

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA)	Docket No. 1:21-cr-00386
)	
v.)	ELECTRONICALLY FILED
)	
PAULINE BAUER,)	The Honorable Trevor N. McFadden
)	
Defendant.)	

DEFENDANT’S REQUEST FOR DOWNWARD DEPARTURE OR VARIANCE

AND NOW, comes Defendant, Pauline Bauer (hereinafter “Ms. Bauer”), by and through her attorney, Komron Jon Maknoon, Esquire, pursuant to 18 U.S.C. § 3553, and hereby respectfully requests this Honorable Court grant her a downward departure and/or variance from the properly calculated recommended Guideline sentencing range. As grounds in support thereof, Ms. Bauer files the within Motion for Downward Departure or Variance and avers the following:

INTRODUCTION

“The history of the Sentencing Reform Act and the Guidelines commentary demonstrate that departures were intended to play a vital role in the operation of the guidelines system; first, by informing the Sentencing Commission of factors not adequately considered in the Guidelines that could be subject of future amendments, and second, by providing sentencing courts an opportunity to adjust sentences to the infinite variety of individual circumstances that no system of guidelines could conceivably take into account.” *United States v. Emmenegger*, 329 F.Supp.2d 416 (S.D.N.Y. 2004) (citing *Koon v. United States*, 518 U.S. 81, 92-94 (1996)). Departure is thus “essential to the satisfactory functioning of the sentencing system.” *United States v. Milikowsky*, 65 F.3d. 4, 7 (2d Cir. 1995).

Departure is permitted on the basis of any factor, even those addressed in the Guidelines, which are not *adequately* considered by the Guidelines. *United States v. Smith*, 930 F.2d 1450, 1454 (10th Cir. 1991) (may depart on the basis of any factor); *United States v. Jones*, 332 F.3d 1294, 1299 (10th Cir. 2003) (departure appropriate when mitigating factor of a kind, or to a degree, not adequately considered by the Sentencing Commission). Moreover, courts may consider several factors in combination even if they do not individually rise to the level of departure. *See United States v. Jones*, 158 F.3d 492, 504-5 (10th Cir. 1998).

Courts have granted downward variances under §3553(a) factors including defendant's lack of criminal history, *see United States v. Huckins*, 529 F.3d 1312 (10th Cir. 2008); characteristics of the defendant such as motivation, intelligence, and stability, *see United States v. Autery*, 555 F.3d 864 (9th Cir. 2009); family circumstances of the defendant, *see United States v. Lehmann*, 513 F.3d 805 (8th Cir. 2008); and diminished need to protect the public due to low risk of reoffending, *see United States v. Grossman*, 513 F.3d 592 (6th Cir. 2008). A court may grant a departure and a variance in the same sentence.

“Post-Booker precedent instructs district courts to follow a three-step sentencing process.” *United States v. Gunter*, 462 F.3d 237 (3d Cir. 2006), citing *United States v. King*, 454 F.3d 187 (3d Cir. 2006). First, the district courts must calculate the defendant's Guidelines sentence as they would before *Booker*; second, they must “formally rul[e] on the motions of both parties and stat[e] on the record whether they are granting a departure and how that departure affects the Guidelines calculation, and tak[e] into account [our] Circuit's pre-Booker case law, which continues to have advisory force.” *King*, 454 F.3d at 196; third, they must “exercise[] [their] discretion by considering the relevant [§ 3553(a)] factors,” *Id.* at 194 (quoting *Cooper*, 437 F.3d at 329), in

setting the sentence they impose regardless whether it varies from the sentence calculated under the Guidelines.” *Gunter*, 462 F.3d at 247.

Ms. Bauer asserts that there are multiple justifiable reasons for a downward departure and/or variance from the standard sentencing guidelines. Although Ms. Bauer submits each individually supports a downward departure or variance, the Court should consider the overall combination in determining the appropriateness of a departure and/or variance in this matter.

FACTORS SUPPORTING DOWNWARD DEPARTURE OR VARIANCE

A. Ms. Bauer’s Exceptional Work History and Interpersonal Stability

Ms. Bauer has maintained steady employment for the last thirty-nine years. Ms. Bauer worked for Kmart from 1984 to 2003 when the store closed; and between 1999 to 2009, she worked for Pepsi, Monark Student Transportation, and was the co-owner of Pauliano’s Pizza on Route 8 in Valencia. Since 2006, Ms. Bauer has owned and operated Bob’s Trading Post, a family business, located in Kane, Pa. Her ability to maintain constant, long-term employment reflects the fact that she is reliable, hard-working, devoted, and stable. Ms. Bauer has not only maintained employment herself; she has provided employment to seventeen employees including high school students and retired individuals.

In addition to her exceptional work record, Ms. Bauer has demonstrated she is a reliable, stable individual by refraining from substance abuse and maintaining strong interpersonal and familial relationships. Ms. Bauer maintains frequent and meaningful contact with her sisters, husband, and son, demonstrating her strong family ties. Additionally, she possesses deep-rooted connections to her community, with Bob's Trading Post serving as a vital establishment in the area. As one of the few restaurants available, it acts as a central gathering place where community members come together, socialize, and interact with one another. These relationships and

community bonds further underscore Ms. Bauer's significant ties to her community. *See United States v. Autery*, 555 F.3d 864 (9th Cir. 2009) (affirming downward variance from a guideline range of 41–51 months to 5 years' probation in possession of child pornography case based in part on finding that the defendant did not fit the profile of a pedophile, had no history of substance abuse, no interpersonal instability, was motivated and intelligent, and had the continuing support of his family).

B. Ms. Bauer's Physical Health

In 2001, Ms. Bauer was diagnosed with an inherited blood-clotting disorder called Factor V Leiden, which includes severe symptoms of abnormal blood clotting in her legs and lungs. In addition, Ms. Bauer was diagnosed with celiac disease, which is an immune reaction to the consumption of gluten and can result in bloating, fatigue, anemia, and osteoporosis. During Ms. Bauer's pre-trial incarceration between September 17, 2021, and September 20, 2022, Ms. Bauer lost fifty pounds due to her fluid and severe health issues. At one point, Ms. Bauer was sent to the emergency room where it was discovered she had blood clots in both her legs and lungs. Upon discharge from the hospital, Ms. Bauer was diagnosed with celiac disease, bilateral pulmonary embolism, left lower extremity deep vein thrombosis, sepsis secondary to colitis, and chronic diarrhea. In addition, Ms. Bauer was prescribed a plethora of medications including six to twelve months of anti-coagulate and a medical recommendation of a gluten-free diet. Unfortunately, the jail was unable to accommodate Ms. Bauer as she continuously received a diet that contradicted her medical directives, and her treatment and medications were rarely distributed in the appropriate manner.

Evidently, the neglect Ms. Bauer faced in jail creates an adverse atmosphere not only for her multiple physical diseases, but also her mental health. Ms. Bauer's fluid health is not

responsive to incarceration, and the correctional system is not properly equipped to provide Ms. Bauer with the specific treatment and medical assistance she needs to survive, which warrants a downward departure. *See United States v. Squire*, No. 97-461 (E.D. Pa. Oct. 23, 2008) (finding that the defendant's kidney disease requiring dialysis qualified as an extraordinary physical impairment warranted a five-level downward departure under U.S.S.G. § 5H1.4).

C. Ms. Bauer's Lack of a Criminal Record

Ms. Bauer has no prior criminal record. She is currently fifty-five years old and, until this 2021 case was a law-abiding citizen. Although Ms. Bauer was remanded to the custody of the U.S. Marshals for violations of pretrial conditions on September 17, 2021, she had a lengthy conversation with undersigned counsel and saw the errors of her previous noncompliance. Since her pretrial release on September 20, 2022, she has complied with all Court-ordered conditions and has not reoffended. She presents an extremely low risk of reoffending. *See United States v. Collington*, 461 F.3d 805 (6th Cir. 2006) (post-Booker, a sentencing court has "greater latitude" to sentence outside the guideline range, and in "appropriate cases" may conclude that the criminal history category overstates the severity of the defendant's criminal history or that a lower sentence would still comply with and serve the mandates of section 3553(a)).

D. Combination of Factors

"The court may depart from the applicable guideline range based on a combination of two or more offender characteristics or other circumstances, none of which independently is sufficient to provide a basis for departure, only if . . . such offender characteristics or other circumstances, taken together, make the case an exceptional one; and each such offender characteristic or other circumstance is present to a substantial degree, and identified in the guidelines as a permissible ground for departure, even if such offender characteristic or other circumstance is not ordinarily

relevant to a determination of whether a departure is warranted.” U.S.S.G. 5K2.0.

Ms. Bauer submits that each of the above-listed factors individually warrants a downward departure or variance. However, this Court should also consider the above grounds for departure or variance collectively even if it deems, they do not, individually, rise to the level of departure or variance.

CONCLUSION

Ms. Bauer's exceptional qualities are evident through her intelligence, stability, and strong work ethic. She has consistently demonstrated a capacity for personal growth and learning from her mistakes, ensuring that they are not repeated. Her outstanding work history is a testament to her dedication and reliability. Moreover, she excels in her roles as a supportive sister, nurturing mother, and devoted wife, embodying exceptional qualities in her personal relationships. Furthermore, Ms. Bauer's contributions to her community are invaluable, as she plays a critical role in its well-being.

It is important to note that Ms. Bauer continues to face medical complications resulting from her incarceration, which have had a lasting impact on her well-being. She has yet to fully heal from the physical and emotional tolls of this incident.

WHEREFORE, for the above-stated reasons, Ms. Bauer respectfully requests this Honorable Court grant her request for a downward departure and/or variance.

Respectfully submitted,

s/ Komron Jon Maknoon
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