

**IN THE UNITED STATES DISTRICT COURT
OF THE NORTHERN DISTRICT OF GEORGIA**

UNITED STATES OF AMERICA)
)
) **V.**)
)
JACK T. CAMP, JR.,)
)
) **Defendant**)

Criminal No. 2010-CR-00475

SENTENCING MEMORANDUM OF DEFENDANT JACK T. CAMP, JR.

Defendant Jack T. Camp, Jr. respectfully submits this memorandum in connection with his sentencing.

I. INTRODUCTION

Jack Camp was arrested by agents of the Federal Bureau of Investigation on Friday, October 1, 2010, in Atlanta, Georgia. He had just participated in the purchase of roxycodone and cocaine from an undercover agent. He was in the company of a woman he had met at a strip club some five months earlier and with whom he had developed a relationship in which he paid her for sex, gave her money to buy drugs, and used drugs with her.

He was held in the United States Courthouse in Atlanta, Georgia until Monday October 4, 2010. At the time of his arrest he was sixty-seven years old and he was a Senior United States District Judge for the Northern District of Georgia. He had served a distinguished career as a judge on that court, during part of which he was its chief judge.

Mr. Camp promptly accepted responsibility, concluded a Plea Agreement with the government, and on November 19, 2010, plead guilty to an information charging him with one count of aiding and abetting his female companion in the possession of controlled substances, 21 U.S.C. § 844(a), one count of possession of controlled substances, 21 U.S.C. § 844(a), and conversion of government property, a laptop computer which he obtained for the same female,

18 U.S.C. § 641. The Court has received a Presentence Report prepared by Mark McCrosen, Deputy Chief United States Probation Officer and sentencing is set for Friday, March 11, 2011. As a result of his pleas of guilty in this case, he retired from the bench on November 19, 2010, and he surrendered his licenses to practice law in Georgia and Alabama promptly after his plea.

His arrest and guilty pleas were widely reported in the local, regional, and national media. The reports shocked his family and his friends and professional colleagues. Many found it impossible to believe.

Jack Camp had to that point lived his life to a high standard of personal and professional integrity. He took his work as a United States District Judge seriously and was recognized as a diligent, hard-working, fair and impartial judge. He had been committed not only to his profession and the rule of law, but to his church, his community, and his family.

The conduct for which this Court must impose a sentence is obviously illegal and immoral. It is inconsistent with the values and responsibilities that Mr. Camp sought to embody throughout his life. In the most basic sense, he broke the laws he was sworn to uphold. He also of course embarrassed his family, especially his wife and children, who have to live with their public identification with him, and he humiliated himself.

In addition to being illegal, the conduct was stunning to his friends and family because it was so reckless and dangerous. It carried a high likelihood that he would be arrested, prosecuted, convicted, forced to resign his commission, and disbarred, all of which of course have occurred.

Of the more than 100 letters from friends, colleagues, neighbors, and acquaintances, we have compiled and are attaching to this memorandum a binder containing 46 letters, many of them unsolicited (see Exhibit B). We have not included all of the letters Mr. Camp received because some are purely personal, and others are from fellow judges that would not be appropriate to include. As a group, the letters speak with compassion to the pain they know he and his family feel. They also speak to the wealth of good will, respect, and admiration he created in his life. Most important, for these purposes, they show the stark contrast between

Jack Camp's conduct in this case and the rest of his life. Selected excerpts from those letters are listed at Exhibit A, and include the following:

Rhodes H. Shell, Newnan City Council member, former member of the Coweta County Board of Education, former banker, and Mr. Camp's lifelong friend writes, "[w]hen I was first told of his arrest, the person telling me made me pull over and cut off my car's engine because she knew how shocked I would be. I assumed it was a setup or a mistake...I did not want to believe what I was seeing and hearing...Many people who know that I am friends with Jack, including his pastor, have asked, 'did you ever see any of this or know about any of this?' My answer is always no....I know that he has punished his family with the publicity and the realization that he has lost a lot of his stature in the community. With this, sixty years of reputation have been undone...As a citizen of his community, I know he has been punished already in that his reputation will never be totally repaired and the respect he had will never be completely recovered. Regardless, I will continue to be his friend and willing to help him in any way possible."

Alan Jackson, Mr. Camp's former law partner at Glover & Davis, writes "[H]e showed that as lawyers we must treat the most humble among us with the same respect as is demanded by the most powerful in society...his apparent actions are so out of place and context for Jack that but for them actually happening, I would not believe them possible...In my opinion, Jack has already suffered and paid a great price for his actions."

Marcus Johnson, owner of Midnight Janitorial Services, writes, "I am a retired, African American teacher...as well as a minority business entrepreneur in Newnan, Georgia...I am a contract provider of janitorial services to the Glover & Davis law firm in Newnan...Jack was one of the first professional individuals that I had the opportunity to meet. Despite our ethnical differences, Jack acknowledged me without prejudice. He and I developed a personal friendship that continues to transcend societal divide...I assertively attest Jack to be a man of great integrity and devout in his faith."

Susan J. Levy, one of Mr. Camp's first law clerks, former attorney with the Georgia Attorney General's Office, and now in private practice, writes "I sat in on oral arguments and watched Judge Camp treat *pro se* litigants with the same respect and professionalism that he treated King & Spalding lawyers. One example that has stayed with me was how much time and care Judge Camp took with a case involving "Abraham," a homeless

man who was living on the steps of the Russell Building (which houses the federal district and bankruptcy courts). Judge Camp treated his staff, the courthouse personnel, the marshals, and the public, with kindness, respect, and humility, regardless of gender, race, or socioeconomic status...Judge Camp was my mentor...He was a fair and impartial jurist, with a superb intellect, who cared deeply about what he did and how he did it."

Dana Graham, former Marine Corps Major, veteran of Desert Shield/Desert Storm, Citadel Graduate, Pastor of a local church, writes "We are an African American (Black) family who are welcome visitors to the Camp Home and their Family Cabin in Moreland....Not only did Mr. Camp guide and support my search for post military employment by introducing me to key community leaders and employers in the community, he also served as a mentor and sounding board for me as I dealt with the mental and emotional stress that every post war veteran experiences when he/she transitions to the civilian world. When I accepted the call to Christian Ministry and became a Pastor, Mr. Camp and other Citadel Alumni members became my greatest supporters."

Randi Engel Schnell, one of Mr. Camp's former law clerks, now an attorney in private practice, writes "I still consider [the clerkship] one of the best jobs I ever had...Mr. Camp was also a true mentor to his law clerks...His chambers were always open to the public during business hours (no lunch break for everyone at one time, no answering machine turned on, etc)...there are times when I can still hear his words in my head - when I am explaining to opposing counsel that needless discovery disputes do not serve our clients well...Mr. Camp's code of ethics--what he practiced as a Judge, taught as a mentor, and expected from members of the bar, has stayed with me...last year when my son had his Bar Mitzvah, the Camps were there to share in my family's celebration..."

J. Littleton Glover, former President of the State Bar of Georgia and Mr. Camp's lifelong friend, writes "I feel that I know Jack and his character as well as anyone outside of his immediate family...I can honestly state that I do not know of an attorney or member of the judiciary that in my mind was less likely to conduct himself in the manner that he apparently did than Jack. Jack's value system was, to my mind, just the type of system that one would want in a husband, father, son, brother, or friend...I know that it is difficult to believe that the individual I have described above could be the same individual who has entered a guilty plea to the matters in the indictment. In my mind I do not believe these persons to be one--the Jack Camp who committed criminal acts is not the Jack Camp I have known for so long or the Jack Camp that I know now."

As the Presentence Report describes, Mr. Camp accepts responsibility for his conduct. He does not blame it on anyone but himself. He of all people understands the responsibility of sentencing and the requirement that the punishment not only fit the crime but that it appear to any objective person to be fair and firm.

We respectfully submit, however, that the appropriate sentence in this case is one which combines supervision, medical treatment, and community service. This memorandum addresses the reasons why incarceration is not necessary or appropriate. It provides some explanation for why Jack Camp is before this Court, and why, in the later years of a distinguished career, he committed conduct that was so inconsistent with the rest of his life and so obviously self destructive. Many of the factors we discuss were known only to those closest to him and some only came to light after he sought inpatient care when he was released from custody .

II. PERSONAL HISTORY

Jack Tarpley Camp, Jr. was born to Sophia S. Camp and Jack T. Camp, Sr. on October 30, 1943 in Newnan, Georgia, a town of about 15,000 located in Coweta County, southwest of Atlanta. His family had modest means.

He grew up on a peach farm that his family converted into a cattle farm. When he turned eight or so, his father decided that his son was old enough to work, so he put Jack to work on the farm. His father had served as a marine who saw action in the Pacific, including at Iwo Jima. He returned from the war in 1946, when Jack was three. He was an alcoholic, the son of a father who had committed suicide, and a difficult and harsh man.

As a young man, Jack worked on the farm, played football, helped take care of his sister, Sally, and excelled in his studies. In 1961 he graduated from Newnan High School. He felt drawn to a military career. Each generation of his family had served in the military. He saw it as a direct way to serve his country. He had visited The Citadel and had the sense that it was the right place for him. He applied and was accepted.

Mr. Camp did well as a cadet, thriving under the demands of discipline, unity, and singleness of purpose. In 1962, he was chosen as the "Outstanding First Year Cadet." His class work was also outstanding. He studied history and graduated with honors in 1965.

Recognizing his talents, a professor encouraged him to apply to graduate school. Mr. Camp did, and was awarded a Ford Foundation Fellowship to study history at the University of Virginia. He received a Masters Degree in 1967.

Upon graduating, Mr. Camp entered active military service at the height of the Vietnam war. He knew that he would likely be sent to Vietnam, and he was. He viewed Vietnam as the defining event of his generation, and wanted to support his country in an important cause he thought it needed to win.

Mr. Camp served in military intelligence in Vietnam. He saw active combat. He received a bronze star for his service, and was promoted to the rank of Captain. He was then selected to teach at the U.S. Army Intelligence School at Fort Holabird, Maryland. He received an honorable separation from the Army in August 1970, but served in the inactive reserve for years after.

There were few opportunities for history graduates in 1970. Although he had already been accepted to the doctoral program in history at the University of Virginia, Mr. Camp reconsidered and chose a career in the law.

He was accepted by and attended the University of Virginia School of Law. He graduated in 1973 in the top 20% of his class.

When he graduated from law school, Mr. Camp took a job with a firm in Birmingham, Alabama. He practiced there until 1975, when he was invited by a high school friend to return home to Newnan to practice.

Mr. Camp was happy to return to his home. His father had died in 1965, and since then Mr. Camp had assumed responsibility for the household, his mother, and his sister. His mother needed his help on business and personal matters more than ever. Also, Mr. Camp had always considered himself to be a small-town lawyer. He wanted to help people and businesses in his hometown deal with their legal problems.

While studying law at Virginia, Jack Camp had met Ms. Elizabeth "Liz" Thomas, who was attending Sweet Briar College in Lynchburg. They began dating and in 1976, they married and moved into a 130-year old farm house built by Mr. Camp's great-grandfather.

Jack and Liz Camp began to build a family together. Thomas Henry, nicknamed Harry, was born in 1981. Sophia Rose was born in 1985.

Mr. Camp built a practice in Newnan representing local banks and several area municipalities. He received the most satisfaction, however, from representing individuals who had known him and his family. Additionally, at that time there was no public defender office, and young lawyers had the duty of representing indigent criminal defendants. He remembers these cases as being among his most rewarding, as well as where he developed his trial skills.

As Mr. Camp's professional experience grew, he sought new ways to contribute to his community. He was elected president of the Newnan-Coweta Bar Association and was also elected to the Board of Governors of the State Bar of Georgia, the Bar's governing body. He also served in a number of local civic organizations, and was chosen as an elder in the Newnan Presbyterian Church.

In 1987, a vacancy occurred in the United States District Court for the Northern District of Georgia. He applied for the position, and was selected by a statewide committee as one of three possible candidates. The Department of Justice chose him as the most suitable, and President Reagan nominated him to fill the vacancy. He was confirmed by the Senate in 1988 and seated later that same year.

Mr. Camp reflects on his years on the bench as a rewarding and humbling opportunity to serve his country and community. He approached each day with a deep sense of his responsibilities to uphold the rule of law, to be fair and impartial, and to administer justice. His family and those who worked closely with him know how seriously he took the responsibility and burden of passing judgment on his fellow citizens. He marvels still at being chosen for such an honorable office.

Mr. Camp also won respect as a judge. He presided over difficult cases, including some of the most high profile cases in Atlanta's recent history. He was also fortunate enough to serve

for two years as chief judge of the district, which meant acting as the leader for the other judges in the district. Serving as chief judge also meant working closely with the other important components of the federal justice system, such as the Probation Office, the U.S. Attorney's Office, and the Office of the Federal Public Defender, to ensure that justice was being administered smoothly and fairly.

In short, Mr. Camp's professional life was, until recently, one of distinction. Every waking moment he deals with the knowledge that his recent actions have irrevocably destroyed the reputation he carefully and painstakingly earned. He recognizes that he will live his remaining years as a judge who broke the very law that he had sworn to uphold.

III. FACTORS RELEVANT TO SENTENCING

Few people in Mr. Camp's circumstances would generate the outpouring of caring and support that he has received. The letters demonstrate a well-lived life of service and distinction. That fact alone is, we submit, an important factor in determining the appropriate sentence in this case. There are other factors in his life which we request the Court to take into consideration as well. The Presentence Report makes reference to them and we address them here in more detail.

In November 1999, Mr. Camp sought treatment for what seemed to him to be depression and from which he has suffered for decades. While that treatment could have been an opportunity to improve the acute feelings of sadness and isolation that he had been feeling, it now appears that he was prescribed medication that worsened, rather than improved, his symptoms.

As noted in the Presentence Report, upon his release from custody, Mr. Camp voluntarily entered a psychiatric hospital, The Retreat at Sheppard Pratt. The physician in charge of his evaluation and treatment was Dr. Miles Quaytman. Dr. Quaytman talked extensively, with Mr. Camp's consent, with Mark McCrosen, the probation office charged with preparing the Presentence Report, and that report accurately describes Dr. Quaytman's observations, the relevant history, and his evaluation and diagnosis. Dr. Quaytman is not a forensic specialist and his opinions and conclusions were formed in connection with his evaluation of Mr. Camp for treatment.

In brief, since he sought psychiatric care in 1999, Mr. Camp had been treated with standard antidepressant medications when his condition actually involved a mood cycling or bipolar disorder. Mood cycling disorders have both depressive and manic phases. Characteristic features of the manic phase are the excessive involvement in pleasurable activities that have a high potential for painful consequences and impairment of judgment about those consequences. Mr. Camp's recent conduct is certainly consistent with that characterization. 0

Dr. Quaytman advised that for patients with mood cycling disorders, standard antidepressants can aggravate rather than improve a patient's condition. Dr. Quaytman changed Mr. Camp's medication to one specifically designed to treat mood cycling disorder and it has had clear benefit.

Dr. Linda Duke, a friend of Mr. Camp's for more than thirty years, and a retired professor of Psychology, writes in a letter attached at Exhibit B:

"Jack, who has a family history suggesting a genetic predisposition to mood disorder, experienced in the span of a few years some pretty severe neurological and psychological precipitating stressors for bipolar disorder."...Over time, it appeared that Jack, a calm, introspective, empathic man was changing. Liz reported that he was becoming irritable, self-centered, withdrawn, unreasonable, irrational, not sensitive to others, just not Jack. Jack did seek psychiatric treatment, but I don't think his condition was adequately diagnosed or treated, and his symptoms continued to progress...[i]n my opinion, Jack had been experiencing a manic episode for some time prior to this recent hospitalization...I can only hope that the unfortunate circumstances that bring him to court will be viewed with consideration of the neurological and psychiatric factors of the last few years. In my opinion, his treatment and rehabilitation would be best effected by returning him to his supportive family and community."

Dr. Quaytman also found it significant that in 2000 Mr. Camp had a serious head injury in a bicycling accident. Mr. Camp was bicycling down Boone Road in rural Coweta County without a helmet when he was found barely conscious and battered beside the road. He was rushed to the hospital, where doctors diagnosed broken ribs, a punctured lung, and a serious concussion. To this day, he has no memory of the accident.

The full extent of the damage caused by the accident and its implication was not known until recently. Dr. Quaytman referred Mr. Camp to a highly qualified neuropsychiatrist, Dr. Vassilis Koliatsos, who examined Mr. Camp and ordered brain magnetic resonance imaging. The MRI showed traumatic injury to the left temporal lobe. As Dr. Quaytman explained to Mr. McCrosen, the temporal lobe is responsible for a wide array of functions, and damage to the lobe can cause problems in impulse control. Those problems can manifest themselves more acutely with aging, particularly if there are mood issues prior to the injury, so that as time passes impulsive behavior can become harder to resist. Thankfully, the remainder of Mr. Camp's brain functions, including his cognitive functions, were not affected.

Mr. Camp's temporal lobe damage was only recently diagnosed, but in hindsight could have been detected much earlier. After the bicycling accident, Mr. Camp's family and others noticed a gradual but persistent personality change. They observed that as time went by Mr. Camp became increasingly irascible and short-tempered in circumstances for which there was no apparent provocation. As Dr. Quaytman explained, this is entirely consistent with someone who has suffered damage to the impulse control part of the temporal lobe, which would ordinarily inhibit impulsiveness or extremely reckless behavior.

In addition to his mood cycling disorder and the physical damage to the brain, Mr. Camp has faced a number of difficult and stressful personal challenges. He was diagnosed with prostate cancer in August 2002. The disease was so advanced that his prostate had to be removed. The surgery was more difficult than normal and took three and one-half hours to perform. He required several blood transfusions to cope with the amount of blood loss. He returned to work in January 2003, but only on a part-time basis. He did not regain his energy for almost a year. He continues to suffer some of the typical post-prostatectomy indignities.

More recently, his children have largely finished their educations and left home to start their own lives, creating the inevitable sense of loss that all parents experience. On January 1, 2008, he stepped down from serving as chief judge and from active status. He knew that stepping down from these positions would mean less work and a reduced caseload. He did not know that it would be so socially isolating. In addition to losing the companionship with and the

care and responsibility for his children, almost simultaneously Mr. Camp lost the engagement with a full docket and the companionship of his fellow judges.

In addition, two tragedies unfolded at home. Mr. Camp has always been close to his younger sister, Sally. In 2008, Sally was diagnosed with stage four colon cancer, which had spread to her lungs and other vital organs. Sally, who never married, had been and continues to be dependent on Mr. Camp's assistance. Since her diagnosis, Sally's health has declined, and her reliance on him has increased. She is currently bed-ridden, receiving hospice care, and is not expected to live beyond a few weeks. Mr. Camp and his wife care for her daily.

Mr. Camp's mother has suffered from dementia since 2006. He has always been close to her, and often sought her support and common-sense advice. More recently, however, his mother began losing not only her short term memory, but also her grip on reality. She has now lost completely her short term memory. He and Liz help care for her daily, too.

No one can assess precisely how these features of his personal mental health and the sorrows and stresses of his life interacted. They do not excuse his conduct. They do help explain, however, how in May of 2010 a lonely man in the twilight of his life became entangled with a seductive prostitute more than willing to take advantage of his needs and of his misguided impulse to be her friend and protector. The combination of his misdiagnosed mood cycling disorder, the effects of the traumatic head injury on his temporal lobe, the waning of his professional career, the personal and emotional effects of aging, and the grave illnesses in his immediate family, undeniably affected his impulse controls, the controls that protect human beings from doing things that are dangerous and self-destructive.

He knows what he did and he understands that he cannot ever fully repair the damage he caused or regain the trust of the people he harmed, especially his wife. There is no punishment he will endure more painful than the guilt and shame he faces every day of the rest of his life.

IV. THE APPROPRIATE SENTENCE

Mr. Camp respectfully requests the Court sentence him to a period of probation with a fine and a period of community service.

For all the reasons discussed above, incarceration is not necessary to rehabilitate Mr. Camp or to impress upon him the seriousness of what he did. Nor is it necessary to protect others. He is committed to giving to his community whatever he can to help those less fortunate and to make amends. He has been actively applying for service opportunities and we expect that he will have a permanent commitment shortly.

He is receiving treatment for his underlying conditions from a local psychiatrist, and continues to receive follow up care from Dr. Quaytman. He and his wife are also engaged in family counseling. As he recognizes, it is essential that he continue with both therapies.

The sentence we request is consistent with the Plea Agreement, sentencing guidelines, and applicable law.

A. The Plea Agreement

Mr. Camp undertook certain obligations under the plea agreement. As the Presentence Report notes, Mr. Camp has complied with all of them. He resigned his commission as a District Judge, he surrendered his licenses to practice law, he submitted to interviews by the United States Attorney's Office for the Northern District of Georgia, and he has repaid the United States for the laptop computer which is the subject of Count Three. He has complied with drug tests required by the United States and obtained more sensitive testing by a private laboratory. All drug testing was negative. He has removed all firearms from his home.

In the Plea Agreement, the parties agreed that a sentence within the applicable guideline range was reasonable. (Agreement ¶ 12, page 8)

B. Sentencing Guidelines

The Plea Agreement contained a stipulation that applicable guideline level was 9, based upon an assumption as to grouping. (Agreement ¶ 11, p.7). The Presentence Report corrects the parties' grouping analysis and calculates the offense level at 8. Both the United States and the defendant agree that the guideline is 8, yielding a range of 0 to 6 months.

C. Applicable Law

The Presentence Report advises that Count 1 requires a mandatory sentence of imprisonment of 15 days because the United States filed a Notice of Enhanced Penalties pursuant to 18 U.S.C. § 851. The Notice of Enhanced Penalties refers to the fact that he aided and abetted possession of controlled substances by a person he knew to have been convicted of a felony.

On Mr. Camp's behalf, we advised the Probation Officer that we believed his report to be in error on this point. As we set forth below, the Court does have the power to impose a sentence of probation and a fifteen day sentence is not mandatory.

First, the enhancement provision in 21 U.S.C. § 844 (a) increases the penalty for an offender who has himself been previously convicted of a drug offense. It does not apply to a first offender who aids and abets possession by another who has been previously convicted.

Second, even if the enhancement applied, the Court may still impose probation .

Third, home confinement would satisfy the enhancement if it applied.

1. The Enhancement Provision in 21 USC § 844(a) is a Penalty for Recidivists.

The Supreme Court recently described the enhanced penalty under 21 USC § 844(a) after a prior conviction as "*recidivist simple possession*," *Carachuri-Rosendo v. Holder*, 130 S.Ct. 2577, 2581 (2010) (emphasis added), observing that, with § 844(a), "Congress has permissibly set out a criminal offense for simple possession whereby a *recidivist finding* by the judge, by a preponderance of the evidence, authorizes a punishment that exceeds the statutory maximum penalty for a simple possession offense." *Id.* at n.4 (emphasis added).

The Supreme Court has long recognized the purpose and import of recidivist statutes. *Graham v. State of West Virginia*, 224 U.S. 616, 623 (1912) ("[t]he propriety of inflicting severer [sic] punishment upon old offenders has long been recognized in this country and in England. They are not punished the second time for the earlier offense, but the *repetition of criminal conduct* aggravates their guilt and justifies heavier penalties when they are again convicted. Statutes providing for such increased punishment were enacted in Virginia and New York as early as 1796 and in Massachusetts in 1804; and there have been numerous acts of similar import in many states.") (emphasis added).

Furthermore, “[i]t is axiomatic that when an enhanced punishment for a particular criminal offense is sought because of a prior conviction, the present defendant must be the same person who was previously convicted. It necessarily follows that proof of such identity is an essential part of the case for the prosecution.” 11 A.L.R. 2d 870 (2011).

Because Mr. Camp had no criminal history prior to his arrest for the conduct at issue in this proceeding, the enhancement does not apply to him. Decisions of federal courts applying guidelines in similar situations are instructive.

Federal courts have held that, under the United States Sentencing Guidelines, the offense level of one who is secondarily liable for a criminal offense should be calculated in accordance with that individual’s own unique criminal history, and not the criminal history of the principal offender.

In *United States v. Hendrick*, 177 F.3d 547 (6th Cir. 1999), the Sixth Circuit held that the offense level of a defendant who pled guilty to aiding and abetting a felon in possession of a firearm in violation of 18 U.S.C. § 922(g) and §2 must be calculated under § 2X2.1¹ of the Sentencing Guidelines using the defendant’s own criminal history and *not the criminal history of the principal offender*. The court observed that:

punishing a defendant convicted of aiding and abetting the commission of a crime to the same degree as the principal offender does not necessarily mean that all participants to the crime are treated exactly the same. Rather, treating an aider and abettor as a principal means only that the defendant is treated as if she or he actually committed the underlying offense.

Id. at 551.

The Fourth Circuit expressly adopted the reasoning of the *Hendrick* decision in *United States v. Godwin*, 253 F.3d 784 (4th Cir. 2001). In *Godwin*, the court concluded that the offense level for a defendant accused of harboring a fugitive could not be enhanced under the Sentencing Guidelines on the basis of the *fugitive’s prior criminal record*. *Id.* at 788 (“While *Hendrick*

¹ USSG § 2X2.1 provides that “[a] defendant convicted of aiding and abetting is punishable as a principal... aiding and abetting the commission of an offense has the same offense level as the underlying offense.”

involved application of the aider-and-abettor guideline, we believe its analysis is equally applicable to the accessory-after-the-fact guideline.”).

We submit that, as a matter of law, Mr. Camp is not subject to the mandatory minimum provisions of § 844(a) and that the Notice of Enhanced Penalties does not change that result. The statute only enhances penalties for defendants who have committed a narcotics offense prior to the one for which they are being sentenced. In this case, the maximum penalty for Count 1 is the same as it is for Count 2.

2. The Court Could Impose Probation Even if the Enhancement Applies.

Even if Mr. Camp were subject to a mandatory minimum sentence of 15 days, which he is not, the Court could nevertheless impose a sentence of probation.

18 USC 3561(a) (2) provides that "A defendant who has been found guilty of an offense may be sentenced to a term of probation unless... *the offense is an offense for which probation has been expressly precluded.*" (emphasis added).

Although 18 USC § 844 states that "the imposition or execution of a minimum sentence required to be imposed under this subsection shall not be *suspended or deferred*" (emphasis added), it does not explicitly preclude the imposition of *probation*.²

In the context of considering the Sixth Amendment right to counsel, two circuits have refused to equate suspended sentences with stand-alone sentences of probation. *See United States v. Pollard*, 389 F.3d 101, 102 (4th Cir. 2004) (affirming the district court's holding that "the imposition of probation under the federal system does not equate to the imposition of a sentence of imprisonment and suspension of that sentence; probation does not involve the imposition of any term of incarceration."); *United States v. Perez-Macias*, 335 F.3d 421, 426 (5th Cir. 2003) ("a suspended sentence is not the same as a stand-alone sentence of probation.").

² *But see United States v. Blair*, 530 F.3d 655 (8th Cir. 2008) (holding that probation was not permitted for violation of 21 USC § 844(a) where the § 851 enhancement applied to a defendant who was a convicted felon).

We therefore urge the court to consider a stand-alone sentence of probation for Mr. Camp, if any sentence is to be imposed.

3. The Court Could Impose Home Confinement

If the court were compelled to impose a sentence of confinement, Mr. Camp could be permitted to serve his time under home confinement or intermittent confinement in lieu of imprisonment.

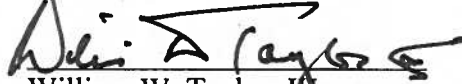
V. CONCLUSION

We respectfully request the Court to impose a sentence that, while recognizing the seriousness of the conduct and the position of the person who committed it, simultaneously takes into account the fact that this case is a personal tragedy, one that does not involve greed, corruption, or venality. As the Presentence Report observes, there is no victim in this case. The consequences of the crimes fall upon Mr. Camp and he has taken responsibility for them. He has followed every order of the court and met every condition of his release. He has committed himself to make amends to the people he hurt and to restore his family's trust.

Under these circumstances, a sentence of probation which involves supervision, community service, and treatment would meet all the goals and objective of sentencing. It would be fair and consistent with the law and the community's expectations.

Dated: February 25, 2011

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Semra A. Mesulam, hereby certify that true and correct copies of Defendant's Sentencing Memorandum and exhibits, were filed and served via email and hand delivery on this 25th day of February, 2011, on the following:

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