THE STATE OF SOUTH CAROLINA
In The Court of General Sessions

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions

The Honorable Diane S. Goodstein, Judge.

Case No. 2018-001915

The State of South Carolina,.....Respondent.

v.

Daemon M. Crim,.....Appellant.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

This appeal arises from a criminal sentence issued by The Honorable Diane S. Goodstein after a guilty plea. On June 11, 2018, Judge Goodstein sentenced twenty-one year old Daemon Crim to a period of twenty years incarceration for two counts of Criminal Sexual Conduct with a Minor in the second degree after Crim pled guilty to both counts. On October 8, 2018, Judge Goodstein held a hearing on a motion to reconsider the sentence. That motion was denied.

The prosecution did not request or recommend any sentence during the plea hearing. The Defense presented a multitude of mitigating evidence. This appeal followed.

STATEMENT OF FACTS

The defense presented ample mitigating evidence at the sentencing hearing. At the time of the offense, Crim was a twenty-one year old Marine, stationed as a correctional officer at the Naval Brig in North Charleston. (T1, 25, lines 11-14). He had no prior criminal record. (T1, 14, lines

18-19). The defense presented Crim's military awards and commendations to the Judge. (T1, 38, lines 16-18).

The defense presented the report of Dr. Geoffrey McKee, who performed a psychosexual evaluation of Crim. (T1, 38, lines 18-20). That report indicated that Crim "does not meet the criteria for Pedophilia or Pedophilic Disorder or another sexual deviance diagnosis." (Ex. 1, 19). Additionally, Dr. McKee's report found that Crim "was well within normal limits suggesting that his risk of harm to others is very low." (Ex.1, 20). On the sexual recidivism scales, Dr. McKee indicated that Crim "fell in a low risk category for sexual recidivism." (Ex. 1, 20). Finally, Dr. McKee found that Crim "fell in the category of the best likelihood to complete probation without incident... over 92% of SC probationers/parolees with similar scores successfully complete their community supervision; none (0.00%) had their probation revoked due to a new violent crime." (Ex. 1, 21). Dr. McKee classified Crim in the Low Risk category for sexual violence. (Ex.1, 20). This report was not contested by the prosecution.

The defense also presented eleven character reference letters from Crim's friends, family, and acquaintances. (T1, 38, lines 20-22, Ex. 1, 23-33). Those letters present Crim as "an outstanding young man," (Ex. 1, 23), "a good man, a good adult, and someone with honor and integrity," (Ex 1, 24), "an amazing man... [who] has a caring heart full of compassion and love," (Ex. 1, 27), "an amazing young man with a bright future," (Ex. 1, 28), trustworthy and respectful, (Ex. 1, 29), "a good willed member of society," (Ex. 1, 30), "a person that you know you can trust," (Ex. 1, 31), "a person of good moral character," (Ex. 1, 32), and "kind-hearted and well-mannered." (Ex. 1, 33).

Kelly Luthie, mother of the Defendant, spoke to the court about Crim's background and asked for leniency in sentencing. (T1, 39, lines 16-25, T1, 40, lines 1-10). At the time of his

sentencing, Crim worked as a shift supervisor at a Pilot truck stop. (T1, 40, lines 23-25). Crim's supervisor, Thomas Mayes addressed the court regarding Crim's work ethic and positive attitude, indicating "we would gladly have him back tomorrow if we could." (T1, 40, lines 23-25, T1, 41, lines 1-9). Crim's longtime friend, Mike Doyle addressed the court, indicating that Crim "is a very good person...he is a standup person." (T1, 41, lines 23-25. T1, 42, lines 1-13). Finally, Crim himself addressed the court. Crim expressed remorse, apologized to the victims, indicated he had "a horrible lapse in judgment," and said this incident was something "I will never – never be able to forgive myself for." (T1, 42, 22-25, 43, lines 1-3).

Trial counsel for Crim made the court aware that this arrest had cost Crim a promising career in the United States Marine Corps (T1, 45, lines 4-7). Trial counsel also asked the Judge to consider the wide range of offenses sentenced under this statute, including strangers who "grab somebody off the street and doing [sic] bad things." (T1, 44, lines 7-10). Trial counsel extensively told the court about Crim's rehabilitative potential (T1, 45, lines 11-15, 46, 3-9).

As to the facts of the crime, while the Defendant admitted on the record to having sexual intercourse with two girls at the same time, there was no evidence in the record of any force, coercion, or violence. Victim K.M. indicated that Victim E.K. told her to take her pants off. (Ex. 1, 1). Victim K.M. also said that victim E.K. told Crim to engage in intercourse with her. (Ex. 1, 2). Victim E.K. indicated that it was Victim K.M.'s idea to have a threesome with Crim. (Ex 1, 17). Victim E.K. said she agreed with her friend to have a threesome because it was "on her bucket list, " and "so she would shut up about it." (Ex. 1, 17). Victim K.M indicated that when she told Crim to stop, he did. (Ex. 1, 2). Victim E.K. indicated she "wanted to know how sex felt like." (Ex. 16). Both victims indicated that they disrobed themselves, and that the sexual encounters were consensual. (Ex. 1, 3, 15, 16).

STANDARD OF REVIEW

The standard of review in reviewing a criminal trial court proceeding is abuse of discretion. "In criminal cases, the appellate court sits to review errors of law only. State v. Jacobs, 393 S.C. 584, 586, 713 S.E.2d 621, 622 (2011). A sentence will not be overturned absent an abuse of discretion or when the ruling is based on an error of law. Id." State v. Dawson, 402 S.C. 160, 163, 740 S.E.2d 501, 502 (2013). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." State v. Hicks, 377 S.C. 322, 324-25, 659 S.E.2d 499, 500 (Ct. App. 2008) citing Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). "When the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred." Fontaine v. Pietz, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987).

ARGUMENT

1. A CIRCUIT COURT JUDGE ABUSES HER DISCRETION IN ISSUING A CRIMINAL SENTENCE THAT IMPOSES THE MAXIMUM SENTENCE WHERE THE DEFENSE PRESENTS SIGNIFICANT MITIGATION EVIDENCE, WHERE THERE IS NO ALLEGATION OF AGGRAVATING CIRCUMSTANCES, WHERE THE DEFENDANT HAD NO PRIOR RECORD, AND WHERE THE RECORD REFLECTS SUBSTANTIAL EVIDENCE OF THE REHABILITATIVE POTENTIAL AND GOOD CHARACTER OF THE DEFENDANT.

Judge Goodstein abused her discretion when she sentenced Crim to twenty years, the maximum sentence for the crimes for which he pled guilty, because she ignored the mountain of mitigating evidence showing Crim was unlikely to re-offend, expressed remorse, had good character, was well employed, and had great rehabilitative potential. This twenty year sentence constitutes cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution, and the cruel and unusual clause of the South Carolina State Constitution because it is disproportionate to the crime committed. U.S. Const. amnd. XIII.

Despite the substantial evidence presented in mitigation of the sentence at the sentencing hearing, Judge Goodstein issued a twenty year sentence, the maximum prescribed by law, which was without evidentiary support and was not grounded in factual conclusions. This constitutes an abuse of discretion. State v. Hicks, 377 S.C. 322, 324-25, 659 S.E.2d 499, 500 (Ct. App. 2008) citing Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). In addition, a sentence to the maximum was a failure to exercise any discretion, which in and of itself is an abuse of discretion. Fontaine v. Pietz, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987).

The Criminal Sexual Conduct with a Minor, second degree statue provides that anyone convicted of this section may be sentenced to not more than twenty years. S.C. Code Ann. §16-003-0655(b)(1)-(2). The General Assembly provided this wide discretion to Circuit Judges because some cases have aggravating factors and some defendants have substantial criminal records. However, in this case, there is nothing in the record to support the high end of this wide range of sentence. Crim had no prior criminal record. (T1, 14, lines 18-19). The prosecution presented no aggravating factors. No force, coercion, or violence were used in the commission of the crime. (Ex. 1, 1-3, 15-17). Crim was not in a position of authority over the victims; he was not their coach, teacher, youth group leader, step-father, or guardian. Crim was seven years older than

one victim and eight years older than the other. (T1, 25, lines 11-12, 26, lines 7-25). Crim was well employed at the time of the crime and at the time of sentencing. (T1, 25, lines 12-15, 40, lines 23-25). Crim presented eleven good character letters at sentencing that demonstrate that he was a good, hard working young man, and had live witnesses say the same at his sentencing hearing. (Ex. 1, 23-33, T1, 39-42). Crim's psychosexual evaluation, uncontested by the prosecution, presented him at low risk to re-offend, and high risk to successfully complete probation or parole. (Ex. 1, 19-22). Crim expressed remorse and apologized to the victims. (T1, 42, 22-25, 43, 1-3). In spite of all of these factors, Judge Goodstein sentenced Crim to the maximum sentence of twenty years.[1]

[1] This sentence appears especially egregious when compared a sample of Judge Goodstein's sentences in other cases where aggravating sentencing factors existed. See Convicted Child Molester Gets 12-year Term, THE POST AND COURIER (Charleston, S.C.), Sept. 22, 2001, at B3 (reporting that Judge Goodstein sentenced a thirty year old, who was already a convicted sex offender, to twelve years for sex crimes on a victim under twelve years old); Herb Frazier, Ex-inmate Gets 15 Years in Prison Stabbing, THE POST AND COURIER (Charleston, S.C.), April 26, 2004 at 1B (reporting that Timothy Player stabbed a fellow inmate at Lieber Correctional Institution, that Player expressed no remorse, and that Judge Goodstein sentenced Player to fifteen years for Assault and Battery With Intent to Kill); Summerville Man Receives 20-year Sentence for Sex Crime, THE POST AND COURIER (Charleston, S.C.), September 5, 2018 at A5 (reporting that Judge Goodstein sentenced a fifty-eight year old man, Vernell Cooley, to twenty years for sex crimes with a minor, and that Cooley had a criminal record); Kathy Stevens, Man Could Face More Prison in Child Sex Case, THE POST AND COURIER (Charleston, S.C.), December 29, 2001 at 1B (reporting that Judge Goodstein sentenced thirty-three year old Stephen Paddock, a serial child molester, to twelve years incarceration after a guilty plea to sex crimes on a nine year old girl and twelve year old boy); St. Helena Man Gets 20 Years for 2011 Shooting, THE ISLAND PACKET (Hilton Head, S.C), September 21, 2012 at 1B (reporting that Judge Goodstein sentenced Jabari Linnen to twenty years for shooting someone five times over a road rage incident); Glen Smith, Man Gets 20 years for Beating 75-year-old, THE POST AND COURIER (Charleston, S.C.), Sept. 6, 2002 at 6B (reporting that Judge Goodstein sentenced Dennis Knight to twenty years after he pled guilty to Burglary First Degree and Assault and Battery With Intent to Kill for breaking into the house of a stranger and beating a seventy-give year old woman in the head with the gear shifter of his truck, where the charges potentially carried a sentence of life in prison); Martha Rose Brown, Man Back in Prison in Shooting; Previously Served Time in Stabbing, THE TIMES AND DEMOCRAT (Orangeburg, S.C.), November 26, 2018 (reporting that Judge Goodstein sentenced Marion Hair, Jr. to three years in prison for his role in a death by stabbing); Summerville Man Gets Prison in Robbery Spree, THE POST AND COURIER (Charleston, S.C.), November 28, 2001 at 3B (reporting that Judge Goodstein sentenced Michael Casey to twenty five years for three separate Armed Robberies with a knife, two Assaults With Intent to Kill, and a Failure to Stop for a Blue Light); Herb Frazier, Man Gets 25 years for Kidnapping Toddler During Chase, THE POST AND COURIER (Charleston, S.C.), March 21, 2003 at 3B (reporting that Judge Goodstein sentenced William Ford to twenty-five years for kidnapping a three year old from her home, stealing a car, and engaging in a high speed chase with police, where the charges potentially carried a sentence of life in prison); and Melissa Boughton, Man Sentenced to Twenty Years for Sexual Assaults, THE POST AND COURIER (Charleston, S.C.), March 4, 2016 at A6 (reporting that Judge Goodstein sentenced forty-six year old Maurice Harris to twenty years for sexual batteries of twelve and eight year old victims, and that Harris had a criminal record for Criminal Domestic Violence of a High and Aggravated Nature and Burglary).

While overturning a circuit court's sentence is an usual remedy given the high standard of review, it is not without precedent. See State v. Gregory, 198 S.C. 98, 16 S.E.2d 532 (1941) (remanding a case for re-sentencing because it was disproportionate for the crime), State v. Kimbrough, 212 S.C. 348, 46 S.E. 2d. 273 (1948), (holding a 20 year sentence for burglary inflicted cruel and unusual punishment as it was effectively a life sentence), State v. Hazel, 317 S.C. 368, 453 S.E.2d 879 (1995) (holding a trial judge abused his discretion where he refused to sentence the defendant under the Youthful Offender Act after a trial).

Our courts have found a wide range of errors to constitute an abuse of discretion. See State v. Williams, 226 S.C. 525, 85 S.E.2d 863 (1955) (finding an abuse of discretion where a judge refused to sequester witnesses where the witnesses were also guards guarding the inmate during trial), State v. Castro, 2012-UP-378, (S.C. Ct. App. Filed June 20, 2012) (granting Post Conviction Relief to petitioner whose attorney failed to object to the sentencing Judge abusing his discretion by stating he was punishing the defendant for exercising his right to a trial by jury).

Indeed, a circuit judge disregarding the facts before them can constitute an abuse of discretion. State v. Hicks, 377 S.C. 322, 324-25, 659 S.E.2d 499, 500 (Ct. App. 2008). In State v. Steadman, 216 S.C. 579, 608, 59 S.E.2d 168, 182 (1950), the South Carolina Supreme Court determined:

> What the court stated in State v. Scates, 212 S.C. 150, 46 S.E.2d 693, 695, may aptly be quoted here: "An exhaustive definition of the phrase 'abuse of discretion' would be difficult, if not impossible. Each case must be determined with reference to its own peculiar facts. The exercise of a sound judicial discretion must and should be performed in every case with a conscientious regard for what is just and proper under the circumstances."

The "peculiar facts" of this case did not warrant a twenty year sentence, and the issuing of that sentence was an abuse of discretion because it ignored all of the facts presented by the defense.[2]

The sentence imposed by Judge Goodstein was so disproportionate to the offense committed in light of all of the circumstances presented at the sentencing hearing that it constituted cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution and Article I, §15 of the South Carolina Constitution.

The Eighth Amendment to the United States Constitution provides, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amnd. XIII. The cruel and unusual punishment clause requires that the duration of a

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[2] An examination of trial court cases with more aggravating circumstances, but lower sentences reveals that the instant case constituted an abuse of discretion. See Katrina A. Goggins, Teacher Sentenced to Six Years for Sex With Students, DAILY-JOURNAL-MESSENGER (Seneca, S.C.), Feb. 20, 2008 at A2 (reporting that a twenty-four year old middle school teacher was sentenced to six years in prison for sexual encounters with five different boys ages fourteen and fifteen); LaDonna Beeker, Roach Found Guilty; John Roach was Found Guilty of Criminal Sexual Conduct Toward a 13-year-old Girl, DAILY JOURNAL-MESSENGER (Seneca, S.C.), October 21, 2011 at A1 (reporting that sixty-four year old John Roach was sentenced to two years in prison after his conviction for sex crimes with a thirteen year old girl); Tonya Root, Andrews Man Sentenced to 18 Years for Second Sexual Assault Charge With a Minor, THE MYRTLE BEACH SUN-NEWS, January 27, 2011 (reporting that Phillip Parsons, a thirty-one year old convicted sex offender serving as a youth minister, was sentenced to eighteen years for child sex offenses when convicted for the second time); Conway Child Molester Gets 10 Years for Assaulting 6-year-old, CBS-13 WBTW (Florence, S.C.), August 15, 2019 (reporting that fifty-three year old David Devine received a ten year prison sentence for sex crimes where the victim was six years old); 2 Pleaded Guilty, 2 Others to Appear at a Later Date in Case of Alleged Horry Co. Child Molesters, CBS-13 WBTW (Florence, S.C.), August 21, 2018 (reporting that fifty-seven year old convicted sex offender Panteleimon N. Spirakis received a seventeen year sentence for multiple sexual encounters with children under six years old); Lexington Man Sentenced to 15 Years in Prison for Sexually Assaulting a Minor, THE STATE (Columbia, S.C.), March 4, 2016 (reporting that forty-five year old Donald Reed received a fifteen year sentence for ongoing sexual abuse with a victim from the time she was eight years old until she was thirteen years old); Tonya Root, Horry County Jury Convicts Sex Offender in Assault of Minor, Sentenced to 15 Years in Prison, THE MYRTLE BEACH SUN-NEWS, June 13, 2012 (reporting that fifty-nine year old Jon Jarrad, who was already a registered sex offender, was sentenced to fifteen years for sex crimes with a victim under eleven years old); Lauren Leach, Sexual Assault Haunts Victim; Probation Sentence of Ex-sheriff's Deputy Who Admitted Molesting Minors 25 Years Ago Prompts One Victim to Describe His Pain, THE STATE (Columbia, S.C.), August 7, 2005 at A1 (reporting that a sheriff's deputy who pled guilty to molesting two young boys who he met in the line of duty received a probationary sentence); Lauren Leach, Ex-Coach Guilty of Having Sex With Minor; Man Charged with Sexual Conduct with 15-year-old Girl Gets 6 Years in Prison, THE STATE (Columbia, S.C.), October 11, 2005 at B5 (reporting that twenty-eight year old wrestling coach Robert Hall received a six year sentence for Criminal Sexual Conduct with a Minor, Second Degree for a sexual encounter with his fifteen year old student); and Vanita Washington, Laurens Man Pleads Guilty in Molestation Case, THE GREENVILLE NEWS, July 29, 1999 at 1B (reporting that forty-eight year old Larry Sterling, the thirteen year old victim's mother's employer, was sentenced to ten years after pleading guilty to multiple sex crimes including videotaping and disseminating the video of the sexual encounter with the thirteen year old victim).

sentence not be grossly disproportionate with the severity of the crime. State v. McKnight, 352 S.C. 635, 652, 576 S.E. 2d 168, 177 (2003).

"What constitutes cruel and unusual punishment, and thus, what violates the Eighth Amendment, is determined by 'evolving standards of decency that mark the progress of a maturing society.'" State v. Pittman, 373 S.C. 527, 562, 647 S.E.2d 144, 162 (2007), cert. denied, 128 S.Ct. 1872, 170 L. Ed. 2d 751 (2008) (quoting State v. Standard, 351 S.C. 199, 204, 569 S.E. 2d 325, 328 (2002)). In implementing this test, the court looks to objective evidence of how our society views a particular punishment today. State v. Wilson, 306 S.C. 498, 509-10, 413 S.E.2d 19, 26 (1992).

The proportionality bedrock of Eighth Amendment jurisprudence is equally important a principle as the "evolving standards of decency," and "it is a precept of justice that punishment for the crime should be graduated and proportioned to [the] offense." Pittman, 373 S.C. at 564-65, 647 S.E.2d at 163 (quoting Atkins, 536 U.S. at 311).

Article I, Section 15 of the South Carolina Constitution provides:

> All persons shall be, before conviction, bailable by sufficient sureties, but bail may be denied to persons charged with capital offenses or offenses punishable by life imprisonment, or with violent offenses defined by the General Assembly, giving due weight to the evidence and to the nature and circumstances of the event. Excessive bail shall not be required, nor shall excessive fines be imposed, nor shall cruel, nor corporal, nor unusual punishment be inflicted, nor shall witnesses be unreasonably detained.

S.C. Const. art. I, §15.

In this case, Judge Goodstein's sentence fails the proportionality test. A twenty year sentence in light of these facts is grossly disproportionate to the crime committed.[3] Even where the sentence falls within the statutory limits, a grossly disproportionate sentence in light of the facts of the crime committed is still violative of the cruel and unusual punishment clauses of the U.S. Constitution and the South Carolina Constitution. "At the same time we have always recognized that even though within the statutory limits a sentence under the circumstances of a particular case may be so grossly disproportionate to the offense committed as to constitute cruel and unusual punishment in violation of the Constitution of this State. State v. Gregory, 198 S.C. 98, 16 S.E. (2d) 532; State v. Gamble, 249 S.C. 605, 155 S.E. (2d) 916; and State v. Kimbrough, 212 S.C. 348, 46 S.E. (2d) 273." State v. Queen, 264 S.C. 515, 528, 216 S.E.2d 182, 188 (1975).

The power to sentence a criminal defendant is one of the most important vested in Circuit Court Judges. It is the duty of this court to correct an abuse of discretion where it may occur, and to prevent a grossly disproportionate sentence to the crimes alleged. As the Court held in Kimbrough:

> "As well stated in Hawkins v. United States, 7 Cir., 14F.2d 596, 698: "There is no judicial function which makes larger drafts upon the fairness, common sense, sanity, and good judgment of the judge than that of fixing penalties for criminal offenses, no one which more vitally affects the stability of free institutions. Excessive penalties are tyrannical in the court, and abhorrent to the public; on the

[3] A comparison of other cases with facts similar to the instant case reveals just how disproportionate the sentence is in this case. See Tim Gulla, 21-year-old Sentenced to Five Years on Criminal Sexual Conduct Charge, THE GAFFNEY LEDGER, September 2, 2016 (reporting that an eighteen year old who pled guilty to a sex crime with a victim between eleven and fourteen years old received a five year sentence); and Man Gets 8 Years After Criminal Sex. Conduct with Minor Guilty Plea, CBS-7 WSPA (Greenville-Spartanburg, S.C.), August 23, 2018 (reporting that twenty-seven year old Matthew Reynolds pled guilty to criminal sexual conduct with a minor for acts performed with a fifteen year old victim and received an eight year sentence).

other hand, penalties unduly mild seriously embarrass law enforcement and encourage infractions of the criminal laws.""

State v. Kimbrough, 212 S.C. 348, 357, 46 S.E. 2d 273 277 (1948).

The instant case presents a twenty-one year old Marine who had a sexual encounter with two underage girls who were seven and eight years younger than him. No force, coercion, or violence was used in the encounter, and the encounter was initiated by the under-aged girls. The evidence showed that this Marine was not likely to re-offend, was not a pedophile, was well employed, and was of high moral character. In light of these facts, Judge Goodstein abused her discretion by sentencing this Marine to twenty years of incarceration, and that sentence was so disproportionate to the facts alleged, that it constituted a violation of the cruel and unusual punishment clauses of the United States Constitution and the South Carolina Constitution.

CONCLUSION

For the reasons set forth above, Appellant respectfully requests that the sentence imposed be set aside, and the matter remanded to the Circuit Court for a new sentencing hearing.

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THE STATE OF SOUTH CAROLINA
In The Court of General Sessions

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions

The Honorable Diane S. Goodstein, Judge.

Case No. 2018-001915

Daemon M. Crim — Appellant,

v.

The State of South Carolina — Respondent.

PROOF OF SERVICE

I certify that I have served the Initial Brief and Designation of Matter on The State of South Carolina, by depositing a copy of it in the United States Mail, postage prepaid, on August 23, 2019, addressed to the attorneys of record, John Benjamin Aplin, Esquire located at P.O. Box 5066 Columbia, S.C. 29250 and Alan McCrory Wilson, Esquire located at P.O. Box 11549 Columbia, S.C. 29211.

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Appellate Case No. 2018-001915

Deputy Clerk Claire Allen:

Enclosed for filing, please find the Appellants Initial Brief, Designation of Matter, and Proof of Service in the above referenced matter. Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

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