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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:23-cr-141
(LJV)

vs.

March 20, 2025

DARIN L. BUTTS, JR.,

Defendant.

TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

MICHAEL DiGIACOMO, UNITED STATES ATTORNEY
BY: LOUIS A. TESTANI, ESQ.
Assistant United States Attorney
Federal Centre
138 Delaware Avenue
Buffalo, New York 14202
For the Plaintiff

LAW OFFICES OF THOMAS J. EOANNOU
BY: THOMAS J. EOANNOU, ESQ.
484 Delaware Avenue
Buffalo, New York 14202
For the Defendant

PROBATION:

ASHLEY S. McNEAL, USPO

COURT DEPUTY CLERK: COLLEEN M. DEMMA

COURT REPORTER:

ANN MEISSNER SAWYER, FCRR, RPR, CRR
Robert H. Jackson Courthouse
2 Niagara Square
Buffalo, New York 14202
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08:19AM

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08:31AM 1 (Proceedings commenced at 8:31 a.m.)

08:31AM 2 **THE CLERK:** All rise. The United States District
08:31AM 3 Court for the Western District of New York is now in session,
08:31AM 4 the Honorable Lawrence J. Vilardo presiding.

08:31AM 5 **THE COURT:** Please be seated.

08:31AM 6 **THE CLERK:** 23-CR-141, United States of America
08:31AM 7 versus Darin Butts, Jr.

08:31AM 8 Assistant United States Attorney Louis Testani
08:31AM 9 appearing on behalf of the government.

08:31AM 10 Attorney Thomas Eoannou appearing with defendant.

08:31AM 11 Defendant is present.

08:31AM 12 Also present is U.S. Probation Officer Ashley McNeal.

08:31AM 13 This is the date set for sentencing.

08:31AM 14 **THE COURT:** Good morning, everyone.

08:31AM 15 **ALL PARTIES:** Good morning, Your Honor.

08:31AM 16 **THE COURT:** So before we begin, my law clerk
08:31AM 17 contacted you folks with respect to a couple conditions that
08:31AM 18 I'm contemplating imposing, mental-health condition, based on
08:32AM 19 the defendant's request for that and because I think it might
08:32AM 20 make it easier for him to get mental-health treatment, less
08:32AM 21 expensive perhaps.

08:32AM 22 **MR. EOANNOU:** Yeah.

08:32AM 23 **THE COURT:** And then also the orders of protection
08:32AM 24 which I'll explain later. Any objection to those,
08:32AM 25 Mr. Eoannou?

08:32AM 1 **MR. EOANNOU:** No, Your Honor.

08:32AM 2 **THE COURT:** You talked to your client about them?

08:32AM 3 **MR. EOANNOU:** I have.

08:32AM 4 **THE COURT:** Great. Terrific. Any problem from the

08:32AM 5 government's perspective?

08:32AM 6 **MR. TESTANI:** No, Judge.

08:32AM 7 **THE COURT:** Okay. Mr. Butts is before the Court for

08:32AM 8 sentencing on his previous plea of guilty to Count 9 of the

08:32AM 9 indictment charging that he possessed at least 50 grams of

08:32AM 10 methamphetamine with the intent to distribute it in violation

08:32AM 11 of 21, United States Code, Section 841(a)(1) and (b)(1)(A).

08:32AM 12 We're going to begin with some questions that I have

08:32AM 13 for the lawyers and for you, Mr. Butts, about the presentence

08:32AM 14 investigation report. I then am going to make sure that I've

08:32AM 15 receive and read all the sentencing-related submissions.

08:32AM 16 After that, I plan to make some findings of fact and calculate

08:32AM 17 the applicable sentencing guidelines range. And then before I

08:32AM 18 state the sentence, I'm going to give counsel for both sides

08:32AM 19 and you an opportunity to talk to me about anything anyone

08:32AM 20 thinks is relevant to sentencing.

08:33AM 21 Are there any questions before we begin, from the

08:33AM 22 government?

08:33AM 23 **MR. TESTANI:** No, Your Honor.

08:33AM 24 **THE COURT:** From the defense?

08:33AM 25 **MR. EOANNOU:** No, Your Honor.

08:33AM 1 **THE COURT:** Mr. Eoannou, have you had enough time to
08:33AM 2 read the presentence report that was prepared and filed on
08:33AM 3 December 17th, 2024, and to review it with your client?

08:33AM 4 **MR. EOANNOU:** I have.

08:33AM 5 **THE COURT:** Ms. McNeal, there were no revisions or
08:33AM 6 updates to the presentence report that was filed on
08:33AM 7 December 17th of last year; is that correct?

08:33AM 8 **USPO McNEAL:** That is correct, Your Honor.

08:33AM 9 **THE COURT:** Mr. Eoannou, did you explain the contents
08:33AM 10 of the report to your client?

08:33AM 11 **MR. EOANNOU:** I did.

08:33AM 12 **THE COURT:** Do you have any concerns about his
08:33AM 13 ability to understand it?

08:33AM 14 **MR. EOANNOU:** No.

08:33AM 15 **THE COURT:** Mr. Butts, did you receive a copy of the
08:33AM 16 presentence report that was filed on December 17th, 2024?

08:33AM 17 **THE DEFENDANT:** I did, Your Honor.

08:33AM 18 **THE COURT:** Did your attorney explain it to you?

08:33AM 19 **THE DEFENDANT:** Yes.

08:33AM 20 **THE COURT:** Do you understand it?

08:33AM 21 **THE DEFENDANT:** Yes.

08:33AM 22 **THE COURT:** Do you need more time to review it or to
08:33AM 23 talk to your lawyer about it?

08:33AM 24 **THE DEFENDANT:** No.

08:33AM 25 **THE COURT:** Do you have any questions about it?

08:33AM 1 **THE DEFENDANT:** No.

08:33AM 2 **THE COURT:** Mr. Eoannou, do you want to contest or

08:33AM 3 change anything in the report?

08:33AM 4 **MR. EOANNOU:** No.

08:33AM 5 **THE COURT:** And that includes both the facts and the

08:33AM 6 guidelines calculation, correct?

08:33AM 7 **MR. EOANNOU:** Correct.

08:33AM 8 **THE COURT:** Mr. Butts, do you want to contest or

08:34AM 9 change anything in the report?

08:34AM 10 **THE DEFENDANT:** No.

08:34AM 11 **THE COURT:** Mr. Testani, does the government want to

08:34AM 12 contest or change anything in the report?

08:34AM 13 **MR. TESTANI:** No.

08:34AM 14 **THE COURT:** And again, that includes both the facts

08:34AM 15 and the guideline calculation, correct?

08:34AM 16 **MR. TESTANI:** Yes, correct.

08:34AM 17 **THE COURT:** Mr. Eoannou, I've received and reviewed

08:34AM 18 the defendant's statement with respect to sentencing factors,

08:34AM 19 and his sentencing memorandum which attached his letter to the

08:34AM 20 Court, and letters written on his behalf by:

08:34AM 21 Kemyatta Austin, his aunt, who helped raise him;

08:34AM 22 Peyton Butts, Paige Egroff, and Tanavia Saintkitts,

08:34AM 23 his sisters;

08:34AM 24 Ben Drake, his basketball coach;

08:34AM 25 Millicent Leeper, his mother;

08:34AM 1 Darin Butts, Senior, his father;
08:34AM 2 Bishop Butts, his brother;
08:34AM 3 Raymond Rohena, a friend for more than 20 years; and
08:34AM 4 Nikita Benson, his girlfriend and the mother of his
08:34AM 5 youngest child; is that everything?

08:34AM 6 **MR. EOANNOU:** It is, Your Honor.

08:34AM 7 **THE COURT:** Is there anything else you'd like to
08:34AM 8 submit in writing?

08:34AM 9 **MR. EOANNOU:** No, Your Honor.

08:34AM 10 **THE COURT:** Mr. Testani, I've received the
08:34AM 11 government's statement with respect to sentencing factors; is
08:35AM 12 that everything?

08:35AM 13 **MR. TESTANI:** Yes, it is, Judge.

08:35AM 14 **THE COURT:** And is there anything else the government
08:35AM 15 would like to submit in writing?

08:35AM 16 **MR. TESTANI:** No.

08:35AM 17 **THE COURT:** Finally, consistent with Federal Rule of
08:35AM 18 Criminal Procedure 32(e)(3) as interpreted by the D.C. Circuit
08:35AM 19 in McIlwain, have both sides been given access to the sealed
08:35AM 20 sentencing recommendation that was filed on March 13th, 2025?

08:35AM 21 Mr. Eoannou?

08:35AM 22 **MR. EOANNOU:** Yes, Your Honor.

08:35AM 23 **THE COURT:** Mr. Testani?

08:35AM 24 **MR. TESTANI:** Yes, Judge.

08:35AM 25 **THE COURT:** I previously accepted the defendant's

08:35AM 1 plea of guilty to Count 9 of the indictment, possessing at
08:35AM 2 least 50 grams of methamphetamine with the intent to
08:35AM 3 distribute it. At that time, I deferred acceptance of the
08:35AM 4 plea agreement. I now accept the terms and conditions of the
08:35AM 5 plea agreement that was signed on August 21st, 2024, and the
08:35AM 6 judgment and sentence will be consistent with it.

08:35AM 7 I note that in the plea agreement, the government did
08:35AM 8 not agree to move to dismiss the open counts of the indictment
08:35AM 9 against the defendant. That was an oversight?

08:35AM 10 **MR. TESTANI:** That was oversight. I noticed that
08:35AM 11 about a minute ago.

08:35AM 12 **THE COURT:** Okay. So, the government is going to
08:35AM 13 move to dismiss those counts?

08:36AM 14 **MR. TESTANI:** Yes.

08:36AM 15 **THE COURT:** So I therefore find that the charge to
08:36AM 16 which the defendant pleaded guilty, that is Count 9,
08:36AM 17 adequately reflects the seriousness of the actual offense
08:36AM 18 behavior, and that accepting the agreement will not undermine
08:36AM 19 the statutory purposes of sentencing or the guidelines.

08:36AM 20 All but one of the dismissed counts involved
08:36AM 21 distribution of drugs, and all drugs and amounts have been
08:36AM 22 taken into account in calculating the guidelines range.

08:36AM 23 And while the other dismissed count involves
08:36AM 24 maintaining drug-involved premises, and that was not included
08:36AM 25 in the guideline calculation, the government maintained that

08:36AM 1 it should have been included, and the probation office
08:36AM 2 considered and rejected that position.

08:36AM 3 So for all those reasons, I find that the plea
08:36AM 4 agreement is consistent with the statutory sentencing purposes
08:36AM 5 and the sentencing guidelines.

08:36AM 6 The defendant and the government have both filed
08:36AM 7 statements with respect to sentencing factors, and both have
08:36AM 8 accepted the United States Probation and Pretrial Service
08:36AM 9 Office's presentence report.

08:36AM 10 Based on the submissions and based on their
08:36AM 11 representations today in court, there are no disputes about
08:36AM 12 the facts in the report.

08:36AM 13 I've reviewed that report, as well. Based on my
08:37AM 14 review, based on the written submissions, and based on the
08:37AM 15 positions taken on the record today, I adopt the facts in the
08:37AM 16 report as my findings of fact, and I incorporate them into the
08:37AM 17 record.

08:37AM 18 I will now place the presentence investigation report
08:37AM 19 that was filed on December 17th, 2024, in the record under
08:37AM 20 seal. If an appeal is filed, counsel will be given access to
08:37AM 21 the sealed report.

08:37AM 22 So let's now turn to the guidelines which I must
08:37AM 23 calculate and consider as an important part of my
08:37AM 24 determination of a sentence. And I apologize to everyone for
08:37AM 25 the very technical nature of what's about to follow, but the

08:37AM 1 guidelines and the reasons behind the guidelines make this a
08:37AM 2 necessary step in the process.

08:37AM 3 Based on the parties' submissions and based on their
08:37AM 4 representations today in court, there are also no disputes
08:37AM 5 regarding the recommendations in the presentence report as to
08:37AM 6 the applicable sections of the Sentencing Commission's
08:37AM 7 advisory guidelines, or the computation of those guidelines.

08:37AM 8 The presentence report calculates under the 2023
08:37AM 9 version of the guidelines manual that Sections 2D1.1(a)(5) and
08:38AM 10 2D1.1(c)(3) provide for a base offense level of 34, and that
08:38AM 11 there are no adjustments for specific offense characteristics.

08:38AM 12 The presentence report then recommends that the
08:38AM 13 offense level be decreased by two levels under 3E1.1(a),
08:38AM 14 because the defendant has accepted responsibility for his
08:38AM 15 conduct.

08:38AM 16 And in its statement with respect to sentencing
08:38AM 17 factors, the government has moved for an additional one-level
08:38AM 18 decrease of the offense level under 3E1.1(b). I grant that
08:38AM 19 motion by the government.

08:38AM 20 So based on this, the presentence report calculates
08:38AM 21 the total offense level to be 31. 34, minus 2, minus 1, is 31.

08:38AM 22 The report then calculates the defendant's criminal
08:38AM 23 history category as Category III based on a criminal history
08:38AM 24 score of VI.

08:38AM 25 Based on my factual findings, I agree with those

08:38AM 1 calculations of both the offense level and the criminal
08:39AM 2 history category.

08:39AM 3 So with a total offense level of 31, and a criminal
08:39AM 4 history category of III, the presentence report calculates the
08:39AM 5 applicable guidelines range as a sentence of imprisonment of
08:39AM 6 135 to 168 months, a fine range of \$30,000 to \$10 million, a
08:39AM 7 period of supervised release of five years, and a mandatory
08:39AM 8 special assessment of \$100 that I must impose, and I agree
08:39AM 9 with those calculations as well.

08:39AM 10 Mr. Butts, under the Supreme Court's decision in
08:39AM 11 Booker and the 2nd Circuit's decision in Crosby, I must
08:39AM 12 consider the guidelines but I'm not bound by them.

08:39AM 13 I also must consider the factors in 18, United States
08:39AM 14 Code, Section 3553(a). Those factors include the nature and
08:39AM 15 the circumstances of the on your offense; your history and
08:39AM 16 characteristics; the need for the sentence to reflect the
08:39AM 17 seriousness of the offense, to promote respect for the law,
08:39AM 18 and to provide a fair punishment to you; the need to deter
08:39AM 19 others from committing crimes and to protect the public from
08:39AM 20 your crimes; the need to provide you with educational or
08:39AM 21 vocational training in an attempt to rehabilitate you; the
08:39AM 22 types of sentences that are available; any policy statements
08:40AM 23 issued by the Sentencing Commission; and sentences given to
08:40AM 24 others who committed crimes similar to the one to which you
08:40AM 25 pleaded guilty.

08:40AM 1 I plan to take all those factors into account when I
08:40AM 2 impose sentence, but before I do that, I want to give the
08:40AM 3 lawyers and you a chance to talk to me.

08:40AM 4 So, Mr. Testani, is there anything the government
08:40AM 5 would like to say?

08:40AM 6 **MR. TESTANI:** Yes, Judge. I think there's probably
08:40AM 7 factors on both sides of this one which, I guess, is probably
08:40AM 8 the case always. But --

08:40AM 9 **THE COURT:** All the time.

08:40AM 10 **MR. TESTANI:** -- we're talking about significant
08:40AM 11 quantities of methamphetamine in this case, as well as the
08:40AM 12 trafficking of fentanyl. I don't think I need to kind of, you
08:40AM 13 know, preach to you about the dangers that that causes and the
08:41AM 14 effects that that causes.

08:41AM 15 **THE COURT:** You've heard me preach about it a number
08:41AM 16 of times.

08:41AM 17 **MR. TESTANI:** But especially in the defendant's
08:41AM 18 community, in the Jamestown community which, I've read the
08:41AM 19 letters, it seems that he cares about, I mean, these drugs are
08:41AM 20 wreaking havoc, ending lives, ruining lives. So this is
08:41AM 21 serious conduct that needs to be accounted for.

08:41AM 22 Another thing I would note is, you know, the
08:41AM 23 defendant was arrested in August of 2023. He was then
08:41AM 24 released and then, you know, only a few months, a handful of
08:41AM 25 months later, found in possession of another large quantity of

08:41AM 1 methamphetamine. I think that's also something that needs to
08:41AM 2 be accounted for in the sentence.

08:41AM 3 With that being said, I mean, there's significant
08:41AM 4 guidelines exposure here. I don't think, you know, we need to
08:41AM 5 go to the high end. I think something around the lower end is
08:41AM 6 probably sufficient and not greater than necessary, and that's
08:41AM 7 what we would recommend.

08:41AM 8 **THE COURT:** Yeah. And the crime is so serious that
08:41AM 9 there's a mandatory minimum of ten years, so the lowest
08:42AM 10 sentence that I can possibly impose is 120 months, right?

08:42AM 11 **MR. TESTANI:** Correct.

08:42AM 12 **THE COURT:** There are no identifiable victims,
08:42AM 13 correct?

08:42AM 14 **MR. TESTANI:** No victims.

08:42AM 15 **THE COURT:** Thank you. Mr. Eoannou?

08:42AM 16 **MR. EOANNOU:** Thank you, Your Honor.

08:42AM 17 Your Honor, I would like to point out that Darin's
08:42AM 18 family's here -- Nikita and his aunt is here, his sister's
08:42AM 19 here, his mother Millicent is here, his father's here -- in
08:42AM 20 support of Darin.

08:42AM 21 Your Honor, we're asking for a 120-month sentence,
08:42AM 22 ten years. We understand, and we understand the Court's
08:42AM 23 position, of the seriousness of the offense of selling
08:42AM 24 fentanyl selling methamphetamine. Thankfully here, there's no
08:42AM 25 overdose, there's no guns, there's no violence, there's no

08:42AM 1 drug-trafficking organization.

08:42AM 2 Also, with a high conversion rate of methamphetamine
08:42AM 3 and the guideline calculation, the minimum -- mandatory
08:42AM 4 minimum of 120 months seems reasonable in light of the way
08:42AM 5 they calculate it.

08:42AM 6 **THE COURT:** Let me stop you there, can you talk
08:42AM 7 about -- that is something that -- that does concern me. So
08:42AM 8 the guidelines are -- are driven by the conversion rate of the
08:43AM 9 pure methamphetamine, right? And there have been articles, a
08:43AM 10 number of articles written about the fact that that conversion
08:43AM 11 rate may be a little bit unfair.

08:43AM 12 What do you have to say about that?

08:43AM 13 **MR. TESTANI:** To be honest, Judge, I think that's
08:43AM 14 above my pay grade. I mean, if the sentencing -- the
08:43AM 15 sentencing guidelines are what the sentencing guidelines are.

08:43AM 16 I'd also note that the first seizure in August was
08:43AM 17 about 600 grams. That was tested for purity. The purity was
08:43AM 18 accounted for.

08:43AM 19 The second seizure of approximately 200 grams, the
08:43AM 20 purity was not tested, so it was calculated as a mixture and
08:43AM 21 substance.

08:43AM 22 **THE COURT:** Go ahead.

08:43AM 23 **MR. EOANNOU:** It's funny, Your Honor, the distinction
08:43AM 24 with the state system.

08:43AM 25 Yesterday I had a methamphetamine case from

08:43AM 1 Jamestown. It was approximately a little bit less than
08:43AM 2 100 grams. The sentence was six months.

08:43AM 3 **THE COURT:** Yeah, I know.

08:43AM 4 **MR. EOANNOU:** It's a huge disparity between state and
08:44AM 5 federal. But 120 months, Your Honor, is reasonable.

08:44AM 6 **THE COURT:** Tell me -- tell me -- let me tell you,
08:44AM 7 under lots of circumstances, especially given the letters and
08:44AM 8 the support that Mr. Butts has with his family, he's got a --
08:44AM 9 what looks like a terrific family and great support, I'd agree
08:44AM 10 with you, and there wouldn't be much question in my mind that
08:44AM 11 120 months is enough.

08:44AM 12 Let me tell you what gives me pause here, and it's
08:44AM 13 what Mr. Testani said about the fact that he was on release
08:44AM 14 and he's still dealing methamphetamine.

08:44AM 15 **MR. EOANNOU:** You know, Judge, it's -- it's the life
08:44AM 16 they know, and it's survival, and it's very sad. It's not the
08:44AM 17 first time I've seen it. It's not the first time I've seen it
08:44AM 18 in this courtroom. They're desperately trying to put food on
08:44AM 19 the table, keep a roof over their heads, and they go back to
08:44AM 20 the well one more time, and it's really not because they want
08:44AM 21 to, it's out of desperation. It's not because they're going
08:44AM 22 to the casino, it's not because he's buying a Mercedes, he's
08:44AM 23 paying for the six kids.

08:44AM 24 And that's his nature, and it's wrong, and we
08:45AM 25 acknowledge that.

08:45AM 1 But the flip side of it that even with both, I think
08:45AM 2 120 months is too much but it's a mandatory minimum. He's
08:45AM 3 never been to jail before, and he's got --

08:45AM 4 **THE COURT:** Six months. Six months is his longest
08:45AM 5 sentence before this.

08:45AM 6 **MR. EOANNOU:** Correct. I'm sorry. Six months, yes.

08:45AM 7 I've said many times, so I'm going to be brief, that
08:45AM 8 when you have people in the system, their parents in the
08:45AM 9 system, they have a significantly higher risk of being in the
08:45AM 10 criminal justice system.

08:45AM 11 And parental absence, as well, I know we put some
08:45AM 12 articles in our sentencing memorandum, increases the
08:45AM 13 likelihood of criminal activity.

08:45AM 14 Well Darin, Your Honor, is the perfect example of
08:45AM 15 that, and no one can speak to it better than I, because I have
08:45AM 16 represented probably half the people in that audience. I have
08:45AM 17 known his mother, who's the sweetest woman, Millicent, for
08:45AM 18 over 20 years. I know there's references in the presentence
08:45AM 19 report about her problems, and I was the lawyer on those.

08:46AM 20 And I can tell you, Judge, that this family was so
08:46AM 21 dysfunctional 20 years ago when I started representing them,
08:46AM 22 that it's just absolutely wonderful the way they've come
08:46AM 23 together and now are a cohesive family unit that drove up here
08:46AM 24 from Jamestown because they care about Darin.

08:46AM 25 And I can say this, too, Judge. It has nothing to do

08:46AM 1 with whatever sentence a judge gave them. It had to do with
08:46AM 2 them coming together as a family and wanting to be there.
08:46AM 3 It's getting their counseling, it's doing it on their own.
08:46AM 4 Warehousing none of -- any of these people I don't think
08:46AM 5 helped the situation, in fact I think it probably made it way
08:46AM 6 worse because of when Millicent was in jail.

08:46AM 7 His mother says it very well. She says he was born
08:46AM 8 into it, he was born into this stupid stuff, because I didn't
08:46AM 9 know any better. I was already sentenced to 3 to 7 when I was
08:47AM 10 pregnant with him. He always knew about it.

08:47AM 11 Pretty close.

08:47AM 12 Kemyatta, who's here today, his aunt, she came all
08:47AM 13 the way up. As you know, she helped bring him up when
08:47AM 14 Millicent was in jail. She sort of describes why he does it.

08:47AM 15 She states that Darin's mom didn't get out of jail
08:47AM 16 until he was 5, she maxed out. Kemyatta took care of Darin.
08:47AM 17 And Darin's mother and father, back then, didn't support him
08:47AM 18 at all.

08:47AM 19 And there in her letter, she asks the question, and I
08:47AM 20 think it's great: All this boy had were takers. When these
08:47AM 21 takers are your mom and dad, and he's paying the rent, what do
08:47AM 22 you do?

08:47AM 23 Which maybe answers your question from before why he
08:47AM 24 went back to selling.

08:47AM 25 What do you do when you're the only one to take care

08:47AM 1 of everyone? Your brother, your sister, your parents, your
08:47AM 2 kids?

08:47AM 3 She says even though he wasn't raised in a church,
08:47AM 4 because Kemyatta is very religious, she said he has his mom in
08:47AM 5 him, he has his daddy in him, and I can't negate what he saw
08:48AM 6 at home.

08:48AM 7 Given all those factors, living in Jamestown where
08:48AM 8 drugs are rampant, methamphetamine is rampant, and that's what
08:48AM 9 people do, unfortunately he had no guidance, no lifeline, and
08:48AM 10 that's what he did.

08:48AM 11 But when you think about Darin, she also tells a
08:48AM 12 wonderful story about he had one winter coat, and he was going
08:48AM 13 down the street and there was somebody who was freezing
08:48AM 14 without a coat. Darin came home without the winter coat that
08:48AM 15 she could barely afford to buy him. And she was very proud of
08:48AM 16 him that he had given a homeless person his coat.

08:48AM 17 And I do like it, and I understand it, that Darin
08:48AM 18 told Kemyatta that I can finally get a good night sleep now
08:48AM 19 that I'm arrested. He's tired of looking over his shoulder.
08:48AM 20 Tired from all that pressure.

08:48AM 21 He knows he has no one to blame but himself, but he
08:48AM 22 did it to take care of other people. He knows that's wrong,
08:48AM 23 but that's his rationale.

08:48AM 24 How does he get into it? He gets into it with his
08:48AM 25 half-brother Rashan. He looks up to him. Rashan's selling

08:48AM 1 marijuana. He starts -- ultimately he starts selling crack
08:49AM 2 cocaine.

08:49AM 3 The sad thing about it is, if Darin was born a little
08:49AM 4 different, he would not be standing here, he'd be coaching on
08:49AM 5 a basketball court. And that's the sadness, and that's why I
08:49AM 6 think 120 months is more than enough.

08:49AM 7 He's the father of six young children, the oldest is
08:49AM 8 11, three of them are eight, one is two months old here today,
08:49AM 9 and they need a father. He didn't have a father, and he's
08:49AM 10 here. And too many times in my life, and you've seen it more
08:49AM 11 than I, they don't have fathers, they don't have mothers, they
08:49AM 12 miss kindergarten, they miss graduation, they miss everything,
08:49AM 13 they miss all the sporting events. The kids end up in the
08:49AM 14 same place.

08:49AM 15 In Darin's case, it's a little different because his
08:49AM 16 significant other, Nikita Benson, is wonderful. She's been
08:49AM 17 by his side all the way. And there's some structure there at
08:50AM 18 the end of the day and some family unit.

08:50AM 19 Oddly enough, Judge, he kept his drug dealing from
08:50AM 20 her. He did it out of his car, and he pretended that he was
08:50AM 21 working, and he tried to keep his family from that.

08:50AM 22 I'm asking the Court for a 120-month sentence. I do
08:50AM 23 not understand the rationale, Judge, I never have, I never
08:50AM 24 will. What do you need 135 months for? What does 15 more
08:50AM 25 months do? Ten years is a hell of a long time. 15 more

08:50AM 1 months of rotting in a jail doesn't help this family, doesn't
08:50AM 2 help him, and doesn't help him pull it together at the end.
08:50AM 3 120 is more than enough time.

08:50AM 4 We can't ignore the fact that drug addiction played a
08:50AM 5 role here. He was a secret addict, but enormously addicted to
08:51AM 6 I think five Percocets a day, and Ecstasy, Judge, for a very
08:51AM 7 long time. And, again, he tried to keep that from his family.
08:51AM 8 But one of the reasons he sold drugs was because of his
08:51AM 9 terrible habit.

08:51AM 10 He does have a work ethic, too. As you see from the
08:51AM 11 presentence report, he's always tried to work, whether it to
08:51AM 12 be have a garbage truck, even temporary job one after another
08:51AM 13 in factories. So he can work. And I think if he had a good
08:51AM 14 job, he probably wouldn't be here either.

08:51AM 15 When -- he says when he's released, he wants to go
08:51AM 16 back to coaching. I believe it.

08:51AM 17 Yesterday when I was sentencing that young man in
08:51AM 18 state court, he said to me, how's Darin doing? I know you're
08:51AM 19 his lawyer. He was one heck of a basketball player. He's in
08:51AM 20 the Hall of Fame in Jamestown High School.

08:51AM 21 He was running five traveling teams, Judge, before he
08:51AM 22 was incarcerated, and the kids love him.

08:51AM 23 He's very embarrassed. He's not somebody from the
08:52AM 24 hood who doesn't give a darn what people think. He was
08:52AM 25 somebody in the community, he was very proud of that, very

08:52AM 1 proud of being a basketball coach. And he really, in my mind,
08:52AM 2 wants to get the respect of the community back, and his
08:52AM 3 family.

08:52AM 4 He's 31 years old. He's not like people we've had in
08:52AM 5 here before where you say, okay, I've had him, he's been
08:52AM 6 sentenced for drug cases for long period of time, for three
08:52AM 7 other times here. He's 35 years old. There's no fixing this
08:52AM 8 defendant.

08:52AM 9 That's not him. This is his first time, and ten
08:52AM 10 years is gonna be very significant.

08:52AM 11 He'll be close to 40 when he gets out. He'll have
08:52AM 12 years of supervised release. By then, Judge, I'm sure he's
08:52AM 13 aged out of crime, especially after doing ten years.

08:52AM 14 At the end of the day, Judge, you also have to look
08:52AM 15 at the fact that he was -- why he did it. I mean, he doesn't
08:53AM 16 have a fancy car. He doesn't have anything fancy. I've seen
08:53AM 17 his house, it's a very, very small house.

08:53AM 18 And we understand the risks, however, of selling
08:53AM 19 fentanyl, but we also think ten years is a heck of a long
08:53AM 20 time. And he accepts responsibility for this. And he, again,
08:53AM 21 he wants to put this life behind him.

08:53AM 22 Judge, I think ideally a sentence of less than ten
08:53AM 23 years would be the right sentence. I've been doing these
08:53AM 24 cases for 42 years. It -- I've never seen it work. I've
08:53AM 25 rarely seen it work.

08:53AM 1 The better alternative is you need some mental health
08:53AM 2 counseling, you need some drug counseling. You need to be
08:53AM 3 punished but not for a decade. And maybe instead of all that
08:53AM 4 money that we spend warehousing you at 30,000 or whatever it
08:53AM 5 is a year, get a job. Give him -- give him vocational
08:53AM 6 training so they get a job.

08:53AM 7 That combination is much, much better than saying,
08:54AM 8 you know what? A decade.

08:54AM 9 We don't do the time. But a decade is a long, long
08:54AM 10 time. It's a lot of Christmases that they're not there with
08:54AM 11 their kids.

08:54AM 12 So, I would say to the Court that in light of
08:54AM 13 everything, yes, it's serious.

08:54AM 14 And there's a lot of good in this young man. This
08:54AM 15 family is tremendous, in my mind, only because I've known them
08:54AM 16 for over 20 years. To come together like they have, because I
08:54AM 17 haven't seen that in the past.

08:54AM 18 120 years -- months is more than necessary. And I
08:54AM 19 personally don't think it is a fair sentence, but it is as low
08:54AM 20 as this Court can go, and I would ask the Court to consider
08:54AM 21 it.

08:54AM 22 **THE COURT:** Thank you.

08:54AM 23 **MR. EOANNOU:** Thank you.

08:54AM 24 **THE COURT:** Mr. Butts, anything you would like to
08:54AM 25 say?

08:54AM 1 **THE DEFENDANT:** I'm a little nervous, I wish I would
08:54AM 2 have spoke first, but yeah.

08:54AM 3 **THE COURT:** No, that's okay. And I know you're
08:54AM 4 nervous. Pretend it's just me and you.

08:54AM 5 **THE DEFENDANT:** Yep.

08:54AM 6 **THE COURT:** Pretend it's me and you in a room, take a
08:54AM 7 deep breath, and tell me what you want to say.

08:54AM 8 **THE DEFENDANT:** It took me ten times to write this
08:54AM 9 yesterday. I didn't know what I was gonna say, and I just had
08:55AM 10 to keep rewriting and rewriting and rewriting. But I came up
08:55AM 11 with it.

08:55AM 12 So I wrote: I have wrote this letter to express my
08:55AM 13 deepest apology for my actions and the harm that they have
08:55AM 14 caused. I fully acknowledge that what I did was wrong, and I
08:55AM 15 full -- and I take full responsibility for my involvement in
08:55AM 16 selling drugs.

08:55AM 17 I understand that my actions not only broke the law,
08:55AM 18 but also hurt the community, my family, and those I care
08:55AM 19 about. I am deeply sorry for betraying the trust of the ones
08:55AM 20 I love, and for putting my family through the emotional and
08:55AM 21 financial strain caused by my choices.

08:55AM 22 To my family: I want you to know that I regret the
08:55AM 23 pain that I have caused, and I promise that I am committed to
08:55AM 24 making changes in my life. I will do whatever it takes to
08:55AM 25 earn back your trust and make amends for my mistakes.

08:55AM 1 I would also like to extend my sincere gratitude to
08:55AM 2 my attorney, Mr. Eoannou. I recognize that my actions have
08:55AM 3 made his job difficult, and I deeply appreciate his guidance
08:56AM 4 and support throughout, that I had the best possible
08:56AM 5 representation, and for that I am truly grateful.

08:56AM 6 I want to is sure the Court and my family and my
08:56AM 7 lawyer that I have learned a valuable lesson from this
08:56AM 8 experience. I am dedicated to turning my life around and
08:56AM 9 contributing positively to society moving forward.

08:56AM 10 I am committed to seeking help and rehabilitation so
08:56AM 11 I never repeat the mistakes I've made.

08:56AM 12 I respectfully ask for your understanding and
08:56AM 13 leniency during sentencing. I am truly remorseful, and I will
08:56AM 14 do everything in my power to make amends for the harm that I
08:56AM 15 have caused.

08:56AM 16 Thank you for allowing me to speak. I sincerely
08:56AM 17 apologize for my actions and the consequences they may have
08:56AM 18 brought.

08:56AM 19 **THE COURT:** Thank you.

08:56AM 20 Ms. McNeal, am I correct that six months is the
08:56AM 21 longest time that he's done before?

08:56AM 22 **USPO McNEAL:** Yes, Your Honor.

08:56AM 23 **THE COURT:** Okay. Does either counsel know of any
08:56AM 24 reason why sentence should not now be imposed?

08:56AM 25 **MR. TESTANI:** No.

08:56AM 1 **MR. EOANNOU:** No, Your Honor.

08:56AM 2 **THE COURT:** Pursuant to the Sentencing Reform Act of
08:57AM 3 1984 and the 2023 version of the guidelines, it's the judgment
08:57AM 4 of the Court that the defendant, Darin L. Butts, Jr., is
08:57AM 5 hereby sentenced to 120 months of imprisonment. The cost of
08:57AM 6 incarceration fee is waived. Upon release, the defendant
08:57AM 7 shall be placed on supervised release for a term of five
08:57AM 8 years.

08:57AM 9 After his release, the following conditions shall
08:57AM 10 apply. Within 72 hours of release from custody of the Bureau
08:57AM 11 of Prisons, the defendant shall report in person to the
08:57AM 12 probation office in the district where he is released unless
08:57AM 13 his probation officer instructs him differently.

08:57AM 14 The defendant shall comply with the standard
08:57AM 15 conditions of supervised release adopted by the Court.

08:57AM 16 The defendant shall not commit any crimes under
08:57AM 17 federal, state, or local law.

08:57AM 18 The defendant shall not possess a firearm,
08:57AM 19 ammunition, or any other dangerous device.

08:57AM 20 The defendant shall not possess a controlled
08:57AM 21 substance except as prescribed by a physician.

08:57AM 22 The defendant shall cooperate in the collection of a
08:57AM 23 DNA sample as required by the Justice for All Act of 2004.

08:57AM 24 The defendant shall participate in a program for
08:58AM 25 substance abuse including substance abuse testing such as

08:58AM 1 urinalysis and other testing, and shall undergo a drug/alcohol
08:58AM 2 evaluation and treatment if substance abuse is indicated by
08:58AM 3 the testing.

08:58AM 4 The probation officer will supervise the details of
08:58AM 5 any testing and treatment, including the selection of a
08:58AM 6 treatment provider and schedule.

08:58AM 7 If inpatient treatment is recommended, however, it
08:58AM 8 must be approved by the Court unless the defendant consents.

08:58AM 9 The defendant is not to leave treatment until
08:58AM 10 completion or as ordered by the Court. While in treatment and
08:58AM 11 after discharge from treatment, the defendant is to abstain
08:58AM 12 from using alcohol.

08:58AM 13 The defendant is required to contribute to the cost
08:58AM 14 of services rendered.

08:58AM 15 The defendant shall notify the probation officer of
08:58AM 16 any opiate-based pain medication prescribed for him before the
08:58AM 17 prescription is filled by a pharmacist.

08:58AM 18 Because this offense occurred after September 13,
08:58AM 19 1994, drug testing is required by the 1994 Crime Control Act.

08:58AM 20 I'm also imposing these two conditions, and in
08:58AM 21 particular the parts of these conditions that are in addition
08:59AM 22 to testing, because of the defendant's use and abuse of
08:59AM 23 alcohol, Percocet, Ecstasy, and other substances, and I
08:59AM 24 believe that the condition serves -- the conditions serve the
08:59AM 25 statutory sentencing purposes of deterrence, rehabilitation,

08:59AM 1 and public protection.

08:59AM 2 Defendant shall participate in a mental-health
08:59AM 3 treatment program, including a mental-health evaluation and
08:59AM 4 any treatment recommended. The probation officer will
08:59AM 5 supervise the details of any testing and treatment, including
08:59AM 6 the selection of a provider and schedule.

08:59AM 7 If inpatient treatment is recommended, however, it
08:59AM 8 must be approved by the Court unless the defendant consents.

08:59AM 9 The defendant is not to leave treatment until completion or as
08:59AM 10 ordered by the Court.

08:59AM 11 While in treatment or taking psychotropic medication,
08:59AM 12 the defendant shall abstain from using alcohol.

08:59AM 13 The defendant is required to contribute to the cost
08:59AM 14 of services rendered.

08:59AM 15 I'm imposing this condition because even though
08:59AM 16 there's no history of mental health issues, the defendant
08:59AM 17 requested it. And there's also a letter from his girlfriend,
09:00AM 18 Nikita Benson, that talks about the stress that he's under,
09:00AM 19 and the mental health that she sees. And so I think that this
09:00AM 20 condition is an important condition to impose, and I think it
09:00AM 21 serves the statutory sentencing purpose of rehabilitation.

09:00AM 22 The defendant shall submit to a search of his person,
09:00AM 23 property, vehicle, place of residence, or any other property
09:00AM 24 under his control based on reasonable suspicion, and shall
09:00AM 25 permit confiscation of any evidence or contraband discovered.

09:00AM 1 I'm imposing this condition because the offense of
09:00AM 2 conviction involved drugs which are easily hidden from law
09:00AM 3 enforcement, and I believe that this condition serves the
09:00AM 4 statutory sentencing purposes of deterrence and public
09:00AM 5 protection.

09:00AM 6 The defendant shall comply with all orders of
09:00AM 7 protection, and the defendant shall notify the probation
09:00AM 8 officer of any orders of protection.

09:00AM 9 I'm imposing this condition because of the
09:00AM 10 defendant's history of domestic violence on at least one
09:00AM 11 occasion, and a prior order of protection that expired just a
09:00AM 12 couple years ago. And I believe that the condition,
09:01AM 13 therefore, serves -- the conditions therefore serve the
09:01AM 14 statutory sentencing purposes of public protection.

09:01AM 15 The defendant shall pay to the United States a
09:01AM 16 mandatory special assessment of \$100, that's due immediately,
09:01AM 17 payment to be made to the Clerk, United States District Court,
09:01AM 18 Attention Finance, United States Courthouse, 2 Niagara Square,
09:01AM 19 Buffalo, New York 14202.

09:01AM 20 If the special assessment is not paid when he's
09:01AM 21 incarcerated, payment shall begin under the Bureau of Prisons
09:01AM 22 Inmate Financial Responsibility Program.

09:01AM 23 I'm going to recommend that the defendant be placed
09:01AM 24 in the RDAP program. I think that he's a prime candidate for
09:01AM 25 it. That may allow him to knock some time off his sentence,

09:01AM 1 and I think it will also go a long way toward dealing with the
09:01AM 2 drug issues he has, the substance-abuse issues that he has, so
09:01AM 3 I'm going to recommend that.

09:01AM 4 I'm also going to recommend that he be housed in a
09:01AM 5 facility as close to Western New York as possible so that he
09:01AM 6 can maintain contact with his family members. He's got a lot
09:01AM 7 of people who support him in the community, both in his family
09:02AM 8 and folks who know him from the Jamestown community, and I
09:02AM 9 think it's in his best interest and in society's best interest
09:02AM 10 to maintain those relationships.

09:02AM 11 So in determining the sentence, I've reviewed the
09:02AM 12 circumstances of the case and the plea. I began my analysis
09:02AM 13 with the guidelines, as I must. I've considered the arguments
09:02AM 14 raised by both sides as to what the appropriate sentence
09:02AM 15 should be. And most important, I've considered the factors in
09:02AM 16 Title 18, United States Code, Section 3553(a), which I stated
09:02AM 17 earlier and I won't repeat.

09:02AM 18 I'm not imposing a fine, I'm not imposing costs of
09:02AM 19 imprisonment or costs of supervised release because I don't
09:02AM 20 believe you have the financial ability to make those payments,
09:02AM 21 because I want to set you up to succeed once you get out, and
09:02AM 22 I think additional financial pressures are going to be
09:02AM 23 counterproductive.

09:02AM 24 So I've chosen the sentence that I've chosen for a
09:02AM 25 few reasons.

09:02AM 1 First of all, this is a really serious crime.
09:02AM 2 You know, methamphetamine and fentanyl are among the
09:03AM 3 worst. Fentanyl is the worst. Fentanyl is killing people,
09:03AM 4 and it's destroying families. So if you call yourself a
09:03AM 5 family man, you can't be involved with fentanyl. Simply, it's
09:03AM 6 destroying families. It's tearing people apart.
09:03AM 7 And you've got a criminal history category of III on
09:03AM 8 a scale of I to VI at a relatively young age.
09:03AM 9 So, I think that to recognize the nature and
09:03AM 10 circumstances and seriousness of the offense, to take into
09:03AM 11 account your criminal history, and your other history and
09:03AM 12 characteristics, to promote respect for the law, to deter
09:03AM 13 others, to protect the public, to impose a fair punishment, a
09:03AM 14 lock term of imprisonment is necessary. And ten years, as
09:03AM 15 your lawyer says, is an awfully long time especially for
09:03AM 16 someone who's done no more than six months before this.
09:03AM 17 And I gave serious thought to imposing a little bit
09:03AM 18 more than 120 months because of your violation of your release
09:04AM 19 when you were out, because I think that that tells me maybe
09:04AM 20 you didn't get it then, and maybe you still don't get it now.
09:04AM 21 But as your lawyer says, ten years is a long time,
09:04AM 22 and if there weren't the mandatory minimum, maybe I'd impose
09:04AM 23 eight years, maybe I'd impose seven and a half years, and then
09:04AM 24 tacking a little bit more onto it would make sense under those
09:04AM 25 circumstances.

09:04AM 1 Ten years, I think, is long enough under these
09:04AM 2 circumstances here, especially for someone who, as I said, has
09:04AM 3 not done significant time in the past.

09:04AM 4 The letters paint you as a really good person, and I
09:04AM 5 think you are. I think inside, you are a really good person.

09:04AM 6 But I want you to understand that what you did is a
09:04AM 7 really bad thing. Good people do bad things sometimes. And
09:04AM 8 your life is defined not by the worst thing you ever did, your
09:04AM 9 life is defined by your entire life, right? Some good, and
09:05AM 10 some bad. We all do. And you've done a lot of good things.

09:05AM 11 And the fact that you're motivated -- your lawyer
09:05AM 12 said, you know, part of the reason that you -- you're doing
09:05AM 13 this is because you're a giver, I've got that word written
09:05AM 14 down here in my notes, he's a giver -- doesn't justify it. It
09:05AM 15 doesn't make it right.

09:05AM 16 You want to give your kids and the kids on your
09:05AM 17 basketball teams stuff. They don't need stuff, they need you.

09:05AM 18 They don't need sneakers, they don't need coats, they
09:05AM 19 don't need toys, they need you.

09:05AM 20 And they need -- and they need you there in their
09:05AM 21 lives, and they need you as a role model to set an example.

09:05AM 22 There's no crying over spilled milk, but the past is
09:05AM 23 the past. But you had an opportunity when you came out of
09:05AM 24 high school to be an incredible role model for these kids.
09:06AM 25 You were a sports star.

09:06AM 1 I remember when I was in high school. I was -- I'm
09:06AM 2 the worst athlete in the world. And I did pretty well
09:06AM 3 academically, but I would have traded it all to be an athlete
09:06AM 4 because I love sports. I love sports, and looked up to the
09:06AM 5 athletes in the class.

09:06AM 6 And you were one of those athletes. You had an
09:06AM 7 opportunity to do that.

09:06AM 8 But you want to know something? You still do.
09:06AM 9 Because you're still that legend down there. You're still
09:06AM 10 that great basketball player down there.

09:06AM 11 And now you've got something more than that. Now
09:06AM 12 you've got some street cred, because you did really bad things
09:06AM 13 and you're gonna do a long time in prison for it.

09:06AM 14 So you come out of prison, and you're gonna have the
09:06AM 15 ability to be a hero in your community. You're going to have
09:06AM 16 the ability to go back to be Darin Butts the basketball star,
09:06AM 17 and Darin Butts the guy who's in the community teaching these
09:06AM 18 kids what to do and what not to do. Teaching them how to play
09:06AM 19 basketball, and teaching them not use drugs. Not to go down
09:06AM 20 the route that you went down, and waste 20 years of their
09:07AM 21 life. Right?

09:07AM 22 **THE DEFENDANT:** Yes.

09:07AM 23 **THE COURT:** Waste 20 years of their life.

09:07AM 24 And you're gonna have -- and that's an incredible, an
09:07AM 25 incredible gift, an incredible opportunity for you that most

09:07AM 1 defendants don't have who sit there because they're not sports
09:07AM 2 stars; that Mr. Testani and Mr. Eoannou and I don't have
09:07AM 3 because we don't have street cred that you're gonna have; but
09:07AM 4 that you're gonna have. You're gonna be able to do that.

09:07AM 5 So I hope that you understand that trying to -- that
09:07AM 6 selling drugs in order to give people things in order to, you
09:07AM 7 know, give the kids on the team the stuff that they need, give
09:07AM 8 your kids what they need. No, no, no. They don't need that
09:07AM 9 stuff.

09:07AM 10 You're gonna be out of their lives now. They would
09:07AM 11 trade all that stuff to have you in their lives for the next
09:07AM 12 eight years, nine years, whatever it's gonna be, that you're
09:07AM 13 gonna be on the inside.

09:07AM 14 They need you, they don't need the stuff. They don't
09:07AM 15 need the stuff.

09:07AM 16 And as I said, you need to understand that family
09:08AM 17 men, and men who want to give back to their community, don't
09:08AM 18 sell this poison in the community that's destroying families
09:08AM 19 and that's killing people.

09:08AM 20 Think about whether you would want someone selling
09:08AM 21 fentanyl to one of your kids, right?

09:08AM 22 It's a no-brainer, right?

09:08AM 23 **THE DEFENDANT:** Right.

09:08AM 24 **THE COURT:** You'd probably want to beat the guy up.
09:08AM 25 I would.

09:08AM 1 But that's what you did. You know? You're selling
09:08AM 2 fentanyl to somebody else's kid, and to somebody else's
09:08AM 3 father. And that's, as I say, it's a bad thing.

09:08AM 4 So, you're a very good person. Those letters don't
09:08AM 5 give me any doubt that you are a very, very good person, your
09:08AM 6 heart's in the right place, but you went about doing what you
09:08AM 7 did in a very misguided way.

09:08AM 8 So, I think that ten years is long enough. I take
09:08AM 9 very seriously my responsibility to impose a sentence that is
09:08AM 10 sufficient but not greater than necessary. And I think that
09:09AM 11 this sentence under the circumstances, because it's the
09:09AM 12 mandatory minimum, is.

09:09AM 13 But I can tell you that even if there weren't a
09:09AM 14 mandatory minimum, if I didn't have to sentence you to any
09:09AM 15 time, you'd be getting a significant period in prison because
09:09AM 16 what you did is a very serious offense. And -- and what you
09:09AM 17 did, did do some very harmful things to the community.

09:09AM 18 That's behind us. It's the past. We can't do
09:09AM 19 anything about it. From this moment, forward, lead a life
09:09AM 20 that makes you a hero in that community.

09:09AM 21 I think that's what you want to be. I think that
09:09AM 22 that's what's inside you and what drive -- is driving you,
09:09AM 23 that you want to give to people who don't have. Do it in the
09:09AM 24 way that is the best way you can do it, and that is teaching
09:09AM 25 these kids not to follow the path that you were on. Teach

09:09AM 1 them how to play basketball, too, but teach them not to follow
09:09AM 2 the path that you were on.

09:09AM 3 And I've imposed that five-year term of supervised
09:09AM 4 release with special conditions, that's to help you return to
09:10AM 5 society after your incarceration, it's also going to allow the
09:10AM 6 probation office to monitor your activity to ensure that you
09:10AM 7 don't engage in illegal activity in the future.

09:10AM 8 And let me tell you something. The guidelines say
09:10AM 9 that because I am now varying downward from the guidelines,
09:10AM 10 I'm giving you a sentence below the guidelines, that if you
09:10AM 11 violate when you're on supervised release, I can consider
09:10AM 12 giving a sentence above the guidelines, and I would in a case
09:10AM 13 like this. You're getting a break -- it doesn't, maybe
09:10AM 14 doesn't seem like a break, ten years is a long time -- but
09:10AM 15 you're getting a break today. That break is going to come
09:10AM 16 back and bite you if you go back and do this again.

09:10AM 17 And as I said, the only thing that concerns me, 120
09:10AM 18 months would have been no-brainer for me under most
09:10AM 19 circumstances. The only thing that concerned me, the only
09:10AM 20 reason I thought about giving a little bit more time than
09:10AM 21 that, was the fact you violated while you were on release.
09:10AM 22 And I'm telling you now, if you violate when you're on release
09:10AM 23 later on, ten years from now, if I'm still on this earth and
09:10AM 24 still in this chair, I will take that into account and will
09:11AM 25 sentence you more harshly because I'm varying downward now.

09:11AM 1 So based on the guidelines, based on the positions of
09:11AM 2 the parties, and based on my review of all other facts and
09:11AM 3 circumstances presented to me, I find that the sentence I've
09:11AM 4 imposed is sufficient but not greater than necessary to comply
09:11AM 5 with the purposes of sentencing in 18, United States Code,
09:11AM 6 Section 3553(a).

09:11AM 7 And pursuant to Rule 32(j)(1)(B) of the Federal Rules
09:11AM 8 of Criminal Procedure, I now advise you of your right to
09:11AM 9 appeal.

09:11AM 10 You have a statutory right to appeal your sentence
09:11AM 11 under certain circumstances, particularly if you think the
09:11AM 12 sentence is contrary to law. A defendant may waive those
09:11AM 13 rights as part of a plea agreement.

09:11AM 14 And as I think you recognize, Mr. Butts, you entered
09:11AM 15 into a plea agreement in which you waived some of your rights
09:11AM 16 to appeal, specifically you waived your right to appeal a
09:11AM 17 sentence that falls within or is less than the guidelines
09:11AM 18 range of imprisonment.

09:11AM 19 These waivers are generally enforceable. If you
09:11AM 20 think the waiver is unenforceable for some reason, you can
09:12AM 21 present that theory to the appellate court.

09:12AM 22 If you want to appeal -- if you want to attempt to
09:12AM 23 appeal some issue that you think survives your waiver, you
09:12AM 24 must file a notice of appeal within 14 days.

09:12AM 25 If you're unable to pay for the cost of an appeal,

09:12AM 1 you may apply for leave to appeal in forma pauperis, that is
09:12AM 2 leave to appeal without paying costs.

09:12AM 3 And you have the right to be represented by counsel
09:12AM 4 on any appeal. If you can't afford counsel, you have the
09:12AM 5 right to have counsel appointed to represent you free of
09:12AM 6 charge.

09:12AM 7 The forfeiture is made a part of the sentence and
09:12AM 8 judgment. Do I need to issue a final order, Mr. Testani?

09:12AM 9 **MR. TESTANI:** If you do, Judge, we'll provide one.

09:12AM 10 **THE COURT:** Terrific. You have a motion.

09:12AM 11 **MR. TESTANI:** Yes. The government moves to dismiss
09:12AM 12 the open counts in the indictment against the defendant.

09:12AM 13 **THE COURT:** So that's 1 through 8 and 10; is that
09:12AM 14 correct?

09:12AM 15 **MR. TESTANI:** Correct.

09:12AM 16 **THE COURT:** Okay. That motion is granted.

09:12AM 17 Anything further from the government?

09:12AM 18 **MR. TESTANI:** Nothing further, thank you.

09:12AM 19 **THE COURT:** Anything further from the defense?

09:12AM 20 **MR. EOANNOU:** No, Your Honor.

09:12AM 21 **THE COURT:** The statement of reasons shall be
09:12AM 22 included in the judgement, and shall be provided to the
09:12AM 23 probation office, to the Sentencing Commission and to the
09:12AM 24 Bureau of Prisons.

09:12AM 25 A complete copy of the presentence report shall be

09:13AM 1 provided to the probation office, to the Sentencing
09:13AM 2 Commission, and to the Bureau of Prisons.

09:13AM 3 Any other copies of the report and related material
09:13AM 4 shall remain confidential.

09:13AM 5 If an appeal is taken, counsel on appeal shall have
09:13AM 6 access to the report.

09:13AM 7 And a judgment of the conviction should be prepared
09:13AM 8 promptly on the form prescribed for judgments, including
09:13AM 9 sentences under the Sentencing Reform Act.

09:13AM 10 Good luck to you, Mr. Butts. You can talk the talk.

09:13AM 11 I mean, what you wrote for me was beautiful. You're obviously
09:13AM 12 a very bright guy. You're obviously a very talented young
09:13AM 13 man, and you obviously have a bright future ahead of you.

09:13AM 14 Make the most of it. You know? Be a hero in the community
09:13AM 15 when you get out. You've got an opportunity that not many
09:13AM 16 people have because, as I say, you've got the fact that you
09:13AM 17 were a back legend, plus the fact that you're gonna have a
09:13AM 18 significant amount of time in prison. Those two things
09:13AM 19 together are going to make you someone that people are going
09:13AM 20 to listen to, and you're going to have the unique ability to
09:13AM 21 change the cycle that's going on in our cities today with kids
09:13AM 22 growing up without parents, without role models, going to jail
09:13AM 23 like you. And you're going to be able to help change that in
09:13AM 24 a pretty significant way, and I hope you do.

09:14AM 25 The defendant is remanded to the custody of the

09:14AM 1 United States Marshals.

09:14AM 2 Thank you, everyone.

09:14AM 3 **MR. EOANNOU:** Thank you, Judge.

09:14AM 4 **THE DEFENDANT:** Thank you.

09:14AM 5 (Proceedings concluded at 9:14 a.m.)

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CERTIFICATE OF REPORTER

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s/ Ann M. Sawyer

Ann M. Sawyer, FCRR, RPR, CRR

Official Court Reporter

U.S.D.C., W.D.N.Y.

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