

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 22-20191CR-WILLIAMS

UNITED STATES OF AMERICA,

Plaintiff,

v.

KADEEM STEPHAN MAYNARD,

Defendant.

_____ /

MOTION FOR VARIANCE

Defendant, KADEEM STEPHAN MAYNARD, pursuant to Rules 32 and 47, Federal Rules of Criminal Procedure, files this Motion for Variance, and in support thereof asserts:

1) On June 12, 2023, Defendant entered a plea of guilt to conspiracy to import cocaine in this case. Sentencing is presently scheduled for August 21, 2023.

2) On April 5, 2023, the United States Sentencing Commission voted to adopt proposed amendments which will go into effect on November 1, 2023, unless modified or disapproved by Congress.

3) In one of the ameliorative amendments, the Commission created a new guideline §4C1.1, which provides a -2 offense level reduction for certain zero-point offenders. (See attached). Defendant Garces meets all the criteria set out in §4C1.1:

- a) Defendant has not received any criminal history points (PSI, ¶47);
- b) Defendant has not received an adjustment under §3A1.4 (Terrorism);
- c) Defendant did not use violence or credible threats of violence in connection with the offense;

- d) the offense did not result in death or serious bodily injury;
- e) the instant offense is not a sex offense;
- f) Defendant did not personally cause substantial financial hardship;
- g) Defendant did not possess, receive, purchase, transport, transfer, sell, or otherwise dispose of a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;
- h) the instant offense of conviction is not covered under §2H1.1. (Offenses involving individual rights);
- i) Defendant did not receive an adjustment under §3A1.1 (Hate Crime Motivation or Vulnerable Victim) or §3A1.5 (Serious Human Rights Offense); and
- j) Defendant did not receive an adjustment under §3B1.1 (Aggravating Role) and was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. §848.1

4) Relatedly, the Commission amended §5C1.1 application note 4 to advise that a sentence other than imprisonment is “generally appropriate” if a person is in Zone A or B of the sentencing table and gets a §4C1.1 reduction. It also advises that a departure, including a sentence of non-imprisonment, may be appropriate for a person in any sentencing zone if they qualify for §4C1.1 and the guideline range overstates the gravity

¹ The Honorable Carlton W. Reeves, Chair, US Sentencing Commission, referred to this criminal history proposal was adopted to fulfill a core directive Congress gave the Commission at its inception. That directive says that, in general, a first offender who has not been convicted of a crime of violence or an otherwise serious offense should not be incarcerated. 28 U.S.C. §994(j). The Commission’s proposal sought to define who met this standard and what the consequences for meeting this standard should be. (Remarks, Chair Carlton W. Reeves, April 5, 2023)(See Attached)

of the offense. (See attached). Defendant qualifies under §4C1.1 (*supra*). Defendant submits that as a first-time offender it is appropriate for this Court to grant a variance. The guidelines calculation overstates the gravity of the offense given Defendant's role in the offense and Defendant's post-arrest conduct demonstrating profound remorse and his active and effective cooperation with the authorities.

WHEREFORE, Defendant moves this Honorable Court to grant a variance in this cause.

Respectfully submitted,

LAW OFFICES OF
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By: s/ J. Rafael Rodriguez
J. RAFAEL RODRIGUEZ
FLORIDA BAR NO. 302007

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion was electronically filed with the Clerk of the Court using CM/ECF and furnished to Kevin Gerarde, Esq., Office of the United States Attorney, 99 N.E. 4th Street, Miami, FL 33132, on this 7th day of August, 2023.

s/ J. Rafael Rodriguez
J. RAFAEL RODRÍGUEZ

§4C1.1



Amendments to the Sentencing Guidelines (Preliminary)

April 5, 2023

This document collects the amendments to the sentencing guidelines, policy statements, and commentary in the unofficial, “reader-friendly” form in which they were made available at the Commission’s public meeting on April 5, 2023. As with all amendments that the Commission has voted to promulgate but has not yet officially submitted to Congress and the Federal Register, authority to make technical and conforming changes may be exercised and motions to reconsider may be made. Once the amendments have been submitted to Congress and the Federal Register, official text of the amendments as submitted will be posted on the Commission’s website at www.ussc.gov and will be available in a forthcoming edition of the Federal Register. In addition, an updated “reader-friendly” version of the amendments will be posted on the Commission’s website at www.ussc.gov.

(B) Zero Point Offenders

CHAPTER FOUR

**CRIMINAL HISTORY
AND CRIMINAL LIVELIHOOD**

* * *

PART C – ADJUSTMENT FOR CERTAIN ZERO-POINT OFFENDERS

§4C1.1. Adjustment for Certain Zero-Point Offenders

(a) ADJUSTMENT.—If the defendant meets all of the following criteria:

- (1) the defendant did not receive any criminal history points from Chapter Four, Part A;
- (2) the defendant did not receive an adjustment under §3A1.4 (Terrorism);
- (3) the defendant did not use violence or credible threats of violence in connection with the offense;
- (4) the offense did not result in death or serious bodily injury;
- (5) the instant offense of conviction is not a sex offense;
- (6) the defendant did not personally cause substantial financial hardship;
- (7) the defendant did not possess, receive, purchase, transport, transfer, sell, or otherwise dispose of a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;
- (8) the instant offense of conviction is not covered by §2H1.1 (Offenses Involving Individual Rights);
- (9) the defendant did not receive an adjustment under §3A1.1 (Hate Crime Motivation or Vulnerable Victim) or §3A1.5 (Serious Human Rights Offense); and
- (10) the defendant did not receive an adjustment under §3B1.1 (Aggravating Role) and was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. § 848;

decrease the offense level determined under Chapters Two and Three by 2 levels.

(b) DEFINITIONS AND ADDITIONAL CONSIDERATIONS.—

(1) “*Dangerous weapon*,” “*firearm*,” “*offense*,” and “*serious bodily injury*” have the meaning given those terms in the Commentary to §1B1.1 (Application Instructions).

(2) “*Sex offense*” means (A) an offense, perpetrated against a minor, under (i) chapter 109A of title 18, United States Code; (ii) chapter 110 of title 18, not including a recordkeeping offense; (iii) chapter 117 of title 18, not including transmitting information about a minor or filing a factual statement about an alien individual; or (iv) 18 U.S.C. § 1591; or (B) an attempt or a conspiracy to commit any offense described in subdivisions (A)(i) through (iv) of this definition.

(3) In determining whether the defendant’s acts or omissions resulted in “*substantial financial hardship*” to a victim, the court shall consider, among other things, the non-exhaustive list of factors provided in Application Note 4(F) of the Commentary to §2B1.1 (Theft, Property Destruction, and Fraud).

Commentary

Application Notes:

1. **Application of Subsection (a)(6).**—The application of subsection (a)(6) is to be determined independently of the application of subsection (b)(2) of §2B1.1 (Theft, Property Destruction, and Fraud).

2. **Upward Departure.**—An upward departure may be warranted if an adjustment under this guideline substantially underrepresents the seriousness of the defendant’s criminal history. For example, an upward departure may be warranted if the defendant has a prior conviction or other comparable judicial disposition for an offense that involved violence or credible threats of violence.

* * *

§5C1.1. Imposition of a Term of Imprisonment

- (a) A sentence conforms with the guidelines for imprisonment if it is within the minimum and maximum terms of the applicable guideline range.
- (b) If the applicable guideline range is in Zone A of the Sentencing Table, a sentence of imprisonment is not required, unless the applicable guideline in Chapter Two expressly requires such a term.

**EXCERPT OF REMARKS
CARLTON W. REEVES
CHAIR**



Amendments to the Sentencing Guidelines (Preliminary)

April 5, 2023

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Remarks as Prepared for Delivery by Chair Carlton W. Reeves

Public Meeting of the United States Sentencing Commission

Thurgood Marshall Federal Judiciary Center

April 5, 2023

Good morning! I welcome you all to this public meeting of the United States Sentencing Commission. I am the Chair of the Commission, Carlton W. Reeves, and I thank each of you for joining us, whether you are in this room with us or attending via livestream. I have the honor of opening this meeting with my fellow Commissioners. To my left, we have Vice Chair Claire Murray, Vice Chair Laura Mate, and Commissioner Candice Wong. To my right, we have Vice Chair Luis Felipe Restrepo, Commissioner Claria Horne Boom, and Commissioner John Gleeson. We are also joined by *ex-officio* Commissioner Jonathan Wroblewski.

the time of the instant offense[,] especially since I would be subject to a violation as well as time for a new offense.”²²

Moreover, Commission research strongly suggests that status points’ ability to predict recidivism – a core justification for their use – may be extremely weak.²³

In light of all this, the Commission’s final policy eliminates status points in the vast majority of criminal cases. For a limited category of defendants with extensive criminal histories, we are cutting the effect of status points in half, reflecting the idea that this tool may sometimes achieve other goals beyond predicting recidivism.

The second “criminal history” proposal we issued sought to fulfill a core directive Congress gave the Commission at its inception. That directive says that, in general, “a first offender who has not been convicted of a crime of violence or an otherwise

²² Shahied Summons, Comment to the United States Sentencing Commission (Jan. 21, 2023).

²³ See generally United States Sentencing Commission, Revisiting Status Points (Jun. 2022).

serious offense” should not be incarcerated.²⁴ The Commission’s proposal sought to define who met this standard and what the consequences for meeting this standard should be.

Ultimately, we decided to answer both questions broadly. Our final policy provides a larger reduction in sentence for a larger category of people than the status quo. While we agreed to limit this reduction in a limited set of circumstances, we also agreed to give judges discretion to expand non-carceral options to more people. We hope that this policy will, as one commenter put it, achieve Congress’s goal of not “subjecting . . . largely productive and benign citizens to lengthy periods of incarceration, which impact not only their lives but those of their families, businesses, and communities.”²⁵

Another policy attempts to address the horrors we have heard about in some of our federal prisons, including and

²⁴ 28 U.S.C. § 994(j).

²⁵ Michael Bauer, Comment to the United States Sentencing Commission (Jan. 28, 2023).

§5C1.1, NOTE 4



Amendments to the Sentencing Guidelines (Preliminary)

April 5, 2023

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decrease the offense level determined under Chapters Two and Three by 2 levels.

(b) DEFINITIONS AND ADDITIONAL CONSIDERATIONS.—

(1) “*Dangerous weapon*,” “*firearm*,” “*offense*,” and “*serious bodily injury*” have the meaning given those terms in the Commentary to §1B1.1 (Application Instructions).

(2) “*Sex offense*” means (A) an offense, perpetrated against a minor, under (i) chapter 109A of title 18, United States Code; (ii) chapter 110 of title 18, not including a recordkeeping offense; (iii) chapter 117 of title 18, not including transmitting information about a minor or filing a factual statement about an alien individual; or (iv) 18 U.S.C. § 1591; or (B) an attempt or a conspiracy to commit any offense described in subdivisions (A)(i) through (iv) of this definition.

(3) In determining whether the defendant’s acts or omissions resulted in “*substantial financial hardship*” to a victim, the court shall consider, among other things, the non-exhaustive list of factors provided in Application Note 4(F) of the Commentary to §2B1.1 (Theft, Property Destruction, and Fraud).

Commentary

Application Notes:

1. **Application of Subsection (a)(6).**—The application of subsection (a)(6) is to be determined independently of the application of subsection (b)(2) of §2B1.1 (Theft, Property Destruction, and Fraud).

2. **Upward Departure.**—An upward departure may be warranted if an adjustment under this guideline substantially underrepresents the seriousness of the defendant’s criminal history. For example, an upward departure may be warranted if the defendant has a prior conviction or other comparable judicial disposition for an offense that involved violence or credible threats of violence.

* * *

§5C1.1. Imposition of a Term of Imprisonment

- (a) A sentence conforms with the guidelines for imprisonment if it is within the minimum and maximum terms of the applicable guideline range.
- (b) If the applicable guideline range is in Zone A of the Sentencing Table, a sentence of imprisonment is not required, unless the applicable guideline in Chapter Two expressly requires such a term.

- (c) If the applicable guideline range is in Zone B of the Sentencing Table, the minimum term may be satisfied by—
 - (1) a sentence of imprisonment; or
 - (2) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in subsection (e), provided that at least one month is satisfied by imprisonment; or
 - (3) a sentence of probation that includes a condition or combination of conditions that substitute intermittent confinement, community confinement, or home detention for imprisonment according to the schedule in subsection (e).
- (d) If the applicable guideline range is in Zone C of the Sentencing Table, the minimum term may be satisfied by—
 - (1) a sentence of imprisonment; or
 - (2) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in subsection (e), provided that at least one-half of the minimum term is satisfied by imprisonment.
- (e) Schedule of Substitute Punishments:
 - (1) One day of intermittent confinement in prison or jail for one day of imprisonment (each 24 hours of confinement is credited as one day of intermittent confinement, provided, however, that one day shall be credited for any calendar day during which the defendant is employed in the community and confined during all remaining hours);
 - (2) One day of community confinement (residence in a community treatment center, halfway house, or similar residential facility) for one day of imprisonment;
 - (3) One day of home detention for one day of imprisonment.
- (f) If the applicable guideline range is in Zone D of the Sentencing Table, the minimum term shall be satisfied by a sentence of imprisonment.

Commentary

Application Notes:

1. **Application of Subsection (a).**—Subsection (a) provides that a sentence conforms with the guidelines for imprisonment if it is within the minimum and maximum terms of the applicable

guideline range specified in the Sentencing Table in Part A of this Chapter. For example, if the defendant has an Offense Level of 20 and a Criminal History Category of I, the applicable guideline range is 33–41 months of imprisonment. Therefore, a sentence of imprisonment of at least thirty-three months, but not more than forty-one months, is within the applicable guideline range.

2. **Application of Subsection (b).**—Subsection (b) provides that where the applicable guideline range is in Zone A of the Sentencing Table (*i.e.*, the minimum term of imprisonment specified in the applicable guideline range is zero months), the court is not required to impose a sentence of imprisonment unless a sentence of imprisonment or its equivalent is specifically required by the guideline applicable to the offense. Where imprisonment is not required, the court, for example, may impose a sentence of probation. In some cases, a fine appropriately may be imposed as the sole sanction.
3. **Application of Subsection (c).**—Subsection (c) provides that where the applicable guideline range is in Zone B of the Sentencing Table (*i.e.*, the minimum term of imprisonment specified in the applicable guideline range is at least one but not more than nine months), the court has three options:
 - (A) It may impose a sentence of imprisonment.
 - (B) It may impose a sentence of probation provided that it includes a condition of probation requiring a period of intermittent confinement, community confinement, or home detention, or combination of intermittent confinement, community confinement, and home detention, sufficient to satisfy the minimum period of imprisonment specified in the guideline range. For example, where the guideline range is 4–10 months, a sentence of probation with a condition requiring at least four months of intermittent confinement, community confinement, or home detention would satisfy the minimum term of imprisonment specified in the guideline range.
 - (C) Or, it may impose a sentence of imprisonment that includes a term of supervised release with a condition that requires community confinement or home detention. In such case, at least one month must be satisfied by actual imprisonment and the remainder of the minimum term specified in the guideline range must be satisfied by community confinement or home detention. For example, where the guideline range is 4–10 months, a sentence of imprisonment of one month followed by a term of supervised release with a condition requiring three months of community confinement or home detention would satisfy the minimum term of imprisonment specified in the guideline range.

The preceding examples illustrate sentences that satisfy the minimum term of imprisonment required by the guideline range. The court, of course, may impose a sentence at a higher point within the applicable guideline range. For example, where the guideline range is 4–10 months, both a sentence of probation with a condition requiring six months of community confinement or home detention (under subsection (c)(3)) and a sentence of two months imprisonment followed by a term of supervised release with a condition requiring four months of community confinement or home detention (under subsection (c)(2)) would be within the guideline range.

4. **Zero-Point Offenders.**—~~If the defendant is a nonviolent first offender and the applicable guideline range is in Zone A or B of the Sentencing Table, the court should consider imposing a sentence other than a sentence of imprisonment, in accordance with subsection (b) or (c)(3). See 28 U.S.C. § 994(j). For purposes of this application note, a “nonviolent first offender” is a defendant who has no prior convictions or other comparable judicial dispositions of any kind and who did not use violence or credible threats of violence or possess a firearm or other dangerous~~

weapon in connection with the offense of conviction. The phrase “comparable judicial dispositions of any kind” includes diversionary or deferred dispositions resulting from a finding or admission of guilt or a plea of *nolo contendere* and juvenile adjudications.

(A) Zero-Point Offenders in Zones A and B of the Sentencing Table.—If the defendant received an adjustment under §4C1.1 (Adjustment for Certain Zero-Point Offenders) and the defendant’s applicable guideline range is in Zone A or B of the Sentencing Table, a sentence other than a sentence of imprisonment, in accordance with subsection (b) or (c)(3), is generally appropriate. *See* 28 U.S.C. § 994(j).

(B) Departure for Cases Where the Applicable Guideline Range Overstates the Gravity of the Offense.—A departure, including a departure to a sentence other than a sentence of imprisonment, may be appropriate if the defendant received an adjustment under §4C1.1 (Adjustment for Certain Zero-Point Offenders) and the defendant’s applicable guideline range overstates the gravity of the offense because the offense of conviction is not a crime of violence or an otherwise serious offense. *See* 28 U.S.C. § 994(j).

5. **Application of Subsection (d).**—Subsection (d) provides that where the applicable guideline range is in Zone C of the Sentencing Table (*i.e.*, the minimum term specified in the applicable guideline range is ten or twelve months), the court has two options:

- (A) It may impose a sentence of imprisonment.
- (B) Or, it may impose a sentence of imprisonment that includes a term of supervised release with a condition requiring community confinement or home detention. In such case, at least one-half of the minimum term specified in the guideline range must be satisfied by imprisonment, and the remainder of the minimum term specified in the guideline range must be satisfied by community confinement or home detention. For example, where the guideline range is 10–16 months, a sentence of five months imprisonment followed by a term of supervised release with a condition requiring five months community confinement or home detention would satisfy the minimum term of imprisonment required by the guideline range.

The preceding example illustrates a sentence that satisfies the minimum term of imprisonment required by the guideline range. The court, of course, may impose a sentence at a higher point within the guideline range. For example, where the guideline range is 10–16 months, both a sentence of five months imprisonment followed by a term of supervised release with a condition requiring six months of community confinement or home detention (under subsection (d)), and a sentence of ten months imprisonment followed by a term of supervised release with a condition requiring four months of community confinement or home detention (also under subsection (d)) would be within the guideline range.

6. **Application of Subsection (e).**—Subsection (e) sets forth a schedule of imprisonment substitutes.

7. **Departures Based on Specific Treatment Purpose.**—There may be cases in which a departure from the sentencing options authorized for Zone C of the Sentencing Table (under which at least half the minimum term must be satisfied by imprisonment) to the sentencing options authorized for Zone B of the Sentencing Table (under which all or most of the minimum term may be satisfied by intermittent confinement, community confinement, or home detention instead of imprisonment) is appropriate to accomplish a specific treatment purpose. Such a departure should be considered only in cases where the court finds that (A) the defendant is an

abuser of narcotics, other controlled substances, or alcohol, or suffers from a significant mental illness, and (B) the defendant’s criminality is related to the treatment problem to be addressed.

In determining whether such a departure is appropriate, the court should consider, among other things, (1) the likelihood that completion of the treatment program will successfully address the treatment problem, thereby reducing the risk to the public from further crimes of the defendant, and (2) whether imposition of less imprisonment than required by Zone C will increase the risk to the public from further crimes of the defendant.

Examples: The following examples both assume the applicable guideline range is 12–18 months and the court departs in accordance with this application note. Under Zone C rules, the defendant must be sentenced to at least six months imprisonment. (1) The defendant is a nonviolent drug offender in Criminal History Category I and probation is not prohibited by statute. The court departs downward to impose a sentence of probation, with twelve months of intermittent confinement, community confinement, or home detention and participation in a substance abuse treatment program as conditions of probation. (2) The defendant is convicted of a Class A or B felony, so probation is prohibited by statute (see §5B1.1(b)). The court departs downward to impose a sentence of one month imprisonment, with eleven months in community confinement or home detention and participation in a substance abuse treatment program as conditions of supervised release.

- 8. **Use of Substitutes for Imprisonment.**—The use of substitutes for imprisonment as provided in subsections (c) and (d) is not recommended for most defendants with a criminal history category of III or above.
- 9. **Residential Treatment Program.**—In a case in which community confinement in a residential treatment program is imposed to accomplish a specific treatment purpose, the court should consider the effectiveness of the residential treatment program.
- 10. **Application of Subsection (f).**—Subsection (f) provides that, where the applicable guideline range is in Zone D of the Sentencing Table (*i.e.*, the minimum term of imprisonment specified in the applicable guideline range is 15 months or more), the minimum term must be satisfied by a sentence of imprisonment without the use of any of the imprisonment substitutes in subsection (e).

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§4A1.3. Departures Based on Inadequacy of Criminal History Category (Policy Statement)

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(b) DOWNWARD DEPARTURES.—

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(2) PROHIBITIONS.—

(A) CRIMINAL HISTORY CATEGORY I.—**Unless otherwise specified, a** departure below the lower limit of the applicable guideline range for Criminal History Category I is prohibited.