

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

UNITED STATES OF AMERICA,

V.

**Case No. 2014-cmd-018262
Judge Geoffrey M. Alprin**

BERNARD FREUNDEL,

Defendant.

_____ /

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT'S MOTION TO REDUCE SENTENCE**

Defendant Freundel moves this court to reduce his sentence pursuant to SCR-Crim. Rule 35(b)(1), which reads in pertinent part:

A motion to reduce a sentence may be made not later than 120 days after . . . receipt by the Court of a mandate issued upon affirmance of the judgment The Court shall determine the motion within a reasonable time.¹

The mandate in this case was issued on October 7, 2016, and the motion filed herewith is filed within the 120-day jurisdictional time limit.

Background Facts

The Court sentenced the defendant on May 15, 2015 to a term of 45 days incarceration on each of the 52 misdemeanor counts on which the defendant entered a guilty plea. The Court ordered that the sentences run consecutively.² The defendant was immediately remanded to the D.C. Jail.

By letter dated June 3, 2015, counsel for the defendant requested that the Court modify

¹ Prior versions of this rule required that the Court had the authority to reduce a sentence within the 120 period. The current rule, as set out above, requires the motion to reduce sentence be filed within 120 days after which the court has a reasonable time to decide the motion. *United States v. Bolanos*, 2008 D.C. Super. LEXIS 6, 14 (D.C. Super. Ct. 2008).

² The Court ordered a \$13,000 assessment under the Victims of Violent Crime Compensation Act of 1996. This assessment has been fully paid.

its judgment and commitment order so as to include a recommendation that the defendant be confined in a Federal Bureau of Prisons facility that permitted the defendant to observe his religion and participate in rehabilitation programs. In response to counsel's letter, the Court modified its judgment and commitment order "to include this court's recommendation to the U.S. Bureau of Prisons and the D.C. Department of Corrections that the defendant serve the remainder of his sentence at the satellite camp of FCI Otisville, or, in the alternative, at the satellite camp of FCI Miami." The Court's stated reasons for this recommendation were "(1) the unusual nature of 52 counts resulting in a 6.5 year sentence: (2) defendant's desire to continue his observance of Orthodox Judaism and to avail himself of rehabilitation programs while he serves his 6.5 year sentence; and (3) the lack of religious and rehabilitative programs available at CTF."

The defendant never made it to the CTF (Correctional Treatment Facility). Rather, he was, and remains, incarcerated in the D.C. Jail. During the first 65 days of his incarceration, he was kept in 23-hour lockdown and placed in leg irons, arm restraints, and waist restraints every time he left his cell. Following a 12-day hospital stay for abdominal surgery, he was thereafter placed in general population.

After entry of the Court's modified judgment and commitment order, counsel for the defendant contacted the General Counsel for the D.C. Department of Corrections, the U.S. Marshals Service, the Federal Bureau of Prisons, and thereafter, the U.S. Attorney. Both the General Counsel and the U.S. Attorney reported that they tried to have the defendant transferred to the Bureau of Prisons, but the Bureau refused to take the defendant, citing the act of Congress that only required the Bureau of Prisons to take D.C. prisoners serving time upon a felony conviction.³ The DOC General Counsel advised, "[T]he FBOP General Counsel and I worked

³ The origin of this legislation dates back to the financial crisis in which the District found itself in the mid-1990s, with a budget deficit of 755 million dollars in 1995. In order to assist the

for months with our Director's approval trying to get him there on a contract but it just cannot be done legally." Email dated Jan. 11, 2016 from DOC, GC. Repeated requests to the Bureau of Prisons were rejected.

INTRODUCTION

The D.C. Jail is a detention facility, not a prison, designed physically and programmatically to provide for the needs of sentenced prisoners serving short sentences. The D.C. Jail's mission is reflected in its formal name, the D.C. Central Detention Facility. Unlike a prison, which provides for the needs of inmates serving long sentences, the average length of stay at the D.C. Jail is less than three months. As such, many aspects that are standard to prisons are not available at the D.C. Jail. Notwithstanding these deprivations, including the opportunity to practice his religion, participate in mental health counseling and rehabilitation programs, have contact visits, have adequate outdoor recreation, as fully set out *infra.*, Rabbi Freundel has made extraordinary contributions to the lives of well over 139 inmates while serving extraordinarily hard time. We believe that these factors, taken in conjunction with the Court's recommendation that Rabbi Freundel be confined in a minimum security Federal Bureau of Prisons facility, merit the Court's exercise of its power to reduce Rabbi Freundel's sentence.

I. Rabbi Freundel's activities while in the D.C. Jail helped well over 100 inmates and received praise from the D.C. Jail and Department of Employment Services.

While Rabbi Freundel expressed his remorse to both the Court and later in a public apology carried in *The Jewish Week* newspaper, the Court expressed its reluctance to be lenient with Rabbi Freundel. The Court's reticence, based upon Rabbi Freundel's words alone, is

District, Congress authorized the Federal Bureau of Prisons to take District felony prisoners so that the District could close the facility it maintained at Lorton, Virginia. See, National Capital Revitalization and Self-Government Improvement Act of 1997, enacted as Title XI of the Balanced Budget Act of 1997 (Public Law 105-33, 111 Stat. 251, 734 (1997)).

certainly understandable, as verbal remorse is the stock-in-trade of criminal defendants. As demonstrated below, Rabbi Freundel has turned his words into deeds deserving of the Court's leniency.

When Rabbi Freundel arrived at the D.C. Jail, he was placed into administrative lock-down for 23 hours a day and put in full body restraints any time he was taken out of the cell. This is the treatment accorded violent prisoners who violate the rules. He was kept in "the hole," as this condition is referred to by other inmates, for 65 days. The only explanation given was that this was being done for his own good, and that his safety could not otherwise be guaranteed.

At about the same time, Mayor Muriel Bowser was initiating a program at the D.C. Jail called the Work Readiness Program. This program takes inmates who are to be released shortly and puts them through a six-week course designed to better prepare these inmates to re-enter society and thereby reduce recidivism. The program is run by an administrator from the Department of Employment Services. The administrators at the D.C. Jail asked Rabbi Freundel if he would be willing to assist the administrator from the Department of Employment Services in conducting the program. Rabbi Freundel agreed. The program teaches life skills, job skills, and computer training. It meets from 9:00am to 4:00pm five days a week for six weeks. Rabbi Freundel's activities include the following: attending and contributing to all class sessions; teaching various subjects; conducting mock job interviews with the students; working with the students on interviewing skills and techniques; acting as assistant computer instructor during lunch break and after class until 7:30pm; helping students write resumes; helping students after hours with homework; helping students write correspondence; guiding students through on-line job searches; helping students understand important documents that are not clear to them; tutoring students seeking a GED degree in math and reading proficiency; counseling students on

anger management and personal or relationship problems; leading discussion groups with inmates on the weekends; assisting students in connecting with outside resources that may be helpful to them; and developing, at the request of the D.C. Jail, college level classes that might be offered. (A. 162-164).

Rabbi Freundel has not only shown an immense dedication to improving the lives of the inmates, but he has also proposed programs, designed written materials, and created further educational opportunities to assist the DOES and the DOC in achieving their goal of rehabilitation and recidivism reduction among inmates, as well as of prevention of incarceration amongst teenagers. (A. 165-196).

As time went by, Rabbi Freundel's duties both in and outside the program were expanded. They included helping students to understand and use the DC Networks job skills assessment; assisting students with courses on the Alison diploma website; serving as the "weekend resource" for the Work Readiness Program; creating an additional curriculum to supplement the Work Readiness Program; creating a math education plan for the program; agreeing to serve as a mentor for individual inmates who so requested; helping students write business plans; creating a proposed program for Teen/Ex-Offenders; helping students complete job applications; helping students with SAT preparation; and mentoring an inmate after his release. Additionally, Rabbi Freundel has taught Hebrew and basic Judaism to interested inmates; organized movie nights at the request of a Corrections Officer; helped organize a Black History Spoken Word Poetry Contest; taught Bible studies to interested inmates; worked with inmates on public speaking; helped organize National Book Reading Month Contest; started and completed a project to supply students with biographical information on 153 persons quoted in the Work Readiness course materials; proctored a computer assessment test; and helped organize a summer reading

contest.

Rabbi Freundel, as you know, is a highly educated individual. However, a number of skills that Rabbi Freundel thought would be useful in helping inmates in and out of the Program were offered through the Alison online diploma website, and he has completed courses in DOC-DOES Computer Basics for Everyday Usage; legal studies; psychology; mental health studies; math course on fractions for GED instructors; work force reentry skills; child development; physiology; change management; educational psychology; social work, nursing, and health management; risk management; and teaching skills for educators. He earned a diploma in each of these courses.

While the D.C. Jail staff is pleased to have Rabbi Freundel contribute in the ways set out above, perhaps the best assessment is from the inmates with whom he has interacted. At first blush, an Orthodox Jewish rabbi incarcerated with a largely African-American inmate population may not seem to be a match made in heaven. (Perhaps it was the staff's fear in this regard that caused Rabbi Freundel to be locked down for 65 days.) Attached hereto in the appendix are the letters that these inmates have written expressing their thanks, appreciation, admiration, and friendship for Rabbi Freundel. While it is quite a time-consuming task, we would respectfully request that the Court review all these letters, as by volume and content they validate Rabbi Freundel's contribution. For example:

Inmate 266824: "When I saw his case in the news, I was appalled, having 7 sisters . . . I can unequivocally say Mr. Freundel is very remorseful and aging in the confines of the D.C. Jail where circumstances can break the youngest & strongest of individuals." Appendix 11-12)(hereinafter A. ____).

Inmate 340588: "in a short period of time I've come to consider [him] a dear friend . . . his

dedication to improving the lives of others [is] awe-inspiring. . . . (A. 104-105).

Inmate 299276: “He has had a positive effect on my rehabilitation.” (A. 48).

Inmate 303059 “He makes sacrifices and lends help to any and every individual.” (A. 54).

Former Inmate: “All the talks we had make a big difference in my life” (A. 44).

Inmate 281959: “I’ve been housed with Mr. Freundel for some time, and I’ve grown to know a certain mind, a heart, a certain care and love.” (A. 47).

Inmate 288032: “[He] took time out whatever he was doing to help someone who need help.” (A. 149).

Inmate WM: “[He] has helped me understand my troubles with the breaking the law, and what I must do to become a productive citizen of society. . . Barry Freundel doesn’t belong in a place like this.” (A. 74).

Inmate 260170: “Without Mr. Bernard Freundel I wouldn’t be standing on my foundation in this program, because there has been some days in class where [I] was over whelm...” (A. 68-69).

Inmate 212907: “I have relied on him more times then I can remember, and he has yet too let me down.” (A. 25).

Inmate 215095: “I came to the Work Readiness program to try and better myself even though I am mentally challenged. I was afraid I would give up and fail like I always did. I really appreciate Mr. Freundel being here at this time. He takes a lot of time to help me. I didn’t expect that amount of attention. He motivates me to go on. Without him I would have given up as usual. . . . There are very few people like Mr. Freundel. When I get out I am going to find someone like him to help me.” (A. 26).

These are but few excerpts from the many, many letters in the appendix, but they are

representative of the feelings his fellow inmates have about Rabbi Freundel personally and the contribution he has made to their lives. Given the environment in the D.C. Jail, this is quite an extraordinary transformation and achievement. Although we write this as Rabbi Freundel's counsel, and admittedly are not objective, we urge the Court to find that Rabbi Freundel's deeds have validated his words of repentance, and that Rabbi Freundel, if not before, is now worthy of the Court's leniency. In light of the manifest, constructive differences that the defendant has made in the lives of other inmates, Mayor Bowser's program, and other programs within the D.C. Jail, the harsh conditions of his confinement notwithstanding, the defendant hopes that the Court will accept his plea for a reduction in his sentence.

In addition to the aforementioned accomplishments, the defendant has also received praise from a number of DOC and DOES staff members. The director of the Work Readiness Program, Alec Vincent, has written stating that Rabbi Freundel is respectful of all the staff and inmates and has expressed to Mr. Vincent that he is remorseful and "strives to be a better man." (A. 151).

Rabbi Freundel has also received letters from community members who know him and have seen the transformation he has undergone as a result of his incarceration. Included in this group are two of the victims who were recorded by Rabbi Fruendel. Uniformly these letters express the belief that Rabbi Freundel has recognized the harm he has inflicted on his victims and is truly remorseful. They also note that they believe that if the Court grants a reduction in the sentence Rabbi Freundel can put his life back in order and become the productive member of society that he seeks to be.

II. The D.C. Jail is an inappropriate facility for a prisoner serving a long-term sentence.

The D.C. Jail is a detention facility whose purpose is the short-term incarceration of

pretrial defendants, as well as defendants who have been convicted and are awaiting transfer to the BOP, and those who face relatively short sentences. It is designed to provide for short-term custodial incarceration. Given its institutional purpose, the D.C. Jail is unsuited to house a prisoner such as the defendant for the following reasons:

A. The D.C. Jail cannot provide for the defendant to practice his religion, that being Orthodox Judaism, in accordance with Jewish law.

Congress has passed two statutes providing heightened protection for religious exercise in prison. One of these, The Religious Freedom Restoration Act (RFRA), 42 U.S.C. 2000bb to 2000bb-4, applies to federal and District of Columbia prisoners. *Sample v. Lappin*, 479 F. Supp. 2d 120, 122 (D.D.C. 2007) (“plaintiff alleges that BOP substantially burdens the free exercise of his religion by refusing to allow him to drink ‘at least 3.5 ounces of red wine (a reviit) while saying Kiddush, a prayer sanctifying the Sabbath,’ and ‘four cups containing at least 3.5 ounces of wine during the Passover seder.’”); *Gartrell v. Ashcroft*, 191 F. Supp. 2d 23 (D.D.C. 2002). While this is not an action brought against the D.C. Department of Corrections alleging a violation of RFRA, the above citations are set out to illustrate that Congress has passed legislation to ensure the right of prisoners with sincerely held religious beliefs to practice their religion while incarcerated. In addition, we are mindful that this right is not unlimited, but rather measured against legitimate penological interests. *Turner v. Safley*, 482 U.S. 78, 89-91(1987).

Measured against this legal backdrop, while conceding that the D.C. Jail does attempt to provide Rabbi Freundel with the opportunity to practice his faith, the institution nevertheless comes up short. Although the D.C. Jail houses approximately six or seven self-identified Jewish inmates out of approximately 1,300 inmates, it houses only two Orthodox Jewish inmates, one being Rabbi Freundel. As an extremely observant Jew, Rabbi Freundel’s faith requires much of him, but the requirements are generally not met. The provision of a kosher diet, as described

below, is inconsistent. Jewish services require 10 Jewish men, and the D.C. Jail refuses to allow visitors who can fulfill that requirement into the jail to pray with Rabbi Freundel. A request for Jewish sacred texts on digital media was denied. Some items necessary for High Holyday observance were not permitted. There were issues with the observance of the Sabbath, which in Orthodox practice, requires refraining from writing, turning on lights, or engaging in any work.

The point here is that the D.C. Jail is not designed nor fully able to accommodate the strict observance of Orthodox Judaism, according to Jewish law. However, there are institutions within the BOP that can. For example, at Otisville, “Today, every day in the minimum security camp at the Otisville Correctional Institution in Rockland County, New York, there are sizable minyanim, three times daily. A full-time rabbi attends to the congregation’s spiritual and religious needs. Daily religious classes are offered. Shabbat and holiday meals are provided.” Unorthodox Jew, Joel Cohen, August 2006. Judge Henry Kennedy, in his opinion in *Gartrell v. Ashcroft*, supra. at 40, held that where a penal institution is unable to accommodate a religious need, it is appropriate to designate that inmate to an institution that can so provide.

Notwithstanding the Court’s recommendation that Rabbi Freundel serve his sentence in an institution such as Otisville, a transfer to that institution, according to the District and federal authorities, is not possible. Hence, Rabbi Freundel is left to serve his sentence in an institution that is not suitable for a number of reasons set out below, but most importantly that does not allow the fulsome observance of his faith according to Jewish law.

B. The D.C. Jail provides absolutely no relevant rehabilitation programs.

One of the major purposes of incarceration in the United States is rehabilitation. Criminal Justice Review, Volume 28 Issue, Spring 2003 Page 47. (“The four different goals of corrections are retribution, deterrence, incapacitation, and rehabilitation.”) The D.C. Jail has no

rehabilitation programs that are relevant to Rabbi Freundel. As set out above, the programs that the D.C. Jail does have are directed at reintegrating short-term inmates back into society. See, *e.g.*, the discussion of the Work Readiness Program discussed above. This is not surprising, since the mission of the D.C. Jail is the incarceration of defendants awaiting trial or inmates serving short sentences. In contrast, the Federal Bureau of Prisons offers a complete catalog of programs that encompass educational training, vocational training, industrial training, psychological programs, and religious programs. A Directory of Bureau of Prisons' National Programs, May 22, 2015. While Rabbi Freundel is helping other inmates with their rehabilitation program, none are available to him. As a result, his incarceration serves only to warehouse him.

C. The D.C. Jail provides wholly inadequate mental health counseling.

Robust mental health counseling a necessary component of prison rehabilitation programs. This counseling is especially important when the motivation for the crimes committed is related to mental health issues. See, *e.g.* Effective Prison Mental Health Services: Guidelines To Expand and Improve Treatment, National Institute of Corrections, U.S. Department of Justice (2004) (“With appropriate treatment services in the criminal justice system and connections to community-based services on release, offenders often can live successful lives integrated in their communities without further run-ins with the law.”) As the Court knows, Rabbi Freundel sought and received such counseling from a psychiatrist from the time of his arrest up to the time of his incarceration. As the Court will recall, that psychiatrist submitted a detailed report to the Court. It is not surprising that the D.C. Jail does not provide the kind of mental health counseling that Rabbi Freundel needs, given its mission.

Rabbi Freundel recognized that his successful rehabilitation required therapy, which addressed the issues that confront him and caused his aberrant criminal behavior. When it

became apparent to him that no such therapy was available in the D.C. Jail, Rabbi Freundel sought the Jail's permission to have telephone therapy sessions at his own expense of \$450 per hour. Initially, he received permission to have 45 minute telephone sessions every three and a half weeks with the same psychiatrist that previously reported to the Court. However, after several sessions, the D.C. Jail informed Rabbi Freundel that they would require that a staff member or members to listen to the therapy sessions between Rabbi Freundel and his psychiatrist. This intrusion into the doctor-patient relationship is unacceptable and renders any further therapy only minimally effective at best. Nonetheless, Rabbi Freundel continued with these therapy sessions. The result of this decision to require jail staff to listen to the session, which is likely based on the Jail's security concerns, nevertheless leaves Rabbi Freundel without any mental health counseling.

D. The D.C. Jail provides inadequate medical and dental care for the defendant.

The medical and dental services provided by the D.C. Jail are designed to treat conditions that need immediate treatment and defer other treatment for its short-term population until the inmate is released back into society. With regard to Rabbi Freundel, this paradigm does not work because he is not a short-term inmate who can wait for treatment on non-immediate medical and dental needs until he is released.

While in the D.C. Jail, Rabbi Freundel developed a problem with one of his teeth. It was determined that what he needed was the installation of a cap. The dentist at the D.C. Jail informed Rabbi Freundel that this was not a service that could be provided for him. The Dentist further advised that he did not have the equipment, and therefore could not perform, a full mouth x-ray. Rabbi Freundel thereafter asked the D.C. Jail to take him to a private dentist, at his own expense, who could provide the required services. This request was categorically denied. The

issue was then raised with the General Counsel of the Department of Corrections who affirmed the decision:

Inmate Freundel is requesting a crown for his tooth. DOC declined the procedure as elective and cosmetic as they do for all inmates who want a crown. You requested on his behalf that DOC reconsider and advised that Mr. Freundel is willing to self-pay if DOC will take him to his private dentist. DOC has thoroughly reviewed the request and it is denied. The crown is cosmetic and not medically necessary. He is not in pain and the tooth is stable. If it becomes unstable, the medical option is extraction Regarding your point that unlike other Jail inmates, Inmate Freundel will be in DOC a long time, there is no causal connection between length of stay and medical necessity. Either an inmate needs it or does not. Bernard Freundel was informed of his treatment options which the doctors advise is pulling the tooth or monitoring it monthly.⁴

Email dated Feb. 1, 2016 from Maria Amato, DOC, GC

The difference between the policies and procedures of a detention facility and a prison, with regard to medical/dental services, is illustrated by contrasting the email above with the Federal Bureau of Prisons policy on exactly the same procedure. The BOP provides a full set of x-rays, a comprehensive dental evaluation, and provides crown, prosthetics, and the like where necessary. See Federal Bureau of Prisons Dental Services dated Jan. 15, 2005, pp. 9-10, 15.

Additionally, while incarcerated, Rabbi Freundel had a severe gall bladder attack that required surgical removal of his gall bladder. The experience and treatment he received during this episode illustrates the inadequate care provided. Rabbi Freundel was transported to the hospital on the floor of a van, after waiting in agony until the end of Shabbat to request transport. While in the hospital awaiting evaluation, a Corrections Officer slammed him up against a wall and hit him in the back, directly opposite his liver and gall bladder, causing him even more excruciating pain. He vomited repeatedly because of his condition and was provided no clean gown to wear.

⁴ There has been no monthly monitoring.

After physicians determined that his gall bladder needed to be surgically removed, they scheduled him for surgery, which was delayed for nearly 10 days due to medical device failures. Rabbi Freundel was starved every one of these days, as each day he was told that the surgery would occur that day, and thus, he could not eat. During these 10 days, he was chained hand and foot to a bed and not permitted to rise, even to walk to the bathroom. He was forced to use a bedpan in plain sight of a Corrections Officer throughout his hospitalization.

Following his operation, physicians recommended Rabbi Freundel become ambulatory to avoid blood clots. The corrections officers refused to allow this, and he remained chained to the bed, against medical advice. Upon his return to the D.C. Jail, he received a new cell assignment. While he was told by his doctor not to lift anything for several weeks to allow healing, the corrections officers made him carry all of his belongings from the Jail to CTF and back. He had not been allowed to stand or walk for nearly 14 days when this occurred. On the medical wing of the CTF, he was given the option of a non-kosher liquid diet or a solid kosher diet, despite medical advice that he not eat solid food.

These incidents highlight the fact that the medical and dental services are not up to the standards that are routinely found in federal prison facilities. This is not a criticism of the jail, rather it is a recognition that its capabilities are tailored to its mission.

E. There are no contact visits, rather visits are by closed circuit television or once a month through a Plexiglas window.

As with medical care, the arrangements for visits are designed and executed consistent with the jail's mission. In the case of visits, all visits are by closed circuit video, where the visitor is actually in a different building than the inmate. In addition, on a monthly basis, there are visits face-to-face but separated by bullet proof Plexiglass. This means that Rabbi Freundel will have no contact visits from family during the entire service of his six and one half year sentence.

The BOP provides for contact visits: “Physical Contact: In most cases, handshakes, hugs, and kisses (in good taste) are allowed at the beginning and end of a visit. Staff may limit contact for security reasons (to prevent people from trying to introduce contraband) and to keep the visiting area orderly.” Federal Bureau of Prisons General Visiting Information.

<https://www.bop.gov/inmates/visiting.jsp>.

Six and one half years without being able to hug your children is frankly inhumane and certainly not justified when the crimes are misdemeanors.

F. Observing a kosher diet is, at times, impossible, leaving the defendant without food.

There is virtually no doubt that an inmate with a sincerely held religious belief that requires a special diet (Kosher for Jews, Halal for Muslims) has a right to be provided meals that comply with the special dietary needs. The current applicable legal standard is that, if the denial of such requests would substantially burden an inmate's practice of his or her religion, such denials must be justified by a “compelling” governmental interest, and the denial must also be shown to be the “least restrictive means” of serving that compelling interest. See e.g., *Ashelman v. Wawrzaszek*, 111 F.3d 674 (9th Cir. 1997) (Jewish prisoners are entitled to a kosher diet.); *Friedman v. South*, 92 F.3d 989 (9th Cir. 1996) .

The situation in the D.C. Jail has been variable. At the beginning, the food was not kosher. Thereafter, it sometimes purports to be and may not be, for example when breakfast arrives as single piece of bread in saran wrap. In addition, sometimes the tray that arrives has both milk and meat on the same tray. What is clear is that the D.C. Jail is not prepared to provide a kosher diet, although it appears to try with limited success.⁵

⁵ This is not to mention the reports of mice running rampant on the food, dead vermin in the food, birds flying around the kitchen, and food served on trays that have not been cleaned. Stmt. of Kitchen Worker David Smith, Inmate 218137. (A. 76).

When Rabbi Freundel is given food that is not kosher, he foregoes eating or eats food he has purchased from the commissary. In fact, the day before Passover, he was provided no food, and on Passover, even the commissary food was not acceptable. This is not the choice that he should be forced to make. Once again, when contrasting and comparing this situation to the provisions made by BOP to accommodate Orthodox Jewish prisoners, it becomes readily apparent that what the D.C. Jail is doing is not up to standard.. Maintaining Jewish dietary laws is a sacred obligation for Rabbi Freundel. While he recognizes that jail is designed to be unpleasant, having to choose whether to eat or violate this sacred obligation is not something that should be imposed upon him. Perhaps the less observant or secular cannot fully appreciate the significance of this issue.

G. There are very limited opportunities for recreation in the fresh air.

As a detention facility, there are few changes for open air recreation. Access to outdoor recreation is controlled and occurs on a hit or miss basis. It is further constricted by the fact that outdoor recreation is not a priority given to those in the Work Readiness Program, as those inmates are weeks away from release. While that is true for the participants in the Program, it is not for Rabbi Freundel.

H. The poor physical condition of the D.C. Jail, which has been documented over the last several years, exacerbates the health risk to inmates staying long-term, particularly of his age group.

This past summer, a D.C. Jail inmate in Rabbi Freundel's age group died of heat stroke and several more were hospitalized. This is just the latest story of the effects on inmates of the condition of the D.C. Jail. It goes without saying that, the longer one stays in the D.C. Jail, the toll it takes on the human condition increases. In June 2015, the Washington Lawyers Committee reported that the conditions in the D.C. Jail were "alarming," the structure was deteriorating, and

the conditions included rat infestations, sewage leaks, and defective temperature controls. A member of the Washington Lawyers Committee reported a year later in August 2016 that all that has changed is the jail is one year older. City Paper, Aug. 5, 2016. It is not only inmates who are subjected to these conditions, “Sgt. John Rosser, chairman the Fraternal Order of Police labor committee representing correctional officers, said the union is preparing to file a formal complaint with the District by the end of the week. He said officers are exhausted and hot, and are spread thin escorting inmates overcome by heat to hospitals. He said inmates are taking more showers to get relief, though that adds to the oppressive humidity.” Wash. Post, July 19, 2016. Naturally, the difference is that at least the staff can go to their air-conditioned homes at the end of their shifts. In addition, most of the staff and the inmate population are considerably younger than Rabbi Freundel, who is 65 years old and suffers from diabetes. In winter, the cold is bone-chilling. A few months in these conditions may be bearable, but six and one half years is intolerable and is not consistent with humane penal practices.

I. Serving time in the D.C. Jail is hard time when compared with time at a BOP camp, as recommended by the Court.

It is beyond argument that serving time in the D. C. Jail is hard time for all the reasons detailed above, as well as the physical dangers that are ever present. One of the other inmates who has made the tour of many of this country’s penal institutions told Rabbi Freundel that the D.C. Jail is the worst. While there are a number of terrible penal institutions in this country, such as the Angola Prison Farm in Louisiana, the fact that the D.C. Jail is included in the conversation is damning.

Against the realities of the D.C. Jail, it must be remembered that the Court supported Rabbi Freundel’s request to serve his sentence at the minimum-security camp at Otisville or Miami. The relevant rhetorical question is, how many days would you be willing to spend in the

recommended minimum security institutions to avoid one day in the D.C. Jail? The ratio of days may vary to anyone who has been incarcerated in both institutions, but we are confident that it is not one-to-one. Rabbi Freundel's 18 months in the D.C. Jail, two months of which were spent in solitary, surely are a harsher 18 months than is reflected in the Court's recommendation. Thus, we ask the Court to reduce Rabbi Freundel's total sentence to take this, as well as all the service he has provided to the D.C. Jail, into account in reconsidering his sentence.

Conclusion

Since the D.C. Department of Corrections was unable or unwilling to accept the Court's recommendation that Rabbi Freundel be incarcerated at a federal minimum security satellite camp, with units to house Orthodox Jewish inmates, Rabbi Freundel has been incarcerated in the D.C. Jail. As a result, the conditions of his confinement have been harsh, to say the least. Had Rabbi Freundel been convicted of a felony, by statute, he would have been transferred to the custody of the Federal Bureau of Prisons. To be clear, in this memorandum, Rabbi Freundel does not purport to argue that the deprivations he has suffered as a result of being in the D.C. Jail rise to violations of statute or the Constitution. He understands that this is not the appropriate forum in which to make that argument, if it is to be made at all, because the Department of Corrections is not before this Court. However, he is arguing that because of the anomalous situation in which he finds himself, he has been made to suffer to a far greater extent than is to be expected. Since the D.C. Jail is the only place of confinement available to house inmates convicted of misdemeanors, Rabbi Freundel is asking the Court to reduce his sentence to take this into account.

Notwithstanding the conditions in the D.C. Jail, Rabbi Freundel has given a full measure of his best efforts to be a model prisoner and contribute to the improvement of the lives of his

fellow inmates. In so doing, he has received the praise and thanks of the Department of Corrections staff for making the Mayor's program effective in increasing the success rate of reintegrating inmates into the community by giving these inmates the skills they need to succeed.

While Rabbi Freundel did not previously enjoy the Court's leniency, he now reapplies, this time supported by good works in the service of others under extremely harsh circumstances in a place of confinement not designed to house sentenced prisoners such as himself. Given this place of confinement, and assuming one of the reasons for the sentence imposed was pure punishment, 18 months in the D.C. Jail has surely satisfied the punishment factor. To the extent that rehabilitation was one factor the Court considered in arriving at its sentence, the record presented herein demonstrates that rehabilitation has taken place, despite the lack of programs available to Rabbi Freundel. The justice system will not have any occasion to see Rabbi Freundel again. Rabbi Freundel asks that the Court look favorably on his motion for a reduction of his sentence.

s/ *Jeffrey Harris*

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