

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	Criminal No. 21-CR-735
	)	
vs.	)	
	)	
JAMES ROBERT ELLIOTT	)	
	)	
Defendant.	)	

**DEFENDANT'S SENTENCING MEMORANDUM**

Defendant, James Robert Elliott, by and through his counsel, James L. Welsh, III, Esquire, submits this Memorandum in Aid of Sentencing.

**RECOMMENDATION OF SENTENCE**

This Honorable Court is requested to use its wisdom, intellect and compassion to impose a sentence that is commensurate with the crime and impose a sentence of probation, intermediate punishment (house arrest), and /or a sentence well below the recommended range after weighing the factors in 18 U.S.C. §3553(a). This is the appropriate sentence given that the Defendant never entered the Capitol Building, that he promptly accepted full responsibility for his actions; that he never intended, nor did he cause any harm to any police officer; that he was cooperative with federal authorities, enabling to fully access his involvement; and that he does not have a criminal record and is a very low risk of another crime. Mr. Elliott pled guilty to the lesser-included offense of Count Two, pursuant to a written plea agreement and Rule 11(c)(1)(B). The base level offense is 14, but with additions for a dangerous weapon (flagpole) and the victim was an official victim and a reduction for acceptance of responsibility the estimate total offense level is 21.

The Defendant has zero criminal history points, placing him in criminal history category I resulting in estimated guidelines range of 37 to 46 months. The government has requested a sentence of 41 months.

### **LEGAL STANDARD APPLICABLE TO SENTENCING**

A district court should begin all sentencing proceedings by correctly calculating the range of the sentence under the United States Sentencing Guidelines. Rita v. United States, 551 U.S. 338, 347-348 (2007). The guidelines, which are not mandatory, United States v. Booker, 543 U.S. (2005) are “a starting point and the initial bench work.” Gall v. United States, 522 U.S. 38, 51 (2007). They “are not the only consideration, however,” *Id.* After giving the parties an “opportunity to argue for whatever sentence they deem appropriate, the district court should then consider all of the §3553(a) factors to determine whether they support the sentence requested by the party.” *Id.* The district judge “must make an individualized assessment [of the appropriate sentence] based on the facts presented.” *Id.*

### **SENTENCING GUIDELINES CALCULATION**

The Defendant has pleaded guilty to the offense that he forcibly assaulted, resisted, opposed, impeded, intimidated, or interfered with any person designated in 18 U.S.C. while engaged in or an account of the performance of their official duties. The total score for the offense is 24 with a 3 level reduction with an estimated offense level of 21. The Defendant has absolutely no prior criminal history so his criminal history category is estimated to be I.

#### The Application of the Factors of §3553(a)

Under 18 U.S.C. §3553(a), a court shall consider:

- (1) The nature and circumstances of the offense and the history and characteristics of the defendant,

- (2) The need for the sentence imposed” (A) to reflect the seriousness of the offense; (b) to afford adequate deterrence to criminal conduct; (C) to protect from further crimes of the Defendant and (D) to provide the Defendant with needed educational and vocational training medical care or other correctional treatment in the most effective manner;
- (3) The kinds of sentences available;
- (4) The kinds of sentences and the sentencing range established for the applicable category of offense and category of Defendant under the U.S.S.G.;
- (5) Any pertinent policy statement issued by the sentencing commission;
- (6) The need to avoid unwarranted sentence disparities among Defendants with similar records who have been found guilty of similar conduct;
- (7) The need to provide restitution to any victims of the offense.

#### **NATURE AND CIRCUMSTANCE OF THE OFFENSE**

The Defendant left his home in Illinois with his disabled father and brother on January 5, 2021. It was Defendant’s intention to listen to President Trump give a speech at the Washington Monument. During the walk back after the speech, the Defendant stopped at the food trucks. There was a large crowd of people walking towards the Capitol Building. Mr. Elliot acknowledges walking over make shift barriers constructed of bicycle racks which had previously been knocked over by others. (Figure 2 in the Government’s Sentencing Memo shows Mr. Elliott smiling and conversing with another person on the way to the Capitol). The Defendant cannot dispute the videos and photographs of him on the Capitol grounds on January 6, 2021. What Defendant can do is provide the appropriate context to the videos and photos to aid the Court in assessing his true intent and purpose for being at the Capitol on January 6, 2021.

First and foremost, it is important to remember the Defendant is a young, naïve 23 year old man from a small mid-western town. To put it any other way simply is not true. Mr. Elliott was dressed in his typical rally gear because he was concerned that he would encounter another run in with Antifa while marching in a parade. At previous lawful rallies, Antifa had thrown rocks and other foreign objects at Mr. Elliott. Mr. Elliott had nine (9) prior concussions from playing football as a youth. He was not there to overthrow the government nor dispute or disrupt any official proceedings. The Defendant's case is completely distinguishable from many because he never entered the Capitol. After Mr. Elliott arrived at the Capitol, the bicycle rack barriers had already been trampled over the Capitol breach had already occurred.

It is important that the Court not look at this case in a vacuum. Video footage of the scene at the Capitol was nothing short of chaos and mayhem. There were literally eighty thousand people who gathered at the Capitol building to peacefully protest what their President had been stating for months. That the election was not valid. There were people everywhere. Moms, dads, grandfathers, grandmothers, people of all ages who came to voice their concerns about the validity of the 2020 election. Mr. Elliott got caught up on the moment as did thousands and thousands of other American citizens. The law enforcement present on that day was woefully unprepared. President Trump had requested 20,000 National Guard Troops assist the Capitol police but the request was denied. Law enforcement officials were shooting rubber bullets at the crowd, throwing flash bangs, spraying mace and/or other chemical irritants at the crowd. As can be expected, the scene was nothing short of complete and utter chaos. Angry citizens were being assaulted. Police were being assaulted. Tugs of war were going on with the bicycle rack barriers. People were being trampled because of the crowd. During one such chaotic scene, Mr. Elliott's flagpole may have come in contact with an officer. It was never Mr. Elliott's

intent to harm anyone. It is not his nature. He came to Washington to see his President speak. He brought no weapons. He donned an American flag. He wore his gear in anticipation of a run in with Antifa, not to overthrow our government and disrupt the transition of power. His backpack was full of medical supplies, not weapons, to assist the injured. There are multiple instances where Mr. Elliott rendered aid to those who had been knocked down or trampled on or had been sprayed with chemical irritants. Everybody was yelling, not just Mr. Elliott. The crowd was chaotic and tempers flared as innocent citizens were caught in harms way.

In summary, Mr. Elliott got caught up in the moment on January 6, 2021. Frustrated and fed up with what was happening to America, Mr. Elliott did and said things he truly regrets and has extreme remorse for doing. January 6, 2021 was a turning point for Mr. Elliott. He had never been in trouble with the law before. What used to be important to him suddenly became meaningless. He went from becoming a youthful, exuberant, naïve boy to a man whose convictions changed for the better. Mr. Elliott was there to help others, not hurt them. To intentionally harm another human being is simply not his nature. He has apologized and is truly remorseful for his actions on that terrible day.

### **HISTORY AND CHARACTERISTICS OF THE DEFENDANT**

On January 6, 2021, Mr. Elliott was a 23 year old youth who was home-schooled by his mother. In his acceptance of responsibility letter for probation, he described himself as a stupid 23 year old who got caught up in the moment. He is torn up by the fact that he could have possibly insured someone by his actions. Even though his intent was to protect himself and others from Antifa, his actions on January 6, 2021 go against who he is as a person and his most strongly held values.



Since his arrest, he lost his job, got re-employed in a profession where he helps people, got married and has 2 beautiful little kids. He has not once violated the terms and conditions of his release, resigned as a member of the Proud Boys and has committed no crimes.

He originally joined the Proud Boys to find like minded people he could converse with. At no time did he assume any leadership position with any knowledge of leaderships' intent on January 6, 2021. Mr. Elliott offered to cooperate with the Government but had no information helpful to the Government so now they want to use his Proud Boy affiliation against him.

The events of January 6, 2021 turned Mr. Elliott from a boy to a man. He is extremely remorseful for what occurred on that date. He is now a devoted son, husband and father who wants nothing more than to share in each and every day of his children's life. Mr. Elliott has a great heart. He is caring, compassionate and is always willing to help someone less fortunate.

Mr. Elliott's income is a significant portion of his family's income. He lives with his wife and children in a home along with his parents and siblings. His father has a myriad of health issues and the loss of his income to the family make up will be devastating.

I have attached hereto multiple letters written by Mr. Elliott's friends and family members which outline who Mr. Elliott is: a family man; a caring man; a devoted son, husband and father, a God fearing man with high moral values. A boy, now a man, who made a significant error in judgment. A man who is truly remorseful who regrets his actions on January 6, 2021. A man who has learned from his mistakes and has vowed to never run afoul of the law again.

Mr. Elliott is now a convicted felon. The stigma of this alone will haunt him for the rest of his life. He can no longer vote, sit on a jury, possess or use a firearm, gain certain types of employment, take out federal loans, etc... To sentence him to a significant prison sentence is neither necessary nor warranted. Mr. Elliott has never been in trouble with the law before or after January 6, 2021. In his youthful exuberance, he exercised poor judgment for which he will remain forever sorry and labeled a convicted felon. He is now married with 2 small children. His family needs his love, support, and guidance. Since being arrested, he has been in complete compliance with all of the terms and conditions of his release. This Honorable Court has recognized his exceptional behavior by allowing him to go on his honeymoon for several days. Again, complete compliance with all terms and conditions of his release. In the search for an adequate punishment that fits the crime, Defendant respectfully requests this Honorable Court apply to factors of 1335(a) and sentence him to an appropriate punishment that will allow Mr. Elliott to pay his debt to society but yet allow him to remain with his family who need him for his love, guidance, support and income.

Respectfully submitted,

The Welsh Law Group, LLC

By: 

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# Statement of James Elliott

I would like to start by saying how truly sorry I am about all the happenings on J6 it was NEVER my intention to hurt anyone and the fact that i may have done just that in the heat of the moment brings no end of shame and regret to me, i apologize and humbly ask the officer for forgiveness.

I have left the proud boys and I'm doing my best to continue to move my life in a positive direction after being arrested. My kids are happy and healthy my wife is happy but worried for me. I have an excellent job as a tow truck driver that I have had since March of last year, keeping Chicagolands roadways clear and safe In conjunction with state and local PD, the IL tollways and the local fire departments. I'm in the process of learning to improve my skills in this field to be more of an asset to my community, state and family.

I would also like to state that most of the comments I made via text, telegram, Twitter, etc about January 6th were made within a couple weeks of the events of January 6th, where I did not have the full scope of all the goings on yet. new evidence is STILL being brought to our attention outside of the small view i had of the events. In the days after January 6th I was filled with frustration, at the government, at Trump, at law-enforcement and also at myself. I didn't know what was true and what wasn't. So much chatter was going on in and outside of my head I didn't know what to believe, as time went on and more info came to the surface I became more apprehensive of what actually happened and I began siding more with people that where against what happend. Regardless of my intentions I am extremely aware of how much of a mistake it was to go. And again I deeply apologize

Your honor

My family will suffer if I get a lengthy jail sentence. My father continues to battle cancer and other serious medical complications and operations, My grandfather is recovering from cancer but is still not at 100% and my brother moved away from IL. Without my income I fear for the well-being not only my wife and twin four year olds but my parents and my four remaining siblings. My income greatly helps to support our household. In addition my kids are at a very important place in their lives, leaning to read, write, count and go to school. I beg you not to take me away from them in these critical years.



I have spent almost two years on the ankle monitor, I have not had any infractions on my curfew or any of the other limitations set by the Court. I have done everything asked of me in a timely manner and

I humbly ask, what benefits it would serve for me to serve time in the prison system that hasn't been achieved already? I have learned my lessons, I have accepted my responsibility, I acknowledge my fault and i have asked for forgiveness. I have no criminal history not even a speeding ticket, I have never been in this situation before and i will never be again after this is over. I would happily submit to continue being on the ankle monitor and the related limitations for the next 10 years if it meant being able to continue to provide for the needs of my family and kiss my kids goodnight until they outgrow their fathers affection. But again I beg you not to take me from them. whatever you ultimately decide your honor I will accept and comply yet again without struggle, anger or resentment and I will continue to pray for everyone that has been involved in my case. Thank you for your time.

Dear Judge

I am writing to you in the hope of giving you insight into who exactly James Robert Elliott is.

One little incident from when Jim was only 2 years old so well sums up who he was, not only while growing up, but who he has become as an adult.

We were sitting accross from the fire station, because Jim loved to watch the fire trucks come and go, and to watch the firefighters caring for their equipment. All of a sudden, I hear his tiny 2 year old voice say "I want to be a firefighter, and drive a firetruck, and help people." It was such a big long, run-on sentence, and from such a little guy, but it has held true through all these years.

He wants to help people!  
... and drive trucks while doing it. (ll)

Well, he didn't become a

firefighter, but he still lives his life helping others. He currently drives a tow truck for a living, and spends his days helping people out of whatever problems their cars have thrown at them.

Through his growing up years, and still, he likes to help in his community and at our church. Haley's Playground gave him a chance to work with Kids with disabilities, and make new friends.

Our church does food drives, and works with our local homeless shelter, and Jim has helped with that and much more over the years.

When he got his first job at Wal-Mart, he not only fed the homeless man who often sat in the parking lot, but he took the time to talk to him, and to learn his name, and to listen about his situation.

When Jim started to talk about going on Jan 6th, I



Knew that there would be trouble, and so did Jim. There were so many riots, and other problems at that time. I begged him not to go.

His plan was to somehow be of help to anyone who needed it. His backpack was filled with water bottles, hand warmers and medical supplies. In the Exuberance of his youth, he did not see all of the potential problems.

He did not go to D.C. to cause trouble, and he did not go to stop the election. He went to Voice his opinion, and to help anyone who needed it.

He now has realized his mistakes and he wishes with **ALL** his heart that he could undo the decisions of that day. That he could go back, and choose to stay home. I wish too, that I had been able to convince him, but I am glad to hear that he would choose not to go if given another chance.

He realizes that by being there he may not get to see his Kids grow up. He may end up missing a whole lot of "firsts" with them. He desperately wishes it was possible to change his actions. He has "grown up" in his way of thinking in the last 2 years.

Jim was never one to get into trouble. He has always been respectful to and supportive of law enforcement. He has never before or after Jan 6th had any legal issues. He is not a danger to anyone, and with his regret of that day, he will not be repeating the actions of that day.

Please allow this young man to restart his life and to see his Kids grow up and to be able to be in their lives. His young son especially would be



lost without his dad. James (the son) can never seem to get enough of his dad Jim (James R Elliott Sr). They play trucks, they watch trucks they talk about trucks. They have even gone to a monster truck show together. This little boy and his sister would be so lost without their father to guide them, and this Momma (me) would be too.

My Husband has a lot of health problems and lives with chronic pain. Because of this my husband is not able to work. We rely heavily on Jim unfortunately. He, his wife, and his kids live with us, and help with the bills and groceries.

Please, if you can see a way, help us keep this young man, who is a good law abiding citizen, who also had a lapse in judgement for a small part of one day, to be able to stay at home with his family.

I want to thank you Sir, if  
you have made it this far into  
a mothers rambling memories and  
thoughts. Please consider who  
this young man truly is both before  
and after Jan 6th. And thank you  
for letting me "speak".

Thank you  
Sincerely;

Cynthia Elliott  
(Cynthia Elliott)

This is a letter of personal reference and or even a professional relationship for my friend and Co'Worker at O'Hare Towing James Elliot.

I came to know and proudly meet James Elliot within the first few weeks of being hired as a Tow Truck Operator. In those first few weeks I had learned and acknowledged his willingness and desire to help in any way possible while out on calls or even in the yard or the shop no matter how heavy or light it was. He'd be there to help lift said object high or at times even low. My friend James has a soothing and calm mindset and has never lost control of his emotions or body in front of me or fellow Team members. His hobbies are both interesting and creative. A list of them are Warhammer board game which he paints all his figures himself with great skill, Xbox loves to play Halo Reach, loves hanging out at the Ballydoyle Irish pub. He loves his two kids and wife very much. I respect and honor his everlasting devotion to his family and work ethic. He cherishes his life and the lives of others to the fullest extent and doesn't wish harm or misfortune on anyone. He just wants to live a normal and fruitful life like everyone else on this blessed world we call earth.

Sincerely: Antonio M Guzman Ryan

To: James Elliot

To Whom it may concern,

I have known James Elliott for 4 years now. He is married to my daughter. He is a very kind, respectful, giving, and selfless young man.

He helps anybody he knows as much as he can. He provides for his wife and children the best he knows how.

Sincerely,

Nicole Wilson



page 1 of 5

Dear Judge,

My name is Michael R. Elliott and I am the father of James R. Elliott. I have watched him grow from a baby to a teen, then transformed into a major contributor to our household. He has given up a lot since Jan 6<sup>th</sup> and I pray that you and the courts seek within your hearts, to judge him with compassion. I cannot work. I receive disability from Social Security, that is my only income that I provide. Over the last 6 years, since my cancer diagnosis and now chemotherapy he has provided the household with his income and while he spends time with his new wife and twin 3 yr olds. Since I cannot work due to all my surgeries, medications and frequent inpatient hospital weeks, James was right there, and always was, to support our whole family with bills, food, and other expenses. He has obeyed the pretrial arrangements with his monitor and curfew. He has surrendered his rifle and gun that he has worked so hard for to be able to buy them. He surrendered his Foia card and his personal knife collection. He has grown from Jan 6<sup>th</sup>, has been cooperative with any changes without any grudges. I ask and pray and beg you to not place my son in prison. Without his income and help around the home, we would lose everything. Our home would not be able without his financial support.



Please do not take my son away. Have mercy, compassion to see that he is a vital role in our house.

He would obey anything that is decided as he has demonstrated this whole time.

Please see pages 3-5 for all of the reason for not being able to support our family with a full time or part time job. Jones supports our house with his generous heart and care. He takes care of others before himself. He has learned that from me.

But I cannot provide income to substantial figures. Our house works as a support for each other.

Please see and understand the magnitude of failure to us and his young family if he were to be imprisoned. Please understand how much he does for our house each and every day with love.

Begging for compassion and heartfelt judgment to my son, Jones R. Elliott.

Thank you,

Michael R. Elliott

Michael R. Elliott

**My health summary:**

- Severe depression
- Frequent migraines
- Degeneration of lumbar or lumbosacral intervertebral disc
- Sciatica
- Irritable bowel syndrome
- Acid reflux
- Severe chronic abdominal pain
- Anxiety disorder
- Cervical nerve root disorder
- Abscess of liver
- Diverticulitis
- Degenerative arthritis of lumbar spine
- Spinal stenosis of lumbosacral region
- Stomach cancer
- Ventral hernia
- Bilateral inguinal hernias
- Chronic aspiration pneumonia due to gastric secretions
- Narrowing of esophagus
- Left foot and right foot bunionectomy
- Esophageal dysfunction
- Left upper quadrant abdominal mass
- Desmoid fibromatosis
- Disorder of peritoneal
- Lumbar disc bulge L3-4 through L5-S1
- Severe teeth decay and missing /broken teeth
- Crohn's disease
- Ulcerative colitis
- Inflammatory bowel disease
- Polyps in colon
- Stomach ulcers ( before total stomach removal)
- Esophagus ulcer
- Carpal tunnel on both wrists
- Arthritis of neck,hands,back,feet
- Cervical disc bulges
- Collapsed lung from multiple gastric secretion aspirations
- Umbilical hernia
- Esophageal erosion
- Seasonal asthma

**Edited by: Michael R. Elliott 10/25/2022**

page 4 of 5

These are the medications that I take everyday. A couple of them are as needed or once a week so the list would reflect the frequency of use.

- Sertraline 100 mg once a day
- Morphine 45mg twice daily
- Dilaudid 4mg every 6 hours as needed
- Xanax .5mg three times daily
- Methylphenidate HCl 5mg twice daily
- Nexavar 200mg two tablets twice daily
- Amitriptyline 25mg once every night
- Allopurinol 100mg once daily
- Propranolol 60mg once daily
- Hydroxyzine 50mg three times daily
- Prochlorperazine 10mg one tablet every 6 hours as needed
- Cholestyramine 4gm once daily as needed
- Senna 8.6mg one tablet as needed
- Sucralfate suspension 1gm/10ml every 6 hours as needed
- Budesonide suspension 1mg/2ml mix with honey twice daily
- Vitamin D3 1250mcg/5000 unit once per week
- Lidocaine- Diphenhydral 5ml four times daily as needed
- Omeprazole 40mg one capsule twice daily
- Metoclopramide HCl 10mg one tablet four times daily
- Testosterone cypionate 200mg/ml .5ml injection every 21 days
- Ferrous sulfate 325mg(65mg iron) once every morning
- Narcan 4mg/actuation 4mg intranasal once as needed
- Ondansetron 4mg one tablet every 8 hours as needed for nausea
- Ascorbic acid (vitamin C) one tablet every morning
- Albuterol 90mcg 1-2puffs as needed
- Prednisone 50mg one tablet every 13hr-7hr-1hr before CT scan
- Diphenhydramine 25mg before and after CT scan

Edited by: Michael R. Elliott 10/25/2022



**Surgeries since 2005 to current 2022**

- Bilateral inguinal hernia repair 2005
- 35(+ -) EGD surgeries 2006 - 2022
- Revision of Left and right inguinal hernias 2010(L) 2013(R)
- L5/S1 fusion 12/22/2016
- L5/S1 wound exploratory surgery 03/16/2017
- Gall bladder removal 03/28/2018
- Total gastrectomy 11/20/2018
- 4 surgeries on Left shoulder 2 (2013), 2 (2014)
- Rotator cuff on right shoulder 2012
- Revision of abdominal wall scar 01/20/2020 tissue and esophagus revision
- Left foot bunionectomy with fusion 11/05/2019
- Right foot bunionectomy 02/12/2021
- Multiple esophagus dilations 10 (2018-2022)

**Edited by Michael R. Elliott 10/25/2022**

10/29/22

TO WHOM IT MAY CONCERN:

JAMES ELLIOTT IS MY GRAND  
SON. HE HAS ALWAYS GONE  
TO WORK SINCE HE'S THE  
MAIN INCOME TO THE HOUSE.

HE WORKS 10-12 HOURS  
A DAY. I DONT KNOW  
WHAT ELSE HE HAS TO DO.

PLEASE BE COMPASSIONATE  
WITH JUDGEMENT.

Michael Elliott