

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SUMTER) FOR THE THIRD JUDICIAL CIRCUIT

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State of South Carolina,) Case No.: 2021-GS-43-0091

Sharon H. Dussal
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

v.)

**DEFENDANT'S MEMORANDUM
IN SUPPORT OF MOTION TO
RECONSIDER SENTENCE**

Brittany Martin,)

Defendant.)

COPY

Defendant Brittany Martin, by and through her undersigned Counsel hereby submits this memorandum in support of her Motion to Reconsider Sentence, which was filed with this court on May 26, 2022.¹

INTRODUCTION

Ms. Martin's four-year sentence is greater than necessary to achieve the purposes of sentencing and grossly disproportionate to other sentences for the same offense in the Third Circuit. Ms. Martin's four-year sentence should be reconsidered, vacated and reduced. When the court considers the need to avoid unwarranted sentencing disparities, the nature and circumstances of Ms. Martin's offense, and the exigent circumstances of Ms. Martin's high-risk pregnancy, it will find that a reconsideration of the original sentence and a reduced sentence of 90 days or time served is appropriate.

FACTUAL AND PROCEDURAL HISTORY

On or about June 4, 2020, Ms. Martin was arrested and charged with five counts of Threatening the Life of a Public Official and one count of Instigating, Aiding or Participating in

¹ The Motion to Reconsider is neither a challenge to Ms. Martin's conviction nor a challenge to the jury's verdict in this case and should not be construed as such.

a Riot following a verbal encounter with sheriff's deputies at a four-day protest in Sumter. Ms. Martin was later indicted for one additional charge of Breach of Peace, High and Aggravated. The case was tried to a jury in May of 2022. The jury found Ms. Martin not guilty of Instigating, Aiding or Participating in a Riot, but convicted her of BOPHAN,² an offense with a sentencing range of 0-10 years. Ms. Martin was sentenced to four years in the South Carolina Department of Corrections.

ARGUMENT

A. The History and Purpose of Punishment

Every society throughout history has promulgated rules and regulations providing for punishment for those who violate societal norms. The history of criminal justice in the modern world is replete with societies that implement incarceration as a form of punishment. Among such societies, there have been varying degrees of success in using punishment as a deterrent to crime or as retribution for criminal activity. The criminal justice system in the United States is one such example.

The purposes of punishment may be divided into the deontological (retribution) and the teleological (deterrence, incapacitation and rehabilitation). When the United States penitentiary system was first established in the late eighteenth century, its goal was mostly teleological or utilitarian—to rehabilitate prisoners. Rehabilitation continued to be the primary goal of the American prison system for nearly two hundred years (with the exception of Southern prisons in the post-Civil War era, which effectively functioned as extensions of exploitative servitude for

² Ms. Martin maintains that the jury instructions on BOPHAN were defective in that the jury was instructed only as to Breach of Peace and not as to what circumstances elevate a simple Breach of Peace to the common law misdemeanor of Breach of Peace, High and Aggravated. We neither address nor argue this issue here, as it is not relevant to the issue of reconsideration.

many years). In the 1960s, the tides began to change and prison objectives shifted away from rehabilitation and towards retribution or incapacitation. It was this shift—fueled in large part by the idea that because a rehabilitation-based model of incarceration is deterministic, explaining away all criminal behavior without regard for the will of the individual criminal actor, that it threatened to undermine notions of moral accountability that sat at the heart of our nation’s criminal laws—that brought on our ever-ballooning prison population.

Continuing to impose lengthy prison sentences for relatively minor or non-violent offenses has had little direct impact on crime rates, but has done tangible damage to families and communities, especially communities of color, who are more impacted by the devastation of mass incarceration. Alternative forms of punishment can be and often are effective means of accomplishing the goals of sentencing, without the negative collateral impact. One such example of a negative collateral effect of choosing incarceration as the chosen method of punishment is its impact on individuals’ ability to function in society, specifically the workplace, upon release. The unemployment rate for formerly incarcerated people is nearly five times higher than the unemployment rate for the general population. This disparity is especially dramatic for formerly incarcerated women and people of color. Among formerly incarcerated black women like Ms. Martin, the unemployment rate jumps to a staggering 43.6%—compared to just 5.8% in the general public.³ A lengthy active sentence not only does little to address or accomplish the goals of sentencing, it actually increases the likelihood of conditions known to reduce recidivism and decrease productivity in society—it directly and significantly impacts Ms. Martin’s employability upon release.

³ See Couloute, L. and Kopf, D. *Out of Prisons, Out of Work*, Prison Policy Initiative (2018) <https://www.prisonpolicy.org/reports/outofwork.html>

B. Factors for Consideration

In federal cases, judges consider several statutory factors when imposing sentences. Pursuant to 18 USC §3553(a), a federal sentencing judge shall impose a sentence that is “sufficient, but not greater than necessary to comply with the purposes [of sentencing].” In all cases, judges shall consider: (1) the nature and circumstances of the offense; (2) the history and characteristics of the defendant; (3) the need for the sentence imposed to reflect the seriousness of the offense; (4) the need for just punishment; (5) the need to deter future criminal conduct and protect the public from future crimes of the defendant; (6) the need to provide a defendant with any needed educational or vocational training or other correctional treatment; and (7) the need to avoid unwarranted sentencing disparities.

While there is no state-level equivalent of 18 USC 3553(a), this Court may consider these factors when making its decision about the reconsideration of its original sentence in Ms. Martin’s case.

(1) Nature and Circumstances of the Offense

In the summer of 2020, with the country still reeling in the wake of the murders of George Floyd, Breonna Taylor and Ahmaud Arbery, community organizers and activists in cities across America organized peaceful protests against police violence. Brittany Martin was one such organizer. Ms. Martin took part in a four-day protest in Sumter County at the end of May 2020. The demonstrators gathered outside of the Sumter police department headquarters to show support for the black community and protest police violence against communities of color. During this protest, Ms. Martin was arrested. She was later indicted for Breach of Peace, High

and Aggravated for a verbal encounter with one of the responding deputies. Ms. Martin was not physically violent or threatening during this encounter.

(2) History and Characteristics of the Defendant

Brittany Martin was born in Peoria, Illinois in 1988 to the marital union of Elbert Martin and Darlene Robinson Martin. She was raised by both parents with her siblings in a healthy and happy home.

Ms. Martin attended college at Saint Leo University and majored in Business. She later attended LeCordon Bleu where she obtained her culinary credentials. She has worked as an executive chef and in the food industry for years, most recently at Tyson Foods. She is the founder of a non-profit organization that provides food to people experiencing homelessness and works to create unification opportunities and liberation in the black community. She is the mother of six children, two of whom she lost under unimaginably tragic circumstances. Ms. Martin lost her 4-month-old son Donnell to SIDS in 2007. Her eighteen-year-old son Courtney, who was attending college with aspirations of becoming a lawyer, was murdered this past January. Ms. Martin is pregnant with her seventh child, a daughter, due to arrive in November of this year.

(3) The need for the sentence imposed to reflect the seriousness of the offense

Breach of Peace of a High and Aggravated Nature is a common law misdemeanor. Ms. Martin's behavior was not physically violent or threatening. While Ms. Martin is passionate about the causes to which she dedicates her life, her passion should not be mischaracterized as violence. Ms. Martin has respect for the law and the men and women who enforce the law in our community. Her passion for equal justice under the law is largely what drives her activism and

community work through partnerships with her nonprofit. A sentence of thirty days, probation or time served would have been consistent with sentencing patterns for the same offense in the Third Circuit and it would have been sufficient but not greater than necessary to reflect the seriousness of the offense.

(4) The need for just punishment

As discussed above, punishment has long served purposes beyond mere retribution for wrongful actions. Punishment must also contemplate deterrence, rehabilitation and incapacitation. While incapacitation is sometimes necessary to protect the public, Ms. Martin's case is not one such instance. A noncustodial, probationary or time-served sentence would have been sufficient to achieve the other purposes of sentencing (punishment, deterrence, rehabilitation) while avoiding many of the negative collateral consequences that accompany lengthy prison sentences.

A sentence of thirty days, probation or time served would have been consistent with sentencing patterns for the same offense in the Third Circuit and it would have been sufficient but not greater than necessary to provide just punishment for Brittany's conduct of breaching the peace.

(5) The need to deter future criminal conduct and protect the public from future crimes of the defendant.

Incarceration cannot be justified by arguing that it better serves deterrence than other punishments. After all, any unpleasant experience promotes deterrence, because both the offending party and the public will want to avoid that unpleasantness in the future. For a woman

in her first trimester of pregnancy, any length of time in prison is surely a horrifying experience, but a probationary sentence or a shorter sentence in the county jail would have been just as effective of a deterrent. Ms. Martin is not a dangerous or violent person, so the public is not in need of any heightened protection from her. A short period of supervision or time in the county jail that was aligned with the sentencing patterns for BOPHAN in the Third Circuit would have been sufficient, but not greater than necessary to deter future criminal conduct and adequately protect the public.

(6) Providing a defendant with any needed educational or vocational training, medical treatment or other correctional treatment.

Prior to her incarceration, Ms. Martin was a homeschooling mother of four, and the director of a busy non-profit organization. She is college educated and has worked her entire life. She has no educational deficits that could be remedied in the Department of Corrections. Active incarceration will provide no needed treatment or vocational training.

Ms. Martin was three months pregnant at the time of her conviction. The majority of Ms. Martin's prenatal care has taken place in the South Carolina Department of Corrections and has been woefully inadequate. Ms. Martin has experienced significant complications throughout her pregnancy since her arrival at SCDC, including bleeding and preterm labor. When Ms. Martin requests medical attention, it routinely takes 7 hours or longer to be seen or receive a response.

The United States of America has the highest incarceration rate of women in the world; but as an institution that has historically been male-focused, correctional institutes are ill-equipped to handle the needs of incarcerated women, especially pregnant women. Given an incarcerated mother's status as an "offender," pregnancy and birth are frequently handled in a manner that

would be considered unacceptable in any other context. While South Carolina recently passed a law outlawing the long-used practice of shackling incarcerated women during childbirth⁴, women who give birth while incarcerated in South Carolina are separated from their newborns within hours of delivery. Their infants are then placed in foster care and the mother returned to prison.

If Ms. Martin is incarcerated at the time she delivers her child, she will be forced to undergo an induction at thirty-nine weeks gestation in accordance with SCDC policy. Because the guards at the South Carolina Department of Corrections are not trained to recognize the signs of labor, all pregnant women are induced at thirty-nine weeks, regardless of their own wishes. This taking of a woman's own body autonomy in the most personal of circumstances is only the beginning of the horrific treatment of pregnant woman who are incarcerated. Ms. Martin's newborn daughter will be taken from her within hours of delivery and Ms. Martin will be returned to prison with no rights to visitation with her. She will be without any accommodations for breastfeeding, pumping breastmilk for her newborn or bonding with her newborn daughter.

Inductions are proven to increase the likelihood of complications during delivery, as well as the likelihood of birth by emergency Cesarean section. With the complications Ms. Martin is already experiencing, coupled with the prospect of being induced before her due date, it is reasonably foreseeable that the newborn may require care in the Neonatal Intensive Care Unit (NICU). Incarcerated mothers have no rights to visitation with their infants in the NICU, nor is there even a policy or procedure in place to allow the mother to receive updates about the hospitalized infant's progress.

⁴ S.C. Code Ann. §23-13-35

All women, regardless of incarceration status, deserve to have a safe, healthy and dignified birth experience. If Ms. Martin's pregnancy and prenatal care while incarcerated are any indicators of what her labor and delivery experience will be, she can expect for it to be plagued with avoidable danger and anything but dignified.

Ms. Martin needs no additional services and has no deficits that would be remedied by a lengthy sentence within the Department of Corrections. In fact, the services and medical care that she *does* desperately need are available to her only *outside* of SCDC. Continued incarceration of Ms. Martin places both her and her unborn daughter at risk.

(7) The Need to Avoid Unwarranted Sentencing Disparities

Federal judges are commanded by statute to consider the need to avoid sentencing disparities when crafting sentences. This includes not only disparity among codefendants in a particular case, but also disparity among similarly-situated defendants convicted of similar offenses. The philosophy behind the implementation of preventive measures to guard against disparity is rooted in notions of fundamental fairness, predictability and justice. Consistency in sentencing also serves a deterrent function in that it sets expectations about outcomes on which other offenders or potential offenders can rely. Without consistency in sentencing and without guarding against unwarranted sentencing disparity, the justice system—and the criminal courts specifically—open themselves up to scrutiny and criticism involving overt racial, gender-based or socioeconomic biases. The Congressional mandate to avoid unwarranted sentencing disparity in federal cases reflects a pervasive concern over individual judges imposing their own idiosyncratic normative views at sentencing. While our state code contains no such mandate constraining state court judges, notions of justice favor a balanced approach to sentencing,

including careful consideration of sentencing norms within and across jurisdictions, as well as among similarly-situated defendants.

Ms. Martin's sentence of four years of active time for her conviction for BOPHAN is more than four times as long as even the lengthiest sentences for same offense in the Third Circuit. The overwhelming majority of individuals convicted of BOPHAN received time served or sentences of thirty days or less. (*See Exhibit 1 – BOPHAN Convictions and Respective Sentences in the Third Judicial Circuit*) Of those convicted of BOPHAN that did not receive time served or short sentences, NONE received any additional active time beyond time already served. In fact, even in cases where the defendant was originally charged with a more serious offense and was instead convicted of BOPHAN, these defendants were still sentenced to significantly less time than Ms. Martin. For example:

2017A1410100261 – Defendant was originally charged with Pointing and Presenting a Firearm, but was convicted of BOPHAN. This defendant received a suspended sentence (5 years suspended to 72 days of time served with 2 years of probation).

2017A4310100228 – Defendant was originally charged with Voyeurism, but was convicted of BOPHAN. This defendant received a suspended sentence (2 years suspended to 2 years of probation).

2018A4320100531 – Defendant was originally charged with Voyeurism, but was convicted of BOPHAN. This defendant received a suspended sentence (3 years suspended to 5 years of probation).

2018A4320108279 - Defendant was originally charged with Burglary 1st degree, but was convicted of BOPHAN. This defendant received a suspended sentence (5 years suspended to 2 years of probation).

2021A4310200634 –Defendant was originally charged with Armed Robbery, but was convicted of BOPHAN. This defendant received a suspended sentence (2 years suspended to 73 days of time served).

89807HB - Defendant was originally charged with Domestic Violence in the 2nd Degree, but was convicted of BOPHAN. This defendant received a sentence of time served.

It is clear that Ms. Martin’s four-year sentence was disproportionately high compared to other sentences for the same offense in the Third Circuit. In addition to that disparity, it is worth noting that numerous individuals convicted of federal crimes for violently assaulting police officers while storming the United States Capitol on January 6, 2021 received lower sentences than Ms. Martin received for the common law misdemeanor of Breach of Peace, High and Aggravated.

Devlyn Thompson received a sentence of 46 months for beating police officers with a metal baton.

Nicholas Languerand received a sentence of 44 months for assaulting officers with weapons.

Scott Fairlamb received a sentence of 41 months for assault on a police officer.

Lonnie Leroy Coffman, described by his sentencing judge as the “most heavily armed” of the Capitol rioters, was sentenced to 46 months in prison.

Jacobe Chansley, the “shaman” and most recognizable face of the Capitol riots, was sentenced to 41 months.

Cleveland Meredith received a sentence of 28 months for threatening to kill United States House Speaker Nancy Pelosi.

Numerous other of the violent rioters received probationary sentences for their roles in organizing and participating in the riot, destroying property, and assaulting Capitol police officers on January 6, 2021.

CONCLUSION

Taking into consideration all of the factors above, we respectfully ask the court to reconsider its sentence in this case. Reducing Ms. Martin's sentence to time served will allow her to seek and receive the prenatal care she needs to sustain what has been a high-risk pregnancy, plagued by complications. The medical care within the South Carolina Department of Corrections is insufficient to address the needs of Ms. Martin's fragile pregnancy, and each day Ms. Martin remains in custody poses a substantial risk to her unborn child.

A reduced sentence consistent with other sentences for BOPHAN within the Third Circuit will adequately reflect the serious nature of what Brittany has done, it will provide just punishment, and it will deter future criminal conduct and adequately protect the public. A sentence of time served would be sufficient, but not greater than necessary to achieve the purposes of sentencing.

In light of all of the factors discussed above, we respectfully submit that reconsideration of Ms. Martin's original sentence is appropriate in this case.

SIGNATURE PAGE TO FOLLOW

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. Sellers'.

Bakari T. Sellers

A handwritten signature in black ink, appearing to read 'A. Benevento'.

Alexandra Benevento

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Attorneys for Brittany Martin

24 August 2022
Columbia, South Carolina

EXHIBIT 1

Case Number	County	Original Charge	Charge of the Convict	Sentence	Sex	Age at Arrest	Race
83675	Sumter	BOPHAN	BOPHAN	Credit Time Served	F	43	Black
54525EV	Sumter	BOPHAN	BOPHAN	30 Days	M	33	Black
54986GG	Sumter	BOPHAN	BOPHAN	Fine (Amount not listed)/ 30 days	M	39	White
13599EB	Sumter	BOPHAN	BOPHAN	Fine (Amount not listed)/ 30 days	M	27	Black
2018A4320100531	Sumter	Sex/ Voyeurism	BOPHAN	3 Yrs Susp., 5 Yrs Prob.	M	39	Black
87319	Sumter	BOPHAN	BOPHAN	Credit Time Served	M	46	Black
88404	Sumter	BOPHAN	BOPHAN	Jail (Days not listed)	F	36	Black
94352	Sumter	BOPHAN	BOPHAN	Fine/ Jail time (Days not listed)	M	29	White
91017	Sumter	BOPHAN	BOPHAN	Credit Time Served	F	36	Black
83651FW	Sumter	BOPHAN	BOPHAN	Fine/ 30 days	M	24	Black
54435DR	Sumter	BOPHAN	BOPHAN	Credit Time Served	F	48	Black
81044	Sumter	BOPHAN	BOPHAN	Fine/ Jail time (Days not listed)	M	33	Black
66786FO	Sumter	BOPHAN	BOPHAN	Credit Time Served	F	50	Black
103968	Sumter	BOPHAN	BOPHAN	Fine Suspended	M	Not Listed	Black
87188	Sumter	BOPHAN	BOPHAN	Fine/ Jail time (Days not listed)	M	34	Black
86699	Sumter	Disorderly Conduct	BOPHAN	30 days	M	48	Black
87314	Sumter	BOPHAN	BOPHAN	Credit Time Served	M	31	Black
2017A4310100228	Sumter	Sex/ Voyeurism	BOPHAN	2 Yrs Prob., 2 Yrs. Susp.	M	21	White
2021GS4300091A	Sumter	BOPHAN	BOPHAN	SCDC Snt 4yrs, CTS 21 Days	F	32	Black
68168FO	Sumter	BOPHAN	BOPHAN	Credit Time Served	M	45	Black
103968	Sumter	BOPHAN	BOPHAN	Fine Suspended	M	Not Listed	Black
84578FW	Sumter	BOPHAN	BOPHAN	Not Listed	M	34	White
2021A4310200534	Sumter	Robbery/ Attempted Robbery	BOPHAN	SCDS 2 Yrs, CTS 73 days	M	43	Black
52250GG	Sumter	BOPHAN	BOPHAN	30 Days	M	48	White
13740EB	Sumter	BOPHAN	BOPHAN	Credit Time Served	M	40	Black
97811	Sumter	BOPHAN	BOPHAN	Credit Time Served	F	56	Black
100338	Sumter	BOPHAN	BOPHAN	Credit Time Served	M	28	Black
78088FW	Sumter	BOPHAN	BOPHAN	Fine/ Jail time - 30 days	M	20	Black
88241	Sumter	BOPHAN	BOPHAN	Credit Time Served	F	23	Black
94017	Sumter	BOPHAN	BOPHAN	Fine Suspended	F	19	Black
86311	Sumter	BOPHAN	BOPHAN	Fine/ Jail Time (Days not listed)	M	17	Black
2021A4310200294	Sumter	BOPHAN	BOPHAN	SCDC Snt 381 Days	M	39	White
86373	Sumter	BOPHAN	BOPHAN	Fine/ Jail Time (Days not listed)	M	20	Black
92725	Sumter	BOPHAN	BOPHAN	Fine Suspended	M	29	Black
80896FW	Sumter	BOPHAN	BOPHAN	Fine/ Jail time - 30 days	F	47	White
2018A4320100279	Sumter	Burglary (First Degree)	BOPHAN	5 Yrs. Susp., 2 Yrs. Prob.	M	20	Black
89378	Sumter	BOPHAN	BOPHAN	Credit Time Served	M	50	Black
2020DIR310002	Lee	BOPHAN	BOPHAN	Credit Time Served - 1 day	M	29	Black
K391460	Lee	BOPHAN	BOPHAN	Dismissed	M	17	Black
89807HB	Clarendon	Domestic Violence (Second Degree)	BOPHAN	Credit Time Served	M	58	Not Listed
2017GS0245	Clarendon	BOPHAN	BOPHAN	8 Yrs. Susp., 3 Yrs. Prob	M	26	Black
53856FY	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 1 day	M	50	Black
43820F0	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 1 day	M	42	Black
12820DW	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 1 day	F	42	Black
2017GS0246	Clarendon	BOPHAN	BOPHAN	4 Yrs. Susp., 1 Yr. Prob.	M	60	Black

Brittany Martin

48230GA	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 1 day	M	48 White
20531DZ	Clarendon	BOPHAN	BOPHAN	1 Day	M	17 White
63223GN	Clarendon	BOPHAN	BOPHAN	Credit Time Served	M	27 Black
52810FY	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 1 day	F	54 White
53863FY	Clarendon	BOPHAN	BOPHAN	Credit Time Served	F	30 Not Listed
84709FI	Clarendon	BOPHAN	BOPHAN	Credit Time Served	F	20 Black
41712FO	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 1 day	Not Listed	30 Not Listed
50102GA	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 1 day	M	25 White
48931GA	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 1 day	F	41 Black
24835ET	Clarendon	BOPHAN	BOPHAN	Fine/ Jail Time - 30 days	M	55 Black
2018A1410100450	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 30 days	M	61 Black
37930EX	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 2 days	M	22 Black
88508FI	Clarendon	BOPHAN	BOPHAN	Fine (Amount not listed)	F	20 Black
40829FO	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 1 day	M	19 Black
2017A1410100261	Clarendon	Weapons/ Pointing Firearms at a Person	BOPHAN	5 Yrs. Susp.; 72 days time served; 2 Yrs. Prob.	M	64 White
53655FY	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 1 day	M	36 Black
62854GN	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 1 day	M	47 Black
69642FR	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 1 day	M	22 Black
43573FO	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 1 day	M	58 White
14092DW	Clarendon	BOPHAN	BOPHAN	Time Served - 1 day	M	35 White
63121GN	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 1 day	F	55 Not Listed
65211AT	Clarendon	BOPHAN	BOPHAN	Time Served - 1 day	M	26 White
43355FO	Clarendon	BOPHAN	BOPHAN	Credit Time Served - 1 day	M	42 White
84456EJ	Clarendon	BOPHAN	BOPHAN	Time Served - 1 day	M	18 Black