

IN THE CIRCUIT COURT OF HARDIN COUNTY
AT SAVANNAH, TENNESSEE

ZACHARY RYE ADAMS
PETITIONER,

vs.

STATE OF TENNESSEE
RESPONDENT.

No. 17-CR-10-PC

FILED 5 DAY OF April, 2024 AT _____ AM PM
BY Tammie Wolfe Deputy TAMMIE WOLFE, CLERK CLERK

MOTION TO STRIKE EXHIBITS
OR IN THE ALTERNATIVE, PLACE EXHIBITS UNDER SEAL

COMES NOW, the State of Tennessee, by and through the undersigned counsel and moves this Honorable Court to strike **Exhibit 1 and Exhibit 2** of Petitioner Zachary Rye Adams' Writ of Error Coram Nobis and Amended Petition for Post-Conviction Relief. As grounds therefore, the State of Tennessee avers:

1. On January 22, 2024, Petitioner Zachary Rye Adams ("Petitioner Adams") filed a Petition for Writ of Error Coram Nobis and Amended Petitioner for Post-Conviction Relief with this Court.
2. The Petition for Writ of Error Coram Nobis and Amended Petitioner for Post-Conviction reference and rely upon three (3) exhibits contained on a USB flash drive and filed with the Hardin County Criminal Court Clerk's Office. The contents of these exhibits are as follows:
 - a. Exhibit 1 is an unsworn video recording of a statement from Lisa Sanders;
 - b. Exhibit 2 is an unsworn video recording of a statement from Jason Autry;

- c. Exhibit 3 is the affidavit of Katie Spirko, a psychologist acting in the role of investigator, retained by Petitioner's counsel at the time the two requests for post-conviction relief were filed. Upon recent representations made by Petitioner Adams' counsel of record, as of February 3, 2024, Katie Spirko is no longer employed by Petitioner Adams' counsel.
3. Exhibit 1 and 2, the unsworn video recordings, are not in the form of a notarized affidavit. Exhibit 3, the affidavit, contains inadmissible hearsay, and none of the three should be considered by this Court unless properly authenticated and admitted pursuant to the Tennessee Rules of Evidence.
4. On January 31, 2024, Counsel for the State and for Petitioner Adams filed a Joint Motion for Temporary Order Placing the Exhibits Attached to the Writ of Coram Nobis and Amended Post Conviction Relief Under Seal.
5. On the same day, January 31, 2024, this Court granted the Motion and entered an Agreed Temporary Order Placing Exhibits Attached To Writ of Error Corum Nobis and Amended Post Conviction Relief Under Seal.

ARGUMENT FOR STRIKING EXHIBITS

6. A witness statement, through whom allegedly newly discovered evidence will be introduced through a writ of coram nobis proceeding, must be in the form of an affidavit, which should be attached to the petition. *See Harris v. State*, 301 S.W.3d 141, 151 (Tenn. 2010) (concurring opinion).
7. Tenn. Code Ann. § 40-26-105(b), requires that the basis for a petition for writ of error coram nobis be subsequently or newly discovered evidence. It is an extraordinary procedural remedy . . . [that] fills only a slight gap into which few cases

fall. *State v. Mixon*, 983 S.W.2d 661, 672 (Tenn. 1999). It is "known more for its denial than its approval." *State v. Vasques*, 221 S.W.3d 514, 524 (Tenn. 2007) (quoting *Mixon*, 983 S.W.2d at 666).

8. Post-conviction petitioners that file a petition for writ of error coram nobis seeking a new trial based on newly discovered evidence must satisfy rather exacting pleading standards. In keeping with the extraordinary nature of the writ, a petition must be pled with specificity. *Harris v. State*, 301 S.W.3d at 150.
9. Moreover, a petition seeking a new trial based on newly discovered evidence must also be supported by affidavits. Specifically, these affidavits:

...must be relevant, material, and germane and must be based on personal knowledge. *State v. Hart*, 911 S.W.2d 371, 375 (Tenn. Crim. App. 1995). They must set forth with particularity facts demonstrating (1) that the prisoner and his or her trial counsel exercised reasonable diligence and were not negligent in the search for evidence in preparation for the original trial and (2) that the prisoner and his or her trial counsel had no pretrial knowledge of the allegedly newly discovered evidence. *Jones v. State*, 2 Tenn. Crim. App. 160, 165, 452 S.W.2d 365, 367 (1970); Raybin, § 33:32, at 494-97.

Harris v. State, 301 S.W.3d at 152.

10. Much like the error coram nobis petition itself, the affidavits supporting the petition "must set forth with particularity" facts showing that the petitioner and his trial counsel "exercised reasonable diligence and were not negligent" in searching for evidence prior to trial, and that the petitioner and his trial counsel "had no pretrial knowledge of the allegedly newly discovered evidence." *Nunley v. State*, 552 S.W.3d 800, 823 (Tenn. 2018) (citing *Jones v. State*, 2 Tenn. Crim. App. 160, 452 S.W.2d 365, 367 (Tenn. Crim. App. 1970)).
11. It should be noted, and same will be addressed in State's Motion to Dismiss the Writ of Error Corum Nobis without Evidentiary Hearing when it is filed, Exhibit 2, the unsworn

video recorded statement of Jason Autrey, is not newly discovered evidence. Mr. Autrey's credibility was at issue the moment he swore to tell the truth and took the witness stand during Petitioner Adams' trial. In fact, there was significant direct and cross examination of Mr. Autrey, singularly devoted to his credibility, during Petitioner Adams' trial. The fact that he recently recanted, calling into question his trial testimony, goes directly to his credibility at trial which was already thoroughly weighed and considered.

12. For a petitioner to be entitled to relief through a petition for error coram nobis, it must be established, and the trial court must find, that the subsequently or newly discovered evidence "may have resulted in a different judgment had it been presented at the trial." Tenn. Code Ann. § 40-26-105. This rule presupposes that the evidence (a) would be admissible pursuant to the applicable rules of evidence, and (b) is material to the issues or grounds raised in the petition. *See Nunley*, 552 S.W.3d at 816.
13. The statement provided by Lisa Carroll in Exhibit 1 does not meet the *Nunley* standard for witness statements attached to a petition for a writ of error coram nobis. According to this standard, to warrant an evidentiary hearing, the witness introducing newly discovered evidence must submit an affidavit explaining the significance of the evidence and confirming that it was not disclosed to Petitioner Adams or his attorney prior to trial. The unsworn unnotarized statement provided by Lisa Carroll in Exhibit 1 falls short of this standard. It lacks the necessary formality of a notarized affidavit as required by *Nunley*, is inadmissible hearsay, and should not be considered by this Court unless properly authenticated and admitted pursuant to the Tennessee Rules of Evidence. As

such, Exhibit 1 to Petitioner Adams Writ of Error Coram Nobis and Amended Petition for Post-Conviction Relief should be stricken by this Court.

14. Likewise, the unsworn unnotarized statement provided by Jason Autrey in Exhibit 2, lacks the necessary formality of a notarized affidavit as required by *Nunley* for witness statements attached to a petition for a writ of error corum nobis. To warrant an evidentiary hearing, the witness introducing newly discovered evidence must submit an affidavit explaining the significance of the evidence and confirming that it was not disclosed to Petitioner Adams or his attorney prior to trial. The unsworn unnotarized statement provided by Jason Autry in Exhibit 2 lacks the necessary formality of a notarized affidavit as required by *Nunley*, is inadmissible hearsay, and should not be considered by this Court unless properly authenticated and admitted pursuant to the Tennessee Rules of Evidence.¹ As such, Exhibit 2 to Petitioner Adams Writ of Error

¹ Exhibit 2 is a video interview of Jason Wayne Autry, created on December 22, 2023, at FCI Memphis, where Jason Autry is incarcerated, awaiting sentencing on federal firearms charges pending in the United States District Court Western District of Tennessee. During this video interview, Jason Autry makes unsworn statements recanting his trial testimony in the Holly Bobo case. It is important to note that on October 27, 2023, 61 days prior to this video interview, Jason Autry, through counsel of record, filed "Defendant's Supplemental Sentencing Memorandum" (see attached Exhibit "A") that made the following factual representations to United States District Judge S. Thomas Anderson concerning his federal sentence: "III. Response to Upward Departure or Upward Variance Based Upon Criminal History – In arguing for an upward departure or variance, the government places great emphasis on Mr. Autry's guilty plea regarding his involvement with the Holly Bobo case. Mr. Autry is solemnly sorry and cannot express his regret deeply enough for his involvement in that case, and he fully accepts responsibly for his involvement in that case. While Mr. Autry cannot change the past, he wishes to assure the Court he will never again be involved in any similar conduct in the future. While not intending to diminish in any manner whatsoever the seriousness of that offense, it is nevertheless respectfully requested what this Court consider that Mr. Autry was sentenced for and has since fully served his custodial sentence in that manner. In so doing, Mr. Autry paid his dept to society for that crime, as determined by the Decatur County, Tennessee Circuit Court. While the government correctly states that he was originally charged with especially aggravated kidnapping and first-degree murder in that case, he pled guilty to facilitation of especially aggravated kidnapping and solicitation of first-degree murder. Mr. Autry testified as a witness for the State in that case and detailed his involvement before the Judge and jury. In approving Mr. Autry sentence in that case, the Judge determined that the sentence imposed was appropriate given Mr. Autry's involvement in the crime. Mr. Autry's testimony was clearly instrumental for the State in obtaining a conviction against the individuals who were found to have actually kidnapped, raped and murdered Ms. Bobo. In this case, that offense has been taken into account in the calculation of his Guideline range and Mr. Autry should not be given additional punishment for that offense." Jason Autry concludes his Supplemental Sentencing Memorandum by reminding Judge Anderson that "The Court must weigh many factors in arriving at a fair and equitable sentence. While Mr. Autry admittedly has a very serious criminal history, it is a fact that, in connection with the most serious prior offense, **his full cooperation with authorities resulted in bringing others to justice for their involvement in the offense**

Coram Nobis and Amended Petition for Post-Conviction Relief should be stricken by this Court.

15. Although investigator Katie Spirko's statements contained in Exhibit 3 to Petitioner Adams' Writ of Coram Nobis are properly attached as a notarized affidavit, the State of Tennessee reserves all applicable defenses concerning the contents of same affidavit – specifically, the numerous statements included that lack personal knowledge of the declarant.

ARGUMENT FOR PLACING EXHIBITS UNDER SEAL PURSUANT TO T.R.CR.P 16(d)(1)

16. In the alternative, the State of Tennessee requests that Exhibits 1 and 2 attached to Petitioner Adams' Petition for Writ of Error Coram Nobis and Amended Petition Post-Conviction Relief be placed under seal until pending further orders of this Court.
17. Tennessee and federal law generally require the public to have access to public records and documents, including court filings. *Ballard v. Herzke*, 924 S.W.2d 652, 661 (Tenn. 1996). In Tennessee, there is a “‘strong presumption in favor of openness’ regarding court records.” *See In re NHC-Nashville Fire Litig.*, 293 S.W.3d 547, 561 (Tenn. Ct. App. 2008).
18. To seal court records, the Court must find a “compelling reason” and consider, among other factors, “the competing interests of the defendant’s right to a fair trial, the privacy rights of participants or third parties, trade secrets, and national security.” *See Rudd Equip. Co., Inc. v. John Deere Constr. & Forestry Co.*, 834 F.3d 589, 593 (6th Cir. 2016).

(emphasize added).” Moreover, on August 10, 2023, Jason Autry, through counsel of record, filed Defendant’s Objection to the Pre-Sentence Investigative Report (see Exhibit “B”), objecting to “some of the factual statements contained in ¶55 of the PSR regarding his convictions in Hardin County, Tennessee Circuit Court docket #2017-CR-10. Defendant admits that he pled guilty and was sentenced as indicated and that this offense give him three additional criminal history points. **Defendant objects to the extent the factual statements in this paragraph could be interpreted to be inconsistent with his trial testimony in that matter** (emphasize added).” Jason Autry’s federal sentencing hearing is set to be heard on June 25, 2024, at 1:30 p.m., and the representations made by Jason Autry concerning his testimony in the Holly Bobo trial in Exhibits A and B speak for themselves.

19. However, per this Court's own Preliminary Order (colorable claim), entered on August 18th, 2023, the State of Tennessee was ordered to "provide discovery to the petitioner in accordance with T.R.Cr.P 16 to the extent relevant to the grounds in the petition. The District Attorney General shall make all other disclosures required by the state and federal constitutions."
20. Since the entry of this Preliminary Order, the State of Tennessee worked diligently to address the exchange of discoverable materials with Petitioner Adams' counsel of record. Multiple phone calls and emails were exchanged between the parties concerning Rule 16 discoverable materials, an invitation to Petitioner's counsel to make use of a private conference room in the District Attorney's Office, and the week selected for the file review. Notwithstanding the foregoing, and in spite of the State of Tennessee's offer to make available the entire case file in its possession, Petitioner Adams' counsel of record advised that he is currently satisfied with (1) the appellate technical record, (3) his ability to view the entire trial, on-line, and (3) Jennifer Thompson's case file, which should contain the voluminous discovery turned over to her during the discovery period prior to Petitioner Adams' trial and which Petitioner Adams' counsel, has in his possession.
21. The Tennessee Supreme Court held *Tennessean v. Metro. Gov't of Nashville & Davidson Cnty*² that "Rule 16, as state law controls the release of these records and provides for access to these records only to the parties to the criminal case—the State and the defendant. There is no provision in Rule 16 for release of discovery materials to the public." *See* 485 S.W.3d 857, 870-871 (Tenn. 2016). This also applies to post-conviction proceedings: "We hold that, based on Rule 16, the Petitioners have no right to the requested

² This case involved litigation filed by media groups over sealed records in the Vanderbilt Rape trial.

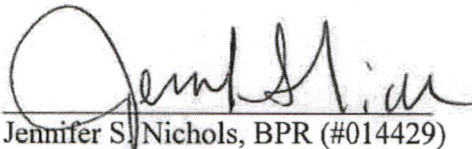
information during the pendency of the criminal cases and **any collateral challenges to any convictions** (emphasize added).” *Id.* at 874.

22. As previously stated in this motion, Exhibits 1 and 2 are unsworn witness statements of third parties. The State of Tennessee submits that Exhibits 1 and 2 fail to meet the strict procedural requirements outlined for witness affidavits in a Petition for Writ of Coram Nobis. Additionally, they do not align with the criteria for admissible evidence in a Petition for Post-Conviction Relief.
23. Notwithstanding the above, Exhibits 1 and 2 do constitute discoverable unsworn witness statements that are subject to T.R.Cr.P 16.
24. The State of Tennessee is particularly concerned with Petitioner Adams, or any party, in a criminal case having the unfettered ability to share discovery materials with the public, which very well may undermine the “smooth functioning of the discovery process.” *See United States v. Anderson*, 799 F.2d 1438, 1441 (11th Cir. 1986).
25. Furthermore, Petitioner Adams’ Petition for Writ of Coram Nobis and Amended Petition for Post-Conviction Relief both seek a new trial from this Court. An order granting a new trial, however remote, means that this Court has an interest in ensuring that all parties retain their right to a fair trial before an unbiased jury, which could be highly problematic should the public be allowed to access unfiltered, and ultimately inadmissible evidence, before a trial.
26. The State of Tennessee submits that this Court, under T.R.Cr.P 16(d)(1) - Regulating Discovery, and under *Tennessean v. Metro. Gov't of Nashville & Davidson Cnty.*, should issue a protective order sealing Exhibits 1 and 2 to ensure that discoverable materials can only be accessed by the State and Petitioner Adams.

WHEREFORE, premises considered, the State of Tennessee respectfully requests that this Court enter an Order:

1. Striking Exhibits 1 and 2 from Petitioner Adams' Writ of Coram Nobis and Amended Petition for Post-Conviction Relief;
2. Alternatively, sealing Exhibit 1 and 2 under T.R.Cr.P 16(d)(1) in accordance with the holding of *Tennessean v. Metro. Gov't of Nashville & Davidson Cnty.*
3. Any further general or specific relief in which the State of Tennessee may be entitled.

Respectfully submitted,



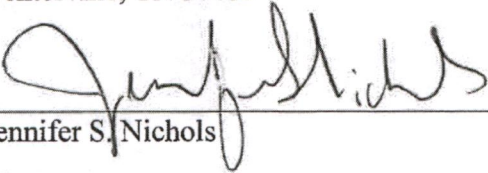
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**THE PARTIES RESPECTFULLY REQUEST THIS MOTION BE
SET TO BE HEARD ON WEDNESDAY APRIL 17TH, 2024, AT 10 A.M. IN
HARDIN COUNTY CIRCUIT COURT.**

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been emailed and mailed to Douglas Thompson Bates IV, attorney for Petitioner Adams, on this 5th day of April 2024.

Douglas Thompson Bates, IV
Bates & Bates Law Office
406 W. Public Sq., 2nd Floor, Bates Building
P.O. Box 1
Centerville, TN 37033



Jennifer S. Nichols

Exhibit A

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

UNITED STATES OF AMERICA

vs

Case No.: 1:20-CR-10063-STA

JASON WAYNE AUTRY

DEFENDANT'S SUPPLEMENTAL SENTENCING MEMORANDUM

COMES now the Defendant, Jason Wayne Autry, by and through counsel, Michael L. Weinman, and submits the following Supplemental Sentencing Memorandum:

**RESPONSE TO GOVERNMENT NOTICE OF INTENT TO SEEK AN UPWARD
DEPARTURE AND UPWARD VARIANCE¹**

I. Background

In this case, Mr. Autry has pled guilty to one count of Felon in Possession of a Firearm (Count Three), which occurred on December 2, 2020, and two counts of Felon in Possession of a Firearm and Ammunition (Counts One and Two), which occurred the following day. In summary, Mr. Autry was in possession of a pistol belonging to his ex-girlfriend, which he exchanged for a rifle the next day. The pistol had been lawfully purchased by Mr. Autry's ex-girlfriend, and at the time of his arrest, Mr. Autry was involved in a new relationship with another woman. (PSR ¶11). A deputy with the Benton County Sheriff's Office initially encountered Mr. Autry alone in a field during the early morning hours, dressed in his pajamas. Concerned for his safety, the deputy made

¹ This filing was prepared in consultation with Ann Searles, a retired United States Probation Officer, employed for over 27 years in that capacity, and who is currently self-employed as a federal sentencing consultant.

contact with Mr. Autry. The deputy patted him down and allowed him to leave. A rifle was found after Mr. Autry left the area after that initial contact with officers. (PSR ¶11).

II. Factors that warrant a sentence at the low end of the guideline range pursuant to 18 U.S.C. 3553(a)(1)

There are various mitigating factors to be considered in determining the appropriate sentence under 18 U.S.C. 3553(a) regarding the history and characteristics of the defendant and the nature and circumstances of the offense. These factors, when considered alone or in combination, justify a sentence of not greater of 180 months, the statutory minimum and low end of the undisputed Guideline range, which is sufficient to meet the various goals of sentencing under the provisions of 18 U.S.C. 3553(a)(2).

Nature and Circumstances of the Offense

Dressed in pajamas and alone in the middle of a field during the early morning hours, it is clear Mr. Autry did not present an imminent danger to any person at the time of his arrest. Mr. Autry made no effort to take possession of or use the rifle during his encounter with the arresting officers. (PSR ¶12). Shortly after locating the rifle and interrogating him about it, Mr. Autry admitted the rifle was his and from whom he had obtained it. Mr. Autry explained that he was using the rifle to hunt deer hunting, a lawful sporting activity for some, but not for Mr. Autry, given his criminal history (PSR ¶12.) Mr. Autry planned to use the deer as a source of food. By providing this information, Mr. Autry wishes to explain, but not excuse his conduct.

If not for Mr. Autry's prior criminal record, the Base Offense Level could have been determined to be far less (6 instead of 24) because the rifle was possessed for a sporting purpose (deer hunting), a legitimate activity recognized by the United States Sentencing Commission as a mitigating circumstance warranting a reduced Base Offense Level under USSG 2K2.1(b)(2). Mr. Autry does not dispute and agrees the correct Base Offense Level was applied. He only wishes to

emphasize he possessed the firearm at the time of his arrest for deer hunting and not for any nefarious purpose.

History and Characteristics of the Defendant Personal and Family History

According to the PSR, Mr. Autry was abused as a child by various adult family members. (PSR ¶71) Child abuse takes many forms and the long-term detrimental consequences to the child are many and far reaching even after adulthood is reached and the abuse ends. According to the Mayo Clinic, any intentional harm or mistreatment to a child under 18 years old is considered child abuse:

Child abuse takes many forms, which often occur at the same time. *Physical child abuse* (emphasis added) occurs when a child is purposely physically injured or put at risk of harm by another person. . . *Emotional child abuse* means injuring a child's self-esteem or emotional well-being. It includes verbal and emotional assault — such as continually belittling or berating a child — as well as isolating, ignoring or rejecting a child. . .

Complications. . . child abuse may result in physical, behavioral, emotional or mental health issues - even years later. . . some examples. . . Substance abuse. . . Illegal or violent behavior. . . Suicide attempts or self-injury. . . Emotional issues. . . Mental health disorders. . . Depression, Anxiety disorders. (Mayo Clinic, *Child Abuse*, <https://www.mayoclinic.org/diseases-conditions/child-abuse/symptoms-causes/syc-20370864?p=1>)

The World Health Organization has similarly recognized that experiencing violence in childhood impacts lifelong health and well-being and can result in:

. . . negative coping and health risk behaviors. Children exposed to violence and other adversities are substantially more likely to smoke, misuse alcohol and drugs. . . They also have higher rates of anxiety, depression, other mental health problems and suicide. . . (World Health Organization, *Violence Against Children*, <https://www.who.int/news-room/fact-sheets/detail/violence-against-children>):

Mr. Autry's father repeatedly physically abused him. As an example, Mr. Autry recalled being beaten by his father and struck with a belt simply over a report card. Mr. Autry described how his father "whooped the hell out of me." (PSR ¶71). Mr. Autry's Father was also an abusive

alcoholic (PSR ¶71). The risk of parental alcoholism on depression is significant among individuals of a wide age range. Centers for Disease Control and Prevention, *Time-Varying Effects of Parental Alcoholism on Depression*, https://www.cdc.gov/pcd/issues/2017/pdf/17_0100.pdf, viewed September 9, 2023. Mr. Autry was also sexually molested and abused as a child by an adult Aunt. (PSR ¶71) Currently, Mr. Autry enjoys the support of his Mother, a retired correctional officer, and with whom he plans to reside his release from custody. Mr. Autry is the father of two adult children, both of whom are employed and productive members of society.

Mental Health

Mr. Autry has a serious history of mental health illness, including a diagnosis of Bipolar II, Depressed, with Anxious Distress diagnosis (PSR ¶89). Mr. Autry was prescribed a medication for Schizoaffective Disorder at the time of a recent evaluation in connection with his competency in this case. The evaluator noted the defendant could also meet the criteria for “Post-Traumatic Stress Disorder, Attention-Deficit Hyperactivity Disorder.” (PSR ¶90). In view of the abuse he experienced as a child, Mr. Autry’s current mental health status is especially concerning because he told the probation officer that “he plans to commit suicide by overdosing on fentanyl should he receive a sentence of 15 years to life in prison for the instant offense.” (PSR ¶ 92). Records from the Bureau of Prisons corroborate Mr. Autry’s thoughts of suicide have alarmingly progressed to actual prior suicide attempts by “cutting his wrist, hanging himself, and overdosing on whiskey and methamphetamine.” (*Id.*).

Substance Abuse Disorder

Mr. Autry has also been diagnosed with Substance Abuse Disorders, including Stimulant Use Disorder (Severe), Opioid Use Disorder (Severe), Cannabis Use Disorder (Severe), and Alcohol Use Disorder (Severe) (PSR ¶89). Individuals with a mental illness such as Mr. Autry are

more likely to experience a substance use disorder than those not affected by a mental illness. Substance Abuse and Mental Health Services Administration, *Co-Occurring and Other Health Conditions*, viewed September 21, 2023 <https://www.samhsa.gov/medications-substance-use-disorders/medications-counseling-related-conditions/co-occurring-disorders>. According to the 2020 National Survey on Drug Use and Health (NSDUH):

. . . 40.3 million Americans had a substance use disorder (SUD) in the past year. Substance use disorders continue to be an important health issue in our country. Substance Use Disorders (SUDs) are treatable, chronic diseases characterized by a problematic pattern of use of a substance or substances leading to impairments in health, social function, and control over substance use. It is a cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues using the substance despite harmful consequences. . . SUDs can range in severity from mild to severe.

There is no question that much of Mr. Autry's criminal history is in large part attributable to his ongoing struggles with substance abuse, which began at the very young age of 15. Some of Mr. Autry's multiple failures under supervision can be directly tied to his unrelenting disease of substance use disorder and inability to remain drug free. Several of Mr. Autry's prior offenses are what could be characterized as offenses that were committed by an addict and motivated by an impulse to feed his addiction (PSR ¶¶ 34, 36, 40, 41, 45, 46, 50, 52, 54).

While Mr. Autry falls into the category of having what is commonly referred to as a dual diagnosis, involving both mental health and substance abuse issues, he has reached a critical crossroads in his life by acknowledging he has a substance abuse disorder and as expressed in his desire to fully engage in substance abuse treatment. Denial that one has a problem is a common symptom of a substance abuse disorder, and Mr. Autry has overcome this common barrier, which greatly increases his ability to lead a life without drug dependence and the associated criminal involvement.

Physical Health Conditions

In addition to his mental and substance abuse conditions, Mr. Autry has a history of serious health conditions, including multiple head traumas, Hepatitis C, high blood pressure, and a vitreous hemorrhage in his left eye (PSR ¶¶76, 77, 79, 81). In addition, Mr. Autry “is currently in heart failure . . . (and) Records from SCDC confirm this condition . . .” (PSR ¶78). According to the Centers for Disease Control and Prevention, “Heart failure happens when the heart cannot pump enough blood and oxygen to support other organs in your body. . . In 2018, heart failure was mentioned on 379,800 death certificates (13.4%). Centers for Disease Control and Prevention, *Heart Failure*, viewed September 7, 2023.

III. Response to Upward Departure or Upward Variance Based Upon Criminal History

In arguing for an upward departure or variance, the government places great emphasis on Mr. Autry’s guilty plea regarding his involvement in the Holly Bobo case. Mr. Autry is solemnly sorry and cannot express his regret deeply enough for his involvement in that case, and he fully accepts responsibility for his involvement in that case. While Mr. Autry cannot change the past, he wishes to assure the Court he will never again be involved in any similar conduct in the future. While not intending to diminish in any manner whatsoever the seriousness of that offense, it is nevertheless respectfully requested what this Court consider that Mr. Autry was sentenced for and has since fully served his custodial sentence in that matter. In so doing, Mr. Autry paid his debt to society for that crime, as determined by the Decatur County, Tennessee Circuit Court.

While the government correctly states that he was originally charged with especially aggravated kidnapping and first-degree murder in that case, he pled guilty to facilitation of especially aggravated kidnapping and solicitation of first-degree murder. Mr. Autry testified as a

witness for the State in that case and detailed his involvement before the Judge and jury. In approving Mr. Autry sentence in that case, the Judge determined that the sentence imposed was appropriate given Mr. Autry's involvement in the crime. Mr. Autry's testimony was clearly instrumental for the State in obtaining a conviction against the individuals who were found to have actually kidnapped, raped and murdered Ms. Bobo. In this case, that offense has been taken into account in the calculation of his Guideline range and Mr. Autry should not be given additional punishment for that offense.

IV. United States Sentencing Commission Research

The United States Sentencing Commission has undertaken various empirical studies in an effort to collect, analyze, and publicly disseminate a broad array of information on federal crime and sentencing practices. The Interactive Data Analyzer developed by the U.S. Sentencing Commission utilizes a comprehensive and impressive collection of research and data reports on various sentencing issues and can be accessed and tailored to specific case types, criminal history categories, geographical areas, ages, genders, races, citizenships, and educational backgrounds.

The information from the Interactive Data Analyzer, specifically with respect to firearm crimes and Career Offenders, reveals there are certain trends nationwide with respect to upward departures and upward variances. A summary of these findings from the years 2015 to 2022 is found in the United States Sentencing Commission, *Research, Interactive Data Analyzer, Sentences Imposed Relative to Guideline Range*², viewed on September 17, 2023. This persuasive data indicates that nationwide, upward departures variances for firearms crimes are extremely rare. In 2015, the percentages of case where an upward departure or variance was given in a firearms case was 0 and 1%, respectively; 2016 – 0 and 0%; 2017 – 0 and 1%; 2018 – 0 and 0%; 2019 - .7

² <https://ida.ussc.gov/analytics/saw.dll?Dashboard>

and 0%; 2020 – 0 and 1.9%; 2021 – 0 and 1%; and 2022 – 0 and 0%. The highest percentage of 0.7% cases in one year that received an upward departure translates to a single case nationwide that year. The highest percentage of 1.9% cases involving an upward variance in one year involved a total of two cases nationwide.

Recidivism Rates of Older Defendants

The United States Sentencing Commission has undertaken empirical studies and concluded a federal offender's age at time of release into the community is closely associated with differences in recidivism rates. Offenders released prior to age 21 had the highest rearrest rate, 67.6 percent, while offenders over sixty years old at the time of release had a recidivism rate of 16.0 percent.³

Mr. Autry will be 63 years of age upon his release from custody after serving a 15-year sentence, which makes recidivism on his part highly unlikely.

V. Sentencing Request

Mr. Autry readily admits to being a Felon in Possession of a Firearm on two consecutive days as the result of his exchange of a pistol, originally lawfully owned by his ex-girlfriend, for a rifle, which he used to go deer hunting. Mr. Autry fully cooperated with authorities and, as a result, both firearms were recovered. Mr. Autry admitted his guilt to the crime immediately upon his arrest and entered a guilty plea relatively early in the prosecution. Mr. Autry asks the Court to consider the fact that he did not use the firearm to perpetuate violence, brandish, threaten, or use violence against another person in connection with this offense. In fact, Mr. had the firearm to hunt deer, which in most instances is considered a lawful sporting activity as recognized by the United

³ United States Sentencing Commission, Research, *Recidivism Among Federal Offenders, A Comprehensive Overview* (March 2016), viewed September 21, 2023
<https://www.ussc.gov/research/research-reports/recidivism-among-federal-offenders-comprehensive-overview>

States Sentencing Commission as a basis for a reduced offense level. Mr. Autry acknowledges this does not apply to him in view of his prior record, but nonetheless is a factor the Court can consider among many other mitigating circumstances.

The Court must weigh many factors in arriving at a fair and equitable sentence. While Mr. Autry admittedly has a very serious criminal history, it is a fact that, in connection with the most serious prior offense, his full cooperation with authorities resulted in bringing others to justice for their involvement in the offense. Mr. Autry was the victim of child abuse, horrific physical violence by his father when he was just a vulnerable and susceptible child. As a child he also witnessed his mother being repeatedly physically abused by his father. He was also a victim of sexual abuse by another family member. Perhaps not coincidentally or surprisingly, as a result of these traumatic experiences, Mr. Autry suffers from substance abuse disorder along with several other mental health conditions. These mitigating factors warrant a sentence of 180 months, as such a sentence will reflect the seriousness of the offense in accordance with 18 U.S.C. 3553(a)(2), and which will undoubtedly promote respect for the law, provide just punishment for the offense, afford adequate deterrence to criminal conduct, and to protect the public from further crimes of the defendant for a lengthy and extended period.

Respectfully submitted,

By:

s/ Michael L. Weinman
Michael L. Weinman (#015074)
Attorney for Defendant Jason Autry
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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing (Supplemental Memorandum) has been served upon:

United States Attorney's Office
William Joshua Morrow
109 South Highland, Suite 300
Jackson, Tennessee 38301
Email: Josh.Morrow@usdoj.gov

United States Attorney's Office
Beth Boswell
167 No. Main Street - Suite 800
Memphis, TN 38103
Email: Beth.Boswell@usdoj.gov

by electronic means via the Court's electronic filing system this 27th day of October, 2023.

s/ Michael L. Weinman
Michael L. Weinman

Exhibit B

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE**

UNITED STATES OF AMERICA

vs

Case No.: 1:20-CR-10063-STA

JASON WAYNE AUTRY

DEFENDANT'S OBJECTIONS TO THE PRE-SENTENCE INVESTIGATIVE REPORT

COMES now the Defendant, Jason Wayne Autry, by and through counsel, Michael L. Weinman, and submits Defendant's Objections to the Pre-Sentence Investigative Report (the "PSR") in this matter:

1. Defendant asserts that the statement in ¶ 20 of the PSR should be supplemented, as he has now submitted a statement to court that states "I admit that I am guilty of the conduct I pled guilty to. I understand that I broke the law by possessing the weapons and understand that I will be punished for my criminal conduct. I accept full responsibility for my criminal conduct."

2. Defendant objects ¶ 30 of the PSR which indicates that he is not entitled to a reduction for Acceptance of Responsibility because he "has not clearly demonstrated acceptance of responsibility for the offense". Defendant has submitted the above-referenced statement to the court. This statement meets the requirement of the USSG 3E1.1 for receiving this reduction.

3. The Plea Agreement entered in this case provides: "The parties agree that the United States will recommend that the defendant receive a full reduction for acceptance of responsibility under USSG §3E1.1, contingent upon conditions." Defendant asserts that he has met the conditions to receive the government's recommendation for the 3-level reduction in his offense level under USSG §3E1.1.

4. Counsel for the Defendant has consulted with AUSA Morrow who has indicated that upon receipt of the above-referenced statement from the Defendant, the government will recommend at sentencing that he receive the full 3 level reduction for Acceptance of Responsibility under USSG §3E1.1 per the Plea Agreement. Accordingly, Defendant submits that the court should grant him the full 3 level reduction in his offense level under USSG §3E1.1.

5. Defendant objects to the Total Offense Level of 33 set out in §31 of the PSR and asserts that the correct Total Offense Level should be 30 for the reason set out above.

6. Defendant objects to some of the factual statements contained in ¶55 of the PSR regarding his convictions in Hardin County, Tennessee Circuit Court docket #2017-CR-10. Defendant admits that he pled guilty and was sentenced as indicated and that this offense gives him three additional criminal history points. Defendant objects to the extent the factual statements in this paragraph could be interpreted to be inconsistent with his trial testimony in that matter.

7. Defendant objects to the calculation of his advisory guideline range as set out in ¶115 and asserts that, with a Total Offense Level of 30 at Criminal History Category VI, his advisory guidelines range is 180-210 months.

Respectfully submitted,

By:

s/ Michael L. Weinman
Michael L. Weinman (#015074)
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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing (Objection) has been served upon:

United States Attorneys Office
William Joshua Morrow
109 South Highland, Suite 300
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United States Attorneys Office
Beth Boswell
167 No. Main Street - Suite 800
Memphis, TN 38103
Email: Beth.Boswell@usdoj.gov

by electronic means via the Court's electronic filing system this 10th day of August, 2023.

s/ Michael L. Weinman
Michael L. Weinman