

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

MATTHEW GRABOWSKY,

Defendant.

No. CR21-0141 RAJ

DEFENDANT’S SENTENCING
MEMORANDUM

I. Introduction

This is an unusual case that calls for an unusual result. While charges of this nature often justifiably result in prison sentences, an analysis of the particular facts of this case, as opposed to a rote application of the sentencing guidelines, calls for a different result. The defense implores the Court to impose a sentence based on the particularized facts of this case, which we submit warrant a sentence of probation. Multiple aspects of this case support such an outcome.

First, the underlying conduct occurred five years ago. Second, and perhaps more significantly, the conduct occurred *before* intervention of the criminal justice system for similar conduct, intervention which was quite successful and resulted in Mr. Grabowsky turning his life around. Mr. Grabowsky was charged in state court in 2017, and convicted in 2019, for sexual misconduct with animals. Law enforcement seized the evidence underlying this case during the

1 execution of search warrants related to the state case, but Mr. Grabowsky was not charged in this
2 case until years after he was charged in state court. In the meantime, Mr. Grabowsky was
3 convicted, served his sentence, underwent an evaluation and treatment, and has been a law-
4 abiding and pro-social member of society.

5 Third, this case only came into being due to Mr. Grabowsky's voluntary provision of a
6 proffer to the federal government during his prior state case. While that case was pending Mr.
7 Grabowsky was sent videos of people killing animals ("snuff films"), and wanted to do what he
8 could to stop what was happening. Mr. Grabowsky's counsel informed the state about the
9 information Mr. Grabowsky possessed, which was eventually sent to the United States Attorney's
10 Office. The USAO was interested in conducting a proffer and did so. Although the investigation
11 did not result in charges against the perpetrators of the violence against animals, it did result in
12 additional warrants which uncovered the activity at issue in this case. In a real sense, Mr.
13 Grabowsky is currently facing additional punishment only due to his desire to assist the
14 government in investigating the murder of animals.
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16 Fourth, Mr. Grabowsky's offense involves two types of conduct, both of which are
17 mitigated to a degree rarely seen in cases of this nature. As to his possession of child sexual abuse
18 material (CSAM), Mr. Grabowsky's conduct was close to inadvertent, to the extent that he
19 previously passed a polygraph examination where he denied possession of child pornography.
20 The materials were present on his phone because they had been sent to him by other people in a
21 chatting app. Mr. Grabowsky was aware the materials had been sent, and briefly viewed some of
22 them, but never saved them and did not realize they remained on his phone. He certainly never
23 solicited the materials. He forgot about the material all together by the time of his polygraph a
24 couple years later.
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1 As to Mr. Grabowsky's production of CSAM, it involved a single incident of consensual
2 sex with someone above the age of consent, which was shared within a small group and did not
3 contain the identity or any identifying features of the subject (WM). WM and Mr. Grabowsky
4 had a long-term, though casual, sexual relationship and remain friends to this day. WM has signed
5 a declaration indicating that he does not view himself as a victim and does not take issue with Mr.
6 Grabowsky having shared the photo in the matter he did.

7 Mr. Grabowsky's crime is as close to victimless as is possible in a case of this nature. The
8 illegal nature of his conduct rests on the somewhat confusing dichotomy presented by the law
9 granting people the ability to consent to sexual activity at the age of 16 but not the ability to
10 consent to making depictions of that activity. It is a dichotomy that Mr. Grabowsky was certainly
11 not aware of at the time he created the depiction (with the consent of the subject), and results in
12 a conviction for something that is technically illegal but is far less morally reprehensible than
13 almost any other imaginable charge of this type.

14 Finally, Mr. Grabowsky has been doing everything the Court would want to see him do
15 since his prior interaction with the criminal justice system. He underwent an evaluation,
16 participated in therapy, stopped engaging in promiscuous sexual encounters, stopped doing
17 anything illegal, maintained a long-term monogamous relationship, and has worked consistently
18 as a valued employee (aircraft avionics electrician) in an industry that needs workers.

19 All of these factors support imposition of a sentence that does not include time in prison.
20 Such a sentence would represent a fair and reasonable result in this matter. Mr. Grabowsky now
21 has a federal felony conviction, will have to register as a sex offender, and will be subject to a
22 restriction on his liberty through probation. Because of the specific facts surrounding Mr.
23 Grabowsky's conduct, a prison sentence is not necessary to achieve just punishment and
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1 deterrence in this case. As to the sentence's impact on Mr. Grabowsky, he is already in therapy
2 and is otherwise doing great. It is hard to see how sending him to prison at this juncture would
3 have a positive impact on him (and thus indirectly on society).

4 **II. Sentencing Guidelines and Presentence Report**

5 The defense objects to the application of the two-level enhancement in USSG §
6 2G2.1(b)(1)(B) for engaging in sexual acts with a person under the age of 16, on the basis that
7 the subject of the relevant photograph in this case was not under the age of 16. See Exhibit 1
8 (Declaration of WM). The defense obtained the declaration from WM, and provided it to the
9 government and probation office, subsequent to the preparation of the presentence report. It is
10 unclear whether the probation office will maintain its recommendation that the enhancement
11 applies in this case in light of the declaration. The defense understands that the government will
12 not be pursuing application of the enhancement.

13
14 The defense also asks the Court to apply a 3-level downward variance in Mr. Grabowsky's
15 offense level based on his agreement to undergo psychosexual and polygraph evaluations. See
16 Plea Agreement, Dkt. No. 8, at para. 11(b). Mr. Grabowsky has undergone these evaluations.
17 See Exhibits 2 and 3 (Evaluation Report, Polygraph Examination Report).

18 The defense submits the final total offense level should be 30, and at Criminal History
19 Category I, Mr. Grabowsky's advisory guideline range should be 97-121 months.

20 **III. Defense Sentencing Recommendation**

21 The defense asks the Court to impose a sentence of probation, based on the many unique
22 factors present in this case.
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1 **III. Basis for Defense Sentencing Recommendation**

2 The defense respectfully submits that its proposed sentence best addresses the factors
3 outlined in 18 U.S.C. § 3553(a) as they apply to this case.

4 **A. Mr. Grabowsky’s background and personal characteristics**

5 Mr. Grabowsky is 30 years old. He was born in Santa Barbara, California and his parents,
6 John and Deborah Grabowsky, adopted him before he was born. Mr. Grabowsky’s biological
7 mother decided to seek adoption for her unborn child when she became pregnant as a young
8 teenager and was experiencing financial difficulties. Although Mr. Grabowsky developed a good
9 relationship with his biological mother in recent years, he never knew his biological father.

10 Mr. Grabowsky had a normal upbringing. He and his two sisters were raised in an upper-
11 middle class lifestyle in Thousand Oaks, California. Because his sisters were over ten years older
12 than him, Mr. Grabowsky never developed close relationships with them. Mr. Grabowsky’s
13 family grew up very religious, and Mr. Grabowsky attended private religious schools from a
14 young age through high school. Throughout his childhood, Mr. Grabowsky struggled with his
15 sexuality, particularly because of his strong religious upbringing. He struggled to find acceptance
16 among his family and peers, especially since many of the people around him were openly against
17 gay marriage.
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19 After high school, in 2010, Mr. Grabowsky honorably served his country by joining the
20 United States Navy. After initial training, he was deployed to Japan in 2011, where he worked
21 as an aviation technician on an aircraft carrier, the USS George Washington. Although Mr.
22 Grabowsky felt a calling to serve his country and hoped to find the experience rewarding, he
23 remembers his time in the Navy as extremely challenging. Due to his sexuality, Mr. Grabowsky’s
24 superiors in the military often verbally and physically harassed him. He also remembers
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1 frequently experiencing suicidal thoughts while in deployed in Japan during his time in the Navy
2 due to the intense nature of the job, as well as the harassment he experienced from his superiors.

3 After serving in the Navy for about two years, Mr. Grabowsky was honorably discharged in 2012.

4 Upon his discharge from the military, Mr. Grabowsky returned to California to live with
5 his parents. He eventually moved to Seattle when he accepted a job at Aviation Tech Services in
6 Everett, Washington. Upon his move to Washington, Mr. Grabowsky did not know many people.
7 In a desire to make friends, he became involved in the “Furry” community. In this community,
8 he met with others who were interested in role-playing as animals for sexual purposes. He found
9 acceptance and friendship in this community, which were things he felt were missing in his social
10 life prior to joining the community. Around this time, he also met his former partner, Raiden.
11 The two lived together and had a registered domestic partnership in Washington.

12 From 2017-2019, Mr. Grabowsky experienced a low point in his life. Mr. Grabowsky
13 acknowledges, in his own words, that he was making “reckless choices” he wishes he could take
14 back (discussed further below). In 2019, Mr. Grabowsky pleaded guilty to Attempted Animal
15 Cruelty in the First Degree, Sexual Motivation in the King County Superior Court in Seattle. The
16 events of that case took place in 2017 (at the same time as the events underlying this case) and
17 ultimately led to the matter at issue in this case. Besides the attempted animal cruelty case and
18 this matter, Mr. Grabowsky has no other criminal history. Mr. Grabowsky took responsibility for
19 his actions in the attempted animal cruelty case by pleading guilty and completed all the
20 conditions required of him.
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22 Mr. Grabowsky experienced what he refers to as “rock bottom” in his life as a result of
23 his 2019 conviction. When Mr. Grabowsky’s conviction became public, he lost several long-time
24 friends when they saw the contents of his plea statement. The case also negatively impacted Mr.
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1 Grabowsky's romantic life. His long-time partner, Raiden, who was still with Mr. Grabowsky at
2 the time of the conviction, was approached at work by a coworker who learned of Mr.
3 Grabowsky's case. Eventually, the repercussions of Mr. Grabowsky's conviction became too
4 difficult for the relationship to endure, and the two ended their relationship after seven years. Mr.
5 Grabowsky also lost the stability of his job at Aviation Tech Industries due to his conviction in
6 the King County case. Overall, the conviction negatively affected Mr. Grabowsky's life in
7 numerous ways. He lost many friends, the stability of his job, as well as his former relationship.

8 Despite these devastating repercussions from his King County case, and in fact largely
9 because of them, Mr. Grabowsky has made many positive changes in his life since 2019. He was
10 until recently employed by his biological mother, who owns a residential construction business.
11 He was just recently able to secure a position in his chosen field of aircraft avionics. Mr.
12 Grabowsky's biological mother now lives in Seattle, and Mr. Grabowsky maintains a good
13 relationship with her. Mr. Grabowsky enjoys working and finds it distracts him from the negative
14 happenings in his life. One of Mr. Grabowsky's biggest worries in this process is being unable
15 to work if incarcerated. He fears that the loss of that distraction will negatively impact all of the
16 positive progress he has made with his mental health since 2019. In addition to remaining
17 productive in his work life, Mr. Grabowsky also cut ties with the "Furry" community and has not
18 interacted with its members in a few years. Mr. Grabowsky also maintains a strong support
19 system in his parents, who have been there for him throughout this entire process.
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21 Additionally, Mr. Grabowsky has undergone a series of evaluations and treatment in the
22 last few years. Mr. Grabowsky has undergone two psychosexual evaluations, one in 2019 and
23 one 2022. In 2019, the court ordered Mr. Grabowsky to complete a sexual deviancy evaluation
24 as a condition of his sentence. See Exhibit 4 (2019 Psychosexual Evaluation Report). During
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1 this evaluation, Mr. Grabowsky was diagnosed with Zoophilia in remission. Zoophilia is a type
2 of paraphilia where a person is sexually interested in non-human animals. Mr. Grabowsky
3 acknowledged that he has this condition. He has not engaged in such behavior in many years.
4 Ultimately, the evaluator determined that Mr. Grabowsky was at low risk for aggressive hands-
5 on sexual misconduct. He was also determined to be at low risk for future sexual or criminal
6 offense.

7 In the 2022 evaluation (Exhibit 2), Mr. Comte describes Mr. Grabowsky as someone who
8 feels socially inadequate, fearful, and suspicious of others. He meets criteria for Persistent
9 Depressive Disorder, and possibly Generalized Anxiety Disorder as well. The evaluator believes
10 that Mr. Grabowsky would benefit from intensive outpatient mental health treatment in addition
11 to sex offender treatment. Mr. Comte also notes that if Mr. Grabowsky receives a jail sentence,
12 jail staff should be informed that Mr. Grabowsky is at risk for self-harm and suicide. Mr. Comte
13 believes that Mr. Grabowsky's work is his biggest distraction from these events in his life. He
14 believes Mr. Grabowsky will be at a much greater risk for suicide and self-harm if he is
15 incarcerated, since he will not be able to work during that time.
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17 Notably, neither evaluator of Mr. Grabowsky in 2019 or 2022 believes that he is sexually
18 interested in children. Since his 2019 case, Mr. Grabowsky has participated in therapy programs
19 targeted at improving his mental health. As a result of his therapy sessions, Mr. Grabowsky better
20 understands the root causes of the issues that led to his past behavior. He learned valuable skills
21 about how to deal with those behaviors and prevent them from happening in the future.

22 For most of his life, Mr. Grabowsky was a law-abiding citizen struggling to feel accepted
23 in his life because of his sexuality. This caused him to seek friendship in the "Furry" community,
24 where he felt he could be himself and people could truly accept him. While he did find friendship,
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1 he also found himself involved in the actions leading up to this and his animal cruelty case. Since
2 those events in 2017, Mr. Grabowsky has made significant positive changes in his life. He has
3 the support of his parents throughout this process, mental health treatment, as well as a stable job
4 to keep him productive. See Exhibit 5 (Letters of support). He wishes to put the events of 2017
5 behind him by accepting responsibility for those actions. While the circumstances of Mr.
6 Grabowsky's personal life do not excuse his actions in this matter, they do provide some
7 perspective as to the positive changes Mr. Grabowsky has made in his life in the past few years.
8 The defense respectfully asks the Court to consider these positive changes when fashioning a
9 sentence for Mr. Grabowsky.

10 **B. The nature and circumstances of Mr. Grabowsky's offense**

11 Mr. Grabowsky was going through what can best be described as a dark period of his life
12 at the time of this offense. As noted above, he had become involved in a loosely affiliated
13 group/movement known as the Furry Fandom, which is marked by interest in anthropomorphic
14 animals and is often related to sexual behavior involving people in animal costumes. Mr.
15 Grabowsky's involvement in the Furry Fandom eventually led to a number of incidents where
16 another participant who had befriended Mr. Grabowsky convinced him to engage in sexual
17 contact with her dog. Mr. Grabowsky was at a low point in his life when this happened, and was
18 typically under the influence of drugs and/or alcohol when he engaged in these activities.

19 During this same period in 2017, Mr. Grabowsky became a member of a "Furry" chat
20 group in an app on his phone called Kik. The members of the chat group shared posts related to
21 numerous different types of deviant sexual behavior. It mainly consisted of Furry-related content
22 but people also shared CSAM. Mr. Grabowsky was never particularly interested in those aspects
23 of the chats. He briefly viewed some of the material that was shared but never downloaded it and
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1 never gave it a second thought. He did not realize that the material was saved on his phone within
2 the app.

3 In the spring of 2017, Mr. Grabowsky shared with the Kik group a photo of a sexual
4 encounter that he'd had with WM (i.e. MV1). WM was someone whom Mr. Grabowsky had met
5 a couple of years earlier through an app designed for people to meet for casual sexual encounters.
6 When Mr. Grabowsky and WM first met over the app, WM was 15, however they did not meet
7 in person until WM was 16. Mr. Grabowsky and WM communicated for some time before they
8 eventually engaged in sexual relations. They did not ever have sexual relations prior to WM
9 turning 16, i.e. the age of legal consent. After they first engaged in sexual relations they
10 continued a consensual sexual relationship that lasted for many years. They had sexual relations
11 intermittently during that time but never had an exclusive relationship. They have not engaged
12 in sexual relations for some time but remain friends.

13 Mr. Grabowsky took a photo of one of the times he engaged in sexual relations with WM.
14 He did so consensually. The photo did not contain WM's face or any personally identifiable
15 information. Mr. Grabowsky then shared the photo within the Kik group, and falsely claimed
16 that the subject of the photo was 15. He did this as part of a misguided attempt to impress the
17 other members of the group. Mr. Grabowsky did not share the identity of the subject of the photo.

18 WM is aware that Mr. Grabowsky shared the photo and does not take any issue with it.
19 WM and Mr. Grabowsky remain friends to this day. WM thinks very fondly of Mr. Grabowsky
20 and does not want the Court to view WM as a victim or punish Mr. Grabowsky on his behalf. He
21 has executed a declaration under penalty of perjury confirming all of this information, which the
22 defense provided to the government and probation office on March 14, 2022. Exhibit 1.
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1 In the fall of 2017, Mr. Grabowsky's friend, the one who had orchestrated his sexual
2 contact with her dog, reported him to law enforcement. (This report included the information
3 contained in the last section of paragraph 28 of the presentence report, which Mr. Grabowsky
4 unequivocally denies.) Law enforcement then sought and obtained search warrants which
5 resulted in the seizure of Mr. Grabowsky's computers and phones, among other things. Mr.
6 Grabowsky was charged in state court with cruelty to animals.

7 While the state case was pending, Mr. Grabowsky came into possession of material
8 depicting torture and murder of dogs. He, through counsel, provided this information to the state
9 prosecutor, who in turn provided it to the United States Attorney's Office, which was interested
10 in conducting a proffer with Mr. Grabowsky. Mr. Grabowsky participated in a proffer and
11 provided all the information he could about the investigation, and also voluntarily turned over his
12 cell phone. Unfortunately, the government was not able to capitalize the information provided
13 by Mr. Grabowsky, and the fact of his participation in the proffer did not positively impact the
14 result of the state case. It did, however, lead to his prosecution in this matter, as described below.

15 Mr. Grabowsky ultimately pleaded guilty in his state case. He was sentenced to home
16 detention and probation and required to undergo a psychosexual evaluation and follow treatment
17 recommendations, which he did in 2018-19. The most notable item from his evaluation is that
18 Mr. Grabowsky denied having ever viewed child pornography, which a polygraph confirmed to
19 be non-deceptive. The reason for the answer and related polygraph result is that, as discussed
20 above, Mr. Grabowsky did not ever pay much attention to the CSAM that was sent to him as part
21 of the group chats in 2017 (which is the only CSAM he has ever possessed). He never sought
22 this material out, never saved it, and was not interested in it. At the time of his polygraph, he did
23 not even recall that he had viewed it.
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1 After his evaluation in 2019, Mr. Grabowsky completed the recommended treatment and
2 was successfully terminated from probation. He used the experience to turn his life around. He
3 maintained a long-term relationship, worked as an aircraft avionics electrician, stayed away from
4 fringe and dangerous groups, and generally lived as a pro-social, valuable member of society. He
5 was walking the straight and narrow and doing great. He thought he had put this period of his
6 life behind him until he got the news that the materials underlying this case had been discovered.

7 Mr. Grabowsky's proffer and the investigation that followed led to federal searches of the
8 materials that had been seized at the time of Mr. Grabowsky's arrest in 2017 as well as the cell
9 phone he provided at the proffer in 2018. While the new cell phone did not contain CSAM (which
10 Mr. Grabowsky has not possessed or viewed since the time of his 2017 arrest), the previously
11 seized phone did contain the material discussed above.

12 Mr. Grabowsky has already been through the criminal justice system, which led to him
13 turning his life around. He did everything he was supposed to do. He is a pro-social and
14 contributing member of society. He has left promiscuous and dangerous, and most importantly
15 illegal, behavior in the past. This all happened completely independently of this case.

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17 **C. The sentence proposed by the defense would not create unwarranted
18 sentencing disparities.**

19 18 U.S.C. § 3553(a)(6) directs courts to "avoid unwarranted sentence disparities among
20 defendants with similar records who have been found guilty of similar conduct." As to this
21 sentencing factor, the defense first notes that, as described above, the circumstances of this case
22 are unusual enough that it is difficult to compare this case to others. Second, the defense notes
23 that many courts have given sentences similar to that requested by the defense in this case where
24 circumstances warrant it. See Exhibit 6 (List of cases). This case is the kind of outlier that
25 warrants such a sentence.

1 **D. The sentence proposed by the defense is sufficient, but not greater than**
2 **necessary, to accomplish the goals set forth in 18 U.S.C. § 3553(a)**

3 “The statute, as modified by Booker, contains an overarching provision instructing district
4 courts to impose a sentence sufficient, but not greater than necessary to accomplish the goals of
5 sentencing, including to reflect the seriousness of the offense, to promote respect for the law, to
6 provide just punishment for the offense, to afford adequate deterrence to criminal conduct, and to
7 protect the public from further crimes of the defendant.” Kimbrough v. United States, 552 U.S.
8 85, 102 (2007)(internal quotations deleted).

9 Mr. Grabowsky is before this Court five years after the conduct that gave rise to this
10 prosecution. The subsequent prosecution by Washington state and rehabilitative steps embraced
11 by Mr. Grabowsky put him in a position unlike most defendants before this court for sentencing.
12 His track record of positive, constructive, pro-social conduct over the last five years demonstrates
13 that the previously imposed punishment successfully accomplished many of the goals of this
14 sentencing.

15 How this case came to the attention of the federal government demonstrates Mr.
16 Grabowsky’s respect for the law. While his state case was still pending, he became aware of
17 violent, egregious animal abuse. Through counsel, he alerted the state prosecutor of the conduct.
18 That prosecutor referred the case to the U.S. Attorney’s Office. Because of that referral and
19 subsequent proffer by Mr. Grabowsky, the government examined Mr. Grabowsky’s cell phone.
20 That forensic examination led to this prosecution (though to be clear no CSAM was discovered
21 on that phone, only the phone seized at the time of his original arrest). Ironically, Mr.
22 Grabowsky’s desire to do the right thing and stop the violent abuse of animals, led to the further
23 prosecution of him for past conduct. Despite this, he would still respond in the same manner. He
24 is committed to closing the past chapter in his life and moving forward in a law-abiding manner.
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1 The sentence proposed by the defense would also provide appropriate, adequate
2 deterrence and reflect Mr. Grabowsky's participation and in and compliance with the criminal
3 justice system. Mr. Grabowsky pleaded guilty and served a sentence in state court. He satisfied
4 the terms of the sentence imposed by Judge McCullough. He served a sentence on home
5 confinement. He obtained a sexual deviancy evaluation and complied with the treatment
6 recommendation. He paid his legal financial obligations to the court. There were no allegations
7 of non-compliance with terms of the sentence. As a result of the state criminal charge and
8 subsequent conviction, he lost two well-paying jobs in the aviation industry. Every time Mr.
9 Grabowsky is fired or loses out on a job opportunity as a result of his criminal conduct, he is
10 painfully reminded of the deterrent effect of his choices. Further, this conviction will add the
11 requirement that he register as a sex offender providing additional accountability.

12 The imposition of a prison sentence, as recommended by the government, would be far in
13 excess of what is necessary to satisfy the sentencing goals set forth in the statute. The timing of
14 this action, well after the state criminal prosecution, affords this Court the opportunity to make a
15 decision that is based on Mr. Grabowsky's demonstrated actions and not the mere promises of a
16 defendant made prior to sentencing. He already has been held accountable. He has maintained
17 law abiding behavior. He served a sentence. He successfully completed treatment. He has felt
18 the consequences of his actions – consequences imposed by a court and the collateral
19 consequences (employment, economic, social) that naturally stem from a conviction. He
20 understands the severity and gravity of his past behavior. An additional term in prison will not
21 provide any additional clarity or deterrence for Mr. Grabowsky or society at large.
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