

**FEDERAL PUBLIC DEFENDER
DISTRICT OF NEW JERSEY**

RICHARD COUGHLIN
FEDERAL PUBLIC DEFENDER

800-840 Cooper Street
Suite 350
Camden, New Jersey 08102

CHESTER M. KELLER
FIRST ASSISTANT

(856) 757-5341 Telephone
(856) 757-5273 Facsimile

February 2, 2017

Honorable Judge Departure
U.S. District Judge
U.S. District Court - New Jersey
Mitchell H. Cohen U.S. Courthouse
1 John F. Gerry Plaza, Room 6010
P.O. Box 888
Camden, NJ 08101-0888

**Re: United States v. John Mathis,
Crim. No. ##-###**

Dear Chief Judge Simandle:

On January 1, 2016, the defendant, John Mathis, entered a plea of guilty before this Court to an Information charging him with two counts of bank robbery in violation of 18 U.S.C. § 2113(a). PSR ¶¶1-2. The Presentence Investigation Report (PSR) concludes that Mr. Mathis's conduct produced an offense level of 27, a criminal history category I, and a corresponding Guidelines range of 70 to 87 months. PSR ¶¶50, 54, 94. This conflicts with the parties' plea agreement, which calculates a total offense level 25, criminal history category I, and corresponding Guidelines range of 57 to 71 months. Mr. Mathis respectfully submits that a sentence below his advisory Guidelines range of 57 to 71 months contemplated by the parties' plea agreement is appropriate based on the sentencing considerations in 18 U.S.C. § 3553(a). It is therefore respectfully requested that the Court consider this letter brief in lieu of more formal motion.

A. Factual Background

John Mathis comes before this Court as a hardworking husband and father who, out of an overwhelming sense of shame and desperation at being unable to support his family due to his gambling addiction, took a sharp detour from his otherwise law-abiding life and committed the instant offenses. See letters from family, friends, and employers attached as Exhibits A and B. Mr. Mathis suffers from a crippling gambling addiction, as well chronic depression and thoughts of low self-worth associated with his financial situation. *See* Psychological Evaluation of John Mathis by Gerald Cooke, Ph.D., attached hereto as Exhibit C, at 8-9. According to Dr. Cooke,

Mr. Mathis's "financial difficulties and his gambling formed a vicious circle" leading to "greater and greater emotional difficulties." *Id.* at 12. The cycle was broken only after Mr. Mathis was arrested for the instant offenses. He now appears before this Court having accepted responsibility for his crimes and asking for leniency at sentencing based on his personal history and characteristics.

Mr. Mathis emigrated from China to the United States as a teenager and resided in Philadelphia with his parents and older sister. PSR ¶61. In 2003, Mr. Mathis moved to New Jersey with his future wife to live with his wife's aunt. PSR ¶62. The pair wed in 2004 and have two children, ages 7 and 4. PSR ¶63. Mr. Mathis's wife, Jane Mathis, is employed as a medical translator, earning approximately \$16 per hour. *Id.*

Mr. Mathis briefly attended college, but struggled academically. PSR ¶75. Dr. Cooke suggests that Mr. Mathis's academic struggles may have been related to a previously undiagnosed case of Attention Deficit Disorder. Exhibit C at 5, 13. After leaving school, Mr. Mathis enlisted in the U.S. Air Force Reserve, where he served with distinction and achieved the rank of technical sergeant - E6. PSR ¶76. He was recognized on a number of different occasions for his exceptional and meritorious service to the Air Force, especially for his training and management skills. *See* Letters of Commendation and Recognition from the United States Department of the Air Force, as well as a character reference from Colonel Michael J. Smith, attached hereto as Exhibit B.

In addition to serving his country in the Reserves, Mr. Mathis worked various part-time and hourly retail positions at the Deptford Mall, Macy's Department Store, and US Vision. PSR ¶¶79-82. Most recently, he was employed as a civilian at Maguire AFB as an administrative support assistant, earning approximately \$39,000 per year. PSR ¶78.

Mr. Mathis and his wife were not rich, but may have been able to live a comfortable life with their children if not for Mr. Mathis's devastating gambling addiction. He began gambling with his parents at the casinos in Atlantic City as soon as he turned 21. Exhibit C at 7. By 2013, Mr. Mathis was going to the casinos at least one a week, sometimes twice. *Id.*; PSR ¶71. On each of those occasions, he would gamble at least \$500, but sometimes as much as \$2,000 per outing. *Id.* He skipped mortgage payments, borrowed money from his parents, racked up over \$20,000 in credit card debt, and raided his retirement savings account in order to fund his gambling habit. Exhibit C at 8; PSR ¶¶83-87. According to Dr. Cooke, Mr. Mathis

began to gamble because he felt there was no way out of a financial situation in which he owed a great deal of money, and in which he felt expenses were greater than income. Of course, once he began gambling and sustaining substantial gambling losses this made his financial situation even more dire, and led to greater and greater emotional difficulty.

Exhibit C at 12.

Mr. Mathis's problems were exacerbated by the fact that he hid his gambling addiction from his family. Projective testing indicates that Mr. Mathis feels a man should be head of the household and he feels he has failed in that regard. *See* Exhibit A at 11. The test also reflects his

distance in interpersonal relationships, which means he has a great deal of difficulty expressing and sharing his feelings with others. *Id.* Further testing revealed that Mr. Mathis “has low self-esteem, a poor self-image, and poor psychological coping techniques. In fact, his coping techniques are compromised to a degree where he finds it difficult to keep himself comfortable on a day-to-day basis dealing with even normal life stresses.” *Id.* at 10. Thus, instead of seeking help for his gambling addiction and dire financial circumstances, he committed the instant offenses.

While Mr. Mathis cannot undo the harm he has already caused, he has no prior criminal history as either a juvenile or an adult. PSR ¶¶51-52. In addition, Dr. Cooke has determined that Mr. Mathis has a low risk of criminal or violent recidivism because he does not exhibit any of the psychopathic attitudes, traits, or behaviors that characterize that population. Exhibit C at 12. Finally, and perhaps most importantly, Mr. Mathis acknowledges that he has a problem and wishes to work hard in order to resolve it. *Id.* at 13. His condition can be helped with enrollment in Gamblers Anonymous or a similar treatment, however it is even more important that he becomes involved in individual therapy. *Id.* This type of therapy is typically not be provided in correctional facilities but may be made available during supervised release. *Id.* at 14.

B. Advisory Guideline Range

In the plea agreement, the parties stipulated to certain guideline calculations and arrived at a total offense level of 25 for the charged offenses. PSR ¶5. The Probation Office generally agrees with the stipulations set forth in the plea agreement, but adds a two-level enhancement, pursuant to U.S.S.G. §2B3.1(b)(4)(B), for restraining a victim to facilitate the offense. PSR ¶¶29, 95. With a total offense level of 27 and criminal history category of I, the Probation Office calculates an advisory guideline range of 70 to 87 months imprisonment. PSR ¶94. Mr. Mathis respectfully requests that this Court adopt the Guidelines range contemplated by the parties’ plea agreement.

C. A sentence below the advisory Guidelines range of 57 to 71 months imprisonment contemplated by the parties’ plea agreement would be “sufficient, but not greater than necessary” to accomplish the goals of sentencing while also taking into account how Mr. Mathis’s psychological history, including his severe gambling disorder, significantly impacted his criminal behavior.

As this Court is aware, the procedural requirements of post-*Booker*¹ sentencing are well established. Briefly, sentencing courts must (1) properly calculate the Guidelines range; (2) rule on any departure motions made under the Guidelines; and (3) exercise post-*Booker* discretion by choosing a sentence in light of all relevant sentencing factors under 18 U.S.C. § 3553(a), “regardless [of] whether [the chosen sentence] varies from the sentence calculated under the Guidelines.” *United States v. Gunter*, 462 F.3d 237, 247 (3d Cir. 2006). The Court’s final determination on a sentence must reflect “§ 3553(a)’s overreaching instruction to ‘impose a sentence sufficient, but not greater than necessary’ to accomplish the sentencing goals advanced in § 3553(a)(2).” *Kimbrough v. United States*, 552 U.S. 85, 110 (2007). Those purposes can best be summarized as punishment, deterrence, incapacitation, and rehabilitation.

¹ *United States v. Booker*, 543 U.S. 220 (2005).

The “sufficient, but not greater than necessary” requirement is often referred to as the “parsimony provision.” The parsimony provision is not simply another factor to be considered along with the others set forth in § 3553(a); it actually imposes a separate and independent limit on the sentence a court may impose. *See United States v. Denardi*, 892 F.2d 269, 276-77 (3d Cir. 1989) (Becker, J., concurring in part, dissenting in part) (since § 3553(a) requires the sentence to be no greater than necessary to meet four purposes of sentencing, imposition of sentence greater than necessary to meet those purposes is reversible, even if within the guideline range). Thus, under § 3553(a), courts are required to impose a sentence below the guideline range if such a sentence would be sufficient to achieve the purposes of sentencing.

1. Mr. Mathis’s history and characteristics merit leniency at sentencing, pursuant to 18 U.S.C. §3553(a).

Mr. Mathis, as a result of a severe gambling addiction, found himself in dire financial straits. Lacking the psychological coping techniques to deal with the stresses of his situation or seek help from his family, Mr. Mathis committed the instant offenses. Up until this point, Mr. Mathis had no criminal history, either as a juvenile or an adult, and had served a distinguished career in the United States Air Force Reserves. If the Court was to sentence Mr. Mathis below the advisory guideline range, it would be appropriate given his low level of psychopathy and risk of recidivism. Furthermore, a sentence below the Guidelines range would enable Mr. Mathis to receive therapeutic treatment sooner than later for his ailments that he cannot receive while in prison.

As described above, Mr. Mathis suffers from poor coping techniques, which cause him great difficulty in handling even normal life stress. *See* Exhibit C at 10. These normal everyday stresses were compounded by the extreme remorse and guilt Mr. Mathis felt once his family began to have financial difficulties. *Id.* He tried to resolve his financial difficulties through legal means, by setting up a GoFundMe account and attempting to recoup his gambling losses, but those attempts only plunged him deeper into debt. *Id.* 8-9. As is often the case with an untreated Gambling Disorder, the intensity and frequency of Mr. Mathis’s gambling increased from mild, to moderate, and then severe. *Id.* at 13. By 2013, Mr. Mathis’s gambling could be characterized as severe and his addiction led him further into debt which only added to his stress. *Id.* He lived with this unsurmountable stress for two years until he could no longer control it. Mr. Mathis told himself that he should not rob the bank but then the thought of his children losing their home and the damage that would do to his family overwhelmed him. *Id.* at 9. Prior research indicated that this psychological state may be quite common among pathological gamblers and merits further research. *See* Mitzner, Whelan, and Meyer, *Comments from the Trenches: Proposed Changes to the DSM-V Classification of Pathological Gambling* (2010) (finding that gambling problems typically predated criminal acts in study; once an individual’s gambling began to take an extreme financial and emotional toll, they became willing to break the law in order to relieve a desperate situation), attached as Exhibit D.

Thus, while the Guidelines provide that an addiction to gambling itself is “not a reason for a downward departure,” U.S.S.G. §5H1.4, courts continue to recognize the debilitating nature of pathological gambling addictions and its impact on criminality. In support of a substantial variance due to a gambling addiction, the court in *U.S. v. Dikiara*, 50 F.Supp.3d 1029(E.D.

Wis.2014), took note of the recent change to the manner in which pathological gambling is classified in the DSM-V from an impulse control disorder to an addiction:

By physically hijacking the brain, addiction diminishes the addict's capacity to evaluate and control his or her behaviors. Rather than rationally assessing the costs of their actions, addicts are prone to act impulsively, without accurately weighing future consequences." *United States v. Hendrickson*, No. CR 13-4110, 2014 WL 2600090, at *5 (N.D. Iowa June 11, 2014). Judge Bennett was talking about drug addiction, but as the evidence defendant presented showed, gambling addiction is similar. The American Psychiatric Association recently reclassified pathological gambling from an impulse control disorder to an addiction-related disorder. See American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* ("DSM-V") 585 (5th ed.2003)(sic); see also Ferris Jabr, *How the Brain Gets Addicted to Gambling*, Scientific American, Nov. 5, 2013."

Dikiara, at 1032, citing *U.S. v. Hendrickson*, 25 F. Supp. 3d 1166(N.D. Iowa 2014). In *Dikiara*, the sentencing court substantially varied from the recommended guideline range of 41-51 months imprisonment and rendered a sentence of 15 months imprisonment. There, the defendant stole over 1 million dollars from her former employer well over a ten year period. The money stolen was used to support her gambling addiction. *Dikiara*, at 1030-1031. See also, *U.S. v. Quinn*, 566 Fed.Appx. 659(10th Cir. 2014)(Tenth Circuit recognizing that a gambling addiction can serve as a ground for a departure, pursuant to U.S.S.G. 5k2.13, despite being expressly ruled out in the guidelines); *United States v. Vieke*, 348 F.3d 811, (9th Cir. 2003) (affirming departure for aberrant behavior in credit card fraud case where crime was committed because of "pathological nature of the [gambling] addiction" and was "totally out of suit with the rest of her life and the behaviors" even though fraud went on for years); *United States v. Sadolsky*, 234 F.3d 938, 943 (6th Cir. 2000) (district court's two-level downward departure for diminished capacity based on defendant's compulsive gambling disorder was not an abuse of discretion, where defendant's gambling disorder was a likely cause of his criminal behavior, given that he had already "maxed out" his own credit line before resorting to fraud to pay his gambling debts); *United States v. Liu*, 267 F.Supp.2d 371 (E.D.N.Y. 2003) (granting four-level downward departure, pursuant to U.S.S.G. §5K2.13, based on defendant's pathological gambling disorder); *United States v. Checoura*, 176 F.Supp.2d 310, 315-316 (D.N.J. 2001) (granting the defendant a two-level downward departure where the defendant's compulsive gambling disorder significantly impaired her ability to control her criminal behavior).

The change in the classification of pathological gambling from an impulse control disorder to and addiction is significant.

The rationale for this change is that the growing scientific literature on PG [pathological gambling] reveals common elements with substance use disorders. Many scientists and clinicians have long believed that problem gamblers closely resemble alcoholics and drug addicts, not only from the external consequences of problem finances and destruction of relationships, but, increasingly, on the inside as well. According to Dr. Charles O'Brien, chair of the Substance-Related

Disorders Work Group for DSM-5, brain imaging studies and neurochemical tests have made a “strong case that [gambling] activates the reward system in much the same way that a drug does.” Pathological gamblers report cravings and highs in response to their stimulus of choice; it also runs in families, often alongside other addictions. Neuroscience and genetics research has played a key role in these determinations.

See, Christine Reilly and Nathan Smith, *The Evolving Definition of Pathological Gambling in the DSM-5*(2013), attached as Exhibit E. The hope is that with a better understanding of gambling disorders, more individuals that suffer with this serious disease will be identified and appropriately treated. See *Substance-Related and Addicted Disorders* attached as Exhibit F.

In the case of Mr. Mathis, Dr. Cooke reports that he meets seven out of the nine diagnostic criteria to be diagnosed with a gambling disorder. Exhibit C at 8 and DSM-5 Diagnostic Criteria: Gambling Disorder, attached as Exhibit G. Most significantly is Mr. Mathis’s belief that one day he would win big and be able to rectify his financial crisis, ie “chasing one’s loses” as referenced in DSM-V. When this belief did not come true, out of desperation, Mr. Mathis turned to illegal activity. See, S.H. Dakai, *Compulsive Gambling: An Examination of Compulsive Gambling, Including Pathology, Chemistry Exchange, Similarities to and Differences from Substance Abuse, Gambling Phases, and Assessment Questionnaires*, Journal of Addictive Disorders, 8–9 (2004), attached at Exhibit H, discussing how this kind of addiction can lead from hoping for a big score to cover past losses on to illegal activity. It is well established in Mr. Mathis’s case, as in Dikiara, that his gambling addiction had a substantial impact on the offense conduct. This factor, along with others, supports the appropriateness of a sentence below the advisory guideline range.

Additionally, up until the time of the instant offenses, Mr. Mathis had no criminal history, either as a juvenile or an adult, and had served a distinguished career in the United States Air Force Reserves. He was recognized on a number of different occasions for his exceptional and meritorious service to the Air Force, especially for his training and management skills. See Exhibit B. The Third Circuit has previously held that a defendant’s military service, especially when combined with other factual findings supporting leniency, can certainly merit a downward variance. *United States v. Howe*, 543 F.3d 128, 139 (3d Cir. 2008) (affirming as reasonable downward variance to probation based in part on defendant’s 20 year record of military service).

Mr. Mathis understands that he must be punished for his offenses and takes responsibility for his conduct. However, considering Mr. Mathis’s history and the fact that he acted out of character and purely out of desperation brought on by his mental illness and financial stress, a sentence below the advisory guideline range is appropriate in his case.

2. The remaining §3553(a) factors also support the imposition of sentence significantly below the bottom of Mr. Mathis’s advisory guideline range.

Section 3553(a)(2) directs the court to consider the need for the sentence imposed to provide appropriate punishment, deterrence, and rehabilitation. Mr. Mathis is aware that his conduct warrants some kind of punishment and he has taken responsibility for his actions by entering a plea. However, Mr. Mathis’s term of imprisonment should fall at the low end or below

the 57 to 71 month Guidelines range contemplated by the parties' plea agreement. The amount of imprisonment Mr. Mathis is facing serves as an adequate deterrent to other individuals contemplating this type of conduct. Mr. Mathis, himself, has been significantly deterred by the simple fact of his arrest and prosecution.

Research has consistently shown that while the certainty of being caught and punished has a deterrent effect, "increases in severity of punishments do not yield significant (if any) marginal deterrent effects." Michael Tonry, *Purposes and Functions of Sentencing*, 34 *Crime & Just.* 1, 28 (2006). "Three National Academy of Science panels...reached that conclusion, as has every major survey of the evidence." *Id.*; see also Zvi D. Gabbay, *Exploring the Limits of the Restorative Justice Paradigm: Restorative Justice and White Collar Crime*, 8 *Cardozo J. Conflict Resol.* 421, 447-48 (2007) ("[C]ertainty of punishment is empirically known to be a far better deterrent than its severity."), Andrew Von Hirsch, *et al.*, *Criminal Deterrences and Sentence Severity: An Analysis of Recent Research* (1999) (a significant connection between certainty of punishment and crime rates exists, but the "correlation between sentence severity and crime rates...were not sufficient to achieve statistical significance...The studies reviewed do not provide a basis for inferring that increasing the severity of sentences generally is capable of enhancing deterrent effects.") The question for the Court, moreover, is "marginal deterrence," *i.e.*, whether any particular amount of punishment results in increased deterrence and decreased crimes, and the conventional notion that longer is better is not supported by the research. Instead, the research indicates that certainty of punishment, rather than length provide deterrence. *Id.* In short, the idea that a lengthy sentence for Mr. Mathis is needed to deter others, or even him, is not only wrong, it is contrary to the requirement that the punishment be "just" and promote respect for the law, because a sentence that is more harsh than necessary is indeed unjust and promotes a disrespect for the law. See *United States v. Gall*, 552 U.S. 38, 54 (2007) ("a sentence of imprisonment may work to promote not respect, but derision, of the law if the law is viewed as merely a means to dispense harsh punishment without taking into account the real conduct and circumstances involved in sentencing") (quoting district court opinion).

The more salient question, and the one that is susceptible to some predictability is "the need to protect the public from further crimes of the defendant." 18 U.S.C. § 3553(a)(2)(c). For those defendants who present a low risk of recidivism, because of their lack of prior record and strong potential for rehabilitation, the need for a lengthy prison term is significantly reduced. See *e.g. United States v. Cavera*, 550 F.3d 180, 186 (2d Cir. 2008) (less need for specific deterrence due to defendant's age.); *United States v. Howe*, 543 F.3d 128, 133-36 (3d Cir. 2008) (affirming district court's downward variance to probation from 18 to 24 month guideline range based upon combination of following factors: defendant led honorable and lawful life until his offense, had no prior criminal history, served in military for 20 years, was a well-regarded member of his community, regularly attended church, was a devoted father, husband and son, his crime was an isolated mistake, and he was remorseful); *United States v. Hairston*, 502 F.3d 378, 385-86 (6th Cir. 2007) (affirming 51% downward variance from the bottom of guideline range based upon defendant's motivation for committing crime and extraordinary post-offense rehabilitation efforts); *United States v. Ward*, 814 F. Supp. 23, 24 (E.D. Va. 1993) (granting departure based on defendant's age as first-time offender since guidelines do not "account for the length of time a particular defendant refrains from criminal conduct" before committing his first offense.).

The Sentencing Commission, pursuant to its obligation to periodically review the Guidelines has released three recidivist studies: *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines* (May 2004) (*Measuring Recidivism*); *Recidivism and the First Offender* (May 2004) (*First Offender*), and *A Comparison of the Federal Sentencing Guidelines Criminal History Category and the U.S. Parole Commission Salient Factor Score* (Jan. 4, 2005) (*Salient Factor Score*). The studies all show that the following factors which are relevant to Mr. Mathis correspond with reduced recidivism:

Age: “Recidivism rates decline relatively consistently as age increases,” from 35.5% under age 21 to 9.5% over age 50.

Employment: A history of stable employment, particularly in the year before arrest is associated with a lower rate of recidivism (19.6%) than those who were unemployed (32.4%).

Education: Recidivism decreases as education level increases. 31.4% - no high school, 8.8% - college degree.

Abstinence from drugs: Non-users – 17.4%; users – 31%.

First offenders: Recidivism rate for first offenders, including re-conviction, re-arrest revocation, is 11.7% as opposed to 22.6% for offenders with just one criminal history point and 36.5% for offenders with two or more criminal history points. Interestingly, offenders who are sentenced to straight prison terms, as opposed to split sentences, are more likely to commit new crimes, suggesting again that over punishment is counter-productive and costly.

Mr. Mathis fits squarely within every factor mentioned above. He is arguably in the category of least likely defendants to re-offend. Mr. Mathis is 34 years old, has a history of stable employment and a distinguished military career. He is a high school graduate with some college education, he does not use drugs or alcohol, and he is a first time offender. Additionally, Dr. Cooke’s psychological testing of Mr. Mathis supports this conclusion and displays that he is at the lowest possible percentile for psychopathic attitudes, traits, or behaviors and presents a low risk of violent recidivism. Exhibit C at 12.

Mr. Mathis’s risk of recidivism can be lowered even further with proper medical attention and enrollment in Gamblers Anonymous. Exhibit C at 13. He acknowledges that he needs treatment and is dedicated to working to fix his problems. *Id.* However, he will most likely not be able to receive the individual therapy needed to treat his disorders in prison. *Id.* Accordingly, a downward variance is appropriate. *See e.g., United States v. Ruff*, 535 F.3d 999,1003 (9th Cir. 2008) (affirming downward variance permitting defendant to spend one year in community treatment center to go to work and obtain counseling; sentence deemed reasonable, in part, because defendant “would clearly benefit from continued mental health treatment” for his gambling addiction).

Finally, Mr. Mathis asks this Court to consider the love and support of family and religious community as shown through the attached letters of support. Exhibit A. These letters reaffirm that Mr. Mathis is a hardworking, dedicated husband and father who acted out of character and purely out of desperation brought on by mental illness and financial stress when he

committed the instant offenses.

In short, Mr. Mathis respectfully submits that a sentence below the advisory range provides adequate punishment and deterrence. Such a sentence would also reflect Mr. Mathis's mental instability at the time of the offense, his chronic depression which resulted from his inability to adequately provide for his family, and the fact that his rehabilitation and mental health will not get better until he is released and can seek the individualized therapy that he needs. For all of these reasons, Mr. Mathis respectfully submits that a sentence below the advisory guidelines range is appropriate.

Conclusion

Mr. Mathis committed two bank robberies that impacted the lives of many innocent victims. While his conviction is certainly important for the Court's assessment of the §3553(a) factors, Mr. Mathis's severe gambling addiction and poor psychological coping skills clearly indicate that Mr. Mathis was acting out of desperation when he committed the robberies and was driven to that point both by his mental illness and his love for his wife and their two young children. This, combined with his lack of prior criminal history, extremely low risk of recidivism, and distinguished military service, merit leniency at sentencing. Based on the foregoing, Mr. Mathis respectfully submits that sentence below the Guidelines range, or in the alternative, at the low end of the 57 to 71 month advisory guideline range contemplated by the parties' plea agreement would be "sufficient, but not greater than necessary" to fulfill the purposes of sentencing set forth in 18 U.S.C. §3553(a).

Thank you for your consideration in this matter.

Respectfully submitted,

Assistant Federal Public Defender

Attorneys for Defendant
John Mathis