

STATE OF MINNESOTA
COUNTY OF WATONWAN

DISTRICT COURT
FIFTH JUDICIAL DISTRICT

State of Minnesota,

Court File Nos.: 83-CR- [REDACTED]
83-CR- [REDACTED]

Plaintiff,

vs.

M [REDACTED] T [REDACTED] B [REDACTED],

**NOTICE OF MOTION AND MOTION
FOR A DOWNWARD DEPARTURE AND
SENTENCING MEMORANDUM**

Defendant.

TO: THE STATE OF MINNESOTA AND [REDACTED], ASSISTANT WATONWAN
COUNTY ATTORNEY, 710 SECOND AVENUE SOUTH, ST. JAMES, MN 56081

PLEASE TAKE NOTICE that on October [REDACTED], 2021, at 1:00 p.m. before the Honorable
[REDACTED], Judge of the above-named District Court at the Watonwan County
Government Center, 710 Second Avenue South, St. James, Minnesota, Mr. B [REDACTED], by and
through his attorney, will move this Court for an Order granting the relief requested in the
following Motion.

MOTION

1. Mr. B [REDACTED] moves the Court for an ORDER granting him a downward dispositional
departure to a stay of execution of sentence. MINN. SENT. GUIDELINES I.B.5.a.(2); *State*
v. Trog, 323 N.W.2d 28, 31 (Minn. 1982).
2. In the alternative, Mr. B [REDACTED] moves the Court for an ORDER granting a downward
durational departure with 4 days of credit for time served. MINN. SENT. GUIDELINES
I.B.5.b.(2); *State v. Solberg*, 882 N.W.2d 618, 624 (Minn. 2016).

The State has agreed to remain silent regarding this motion at sentencing.

This Motion is made on all the files and records in the case, the United States and Minnesota Constitutions, the Minnesota Statutes and Rules of Criminal Procedure, the Minnesota Sentencing Guidelines, the interests of justice, the following argument, and upon such other and further points and authorities as may be subsequently presented to the Court.

FACTS

Court File Number 83-CR-■■■■: On January ■■, 2020, Mr. B■■■■ was charged with three counts of *Felony Felon in Possession of a Firearm* arising out of a search warrant execution that revealed firearms and ammunition on his property. The firearms were located in a locked and secure pop machine, which really was a safe. On August ■■, 2021, Mr. B■■■■ accepted responsibility and pled guilty to Count I.

Court File Number 83-CR-■■■■: On April ■■, 2020, Mr. B■■■■ was charged with three counts of *Felony Receiving Stolen Property*, *Felony Predatory Offender Registration Violation*, two counts of *Felony Fifth Degree Drug Possession*, *Misdemeanor Arson*, and *Petty Misdemeanor Possession of Drug Paraphernalia*. On August ■■, 2021, Mr. B■■■■ accepted responsibility and pled guilty to *Felony Receiving Stolen Property* with an amended penalty statute and *Felony Fifth Degree Drug Possession*. The basis of the Receiving Stolen Property charge was Mr. B■■■■'s possession of a stolen skid loader. The basis of the drug charge was Mr. B■■■■'s possession of five Morphine pills.

The global plea resolution, which encompassed all of Mr. B■■■■'s cases, is as follows:

83-CR-■■■■

- Plead guilty to Count 1
- Dismiss remaining Counts
- Severity Level 6; Criminal History Category 4
- Guidelines call for 45 months in prison
- Concurrent with case number 83-CR-■■■■
- State agrees not to file a 609.11 mandatory minimum enhancement

- Defense can argue for a downward dispositional or durational departure
- State agrees to remain silent at sentencing

83-CR- [REDACTED]

- Plead guilty to Amended Count 1 (penalty statute amended to Minn. Stat. § 609.52, subdiv. 3(3)(v))
- Plead guilty to Count 5
- Dismiss remaining Counts
- Concurrent sentence with case number 83-CR- [REDACTED]
- Defense can argue for a downward dispositional or durational departure
- State agrees to remain silent at sentencing

83-VB- [REDACTED]

- Dismissed

[REDACTED] County Theft Investigation (pending)

- [REDACTED] County Attorney's Office agrees not to prosecute

BACKGROUND

I. Mr. B [REDACTED]'s Life Background.

It is undisputed that despite Mr. B [REDACTED]'s extremely difficult childhood, he has turned his life around and become a father to his [REDACTED]-year-old son and husband to his wonderful wife, [REDACTED]. He has been crime-free since April [REDACTED], 2020. Mr. B [REDACTED] has been completely sober of controlled substances for many years, and he drinks alcohol very occasionally. Mr. B [REDACTED] denies using the controlled substances found. Due to child protection involvement, Mr. B [REDACTED] had to complete a chemical health assessment, which recommended a 12-hour class, therapy sessions, and drug testing (PSI, pp. 6–7). Mr. B [REDACTED] reported that he completed all of his requirements without issue.

By way of background, Mr. B [REDACTED] was born in [REDACTED], Minnesota and graduated from [REDACTED] High School in [REDACTED] with good grades. During his last two years, he participated in a school-to-work program, where he attended school until noon and then went to work for the rest

of the day. He started working on cars as a mechanic at a shop. Mr. B████ earned his Certificate in mechanical drafting and design in █████. Since high school, he has always been an auto mechanic and also spent a couple of years as a machinist and another couple of years in construction. He is currently self-employed as an auto mechanic and has a shop at his residence.

Mr. B████'s father was in and out of prison and jail throughout Mr. B████'s entire life. His father's criminal history was mainly drug-related as he was a drug addict. Mr. B████ has five sisters, including one older sister and four younger sisters. All six siblings are approximately three years apart. While his father was a drug addict, his mother struggled with significant mental health issues which, caused Mr. B████ to suffer from abandonment and depression.

Mr. B████ met his wife, the love of his life, in █████, and they have been together since. They are best friends. They learned she became pregnant in █████, and they moved out of their trailer into their first house. It was a monumental accomplishment for both of them. Mr. B████'s wife, █████, was a full-time college student, and Mr. B████ worked to support their family. He learned that his boss was engaging in unethical practices, and so Mr. B████ left and started working on his own. █████ graduated college and became a Registered Nurse. They married in February █████. Their son is now █ years old and is in █████. Because Mr. B████'s shop is at home, he and their son spend a lot of time together every day. They play video games, go four-wheeling, and spend time in the shop.

████ works as a charge nurse at a hospital emergency room. Previously, she was a █████ County Public Health nurse. She works very inconsistent and unpredictable hours, including days, nights, and weekends. She usually works six days per week, at least 60 hours per week. Mr. B████ is responsible for taking care of their son nearly full time due to his flexible hours and at-home mechanic shop. He also takes their son to medical appointments and any other appointments needed. The photos pasted throughout this memorandum demonstrate how close Mr. B████ is to his son and wife. Having a father that works from home with a flexible schedule has created an unparalleled bond between Mr. B████ and his son. A prison sentence in this case would destroy the family, and Mr. B████'s wife would be unable to work given her unpredictable schedule.

II. Tragedy Throughout Mr. B████'s Life.

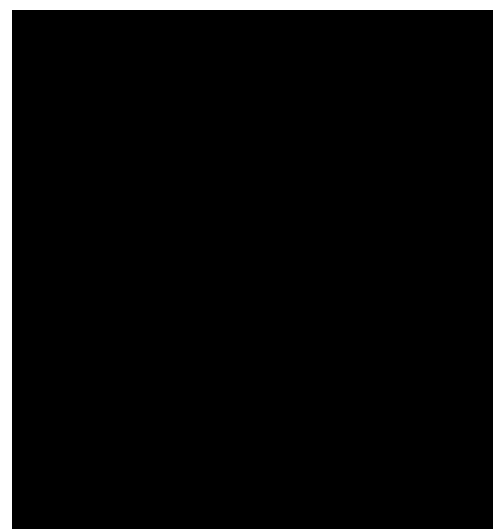
On August █████, tragedy struck Mr. B████ when he discovered his mother after she committed suicide. His mother's mental health had been declining for years. She would frequently lock herself in her house and not talk to anyone. Mr. B████'s sisters would tell him to go check on her, and he would text his mother and say he would come over unless she responded—she always responded. August █████ was different. His sisters texted him that day to check on their mother as she was not responding to them. She did not respond to Mr. █████'s text either. He drove to her house with a sinking feeling. Mr. B████ called police asking for an officer to do a welfare check with him. An officer met him at the house and walked inside the house first. Mr. B████ waited outside and then went to the garage to open it

so the officer could look inside. When he tried the garage handle, the door was locked. Mr. B████ knew something was wrong as the garage door was never locked. Mr. B████ kicked the door in and saw his mother on the floor. He became distraught and yelled for the officer, who ran out and asked if his mother was inside. His mother had committed suicide by asphyxiation; tragically, she used the truck she had borrowed from Mr. B████, closed the garage door, and let the truck run until she died. Given his father's abandonment, Mr. B████ was very close with his mother, and her death was extremely painful. The only thing that kept him going was knowing he had to help his sisters through the pain and grief.

Around 11:00 p.m. that same day, Mr. B████ received more devastating news—his best friend had died from alcohol poisoning. His best friend had borrowed his car and went camping with another friend. The friend called Mr. B████ to pick up his car because his best friend had died. He had consumed too much alcohol, went to sleep, and died from alcohol poisoning. This, too, was a horrific loss for Mr. B████. In less than 12 hours, he lost his mother and his best friend.

III. **Rehabilitation.**

Mr. B████ now has his life together. He is working, is married, and has a █-year-old son, who is the joy of his life. He is his son's primary caretaker. He adores his family, and they adore him. In July █████, they bought a hobby farm. He works both in the shop he built as well as on the farm. They have cows, chickens, dogs, and a vegetable garden. They have a huge playground for their son as well as a pool.



Since these charges and the news articles that followed, Mr. B████ has avoided being out in the community. He would like to be involved in the community, and he hopes he will be able to again soon.

STATUTORY SENTENCE

In court file number 83-CR-████, Mr. B████ pled guilty to *Felony Felon in Possession of a Firearm*, in violation of Minn. Stat. § 624.713, subdiv. 1(2). This charge carries no mandatory minimum incarceration and a 15-year maximum.

In court file number 83-CR-████, Mr. B████ pled guilty to *Felony Receiving Stolen Property*, in violation of Minn. Stat. § 609.53, subdiv. 1 and amended penalty statute Minn. Stat. § 609.52, subdiv. 3(3)(v). This charge carries no mandatory minimum incarceration and a 5-year maximum. He also pled guilty to *Felony Fifth Degree Drug Possession*, in violation of Minn. Stat. § 152.025, subdiv. 2(1) and penalty statute Minn. Stat. § 152.025, subdiv. 4(b). This charge carries no mandatory minimum incarceration and a 5-year maximum.

GUIDELINES SENTENCE

In court file number 83-CR-████, Mr. B████'s conviction carries a presumptive guidelines sentence of 44–61 months in prison (severity level 6) based on his 5 criminal history points. MINN. SENT. GUIDELINES IV.A. The parties anticipated that Mr. B████ would have 4 criminal history points, which calls for 39–54 months in prison (45 months middle-of-the-box). The State did not file the Minn. Stat. § 609.11 mandatory minimum enhancement, and the parties specifically agreed in the plea agreement to disregard any applicable mandatory minimum in this case.

In court file number 83-CR-████, Mr. B████'s Felony Receiving Stolen Property conviction carries a presumptive guidelines sentence of 18–25 months in prison (severity level

2), based on his 6 criminal history points. MINN. SENT. GUIDELINES IV.A. His drug conviction carries a presumptive guidelines sentence of 18–25 months in prison (severity level D2), based on his 7 criminal history points. MINN. SENT. GUIDELINES IV.C.

For the reasons discussed below, Mr. B████'s criminal history is overstated. He will respectfully request that this Court consider his criminal history lower than that scored in the PSI.

DOWNWARD DEPARTURE

Mr. B████ is respectfully asking, perhaps begging, this Court for a dispositional departure. He would like to prove to this Court that he can be successful, raise his son, and become a good example for him. This Court may depart from the Minnesota Sentencing Guidelines and grant Mr. B████'s motion for a downward departure. MINN. SENT. GUIDELINES II.D.1 (“The court must pronounce a sentence of the applicable disposition and within the applicable range unless there exist identifiable, substantial, and compelling circumstances to support a departure.”). A departure is an exercise of judicial discretion. *Id.* The sentencing court’s decision to depart will not be reversed absent a clear abuse of that discretion. *State v. Geller*, 665 N.W.2d 514, 516 (Minn. 2003). The appellate court is “loath to interfere” with the trial court’s sentencing decision. *State v. Bendzula*, 675 N.W.2d 920, 921, 924 (Minn. Ct. App. 2004) (citing *State v. Case*, 350 N.W.2d 473, 476 (Minn. Ct. App. 1984)) (“Because the trial court in this case dealt with the departure issue both deliberatively and thoroughly, and because the court adequately identified considerations favoring its downward departure that were both atypical and substantial, we must defer to its judgment.”).

“When departing from the sentence calculated under the guidelines, the sentencing judge ‘should pronounce a sentence which is proportional to the severity of the offense of conviction

and the extent of the offender's prior criminal history.” *Id.* at 923–24 (citing MINN. SENT. GUIDELINES II.D). “[A]lthough the guidelines, as intended, produce consistency, they also preserve traditional trial court discretion to employ broadly stated standards, both in determining cause to depart and in determining an apt departure. And the guidelines expressly enlarge the trial court's discretion when assessing reduced culpability and determining a downward departure.” *Id.* at 923.

Dispositional and durational departures are different results and require different analyses. MINN. SENT. GUIDELINES II.D.1.a. The Minnesota Sentencing Guidelines provide this Court with factors that may be used as reasons for a departure. *Id.* at II.D.3. Mitigating factors include amenability to probation. *Id.* at II.D.3.a.

A. Downward Dispositional Departure.

A downward dispositional departure occurs when the Court sentences a defendant to a stayed sentence when a prison commitment is recommended. MINN. SENT. GUIDELINES I.B.5.a.(2). Factors that warrant departure include amenability to probation. *Id.* at II.D.3.a. In determining whether an individual is amenable to probation, factors to consider include “age, prior record, remorse, cooperation, attitude before the court, and social support.” *Id.* at cmt. II.D.303 (citing *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982)).

In *Trog*, the court listed numerous factors in consideration of whether a mitigated dispositional departure was warranted:

1. Defendant's age
2. Defendant's prior record
3. Defendant's remorse
4. Defendant's cooperation
5. Defendant's attitude while in court
6. Defendant's support of family and/or friends

Trog, 323 N.W.2d at 31. The court found that a sentence of probation, when the guidelines recommended a prison commitment, was warranted when the PSI was favorable, showing that he had otherwise been an “outstanding citizen,” had no prior involvement with police, did well in school, had a good work record, had been intoxicated during the offense, cooperated with police, was “shaken” by the incident, and was “extremely contrite.” *Id.* at 29. In addition, at sentencing, defense counsel cited the defendant’s clean criminal record, remorse, cooperation, respectful attitude, strong community support, and presented statements by family and friends. *Id.* at 30.

In 2020, the Minnesota Sentencing Guidelines Commission completed a study on criminal cases receiving departures and found that of all the cases that expected a presumptive commit to prison, 39.4% received a mitigated dispositional departure. MINNESOTA SENTENCING GUIDELINES COMMISSION, *2019 Sentencing Practices: Annual Summary Statistics for Felony Offenders Sentenced in 2019*, p. 29 (Dec. 1, 2020).¹ In the Fifth Judicial District (including Watonwan County), **44%** of cases with a presumptive commit received a mitigated dispositional departure. *Id.* at p. 40. The Guidelines Commission stated, “the presumptive sentence is based on ‘the typical case’” and so “appropriate use of departures by the courts when substantial and compelling circumstances exist can actually enhance proportionality by varying the sanction in an atypical case.” *Id.* at p. 25.

Mr. B████’s unique situation warrants a downward dispositional departure. The most recent date of offense was April █, 2020,² and he has been law-abiding since that date. His nearly 18 months of law-abiding behavior demonstrate that he will be particularly amendable to probation in Watonwan County.

¹ Available at https://mn.gov/sentencing-guidelines/assets/2019MSGCAnnualSummaryStatistics_tcm30-457007.pdf

² This case, court file number 83-VB████, was dismissed on September █, 2021.

The *Trog* factors support a downward dispositional departure.

First, Mr. B████'s age. Mr. B████ is █████ years old. He has a wife and █████-year-old son. Notably, until the two instant cases, he had not had any criminal history (outside of traffic cases) since 2012—before his son was born. This is significant because it shows that he has been working hard to turn his life around so he can be a good father and role model for his son.

Second, Mr. B████'s prior record. While Mr. B████ has several criminal cases, 3 of his 4 felony points come from the same case wherein he was convicted of three Burglary charges in 2008. Thus, his criminal history is overstated. Had he only received 1 point for that one case, he would only have 3 criminal history points, which would significantly lower his guideline ranges. The more appropriate starting point, when considering only 3 criminal history points is as follows:

83-CR-████	34–46 months in prison (severity level 6, CH 3)
83-CR-████ Ct 1	17 months stayed (severity level 2, CH 4)
83-CR-████ Ct 5	19 months stayed (severity level D2, CH 5)

Further, all of his criminal history is over 10 years old. He received 1 point from a case from 2004, 3 points from a case from 2007, ½ point from a case from 2007, and ½ point from a case from 2010. His most recent criminal history (outside of traffic offenses) is from 2012. Thus, he went from 2012 to 2020 crime-free. Mr. B████ is being severely punished from conduct he engaged in a decade ago. Had he had no criminal history points, he would be facing all stayed sentences:

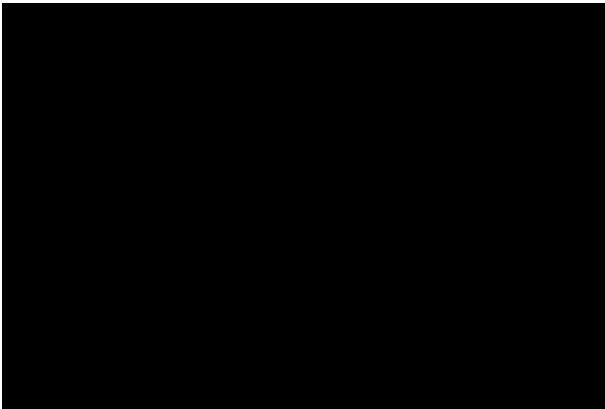
83-CR-████	21 months stayed (severity level 6, CH 0)
83-CR-████ Ct 1	12 months 1 day stayed (severity level 2, CH 1)

83-CR-██████████ Ct 5 13 months stayed (severity level D2, CH 2)

In short, it is not the severity of the offense that presumes a prison commitment, but rather his criminal history from more than 10 years ago.

Third, Mr. B██████████'s remorse, cooperation, and attitude while in court. Mr. B██████████ has pled guilty pursuant to the plea agreement and has accepted responsibility. He has been respectful in Court, has always dressed in a suit, has treated the Court and prosecutor with respect both in and out of the courtroom, and looks forward to succeeding on probation.

Finally, Mr. B██████████'s support of family and friends. He is supported by, and moreover supports, his young family. Mr. B██████████'s wife and son both depend on him not only for income but moreover for childcare. They have a house, a hobby farm, and jobs. Due to his wife's unpredictable work schedule, Mr. B██████████ takes care of their son, including bringing him to doctor's appointments, etc. The attached support letters show that Mr. B██████████ has support from the community and is doing well and moving his life in the right direction despite the current charges. He told the PSI writer that "he is scared to death of being taken away from his family" (PSI, p. 2).



For these reasons, a downward dispositional departure is appropriate given the *Trog* factors.

B. Downward Durational Departure

Mr. B██████████ dreads the thought of a prison sentence, but if this Court were to deny his motion for a downward dispositional departure, a downward durational departure is appropriate.

A downward durational departure occurs when the Court imposes a sentence 15% lower than the Guidelines box. MINN. SENT. GUIDELINES I.B.5.b.(2).

“A downward durational departure is justified only if the defendant’s conduct was ‘significantly less serious than that typically involved in the commission of the offense.’” *State v. Solberg*, 882 N.W.2d 618, 624 (Minn. 2016) (quoting *State v. Mattson*, 376 N.W.2d 413, 415 (Minn. 1985)). “[A] single mitigating factor may support a downward durational departure.” *Id.* at 621.

The Minnesota Sentencing Guidelines Commission’s 2019 study discussed above revealed that of all the cases that expected a presumptive commit to prison, 20% received a downward durational departure. *See supra*, p. 34. In the Fifth Judicial District (including Watonwan County), **16%** of cases received a downward durational departure. *Id.* at p. 40. A durational departure is “based on factors that reflect the seriousness of the *offense*, not the characteristics of the offender.” *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016) (citation omitted, emphasis in original). “A downward durational departure is justified only if the defendant’s conduct was significantly less serious than that typically involved in the commission of the offense.” *Id.* at 624 (citation and inner quotation marks omitted). A single factor may justify a durational departure. *Id.* at 624–25.

Mr. B████’s is not the typical case where the ineligible person was carrying the firearm in his vehicle or walking around with it or otherwise committing crimes. Here, Mr. B████ had his firearms locked up in a pop machine/safe. Thus, this case is less serious than the average case.

Thus, a downward durational departure is also appropriate.

COSTS OF INCARCERATION

According to the Minnesota Department of Corrections, there are 9,381 inmates in the State of Minnesota, 93.4% being male, and 8.3% of all offenders being incarcerated for weapons offenses.³ Of all the male defendants released in 2016, 38% picked up a new conviction and 27% were reincarcerated within three years following their release.⁴

In 2019, Department of Corrections average adult operational per diem was \$111.07.⁵ This averages out to \$40,540.55 per inmate per year. To put this in perspective, Minnesota spent \$12,975.00 per public school student in 2018⁶; the average statewide weekly cost for a childcare center taking care of an infant as of March 2021 is \$370.00, which averages to \$19,240.00 a year⁷; and undergraduate tuition for a Minnesota resident at the University of Minnesota for the 2021–2022 school year is \$6,766.00 for 13 or more credits a semester, which calculates to \$13,532.00 for the year.⁸

Commitment to the Commissioner of Corrections is the most severe sanction that can be imposed for a felony conviction, but it is not the only significant sanction available to the court.

Because state and local correctional facility capacity is finite, confinement should be imposed only for offenders who are convicted of more serious offenses or who have longer criminal histories. To ensure such usage of finite resources, sanctions used in sentencing convicted felons should be the least restrictive necessary to achieve the purposes of the sentence.

³ Minnesota Department of Corrections, *Adult Prison Population Summary* 1 (2020), https://mn.gov/doc/assets/Adult%20Prison%20Population%20Summary%201-1-2020_tcm1089-418232.pdf (last visited Oct. 5, 2021).

⁴ Minnesota Department of Corrections, *2020 Performance Report* 46, https://mn.gov/doc/assets/DOC%202020%20Performance%20Report%20%28final%29_tcm1089-466714.pdf (last visited Oct. 5, 2021).

⁵ *Id.* at 34.

⁶ Governing the Future of States and Localities, *Education Spending Per Student by State* (2020), <https://www.governing.com/finance/education-spending-per-student-by-state.html> (last visited Oct. 5, 2021).

⁷ ChildCare Aware of Minnesota, *Cost of Care*, <https://www.childcareawaremn.org/community/cost-of-care/> (last visited Oct. 5, 2021).

⁸ University of Minnesota, *2021–22 Undergraduate Tuition*, <https://onestop.umn.edu/finances/tuition> (last visited Oct. 5, 2021).

~MINN. SENT. GUIDELINES I.A.4. and 5.

If this Court sentences Mr. B [REDACTED] to the 45 months in prison, the State of Minnesota will spend approximately \$152,027.06 on his incarceration. If he is sentenced to 60 months, Minnesota will spend approximately \$202,702.75 on his incarceration. The purposes of sentencing are not served by this sentence of incarceration.

Thus, the undersigned suggests an alternative sentence. A downward dispositional departure to a stay of execution would provide punishment and deterrence. A term of probation would add to Mr. B [REDACTED]'s motivation to avoid further crime; the threat of probation violations and prison incarceration would be a constant reminder. Further, the standard conditions of probation, especially random chemical tests, will provide further motivation to remain sober. In the alternative, a downward durational departure reflects the seriousness of the offense but also takes into consideration the specific facts of this case.

By staying execution of sentence and imposing a term of probation, Mr. B [REDACTED] is punished, deterred from further criminal offenses, and able to keep his life moving in a better direction. One mistake, he is off to prison. One positive test, this Court can send him to prison. Success will be up to Mr. B [REDACTED].

SUPPORT LETTERS

Mr. B [REDACTED] has immense support from his family and friends. [REDACTED], Mr. B [REDACTED]'s wife, writes:

While it is unfortunate that M [REDACTED] has made some bad decisions, I know he has deep regret for his involvement in these crime's because he knows he has disappointed his family and created a hardship for us. Although, I do not condone M [REDACTED]'s behavior, he deserves a break because incarceration would not benefit his son or the friends and family he continuously helps. If M [REDACTED] were to be incarcerated it would affect [our son] a great deal. [Our son] has never been without his dad and simply wouldn't understand why he was gone. Despite the current charges, I still believe M [REDACTED] to be a great friend, husband, and father.

██████████, Mr. B██████████'s sister, writes:

[T]imes have changed and so has my brother. Since my nephew was born ████████ years ago my brother has become a different person. His sole purpose for living is to raise his son to be the most well behaved, respectful, and responsible little boy possible. And he has done a remarkable job. My brother swore to do whatever it takes to break the cycle of criminal behavior that has followed the men in our family for generations. He plans to accomplish this by making the criminal behavior and all things alike, completely foreign to his son. When my brother's actions got him a criminal record at a young age he didn't think it was a big deal. He watched his dad and uncles go in and out of prison throughout his entire childhood. He thought it was normal. His path had been laid out for him since before he could walk. And by the time he was able to recognize it, it was already too late. The damage had been done. He refuses to let his son face the same fate. So since his son was born, his plan has been to make sure that the path his son saw as normal, was a good path. As well as the only path. The path that consisted of honesty, integrity, humility, compassion, empathy, ambition and trust.

My brother truly has been a better person the past ████████ years. I am terrified that if he were to suffer harsh consequences for this that he would give up. He will see that the 110% that he has been putting into being a good person is still not good enough. He will feel as though he failed his family, his son, his wife, the community. The ones who will suffer most from M██████████ receiving a harsh punishment will be the ones around him. What M██████████ did may have been wrong. But he didn't hurt anyone. Sending him to prison will hurt many people. It will do irreparable damage to him, his wife, his son, his 5 sisters, his 4 nephews, his 3 nieces, and so many others who care about him so much. We need him here with us. M██████████ discover our mother after she committed suicide 3 years ago. She used his truck that he was borrowing her to do. He blames himself because he filled up with gas for her the night before because she had no money. He believes that if he hadn't filled it up, she would still be here. He lost his best friend to a freak accident the same day. Yet he still held us together. He has continued to be our rock to this day. So when I say we need him, I mean it in the most literal sense of the word possible.

██████████, Mr. B██████████'s friend, writes:

M██████████ is a wonderful man. He is devoted and loyal husband to his wife, ████████s and father to his son, []. He makes sure that ████████' vehicle is running safely, the home repairs are kept up, and that his family is well taken care of. M██████████ has always been

kind, courteous and respectful to me and my children. He has always demonstrated dependability, honesty, integrity, and a willingness to help in any situation.

During open and honest conversations with M██ about these charges, actions, and behavior, he has shown deep remorse. He stated that it was wrong and that he put his family in jeopardy. Which is something he would never do under normal circumstances, as his family is everything to him. I feel M██ is a good guy who went through some difficult stuff causing him to act in a manner contradictory to his character. I believe this is due to his battle with grief, over the loss of his mother.

██████, Mr. B███'s friend, writes:

M██ really is a good person. I realize that might seem hard to believe, given the circumstances, but it's true nonetheless. He is a decent person at the core. He just needs more people to see that he has truly changed and grown into a hardworking, trustworthy, family man. He a great father to a little boy who adores and needs him. He has also recently married, purchased a beautiful county home, and started a small business that seems to be doing quite well! I full-heartedly believe that M██ has found peace with life and what it has to offer, and incarceration would not serve him nor the the public. I honestly feel that if given the chance M██ would do what it takes to move on and be a law abiding citizen again. I hope a fair decision is made and he is given the opportunity to do so.

██████, Mr. B███'s friend, writes:

I believe that everyone deserves grace. What I know about M██ is that he is a hard worker and great dad as well as husband. His past doesn't need to define him and I think he has so many good qualities that very much outweigh his actions in this case. M██ is such a wonderful father and provides for his family with his great work ethic. I am saddened to hear that he has even involved in this crime, but I know that we all make mistakes and he regrets the actions and involvement. I don't believe taking him away from his family is going to do any good for our future generation. His son needs his daddy and I from all the involvement in [his son's] life, I think he is very involved and has always been on time picking up [his son]. He adores his parents and I believe that says a lot about how M██ treats his child and raises him.

██████, Mr. B███'s mother-in-law, writes:

I am aware of the predicament that M██ has gotten himself into. Despite this unusual behavior, M██ is a wonderful person who is very kind, respectful and always willing to help anyone out without a second request. He is very dependable and an amazing father and husband who is very tentative to my grandson & daughter's needs and desires. He is very loyal, trustworthy & dependable to his family and friends. M██ is the type of person who will help out a complete stranger without any hesitation, just because it's the right thing to do. He never wants to see

someone struggle and if he can make things a little easier for that person, he will without expecting anything back in return.

...

I do not condone M███'s behavior in any way and I am truly disappointed in his choices. However, I do believe he deserves a break, or 2nd chance, and that it would not be beneficial to the community, or his family, if he was to be incarcerated. M███ is a huge part of raising my grandson and I'm fearful it would cause extreme mental turmoil for both my grandson, [], and my daughter, █████, M███'s wife.

██████████, Mr. B█████'s friend, writes:

Although we do not condone his behavior, we do believe that he should be given a second chance as we know he is sorry for his actions and is trying to right his wrong by being a valuable member of society through the services he provides. . . . M███ has demonstrated being a loving and caring husband and father to his family as well as being a good friend to others.

CONCLUSION

For the foregoing reasons, Mr. B█████ respectfully requests that this Court grant his motion for a downward dispositional departure and sentence him to a stay of execution.

Respectfully submitted,

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Dated: October██, 2021

s/ Ryan Garry

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