

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES

v.

HERBERT SMALL

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Crim. No. 15-10145-RGS

SENTENCING MEMORANDUM OF HERBERT SMALL

“My father was out of my life. He was in and out of jail. I didn’t have a strong solid figure I needed.” – Herbert Small, Forensic Mental Health Evaluation, p. 2.¹

Herbert Small, 25 years old, was born in Dorchester, Massachusetts in 1991. He was raised by a single mother, along with four brothers. Mr. Small’s father was in and out of prison during Mr. Small’s childhood, and is currently serving a life sentence out of state. Mr. Small never had any father-son relationship, let alone a benevolent one, that so many take for granted.

Mr. Small’s life has been fraught with other challenges. He suffered lead poisoning as a child, and developed an organic brain disorder linked to the lead poisoning. Consequently, Mr. Small experiences difficulty focusing and processing information, and cannot read or write large words, as evidenced by his letter to this Court:

¹ Forensic Mental Health Evaluation of Herbert Small conducted by Frank DiCataldo, Ph.D., (dated December 21, 2016) submitted herewith as Exhibit A.

To him it may concern Grewin up ~~me~~ me
 was ~~the~~ ruff. no rainbows or pots of gold ~~****~~
 My mom did her best 2 raise 5 ~~both~~ boys
 on her own. My father been in jail most
 of my life then caught ~~on~~ a life sentence
 when I was 10 years old. My oldest brother
 Jharmel ste up as a father figure to me.
 things were hard to me when me father
 left but got worse when my brother
 passed away. From sleep apnea I took this
 very hard and have yet to recover since
 seeing my brother passed at ~~the~~ the young age
 of 30 made me feel like tomorrow wasn't
 promised so I started living in the moment.
 At the age of 15 I started using drugs everyday
 start smoking blunts then soon after that came
 the liquor I would get high to balance me
 low's depression played a major role in me
 drug abuse. The liquor led to even stronger
 drug like percocet, cocaine, marly, ecstasy and
 much more. I like the stronger drugs b-c
 it numbs the pain and make forget about
 my ~~my~~ childhood.

being a kid diagnosed with lead poison
 made me unable 2 comprehend and put me at
 a disadvantage struggling 2 read and ride
 made me feel like I wasn't good enough
 in life

As a young boy, Mr. Small was molested by a teenage neighbor, who took advantage of his low cognitive abilities. When Mr. Small was 13 years old, one of his older brothers, with whom he was particularly close and considered to be a father figure, passed away unexpectedly. Mr. Small was devastated. He became depressed, and turned to drugs and alcohol to deal with his depression. Remarkably, despite all of these setbacks, Mr. Small obtained a high school diploma, maintained continuous employment prior to incarceration, including starting a lawn business,² and was taught how to cook in a professional kitchen by his mother.³ He was also very involved in guiding youth in his church with respect to the importance of education.⁴ Mr. Small's achievements demonstrate his ability to accomplish goals with determination in the face of adversity: "...despite what the academic testing showed, the teacher's assessments, and the teacher's observations of his academic abilities, along with the emotional and physical trauma he experienced, Herbert had a will to learn and achieve."⁵

Mr. Small's cognitive difficulties and familial devotion made him a prime target of older individuals who could easily manipulate him: "with the circumstances of his surroundings within the inner city and the stigma of Public Housing, the pressure fitting into his surrounding and pressure from his peers weighed heavily on Herbert."⁶ Mr. Small got involved in drug dealing, which led to his involvement in the instant offense. Mr. Small recognizes the mistakes he has made and the dangerous role that drugs and alcohol have played in his life. He does not make excuses for his conduct.

² See June 8, 2017 letter to the Court from Deacon Carter Crosby Jr., submitted herewith as Exhibit B.

³ See June 8, 2017 letter to the Court from Minister Stephanie Williams Crosby (Mr. Small's mother) submitted herewith as Exhibit C.

⁴ See July 20, 2017 letter to the Court from Missionary Ernestine Howard, submitted herewith as Exhibit D.

⁵ See June 27, 2017 letter to the Court from Sandra M. Hale, submitted herewith as Exhibit E

⁶ See June 21, 2017 letter to the Court from Beatrice Roberts-Clark, submitted herewith as Exhibit F.

Mr. Small's mental and emotional difficulties have been manifest during his incarceration. He has experienced depression, anxiety, loneliness, panic attacks, and claustrophobia. He had previously been diagnosed with Adjustment Disorder with Anxious Features, and with general psychotic disorder due to experiencing auditory hallucinations. Mr. Small has been particularly devastated at not being able to provide financially for his three young children. However, true to his persevering nature, he has completed several programs at the Wyatt Detention Center including a domestic violence workshop, parenting workshop, violence in society workshop, and the SRG program.⁷ He also participates in a unit workers program, earning \$5.25 per day, where he has demonstrated a good work ethic and positive attitude.⁸ He has also attended alcoholics anonymous meetings while incarcerated.

As outlined in Dr. DiCataldo's Forensic Mental Health Evaluation, Mr. Small would benefit from (1) continued educational services to address his reading deficits and other academic problems, (2) a comprehensive substance abuse treatment program that emphasizes relapse prevention and sober living skills, and (3) educational and vocational training to prepare him for post-release adjustment. For instance, the Probation Office has indicated that Mr. Small is an appropriate candidate for the RDAP program, and Mr. Small requests a judicial recommendation to the program. Mr. Small also requests a recommendation to an institution where both RDAP and vocational training are offered.⁹

⁷ Parenting Workshop certificate submitted herewith as Exhibit G; Domestic Violence Workshop certificate submitted herewith as Exhibit H; Violence in Society Workshop certificate submitted herewith as Exhibit I; and SRG program certificate submitted herewith as Exhibit J.

⁸ See May 25, 2017 letter from Mr. Small's unit manager at Wyatt, Susan Devonis, submitted herewith as Exhibit K.

⁹ It is anticipated that a list of institutions to which a judicial recommendation is sought will be submitted at the sentencing hearing.

For the reasons stated above, Mr. Small respectfully requests that he receive a sentence of 37 months, as contemplated by the parties in the plea agreement.

HERBERT SMALL
By his attorney,

/s/ John H. Cunha Jr.
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Dated: August 3, 2017

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading was filed on this date via the ECF system, and was sent electronically on that date to the parties' counsel of record and the Probation Officer.

/s/ John H. Cunha Jr.
John H. Cunha Jr.