

SLEET, District Judge

I. INTRODUCTION

On March 14, 2000, John Walter Trala (“Trala”) was indicted for conspiracy to commit bank robbery, bank robbery, and possession of a firearm during the commission of a violent crime. *See* 18 U.S.C.A. §§ 371, 2113, and 924 (West Supp. 2000). These charges arose out of the robbery of a local bank on January 14, 2000.

A jury trial was held between November 26 and December 3, 2001. On December 3, 2001, the jury returned a verdict convicting Trala on all three counts. Although Trala’s initial sentencing was set for February 28, 2002, it was later continued.

On April 1, 2002, counsel for Trala submitted a letter memorandum in preparation for sentencing. This letter made two motions for downward departure. Specifically, the letter requested a downward departure based on: (1) an over-representation of his criminal history, and (2) the fact that the offense was only one portion of the co-conspirator’s scheme.

The court held the first sentencing hearing for Trala on May 29, 2002. At this hearing, the court adopted the facts as presented by the pre-sentence report. All of Trala’s objections to the pre-sentence report were overruled. The court also found applicable the mandatory statutory penalty of five years, to run consecutively with any other sentence, for the firearms charge. The court further found that the appropriate offense level was thirty-four, with a criminal history category of VI. This guideline range is based on the application of the career offender enhancement found in United States Sentencing Guideline Section 4B1.1. It results in a sentence in the 262 to 327 month range, absent downward departure.

With regard to Trala’s motion for downward departure for over-representation of criminal

history, the court expressed the belief “that [the court] would have the discretion to depart.” Transcript of May 29, 2002 Hearing at 44. It then continued the sentencing hearing to allow defense counsel to gather and present information supporting its motion for a downward departure. In continuing the hearing, the court stated that “[it] believe[s] that it is most prudent for [the court] to give [defense counsel] the opportunity to make a proper record if [it] can.” *Id.* at 48. The court then asked the parties to specifically address “the causative link between the abuse” and the predicate convictions. *Id.* at 46.

On July 31, 2002, the defense submitted a list of potential witnesses for the next sentencing hearing. It also submitted a letter memorandum requesting that the court refrain from considering Trala’s actions while in the custody of the Bureau of Prisons. In a letter dated August 13, 2002, the Government stated that it did not plan to call any witnesses at sentencing, and “that the court should give minimal weight to these [Federal Detention Center] incidents.”

The court reopened the sentencing hearing on August 29, 2002. The court first decided not to consider Trala’s behavior at the Federal Detention Center as a strike against him for sentencing purposes. This left Trala’s motion for a downward departure based on an over-representation of Trala’s criminal history as the only remaining issue.¹ The following witnesses testified at this hearing with regard to Trala’s motion: (1) Trala’s aunt, “Betty” Dwyer, (2) Trala’s sister, Mischeal Trala, and (3) Dr. Allan M. Tepper, an expert in psychology. At the close of the hearing, the court requested the filing of post-hearing briefing on the motion for downward departure.

The following is the court’s decision on the pending motion for downward departure.

¹The defense concedes that its second motion for a downward departure is no longer at issue. *See* Brief in Support of Defendant’s Motion for Downward Departure at 2, fn 4.

II. BACKGROUND

A. History of Early Childhood Abuse

John Walter Trala was born to Shirley and Walter Trala on April 5, 1972. In his earliest days, he lived with his parents, his slightly older natural sister, Mischeal, and his maternal half-brother Craig in Kentucky. *See* Defendant’s Appendix (“App”) at 109. Although Mischeal testified that she remembers very little of these early years, she does remember her father giving Trala a beer bottle with a baby bottle’s nipple attached to the top. *See id.* at 114. She stated that her “dad thought it was cool for him to be a little Polack that drank.” *Id.* at 114. She also described this period of time as “[a] lot of drinking, not just from my father, but my mother also. And losing our house, I know, I remember moving to Rehoboth because of hard times.” *Id.* at 110.

By the time Trala reached pre-school age, the family was living in Rehoboth. During that period, the family consisted of his parents, himself, and Mischeal. Trala remembers “[a] lot of arguing and fighting. When they’d fight, I’d hear them screaming. I’d hear a lot of cursing” *Id.* at 178.

The record reflects that Shirley Trala was also a chronic alcoholic. *See id.* at 102, 110, 179. Mischeal remembers that when she was drinking, or at work, their mother would have unfamiliar people come to take care of them. *See id.* at 110, 111. Specifically, she remembered that, “[w]hen [they] weren’t working and they did come home, there was a lot of arguing, a lot of fighting, a lot of splitting up, dragging us, walking down roads, at wee hours of the morning.” *Id.* at 111.

Trala’s Aunt Betty also remembers witnessing him being beaten by his father when Mischeal was in kindergarten. *See id.* at 103. She remembers thinking that, “he was going to kill the boy. He beat him unmercifully.” *See id.* at 103-104. She also described her ex-brother-in-law as “[a]

monster He was very aggressive. Very abusive. Drank. But at other times he could be good too. But most of the times he was mean and hateful.” *Id.* at 101.

Misceal described her father’s violence when he drank. She said that “[h]e would tear the house up. He would never really hit me. But he would get angry with my brother very easily for little things and would hit my brother.” *Id.* at 111. While Shirley Trala still lived in the home, there were numerous other times when Walter Trala was abusive to her as well. *See id.* at 112, 102, 103, 134. He would call his wife degrading and disrespectful names. *See id.* at 112. He also cut her with glass and beat her in front of the children. *See id.* 112-113. Trala remembers his father once asking him for a knife while he was in the middle of beating Shirley Trala. *See id.* at 178. Trala did not comply with this request, which resulted in him being physically assaulted as well. *See id.*

One of the most violent episodes that the children witnessed between their parents ended with Walter Trala, Sr. trying to set his wife on fire. *See id.* at 178. Both Misceal and Trala remember this incident clearly and describe it in similar detail. *See id.* at 113, 178. In essence, their father threw kerosene from a heater or a lamp on their mother, and then attempted to throw a Zippo flip-top lighter at her. *See id.* at 113, 178. Shirley Trala ran out of the house. *See id.* at 113. As Misceal remembers it, she never returned to that house. *See id.* She had sporadic telephone contact with the children for a month or so afterwards, but then became completely absent from their lives for approximately seven years. *See id.* at 178.

From the ages of six through thirteen, the children lived alone with their father and their paternal grandmother. *See id.* at 113, 178. During this time, their father would stay away for weeks at a time while he was on a drinking binge or living with girlfriends. *See id.* at 178. When their father was home, the violence they had experienced in their earliest years continued. Misceal

remembers her father being “[v]ery scary” to them during this time. *Id.* at 113. She said that they were walking on eggshells around him because they were afraid to do anything wrong. *See id.* at 113-114. She further testified that, often, when their father could not find anyone to watch them, he would just bring them along to the bar to watch him drink. *See id.* at 114.

Misceal also testified that her father sexually abused her. *See id.* at 111-112. She remembers him fondling her and performing oral sex on her, all in the name of teaching her how to be a good girlfriend. *See id.* In a videotaped interview, she tearfully reported that her pleading to get her father to stop beating Trala many times ended in compromise. *See Taped Video Testimony of Misceal Trala, dated April 1, 2002 (“April 1, 2002 Video”).* She felt that she had to allow her father to molest her in order to have him stop beating her brother. *See id.* She further testified that Trala was unaware of this abuse. *See id.* According to her, if Trala came in and unknowingly interrupted this sexual abuse, their father would yell at him and make him leave before he saw what was going on. *See App.* at 112.

Trala testified that he clearly remembers the beatings he experienced during this period. *See id.* at 178, 179. He remembered that his father would “pick me up off the floor by my hair, and drag me across the floor. He knocked me out a few times.” *Id.* at 178. Misceal remembers a time when Trala’s father slammed him through a wall, saying that it would make him tough. *See id.* at 112. Trala told Dr. Tepper that the thing that he hated the most during this time period was that he had to pretend in school that this was not going on. *See id.* at 179. If he had a black eye, or another cut or scar from a beating, he had to say that it was from a fight with someone in his neighborhood or from sports. *See id.* Misceal also remembers her brother being teased and picked on quite often in school because he did not have new clothes and proper hygiene. *See April 1, 2002 Video.*

In an interview with Dr. Tepper, Trala also remembered additional instances of abuse. *See App.* at 180. In one instance, he remembered being beaten by his father when he was approximately 11. *See id.* On that occasion, however, Trala told his father that he did not feel well, and he began to throw up. *See id.* His father took him to the hospital, where the doctors learned that Trala's appendix had burst. *See id.*

When Mischeal entered the sixth grade, and Trala was approximately eleven or twelve, she told a guidance counselor at school about the abuse. *See id.* at 115, 116. The school contacted Shirley Trala, and she came to pick the children up at the school. *See id.* at 116, 199, 122. Neither of the children recognized her after such a long period without their mother. *See id.* at 179. Mischeal does, however, remember smelling the familiar scent of alcohol on her mother when she gave her a hug during this reunion. *See id.*

Trala testified that the transition to a new house with his mother and finding out that his sister had been sexually abused colored his early teenage years. *See id.* at 179. He testified that the news of the sexual abuse was particularly difficult for him to take because of the guilt he felt for not protecting his sister. *See id.* at 179, 152. Furthermore, both Trala and Mischeal describe their mother as "absent." *See id.* at 117, 179. Trala's Aunt Betty admitted that her sister was not a good mother. *See id.* at 102. She worked from early evening until 3:00-5:00 A.M. and would stay and drink after work on many nights, leaving the children alone all night long. *See id.* at 102, 110, 179. Trala testified that she was also physically abusive towards the children when she would drink. *See id.* at 179.

As reflected in the Pre-Sentence Investigation Report, Trala began getting into mischief around this time. *See Pre-Sentence Investigation Report ("PSR")* at ¶¶ 51-55. As a result of being

picked on in school, Trala began to associate with the most accepting crowd he had been exposed to, the trouble-makers in his mother's neighborhood. *See App.* at 180.

Misceal also testified that their mother's house itself, and the provisions made for the children, were inadequate. *See id.* at 116-117. She described the house as small, and "[i]t was always damp and moldy and mildewy." *See id.* at 116. She noted that Trala started having breathing problems, like their mother, once they moved into this house. *See id.* at 117. She also stated that Shirley Trala did not make enough money to support the children. *See April 1, 2002 Video.* According to Misceal, her mother was supporting the family on a bartender's salary, much of which she spent on alcohol. *See id.*

After approximately a year of living with her mother, Misceal was removed from the home and put into foster care because the school nurse had alerted social services about the situation in the home. *See id.* at 117. Trala, however, remained with his mother. *See id.* at 117. It was during this period that Trala admitted to inhaling gas on a regular basis, in addition to his drinking. *See id.* at 117-118, 181, 183.

Misceal started visiting the home and tried to keep in contact with her brother by phone after she was placed in foster care. After a period of time had passed, Shirley Trala agreed to change in an attempt to coax Misceal back into the home. *See id.* at 118-119. She also began family counseling. *See id.* Misceal stated that she moved back into the home, but shortly thereafter, the counseling ended, and things returned to the way they were before. *See id.*

Misceal testified that she witnessed a suicide attempt by her brother when she was at the house on a home visit. *See id.* at 119-120. According to her, Trala overdosed on his mother's pills. *See id.* at 119. She called her mother at work and said that she needed to rush home. *See id.* It took

her mother two hours to arrive home. *See id.* When she did arrive, she was intoxicated and failed to assist her children. *See id.* As Mischeal stated, “instead of going and taking my brother to go get help, she started hitting him very violently. And he couldn’t even keep his eyes open. His eyes were rolling When she came in and was hitting him, I had to jump up on the bed, slapping my mom to get her to stop hitting him.” *Id.* at 119-120.

That incident marked the end of Mischeal’s time at home. That night, Shirley Trala called the police. *See id.* at 120. When the officers arrived, they took Mischeal to Bridge House for the weekend because her mother wanted to press charges against her. *See id.* Mischeal never returned to her mother’s home because she was returned to foster care and then went into the Job Corp. *See id.* at 127.

At one point after his sister left, Trala testified that he decided to move back in with his father and grandmother, “[b]ut it was the same thing” as when he was young. *Id.* at 180. Thus, between the ages of sixteen and seventeen, he lived with his mother, his father, and friends at various points. *See id.* at 120. According to both the Pre-Sentence Investigation Report and Trala himself, this is when his significant participation in criminal activities began. *See* PSR at ¶¶ 56-66.

From the ages of eighteen to twenty-eight, Trala oscillated between living with various family members, living with friends, living on his own, living on the street, undergoing periods of confinement, or living with girlfriends. *See* App. at 180. He also began to engage in serious criminal activities.² *See* PSR at ¶¶ 73, 85.

²The Government argues that, because Mischeal was in foster care and testified that she did not see Trala from the ages of thirteen or sixteen until he was twenty-five, the court cannot consider her testimony regarding his life during those years as reliable. The court agrees. It

In 1991, at the age of 18, Trala was convicted of two counts of second degree burglary. *See id.* at ¶73. In essence, he entered a private residence and stole two personal checks. *See id.* at ¶74. He subsequently attempted to negotiate those checks. *See id.* He was sentenced to one year imprisonment, followed by a term of probation. *See id.* at ¶73. Shortly after his release, in September 1992, his probation was revoked as a result of a resisting arrest conviction. *See id.* He was sentenced to an additional six months of prison and an additional term of probation. *See id.*

In March 1993, at the age of 20, Trala was convicted of his second burglary charge. *See id.* at ¶85. For this, he incurred an additional two-year term of imprisonment. *See id.* In his statement to the authorities, he indicated that he had broken into the residence to get drugs. *See id.* at ¶88. He further stated that the victim had previously “beat” him for \$300 because the victim had sold Trala some fake drugs. *Id.* Months after his release, he sustained yet another conviction and had his probation revoked. *See id.* at ¶¶ 73, 85, 91. This resulted in an additional ninety days of imprisonment, and a final release date of February 6, 1996. *See id.* at ¶¶ 73, 78. In 1998, he was convicted of resisting arrest and carrying a concealed weapon. *See id.* at ¶¶ 96-101. He was arrested for the present offense on February 10, 2000.

Shirley Trala died of emphysema approximately seven or eight years ago. *See App.* at 121, 177. Trala did keep some irregular contact with his father throughout the years, but he has not spoken to him in a few years. *See id.* at 177. Mischeal testified that she tried to contact her father recently to give him some paperwork that was recovered after Shirley Trala’s death. *See* April 1, 2002 Video. Mischeal stated that her father’s new girlfriend informed her that her father wanted

will, therefore, only credit her testimony regarding events of which she has first-hand knowledge.

nothing to do with her or her brother. *See id.*

In approximately 1996, Trala met Vicky Prince (“Prince”). *See App.* at 180-182. Mischeal has stated that she believes this relationship is good for him. *See April 1, 2002 Video.* She also commented that he is excited about being a father to their child, Laura Trala. *See id.* She felt relieved that he finally had something to live for, after all the terrible experiences he had suffered and his ongoing depression. *See id.*

B. Dr. Tepper’s Analysis

Psychologist Allan M. Tepper (“Tepper”) evaluated Trala on March 29, 2002. In his April 1, 2002 report, Tepper concluded that Trala was exposed to a number of severe and cumulative traumatic events during his developmental years. *See App.* at 183-184. These events “exerted a negative effect upon Mr. Trala’s ability to develop a strong sense of inner self and confidence.” *Id.* Moreover, the events left him with “strong unresolved feelings of dependency, inadequacy, and depression.” *Id.* Tepper further noted that these emotional concerns have generally been directed “in an inward fashion.” *Id.* at 183. Despite his early traumas, Tepper found that Trala: (1) possesses average intelligence; (2) displays no past or present symptoms of a psychotic proportion; (3) is capable of distinguishing between fantasy and reality; (4) exhibits no symptoms suggestive of a psychotic disturbance; and (5) shows no past or present indications of any formal underlying thought disorder. *See id.* at 182-183. Tepper also found that Trala has abused drugs and alcohol over the years, and that his past criminal contacts in some cases involved instances in which he was under the influence of these substances. *See id.* at 183-184.

At the hearing on August 29, 2002, Tepper testified that there is a correlation between

childhood abuse and later juvenile or adult criminal convictions.³ *See id.* at 141. He stated, however, that such general research findings must be compared against the individual subject because not every victim of abuse will engage in criminal behavior. *See id.* at 157. Based on his analysis, Tepper was unable to posit that Trala's two prior burglary offenses were caused by his abusive upbringing. *See id.* at 158. Nor could Tepper posit that Trala was predisposed to commit those particular crimes, or even those categories of crimes, by virtue of his abuse. *See id.* Thus, Tepper was only able to testify that, at best, "based on, again, the research on Mr. Trala, he certainly, I can say, was predisposed to engage in criminal or asocial activities." *Id.*

III. DISCUSSION

Under Section 4A1.3 of the Sentencing Guidelines, the court may grant a downward departure if the defendant's criminal history category significantly over-represents the seriousness of the defendant's criminal past or the likelihood that the defendant will commit additional crimes in the future. *See United States v. Shoupe*, 35 F.3d 835, 839 (3d Cir. 1994)(*Shoupe II*). If the criminal history calculation results in a career offender designation, the court may downwardly depart on both the criminal history and/or offense level axes, if warranted by the facts. *See id.* As the movant, the defendant bears the burdens of production and persuasion on a motion for downward departure. *See United States v. Higgins*, 967 F.2d 841, 846 n.2 (3d Cir. 1992).

Trala posits four bases which, taken separately, or together, he contends demonstrate that a Section 4A1.3 departure is warranted in this case. In essence, he argues that the career offender

³Although Tepper testified at the August 29, 2002 hearing, he did not prepare a report supplementing his April 1, 2002 report. Such a supplemental report, while not required, would have been a useful addition to the record in this case. The court does not, however, draw any negative inferences from the fact that Tepper did not prepare a second psychological report.

designation resulting from his two prior felony burglary convictions overstates his criminal history. The court will now discuss each of Trala's arguments in turn.

A. The Age of the Predicate Offenses

Trala first argues that the time elapsed between the commission of his two career offender predicates and the instant offense suggests that his criminal history score overstates his criminal past and the likelihood of recidivism. Specifically, Trala argues that the two predicate offenses that qualify him for the career offender status were committed approximately ten years ago.

The court does not dispute that the amount of time between the instant offense and a predicate offense may be relevant to both the seriousness of the criminal history and the likelihood of recidivism. *See Shoupe II*, 988 F.2d at 447. Nor does the court dispute that the predicate offenses in this case occurred in 1991 and 1993, respectively. For the following reasons, the court will, however, decline to depart on this basis.

Section 4A1.3 illustrates the potential applicability of a downward departure in the case of a defendant with two minor misdemeanor convictions ten years prior to the instant offense, with no other evidence of criminal behavior in the intervening period. *See* U.S.S.G. § 4A1.3. Trala, by contrast, has two prior felony convictions for crimes of violence, and a history of additional criminal behavior in the intervening period. Specifically, with regard to his first burglary conviction, Trala was sentenced to one year imprisonment, followed by a term of probation. Shortly after his release, in September 1992, Trala's probation was revoked and he was sentenced to an additional six months imprisonment and an additional term of probation. In March 1993, he was convicted of his second burglary charge. He was sentenced to a two-year term of imprisonment. In the months following

his release, he sustained a criminal impersonation conviction and had his probation revoked. This resulted in ninety more days of imprisonment. His final release date was February 6, 1996.

Thus, for the approximately four and one-half year period from July 1991 through February 1996, Trala was incarcerated for all but approximately one year. During his brief periods of release, he committed new crimes and had his probation revoked on two occasions. Even after 1996, when Trala, in practical terms, completed his terms of incarceration on his burglary convictions, he continued to commit new crimes right up until his arrest on the instant offense. These new crimes included carrying a concealed weapon and resisting arrest.

In light of this history, the court cannot conclude that, because of their age, Trala's predicate convictions are not an accurate reflection of his likelihood of recidivism. Trala's criminal history shows a pattern of continuous criminal conduct, of varying degrees of seriousness, throughout his adult life. During the 1991-1996 period, he continued to commit new crimes despite being incarcerated for the majority of this time. In the 1996-2000 period, although not sustaining convictions for additional crimes of violence, he was nevertheless convicted of other crimes. For these reasons, the court is not persuaded that the age of the predicate offenses warrants a downward departure.

B. Trala's Age at the Time of the Predicate Offenses

Trala next argues that his age and immaturity at the time of his predicate felonies, eighteen and twenty, respectively, demonstrates that his criminal history score overstates the seriousness of his criminal past. The court disagrees.

While age may be relevant to the court's Section 4A1.3 analysis, Trala has failed to suggest why his age at the time of his prior offenses renders his case extraordinary. The fact that he was

eighteen and twenty years old does not in itself suggest that his prior convictions overstate his criminal past. *See United States v. Pullen*, 89 F.3d 368, 372 (7th Cir. 1996) (concluding that committing two bank robberies at the ages of nineteen and twenty-three “could hardly be viewed as youthful indiscretions.”).

Trala also argues that his development was “corrupted” by his childhood abuse and substance abuse. Due to this corruption, he contends that he was immature at the time of those crimes and had been associating with people who were bad influences on him. However, to the extent Trala argues that his lack of proper development was a function of the childhood abuse that he suffered, his immaturity claim becomes a restatement of his extraordinary abuse claim. The court will address the issue of his childhood abuse in Section III D, *infra*.

C. The Nature of Trala’s Predicate Convictions

Trala next claims that the nature of his two prior felony convictions renders this case outside the career offender heartland. As he recognizes, however, his two prior convictions for burglary of a dwelling qualify as “crimes of violence” under the Sentencing Guidelines. *See* U.S.S.G. § 4B1.2(a)(2). He nevertheless contends that his case is outside the heartland because his prior offenses did not involve actual violence. The court must disagree that this distinction is relevant.

The Sentencing Commission has adopted a categorical approach to the determination of whether an offense is a “crime of violence.” *See United States v. McClenton*, 53 F.3d 584, 588 (3d Cir. 1995). The Commission has further decided that any invasion of a place where people may reside presents an unacceptable risk of harm and must be classified as a crime of violence. *See id.* Moreover, the Third Circuit has consistently held that, where the Sentencing Guidelines expressly list a predicate offense as a crime of violence, a more detailed inquiry into the underlying facts of

the offense is inappropriate. *See United States v. McAllister*, 927 F.2d 136 (3d Cir. 1991); *see also McClenton*, 53 F.3d at 588-589. Accordingly, because burglaries of dwellings are *per se* crimes of violence, no further inquiry is warranted. Thus, Trala's motion for a downward departure on this ground is denied.

D. Extraordinary Childhood Abuse

As stated at the May 29, 2002 hearing, the court has already determined that it has discretion to consider a downward departure based on the defendant's disadvantaged background. *See* Transcript of May 29, 2002 Hearing at 44; *see also United States v. Clark*, 8 F.3d 839, 845 (D.C. Cir. 1993) (noting that "the district court is also free to consider whether a nexus exists between the circumstances of [the defendant's] childhood and his prior criminal offenses, for purposes of determining whether the seriousness of his criminal record is overrepresented under § 4A1.3."). The court will, therefore, turn to the merits of Trala's contentions.

The primary thrust of Trala's argument is that the abuse he suffered as a child did not allow him to develop normally, which in turn predisposed him toward criminal activity at a young age. He claims that his predicate convictions occurred at a time when "the effects of his childhood abuse and neglect were ripe." Therefore, his designation as a career offender overstates his criminal past and likelihood of recidivism. *See* Defendant's Opening Brief at 26. For the following reasons, however, the court will decline to exercise its discretion in favor of a downward departure.

The Government does not dispute that Trala's childhood was marred by domestic violence and abuse. Nor would the court sanction such an argument as it is clear that much of Trala's family life was both shocking and repulsive during his formative years. Furthermore, the court credits Tepper's testimony that psychological research supports a statistical correlation between

developmental interferences such as childhood abuse and adult offending. As Tepper himself conceded, however, one must compare this research against the individual case facts in order to draw a conclusion about the effect of such interferences in a given case. *See* Transcript of August 29, 2002 Hearing at 64. This is because, in Tepper’s words, “not [] every individual exposed to that environment is going to engage in criminal behavior.” *Id.*

At the August 29, 2002 hearing, Tepper testified that he could not posit a direct causal relationship between Trala’s abusive upbringing and his predicate offenses. *See id.* at 80. When asked on direct examination whether the abusive upbringing “predisposed” Trala to criminal activity, Tepper answered:

Well, my opinion with respect to that question or issue is that the overall effect of Mr. Trala’s specific upbringing led to certain personality difficulties, psychological functioning difficulties, and also alcohol and substance abuse problems So with respect to Mr. Trala, he was exposed and really raised in the type of environment that there is a strong likelihood, or if you want to use, a strong predisposition or very strong probability that an individual raised in such an environment would later engage in juvenile or adult criminal activity.

Id. at 64. On cross-examination, however, Tepper stated that he could not testify that Trala was predisposed “to commit these particular crimes, or even these categories of crimes.” *Id.* at 81. Thus, at best, Tepper established only that Trala suffered the type of abuse from which there is a statistical correlation with later juvenile or adult offending.

Additionally, Tepper formulated his opinion on the predisposition question without reviewing any specific details, independent of the Pre-Sentence Report summary, concerning Trala’s prior offenses. *See id.* at 92-93. Tepper did not ask Trala about the facts of the prior offenses. *See id.* at 92. Nor did he review the police reports for those offenses. *See id.* Despite having the Pre-

Sentence Investigation Report summary of the prior offenses in his available materials, Tepper did not review any specifics with Trala during his interview. *See id.* at 93. In other words, Tepper failed to test his hypothesis by examining the objective facts of Trala’s prior crimes. The court will thus decline to credit the theory that Trala was predisposed to commit his prior criminal acts when there is no analysis of his prior crimes to determine whether those crimes are in any conceivable way related to the alleged abuse.

Moreover, Tepper’s April 1, 2002 report does not portray Trala as prone to criminal acts.⁴ *See id.* at 88. Indeed, it described Trala as an individual whose emotional concerns relate to unfulfilled dependency and nurturing needs, which are typically directed “in an inward fashion.” *See* April 1, 2002 Report at 7. The only mention of Trala’s criminal behavior in this report suggests that the proximate cause of the behavior was Trala’s drug and alcohol abuse, not his early childhood abuse. *See id.* Moreover, as the court noted during the May 29, 2002 hearing, such findings, by themselves, are of no aid to Trala’s departure motion. *See* Transcript of May 29, 2002 Hearing at 46.

Also informing the court’s decision in this case is the Seventh Circuit’s discussion of a similar situation in *United States v. Pullen*. 89 F.3d 368 (7th Cir. 1996) (Posner, J.). In that case, the defendant’s father was a drunkard and a gambler. He beat his wife and threatened his children with guns and knives. *See id.* at 369. When the defendant was five years old, his father sexually abused him for a period of several months. *See id.* As the defendant grew older, he and his father

⁴In his Reply Brief, Trala invites the court to infer that the reason Tepper’s report is silent on this issue “may actually be an indication that Tepper did not see criminal propensities in Mr. Trala *now*.” (emphasis added). The court must decline this invitation, however, as Trala offers no evidence in support of this assumption.

would go out drinking together. *See id.* After one such episode, his father raped him. *See id.* At the age of nineteen, the defendant robbed his first bank. *See id.* He committed his second robbery at the age of twenty-three. *See id.* A psychologist evaluated the defendant and concluded that, as a result of the history of abuse, the defendant “has a need to punish himself, hence his illegal acts” *Id.* The psychologist also found that the defendant suffers from a “schizoid disorder” and “borderline personality disorder.” *See id.* Both of these disorders were clinically linked to his history of abusive treatment. *See id.*

On these facts, the Seventh Circuit held that “[t]o grant a downward departure in these circumstances would have been an abuse of discretion.” *See id.* at 372. In so holding, it also noted that the defendant in that case had not “come close to satisfying his burden” of proving extraordinary abuse. *See id.*

While the court is deeply disturbed by Trala’s upbringing, it unfortunately must conclude that the abuse he suffered at his parent’s hands does not warrant a downward departure. As the Fifth Circuit has noted, “[c]hildhood abuse and neglect are often present in the lives of criminals. They always affect their mental and emotional condition.” *United States v. Vela*, 927 F.2d 197, 199 (5th Cir. 1991). While the court does not, in any way, intend to belittle the trauma Trala suffered in his youth, the court is constrained to find that the abuse demonstrated here does not lessen the extent of his criminal conduct. Accordingly, the court will deny his motion for a downward departure.

IV. CONCLUSION

Although it is undisputed that John Walter Trala’s youth was undoubtedly difficult, the court concludes that, on the facts and circumstances of this case, he has failed to present any ground, or combination of grounds, from which the court could find that a departure is warranted. Accordingly,

his motion must be denied. The court will issue an order in conjunction with this opinion.