

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

**DEFENDANT'S SENTENCING
MEMORANDUM**

vs.

Mohamed Mohamed Noor,

Court File No.: 27-CR-18-6859

Defendant.

Following a jury trial, Mr. Mohamed Mohamed Noor was found guilty and convicted of third-degree murder and second-degree manslaughter. In anticipation of sentencing, probation conducted a presentence investigation that resulted in a report suggesting that Mr. Noor be sentenced to the presumptive sentence under the Minnesota Sentencing Guidelines. On June 7, 2019, this Court sentenced Mr. Noor to the presumptive guideline sentence of 150 months under the Minnesota Sentencing Guidelines for third-degree murder.¹

On September 15, 2021, the Supreme Court of Minnesota issued an opinion determining that there was insufficient evidence to sustain Mr. Noor's conviction of third-degree murder under Minn. Stat. § 609.195(a). *State v. Noor*, --- N.W.2d ---, 2021 WL 4185651, at *13 (Minn. 2021). The Supreme Court of Minnesota remanded

¹ The guideline range for Murder in the Third Degree is 128 to 180 months with 150 being the presumptive sentence in that range.

to this Court to resentence Mr. Noor on the sole remaining charge of second-degree manslaughter. *Id.*

Mr. Noor respectfully asks this Court to impose a sentence at the low end of the applicable guideline range² (41 months), crediting his time served and directing he be placed on supervised release upon his release from prison. Mr. Noor points to the unexpected and particularly harsh conditions of his incarceration as well as his post-sentencing conduct to support his request.

1. Harsh Conditions of Confinement in Administrative Segregation.

Mr. Noor has spent a significant amount of time in administrative segregation at Oak Park Heights Prison. On April 30, 2019, following the jury's verdict, Mr. Noor was immediately taken into custody and placed in administrative segregation, due to safety concerns. He remained in administrative segregation until July 11, 2019. To be clear, during this 72-day administrative-segregation period, Mr. Noor was held in administrative segregation at Oak Park Heights Prison. On September 23, 2021, following the Supreme Court's opinion reversing and remanding to this Court to vacate Mr. Noor's conviction for depraved-mind murder and sentence him on his conviction of second-degree manslaughter, Mr. Noor was returned to Oak Park Heights Prison and again placed in administrative segregation. He remains at that prison, awaiting his sentencing, which was

² The guideline range for Manslaughter in the Second Degree is 41 to 57 months with 48 months being the presumptive sentence in that range.

subsequently scheduled for October 21, 2021, adding an additional 28 days for a total of 110 days of administrative segregation to date.

Oak Park Heights is Minnesota's only Level Five maximum security prison.³ Most individuals housed in the facility are designated at either maximum or close custody levels. Mr. Noor's incarceration in the Administrative Control Unit (ACU) at Oak Park Heights is the most restrictive prison setting the State of Minnesota has to offer.⁴ The ACU often houses individuals for disciplinary reasons but may also house some individuals who are in administrative segregation, as is the case with Mr. Noor. Regardless of the reason a prisoner finds themselves in the ACU, the conditions are largely the same. Persons in administrative segregation are not allowed visitation with family or friends from the outside world. Mr. Noor spends 23 hours per day alone in a 6 x 9 foot concrete room. The room contains a narrow concrete slab with a thin plastic mattress and an open toilet. He is always in view of the watchful eye of a camera. Mr. Noor is allowed 1 hour of "recreation" on 3-4 days per week due to extreme staffing shortages in Minnesota prisons. Recreation occurs in an empty 13 x 17 foot concrete room. The room has a telephone and a pullup bar. Mr. Noor is allowed a 10-20 minute phone call following which he walks in a circle for the rest of his recreational time. He never steps into the light of day. While in administrative segregation his meals are slid through a slot in the

³ <https://mn.gov/doc/facilities/oak-park-heights/>

⁴ <https://mn.gov/doc/facilities/oak-park-heights/administrative-control-unit/>

door without conversation. He is allowed 3 sets of undergarments, 4 shirts, and 4 pants, which are laundered weekly. Many days he has no human contact beyond the scrape of a food tray making its way into his cell.

Mr. Noor's custody experience in Minnesota is akin to a prisoner who has committed a Level-4 violation. The Minnesota Department of Corrections (DOC) 2021 Offender Discipline Rules outlines 5 levels of violations with 5 being the most serious violation. The Table of Penalties outlines the nature of violations and term or segregation for those violations. See *Id.*

Level 4 Violations:

Penalty Range:

SEG 60-180 EI 0-270*

*EI time of 31-75 days must have facility warden approval. EI time of 76 or more days must have Deputy Commissioner – Facilities Division approval.

#	Name	PENALTIES	
		SEG*	EI*
330	Arson (Risk Code Violation (RCV))	180	270
413	Assault of Staff with Weapon (RCV)	180	270
414	Assault of Offender with Weapon (RCV)	180	270
420	Riot (RCV)	180	270
439	Escape from Secure Custody (RCV)	180	270
441	Assault with Bodily Harm of Staff (RCV)	180	270
442	Assault with Bodily Harm of Offender (RCV)	180	270

A Level-4 violation assumes a 60-180 day period of segregation. *Id.* Mr. Noor's restriction is commensurate to that of inmates being sanctioned for committing arson, assault, or riot while in custody according to DOC regulation. Mr. Noor has never committed an infraction of any prison policy. *See infra* Section 3. In fact, he has spent his time trying to help those around him live a better life. *See infra* Section 3. Mr. Noor relies in part on his particularly harsh conditions of confinement to advocate for an executed sentence of 41 months.

2. *The COVID-19 Pandemic Provides Reason to Sentence to 41 Months.*

Mr. Noor's time in custody has been unexpectedly harsh for a second reason—it has overlapped in large part with the coronavirus pandemic. According to the CDC, there have been 43,773,573 COVID-19 cases in the United States in the 30 days prior to October 5, 2021.⁵ In the same time period, the United States has recorded 702,360 deaths from COVID-19. *Id.*

In March 2020, the facility where Mr. Noor was being held, like many others, went to lockdown status due to the on-going COVID-19 pandemic. This prudent decision closed doors to visitors and abruptly deprived Mr. Noor of family and social contact, legal visits, visits from volunteers, and any communal religious activity.

Prior to that event Mr. Noor had occasional visits from his family and was able to attend and lead religious services with and for the Muslim population at

⁵ <https://covid.cdc.gov/covid-data-tracker/#datatracker-home>

the correctional facility. The COVID-19 pandemic ended all religious services at his facility and has prevented family visits for more than a year. Mr. Noor has not enjoyed a religious service in the same amount of time. While the same is true for all persons in the facility, this fact establishes a particularly harsh custodial environment. Prison affords few pleasures, it is not supposed to. But taking away family contact and an opportunity for spiritual sustenance is a factor that lifts the bar high for harsh conditions of confinement.

Simply put, Mr. Noor’s “incarceration in the midst of a global pandemic has sufficiently increased the severity of the sentence beyond what was originally anticipated” when this Court sentenced Mr. Noor in 2017. *See United States v. Frost*, No. 16-0582, 2021 WL 229665, at *9 (D. Md. Jan. 22, 2021) (noting that, due to the pandemic, prison “programming and recreation have either been limited or cancelled altogether, and visitation is either prohibited or restricted”).

Further, incarcerated persons live with a greater risk of infection with the possibility of death or “long-haul” medical complications that they are unable to avoid due to the nature of prison life. As other courts have recognized, prison inmates are unable to “maintain social distance in confinement, and it is difficult—if not impossible—to practice other necessary behaviors, such as frequent hand washing to reduce the spread of the virus.” *United States v. Curington*, No. 12-20115, 2020 WL 4344083, at *2 (S.D. Fla. July 7, 2020). The Delta-9 variant, with

accompanying increase of breakthrough infections, has only increased the specter of COVID-19 in prison.

A 41-month sentence would recognize this increased severity of Mr. Noor's incarceration to date due to the COVID-19 pandemic.

3. Mr. Noor's Post-Sentencing Conduct Supports a sentence of 41 months.

The United States Supreme Court has long recognized that sentencing judges "exercise a wide discretion" in the types of evidence they may consider when imposing sentence and that "[h]ighly relevant—if not essential—to [the] selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics." *Pepper v. United States*, 562 U.S. 476, 480 (2011) (internal citation omitted).

Since his time in custody, Mr. Noor has received 19 positive behavior reports and zero negative ones. Mr. Noor has been lauded for his willingness to assist other inmates. *See Exh. 1* (09/13/2019). Several positive reports applaud Mr. Noor's politeness and respect toward staff and other residents alike, making for "a more positive environment in the workplace". *Id.* (10/13/2019). Staff has noted his great work ethic. *Id.* (10/13/2019). Mr. Noor has regularly assisted others where not required. Overall, Mr. Noor "model[s] positive behavior for others to see". *Id.* (11/13/2019).

In notable positive behavior reports staff members reported:

Thank you for taking the time to talk to another resident that was going through some emotions about moving to the East. This shows what kind of person you are. I greatly appreciate this and thank you for always having such a positive attitude.

Id. (01/09/2020).

... No task is too small, or too big, as you are always willing to help out in any capacity. Your hard work and dedication to achieving the missions brought forth to you, makes you an essential worker. Your efforts are both noticed and appreciated. Thank you.

Id. (5/11/2020).

In September of 2020, Officers and a Sergeant recognized Mr. Noor with the September 11th Worker Award – named after those who passed on September 11, 2001. *See Id.* 09/11/2020. The Sergeant wrote that “Your commitment to your job, and the respect you show others is why you have been selected for this award. It is my hope that you will continue to inspire others to achieve their goals, far beyond these walls.” *Id.*

Staff at Mr. Noor’s facility recognizes that Mr. Noor’s positive acts—such as assisting other residents with meals—are not done in “asking for recognition or additional compensation”.

Mr. Noor has shown to be a model prisoner. *See Exh. 2.* He has spent his time giving back to the community he has found himself in, to the extent he is able given the pandemic restrictions. Mr. Noor has demonstrated that he is ready to return to “normal” society and will continue assisting those in need around him.

Continuing to keep Mr. Noor imprisoned would be unnecessary if the goal of this Court is reformative justice, as Mr. Noor has shown that he a positive member of society and is willing to assist his community.

Conclusion

Mr. Noor respectfully asks the Court to resentence him within the Minnesota Sentencing Guidelines. Specifically, Mr. Noor seeks a resentence of 41 months. This period of incarceration recognizes the particularly harsh nature of Mr. Noor's incarceration and recognizes the work he had done in prison to help those around him and be supportive of staff.

Dated: October 14, 2021

Respectfully submitted,

s/ Thomas C. Plunkett

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