

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
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UNITED STATES OF AMERICA,

Docket No.: 09-Cr-558 (CM)

-against-

JAMES CROMITIE,

**MOTION FOR SENTENCE REDUCTION/  
COMPASSIONATE RELEASE**

Defendant.

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JAMES CROMITIE, by counsel, moves the Court for a sentence reduction on the ground of compassionate release, pursuant to 18 U.S.C. § 3582(c)(1)(A)(i). That provision, part of the First Step Act, permits the modification of a sentence in situations where the Court finds there are “extraordinary and compelling circumstances” and where the defendant has exhausted his administrative remedies. The Court may nevertheless deny a motion if the sentencing factors set forth in § 3553(a) do not justify release.

Cromitie submits that he should be granted compassionate release upon the same principal ground the Court found to support the motions of Cromitie’s former co-defendants David Williams, Onta Williams and LaGuerre Payen. In its Decision and Order, dated and filed July 27, 2023 (Doc. # 271), the Court determined that the Government-engineered sentence, based on the defendants’ conspiring to shoot down military aircraft with “stinger missiles” resulted in a mandatory minimum sentence of twenty-five years that was unjust and unduly harsh. That engineering of the facts and thus the sentencing constituted “extraordinary and compelling circumstances” warranting relief for the co-defendants. It warrants relief for James Cromitie as well. In addition, he has exhausted his administrative remedies and the § 3553(a) factors do not stand in the way of granting Cromitie’s motion. Cromitie adopts the Court’s Decision and Order

in full in support of his motion, and his motion for compassionate release should be granted just as his co-defendants' motions were granted.

### **Preliminary Statement**

The Court, having presided at the trial of this case and having decided numerous pretrial and post-trial motions, is well aware of the factual background of this case. In brief, Cromitie, an impoverished small-time hustler, was gulled by the Government's informant Shaheed Hussain to agree to commit horrendous terrorist crimes that he never would have even thought of, let alone attempted or committed, if the Government had left him alone. Those crimes included a conspiracy to fire a "stinger missile" at incoming military aircraft at Stewart Air Force Base and a conspiracy to detonate a bomb at a Jewish Community Center in the Bronx. The crime involving the "stinger missile" carried with it a twenty-five year minimum sentence.

At trial, the jury rejected the defendants' claims of entrapment and other defenses. The defendants were convicted on all counts, except that Onta Williams and Payen were acquitted of a single count of attempting to kill officers and employees of the United States. The Court denied all post-trial motions. At sentencing, the Court reluctantly sentenced Cromitie and his co-defendants to twenty-five years in prison, based on the statutory mandatory minimum sentence in 18 U.S.C. § 2332(g) for the "stinger missile" crime, and concurrent sentences for the remaining counts of conviction.

One reason for the Court's reluctance was its well-founded belief that Cromitie had been maneuvered by the Government and its informant into committing a crime that had a twenty-five year minimum sentence. Again, it was a crime so beyond Cromitie's capabilities that any objective person would conclude that he would not, could not, have ever committed it if the Government had not framed him by suggesting it, supplying it, and walking Cromitie through every step. The

Court nevertheless was left with no choice but to impose the sentence the law required for the crime. James Cromitie, as well as the co-defendants, were led off to prison to serve twenty-five-year terms of incarceration, while their families and supporters, their attorneys and undoubtedly others, were left to wonder how such a thing could happen in our country.

Cromitie's appeal was rejected by a split Second Circuit. 727 F.3d 194 (2d Cir. 2013).

James Cromitie is presently incarcerated at FCI Allenwood Medium, having served over fourteen years of his sentence.

### **Cromitie's Motion for Compassionate Release**

A defendant may bring a motion for compassionate release when he has fully exhausted all administrative rights and when he shows that there are "extraordinary and compelling circumstances" that warrant his release. 18 U.S.C. § 3582(c)(1)(A)(i). If these requirements are met, the Court must then determine if release is appropriate under the sentencing factors in 18 U.S.C. § 3553(a).

This is Cromitie's first motion for compassionate release. He submits that he meets the requirements set forth above, and that the § 3553(a) factors do not present an impediment to release. He respectfully requests that the Court grant his motion as it granted the motions of the co-defendants.

#### (1) Exhaustion of Administrative Remedies

Cromitie filed a written request with the Warden at his facility, FCI Allenwood Medium, that the BOP make a motion for compassionate release on his behalf. His request was denied on August 25, 2023. Cromitie thus has satisfied the exhaustion of administrative remedies requirement.

(2) The Presence of “Extraordinary and Compelling Circumstances”

The Court found, and described in detail, the presence of an extraordinary and compelling circumstance in connection with the motions for compassionate release of the co-defendants. That circumstance, the extraordinary length of the defendants’ sentence that was produced by the Government’s conduct, exists with equal force and merit with respect to James Cromitie’s sentence. Additional factors with respect to Cromitie warrant the Court’s consideration as well. Pursuant to *United States v. Brooker*, 976 F.3d 228, 237 (2d Cir. 2020), district courts are free to consider the “full slate” of extraordinary and compelling circumstances that an imprisoned defendant might present to them.

(a) Extraordinary Length of Cromitie’s Sentence as a Product of the Government’s Conduct

James Cromitie is serving a sentence of twenty-five years as a result of the manipulative Government informant who carried out the Government’s plans, which included luring Cromitie into a conspiracy to fire “stinger missiles” at military aircraft at Stewart Air Force Base. Cromitie was induced to participate in this conspiracy by promises of cash, cars and dream vacations, even his own barber shop, by the informant. Cromitie’s conviction at trial resulted in a sentence of twenty-five years, the minimum sentence the Court could have imposed but still greater than necessary to achieve the goals of sentencing. A lesser sentence would have met those goals, based on the absence of any actual danger, the Government’s manipulation of the facts and of Cromitie himself, and Cromitie’s own history of non-violent low-level offenses and the certainty that he could not have committed the crime without the Government’s extensive involvement with every phase of the crime. But a lesser sentence was not possible, and a sentence of extraordinary and unnecessary length was all the Court could impose.

The crime may have been manufactured, but its consequences have been real to James. He has served over fourteen years in prison, and except for hope provided by his motion, he is nowhere near the end of his sentence.

In its Decision and Order of July 27, 2023, regarding the co-defendants' motions, the Court reviewed the Illinois stash-house stings in which the Government engaged in comparable manipulative conduct and courts granted compassionate release motions based on the extraordinarily lengthy sentences that resulted. *See, e.g., United States v. Conley*, 2021 U.S. Dist. LEXIS 40763 (N.D. Ill. 2021); *United States v. White*, 2021 U.S. Dist. LEXIS 146891 (N.D. Ill. 2021). The Government had the fortitude to disavow its conduct in those cases. That fortitude has been absent here, although the Government's conduct has not been repeated, a disavowal of sorts one hopes.

The Court also reviewed a number of other cases in which mandatory minimum sentences produced unjust and harsh results and warranted the granting of compassionate release motions. *See, e.g., United States v. Snype*, 02-Cr-939 (Dkt. No. 151) (S.D.N.Y. 2023); *United States v. Ramsay*, 2021 U.S. Dist. 89741 (S.D.N.Y. 2021) and other cases cited at Decision and Order (p. 14). Cromitie's case fits squarely within the rationale for relief in those cases. Cromitie has served more than half of a harsh, overlong and manufactured sentence, an "extraordinary and compelling circumstance." It is time to reduce that sentence, show Cromitie a measure of compassion, and grant his motion.

(b) Other Factors That Support Cromitie's Motion for Compassionate Release

In combination with the overlong and harsh sentence, there are additional factors the Court may consider in determining whether "extraordinary and compelling circumstances" exist. These

additional factors support the conclusion that such circumstances indeed exist, and that compassionate release is warranted.

(1) Exceptional Rehabilitation

Starting from the bankrupt and dissolute life James was living at the time of his arrest, he has taken significant strides toward becoming a better man. He is now fifty-eight years old and, if his motion succeeds, hopes to live the rest of his life in freedom. He knows the only way he can maintain such a life is to fully commit to the progress he has made. James awaits the opportunity to show the Court that he will do just that.

James is employed in prison as a cook and has worked other jobs in the kitchen at Allenwood. He has attended numerous classes, received certificates from completing self-improvement programs, and is close to obtaining his GED. He has taught art classes.

James resolved not to be a discipline problem at his facility, and he treats the officers and prison personnel with respect. He has received tickets for only minor infractions, and none since 2013.

James has reestablished a relationship with his girlfriend Kathleen, who is devoted to James and will keep him on track if and when he comes home. James also expects, indeed wants, to work and to steer clear of trouble and the disreputable characters with whom he associated before he went to prison. Adherence to his faith will keep him away from them and away from drugs and alcohol.

James Cromitie 2.0 is a better version of himself. Supervision and his own determination will show that his rehabilitation is genuine. He is not the old James Cromitie anymore.

(2) Covid/Health Matters

James is far more attentive to his health now. He is diabetic but watches his diet and has

lost sixty pounds. He is far more fit than he has been for most of his adult life.

James was in Allenwood at the height of the Covid pandemic. He was sick with the virus but recovered in about two weeks. He still had to live with the severe restrictions and the widespread breakdown in health that Covid caused at Allenwood. While the virus has receded from its worst days, there has been a recent uptick in the number of infections in the general population, and there is always a risk it will return to the prison, where the inmates are confined, and live in close quarters with no place to avoid the virus. James's diabetic condition will make him more susceptible to Covid should it return, and its consequences will be more severe. At the time James was sentenced, no one could have anticipated that he would have to live under the conditions of confinement caused by the pandemic that he has experienced. It was never intended that Cromitie should be exposed to a "great and unforeseen risk of severe illness or death." *United States v. Zukerman*, 451 F.Supp.3d 329, 336 (S.D.N.Y. 2020). He should not have to experience those conditions again.

The BOP medical records regarding James Cromitie reflect that he suffers from diabetes as well as hyperlipidemia, hypertension and chronic kidney disease. He also had a surgical procedure this year to remove a lesion, from which complications have arisen. James will need medical attention for these conditions as he gets older, more than the BOP is likely to be able to provide.

The § 3553(a) Factors Favor Sentencing Reduction for James Cromitie

Finally, the Court is obliged to review the sentencing factors in 18 U.S.C. § 3553(a) to make sure they are consistent with granting the relief that Cromitie is seeking. In brief, they are.

The nature of the offenses and their circumstances have been thoroughly analyzed. The offenses were heinous but never real and were made up by the Government in every respect. There

was never any actual danger. Cromitie's agreement to participate in these fictional plots and his gross antisemitic language were disgusting, but were a grifter's ploy to get what he wanted and what was being dangled in front of him. Only James knows his own heart and whether his words were ever meant. I suspect they were not, based on the hours of conversation I have had with James and people who know him well. His hateful language just does not reflect the James I came to know. It is more likely that he said what he thought Hussain wanted to hear in order to stay on track for a payday without meaning any of it or intending to do any of it, not then and certainly not now.

Like his co-defendants, James was an impoverished and gullible man when he was approached, at his house of worship no less, by the informant and over time was offered wealth and heaven to do things he had never considered. He took the bait and agreed to do what he never would have even thought of and what was never going to happen. He has now spent over fourteen years in prison for his poor judgment and his failure to tell Hussain to get lost. That is enough time; more would not enhance anyone's respect for the law, already at a low ebb for luring a gullible and vulnerable sad sack into a fictional "terrorist" plot.

It is hard to conjure up any general deterrence value this prosecution ever had, and its only specific deterrence was incapacitating Cromitie and his co-defendants for a decade and a half, for crimes the likes of which they never would have committed if they had been left alone. Keeping James incarcerated longer than he has been already provides society nothing of value, nothing positive, and nothing to be proud of.

Finally, James has received counseling, self-improvement programs and vocational training already while in prison. No further services in a prison setting are needed.



**Conclusion**

Since going to prison, James Cromitie has devoted time and effort into making himself into a better person and someone who could properly be a part of the community. “Extraordinary and compelling circumstances” have separated him from the community and sent him to prison for too long. It is time for him to be shown a measure of compassion, and for the Court to grant his release for the reasons stated in this motion and in the Court’s prior Decision and Order granting release for the co-defendants.

Dated: September 10, 2023  
White Plains, NY



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