

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CRIMINAL DIVISION - FELONY BRANCH**

<b>UNITED STATES OF AMERICA</b>	:	<b>Case No. 1993 FEL 001723</b>
	:	
v.	:	<b>Judge Danya A. Dayson</b>
	:	
<b>ANDRE BROWN</b>	:	
<b>a/k/a MUSTAFA ZULU</b>	:	

**ORDER DENYING MOTION TO REDUCE SENTENCE PURSUANT TO THE  
INCARCERATION REDUCTION AMENDMENT ACT OF 2016**

This matter is before the court upon defendant Andre Brown’s Motion to Reduce Sentence Under the Incarceration Reduction Amendment Act of 2016 (hereinafter “IRAA Motions”),<sup>1</sup> the government’s Opposition, and the defendant’s Reply, as well as several additional submissions from the parties.<sup>2</sup> On September 20, 2019, the court held a hearing on defendant’s Motion at which he presented the testimony of Eddie Ellis,<sup>3</sup> Keith Johnson,<sup>4</sup> and Marc Howard.<sup>5</sup> The government presented the testimony of Emanuel Graham and Stephanie Lyon.

**FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

On December 28, 1992, the body of Michael Graham, also known as Michael Washington, was found in a trash can in an alley of the 1700 block of Kearney Street N.E., Washington, D.C. Mr. Graham was known to be the head of a drug distribution operation in the River Terrace neighborhood in the District. He was found with gunshot wounds to his head and torso. The next day, police found Mr. Graham’s car burned in Anne Arundel Country and his apartment ransacked. Govt. Opp. at 1-2, 10. Robin Lyons, Mr. Graham’s girlfriend and one of the last people to see him

---

<sup>1</sup> D.C. Code § 24-403.03.

<sup>2</sup> The court has reviewed the following filings from the parties: Supplement to the defendant’s IRAA Motion filed on 10/28/2018; Supplement to the defendant’s IRAA Motion (report by former BOP Administrator John Clark) filed on 2/16/2019; the Government’s Opposition to the defendant’s Supplement to his IRAA Motion filed on 3/5/23/2019; the defendant’s Supplemental Exhibits filed on 9/17/2019; government’s Notice of Filing (the defendant’s *Prison Writers* article regarding the North Dakota State Prison) filed on 9/19/2019; and government’s Notice of Filing (BOP’s Step-Down Program at Florence ADX) filed on 10/17/2019.

<sup>3</sup> Mr. Ellis met the defendant at Florence ADX.

<sup>4</sup> Mr. Johnson met the defendant at the D.C. Jail through the Black Fathers Matter Program.

<sup>5</sup> Professor Howard had the defendant as a student at the D.C. Jail.

alive, was stabbed and shot to death in her home in Prince George's County.<sup>6</sup> *Id.* at 2.

The defendant, along with three co-defendants, were indicted in September of 1993 for: (1) armed robbery – Mr. Graham; (2) felony murder while armed – Mr. Graham; (3) first-degree premeditated murder while armed – Mr. Graham; (4) possession of a firearm during a crime of violence or dangerous offense; (5) second-degree burglary – Mr. Graham; (6) first-degree theft – Mr. Graham and Altimese Hall; (7) receipt of stolen property – Mr. Graham and Altimese Hall; (8) conspiracy to commit murder – Robin Lyons; and (9) conspiracy to obstruct justice – Robin Lyons. *Id.* Defendant was tried before Judge Evelyn Queen in 1994 and a jury found him guilty of all counts in the indictment.

Judge Queen sentenced the defendant on October 17, 1994. On May 5, 2003, due to merger of certain counts, the court entered an Amended Judgment and Commitment Order sentencing defendant to 15 years to life for armed robbery; a mandatory minimum of 30 years to life for the merged counts of first-degree felony murder while armed and first-degree premeditated murder while armed; 5 to 15 years for Possession of a Firearm During a Crime of Violence; 2 to 6 years for second-degree burglary; 3 to 9 years for first-degree theft; 3 to 9 years for receiving stolen property; and 1 to 3 years for conspiracy to commit murder, with each count to run consecutive to each other.

The defendant pursued post-trial motions at the trial court level and appealed his case in the District of Columbia Court of Appeals. His appeal and post-conviction motions were denied.

On April 21, 2017, Defendant filed his motion for reduction of sentence pursuant to The Incarceration Reduction Amendment Act of 2016 (“the IRAA”).

---

<sup>6</sup> Government's evidence presented at trial establish that the defendant, out of fear that Ms. Lyons, having seen him and his co-defendants with Mr. Graham before he was killed, would lead the police back to them, proposed to kill her. Govt. Opp. at 9. The defendant and one of his co-defendants went into her home armed with knives and a gun. After a few minutes, they returned and the defendant said that he “got her.” *Id.* at 9-10. Ms. Lyons was stabbed repeatedly as well as shot several times. The manner of death was ruled a homicide by the State of Maryland. *Id.*

## LEGAL STANDARD

The IRAA, part of the Comprehensive Youth Justice Amendment Act, became effective on April 4, 2017. D.C. Law No. 21-238, §§ 301–306 (codified as amended at D.C. Code § 24-403.03). The IRAA allows people who were under the age of eighteen at the time of the offense to move the sentencing court for a reduction of sentence, provided the movant meets the criteria outlined in the statute. First, movants must have been convicted as adults of offenses committed before turning eighteen years old. D.C. Code § 24-403.03(a). Second, movants must have served at least 15 years of the sentence imposed. *Id.* The United States agrees, and the court finds, that the threshold eligibility requirements for resentencing under the IRAA are met in this case.

In keeping with U.S. Supreme Court jurisprudence about the relevance of childhood to sentencing, the Council of the District of Columbia enacted the IRAA as part of a broad effort to promote “best practices” in juvenile sentencing and the juvenile justice system. Comm. Rep. on Bill No. 21-0683, D.C. Law No. 21-238, at 3, 11 (Comm. on the Judiciary, 2016) [hereinafter “Comm. Report”]. One of the IRAA’s primary goals is to comply with Supreme Court precedent that juveniles are “constitutionally different from adults for the purposes of sentencing.” *Miller v. Alabama*, 567 U.S. 460, 471 (2012); Comm. Report at 11-14.

The Council intended that sentencing be age-appropriate and relied on four recent Supreme Court juvenile sentencing cases in its analysis. Comm. Report at 11-14. These cases together stand for the proposition that because juveniles are inherently less culpable than adults, they are less deserving of the most severe punishments. *Id.*; *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016); *Miller v. Alabama*, 567 U.S. 460 (2012); *Graham v. Florida*, 560 U.S. 48 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005).

First, in 2005, the Court in *Roper v. Simmons* ruled unconstitutional the sentence of capital punishment imposed on a person who was under eighteen at the time of the offense. 543 U.S. at

569-70 (holding that juveniles’ “lack of maturity and underdeveloped sense of responsibility” heightened impulsivity, recklessness, susceptibility to peer pressures and negative influences, and “transitory” personality traits render them incapable of being “classified among the worst offenders”). Five years later, in *Graham v. Florida*, the Court held that the sentence of life without parole for non-homicide crimes committed under the age of 18 violates the Eighth Amendment. 560 U.S. at 82. In so doing, the majority looked to the four recognized penological justifications—retribution, deterrence, incapacitation, and rehabilitation—concluding that none of them provides an “adequate justification” for juvenile life without parole for nonhomicide offenders. *Id.* at 71-73 (recognizing that because “the heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender. . . the case for retribution is not as strong with a minor as with an adult”).

The *Graham* Court reasoned that a sentence of life without parole is an “especially harsh punishment for a juvenile” because “he will on average serve more years and a greater percentage of his life in prison than an adult offender.” 560 U.S. at 70. The majority concluded that juvenile nonhomicide offenders must be afforded “some meaningful opportunity to obtain release based upon demonstrated maturity and rehabilitation,” leaving to the states the “means and mechanisms for compliance.” *Id.* at 75.

The Court in *Roper* and *Graham* rested its decisions not only on “common sense—on what any parent knows—but on science and social science as well.” *Miller*, 567 U.S. at 471. The *Roper* Court cited a study showing that “[o]nly a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood.” 543 U.S. at 570 (quoting Steinberg & Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1014 (2003)). The Court in *Graham* noted that “developments in psychology and brain science

continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence.” 560 U.S. at 68. The Court reasoned that such findings, those of “transient rashness, proclivity for risk, and inability to assess consequences,” reduced a juvenile’s “moral culpability” and increased the “prospect that, as the years go by and neurological development occurs, his deficiencies will be reformed.” *Miller*, 567 U.S. at 472 (internal quotation marks and citations omitted).<sup>7</sup>

The next extension came in 2012, when the Court in *Miller v. Alabama* held life without parole unconstitutional when imposed on juvenile offenders in a sentencing scheme that denied the judge the opportunity to consider youth as a mitigating factor. 567 U.S. at 489. In contrast to *Graham* and *Roper*, the Court in *Miller* did not create a categorical bar on a penalty for a class of offenders; instead, it mandated that a juvenile offender’s sentence must follow a “certain process,” one that involves “considering an offender’s youth and attendant characteristics[] before imposing a particular penalty.” *Id.* at 479, 483 (noting that due to “children’s diminished culpability and heightened capacity for change . . . appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon”). Finally, in 2016, the Court in *Montgomery v. Louisiana* held the *Miller* ruling retroactive. 136 S. Ct. at 736.

The Council appears to have appreciated the constitutional need for juvenile offenders to have the opportunity to receive lesser penalties as compared with adults. Indeed, the Comprehensive Youth Justice Amendment Act prohibits the sentence of juvenile life without parole altogether, D.C. Code § 24-403.01(c)(2), and allows the court to sentence a juvenile offender below

---

<sup>7</sup> In passing the IRAA, the Council considered similar research on the development of the brain during adolescence. Comm. Report at 3-4. This research concludes that the frontal lobes of the brain related to executive functioning may not be fully developed until the mid-twenties, meaning that adolescents possess impaired judgment and difficulty grasping consequences. *Id.* at 3 (citing Sara B. Johnson et al., *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, 45 J. ADOLESCENT HEALTH 216 (2009); Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 ANNU. REV. CLIN. PSYCHOLOGY 459 (2009)). As such, “[t]he juvenile justice system should, and increasingly has been recognizing that the developmental differences between adolescents and adults must give way to a different approach that recognizes both their reduced culpability and their capacity for rehabilitation and growth.” Comm. Report at 4.

the minimum term otherwise required by law, *id.*, while the IRAA provides a mechanism for convicted juvenile offenders to obtain a reduced sentence, D.C. Code § 24-403.03. The Council recognized the seriousness of crimes committed by juveniles eligible for such relief in stating: “While the severity of these crimes is not open to debate, the rationality of continuing to imprison an individual into old age for a crime they committed as a child, without any opportunity to review that decision, is subject to serious question in the District and across the country.” Comm. Report at 12.

To reduce a term of imprisonment pursuant to the IRAA, the court must find, after considering all eleven factors set forth in the statute, that “the defendant is not a danger to the safety of any person or the community and that the interests of justice warrant a sentence modification.” D.C. Code § 24-403.03 (a)(2). The factors the court is required to consider, and has considered in this case, are the following:

- (1) The defendant's age at the time of the offense;
- (2) The history and characteristics of the defendant;
- (3) Whether the defendant has substantially complied with the rules of the institution to which he or she has been confined and whether the defendant has completed any educational, vocational, or other program, where available;
- (4) Any report or recommendation received from the United States Attorney;
- (5) Whether the defendant has demonstrated maturity, rehabilitation, and a fitness to reenter society sufficient to justify a sentence reduction;
- (6) Any statement, provided orally or in writing, provided pursuant to § 23-1904 or 18 U.S.C. § 3771 by a victim of the offense for which the defendant is imprisoned, or by a family member of the victim if the victim is deceased;
- (7) Any reports of physical, mental, or psychiatric examinations of the defendant conducted by licensed health care professionals;
- (8) The defendant's family and community circumstances at the time of the offense, including any history of abuse, trauma, or involvement in the child welfare system;
- (9) The extent of the defendant's role in the offense and whether and to what extent an adult was involved in the offense;

(10) The diminished culpability of juveniles as compared to that of adults, and the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate risks and consequences, which counsel against sentencing them to lengthy terms in prison, despite the brutality or cold-blooded nature of any particular crime; and

(11) Any other information the court deems relevant to its decision.

*Id.* § 24-403.03(c). The court shall reduce a term of imprisonment imposed upon a defendant for an offense committed before the defendant’s 18th birthday if the defendant is eligible and the court finds “the defendant is not a danger to the safety of any person or the community and that the interests of justice warrant a sentence modification.” D.C. Code §24-403.03(a)(2). The burden is on the defendant to make such a showing. *Williams v. United States*, 205 A.3d 837, 850 (D.C. 2019).

## ANALYSIS

### A. IRAA Factors

#### 1. The Defendant’s Age at the Time of the Offense

The parties agree that at the time the defendant committed the offenses at issue, he was 16 years old.

#### 2. The History and Characteristics of the Defendant

Mr. Zulu was exposed to trauma and violence at an early age. The most prominent father figure in his life was murdered when he was a young child. Another formative relationship was interrupted when Mr. Zulu’s uncle was charged and incarcerated for murder.

While Mr. Zulu’s male role models were stripped from him by violence, the stability of his relationship with his mother was undermined by her addiction to heroin and crack cocaine, introduced to her by a boyfriend who also physically abused her and her children – including Mr. Zulu. Drug addiction, intrafamily violence, and crime led to a downward cycle of destabilization that left Mr. Zulu woefully and inadequately supervised and cared for.

Mr. Zulu also witnessed violence outside his home, including witnessing a murder as early as eight years old. Mr. Zulu became involved in selling drugs when he was approximately 10 years old. The majority of his friends also participated in the drug trade. Although there were various efforts by family members to intervene when he was very young, he was essentially left to the care of adults in the drug trade in the Langston Terrace neighborhood. These adults used Mr. Zulu, along with other minors, as runners, lookouts, and violent enforcers for their business, in order to shield themselves from law enforcement. Even after moving at 12 years old, Mr. Zulu became a juvenile member of another drug organization, the head of which was ultimately one of Mr. Zulu's victims.

3. Whether the Defendant Has Substantially Complied With the Rules of the Institution to Which He or She Has Been Confined and Whether the Defendant Has Completed any Educational, Vocational, or Other Program, Where Available

The defendant incurred numerous infractions while in the custody of the Federal Bureau of Prisons ("BOP"), many of which were serious and violent in nature. Govt. Opp. Ex. F. The first violent infraction incurred was in 1995 for stabbing another inmate. *Id.* at 10. The next year, the defendant, along with two other inmates, stabbed and seriously injured an unarmed inmate. Following that infraction, the defendant was recommended for a disciplinary transfer. Govt. Supp. Opp. at 3. As a result, he was transferred to Florence ADX, a maximum-security BOP facility in Colorado, where he served for 20 years mostly in solitary confinement.

While serving his sentence at Florence ADX, the defendant incurred further serious or violent infractions such as: threats of bodily harm in 2001; assault with serious injury in September 2004; assault without serious injury in November 2004; and assault with serious injury and possession of a dangerous weapon in 2007. In addition, the defendant incurred a series of relatively minor infractions such as: failing to obey orders and "being insolent to staff members"; refusing to work; and destroying property. Govt. Opp. Ex. F at 2-8. Individually, these infractions have little



impact on the court's decision here, but in total demonstrate a noncompliance that appears to be a pattern of immaturity in decision making and impulse control.

BOP records, as provided by the government, describe the 2004 and 2007 assaults. The court focuses on these assaults because of the nature of the offense and because they took place after Mr. Zulu had been incarcerated for some time. On September 22, 2004, Mr. Zulu, then 28 years old, walked up to another inmate who was sitting on a dividing wall. Govt. Supp. Opp. Ex. 5. The defendant punched that inmate in the face, causing him to fall off the wall into a small area in between the wall and the toilet. The defendant jumped onto that inmate and continually beat him in the head and body with his fists and feet for about five minutes despite the other inmate trying to stand up. The assault was captured on video and the victim was transferred to the hospital following the assault. The incident was initially charged as Attempted Murder but the defendant was eventually found guilty<sup>8</sup> of Assault with Serious Injury. BOP staff confiscated the defendant's writings about the incident in which he wrote that he "took [his] time" and detailed a list of injuries he inflicted on the victim, described the victim's begging for his life, explained his reasons for the assault, and described how it made him feel "sooooooooooooo good." Govt. Supp. Opp. Ex. 6. He also referenced his past acts of violence, including murder, without any remorse. *Id.*

On November 10, 2007, the then 31-year-old defendant, while in the Step-Down Program described below, stabbed another inmate twice in the back with a six-inch homemade weapon. Govt. Supp. Opp. Ex. 7. The victim sustained two deep puncture wounds and had to be transported to a local hospital for emergency medical treatment. The defendant claimed his actions were in self-defense but ultimately was found guilty of Assaulting With Serious Injury and

---

<sup>8</sup> "Guilty" is the term used in the BOP disciplinary records and therefore in this order. The court does not mean to suggest that there were additional criminal charged of which Mr. Zulu was convicted.

Possession of a Dangerous Weapon and was sanctioned accordingly. *Id.* This was the third stabbing for which Mr. Zulu was sanctioned during his incarceration.

During his time in solitary confinement at Florence ADX, the defendant was placed in the Step-Down program on five occasions – July 1998, March 2000, August 2006, May 2007, and March 2011 – to afford him the opportunity to transition to an open population facility. Govt. Notice of Filing 10/07/2019 at 2. The Step-Down program is described as follows:

“The Program utilizes a stratified system of less-restrictive housing to provide inmates with incentives to adhere to the standards of conduct associated with a maximum security custody program. Ordinarily, as inmates at the ADX demonstrate periods of clear conduct and positive institutional adjustment, it is possible for the inmate to progress from the General Population Units, through the Intermediate (J/A), Transitional (B/B Phase I), and Pre-Transfer Units (B/B Phase II), with increasing degrees of personal freedom and privileges at each stage, and be transferred out of the Program to an open population institution. An inmate’s placement in, advancement through, and transfer out of, the Program is a classification decision as to whether the inmate can safely function a less-restrictive unit without posing a risk to institutional security and good order; posing a risk to the safety and security of staff, inmates or others, including the inmate himself; and/or posing a risk to public safety.”

Govt. Notice of Filing 10/07/2019, “Institution Supplement: General Population and Step-Down Operations” at 6. However, the defendant was removed from the program for various reasons including possession of a dangerous weapon and the 2007 assault with serious injury. *Id.* While credible evidence was presented at and after the hearing explaining how the Step Down process is often not a linear one, the fact remains that on numerous occasions, Mr. Zulu was unable to conform his behavior – including his violent behavior – to acceptable standards, despite incentives to do so.

In 2015, the defendant was transferred from Florence ADX to the North Dakota State Prison where he stayed for approximately a year before returning to the BOP at United States Penitentiary (“USP”) Allenwood. On October 31, 2016, while in the general population, the

defendant was involved in a fist fight for which he was found responsible for injury to another inmate. Govt. Opp. Ex. F at 1; Govt. Supp. Opp. Ex. 8. The defendant was 40 years old.

Since being transferred back to D.C. in 2018, the defendant has not incurred any additional infractions.

In contrast to his BOP disciplinary record, the court finds that Mr. Zulu has taken advantage of a number of educational and rehabilitative programs, which is especially laudable given his limited opportunities to do due to his conditions of confinement. Def. Supp. 10/28/2018 at 24-26. He successfully participated in Black Fathers Matter, a behavioral health education group, Georgetown University Prison Scholars Program, Free Minds Book Club, and Writing Workshop. Def. Supp. 10/28/2018 at 25-26. He has reached out to the Fresh Start Project to pursue vocational assistance.

4. Any Report or Recommendation Received from the United States Attorney

The United States Attorney opposes Mr. Zulu's motion. The reasons for its opposition relate primarily to Mr. Zulu's lack of expression of remorse Robin Lyons' murder, his disciplinary record, and what the government characterizes as his endorsement of violent ideologies.

Mr. Zulu's lack of expression of remorse and responsibility with regard to Ms. Lyons are notable. However, the court is mindful that Mr. Zulu still has potential criminal exposure for Ms. Lyon's death and of defense counsel's representations about his legal advice to Mr. Zulu. Under these circumstances, the court is unwilling to find that Mr. Zulu's failure to explicitly address Ms. Lyon's murder is evidence of his lack of remorse.

The AUSA also notes Mr. Zulu's troubling disciplinary record, the opposition of the victims' family to resentencing, and the defendant's role in the crimes, which the court addresses herein.

5. Whether the Defendant has Demonstrated Maturity, Rehabilitation, and a Fitness to Reenter Society Sufficient to Justify a Sentence Reduction

While more recently Mr. Zulu has demonstrated some hallmarks of maturity and rehabilitation, his pattern of potentially lethal violence earlier in his incarceration, his more recent

disciplinary infractions, and his recent written expressions regarding his attitudes towards violence, all speak to a persistent lack of maturity and an incomplete rehabilitation. These, in turn, lead the court to find that Mr. Zulu has not yet sufficiently demonstrated fitness to re-enter society.

Mr. Zulu, as outlined herein, has participated in programs and has refrained from further disciplinary infractions since being transferred back to the Department of Corrections in 2018. Not only do these actions themselves demonstrate a level of maturity, but his response to the incentive provided by the possibility of an IRRA reduction is in stark contrast to his inability to respond to the incentive presented by the Step Down Program on numerous occasions. This does provide some evidence of Mr. Zulu's increased facility with appropriate cost-benefit analysis and impulse control, and thus his increased maturity.

Mr. Zulu has many supporters, including institutional programming partners, who note his maturity and thoughtfulness as positive traits. The court does not discredit this evidence and finds that Mr. Zulu, recently and in the right circumstances, can demonstrate signs of maturity and fitness to re-enter society.

However, as outlined herein, Mr. Zulu's violent behavior does not appear limited to an immaturity due principally to youth. His continued disciplinary infractions up until soon before his transfer to D.C. do not evidence a marked increase in maturity over the years. Moreover, his continued violent behavior, and perhaps even more so his stated attitude towards violence as an acceptable means of prison discipline and enforcing morality, demonstrate a continued immaturity.<sup>9</sup> It also evidences an incomplete rehabilitation, which has not yet adequately changed Mr. Zulu's view of violence as an acceptable means of extrajudicial conflict resolution. Both the demonstrated lack

---

<sup>9</sup> Even if the court were to credit Mr. Hudson's explanation of "prison writing" as a genre rather than an expression of true intent or perspective, Mr. Zulu's willingness to engage in such "self-aggrandizing" behavior, does not speak the type of maturity that the court finds would militate in favor of granting IRRA relief.

of consistent maturity and rehabilitation lead this court to find that Mr. Zulu is not yet ready to re-enter society.

6. Any Statement, Provided Orally or in Writing, Provided Pursuant to § 23-1904 or 18 U.S.C. § 3771 by a Victim of the Offense for Which the Defendant is Imprisoned, or by a Family Member of the Victim if the Victim is Deceased

The court reviewed the written statement submitted to the court on October 22, 2019 from Mr. Emanuel Graham, victim Michael Graham's uncle. The court also considered the oral victim impact statements given at the September 20, 2019 hearing by Mr. Emanuel Graham and Ms. Stephanie Lyon, victim Robin Lyon's mother. All the victims expressed the ways in which the crimes have devastated the families of the victims and left them feeling insecure and unsafe to this day.

7. Any Reports of Physical, Mental, or Psychiatric Examination of the Defendant Conducted By Licensed Health Care Professionals

The court has not received any reports of physical, mental, or psychiatric examinations of the defendant conducted by licensed healthcare professionals in preparation for this Motion or any assessment of whether the defendant is still a danger to society or the likelihood that he will succeed in the community after release.

8. The Defendant's Family and Community Circumstances at the Time of the Offense, Including Any History of Abuse, Trauma, or Involvement in the Child Welfare System

The defendant spent the early years of his life living with his mother's parents in the River Terrace neighborhood of Northeast D.C. Def. Supp. 10/28/2018 at 8. Although the defendant's biological father was never actively involved in his life, he developed a close relationship with his half-sister's father, Hughie Dyer. Mr. Dyer was "the closest thing to a father figure in Mr. Zulu's early childhood." *Id.* Tragically, Mr. Dyer was killed in a drug-related murder when the defendant was six years old. Mr. Dyer's death was a "formatively traumatic experience" for the defendant as his mother recalled. *Id.* The defendant's uncle, with whom he also had a close relationship, was

convicted for a 1984 murder. The defendant, then seven years old, testified at his uncle's trial. His uncle passed away in prison when the defendant was 13 years old. *Id.* at 8-9.

At age of seven, the defendant moved with his mother and half-sister from his grandparents' home to the Potomac Gardens housing development in Southeast D.C. They moved in with his mother's then boyfriend, Robert, who was a heroin and cocaine addict. His mother's relationship with Robert was the start of her addiction, one that she struggled with for the rest of her life. *Id.* at 9. Due to her addiction, Patricia was unable to provide her children with food and the care that they needed. The defendant grew up watching his mother and Robert smoke crack and inject heroin in a home "littered with drug paraphernalia." *Id.* at 9. At the time, Potomac Gardens was the "largest open-air drug market in the Washington area," according to the Washington Post. *Id.* at 10. Also during this time, Robert frequently abused the defendant's mother in front of him. The defendant also recalled Robert beating him with objects like extension cords and a wooden back scrubber. *Id.*

When the defendant was about eight or nine years old, his grandparents helped his mom move out of Potomac Gardens in hopes to end her addiction. Patricia's drug treatment proved to be unsuccessful. Around this time, she began a relationship with a drug dealer named Tyrone Jefferson and began selling drug herself. *Id.* at 10-11. It was also during this time that the defendant witnessed his first murder. *Id.* at 11.

The defendant began selling PCP at age 10 or 11. His grandparents tried to move him and his sister back to their house in River Terrace when he was 12 years old, but he ran away. *Id.* at 11-12. He spent the next two years at Langston Terrace housing development where he and others his age were making thousands of dollars a week selling cocaine. *Id.* at 13.

In late 1988, the defendant eventually moved back to River Terrace, which had become a "thriving drug market." *Id.* at 13. Shortly after his return, the defendant developed a relationship with Michael Graham, in which Mr. Graham used the defendant as an aide and enforcer in his drug

organization. It was then that the defendant came in contact with the juvenile justice system. The defendant was arrested three times in 1990 and twice more in 1991, each time for either possession with intent to distribute cocaine or carrying a pistol, or both.<sup>10</sup> *Id.* at 14. It was also during this time that the defendant developed a regular cocaine habit. *Id.* Mr. Graham loaned the defendant thousands of dollars over time which was a debt that he used as “leverage to secure Mr. Zulu’s continued obedience and loyalty as their relationship began to sour.” *Id.* at 15.

The defendant attributes his violent behaviors in his youth to his mother’s neglect during his early years, to Michael Graham using him for his drug trade, and to the D.C. youth systems’ failure to provide him with a reliable support system. While the court finds that these reasons likely led the defendant down an unstable and violent path, his continued assaultive behaviors and anti-social perspectives, which lasted through his 40s, cause the court concern regarding his rehabilitation.

9. The Extent of the Defendant's Role in the Offense and Whether and to What Extent an Adult was Involved in the Offense

Evidence at trial established that the defendant acted with three adult co-defendants in the murders of Michael Graham and Robin Lyons. Nevertheless, not only was he the one who shot and stabbed the victims to death, he also proposed and orchestrated the plan to kidnap and torture Michael Graham and the coverups that followed. Govt. Opp. at 4-13, 22.

10. The Diminished Culpability of Juveniles as Compared to that of Adults, and the Hallmark Features of Youth, Including Immaturity, Impetuosity, and Failure to Appreciate Risks and Consequences, Which Counsel Against Sentencing them to Lengthy Terms in Prison, Despite the Brutality or Cold-Blooded Nature of any Particular Crime

The court is mindful of the role that Mr. Zulu’s very young age at the time of his offenses played in his decreased culpability. However, as outlined above, Mr. Zulu’s actions since the time of incarceration and his attitudes towards violence have extended far beyond the impetuosity primarily

---

<sup>10</sup> The defendant was committed multiple times to D.C.’s then notorious juvenile facilities, Cedar Knoll and Oak Hill. Def. Supp. 10/28/2018 at 16. Oak Hill, in particular, became known as a place where detained youths “lived in squalor, were beaten and went home more violent than when they arrive.” *Id.*

attributable to youth. Moreover, his continued immaturity and demonstrated inability to appreciate risks and consequences of his behavior as demonstrated by his disciplinary record, show that these traits, as expressed in Mr. Zulu, are not simply the hallmarks of youth.

11. Any Other Information the Court Deems Relevant to Its Decision

The court notes that Mr. Zulu has a strong support system of individuals, many of whom wrote on his behalf and appeared in court for his hearing. The court does not discount that strong showing of community support, but rather finds that the other factors outweigh them at this time.

The court is also mindful that Mr. Zulu spent a long portion of his sentence in a supermax prison, essentially in solitary confinement. The court agrees that such conditions of confinement appear to have severely limited Mr. Zulu's ability to access meaningful rehabilitative programs, and an opportunity for the type of interactions that would aid in rehabilitation. However, the court must be mindful of all the factors underlying the decision of whether a reduction of sentence is warranted, and not simply discount them because there is an explanation of the factors that weigh against granting relief. This is especially true where the potential for Mr. Zulu to reapply for relief remains open, after an extended period of what may be more fruitful rehabilitation.

**B. Reduction in Sentence is Warranted**

1. Danger to Society

After considering each of the factors set forth above, the Court has determined that Mr. Zulu has failed to establish that he is no longer a danger to the community. As discussed in connection with the third factor, Mr. Zulu has incurred numerous infractions during his time in prison, including multiple sanctions for brutally violent armed attacks.

Mr. Zulu argues that the time elapsed since his last seriously violent incident is evidence that he no longer poses any danger and should be released from incarceration. While Mr. Zulu's most recent behavior certainly reflects a marked improvement over his earlier conduct, the court finds it



insufficient to conclude that Mr. Zulu is not a danger to the safety of the community when weighed against the prior 13-year period.<sup>11</sup> The 2004 assault which left another inmate hospitalized occurred when Mr. Zulu was 28 years old. Moreover, far from reflecting on that experience in any way that showed meaningful growth, Mr. Zulu wrote about the incident in a way that demonstrated he had no remorse or even much reflection about his violent actions.

Moreover, his armed violent assault occurred when he was over the age of 25, with arguably the most serious attack occurring in November of 2007 when Mr. Zulu was 31 years old and had been incarcerated for more than a decade.

Mr. Zulu's late 2018 writing on his transfer from Florence ADX to a state prison also undermine his assertion that he has matured beyond being a danger to the community. He wrote that he was no longer the impulsive person he used to be because he talked himself out of "slic[ing] open [his cell mate's] throat" for disrespecting him. Nonetheless, a paragraph later he stated "[t]here are some things in life we must kill for, that's the raw truth." After 20 Years of Solitary in a Supermax- They Send Me to This Place<sup>2</sup>, 12/31/18, p. 4. Mark Howard, who met Mr. Zulu in his Georgetown University program at the DC Jail, spoke at the IRAA hearing and urged the court to discount such writing (and presumably his earlier writing) as "prison writing" consistent with a genre of self-expression that is typically self-aggrandizing and an expression of thoughts rather than intent. However, the court notes that Mr. Zulu's consistent written expression regarding his comfort with resorting to violence to right wrongs, gain respect, or even maintain his sense of order, is also consistent with his repeated violent behavior up to and including the 2016 assault.

---

<sup>11</sup> While the court discussed explicitly two of the events that resulted in serious injury and/or in which Mr. Zulu used potentially lethal force, these are not the only assaultive incidents on Mr. Zulu's record, nor the only serious assaults. Indeed, his first assault involved a stabbing and his most recent assault in his BOP records occurred in 2016.

The court simply cannot discount Mr. Zulu's own continued and recent expressions of willingness to engage in violence up to and including killing when he has continued to engage in brutally violent assaults, including armed assault, such as stabbing another inmate, in prison. The timing of such assaults also leads to the conclusion that such impetuosity is not simply, or even primarily, attributable to the vagaries of the undeveloped juvenile brain.

## 2. Interests of Justice

After considering each of the factors set forth above, the Court has determined that Mr. Zulu has failed to establish that a reduction of his sentence would be in the interests of justice, in large part because Mr. Zulu has failed to persuade this court that he no longer poses a danger to the community. There are many factors that militate in favor of reducing a sentence, such as Mr. Zulu's age at the time of the offense, his participation in rehabilitative programs and more recent demonstrations of steps towards maturity, and his own history and lack of family and community resources at the time of his offenses. However, the sustained pattern of potentially fatal levels of violence after incarceration, Mr. Zulu's inability to refrain from violence even when incentivized to do so by potential step down, and his continued endorsements of violence as a problem-solving tool, all outweigh the role his diminished culpability as an juvenile with his particular background may have played in his earlier crimes. Perhaps a longer history of non-violence and further demonstration of rehabilitation may at some point outweigh these considerations, but they do not do so at this time.

## **CONCLUSION**

Based on the aforementioned factors, the court finds that Mr. Zulu is still a danger to society and that he has not demonstrated that the interests of justice would not be served by a reduction of his sentence.

WHEREFORE it is this 9<sup>th</sup> day of January, hereby

ORDERED that Mr. Zulu's Motion to Reduce is **DENIED**.

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a vertical line and another large, stylized 'D'.

---

**Judge Danya A. Dayson**  
(Signed in Chambers)

**Copies e-served on:**

James Zeigler  
*Counsel for Defendant*

Jocelyn Bond  
*Assistant U.S. Attorney*