

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSHUA CALVIN HUGHES,
JEROD WADE HUGHES,

Defendants.

Cause No. 21-CR-00106-TJK

DEFENDANT JOSHUA HUGHES'
SENTENCING MEMORANDUM

Pursuant to the Minute Entry of August 25, 2022, and Fed.R.Crim.P. 32(i), the Defendant, JOSHUA CALVIN HUGHES, hereby submits this Sentencing Memorandum for consideration by the Court prior to the imposition of sentence. A sentencing hearing is scheduled to occur on November 22, 2022, at 2:00 p.m.

SUMMARY

Joshua Hughes was convicted by plea of guilty to Count 2 of the Second Superseding Indictment, Obstruction of an Official Proceeding and Aiding and Abetting, in violation of 18 U.S.C. §§ 1512(c)(2) and 2. His Total Offense Level is 22. With a Criminal History Category of I, his guideline range of imprisonment is 41 to 51 months.

Paragraph 6 of the Plea Agreement allows Mr. Hughes to seek a variance and suggest that the Court consider a sentence outside of the applicable Guidelines Range based upon the 18 U.S.C. § 3553(a) factors. *ECF No. 74*. Based upon the circumstances of the offense, Mr. Hughes' history and characteristics, together with his extraordinary acceptance of responsibility, Mr. Hughes asks the Court to vary below the guideline range and sentence him to a period of incarceration of time-served, a four-year probationary sentence, with conditions, including community service. If the Court is inclined to sentence him to a period of incarceration, then Mr. Hughes requests that he be permitted to self-surrender to the Bureau of Prison's SeaTac Facility in Seattle, Washington.

CIRCUMSTANCES OF THE OFFENSE

The Statement of the Offense sets forth the conduct for which Mr. Hughes is to be sentenced. Essentially, Mr. Hughes entered the Capitol Building at 2:13 p.m. through a window next to the Senate Wing door that had been broken open by others. See, *ECF No. 75*, ¶ 8. He then followed Officer E.G. into the Ohio Clock Corridor. *Id.*, ¶ 12. He entered the Senate gallery at 2:44 p.m. and stayed there for approximately one minute. *Id.*, ¶ 14. At approximately 2:48 p.m., he entered the Senate chamber through the east doors and walked among the senators' desks for approximately two minutes,

exiting the Senate chamber at approximately 2:51 p.m. *Id.*, ¶ 15. He exited the building less than a minute later. *Id.*, ¶ 16.

Mr. Hughes testified at his detention hearing that his primary reason for being in Washington, DC, was to hear former President Donald Trump speak, and then to go see the Lincoln Memorial and other sites because he had never been to Washington, DC, or the Capitol. He never felt like he needed to get inside the Capitol building and it was nothing that he wanted or planned to do. He just went to see what was going on at the Capitol. When he arrived, people were all over the place and were already trying to get up the steps on both sides of the building. *ECF No.* 13-1, 23:4 to 26:18; 39:18 to 40:4. Mr. Hughes did not push through the line of Capitol police officers. He followed the crowd through the line and worked his way up to the front of the line “to see what was going on.” *Id.*, 23:4 to 28:3. He eventually entered the Capitol building and walked through the hallways of the building. He did not know who any of the people were and just followed his brother in because he did not want to be separated from him. He then walked, following the mob, with his hands up all the time. *Id.*, 28:4 to 29:24. At no point did he damage property, threaten anybody, yell or shout at anyone, or encourage others to do anything at all. He was unarmed and did not carry any kind of riot or tactical gear. Mr. Hughes was not and has never been a member of

any political organization or subversive group such as the Oath Keepers, the Proud Boys, white nationalists or the 3 percenters in or outside of Montana that were responsible for the riot. *Id.*, 33:19-24. Significantly, when asked at his detention hearing why he engaged in that behavior, he responded that he was “keeping an eye on his brother and “just bearing witness” to what was going on. *Id.*, 30:2-9. The whole time that he was there he had no idea where he was or where he was headed. He had no plans or any idea where he was going. He just followed people that were walking around. When he was walking out of the building he had no idea where he was going and happened to walk by the doors of the Senate floor, which somebody had just opened. He then walked in and entered the Senate floor. He walked around for a couple of minutes and then exited, walking out of the building and leaving the Capitol grounds. He immediately had the feeling, “My God, what have we done?” and was in a state of shock. *Id.*, 30:10 to 32:18; 47:24 to 48:10. He was at “the Capitol because the President told us to go march to the Capitol,” and he “was in the building just following the group.” He was very surprised at the events that ended up occurring. He knows that he was wrong for being there, feels misled by former President Donald Trump, and deeply regrets his actions there. *Id.*, 33:9 to 34:3.

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HISTORY AND CHARACTERISTICS

Residences

Joshua Hughes was born in Colorado Springs, Colorado, but moved to Texas when he was one year old where his family lived for two years. His parents were in the Army. In around 1984 they moved from Texas to Helena, Montana, where Josh remained until he was 22 years old. He moved to Denver, Colorado, in 2005 where he remained for the next five years. In 2010 when he was around 27 or 28 years of age, Josh moved to Missoula, Montana, for school for about three years. He returned to Helena in 2013 and has lived in Helena ever since. Prior to his arrest Josh had lived at a residence next to his parents' house since 2015. Josh currently lives with his parents, but plans to move back to his prior residence after this case is finally resolved.

Family

Josh is 38 years old and the eldest son of a relatively large family. His family members have provided letters to the Court, which are attached. His father is Ernest Hughes, who is 60 years old. Ernest is originally from Texas. He is a reformed alcoholic and runs the Mountain Mud Coffee Shop in Helena. His mother is Sandy Hughes. Sandy is 59 years old and a personal housecleaner. Ernest and Sandy were married in 1984 and have been married now for 38 years. They have a loving, stable relationship.

Josh has five siblings, including his co-defendant, Jerod Hughes. His other siblings include sister, Cassandra “Cassie” Hughes, 29 years old, who is attending a community college in Helena and studying nursing and works in an OB/GYN clinic. His brother Joe Hughes, is a 27 year-old married man with two children. Joe’s wife runs the Legacy Assisted Living Facility in Helena. Joe is a stay-at-home dad. Josh is in business with his other brother, Jacob “Jake” Hughes, who is 25 years old. The two run a nutrition store called “Devout Nutrition” in Helena. Josh’s youngest brother, Jesse Hughes, is 22 years old and works at the Legacy Assisted Living Facility.

Josh grew up in a stable, loving, and happy family and household. With the exception of his father’s drinking, there was no abuse or any other issues. There was some discipline, but it was not bad; they got spanked if they really needed it. They were in a moderate to lower income financial bracket and money was tight. They were often on food stamps. They are a very close family and still get together every Sunday for dinner.

Education

Josh graduated from Helena High School in 2002. He also attended the University of Montana in Missoula for three years, between 2010 and 2013, where he studied Exercise Science and Human Health and Performance.

In 2013 he married and divorced a woman named Courtney Allinson.

He and Courtney had no children. When they married Courtney was in the military and was unfaithful to him so Josh divorced her and pulled out of school at the University of Montana and went to the Vo-Tech in Helena in 2013. Josh ultimately did not receive a degree. Josh has no certifications, but is a licensed caregiver.

Employment

Josh has been self-employed as a housecleaner since February, 2019. His company is called JH Cleaning Services. He cleans private residences and commercial buildings. He is very highly regarded by his clients, some of whom have also provided letters to the Court, which are also attached. His monthly net income is less than \$2,000.

In 2019, Josh and his brother, Jacob, opened a nutrition store called “Devout Nutrition” which was intended to fill the fitness supplement void in the Helena area after GNC closed. Devout Nutrition sells fitness supplements, energy drinks, and apparel. The business is still in the development stage and both brothers reinvest all profits back into the business. They have recently relocated the business to improve customer access.

Between 2014 and 2019, Josh worked at GNC and a medical marijuana dispensary. Both businesses were owned by the same individual.

Between 2010 and approximately 2013, Josh worked at the Magic Diamond Casino as a floor runner. His primary duties included serving drinks and cashing tickets.

Financial

Josh's average monthly income is less than \$2,000. Prior to moving back in with his parents his monthly rental payment was \$925 and his total monthly expenses amounted to about \$1,500. He owns a 2014 Honda Civic that has approximately 70,000 miles on it, but he takes good care of it. He doesn't own any real estate.

Physical Health

Josh broke his right wrist in 2008 while playing football and the scaphoid bone is in necrosis, which is the death of bone tissue due to interruption of the blood supply.

When he was a senior in high school he broke his ankle when he stepped into a muddy hole at football camp at the University of Montana. Otherwise he is healthy.

Mental Health

Josh's mental health is good, although he is suffering from situational anxiety resulting from these charges and his impending sentencing hearing. However, he is not typically anxious.

Criminal History

Josh was convicted of misdemeanor criminal trespass when he was 19 years old. He was ordered to pay restitution and he received a deferred sentence which has since been dismissed. He also had a marijuana charge and received a 6-month deferred sentence. That case was also dismissed.

Drugs and Alcohol

Josh has his medical marijuana card and used marijuana daily for pain in his wrist until January 7, 2021, at which time he stopped cold turkey. He also uses CBD cream which is an organic pain reliever for his wrist. Josh rarely uses alcohol.

Special Abilities and Talents

Josh is a good athlete and was a running back in football. He also ran track and participated in the following events: 100, 200, 400 relay, long jump and triple jump. Josh is a personal trainer, strength trainer, and enjoys lifting weights and working out. He is also good at art, drawing and painting.

Other

Josh has not had any kind of association with political groups of any kind. He does not have a Facebook account or any other social media. He is not politically active and had never gone to a Trump rally, although he has gone to freedom of speech rallies. He did support Donald Trump, however,

and when Trump called “all patriots” to Washington, DC, in his last week of public tweets, Josh decided to go with his brother Jerod.

EXTRAORDINARY ACCEPTANCE OF RESPONSIBILITY

The events for which Mr. Hughes is to be sentenced occurred on January 6, 2021, and it took Mr. Hughes and his brother several days to return to Helena. They both “self-identified” the following Monday, on January 11, 2021, and went to local law enforcement to turn themselves in. They met with an FBI SA in Helena, Montana, *ECF No.* 13-1, 20:14 to 21:23. Mr. Hughes then testified at his detention hearing and admitted his conduct. *Id.*

On April 5, 2021, Josh met with FBI SA Alejandro Flores and AUSA James Nelson, again fully disclosing his conduct and accepting responsibility for his actions.

LETTERS TO THE COURT

Attached hereto are letters to the Court from friends and family members of Josh Hughes. As these letters attest, Mr. Hughes is very highly regarded by those who know him.

RECOMMENDED SENTENCE

Standing before the Court is an individual who was present at the United States Capitol during the events that occurred on January 6, 2021.

He intended to go to Donald Trump's rally and then visit some monuments on the mall before returning to Montana. He had no plans to go to the Capitol until Trump told the crowd to do so during his speech, and most of the time during these events Josh didn't know where he was or where he was going. He was following his brother so as to avoid becoming separated from him among the throng of protesters. He is not politically active and has never been a member of a political or subversive group. He was not clothed in riot or tactical gear, he carried no weapons, and he did not yell or shout at anybody, damage property, harm or threaten to harm anybody, or encourage anybody to do anything at all. He did not take photographs and never pulled out or used his cell phone. Josh touched his glasses in one picture (*ECF No. 1-1*, p. 4) because they fogged up from the change of cold to hot when he entered the building. Aside from that, he walked around the building with his hands up. He has demonstrated extraordinary acceptance of responsibility, remorse and great regret for his actions. He turned himself in to authorities shortly after arriving back in Montana. He cooperated with law enforcement, admitted guilt at his detention hearing, was taken into custody on February 1, 2021, and transported to Washington, DC. He had been in-custody for 68 days when this Court finally released him on April 7, 2021. *ECF No. 22*. Importantly, the 68 days that Josh spent in transit from

Montana to Washington, DC, were exceptionally hard on him. He was transferred from jail to jail while being transported across the country and became ill with Covid-19 while passing through Oklahoma, suffering fevers and the corresponding Covid symptoms with minimal medical care. He was frequently in 24 hour lock-down. The custodial time that Josh spent in transit satisfies the punitive component of 18 U.S.C. § 3553(a)(2)(A).

Since April 7, 2022, Josh has been on supervision, and every Pretrial Compliance Report (*ECF Nos.* 32, 35, 44, 51, 55, 67, 69, and 71) filed has shown 100 percent compliance with the terms of his release.

The Guideline range of imprisonment is greater than necessary under these facts and circumstances. Further punishment is neither warranted in Joshua Hughes' case nor will it satisfy the sentencing goals of § 3553(a)(2). A sentence of probation is possible under 18 U.S.C. § 3561(c)(1). See, *PSR*, ¶ 109. To the extent that further punishment may be considered, community service will satisfy that component, as well benefit the community, reflect the seriousness of the offense, promote respect for the law, afford adequate deterrence to criminal conduct, and save the taxpayers the unnecessary cost of further incarceration. Joshua Hughes therefore requests the Court to vary from the Guidelines and sentence him to a four-year period of probation with conditions, including community service. Four years is a period of time that

is in the middle of the Guideline range, toward the higher end. It is also a sentence that is sufficient, but not greater than necessary to comply with the sentencing purposes and policies of 18 U.S.C. § 3553(a).

In the event that the Court is inclined to impose a sentence of further incarceration, Mr. Hughes requests leave to self-surrender to the United States Bureau of Prisons SeaTac Facility in Seattle, Washington.

DATED this 15th day of November, 2022.

By: s/ Palmer Hoovestal

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CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2022, a copy of the foregoing document was served on the following persons by the following means:

1, 2, 3 CM-ECF

_____ Hand Delivery

_____ Mail

_____ Overnight Delivery Service

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_____ E-Mail

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