

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)
)
) Criminal No. 22-84
)
)
TYLER SMITH)

GOVERNMENT’S SENTENCING MEMORANDUM

AND NOW comes the United States of America, by its attorneys, Eric G. Olshan, United States Attorney for the Western District of Pennsylvania, and Carolyn J. Bloch and Brendan J. McKenna, Assistant United States Attorneys for said district, and respectfully submits, in accordance with U.S.S.G. § 6A1.2, the instant sentencing memorandum in support of the imposition of a sentence of 120 months’ imprisonment, which is at the top of the stipulated range and one month lower than the correctly computed advisory guideline range of 97 to 121 months’ imprisonment.

From June 2016 through September 2017, defendant Tyler Smith participated in a conspiracy and joint undertaking with his then-colleague and now co-defendant, Zachary Dinell. They shared a singular goal and unity of purpose: to commit hate crimes against the disabled residents of the long-term care facility where Smith and Dinell worked together. In the private rooms and spaces of the facility, Smith and Dinell secretly committed physical assaults and violent acts upon at least 13 severely disabled and defenseless residents. Many of the physical assaults were captured on Dinell’s cell phone and revealed, among other things, the residents being punched, kicked, and choked, as well as subjected to hand sanitizer being rubbed in their eyes and mouth wash being sprayed in their faces.

Throughout the conspiracy, Smith and Dinell exchanged regular text messages in which they shared degrading comments about the residents and discussed the harm they had done or

planned to do to their helpless victims, simply because they were disabled. Smith's conduct is reprehensible, and his crimes justify substantial punishment. Specifically, the government urges the Court to accept the defendant's plea agreement and impose a sentence at the top of the stipulated sentencing range—120 months—which is one month shy of the high end of the applicable advisory Guidelines range.

I. Procedural Background and Summary of Offense Conduct

On March 23, 2022, a federal grand jury returned a twelve-count Indictment against defendants Tyler Smith and Zachary Dinell. The defendants were charged at Count One with conspiracy to commit hate crimes, in violation of 18 U.S.C. § 371; at Counts Two through Eleven with substantive hate crime offenses, in violation of 18 U.S.C. §§ 249(a)(2) and 2; and at Count Twelve with engaging in a scheme to conceal material facts related to a health care matter, in violation of 18 U.S.C. §§ 1035(a)(1) and 2. Doc. No. 3. On October 13, 2022, Dinell entered a guilty plea to all twelve counts charged in the Indictment. Doc. No. 76. The Court sentenced him on January 26, 2023, to serve 204 months' imprisonment—the top of the stipulated sentencing range. Doc. No. 100.

Prior to the commencement of trial, the government and Smith entered into an agreement whereby Smith would plead guilty to Counts One and Five of the Indictment and acknowledge responsibility for Count Twelve. In advance of the change-of-plea hearing, and in accordance with the Court's scheduling order (Doc. No. 133), the government provided the defendant with a written factual basis for the charges at Counts One and Five, to be read into the record during the guilty plea colloquy. *See* Exhibit B.¹ Thereafter, on November 27, 2023, the government having received approval of the factual summary from the defendant and his counsel, submitted the

¹ Exhibit A was previously filed under seal at Doc. No. 96 in advance of Dinell's sentencing hearing.

summary and a copy of the negotiated plea agreement to the Court by email. On December 4, 2023, Smith entered a knowing and voluntary guilty plea and admitted to engaging in the criminal conduct set forth in Counts One and Five of the Indictment. Doc. No. 36.

During Smith's plea hearing, as anticipated, the government read the factual basis in support of the guilty plea, which included by reference, among other things, the contents of paragraphs 1 through 20 of Count One of the Indictment. *See* Transcript of Change-of-Plea (hereinafter "Transcript") at 26-27. At the outset of the factual reference, the government stated that "had this matter proceeded to trial, the United States would have proven *each of the facts*" alleged in the relevant paragraphs. *Id.* at 26 (emphasis added). Paragraphs 1 through 20 provided a detailed factual description of the conspiracy between Smith and Dinell to commit hate crimes against protected persons, that is, Smith and Dinell combined, conspired, and agreed "to willfully cause bodily injury to *persons* because of said persons actual and perceived disability." Doc. No. 3 at 3 (emphasis added). After the government's reading of the factual basis, defense counsel responded that while defendant Smith did not himself perpetrate each of the physical assaults, he was admitting all of the elements of the crime of conspiracy, as well as his responsibility for committing the hate crime perpetrated upon Resident 9 at Count Five of the Indictment, for encouraging Dinell's violent acts upon the other residents, and for failing to report the assaults. Transcript at 27-28. The defendant, in turn, agreed with the government's factual basis for the plea of guilty and admitted committing the crimes at Counts One and Five. Transcript at 29. In fact, Smith admitted that his and Dinell's conspiracy involved at least 18 specified assaults carried out against 13 severely disabled residents of McGuire Memorial.

Among other facts, Smith admitted that between June 2016 and September 2017, he and Dinell were both employed as Patient Service Technicians at McGuire Memorial, an in-patient health care facility located in New Brighton, Pennsylvania. Residents of the facility suffered from

a range of severe physical, intellectual, and emotional disabilities, and required assistance with all activities of daily life, including bathing, using the bathroom, oral hygiene, feeding, and dressing. Smith admitted that he and Dinell, as members of the facility's Direct Care Staff, were responsible for providing this critical daily assistance to residents, as well as identifying and reporting signs and symptoms of injury and illness. Smith admitted to being subject to federal and state regulations that prohibited, among other things, physical, psychological, sexual, and verbal abuse of residents, and mandated immediate reporting of such abuse. He further acknowledged having received training from the McGuire Memorial staff regarding these prohibitions and mandated reporting requirements.

Smith admitted that while he and Dinell worked together at McGuire Memorial the two engaged in a conspiracy to commit hate crimes against residents of the facility because of the residents' actual or perceived disabilities. The hate crimes to which Smith acknowledged responsibility were perpetrated upon a total of thirteen residents, as described in Count One of the Indictment, all of whom were nonverbal and suffered severe physical and/or mental disabilities. Seven of the victims required the use of a wheelchair. Smith admitted that he and Dinell carried out the assaults in a variety of ways, including by punching and kicking residents, jumping on residents, rubbing Purell hand sanitizer in their eyes, spraying mouthwash in their eyes and mouths, and, in one instance, removing a resident's compression stocking in a manner intended to inflict pain.² Smith acknowledged that he and Dinell sought to inflict bodily injury on the residents in a

² In aid of sentencing and prior to the sentencing hearing as to Dinell, the United States prepared a compilation exhibit, Exhibit A, containing recorded assaults that are referenced in the Indictment. The video compilation is 5 minutes and 31 seconds in length. The United States filed said exhibit under seal at Doc No. 96 and asks that the Court again consider its contents in fashioning the sentence to be imposed upon Defendant Smith. Contrary to the defendant's suggestion, Doc. No. 148 at 8 & n.4, neither the video compilation nor the original videos extracted from Dinell's cell phone have been enhanced visually or audibly for evidentiary purposes. Exhibit A remains available for counsel to review. (Indeed, even if the compilation in Exhibit A had been enhanced, Smith has provided no support for his position that it would be improper for the Court to consider it as an aid to sentencing.)

manner that would result in undetectable injuries or injuries that could be attributed to the residents' disabilities. He admitted that the victimized residents suffered from physical disabilities that prevented them from defending themselves and providing selfcare following the assaults. Several of these assaults were recorded on Dinell's cell phone, and at least one was sent back and forth between Dinell and Smith on more than one occasion. In that particular video, Dinell used a handheld showerhead to spray a naked resident (Resident 5) lying on a shower table with cold water—which Dinell and Smith knew would cause the resident pain due to his hypersensitivity to cold.

Smith further admitted that he and Dinell were able to avoid detection by, among other things, exploiting their one-on-one access to residents of the facility and the fact that the residents were non-verbal and could not report the defendant's abuse. Likewise, Smith admitted that he and Dinell carried out assaults on residents in a manner that any resulting visible injuries could plausibly be attributed to the residents' disabilities, and as a result, would draw less scrutiny from other McGuire Memorial personnel. And despite that Smith and Dinell were mandatory reporters of physical abuse and neglect pursuant to applicable federal and state regulations, Smith admitted that they made no such reports and in fact affirmatively lied to their supervisors about the physical condition of residents to further conceal their hate crimes.

As part of the conspiracy, Smith also admitted that he and Dinell exchanged text messages in which they expressed their animus toward the disabled residents, shared photographs and videos depicting assaults on residents, described their assaults, and encouraged each other's continued abuse of the residents. Excerpts of text exchanges between the two from September 2016 through October 2017, revealing the defendants encouraging each other to engage in bias-motivated assaults against the residents at McGuire, are set forth in the attached Exhibit C, which the government incorporates herein and has filed separately under seal.

It is clear from a reading of the text exchanges between Smith and Dinell that they are equals; equals in their animosity towards the disabled residents in their care, in their agreement to perpetrate physical assaults upon those residents because of their disabilities, and in their encouragement of one another's actions in furtherance of their agreement to do unthinkable physical and emotional harm to individuals wholly incapable of defending themselves against the assaults. And while the government only has the evidentiary benefit of the contents of Dinell's cell phone and the photos and videos saved memorializing many of the assaults committed upon the residents in their care, the text exchanges between Smith and Dinell make abundantly clear their wholly joint desire to kill and beat residents, to "smash" the residents' faces in, and to "sanitize" the residents' eyes.

Sentencing is scheduled for April 19, 2024, at 2:00 p.m.

II. Argument

A. The Sentencing Guidelines

Although the Supreme Court rendered the federal Sentencing Guidelines advisory in *United States v. Booker*, 543 U.S. 220 (2005), a sentencing court is still required to "consult [the] Guidelines and take them into account when sentencing." *Id.* at 264. The Supreme Court has directed that district courts "begin all sentencing proceedings by correctly calculating the applicable Guidelines range." *Gall v. United States*, 552 U.S. 38, 49 (2007). The sentencing court, however, "may not presume that the Guidelines range is reasonable." *Nelson v. United States*, 550 U.S. 350, 352 (2009). The "Guidelines should be the starting point and the initial benchmark," but the sentencing court must also "consider all of the § 3553(a) factors" in determining the appropriate sentence. *Gall*, 552 U.S. at 49-50. Ultimately, the sentence imposed must meet a standard of reasonableness. *Booker*, 543 U.S. at 260-61.

Sentencing Guidelines § 1B1.2(d) provides direction as to the starting point for computing

the offense level for a single conspiracy count charging multiple offenses or the same offense against multiple victims who have sustained individualized harm, such as a conspiracy count charging multiple bank robberies, a hostage taking involving multiple hostages, or, as in this case, hate crimes committed upon multiple persons, each such person suffering an assault and/or bodily injury. Section 1B1.2(d) states, “[a] conviction on a count charging a conspiracy to commit more than one offense shall be treated as if the defendant had been convicted on a separate count of conspiracy for each offense that the defendant conspired to commit.” “For example, where a conviction on a single count of conspiracy establishes that the defendant conspired to commit three robberies, the guidelines are to be applied as if the defendant had been convicted on one count of conspiracy to commit the first robbery, one count of conspiracy to commit the second robbery, and one count of conspiracy to commit the third robbery.” U.S.S.G. § 1B1.2, App. Note 3. Section 3D1.2—one of the Guidelines provisions on grouping—provides another useful example:

The defendant is convicted of two counts: conspiring to commit offenses A, B, and C, and committing offense A. Treat this as if the defendant was convicted of (1) committing offense A; (2) conspiracy to commit offense A; (3) conspiracy to commit offense B; and (4) conspiracy to commit offense C. Count (1) and count (2) are grouped together under § 3D1.2(b). Group the remaining counts including the various acts cited by the conspiracy count that would constitute behavior of a substantive nature, according to the rules in this section.

U.S.S.G. § 3D1.2, App. Note 8.³

Courts have interpreted the provisions of U.S.S.G. §§ 1B1.2(d) and 3D1.2 in keeping with the above directive. In *United States v. Torrealba*, 339 F.3d 1238 (11th Cir. 2003), for example, two defendants, Edgar and Adda Torrealba were charged and convicted of conspiring with each

³ The Chapter 2 Guideline applicable to bias-motivated offenses, § 2H1.1, specifically endorses application of § 1B1.2. See U.S.S.G. § 2H1.1, App. Note 1 (“In certain cases, conduct set forth in the count of conviction may constitute more than one underlying offense (e.g., *two instances of assault*, or one instance of assault and one instance of arson).) (emphasis added).

other and other persons to commit hostage taking, in violation of 18 U.S.C. § 1203(a), as well as other related offenses. There were three hostage victims who were kidnapped and beaten, and then taken to a residence where they were strapped to lawn chairs, gagged, and placed in separate pitch-dark closets. *Id.* at 1239-40. For sentencing purposes, the district court, in accordance with the provisions of U.S.S.G. §§ 3D1.2 and 1B1.2(d), treated the single conspiracy count as three separate groups based on the three individual victims, calculated the total offense level of each group, and then determined the combined offense level pursuant to U.S.S.G. § 3D1.4. *Id.* at 1240-41. On appeal, the Eleventh Circuit affirmed, holding that the district court had properly divided the single conspiracy count into three separate conspiracy groups to address the victimization of three individuals and to calculate the applicable sentencing guideline range. *Id.* at 1233. The reviewing court relied, in significant part, on § 3D1.2 and stated that “where a conspiracy involves multiple victims, the defendant should be deemed to have conspired to commit an equal number of substantive offenses, and the conspiracy count should be divided under § 3D1.2 into the same number of distinct crimes for sentencing purposes.” *Id.* at 1243. Quoting the Tenth Circuit’s similar approach to § 3D1.2, the *Torrealba* court emphasized that “[w]hen . . . the gist of the offense is injury to persons, the offense against *each* human victim belongs in a *different* group, even when the offenses arose out of a single event.” *Id.* at 1243 (quoting *United States v. Jose-Gonzalez*, 291 F.3d 697, 707 (10th Cir. 2002)).

Similarly, in *United States v. Melchor-Zaragoza*, the defendant was convicted of conspiring with persons known and unknown to commit hostage taking, in violation of 18 U.S.C. §§ 1203 and 371, and five other related offenses. The hostage taking involved the kidnapping of 23 illegal aliens from a group of smugglers. 351 F.3d 925, 927 (9th Cir. 2003). The district court, pursuant to U.S.S.G. §§ 1B1.2(d) and 3D1.2, computed the sentence based upon 23 groups, each one representing the individual victim hostages, which resulted in a five-level increase in the

combined offense level calculated in accordance with U.S.S.G. § 3D1.4. *Id.* at 927. On appeal, the Ninth Circuit adopted the court’s reasoning in *Torrealba* and held that the district court properly treated the kidnapping of each of the 23 victims as a separate offense under the provisions of U.S.S.G. §§ 3D1.2 and 1B1.2(d). *Id.* at 927-28.

In the instant case, the U.S. Probation Office correctly recomputed the defendant’s total offense level following the filing of the parties’ positions with regard to sentencing factors and their responses thereto. The corrected computation is set forth in the Addendum to the Presentence Investigation Report (PSIR) wherein, pursuant to the provisions of U.S.S.G. § 3D1.4, the probation officer calculated Smith’s combined offense level to be 33 (28 + 5 (based upon number of units)), his criminal history category to be I, and the corresponding applicable guideline range to be 97 to 121 months’ imprisonment. Doc. No. 149. Notably, the probation officer, in keeping with the provisions of U.S.S.G. §§ 3D1.2 and 1B1.2(d), treated as a separate “group” each of the 18 assaults set forth in Count One and that Smith admitted occurred during his conspiracy with Dinell.⁴

In accordance with the provisions of U.S.S.G. § 2X1.1(a), which provides that the base offense level for a conspiracy is the base level from the guideline for the substantive offense, the probation officer correctly turned to U.S.S.G. § 2H1.1, the guideline that applies to offenses involving individual rights, including hate crimes committed in violation of 18 U.S.C. § 249(a)(2)(A). As to the hate crime “groups” that involved the commission of an underlying offense—here, aggravated assault—the probation officer, pursuant to the cross-reference in

⁴ The PSIR prepared as to co-defendant Zachary Dinell computed the total offense level by treating each substantive offense as its own group, without breaking the conspiracy offense into separate groups to account for the 18 underlying assaults. Computing the sentence in that fashion did not ultimately affect the determination of the combined total offense level under § 3D1.4 as all substantive hate crime offenses would have grouped with the corresponding conspiracy “group” associated with the particular assault, as Counts One and Five have been grouped in the instant corrected offense level computation.

U.S.S.G. § 2H1.1(a)(1), properly calculated the total offense level using U.S.S.G. § 2A2.2.⁵ As to those “groups” not involving an aggravated assault (i.e., where there was no underlying offense to cross-reference), the probation officer correctly applied the base offense level of 12 because the offenses involved two or more participants.⁶ *See* U.S.S.G. § 2H1.1(a)(2). In accordance with U.S.S.G. § 3D1.2(a), the probation officer then properly grouped Count Five with the “group” from Count One associated with the hate crime perpetrated upon Resident 9 because it involved the same victim and the same act.

The Addendum contains a hate crime breakdown, by victim and offense/assault, which is consistent with both the government’s calculations set forth in its position with respect to sentencing factors and the factually detailed provisions of Count One of the Indictment. Doc. Nos. 143, 143-1. The probation officer applied the appropriate enhancements in each instance accounting for the use of a dangerous weapon where appropriate, serious bodily injury/bodily injury, bias motivation, and abuse of position of trust under U.S.S.G. § 3B1.3, resulting in a Total Offense Level of 30. The applicable guideline range based on a Criminal History Category of I is 97 to 121 months’ imprisonment for Counts One and Five. Addendum, ¶¶ 4-15. Subject to the Court’s acceptance, the defendant’s Rule 11(c)(1)(C) plea agreement calls for a stipulated term of imprisonment no less than 60 months and no greater than 120 months, one month shy of the top of the applicable advisory guideline range.

⁵ These “groups” comprised the assaults carried out against Residents 2, 4 (3/7/17 and 6/05/17), 5 (4/26/17 and 05/16/17), 7, 8, 10, 11, and 13 (04/26/17).

⁶ The probation office, in preparing the PSIR as to co-defendant Zachary Dinell, inaccurately calculated the hate crime offenses in which there was not an aggravated assault using a base offense level of 6 (§ 2H1.1(a)(4)), rather than 12 (§ 2H1.1(a)(2)). Computing the sentence using the lower base offense level did not, however, ultimately affect the determination of the combined total offense level under § 3D1.4, as the substantive hate crime offenses cross-referenced to § 2A2.2 were 9 or more levels more serious than those calculated using 2H1.1(a).

B. Analysis of the § 3553(a) Factors

Based on a review of the applicable statutory sentencing factors codified in 18 U.S.C. § 3553(a), a sentence of 120 months—i.e., the top of the stipulated sentencing range of 60 to 120 months—is sufficient but not greater than necessary to achieve the goals of sentencing in this case. Indeed, consideration of the § 3553(a) factors justifies imposition of the maximum sentence in the stipulated range—irrespective of the ultimate Guidelines range.

To that end, the government will highlight what it believes are the most relevant statutory factors in support of this sentence.

1. The Nature, Circumstances, and Seriousness of the Offense, and the History and Characteristics of the Defendant

For over a year, Smith and Dinell carried out a conspiracy designed to attack and terrorize residents of McGuire Memorial. Their victims could not defend themselves; indeed, they almost certainly could not understand what was happening to them, or why. They suffered in silence, and they suffered for Smith’s and Dinell’s amusement—so that they could record assaults and ridicule their victims in abhorrent text messages. The seriousness of the defendant’s conduct cannot be overstated; it warrants serious punishment.

This case is not simply about the physical assaults on helpless victims. It is about *why* Smith and Dinell did what they did. The answer is as simple as it is troubling: Smith and Dinell assaulted their victims because they were disabled. They acknowledged as much in their copious text exchanges. Every person in the United States is entitled to equal respect and dignity under the law without regard to, for example, the color of their skin, what religion they practice, or whether they are disabled. Hate crimes, like the defendant’s, strike at the fabric of our society, reinforcing the stigma often faced by those who have been marginalized so often throughout history—including the disabled. Indeed,

[a] prominent characteristic of a violent crime motivated by bias is that it devastates not just the actual victim and the family and friends of the victim, but frequently savages the community sharing the traits that caused the victim to be selected.

Shepard-Byrd Hate Crimes Prevention Act, Pub. L. 111-84, div. E, sec. 4702, 123 Stat. 2835 (2009); *cf. S.F. by K.F. v. Sch. Dist. of Upper Dublin*, 2021 WL 1979501, at *21 (E.D. Pa. May 18, 2021) (noting that standards promulgated under the Americans with Disabilities Act “explicitly ‘promote inclusion, reduce stigma and potential embarrassment, and combat isolation, segregation, and second-class citizenship of individuals with disabilities’” (quoting 75 Fed. Reg. at 56,241)).

Underscoring the seriousness of the defendant’s crimes is the fact that he committed them while occupying a position of substantial trust at McGuire Memorial. As a member of the Direct Care Staff, Smith interacted with residents at the facility more frequently than many of their own families. He was responsible for ensuring the residents’ safety and reporting any abuse. Instead of reporting abuse, he became an abuser, and then actively concealed his and Dinell’s abuse from those around them. The victims’ families and guardians entrusted Smith and Dinell with the responsibility of caring for their loved ones, all of whom were incapable of taking care of themselves due to their disabilities. Smith betrayed that critical trust, and as a result, many of the victims’ loved ones will forever struggle with whether they can feel comfortable with other caregivers.

Undoubtedly, Smith will argue that a sentence of imprisonment of 60 months, the bottom of the stipulated range, is appropriate based upon his lack of criminal history. While the Presentence Investigation Report correctly calculates Smith as falling under Criminal History Category I, his applicable advisory Guideline range is still 97-121 months. When balancing the significance of Smith’s crimes against his criminal history, varying below the Guideline range is not warranted. On the contrary, a sentence near the top of the range is wholly justified. As an initial matter, Smith’s conduct did not involve the commission of a singular act. He was a member

of a conspiracy that spanned over a year and involved numerous, horrific acts of abuse. Smith was an essential and equal part of the conspiracy, and as a mandatory reporter, he was obligated to notify his supervisors at McGuire Memorial the very first time he became aware of abuse—whether he committed it or not. This is not a case where the victims suffered in silence as those in positions of power turned a blind eye to their agony. Smith, in fact, actively concealed the abuse, personally visited acts of violence upon his disabled victims, and repeatedly urged Dinell to kill their victims. To further aggravate this conduct, Smith, as demonstrated by his texts with Dinell, somehow found pleasure in the often ghastly acts of violence.

The nature and circumstances of the offenses, despite the defendant's lack of criminal history, warrant a significant sentence at the top of the stipulated sentencing range.

2. The Need for the Sentence to Promote Respect for the Law, Protect the Public from Further Crimes of the Defendant, and Afford Adequate Deterrence

Smith's conduct demonstrates sustained disrespect for the law over an extended period of time—from in and around June 2016 through in and around September 2017. The defendant knew exactly what he was doing, for as long as he and Dinell were doing it, and he knew it was wrong. Despite being subject to strict federal and state reporting requirements, Smith has now admitted that he and Dinell ignored their training and attendant legal obligations designed to protect their vulnerable victims from harm. While Smith will inevitably endeavor to contextualize himself as less culpable than Dinell, they were true partners in crime. The cyclical nature of the conspiracy involved championing each other's reprehensible acts of violence and actively concealing the same from anyone who might put a stop to it.

Moreover, although the fact of a federal felony conviction—particularly one involving hate crime offenses—will ensure that Smith never works in a health care setting again,⁷ a significant sentence is necessary to protect the public from further crimes he might commit. Such a sentence would likewise deter him from engaging in similar criminal activity *in any setting*—i.e., at work, at home, or anywhere in the community. Perhaps more importantly, a sentence of 120 months would serve as a compelling deterrent for the thousands of direct care workers throughout the United States who are charged with caring for the disabled and other vulnerable populations. A lengthy period of incarceration in this case would communicate that those who commit hate crimes directed at the disabled (or any protected population) will face severe consequences in federal court, including meaningful periods of incarceration. Indeed, deterrence is paramount here where crimes like the ones Smith committed can go undetected for long periods of time (as happened here), increasing the chances that perpetrators will not be held accountable and that more victims will suffer. A sentence of 120 months will achieve the necessary deterrent effect—both individually and in general—while promoting respect for the law and protecting the public from further crimes of the defendant. *See* 18 U.S.C. § 3553(a)(2)(A)-(C).

⁷ Pursuant to his plea agreement, Smith has agreed “not to seek or accept employment with any health care facility or other public or private entity that provides care of any kind for juveniles, the disabled, or both.” Doc. No. 135-1, at 5. He also agreed to recommend that the Court include this prohibition as a condition of his supervised release. *Id.*

III. Conclusion

For the foregoing reasons, the Court should accept the defendant's plea agreement and impose a sentence of 120 months' incarceration and 3 years' supervised release.⁸ Such a sentence would be sufficient but not greater than necessary under § 3553(a) to hold Tyler Smith accountable for the full scope of his egregious crimes against multiple severely disabled victims who were under his care in 2016 and 2017.

Respectfully submitted,

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⁸ Although restitution is mandatory pursuant to 18 U.S.C. § 3663A, the United States is unaware of any qualifying victim losses and is, therefore, not seeking restitution at this time.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

TYLER SMITH

Criminal No. 22-84

FACTUAL BASIS FOR CHANGE OF PLEA HEARING

AND NOW comes the United States of America, by its attorneys, Eric G. Olshan, United States Attorney for the Western District of Pennsylvania, and Carolyn J. Bloch and Brendan J. McKenna, Assistant United States Attorneys for said district, submitting the following factual basis in advance of defendant Tyler Smith's change of plea hearing.

Had this matter proceeded to trial, the United States would have proven each of the facts alleged in the following paragraphs and counts of the Indictment at Criminal No. 22-84 beyond a reasonable doubt: paragraphs 1 through 20 of Count One and paragraph 2 of Count Five. The United States would have also established the following facts beyond a reasonable doubt:

1. As to paragraphs 20.l, 20.o, and 20.cc of Count One, the liquid irritant was Purell hand sanitizer, which was manufactured outside the Commonwealth of Pennsylvania and traveled in interstate commerce.

2. As to paragraph 20.m of Count One, Zachary Dinell wore a black tennis shoe, which was manufactured outside the Commonwealth of Pennsylvania and traveled in interstate commerce.

3. As to paragraph 20.aa of Count One, the liquid irritant was Spring Mint antiseptic mouth rinse, which was manufactured outside the Commonwealth of Pennsylvania and traveled in interstate commerce.

4. As to paragraph 20.dd of Count One, the compression stocking was manufactured outside the Commonwealth of Pennsylvania and traveled in interstate commerce.

Accordingly, the evidence supports that defendant Tyler Smith is guilty of Counts One and Five of the Indictment at Criminal No. 22-84.

Respectfully submitted,

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