

UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

UNITED STATES OF AMERICA

V.

Case No.: 2:24-cr-00192-007
The Honorable Irene C. Berger

JASMINE SPENCER

SENTENCING MEMORANDUM OF
DEFENDANT JASMINE SPENCER

Now comes defendant, Jasmine Spencer, by and through counsel, John J. Balenovich, Esq., and submits this memorandum for consideration by this Honorable Court for her upcoming sentencing, currently scheduled on August 21, 2025. For the reasons set forth below, this Court has the discretion to sentence Ms. Spencer to home confinement or imprisonment. Under the United States Sentencing Guidelines (hereinafter U.S.S.G.), because the offense is a Class B felony, a sentence of probation is impermissible. 18 U.S.C. § 3561(a)(1). Therefore, a sentence of zero (0) months of imprisonment along with two years of supervised release is sufficient but not greater than necessary to comply with the stated goals of the United States Sentencing Commission.

I. Objections to Report

Ms. Spencer has no objections to the report. Ms. Spencer would like to make one addition to her mental and emotional health. Ms. Spencer has a cognitive issue that slows her ability to understand information being relayed to her through speech or written communication.

II. Guideline Calculation

Ms. Spencer does not object to the guideline calculation made by the probation

officer. Based upon a Total Offense Level of seven (7) and a criminal history category of I, the guideline imprisonment range is zero (0) months to six (6) months. PIR, Paragraph 47.

III. Discussion of 18 U.S.C. § 3553(a) Sentencing Factors

As this Court is aware, the United States Code mandates the District Court “shall impose a sentence of the kind, and within the range, ...unless the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described.” 18 U.S.C. § 3553(b)(1). The sentencing of Ms. Spencer should be driven by the “overarching provision” of 18 U.S.C. § 3553(a), which instructs district courts to “impose a sentence sufficient, but not greater than necessary” to accomplish the goals of sentencing. *Kimbrough v. United States*, 552 U.S. 85, 89 (2007) (quoting *Gall v. United States*, 552 U.S. 38, 56 (2007)).

Section 18 U.S.C. § 3553(a)(1) mandates that the Court shall consider “the nature and circumstances of the offense and the history and characteristics of the defendant.” 18 U.S.C. § 3553(a)(1). When examining the defendant for sentencing purposes, the Court must treat the sentencing guidelines as “effectively advisory” and consider them as just one of a number of sentencing factors the Court must take into account. *United States v. Booker*, 543 U.S. 220, 245 (2005). Finally, the district court has great discretion in fashioning a sentence that is sufficient “but not greater than necessary,” based upon an individual analysis of the sentencing factors concerning Ms. Spencer. *See* 18 U.S.C. § 3553(a).

In determining an appropriate sentence, this Court is “to consider every convicted person as an individual and every case as a unique study in human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.” *Koon v. United States*, 518 U.S. 113 (1996). While the Sentencing Guidelines are considered the “starting point” for

sentencing proceedings, district courts can consider a variety of factors outlined in 18 U.S.C. §3553(a) to craft a fair and reasonable sentence for each defendant individually. *Gall*, 552 U.S. at 49.

A zero (0) month sentence is appropriate in this case for two reasons based on Ms. Spencer's individual 18 U.S.C. § 3553 factors. The best argument for a zero (0) month sentence in Ms. Spencer's case is the defendant's role as the primary caretaker of her four children, one of whom has a persistent traumatic brain injury. PIR, Paragraph 38. A zero-month sentence is also warranted in this case due to Ms. Spencer's lack of criminal history and her status as a first-time felon.

A. Nature and Circumstances of the Offense

Defendant Spencer took responsibility for her criminal conduct in this case. Ms. Spencer pleaded guilty to the indictment and met the expectations agreed to by both parties in the plea agreement. Instead of putting on a defense that would have wasted government resources and not served the interests of justice or the truth, Ms. Spencer stepped forward and accepted responsibility for her actions.

B. History and Characteristics of the Defendant.

The primary mitigating factor warranting the requested sentence in Ms. Spencer's unique situation is her role as the primary caretaker of her four children. Ms. Spencer is a single mother and the physical custodian of four minor children aged 15, 6, 9, and 10. Her 10-year-old child has a significant disability, specifically a persistent traumatic brain injury resulting from shaken baby syndrome. PIR, Paragraph 38.

If Ms. Spencer is sentenced to prison, it will result in a significant and direct loss of essential care for her four children. Ms. Spencer is the only caretaker they have ever known. The fathers of three of her children have not been involved in their lives; two of the fathers

have either passed away or are not allowed to be around the children due to abusive behavior. PIR, Paragraph 38. A sentence of zero (0) months, followed by two years of supervised release, would be a sufficient sentence that addresses the need for caretaking support without being overly punitive.

Given these circumstances, the loss of Ms. Spencer as a caretaker would have a far greater impact than the typical consequences of incarceration. She has been the sole caretaker and the only parent her children know. There are no effective alternatives, which means that her absence would be a devastating blow to her children's stability and emotional well-being, as they may lose their only parent. Ms. Spencer is simply irreplaceable.

The second most crucial factor that supports Ms. Spencer's requested sentence is her lack of a criminal record. Ms. Spencer is a first-time felon. Ms. Spencer's total criminal history score is zero, and she falls into the criminal history category of I. PIR, Paragraph 30. Ms. Spencer's lack of criminal history demonstrates that she is someone who would not present a danger to her neighbors in her community if she were to be placed on supervised release. Furthermore, her lack of criminal history suggests that Ms. Spencer knows how to navigate society without engaging in unlawful behavior.

It is clear from Jasmine Spencer's criminal history score that she is not a career criminal. Given her background, even a minor criminal charge, let alone a felony conviction, constitutes a significant punishment. She must live with the reality of her involvement in criminal behavior, and for many years, she will need to explain her choices and actions to her children. The consequences of her actions will not only affect her but will also have a detrimental impact on her children, who were completely unaware of what was happening with their mother. This impact would only worsen if Ms. Spencer received

a prison sentence.

It is important to note that Ms. Spencer's criminal behavior did not target any specific individuals and did not involve violence. Despite any criticisms regarding her actions, this was her first serious offense of any kind.

C. The Need for the Sentence Imposed to Reflect the Seriousness of the Offense, to Promote Respect for the Law and to Provide Just Punishment for the Offense.

Given the totality of the circumstances, Ms. Spencer is requesting a prison sentence of zero (0) months, along with two years of supervised release. For a single mother of four children, the requirements of supervised release represent a significant penalty. The implications of having a felony conviction, along with the obligation to repay \$15,625 to a large corporation and the daily living restrictions that would remain in effect during the supervised release, would appropriately reflect the seriousness of Ms. Spencer's offense. This would constitute a just punishment, ensure public safety, and serve as an effective deterrent for both Ms. Spencer and others. Overall, this approach would sufficiently meet the sentencing objectives outlined under 18 U.S.C. 3553(a)(2) without being excessive.

D. The Need for the Sentence to Afford Adequate Deterrence to Criminal Conduct

Defendant Spencer submits that a lengthy prison sentence is unnecessary in this instance to deter future criminal conduct. She argues that a sentence of zero (0) months in prison with home incarceration and two years of supervised release crafts a fair and reasonable sentence considering the 18 U.S.C. §3553(a) factors, the ends of justice, and provide a deterrence for other criminal conduct.

Furthermore, Ms. Spencer argues that longer custodial sentences do not prevent reoffending nor reduce recidivism. Recidivism refers to a person's relapse into criminal behavior, often after the person receives sanctions or undergoes intervention

for a previous crime.¹ Longer prison sentences create difficulties for people re-entering society after prison because they reduce their ability to secure employment and housing.² Lengthy prison sentences also increase recidivism rates because a person leaving prison after a long sentence has an overall lack of financial security that negatively impacts one's ability to succeed after prison.³

IV. Conclusion

As set forth above and considering the 18 U.S.C. §3553(a) factors, Ms. Spencer submits that a fair and reasonable sentence in her case is a sentence of zero (0) months in prison with home incarceration and two years of supervised release.

Ms. Spencer is unlikely to reoffend due to her responsibilities as a caregiver for her four children and her minimal criminal history. A sentence of zero months, with home confinement and supervised release, would reflect the seriousness of her actions and deter similar behavior in the community.

Considering the totality of the facts and circumstances in Ms. Spencer's case, a sentence of zero (0) months with home confinement and supervised release is sufficient, but not greater than necessary, to comply with the stated goals of the United States Sentencing Commission.

Therefore, for the above reasons, Jasmine Spencer requests that this court impose the suggested sentence during her sentencing hearing on August 21, 2025.

¹ <https://nij.ojp.gov/topics/corrections/recidivism>

² <https://docs.iza.org/dp14022.pdf>

³ *Id.*

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CERTIFICATE OF SERVICE

I, John J. Balenovich, Esq., hereby certify that on July 31, 2025, I filed a true and accurate copy of the attached **Sentencing Memorandum of Defendant Jasmine Spencer** and **Certificate of Service** with the Clerk of the Court using the CM/ECF system which will send notification to the following CM/ECF participants:

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Respectfully Submitted,

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