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CIRCUIT COURT OF
LEE COUNTY, ALABAMA
MARY B. ROBERSON, CLERK

IN THE CIRCUIT COURT OF LEE COUNTY, ALABAMA

STATE OF ALABAMA,	)	
	)	
v.	)	**Case No.: CC–2014–565**
	)	
MICHAEL GREGORY HUBBARD,	)	**ORAL ARGUMENT REQUESTED**
	)	
Defendant.	)	

DEFENDANT'S REPLY IN SUPPORT OF MOTION FOR EARLY RELEASE

Defendant, Michael Gregory Hubbard ("Defendant"), respectfully submits the following Reply in Support of his Motion for Early Release (the "Motion") (Doc. 853):

INTRODUCTION

The State of Alabama (the "State") has responded to Defendant's Motion, objecting on various grounds. (Doc. 859.) For the reasons herein, none of the State's arguments are persuasive, and it has failed to demonstrate why Defendant is not an acceptable candidate for early release. As a result, the Court should grant the Motion.

ARGUMENT

I. Defendant's Apology

First, the State argues that Defendant's apology is a "good thing," but "not a basis for early release."[1] The State claims that Defendant's so-called "wait and see approach" to offering an apology should not serve as a ground for the Court to weigh when considering early release. The State relies on various federal authorities in support of its position. However, as the State is well aware, while acceptance of responsibility is a statutorily mandated factor under the United States

[1] The State's contention that Defendant's apology "does not travel alone," is either misleading or ignores the multiple other grounds made in the Motion. Defendant's other grounds for early release do not detract from his apology, but are instead separate reasons why this Court could and should grant an early release.

Sentencing Guidelines, which may reduce a defendant's score under the federal guidelines, there is no such provision under Alabama law. How much weight to afford Defendant's apology is a matter of discretion that rests entirely with this Court because Defendant is serving a split-sentence.

The State's characterization of Defendant's apology as "too little, too late," also ignores the obvious. The fact remains that Defendant has been incarcerated in Limestone Correctional Facility for the last 13 months. Regardless of the positions previously taken by Defendant throughout the course of this litigation, his time in prison has obviously given him the opportunity to reflect not only on his actions, but also on the broader implications that his convictions have had on his former constituents and the entire political system. Accordingly, the State's veiled portrayal of Defendant's apology as crocodile tears or anything other than completely honest is conclusory, speculative, and simply erroneous.

Furthermore, the State's attempt to analogize Defendant's apology to that of an arsonist is absurd and underscores the importance of the principles of sentencing (to which the State offers no response) recommending incarceration **only for those whom the court deems to pose a danger to society**. Obviously, an arsonist poses a danger to society; Defendant does not. This is despite the State's contention that his community support somehow makes his "more culpable" and not ***more appropriate*** for returning to that very community.[2] Defendant is exactly the type of inmate contemplated by the enactment of Ala. Code § 15–22–50, and the State's attempt to dilute his apology wholly misses the mark. Defendant's apology should carry weight when considering early release.

[2] The State's attempt to argue that Defendant only serving half of his sentence, instead of the entire 28 months, would not serve as an efficient deterrent is illogical. It is readily apparent from Defendant's brief, his letters, and his letters of support that his incarceration has—and continues to—affect him greatly. The State cannot seriously contend that, **regardless of whether Defendant is granted an early release**, would-be violators of Alabama's ethics laws would not view Defendant and this case as anything other than a cautionary tale.

II. The Sentencing Guidelines

Next, the State argues that the Alabama Sentencing Guidelines are expressly inapplicable and should not be considered. Defendant acknowledged in his Brief that the Sentencing Guidelines are not applicable to his offenses, but contrary to the State's argument, they are extremely instructive. In the reality of disposing of felony cases, sentencing guidelines are utilized quite often by district attorney's offices, defense lawyers, and Courts around this State (including the 37th Judicial Circuit) in determining sentence lengths in pleas offers as well as whether a suspended sentence is appropriate. They also reflect the intent of the Legislature, as echoed in the Rules of Criminal Procedure, that only violent offenders and those with substantial criminal histories should be subject to lengthy terms of confinement. Thus, the State is mistaken in arguing that the Guidelines are not informative, even in non-guidelines cases.

The State also contends that Defendant is wrong to equate his offense to "garden-variety" theft convictions. However, the State cannot avoid the fact that had Defendant been convicted of stealing six automobiles—even if those automobiles totaled $525,000 in value—he would nevertheless be "presumptively suitable" for straight probation. Instead, the State attempts to sidestep by contending that Defendant could still be suitable for up to three years in the county jail. Of course, Defendant has not been sentenced to the county jail, but the Department of Corrections, so it is unclear why the State even raises this point.

III. Comparable Cases

The State next takes issues with Defendant's alleged "cherry-picked" list of other defendants convicted of Alabama ethics offenses.[3] Interestingly, the State concludes

[3] The State refers to the list as "cherry-picked" but offers no other comparable cases, except for nebulously referring to defendants convicted in federal court. Again, Defendant has not been convicted in federal court, and the federal guidelines, as addressed above, have absolutely no application to this matter, as early release is not even an option in federal court.

its Response by claiming that Defendant "should serve his sentence, just like everyone else." The State makes this argument despite also arguing throughout its Response that Defendant ***should not*** be treated like everyone, but harsher. In so arguing, the States apparently wishes to have its cake and eat it, too. Of course, "everyone else" serving a split sentence is eligible for early release. And "everyone else" not serving a split sentence is eligible for parole, incentive time, or mandatory supervised release. One is Defendant's primary contentions is that he is ***not*** being treated like "everyone else."

CONCLUSION

The bottom line is, Defendant has lost his freedom, his public office, his reputation, many of his friends and supporters, and is at risk of losing his business. He has served nearly half of his sentence, day-for-day, and is simply seeking a remedy that is available to every other Alabamian serving a custodial sentence—a release earlier than his scheduled release date. The State's attempt to portray Defendant's request as "favoritism for the elite" is a misguided platitude that has no basis in law, fact, or reality.

For the foregoing reasons, this Honorable Court should grant Defendant's Motion for Early Release.

Respectfully submitted this the 20th day of October 2021.

/s/ Jonathan K. Corley
One of the Attorneys for Defendant

OF COUNSEL:
Jonathan K. Corley (COR049)
WHITTELSEY & CORLEY, LLC
Post Office Box 106
Opelika, Alabama 36803–0106
Tel: (334) 745–7766
Fax: (334) 745–7666
Email: jcorley@wwp-law.com

/s/ Andrew D. Stanley
One of the Attorneys for Defendant

OF COUNSEL:
Andrew D. Stanley
SAMFORD & DENSON, LLP
709 Avenue A
Opelika, Alabama 36801
Tel: (334) 7465-3504
Email: stanley@samfordlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this the 20th day of October 2021, I have electronically filed the foregoing document with the Clerk of the Court using the Ala-File system, which will send notification to the following via e-mail:

Steven T. Marshall
A. Clark Morris
Kyle A. Beckman
James R. Houts
Office of the Attorney General
Post Office Box 300152
Montgomery, Alabama 36130-0152

/s/ Jonathan K. Corley
Jonathan K. Corley