wholly

uncharacteristic and an aberration in an otherwise blameless life. The Court accordingly should depart.

### III. A Combination of the Foregoing Factors Warrants a Downward Departure.

While the defense maintains that each of the foregoing factors could properly support a discrete downward departure, it may be more appropriate and sensible for the Court to consider them in combination. See USSG §5K2.0, comment. (combination of circumstances may remove a case from the "heartland"). Should the Court be of the view that of the foregoing grounds are inextricably woven together or that one or both of them are not sufficient to stand independently as a departure ground, the Defense commends to the Court the "combination of factors" analysis. In any event, the grounds he has identified, whether considered severally or in combination, fully justify the departure which Mr. C. seeks and will allow imposition of a sentence which is "sufficient, but not greater than necessary, to comply with the purposes [of federal sentencing]" 18 U.S.C. § 3553(a).

### IV. The Court Should Impose a Sentence of 121 Months.

Upon determining that departure is warranted, it remains for the Court to determine the extent of the departure. In this connection it is important to recall that Mr. C.'s offense -- armed robbery of a bank -- has resulted in his conviction on two counts for which he must receive separate sentences. The *aggregate* sentence for this offense will be the sum of the Guidelines sentence which the Court imposes on Count One plus the statutory ten-year sentence which the Court must impose on Count Two. The predeparture aggregate sentencing range in this case is 157-166 months (120 months + 37 to 46), and the government will recommend to the Court a sentence at the low end of that range: 157 months.

In determining the extent of a departure, the importance of focusing on the aggregate sentence follows from the Court's duty to "link the extent of departure to the structure of the guidelines." *United States v. Ferra*, 900 F.2d 1057, 1062 (7th Cir. 1990). Since, for his conduct, Mr. C. will be sentenced to 157 months less whatever incremental proportion of that sentence is deemed appropriate by the Court, it is helpful to observe that a 157-month guidelines sentence at Criminal History Category I would be an offense level 34 sentence . Counsel's suggestion is that an appropriate downward departure would analogize to a two-level downward departure from offense level 34. The sentencing range at level 32 for one with a Category I criminal history is 121-151 months. Counsel respectfully suggests imposition of an aggregate sentence of 121 months.

Respectfully submitted,

JAMES K. BREDAR
Federal Public Defender

_____
GARY W. CHRISTOPHER
Assistant Federal Defender
l00 S. Charles Street
Tower II, Suite 1100
Baltimore, Maryland 21201
(4l0) 962-3962

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of August, 1997, a copy of the foregoing Motion and Memorandum was delivered to Thomas M. DiBiagio, Esquire, Assistant United States Attorney, 6625 United States Courthouse, 101 W. Lombard Street, Baltimore, Maryland 2l20l.

_____
GARY W. CHRISTOPHER
Assistant Federal Defender