

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA

V.

DOCKET NO. 1:10CR00021-001 (GMS)

JOSEPH AUGHENBAUGH

DEFENSE SENTENCING MEMORANDUM

I. Summary of Sentencing Issues

Joseph Aughenbaugh [Lord Aughenbaugh] is due to be sentenced November 22, Lord Aughenbaugh's early life was tragic in that he had no maternal influence, nor stability or a place to call home as he moved at least fifteen times in his early life, he lost his grandmother who was his dearest relative after his father early in his life, and had to endure physical as well as sexual abuse on an almost constant basis. With his sixth grade education he was easily influenced to break the law by close members of his family who he would expect to be only thinking of his best interests.

Although Mr. Aughenbaugh's conviction was for a most serious crime, the purposes of sentencing would not be fulfilled by a lengthy prison sentence. The following sentencing memorandum is respectfully submitted to this Court in order to assist the Court in imposing an appropriate sentence in this matter.

II. Post-Booker Sentencing Considerations

*Rita v. United States and the District Court's Discretion to Impose Sentence Tailored to Relevant Section 3553(a) Factors, Regardless of Whether the Sentence Varies from the Sentence Calculated under the Guidelines.*

As affirmed in Rita v. United States, 127 S. Ct. 2456 (2007), explained below, this Court

exercises broad discretion in fashioning a sentence which furthers the directives and purposes of sentencing under 18 U.S.C. §3553(a).

As revised by United States v. Booker, 543 U.S. 220, 245-46 (2005), the Sentencing Reform Act requires a sentencing court to consider [advisory] Guidelines ranges, see 18 U.S.C. §3553(a)(4), but it permits the court to tailor the sentence in light of other statutory concerns as well, see §3553(a).” This means that a district court’s primary obligation is to choose a sentence in light of all the statutory sentencing factors (including the advisory guideline range) in the context of defendant’s particular case, and that sentence may or may not be imposed with regard to the guideline range. See United States v. Coleman, 451 F.3d 154, 158 (3d Cir. 2006) (“the Guidelines’ recommended range may be modified or disregarded by a district court upon consideration of the other sentencing factors Congress has identified in §3553(a)”).

The Supreme Court unconditionally affirmed this sentencing discretion in Rita. The Court held that while a guideline sentence, at appellate level only, “may” be presumed reasonable, “the sentencing court does not enjoy the benefit of a legal presumption that the Guidelines sentence should apply.” Id. at \*9. Thus, even in those Circuits that have, unlike the Third Circuit, adopted a presumption of reasonableness, this does not apply in the district courts and is not binding at the appellate level.

Of course the Third Circuit has flatly rejected any presumption of reasonableness. United States v. Cooper, 437 F.3d 324 (3d Cir. 2006). The appellate presumption upheld in Rita in no way changed the standard of appellate review recognized in the Third Circuit in Cooper, 437 F.3d at 330-31. Cooper rejected a presumption of reasonableness and instead simply acknowledged that a within-guideline sentence is “more likely” to be considered reasonable on appeal than a non-guideline sentence. Rita cited Cooper with approval. Rita at \*8. Rita,

moreover, reaffirmed the abuse of discretion standard of review. Id. at \*9 (“appellate ‘reasonableness’ review merely asks whether the trial court abused its discretion). The presumption for within-guidelines sentences upheld in Rita merely recognizes that where both the Sentencing Commission and the sentencing judge have independently applied the §3553(a) factors, and “the judge’s discretionary decision accords with the Commission’s view of the appropriate application” in that particular case, “it is probable that the sentence is reasonable.” Rita at \*8. Further, the Court was clear that “permitting courts of appeals to adopt a presumption of unreasonableness does not mean that courts may adopt a presumption of unreasonableness” to a non-guidelines sentence. Rita at \*11.

Rita emphasized the sentencing court’s discretion, moreover, by making plain that the district court need not defer to the judgments of the Sentencing Commission, and that the sentencing court must consider arguments “that the Guidelines reflect an unsound judgment...” Id. at \*12. Rather than sentencing judges to defer in any way to the Sentencing Commission, “the sentencing statutes envision *both* the sentencing judge and the Commission as carrying out the same basic §3553(a) objectives, the one at retail, the other at wholesale.” Id. at \*7. In other words, the two are equal and the Commission is no more an “expert” at evaluating the §3553(a) factors than is the judge. Thus, after properly determining the Guidelines range,<sup>1</sup> a sentencing judge may decide that the Guidelines sentence is not appropriate. The Court may decide:

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<sup>1</sup> In the Third Circuit, district courts “follow a three-step sentencing process:”

- (1) Courts must continue to calculate a defendant’s Guidelines sentence precisely as they would have before Booker.....
- (2) In doing so, they must formally rule on the motions of both parties and state on the record whether they are granting a departure and how that departure affects the Guidelines calculation, and take into account our Circuit’s pre-Booker case law, which continues to have advisory force.....
- (3) Finally, they are required to exercise their discretion by considering the relevant §3553(a) factors...in setting the sentence they impose regardless whether it varies from the sentence calculated under the Guidelines.

That the Guidelines sentence should not apply, perhaps because (as the Guidelines themselves foresee) the case at hand falls outside the “heartland” to which the Commission intends individual Guidelines to apply, USSG § 5K2.0, perhaps because the Guidelines sentence itself fails properly to reflect §3553(a) considerations, or perhaps because the case warrants a different sentence regardless. See Rule 32(f). Thus, the sentencing court subjects the defendant’s sentence to the thorough adversarial testing contemplated by federal sentencing procedure.

Id. at \*9.

A district court commits error if, in crafting an appropriate sentence, it believes that it is bound by any aspect of the sentencing guidelines. This aspect of post-Booker Third Circuit law was illustrated clearly in Gunter, 462 F.3d at 247-48 (remaining where district court’s refusal to consider 100-to-1 crack versus powder differential as advisory amounted to treating the guidelines as mandatory)<sup>2</sup> and United States v. Cooper, 437 F.3d 324, 330-31 (3d Cir. 2006) (rejection notion that guideline sentence is presumptively correct as “com[ing] close to restoring the mandatory nature of the guidelines”). The view of the Guidelines as truly “advisory” has now been affirmed in Rita.

The Court further emphasized the ultimate command of the statute-- that sentence must be “sufficient, but not greater than necessary, to comply with the purposes” of sentencing set out in the statute, the so-called “parsimony provision.” Id. at \*6, \*11 (noting that both the judge and the Commission both determine whether a Guidelines sentence reflects the Section 3553 factors, including the “parsimony provision”); United States v. Gunter, 462 F.3d 243 n.9 (3d Cir. 2006) (recognizing broad mandate of the “parsimony provision”).

Accordingly, post-Booker, district courts have much greater discretion in sentencing than was previously afforded. The Third Circuit and now the Supreme Court have spoken firmly in support of this discretion. This Court must exercise its sentencing discretion to further the

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<sup>2</sup> Gunter, 462F.3d at 247 (internal quotations and citations omitted; emphasis added).

directives and purposes of 18 U.S.C. §3553, the most salient of which are set forth and applied to Lord Aughenbaugh's case herein.

### **III. Application of Statutory Factors**

#### **A. The History and Characteristics of Lord Joseph Helaman Mormon Aughenbaugh (18 U.S.C. §3553(a)(1))**

Lord Aughenbaugh, age 41, was born Lord Aughenbaugh Ashley Harris, on November 10, 1968, in Columbia, South Carolina, and is the only child born to Monica Christine Loutenschlager and Clyde Brooks Harris. His mother was born in Frankfurt, Germany and his father, born March 5, 1925, was born in North Carolina.

Any information Lord Aughenbaugh has about his mother is what he has been told by his family. From what is known from the time shortly after his birth is that his mother dropped him off with his father and then disappeared never to be heard from again. His father, Clyde Harris, then moved with Lord Aughenbaugh to North Carolina to live with Lord Aughenbaugh's paternal grandmother, Coynee Lloyd Fletcher Harris. Grandmother Harris was living with her youngest son, (Lord Aughenbaugh's Uncle Wade and his wife, Martha), at the time and so Lord Aughenbaugh and his father moved into his uncle's home located in Youngsville, North Carolina. It is also believed that Clyde Harris moved in with his brother and sister-in-law because he was a traveling salesman and needed help caring for Lord Aughenbaugh. He later moved to Forestville and his mother cared for Lord Aughenbaugh.

According to Lord Aughenbaugh his father owned and operated a furniture business. His store was located in Zebulon, North Carolina. After awhile Clyde Harris decided to move with his son and his mother to Forestville, North Carolina. They lived there until Lord Aughenbaugh was about five years old. In a reverse situation Uncle Wade and his family moved from

Youngsville to Forestville to live with Lord Aughenbaugh, his father and grandmother because the township of Youngsville declared his home unsafe to live in.

Lord Aughenbaugh has said that there were pros and cons to this situation. Lord Aughenbaugh's cousins did not have good behavior. They bullied Lord Aughenbaugh, picked fights with him and were destructive in the home. Eventually he moved with his father to their own home.

In Forestville Lord Aughenbaugh went to a Christian School. He liked the school but knew he was different in his sexuality and this caused him anxiety at his young age. Lord Aughenbaugh had been diagnosed with minimal brain damage.

Martha Wade said that as a baby Lord Aughenbaugh had a phase of head banging. When he was in school in Forestville the teachers suggested to his father that he needed special education services. His father did not like the idea and moved with Lord Aughenbaugh to Ocala, Florida and moved in with his brother Mack, Lord Aughenbaugh's uncle. The teachers in Florida said the same thing as the teachers in North Carolina. After a short time they moved back to Henderson, North Carolina.

The landlord who owned the house the family rented wanted to sell the house. His father tried to arrange to buy the house but the deal fell through. His grandmother's health was not good and it was suggested to his father that he move his mother to Florida and that is the reason the family moved to Ocala, Florida. There they lived with Lord Aughenbaugh's Uncle Mac and his daughter Connie for a few months. This was not a good situation for Lord Aughenbaugh either. His uncle was verbally abusive to Lord Aughenbaugh saying that he was a "Nazi Bastard," his mother was a German whore, and that Lord Aughenbaugh was worthless. Lord Aughenbaugh was subjected to this abuse on a daily basis until his father found a home and they

could move out.

His father started his own business, an open air market, a store selling all kinds of dry goods. Things were going good until Lord Aughenbaugh's Uncle Mac did something that caused his dad to lose the business and they then had to move again.

This time they moved to a home out in the country. Lord Aughenbaugh says that they were poverty stricken and his father's only means of making money was to take pictures of truck drivers next to their rigs.

At this time Lord Aughenbaugh grandmother fell and hurt her ankle which caused fluid to build up in her body, resulting in her death. Prior to her death, Lord Aughenbaugh's grandmother disowned her son Mac for the way he treated Lord Aughenbaugh and his father.

When Lord Aughenbaugh was released from Federal prison he had good intentions of finding a job and keeping to a more productive life. Just after his release he lived with Lorraine. He met Todd Yurgin while in Butner, North Carolina and reported that Todd Yurgin went with him as he traveled and at one point they both lived with Todd's sister, Tracey Pinque. Ms. Pinque became upset with Todd and the two moved to San Francisco. He and Todd eventually decided to go back east, living in Tennessee and then Kentucky.

Lord Aughenbaugh was incarcerated again due to revocation of his supervised release and after that was again released to the custody of Lorraine. He lived with Lorraine for approximately one year before moving on. At some point he again connected with Todd Yurgin and they moved to the Philadelphia area and then Cinnaminson, New Jersey. Lord Aughenbaugh lived with Todd's sister again in New Jersey and they cleaned houses. He then moved with Todd to Staten Island, New York and he became employed at Macy's as a sales associate.

Lord Aughenbaugh was a hard worker and always tried to find and keep a job. He

mostly worked at either cleaning houses or housekeeping in a motel. In Philadelphia he cleaned homes and worked at Jean's Motel cleaning rooms. In Cinnaminson, New Jersey he worked in a motel in housekeeping. In San Francisco he worked at various motels such as the Twin Peaks Motel and the Pontiac Hotel cleaning rooms and at the Jury Box Restaurant in San Francisco. In Richfield, Utah he worked as a night clerk at the Westin Inn and in a maintenance position for Sears Department Store.

He has also worked in North Carolina for Carolina Builders, Panera Bread, Warner Brothers, Wal-Mart, and Kay Bee Toys. In Philadelphia he worked for Rite Aid Pharmacy. As mentioned, in New York he worked for Macy's. In Bear, Delaware he worked for K-Mart. In 1996 he worked as a crew leader for a very short period for Hardee's and some time prior to that as a perishable food clerk for Food Lion in Wake Forest, North Carolina. He worked for Bates Graphics as a driver in Raleigh, North Carolina.

In 1995, he worked for Butler County Publishing Company in Poplar Bluff, Missouri and also at a Food Lion store. In 1994, he worked for Mitchell Temporary Services, Britt Enterprises and P&R Environmental Industries.

Todd Yurgin and Lord Aughenbaugh moved to Delaware where Todd purchased a trailer in 2005. On public property records Lord Aughenbaugh is reported to have been the purchaser of the trailer.

Lord Aughenbaugh has four paternal siblings; Ken Harris, a salesman living in Raleigh, North Carolina; Kaye Harris, living in Jacksonville, North Carolina; Betty Harris, living in Petersburg, Virginia; and Lorraine Putnam, living in Youngsville, North Carolina. Lord Aughenbaugh does not have any knowledge of his two maternal half-siblings.

**LORD AUGHENBAUGH'S PERSONAL STORY OF HIS LIFE AS WRITTEN BY HIM<sup>3</sup>**

I remember my Uncle Mac came over and my grandmother wanted nothing to do with him because of the awful things he did to me, my dad, and her. I was the apple of her eye. I did anything she wanted and I looked after her when my dad was out trying to work to keep a roof over our heads and what little if any food on the table. When my grandmother passed away I lost the one person whom I loved so much. I was the little adult, worrying; of things a child should never think of or have to deal with. We packed up and went back to North Carolina to bury my grandmother at Oak Grove Baptist Church and to live there once again.

[this is the 7<sup>th</sup> home]

I got to see my dog chief who was left behind in North Carolina with my Uncle Wade and his family for a short moment. It was very cold during the time when we came back to bury my Grandmother and with all that was going on my Uncle Wade left my dog out on a chain with no shelter on the coldest night, he froze to death. I was devastated two-fold, losing my grandmother and then my doggie. As for them, that's their treatment of many things being my Uncle Wade and his wife. My dad rented a home to put our furniture. My grandmother left everything to me. Of course my uncle broke into the home and stole pieces of the furniture and such. I remember my dad being furious.

This is when Marie McDavis came into my life. My dad had met her at her sister's dinner in some town up in the mountains of North Carolina. My dad had me meet her and I thought she was so wonderful. We moved from the Youngsville area to Ashville, North Carolina. Marie worked at a jean factory, Gloria Vanderbilt. She lived in a trailer park with her two sons, Rosco and Jerrylee. Rosco is mentally handicapped, Jerrylee was a drunk and trouble

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<sup>3</sup> Lord Aughenbaugh requests that his personal narrative be part of the sentencing memorandum.

maker. He loved cutting people which got him into a lot of bar fights and jail. During my time at Marie's home, Rosco and Jerrylee took advantage of my sexuality. I was made to have sex with them throughout the time I knew them until we moved away some three to four years later. At one point Rosco was afraid that I was going to tell so he tried to kill me. My childhood was taken from me and I was forced to live with adult situations.

During all this my life seemed as if I was alone with no one seeming to understand my pain. So we moved to Mt. Olive where my dad rented a home and I went to a school where I was decimated for my sexuality. Funny thing I never spoke of it. My dad was then arrested for stealing a car but it turned out he was innocent, (he was found not guilty).

I then had to be around my cousins that acted like a bunch of wild animals. This was my Uncle Wade and Aunt Martha's children. So I went from two men making me do sexual acts to my cousin Charles doing it now. Charles and I are a year apart in age and he was told by Rosco when he visited us in Hendersonville that I was being so called "trained" to do blowjobs and anal sex. He used that info to blackmail me into doing that with him and his two buddies. With the sexual also came the physical abuse by both of my male cousins, Charles and Stacey. They would light matches on me be it in my chair or clothes, chase me with knives, guns, and loved locking me in an old trunk for hours. I would scream and cry until I fell asleep. I prayed for help.

My Aunt Martha who was a drunk seemed to be in her own world. She got off on them slapping me. She treated me as if I was this scourge. The one thing they loved to do was tell me stories of how they thought my dad was a loser and I was just like him. Of course I learned to keep my mouth shut or face the wrath of my dad's brothers' brood. My aunt and uncle had sex parties which to find out that's most likely where Charles and Stacey got their ideas from.

They were swingers and I was caught in the middle feeling I could tell no one, trapped with no one to give me justice. It's weird but back in Henderson there was this pedophile who would approach me and the kids I played with I always knew never to take anything from him or go anywhere with him and I warned my friends. I never knew people like that were called pedophiles. The sad thing is was I had two men in my home doing the very thing which in the aspect of it all made it worse.

We moved to Rocky Mt., North Carolina and my dad was selling Rainbow Vacuum Cleaners. I enrolled in Freewill Baptist Church. Going to school was awful, being harassed. I did everything to fit in but that never worked and telling the truth seemed only to make it worse. I made the mistake of confiding to a boy, Kile Williams, my life and for my wanting to seek a friend I ended up being punched and in his words, "Fagots are to burn in hell", he'll teach me that. Sick thing was him forcing me to give him blowjobs when after he would scorn me and hit me I came up with excuses for my bruises, I kept silent thinking that's what I deserved. My prayers were answered when we moved to New Bern, North Carolina, in 1984. My dad insisted I go to a Christian School. I was wanting nothing of it.

I was enrolled at Calvary Baptist Church in the sixth grade. It was o.k. even though there was a lot of talk about being a homosexual meant death so I kept that to myself and my other secrets. My dad had us living in the same building where he had his store selling various products. He was still selling Rainbow Vacuums. He also started selling lightning rods for the home or business, Craftmatic beds and satellite dishes. Things were ok for the time other than dealing with all the issues I have.

We ended up moving to Jacksonville, North Carolina. My dad rented a home on Maple Drive. It was just two blocks from his ex-wife of his first marriage. This time my dad did not

enroll me in school, things were tough money wise. Either way I had to deal with adult issues.

I was sixteen years old at that time and I tried to go into the Navy. I failed the exam which only made my dad happy. He also never wanted me to get my social security number. I wanted to work but he did not want me to. For whatever reason he added me to his business checking account. He also had me start to help him out more by driving him and helping him to sell the satellite dishes and lightning rods. He only did this since we moved from New Bern, North Carolina. His health was declining and I was scared so I contacted the one person I thought would be helpful, Lorraine Putnam. She refused at first and I was devastated. After making her aware I had no idea what to do, she relented and in her way helped move us to Youngsville, North Carolina.[this is 13<sup>th</sup> home].

Lorraine Putnam is the biological child of Clyde Harris. As a baby she was adopted by Martha and Wade Harris and this is why Lord Aughenbaugh refers to her as my "sister/cousin." Lorraine had reported that Clyde Harris moved around so much that the family was not aware of what was going on with him and Lord Aughenbaugh.

Lorraine reported that she initiated contact with Lord Aughenbaugh and her father/uncle because she was working in a bank and came across an application for an ATM card that she realized was for Lord Aughenbaugh. He was around 16 or 17 at the time Lorraine worked at the bank in Raleigh, North Carolina.

I got a job working at Hardees and then moved us next door to my Aunt Martha and Uncle Wade Harris' home. I also worked for Manpower Piedmont Fabricators and another temporary agency. Living there as well as the memories of it and having to live hand to mouth were awful. My dad ended up finding out he was legally blind from diabetes. He was taken to the doctor's by his niece, Lorraine Putnam, since we had no vehicle that was legal to drive. I

could not afford the insurance so I had to walk to work, be it rain or shine.

My dad was approved for SSI, but his niece, (Lorraine), decided he needed to pay her for taking him to and from the doctor's office at the sum of \$1,200.00. At this time I was helping out at the day care center Lorraine and her partner had started. Out of anger I took three checks. I did return the money and closed the account which I had due to issues related to this by orders from my dad. My dad had me put up my name to purchase the land in Schlosh, North Carolina. He pressured me every day to get the money to move to the property. In frustration I kited checks on three accounts to get him what he wanted. I ended up having to put a second mortgage on the property to pay the bank the money I had kited. My dad was only happy that he was on the land. I, of course, was stuck back at zero. The people we dealt with were Jolly Williamson and Williams, Louisburg, North Carolina, who supplied the loan and Triangle Reality, whom the land was bought from. During this time I worked for Hardees, McDonalds, Wal-Mart, J&M Manufacturing and two temporary agencies.

Lorraine has said that she assisted her uncle by taking him to grocery and doctor appointments. She reports that the \$1,200.00 amount in question was the total of three checks Lord Aughenbaugh stole from her company office. He ended up paying for the checks but she said he went to the bank and said Lorraine had stolen them from him.

The vehicles I drove had no insurance coverage. The inspection sticker and license plates were also out of date. I had not the means so I ended up, due to no public transportation, having to walk. It was hell for me, we had our lights turned off for eight months and we had no phone service. I went to social services but was turned down.

My dad's health was getting worse. I turned to kiting checks to get the utilities back on. My dad said he would find a way to pay the debt of the checking accounts, he gave all our titles

to my Uncle Mac so he would loan the money needed to pay off the debts. At this time Russell Capps was my dad's home health nurse. He said I needed to leave my home and if I did not I would go nowhere.

As per Lorraine's report, she said Russell Capps kindly let Lord Aughenbaugh stay in his home. His kindness was abused when Lord Aughenbaugh used his computer, met David Bridgewater on the computer, used Mr. Capps name to get credit and left to go to be with David in Poplar Bluff, Missouri.

At that time I had a computer and met David Bridgewater on AOL chat. I moved out but kept in contact with my dad. At this time I found out that Mr. Capps was a closeted homosexual. When he was first in our home I was to sleep in the guest bedroom and then he had me move into his bedroom.

As to the credit I was given permission for three of the accounts but not the others I had opened. I had become involved with Lorraine Putnam and we started the business, "Propack." Through Mayflower we packed up the homes of people who were moving. Russell found out about me working with my cousin/sister and was furious. The car he bought me he had me park it. I had used the money for the credit cards to buy the shed, (for Lorraine's home), furnishings and two cars and a van which Lorraine ended up with control over. Given the situation I chose to leave and go to David Bridgewater's and that was a nightmare. I ended up coming back to Lorraine Putnam's at my request. I was told by Lorraine she wanted me to apply for SSI, I did and was denied. I was blessed to get a job at Food Lion in Roseville, North Carolina.

Lorraine said that in 1995, (close to a year after Lord Aughenbaugh left), Mr. Bridgewater contacted her to come and get Lord Aughenbaugh.

After working for a moment Lorraine complained on the miles to my job I had to be

driven back and forth due to me not having a car. Funny, the two cars she drove during that time I had bought. While at work at the Roseville store I found out about a job at the new Food Lion grocery store that was built in Wakeforest and that store was closer to where I lived. I put in for the job and was transferred.

I met the Mormon missionaries and joined their church. Lorraine was very upset that I joined their church, (Lorraine reported that after he moved to be with a Mormon family the sheriff's department came looking for him for an offense he committed in August 1997). I was told to move out, (later she changed her mind but in anger I moved out). I joined the Mormon's looking for love and to fit in - since so many viewed them as I felt a misfit. I ended up getting married to Janette Aughenbaugh, who had her own bag of issues.

According to Lorraine, Calvin Ashley Harris decided to change his name prior to his marriage to Janette. He changed his name to Lord Ashley Harris either because Lord sounded wealthy, because his Uncle Wade traced family roots back to William the Conqueror and he believed he was descended from royalty, or because he wanted a new life without all the problems "Calvin" had. He legally changed his name in 1996 to Lord Joseph (for Joseph Smith) Helaman (the name of a book in the Book of Mormon) Mormon (his faith) Aughenbaugh (Janette's last name). Janette was a widow with five children and he felt it would be easier to change to their name than for Janette to change her name and that of her five children. So many issues arose and Janette and I decided to separate and go our own ways in 1997 and the marriage was annulled.

I had been a driver for a graphics company and then worked at Hardees. I left for Utah, Richfield. I got a job at a loan office through the Employment office and then I got a job at the Westin Inn. Due to money issues I moved to Murry, UT. I worked for a grocery store and then

for a temporary agency for Sears. The last job I had was working for Zion's Bank. I was released from my job and thus I left to San Francisco, CA. I lived in Twin Peaks and I got a job at the Jury Box Courtside Coffee Shops. I was arrested at my job and brought back to North Carolina to face charges there.

**B. The Nature and Circumstances of the Offense (18 U.S.C. §3553(a)(1))**

The Offense Conduct

As per the investigation, beginning around March 2003, Lord Aughenbaugh along with Todd Yurgin devised a scheme to obtain money and property by fraudulent means. They obtained personal identity information of people mostly unknown to them in order to obtain credit cards and to open bank accounts.

One way they obtained the personal information was to steal mail from neighbor's mailboxes. They used social security numbers found to apply for credit cards. They later went on Internet Websites to find actual social security numbers issued to people to again apply for credit cards by sending applications through the U.S. Mail and also by applying for credit cards on line.

Lord Aughenbaugh obtained a business license with the State of Delaware to operate two "shell" companies, "Cathouse," and "Restored," that the men created at a Newark address. The companies were used to launder proceeds they obtained. The addresses where the businesses were registered were not at a commercial location but rather at the trailer in a residential neighborhood. The social security number used to register Cathouse was of an adult male and for Restored he used that of a child.

The two men obtained a Point of Sale Terminal (POST) machine, normally used to

facilitate credit charges. Lord Aughenbaugh opened a bank account with PNC Bank on August 20, 2006, and deposited the funds obtained from “transactions,” into the PNC account. They used the funds as well as the credit cards to make payments on various purchases they made or to make purchases of goods and services.

On September 1, 2009, the agents in the investigation searched the trailer where Lord Aughenbaugh and Mr. Yurgin were living. They found credit card statements, receipts from goods, credit cards, a tablet listing names and email addresses, as well as other evidence.

Lord Aughenbaugh voluntarily agreed to speak with the agents and provided a voluntary statement and told investigators information about the schemes.

On September 1, 2009, a criminal complaint was filed by the United States Postal Inspector’s office.

On September 8, 2009, Petitioner was arrested. On September 9, 2009, Lord Aughenbaugh appeared before U.S. Magistrate Judge Mary Pat Thyng. He was detained pending a detention hearing.

On September 15, 2009, Lord Aughenbaugh did not oppose the government’s motion for detention and he was detained pending his trial. He also waived his right to a preliminary hearing.

On February 23, 2010, Lord Joseph Helaman Mormon Aughenbaugh was indicted by a Grand Jury of the United States, District of Delaware, with an eight count Indictment, charging him with (count one) conspiracy to commit mail and bank fraud; (count two) mail fraud; (counts three, four and seven) social security fraud; (count five) money laundering; and (counts six and eight) aggravated identity theft.

On May 25, 2010, Lord Aughenbaugh entered pleas of guilty to Counts one, two, three, five, seven and eight before Chief U.S. District Judge Gregory M. Sleet. As per the Memorandum of Plea Agreement, Lord Aughenbaugh admitted to the central aspects of the case.

**C. The Need for the Sentence to Promote Statutory Objectives - §3553(a)(2)**

A sentence must be “sufficient, but not greater than necessary,” to comply with the purposes listed in section 3553(a)(2), namely, the need to: reflect the seriousness of the offense, promote respect for the law, provide just punishment, afford adequate deterrence, and protect the public from further crimes of the defendant.

Without a doubt the instant offense is a very serious one but the court should consider the tragic early years of Lord Aughenbaugh’s life as well as his limited education when determining a sentence.

Hopefully Lord Aughenbaugh will receive training and further education while incarcerated and being that he is still at a young age and looking at his work history and his desire to work and earn a livelihood; the likelihood that he will reoffend or pose a danger to the public is extremely low. With education and training and a viable means for getting legitimate work to pay for housing and everyday needs, Lord Aughenbaugh will certainly become a valuable and productive member of society.

**D. Kinds of Sentences Available and the Advisory Guideline Range  
(§3553(a)(3) and (4))**

**Statutory Provisions**

Count One: Conspiracy, to commit mail fraud and bank fraud - in violation of 18 U.S.C. §1341, 1344, and 1349.

- Count Two: Mail fraud - in violation of 18 U.S.C. §1341.
- Counts Three and Seven: Social Security fraud - in violation of 42 U.S.C. §408(a)(7)(B).
- Count Five: Money Laundering - in violation of 18 U.S.C. §1957.
- Count Eight: Aggravated Identity Theft - in violation of 18 U.S.C. §1028A.

**Guidelines Provisions**

While the sentencing range set forth under the guidelines is no longer mandatory, that range and the policy statements set forth in the guidelines are factors to be considered in determining the appropriate sentence.

As noted above, “the sentencing court does not enjoy the benefit of a legal presumption that the Guidelines sentence should apply.” Rita. At \*9. It is respectfully submitted that the other §3553 sentencing factors, which take into account the circumstances of this offense and Lord Aughenbaugh’s background, diminish the suitability of the Guidelines in this case to adequately reflect the purposes and goals of sentencing described above call for a sentence lower than the recommended range.

**Objections to the pre sentence report**

1. Defendant has no knowledge of pending charges listed in §83, 84 and 85. He believes this was someone else using his name. No points have been assessed for these offenses.
2. As to §60, defendant claims he was not on probation at the time of the instant offense and should not receive two points as listed in §77. He contends he was not under any supervision. He was under supervision for his federal offense.
3. As to §63, this was for an insufficient funds offense as the account was closed. Under §4A1.2 (c)(1), it should be excluded.
4. As to § 62, Defendant believes this information is incorrect. The offenses are supposed to

have taken place in 1991 and 1992 and yet Defendant wasn't arrested until 9/16/98.

5. Sophisticated means enhancement, §42

Defendant objects to sophisticated means enhancement. This is not the type of conduct that is contemplated under 2B1.1.(b) (9). (C)Sophisticated means especially complex or especially intricate offense conduct pertaining to the execution or concealment of the offense. This was not that type of offense. Additionally, Defendant has a 6<sup>th</sup> grade education and was in special ed classes throughout his schooling.

6. Vulnerable victim enhancement., §44

Defendant objects to a vulnerable victim enhancement. In that he received an adjustment of 4 levels for 50 or more victims, the vulnerable victims enhancement should not apply. See 2B1.1, applications notes under 4 (D).

#### **IV. Request for Departure from Guidelines**

##### **Defendant's criminal history category over represents his criminal history**

Lord Aughenbaugh objects to the criminal history category of V based on the above objections under criminal history category. If the Court finds that the criminal history category as determined by the probation department is correct, Lord Aughenbaugh submits that the criminal history category overstates the seriousness of his record. See 4A1.3 (b) (1). He is requesting a downward departure of one criminal history category.

The Court may depart downward where the defendant's criminal history is significantly less serious than that of most defendants in the same criminal history category. See United States v. Shoupe, 35 F.3d 835 (3d Cir. 1994).

The offenses that place Lord Aughenbaugh in category V include two 1993 offenses for worthless checks, (he received two criminal history points for these), and a 1998 offense for worthless checks. Defendant asks this Court to find that his criminal history is over-represented by being in a category V and assign him a category IV. The majority of defendants in criminal history category V are not there for a 17 year old offense and a minor offense.

#### **V. REQUEST FOR NON GUIDELINE SENTENCE (VARIANCE)**

##### **Physical and mental condition and childhood trauma:**

Lord Aughenbaugh requests that the Court consider the personal history that has been written above. He suffered from physical abuse and sexual abuse from those closest to him. His family moved constantly and he never was in one place for any length of time. He has no knowledge of his mother and was sent from relative to relative to live. He only has a sixth grade education because he was never in any school due very long due to the constant moving. He has been diagnosed with brain damage.

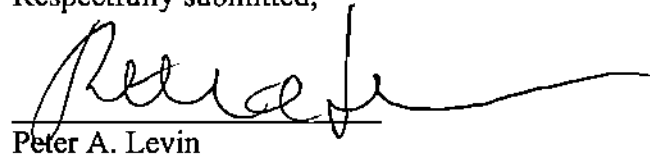
##### **Post offense rehabilitation**

Lord Aughenbaugh has met with the government and has briefed them on ways to combat the type of illegal activities that he was involved in. He has also agreed to assist the government in any other ways that the government deems appropriate. Additionally, he convinced his co defendant Todd Yurgin to plead guilty thereby saving the government of the time and expense of a lengthy trial.

**VI. Conclusion**

For all of the above stated reasons, Lord Joseph Helaman Mormon Aughenbaugh requests compassion and leniency in sentencing. Counsel therefore, respectfully submits that the presence of these mitigating factors provide a basis for this Court to exercise its discretion and set a sentence that is sufficient, but not greater than necessary, to comply with the statutory directives set forth in 18 U.S.C. §3553(a).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter A. Levin", written over a horizontal line.

Peter A. Levin

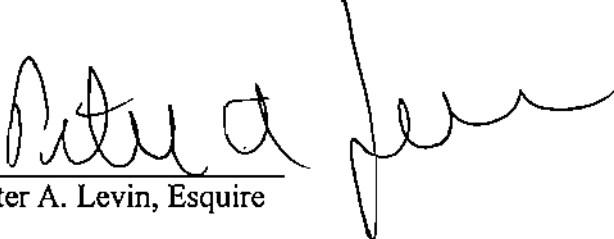
Attorney for Lord Joseph  
Mormon Aughenbaugh  
1927 Hamilton Street  
Philadelphia, PA 19130  
(215) 563-3454

**CERTIFICATE OF SERVICE**

Peter A. Levin, Esquire, hereby certifies that a true and correct copy of the within Motion has been served upon the Filing User identified below through the Court's Case Management /Electronic Case Files ("em/ecf") system:

Robert F. Kravetz, Esquire  
Assistant United States Attorney  
1007 Orange Street, Suite 700  
Wilmington, DE 19899-2046

November 10, 2010

  
Peter A. Levin, Esquire

**CERTIFICATES  
OF  
ACHIEVEMENT  
EARNED AT FDC  
PHILADELPHIA**

# Certificate of Achievement

This certifies that  
**Lord Aughenbaugh**

has satisfactorily completed

**Money Smart: Charge It Right**

Consisting of <sup>2</sup> \_\_\_\_\_ Hours of Training

24<sup>th</sup> August 10

This certificate is hereby issued this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

*B. Womack*  
B. Womack  
ACE Coordinator

# Certificate of Achievement

This certifies that  
**Lord Aughenbaugh**

has satisfactorily completed  
**Money Smart: To Your Credit**

Consisting of 3 Hours of Training

This certificate is hereby issued this 4<sup>th</sup> day of August, 2010

B. Wonnack

B. Wonnack  
ACE Coordinator

# Certificate of Achievement

This certifies that  
**Lord Aughenbaugh**

has satisfactorily completed  
**Money Smart: Keep It Safe**

Consisting of 3 Hours of Training

This certificate is hereby issued this 2<sup>nd</sup> day of August, 2010

\_\_\_\_\_

*B. Womack*  
\_\_\_\_\_

B. Womack  
ACI Coordinator

# Certificate of Achievement

This certifies that  
**Lord Aughenbaugh**

has satisfactorily completed  
**Money Smart: Pay Yourself First**  
Consisting of   2   Hours of Training

This certificate is hereby issued this   22<sup>nd</sup>   day of   July  , 20   10

*B. Womack*

B. Womack  
ACE Coordinator

# Certificate of Achievement

This certifies that  
**Lord Aughenbaugh**

has satisfactorily completed  
**Money Smart: Check It Out**

Consisting of 3 Hours of Training

This certificate is hereby issued this 8<sup>th</sup> day of July, 2010



B. Wonnack  
ACE Coordinator

~ Certificate of Achievement ~

This certifies that  
**Lord Aughenbaugh**

has satisfactorily completed  
**Money Smart: Money Matters**  
Consisting of 2 Hours of Training

This certificate is hereby issued this 8<sup>th</sup> day of July, 2010

*B. Wonnack*

B. Wonnack  
ACE Coordinator

# Certificate of Achievement

This certifies that  
**Lord Aughenbaugh**

has satisfactorily completed  
**Money Smart: Borrowing Basics**

Consisting of 2 Hours of Training

This certificate is hereby issued this 17<sup>th</sup> day of June, 2010

\_\_\_\_\_

*B. Wonnack*

**B. Wonnack**  
ACE Coordinator

# Certificate of Achievement

This certifies that  
**Lord Aughenbaugh**

has satisfactorily completed  
**Money Smart: Bank On It**

Consisting of 2 Hours of Training

This certificate is hereby issued this 11<sup>th</sup> day of June, 20 10

B. Womack

B. Womack  
ACE Coordinator