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October 14, 2022

The Honorable William C. Carpenter, Jr.
Superior Court of Delaware
Leonard L. Williams Justice Center
500 North King Street
Wilmington, DE 19801

State of Delaware v. Kathleen McGuiness
Id No. 2206000799

Dear Judge Carpenter,

The Defendant is scheduled to be sentenced by Your Honor on Wednesday, October 19, 2022. This letter is to set forth the State of Delaware's recommendation in advance of sentencing.

The State has consistently requested Level V time for the most egregious Official Misconduct convictions. Because this case involves the most serious breach of public trust in recent memory; a complete lack of remorse from the Defendant; and the Defendant continued her criminal conduct—employing and paying her daughter long after the guilty verdict—the State asks for a sentence that will make clear the consequences of her continued, unabashed actions.

Defendant's Criminal Convictions:

On July 1, 2022, after eleven days of trial and approximately one day of deliberations, a Kent County Superior Court jury found the Defendant guilty of three separate public corruption crimes: Conflict of Interest: Violation of the State Officials' Code of Conduct, Structuring: Non-compliance with Procurement Law, and Official Misconduct.

On August 30, 2022, the Court denied the Defendant's Motion for New Trial – and denied her Motion for Judgment of Acquittal as to Conflict of Interest: Violation of the State Officials' Code of Conduct and as to Official Misconduct.

The Court granted the Defendant's Motion for Judgment of Acquittal on Structuring: Non-compliance with Procurement Law, finding that the Defendant's non-compliance with the accounting rules was not criminal conduct but rather a comedy of errors.¹ However, the Court held that "the facts surrounding the interaction between [My Campaign Group], Christie Gross and the Defendant can still be considered and are relevant to whether the facts support the Official Misconduct offense..."² Indeed, Official Misconduct is predicated on a public servant's unauthorized exercise of official functions with the intent to gain a personal benefit. The Defendant, as a statewide, elected office holder, benefitted from the unauthorized portions of the My Campaign Group contract and her personal intervention in, and supervision of, her daughter's state employment.

Defendant's Criminal Activity:

The facts provided at trial established that the Defendant circumvented the hiring process to hire her daughter and her daughter's friend as state employees. Several official documents, including "on-boarding" paperwork, listed the Defendant as her daughter's supervisor – and much of the paperwork was signed by the Defendant herself. As presented at trial, a non-exhaustive list of the Defendant's conflicts and her personal interest in her daughter's employment included:

1. The casual-seasonal positions were not posted.
2. Even though she initially claimed otherwise, the daughter was hired without first being interviewed by OAOA staff.
3. The daughter was permitted to work more hours than other casual-seasonal employees.
4. The daughter was given immediate access to a state vehicle when others were not.
5. The daughter was paid more than the casual-seasonal employees who were on payroll at the beginning of daughter's employment, but then quickly lost available work.
6. The daughter continued to receive state paychecks while enrolled in college in Charleston, South Carolina.

¹ Memorandum Opinion, August 30, 2022, at p. 15.

² Memorandum Opinion, August 30, 2022, at p. 17, FN51.

7. The daughter was allowed to “bank”¹⁶ hours—in excess of the hourly cap on casual-seasonal employees—and apply them to weeks in which she did little or no work, while other casual-seasonal OAOA employees were not aware of or utilized this practice.
8. The daughter never used the state Virtual Private Network to work remotely in 2020.
9. The daughter never accessed the office nor used office email between August 17th and December 11th, 2020, during which time she was receiving paychecks from the OAOA. The daughter did send very few emails from her Gmail account.
10. The daughter’s paychecks were deposited into an account owned by the Defendant.
11. The Defendant addressed work complaints on behalf of her daughter to OAOA staff.

The state employees who witnessed her misconduct first-hand were afraid to go to work and experienced severe, in some cases diagnosed, anxiety. They were spied on and had their professional lives in state government placed in jeopardy due to no fault of their own. After having the courage to blow the whistle on their boss, they were belittled as having peddled a fiction,³ were subjected to questions about their sex lives,⁴ painted as racist,⁵ and opportunistically tagged as the scapegoat for the Defendant’s own criminal conduct.⁶

Available Penalties and Aggravating Factors:

The State respectfully submits that three key aggravators apply to the Defendant’s sentence in this case.⁷ The only mitigating factor present is no prior convictions. While “SENTAC guidelines are voluntary and nonbinding;”⁸ they provide a sentencing Court guidance in crafting a sentence and, where appropriate, imposing a sentence beyond the guidelines.⁹ The Defendant’s convictions in this

³ Counsel for Defendant’s October 11, 2021 statement.

⁴ Trial Transcript, June 23, 2022, at p. 156-162 and 164-165.

⁵ Trial Transcript, June 21, 2022, at p. 225-232.

⁶ Trial Transcript, June 23, 2022, at p. 185-187; June 24, 2022, at p.80-95.

⁷ The aggravators addressed in this correspondence have been drawn from the 2019 SENTAC Benchbook. SENTAC Truth-In-Sentencing Benchbook at pp. 133-135. (2019).

⁸ *Benge v. State*, 2004 WL 2743431, *1 (Del. Nov. 12, 2004).

⁹ *Id.*

case create a statutory range of penalties between zero (0) and two (2) years of incarceration and fines up to \$4,600. To be sure, this Court has wide discretion to consider the facts of this case as well as facts and circumstances unique to this criminal offender.¹⁰

- 1. Lack of Remorse:** This aggravator is present when the “offender has demonstrated a total lack of remorse or acceptance of responsibility with regard to the offense.”¹¹

As of this writing, the Defendant has refused to accept any responsibility for her crimes. In fact, in the weeks following being found guilty, the Defendant conducted several media interviews during which she disparaged the State; characterized the guilty verdicts as “political”; and her counsel blamed the Court, saying “there’s no question that [the jury’s] thought process was influenced by multiple erroneous decisions that were made by the Court along the way.”¹² In an August interview, the Defendant had the following exchange:

Defendant: I did nothing wrong. I did zero wrong.

Interviewer: But the jury said you did something wrong.

*Defendant: They didn’t have all the information because the Chief Investigator lied! You know, I could lie about something now and people would believe it.*¹³

Those actions alone demonstrate a sufficient lack of remorse to satisfy the SENTAC aggravating factor.

¹⁰ See *Mayes v. State*, 604 A.2d 839, 842 (Del. 1992). “In Delaware, a sentencing court has broad discretion to consider ‘information pertaining to a defendant’s personal history and behavior which is not confined exclusively to conduct for which that defendant is convicted.’” *Id.* at 842, citing *Lake v. State*, 494 A.2d 166 (table)(Order), Del. Supr., No. 67, 1984, Horsey, J., (Oct. 29, 1984). A sentencing court should “have ‘the fullest information possible concerning the defendant’s life and characteristics.’” *Id.* at 842, n.5 citing *Williams v. New York*, 337 U.S. 241, 247 (1949).

¹¹ SENTAC Benchbook 2021-2022 at 109.

¹² See https://www.washingtonpost.com/politics/delaware-auditor-dodges-felony-charges-guilty-of-misconduct/2022/07/01/16a225c8-f95d-11ec-81db-ac07a394a86b_story.html.

¹³ See <https://www.facebook.com/DeTv302/videos/5767604479924959/>.

Further, the Defendant’s sentencing memo attaches similar phrasing, including “political hit job[,]”¹⁴ “career tarnished over lies and personal agendas[,]”¹⁵ and that the Defendant “has already paid a high price for her diligence in government.”¹⁶ None of those is the phrasing of a party who shows any remorse.

Perhaps most alarming, while not a standalone SENTAC aggravating factor, the Defendant’s continued conduct—after indictment, through trial, and after being found guilty by the jury—accelerates beyond mere lack of remorse. Indeed, the *Defendant continued the criminal conduct of which she was found guilty* for nearly two months after being convicted.

The Defendant continued to employ her daughter and pay her with taxpayer dollars through at least August 13, 2022.¹⁷ (Her daughter remains listed as an employee as of October 11, 2022 but has not been paid since August 26, 2022.) This is the precise conduct that supported both remaining guilty verdicts.

Thus, the Defendant has not just “demonstrated a total lack of remorse or acceptance of responsibility with regard to the offense”— she is making clear to this Court, the jury who convicted her, and the State as a whole that not even criminal convictions will stop her from engaging in criminal conduct.¹⁸

- 2. Undue Depreciation of Offense:** This aggravator may be found when “[i]t would unduly depreciate the seriousness of the offense to impose a sentence of other than total confinement.”

The Defendant is the State Auditor of Accounts. She is the first statewide elected official to ever be convicted of any crime during, or after, time in office. She has continued her misconduct after being found guilty, and has demonstrated that she will continue to abuse the office as long as she can.

¹⁴ Defendant’s Sentencing Memorandum, Appendix 5, at 1.

¹⁵ Defendant’s Sentencing Memorandum, Appendix 16, at 1.

¹⁶ Defendant’s Sentencing Memorandum, Appendix 18, at 1.

¹⁷ See Exhibit A.

¹⁸ SENTAC Benchbook 2021-2022 at 109.

Months after being convicted of abusing this very office, the Defendant continues to treat the OAOA as her personal fiefdom. Defendant has apparently pressured the Deputy Auditor to commit to hiring the Defendant back as a casual-seasonal employee immediately after the Defendant's expected removal from office.¹⁹ When the Deputy Auditor refused, the Defendant re-hired a loyalist who had previously left the office, and pressured the Deputy Auditor to resign. The Deputy Auditor continues to refuse to resign or re-hire the Auditor as an OAOA employee if she is removed from office.

The State continues to receive whistleblower reports from the OAOA, including from a new whistleblower as recently as this week. The situation in this constitutional office has become untenable.

The Defendant's unprecedented criminal conduct would be minimized by a sentence with no confinement—considering her escalating conduct, some confinement is necessary.

- 3. Betrayal of Public Trust:** This aggravator is present when the Defendant, while holding public office by appointment or election, betrayed the public trust by her unlawful conduct.²⁰

The Defendant was found guilty of conduct that precisely mirrors the language of the SENTAC aggravator: she was found guilty of Official Misconduct, the first statute under "Abuse of Office" in our Code.²¹ It is difficult to conceive of what crimes would fulfill this SENTAC aggravator if her crimes do not.

¹⁹ See Exhibit B.

²⁰ *Id.*

²¹ Title 11, Chapter 5, Subchapter VI, Part B.

Recommended sentence:

Due to the Defendant's severe lack of remorse, undue depreciation of her offenses, brazen betrayal of the public trust—and her continued conduct after being convicted—the State submits that this is a unique and aggravated case, and the defendant should be sentenced to no less than the following:

On the charge of Conflict of Interest: Violation of the State Officials' Code of Conduct (IK-22-06-0145):

One (1) year at Level V suspended for 1 year at Level 2 Probation.

Restitution to the State of Delaware in the amount of \$23,655.00, representing the daughter's salary earned from her illegitimate employment.

On the charge of Official Misconduct (IK-22-06-0143):

One (1) year at Level V suspended after thirty (30) days for one (1) year at Level 2 Probation.

Restitution to the State of Delaware in the amount of \$6,950, representing the unauthorized amount of the My Campaign Group Contract above the \$45,000.00 approved purchase order.

While on probation, the Defendant is to have no contact with any State of Delaware employee in the Office of the Auditor of Accounts, the Department of Finance, the Department of Technology and Information, the Department of State, the Office of Management and Budget, and the Department of Justice, unless the Defendant is being asked to provide materials to facilitate her exit from office.

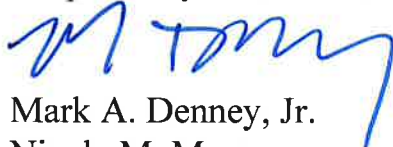
While on probation, the Defendant is not to have any direct or indirect contact with any witness who testified in the State's case-in-chief, and shall have no contact with any family of the witnesses who testified in the State's case-in-chief, and she shall not direct any third person or intermediary to have contact with any of the State's witnesses on her behalf.

Despite being charged by multiple grand juries, found guilty beyond a reasonable doubt by a unanimous trial jury of multiple crimes for abusing public office, and having her post-trial motions denied, the Defendant continues to cling to power at the expense of the public trust. In so doing, her misconduct has disrupted the operations of several critical state enterprises, including accounting, payroll, human resources, and information technology. She continued to employ and pay her daughter *after* her guilty verdicts, extracting more than \$1,600.00 in additional state money over four pay periods. She has repeatedly claimed she was the victim of a “political” prosecution despite this Court finding she received “about as fair and appropriate and clear trial as one can imagine.”²² And a multitude of former supporters and state employees came forward after witnessing her misconduct and having suffered mistreatment as a result.

Within state government, the Defendant’s conduct has been destructive. Externally, in the eyes of the public, the Defendant’s conduct has eroded faith in our institutions of government. It cannot continue, and it should be appropriately punished by this Court.

Thank you for the Court’s consideration of this sentencing letter and the State’s position.

Respectfully Submitted,



Mark A. Denney, Jr.

Nicole M. Mozee

Deputy Attorneys General

(302) 577-8815

cc: Kent Co. Prothonotary
Counsel for Defendant

²² Trial Transcript, June 28, 2022, at p. 40-41.

EXHIBIT

A

Full Name	Pay Period End	Dept ID	Dept Desc	Earn Code Descr	Earnings
McGuinness,Elizabeth	5/23/2020	120201001	Auditor of Accounts	Regular Pay	420.00
McGuinness,Elizabeth	6/6/2020	120201001	Auditor of Accounts	Regular Pay	997.50
McGuinness,Elizabeth	6/20/2020	120201001	Auditor of Accounts	Regular Pay	1,032.50
McGuinness,Elizabeth	7/4/2020	120201001	Auditor of Accounts	Regular Pay	1,032.50
McGuinness,Elizabeth	7/18/2020	120201001	Auditor of Accounts	Regular Pay	1,032.50
McGuinness,Elizabeth	8/1/2020	120201001	Auditor of Accounts	Regular Pay	1,032.50
McGuinness,Elizabeth	8/15/2020	120201001	Auditor of Accounts	Regular Pay	1,032.50
McGuinness,Elizabeth	8/29/2020	120201001	Auditor of Accounts	Regular Pay	1,032.50
McGuinness,Elizabeth	9/12/2020	120201001	Auditor of Accounts	Regular Pay	1,032.50
McGuinness,Elizabeth	9/26/2020	120201001	Auditor of Accounts	Regular Pay	560.00
McGuinness,Elizabeth	10/10/2020	120201001	Auditor of Accounts	Regular Pay	140.00
McGuinness,Elizabeth	12/19/2020	120201001	Auditor of Accounts	Regular Pay	630.00
McGuinness,Elizabeth	1/2/2021	120201001	Auditor of Accounts	Regular Pay	1,032.50
McGuinness,Elizabeth	1/16/2021	120201001	Auditor of Accounts	Regular Pay	131.25
McGuinness,Elizabeth	1/30/2021	120201001	Auditor of Accounts	Regular Pay	122.50
McGuinness,Elizabeth	2/27/2021	120201001	Auditor of Accounts	Regular Pay	70.00
McGuinness,Elizabeth	3/13/2021	120201001	Auditor of Accounts	Regular Pay	192.50
McGuinness,Elizabeth	3/27/2021	120201001	Auditor of Accounts	Regular Pay	35.00
McGuinness,Elizabeth	5/22/2021	120201001	Auditor of Accounts	Regular Pay	1,032.50
McGuinness,Elizabeth	6/5/2021	120201001	Auditor of Accounts	Regular Pay	1,032.50
McGuinness,Elizabeth	6/19/2021	120201001	Auditor of Accounts	Regular Pay	1,032.50
McGuinness,Elizabeth	7/3/2021	120201001	Auditor of Accounts	Regular Pay	1,032.50
McGuinness,Elizabeth	7/17/2021	120201001	Auditor of Accounts	Regular Pay	1,032.50
McGuinness,Elizabeth	7/31/2021	120201001	Auditor of Accounts	Regular Pay	1,032.50
McGuinness,Elizabeth	8/14/2021	120201001	Auditor of Accounts	Regular Pay	1,032.50
McGuinness,Elizabeth	8/28/2021	120201001	Auditor of Accounts	Regular Pay	516.25
McGuinness,Elizabeth	10/9/2021	120201001	Auditor of Accounts	Regular Pay	87.50
McGuinness,Elizabeth	11/6/2021	120201001	Auditor of Accounts	Salary Supplement F	1,000.00
McGuinness,Elizabeth	12/4/2021	120201001	Auditor of Accounts	Regular Pay	43.75
McGuinness,Elizabeth	12/18/2021	120201001	Auditor of Accounts	Regular Pay	17.50
McGuinness,Elizabeth	1/15/2022	120201001	Auditor of Accounts	Regular Pay	17.50
McGuinness,Elizabeth	1/29/2022	120201001	Auditor of Accounts	Regular Pay	8.75
McGuinness,Elizabeth	4/9/2022	120201001	Auditor of Accounts	Regular Pay	26.25
McGuinness,Elizabeth	5/7/2022	120201001	Auditor of Accounts	Regular Pay	17.50
McGuinness,Elizabeth	5/21/2022	120201001	Auditor of Accounts	Regular Pay	393.75
McGuinness,Elizabeth	6/4/2022	120201001	Auditor of Accounts	Regular Pay	542.50
McGuinness,Elizabeth	6/18/2022	120201001	Auditor of Accounts	Regular Pay	472.50
McGuinness,Elizabeth	7/2/2022	120201001	Auditor of Accounts	Regular Pay	122.50
McGuinness,Elizabeth	7/16/2022	120201001	Auditor of Accounts	Regular Pay	673.75
McGuinness,Elizabeth	7/30/2022	120201001	Auditor of Accounts	Regular Pay	778.75
McGuinness,Elizabeth	8/13/2022	120201001	Auditor of Accounts	Regular Pay	150.00
TOTAL					23,655.00

EXHIBIT

B

Denney, Mark (DOJ)

Subject: RE: OAOA- Parker Offer Letter Response

From: Parker, Tori (Auditors) <Tori.Parker@delaware.gov>

Sent: Thursday, October 13, 2022 9:22 AM

To: McGuiness, Kathleen (Auditors) <Kathleen.McGuiness@delaware.gov>

Cc: Davis, Patricia (DOJ) <PatriciaA.Davis@delaware.gov>; Paisley, Barbara (Auditors) <Barbara.Paisley@delaware.gov>; Bayline, Andrea G (Auditors) <Andrea.Bayline@delaware.gov>

Subject: OAOA- Parker Offer Letter Response

McGuiness,

I am writing to let you know I am not resigning as Deputy Auditor, and I am not accepting the position of Chief of Staff.

I believe demanding Alaina and I switch positions, especially after I refused to hire you back as a Casual/Seasonal once the Governor removes you, is a form of retaliation. I am filing a formal complaint with the Department of Labor against you today.

Despite your relentless belief, this is not your agency to burn to the ground on your way out. The people in that office and the people of Delaware deserve significantly better.

Tori Parker, Deputy Auditor

Delaware Office of Auditor of Accounts

Office: 302-857-3932 Tori.Parker@delaware.gov

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**KATHLEEN
McGUINNESS**
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[Auditor Kathy McGuiness](#)



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