

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Case No. 19-CR-00623
v.)	
)	Honorable Robert W. Gettleman
)	
THOMAS E. CULLERTON,)	United States District Court Judge
)	
Defendant.)	

DEFENDANT’S SENTENCING MEMORANDUM

Defendant Thomas E. Cullerton, by his undersigned attorney, respectfully submits that a sentence of three years’ probation, an order to perform community service, and restitution in the amount of \$248,828 is a sufficient, but not greater than necessary punishment that serves the factors outlined in 18 U.S.C. § 3553(a). In further support, the Defendant states as follows:

I. INTRODUCTION

Tom Cullerton is a 52-year-old husband and father who has spent most of his adult life serving his community. On June 21, 2022, he will stand before this Court humbled and with deep regret for his criminal conduct. Tom fully accepts responsibility for receiving salary and benefits from the Teamsters without earning that compensation through work as an organizer. Tom has resigned his position as an Illinois State Senator, and now performs shift work at a warehouse to make ends meet and provide restitution to the Teamsters. His wife also has returned to the work force, currently working in two different jobs. Between income from their jobs and loans from other family members, Tom already will have contributed approximately \$26,000, towards restitution by the time of sentencing, and he looks forward to paying the full

balance. Tom understands that he deserves much of the public scorn that he has received, but is nonetheless committed to making things right with the Teamsters and working hard for his family and community. He will forever bear the stigma, public embarrassment, and financial and other costs associated with this felony conviction.

II. A SENTENCE BELOW THE ADVISORY GUIDELINE RANGE WILL SERVE THE FACTORS OUTLINED IN 18 U.S.C. § 3553(A)

The goal of sentencing is to fashion a sentence that is “sufficient, but not greater than necessary,” to promote the goals established and codified by Congress. 18 U.S.C. § 3553(a). The guidelines are advisory and a court may sentence outside the guideline range as long as all of the § 3553(a) factors are considered. Indeed, it is the district court’s duty to “make its own reasonable application of the § 3553(a) factors, and to reject (after due consideration of) the advice of the Guidelines” if the result they suggest does not comport with the sentencing court’s view of an appropriate sentence. *Kimbrough v. United States*, 552 U.S. 85, 113 (2007) (Scalia, J., concurring).

The Supreme Court has emphasized that sentencing courts should impose a punishment that “fit[s] the offender and not merely the crime.” *Pepper v. United States*, 131 S. Ct. 1229, 1240 (2011). Moreover, the Supreme Court has rejected outright the notion that “extraordinary” circumstances must exist to justify a sentence outside the advisory Guideline range, including cases in which courts depart significantly from advisory guideline ranges to impose a non-custodial sentence. *Gall v. United States*, 552 U.S. 38, 47 (2007) (finding district court’s departure from advisory guideline range of 30-37 months to impose sentence of probation was not an abuse of discretion).

To determine a sentence that is sufficient, but not greater than necessary to fulfill the purposes of sentencing, § 3553 directs consideration of several well-known factors. 18 U.S.C. §

3553(a); see *United States v. Johnson*, 471 F.3d 764, 766 (7th Cir. 2006) (“the statute does not weigh the factors . . . that is left to the sentencing judge, within the bounds of reason, which are wide.”). The Defendant respectfully submits that consideration of these factors demonstrates that a sentence of three years’ probation, an order to perform community service, and restitution in the amount of \$248,828, is sufficient to promote the goals of sentencing.

A. History and Characteristics of the Defendant

Tom grew up in Evanston, Illinois. PSR ¶ 41. His parents divorced when he was 18 months’ old, and he was raised by his mother with assistance from his grandmother. PSR ¶ 42. Tom graduated Loyola Academy and tried his hand at college, briefly attending the University of Kansas before failing out. PSR ¶ 61. He enlisted with the U.S. Army, and served three years (’90 to ’93) as a TOW Gunner before receiving an honorable discharge. PSR ¶ 66. In addition to serving his country, Tom hoped that he would learn enough discipline in the Army to help him focus on school, but he never finished college. PSR ¶ 62. Throughout the remainder of his 20’s, Tom pursued work as an actor/comedian and worked a series of jobs at retail stores – e.g. Tommy Bahama, Pottery Barn, and Williams Sonoma -- to support himself.

Tom met his wife Stacey in the spring of 1999, and their oldest son was born in November 2000. PSR ¶ 43. They moved to their current two-bedroom home in Villa Park shortly thereafter. *Id.* Tom was the sole breadwinner for their growing family -- they had two more sons in February 2003 and May 2004. *Id.* Tom continued to work retail jobs, tried other careers unsuccessfully, and eventually became a route driver for Hostess Brands in or around 2007. In that job, Tom worked twelve hour shifts starting at around 2 a.m. each day, driving to various convenience stores, stocking their shelves, and collecting payments from store owners. Tom’s compensation varied depending on sales. Money has been and continues to be a source

of stress for their family. *Id.*

Tom is a dedicated husband and parent. Since his boys were little, Tom has been an active participant in their lives, doing everything from being a Cub Scout leader and later a Boy Scout leader to coaching all of their sports – baseball, basketball, and football – as well as building sets for the local children’s theater. PSR ¶ 44. Tom and Stacey are very proud that each of their boys has achieved the level of Eagle Scout. Tom and Stacey have spent significant time teaching their boys the importance of public service. Long before Tom sought public office (and since that time), Tom and Stacey have volunteered their time in a variety of ways, including, among others, the annual Prairie Path clean up, the Salt Creek clean up, Soles for Villa Park (gathering gently used shoes for families in need), and serving Thanksgiving dinner for newly enlisted soldiers and veterans at the VFW Hall. Tom and Stacey brought their children to each of these events for what they jokingly referred to as “forced family fun” because they wanted them to value the importance of volunteer work and community service.

In addition to the boys’ activities, Tom helped form a neighborhood watch group, became very active with the Knights of Columbus and the American Legion, and volunteered with a number of veteran groups and other organizations. Tom did these things long before he decided to pursue a political career. Other parents and community members saw his work in the community and encouraged Tom to seek public office, but he politely declined at first. What changed his mind was the flooding of his basement. His family was required to post a bond with the Village to allow a contractor to perform work on the sewer line connected to their home. After the work was completed, the Village would not timely return the bond money. Tom’s family needed that money to pay for living expenses. As approval of the return of the bond money remained delayed, Tom started attending Village meetings and came to believe

that the then-current trustees needed to focus more on the issues facing the young families in the neighborhood. So Tom decided to seek office. Tom successfully ran for the position of Village Trustee in 2005. He then became the Village President in 2009, and successfully ran for the State Senate in 2012.

As a public official, Tom stayed closely engaged with his community, and his legislative efforts most often grew from conversations with other parents, community members, and veterans. For example, Tom met two mothers with boys suffering from pediatric autoimmune neuropsychiatric disorders. Both boys were named Charlie. Based on those conversations, Tom introduced and helped pass “Charlie’s Law,” making Illinois the first state in the country to require insurers to cover medical treatment for children afflicted with pediatric autoimmune neuropsychiatric disorders.¹ One mother described her experience first meeting Tom, noting “we knew immediately he was taking our concerns to heart,” and spoke of his continued commitment, “volunteering his time after hours and on weekends to attend and emcee PANS awareness events.” With these parents, Tom worked hard to bring awareness to this issue. Seven other states have now passed similar laws to help these parents and their children. Yet another conversation with a parent whose son suffers from autism led Tom to secure passage of a law requiring training for health workers on how to draw blood from children with intellectual and developmental disabilities.²

Tom introduced and helped pass legislation that required putting the phone numbers for the National Suicide Prevention Lifeline and Crisis Text Line on college students’ identification

¹ <https://www.reuters.com/article/us-illinois-insurance/illinois-law-requires-coverage-of-pediatric-autoimmune-disorders-idUSKBN1A32B7> (last accessed June 7, 2022).

² <https://patch.com/illinois/elmhurst/tom-cullerton-passes-measure-help-individuals-disabilities> (last accessed June 7, 2022).

cards to make sure the information was readily available.³ Addressing mental health in fact was a priority for Tom – he also sponsored a law that allowed police officers to seek mental health treatment without the fear of losing their job⁴ and other legislation that created the Illinois Veteran Suicide Task Force.⁵ Tom led the investigation into an outbreak of legionella at the LaSalle Veterans’ home, eventually sponsoring the creation of the Veterans’ Accountability Unit.⁶ These are but a few examples. Tom remains proud of his work as a public official, but fully understands that it does not excuse what he did to the Teamsters.

Tom has resigned from public office, and now performs shift work at a warehouse for an hourly wage without insurance or other benefits. His employer makes available 5-hour shifts for scheduling, and Tom signs up for as many as possible. He often works shifts from 3 a.m. to 8 a.m., and then returns later in the day to work a 1 p.m. to 6 p.m. or 5 p.m. to 10 p.m. Tom has deferred seeking more stable employment until sentencing, but hopes to secure a better position to pay the Teamsters back more quickly and support his family.

In February 2021, Stacey, who had stayed home with the boys when they were younger, started working shifts at the same warehouse. In late January 2022, Stacey secured full-time employment with a consulting firm, but has been and intends to continue working shifts at the warehouse on nights and weekends. Their youngest son just graduated high school, and next year they will have three children attending college. Both Tom and Stacey are hard-working, dedicated parents who have struggled with the public embarrassment that has resulted from Tom’s conduct.

³ <https://www.thetelegraph.com/news/article/Bill-would-list-mental-health-help-on-student-IDs-15104711.php> (last accessed June 7, 2022).

⁴ <https://www.nprillinois.org/statehouse/2018-08-17/new-law-to-address-police-officers-mental-health> (last accessed June 7, 2022).

⁵ <https://khqa.com/news/state/illinois-group-wants-to-prevent-veteran-suicides> (last accessed June 7, 2022)

⁶ <https://foxillinois.com/news/local/veterans-react-to-new-accountability-law-for-illinois-veterans-homes> (last accessed June 7, 2022)

B. Nature and Circumstances of the Offense

Tom deeply regrets his conduct, which is detailed in his plea agreement and in the PSR. When Hostess Brands filed for bankruptcy in late November 2012, Tom lost his job and needed to seek out new employment. Tom went without any income from November 2012 to February 2013, when he received his first paycheck as a Senator. Although recently elected to the State Senate, Tom needed a second job to pay the mortgage on his family's home, buy groceries, and otherwise support his family.

In March 2013, Tom accepted the organizer job from the Teamsters and performed some limited work for the Teamsters that summer, after the session in Springfield ended. To be clear, Tom understood that he was not meeting the expectations of the job. He found it difficult to dedicate enough time to both jobs and his family, and knows that he should have resigned his position with the Teamsters as early as that very first summer. He was not performing the responsibilities required by the position and he should not have accepted its salary and benefits. His decision not to resign right then and there will haunt him the rest of his life.

After the legislative session ended in 2014, Tom again made admittedly sporadic efforts to perform work for the Teamsters, but fully acknowledges that his efforts were nowhere near enough to meet the requirements of the job. And in 2015, Tom did not perform any work for the Teamsters. Tom fully understands that his continued acceptance of salary and benefits during this almost three year time period (March 2013 to February 2016) was inexcusable.

Tom also recognizes that he did not treat his Teamsters' supervisors with the respect they deserved -- he failed to return their phone calls, did not submit necessary paperwork, and did not attend regularly-scheduled meetings or required events. He is truly embarrassed by how he treated his supervisors at the Teamsters, and understands that he owes them more than an

apology. Tom is anxious to repay the Teamsters the salary and benefits that he received without earning it (\$248,828). Tom has made an initial advance payment of \$25,000 towards this restitution amount with money borrowed from a family member, and before the time of sentencing will have made additional payments with income earned from his warehouse job for a total approximate amount of \$26,000. Tom is committed to repaying the full restitution amount as soon as he is able.

C. The Need to Reflect the Seriousness of the Office and Provide Deterrence

The defendant appreciates the seriousness of his conduct, and respectfully submits that a sentence of imprisonment would be greater than necessary to protect the public or deter him from criminal conduct. Tom has taken a very public fall. After earning a job that truly gave him purpose by serving his community, Tom now has resigned his seat and will never hold public office again. His standing in the very community which he served has cratered. When the charges were first announced, he received threats at his office. PSR ¶ 53. Since that time, Tom and his family have noticed how differently many people treat them. Certain neighbors have chosen to ignore him, while some others have been supportive. The reality is that shame will follow Tom the rest of his life. Any internet search of his name produces article after article describing Tom's criminal conduct, sometimes inaccurately. Tom knows that he has stained his family's name and carries deep regret for how his conduct has caused them harm. To be clear, Tom fully recognizes that he should have considered the consequences during the months that he accepted a paycheck from the Teamsters without earning it and he bears full accountability for his own actions.

This public embarrassment and stigma, however, have added significantly to the punishment that Tom has received. Tom presents no risk of recidivism and, considering the

significant financial and community service obligations that Tom readily accepts, he respectfully submits that a sentence of probation is a sufficient but not greater than necessary punishment. As the Supreme Court recognized in *Gall*, a sentence of probation involves a “substantial restriction of freedom.” *Gall*, 552 U.S. at 48, 128 S.Ct. 586. Such a sentence would allow Tom to continue working and achieve his goal of making full restitution as quickly as possible.

D. The Need to Provide Restitution

The Defendant agrees that an order of restitution in the amount of \$248,848 should be imposed. A sentencing court may consider a defendant’s ability to earn money to pay restitution as a reason to impose a lower sentence. *United States v. Cole*, 765 F. 3d 884, 886 (8th Cir. 2014) (affirming sentence of probation, where district court found it “would allow [defendant] to work and earn money to make restitution to the victims of the fraud); *see also United States v. Menyweather*, 447 F. 3d 625, 636 (9th Cir. 2006) (affirming sentence of probation, noting “a sentence of probation may have made Defendant better able to provide restitution to the victims of her crime”), *overruled on other grounds*; *United States v. Edwards*, 595 F. 3d 1004, 1011 (9th Cir. 2010) (affirming sentence, noting that “district judge recognized that restitution serves as a deterrent, and that ‘[t]he term of probation imposed will enable [defendant] to continue working in order to pay the significant amount of restitution he owe[s].’”); *United States v. Musgrave*, 647 Fed. Appx. 529, 536 (6th Cir. 2016) (affirming a sentence of one day of imprisonment, 24 months’ home confinement and five years’ supervised release as reasonable, where district court explained “the goal of obtaining restitution for the victims is best served by a non-incarcerated and employed defendant.”)

As mentioned, Tom already has made strides toward restitution. By the time of

sentencing, Tom will have paid a little more than 10% of the total amount owed. Going forward, Tom plans to deposit proceeds from his current employment at the warehouse, while seeking better-paying employment. Tom is fully committed to providing restitution to the Teamsters.

E. The Advisory Guideline Range

The PSR correctly calculates the advisory guideline range. The adjusted offense level (13), criminal history category (I), and resulting range (12-18) are consistent with those in the plea agreement. In the plea agreement and as a result of its investigation, the government agreed that the Defendant “has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct” and “timely notified the government of his intention to enter a plea of guilty.” (Plea Agreement, Doc. No. 83, at ¶¶ 9(b) (iii), (iv)).

III. CORRECTIONS TO THE PRESENTENCE INVESTIGATION REPORT

The parties have agreed that the last sentence of paragraph 11 of the PSR should be stricken.

IV. SUPERVISED RELEASE

The Defendant has reviewed Probation’s recommendations of conditions of supervised release with his undersigned counsel and has no objections.

V. CONCLUSION

Tom is a good and decent man who made a terrible mistake. He should not have accepted the Teamsters salary and benefits without doing enough to earn them. Tom will live the rest of his life with deep regret and shame, but he is determined to make it right and continue in some way to help his community. Tom respectfully submits that a sentence of three years’ probation, an order to perform community service, and restitution in the amount of \$248,828 is a sufficient, but not greater than necessary punishment.

Dated: June 7, 2022

Respectfully submitted,

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