

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

UNITED STATES OF AMERICA,)	CRIMINAL ACTION NO.
)	
Plaintiff,)	3:99-CR-050-R
)	
v.)	
)	
XXXX XXXX XXXX,)	
)	
Defendant.)	
_____)	

MOTION FOR DOWNWARD DEPARTURE IN CRIMINAL HISTORY CATEGORY

The Presentence Report (the PSR) prepared in this case notes that [t]he Court may conclude that the defendant s Criminal History Category significantly over-represents the seriousness of her criminal history, and therefore consider a downward departure from the guidelines. See PSR at f79. Indeed, Ms. XXXX has been placed in Criminal History Category III as a result of one shoplifting case and two cases involving liquor law violations where Ms. XXXX was convicted of serving undercover officers alcohol after-hours after having been ordered to do so by her employer. Id. at ff33-35.

U.S.S.G. / 4A1.3, in fact, recognizes that [t]here may be cases where the Court concludes that a defendant s criminal history category over-represents the seriousness of a defendant s criminal history. Moreover, this section has been utilized by numerous courts. See, e.g., *United States v. Summer*, 893 F.2d 63-67-68 (4th Cir. 1990) (District Court did not act unreasonably in excluding three driving with suspended license convictions from a defendant s criminal history score); *United States v. Anderson*, 955 F. Supp. 935, 937 (N.D. Ill. 1997) (Defendant had drunk driving and domestic battery conviction. Taking all of the relevant factors into consideration, and comparing Anderson s criminal history to that of other defendants sentenced by the Court over the years, the Court concludes that criminal history category III

significantly over-represents the seriousness of Anderson s criminal history.); *United States v. Hughes*, 825 F. Supp. 866, 869 (D. Minn. 1993) (Court reduced criminal history category from II to I for defendant with two misdemeanor convictions); *United States v. Baker*, 804 F. Supp. 19, 22 (N.D. Cal. 1992) (Criminal history category of III reduced to I for defendant previously convicted of providing false information to a police officer and grand theft auto).

This Court has obviously encountered numerous defendants falling within each of the six criminal history categories. The question that now confronts the Court is whether, given its experience, Ms. XXXX s criminal history is typical of the type of criminal history that category III offenders normally possess. Counsel s experience indicates that it is not. By downward departing to criminal history category I, or even category II, this court would implement the Sentencing Commission s recognition that, in some cases, a defendant criminal history category truly does over-represent the seriousness of his or her criminal history and, therefore, that such a defendant should be treated differently than the typical defendant falling into that criminal history category.

WHEREFORE, Marie XXXX respectfully requests this Court to depart downward to criminal history category I or I.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, F. Clinton Broden, certify that on _____, 1999, I cause the foregoing document to be served by ___ hand-delivery ___ first-class mail postage prepaid on Diane Jones, Assistant United States Attorney, 1100 Commerce Street, Third Floor, Dallas, Texas 75242 and Colleen A. Hammons, United States Probation Office, 1100 Commerce Street, Fourteenth Floor, Dallas, Texas 75242.

F. Clinton Broden