UNITED STATES

VS

AMANDA CHRISTIAN

Case No : 1:20-CR-00296-09-JPB

Motion under 28 USC 2255 to vacate, set aside, or correct sentence by a person in federal custody.

United States District Court District 11

Amanda Christian

55929-509

B3-62-L

Federal Prison Camp

PO Box A

Alderson, VA 24910

United States District Court for the Northern District of Georgia, Atlanta Division

Sentenced: September 13, 2022

41 months Pleaded Guilty to Conspiracy to commit wire fraud

18 USC 1349

This is a pro se motion pursuant to Haines vs Kerner, 404 US 519, 92 S.Ct 594, to raise the following grounds of ineffective assistance of counsel. Pro se litigants pleading are held to less stringent a standard then one done by formal pleading drafted by a lawyer.

Argument

"A defendant has a constitutional right to effective assistance of counsel at sentencing." Jones v United States, 224 F.3d 1251, 1259 (11th Cir. 2000)(citation omitted). "['Counsel' bears the primary responsibility for advising the defendant.... ' the strategic implications of each choice....." Corley v United States, 406 F. App x 342, 343(11th Cir. 2010) Quoting United States v. Teague, 953 F. 2d 1525, 1533(11th Cir. 1992).]

The defendant's counsel erred in his professionally handling of this case. He failed to file a motion of discovery to obtain evidence held against the defendant and to substantiate the government's claims as well as failed to go over said evidence with the defendant before having her sign a plea agreement. His lack of doing so created a prejudice for the defendant that carried until the actual day of sentencing. "The likelihood of a a different result must be substantial, not just conceivable.'

Harrington v Richter, 562 U.S. 86,112,131 S. Ct. 770,178.L Ed. 2d 624 (2011)(Quoting Strickland) Counsel's errors here deprived thee defendant of the opportunity to a fair trial, a trial whose result is reliable. The result of which would have demonstrated and brought fourth all evidence and her sentencing would have been less harsh due to her loss calculation and offense level being less.

Grounds

1. Counsel was ineffective because he failed to file a motion of discovery to obtain evidence used to indict the defendant.

2. Counsel was ineffective because he hurriedly advised the defendant to sign her plea agreement due to the fact that "the government would not speak with me until it was signed."

3. Counsel was ineffective due to not challenging loss calculation/intended loss amount.

4. Counsel was ineffective due to not objecting to the submission of "intent and willful" element.

5. Counsel was ineffective due to withdrawing role enhancement objection; for role enhancement as a recruiter prior to sentencing and not discussing the strategy with the defendant.

6. Counsel was ineffective for failure to argue 3553(a) factors and sentencing disparities among defendants with similar records and with similar conduct.

Motion Supplement

Ground 1:

Counsel was ineffective because he failed to file a motion of discovery to obtain evidence used to indict the defendant. While the right to discovery is not a constitutional one, the lack of a defendant having access to such evidence hinders the sense of justice mandated by the due process of the fifth amendment. Federal rules of criminal procedure (Rule 16) allows for the defendant to see and make available the discovery/evidence used to indict the defendant. However, since he failed to obtain the government's evidence, he proved prejudicial against the defendant. Without seeing the evidence that the government held against her, the defendant did not give her plea fully, knowingly, and able to act intelligently with sufficient awareness of the relevant circumstances and likely consequences surrounding the plea. The could have changed the sentencing outcome and other factors i.e. loss calculation. The day of sentencing, the defendant was shown three exhibits provided by the prosecution. The timing was inadequate as the plea agreement was worked out several months prior (see Doc 565). Presenting this evidence on such an emotionally charged day would guarantee that the defendant would be unable to review the evidence and its merit. The defendant substantially disadvantaged in her defense. See, therefore, was denied "fundamental fairness: and waived substantial constitutional rights due to her counsel's lack of action and preparation as these documents were filed with the court on September 6, 2022.

In the Eleventh Circuit: United States V Frazier 387.2d 1244(11th Cir 2004) this court found that "bedrock principles established with a criminal must be given every meaningful opportunity to present a complete defense, in doing so must comply with the procedural and evidentiary rules designed to facilitate a search for the truth". This rule should apply also to defense counsel. In Maryland: Washington V State, 951 A 2d 885 (Md. App 2008) "the court noted that the absence of evidence can be a basis of acquittal rather than a finding of innocence. Since the defendant did not have access to this evidence, she was denied this opportunity. Counsel had a constitutional right to obtain all evidence and materials needed to establish a proficient defense, as well as to advise the defendant properly of her plea. Brady V Maryland, 373 US.83(1963). The Supreme Court held that "non-disclosed evidence" is considered material only if there is a reasonable probability that had the evidence been disclosed to the defense, the result of the proceedings would have been different." The defendant having all of the evidence against her or they would have allowed her to make an informed plea and possible led her to go to trial.

Ground 2:

Counsel was ineffective because he hurriedly implored the defendant to sign her plea agreement due to the fact that the government would not speak with me until after the plea agreement was signed. "To act voluntarily and knowingly 1) The guilty plea must be done free from coercion", Fed.R.Crim. P. 11), which did not occur because of this sense of urgency that counsel upheld. Counsel continuously stated that "I have issues with your guilty plea." However, he never made known to the defendant the specifics of his concerns. He did not advise the defendant to withdraw her guilty plea (change of plea option) or other defense options. Counsel moved forward with the guilty plea, even after expressing his uncertainty of if the guilty plea was the correct decision or not. The defendant would like to request an evidentiary hearing to see if these concerns were ever addressed with the government.

Fed. R. Crim. P. 11. As the Eleventh Circuit has stated, "a guilty plea involves the waiver of a number of the defendant's constitutional rights, and must, therefore, be made knowingly and voluntarily to satisfy the requirements of due process. United States v. Moriarty, 429 F. 3d 1012, 1019 (11th Cir 2005)(Citations omitted) A guilty plea is constitutionally voluntary when a defendant "receives real notice of the true nature of the charge against him." United States v Presendiew, 880 F.3d 1228, 1238 (11th Cir 2018)(citation and quotation and responsibility to conduct an inquiry to whether the defendant makes a knowing and voluntary guilty plea."

United States v Lundi, 2022 U.S. App Lexis 25556, *3-4 (11th Cir 2022)(per curiam). This inquiry-known as a plea colloquy must "specifically (2023 U.S. Dist. Lexis 12) address three 'core principles; ensuring that a defendant 1) enters his guilty plea free from coercion, 2) understands the nature of the charges and 3) understands the consequences of his plea."

While a district court's failure to address any of these core principles may warrant reversal, "any variances or deviations…. That do not affect a defendant's substantial rights constitute harmless error. "United States v Hernandez - Frave, 28 F. 3d 945, 949-50 (11th Cir 2000.) Counsel's insistence to "hurry up and sign" the plea agreement violates the core principles of rule 11-1 therefore the defendant is entitled to immediate relief.

Ground 3:

Ineffective assistance of counsel due to counsel objecting to challenging loss calculation/intended loss amount. This case involves perennial harm. Counsel do their defendant a disservice by not arguing the loss around which substantially affected her sentencing guideline range. He never contested the less amount during the pretrial phase or at sentencing, even after the defendant voiced her concerns because the money was returned once she was made aware that it was a scheme. In United States V Banks, No 19-3812 (3d Cir 2022), the US Court of Appeals for the Third Circuit in Philadelphia held that judges may not use intended loss. Instead, the may only rely on actual loss to calculate the range of criminal penalties applicable in fraud cases. Counsel should have argued that because the defendant asked her bank to send the money back to the lender as well as she alerted her co defendant (McDuffie) to do the same; her loss calculation and restriction amount should both be 55,000 as that was the amount that she received in her business account as payment for the referral. This fee was divided to and sent to Charles Knight ($25,000). The 11th circuit sustained in United States v Alford that the §2B1.1 does not define law and neither side argues it is a term art in this context. The text of §2B1.1 does not define "loss," and neither side argues it is a term of art in this context. The Court thus begins, as it must, by employing traditional tools of statutory construction to determine whether "loss" as used ?? 2B1.1(b)(1) is genuinely ambiguous. See Kisor, 139 S. Ct. at 2414-15. It is worth noting at this point that neither the Supreme Court nor the Eleventh Circuit has considered this precise issue. Other circuits have turned to the "ordinary, contemporary, common meaning" of the term "loss" and, in doing so, have identified a "range of meanings that a reasonable person would understand a word like 'loss' to have." See United States v. Riccardi, 989 F.3d 476, 486 (6th Cir. 2021) (applying the Kisor framework and holding that "the commentary ' s $500 minimum loss amount for gift cards does not fall within the zone of any ambiguity" in the term "loss " under ?? 2B1.1(b)(1); see also United States v. Kirilyuk, 29 F.4th 1128, 1137-38 (9th Cir. 2022) (same). For example,

one dictionary defines ["loss"] to mean, among other things, the "amount of something lost" or the "harm or suffering caused by losing 5 The Eleventh Circuit has not yet considered the Kisor decision in the context of Guidelines interpretive commentary. However, it has applied the Kisor framework for Auer deference in other contexts. See, e.g., United States v. US Stem Cell Clinic, LLC, 998 F.3d 1302, 1308 (11th Cir. 2021) (observing that courts faced with a challenge to an administrative rule may " [no longer] . . . simply wave the ambiguity flag and defer to the agency's interpretation "); see also Dobson v. Sec'y of Health & Hum. Serv ., 2022 WL 424813 (11th Cir. 2022) (FDA interpretation of prescription coverage provision of Medicare Part-D statute); Rafferty v. Denny's , Inc., 13 F. 4th 1166 (11th Cir. 2021) (Department of Labor interpretation of dual-jobs regulation).

or being lost." American Heritage Dictionary of the English Language 1063 (3d ed. 1992). Another says it can mean "the damage, trouble, disadvantage, [or] deprivation . . . caused by losing something" or "the person, thing, or amount lost." Webster's New World College Dictionary 799 (3d ed. 1996). A third defines it as "the being deprived of, or the failure to keep (a possession, appurtenance, right, quality, faculty, or the like)," the "[d]imunition of one's possessions or advantages," or the "detriment or disadvantage involved in being deprived of something[.]" 9 Oxford English Dictionary 37 (2d ed. 1989). See Riccardi, 989 F.3d at 486. This Court' s own consultation of contemporary dictionaries yielded similar definitions. See, e.g., Loss, MERRIAM-WEBSTER.COM DICTIONARY (2022) (defining loss to include the "physical, emotional, or especially economic harm or damage sustained"); Loss, THE BRITANNICA DICTIONARY (2022) (defining loss to include a "failure to keep or to continue to have something," and "the experience of having something taken from you or destroyed").

"These definitions show that 'loss' can mean different things in different contexts." See Riccardi, 989 F.3d at 486. It can encompass economic, emotional, and/or physical harms. See id. And "[e]ven in the economic realm," it "might cover only the precise value of, say, [an item] that is stolen . . . [o]r it might include the costs associated with" replacing the stolen item. See id. Nevertheless, there is at least one element shared by all of the "ordinary, contemporary, common meaning[s]" for the word "loss " in all of its various contexts concrete materialization of harm.

There is no reasonable construction of the "plain and ordinary meaning" of loss that includes harm that did not actually materialize. See

Fulford, 662 F.3d at 1177. The term is unambiguous in that respect. 6

Consequently, the Court "has no business deferring to any other reading" of the term, no matter how much the Government insists that doing so "would make more sense." See Kiser, 139 S. Ct. at 2415.

Based on the foregoing, it is clear that the Guidelines commentary defining "loss" to include "intended loss" is not due Auer deference. Section 2B1.1 is driven by "the amount of loss caused by the defendant's offense," see United States v. Souffrant, 517 Fed App'x 803, 821 (11th Cir. 2013), which plainly means, as explained above, the economic, emotional and/or physical harm that actually occurred. "Loss" cannot mean harm that never materialized. Yet the Guidelines commentary broadens the term "loss" to include harm of precisely that nature by inserting "intended loss" into its definition.

7 See U.S.S.G. ?? 2B1.1 at cmt. n.3(A)(ii). In doing so, the commentary does not "illuminate the meaning of 'loss,' but modifies it." See Kirilyuk, 29 F.4th at 1138. And the modification is so far afield from any contextual zones of ambiguity inherent in the ordinary meaning of the word "loss"

that the commentary is rendered plainly inconsistent with the text of §2B1.1(b)(1). The Government has identified nothing in the structure, history or purpose of this guideline that supports such an expansive view of the term "loss. " "Deference in [this] circumstance would permit the [Sentencing Commission], under the guise of interpreting a [Guideline], to create de facto a new [Guideline]." See Kisor, 139 S. Ct. at 2415. " Auer does not, and indeed could not, go that far." See id .

The Court recognizes that it, other district courts in this circuit, and the Eleventh Circuit Court of Appeals have routinely applied "intended loss" in past Guidelines calculations. See, e.g., United States v. Baldwin, 774 F.3d 711, 727-28 (11th Cir. 2014); United States v. Barrington, 648 F.3d 1178, 1197-98 (11th Cir. 2011); United States v. Fisher, No. 3:19cr076, 2021 WL 1886000, at *1-2 (N.D. Fla. May 11, 2021); Bah v. United States, 2015 WL 5092569, at *2 (S.D. Ga. Aug. 27, 2015). In each case, the respective court fairly "reflexive[ly]" deferred to the Sentencing Commission's interpretation of loss under §2B1.1(b)(1), which, again, includes harm that did not actually materialize. But none of the cases nor any others cited by the Government or found by the Court engaged in the Kisor process of exhausting the traditional tools of construction to conclude that §2B1.1 was genuinely ambiguous before turning to the Commentary. See Kisor, 139 S. Ct. at 2415. Moreover, none of the cases cited by the Government (or any other) determined that the Sentencing Commission's definition of "intended loss" could reasonably be read into any zone of ambiguity inherent in the term "loss." See id . at 2415-16. Because these issues do not appear to have been squarely addressed or even raised in this circuit (or in the Supreme Court, for that matter), this Court is free to consider them on the merits. See United States v. Jackson, 36 F.4th 1294, 1305 (11th Cir. 2022) (quoting Webster v. Fall, 266 U.S. 507, 511 (1925)) ("Questions which merely lurk in [a] record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents.").

In light of Kisor's clarifications on deference to administrative agencies and the Court's own careful consideration of the Guidelines and accompanying commentary, the undersigned concludes that "intended loss" does not "fall within the bounds of reasonable interpretation" for the term "loss" in §2B1.1(b)(1). Applying this to the defendant's case the actual loss amount is $830,417.00. Counsel, therefore, should have objected to the intended loss amount set forth by the government. (PSR, p.31)(see note) Had the counsel advised defendant to go to trial, a; point would have been made that the defendant received $20,000 from what she believed at the time that she was seemingly a referral source. The lenders received all of the funds back with the exception of .... The $830,417 defendant should have received credit for this and been sentenced within the guideline range for this amount, instead of the intended loss amount of $2.3 million. At it's highest, the defendant's loss amount should have been $830,417, and $55,000 at its lowest, which is the amount that the defendant actively received. Therefore, had this objection been raised, the guideline calculation as well as the specific offense characteristic enhancement calculations would have varied downward, thus, creating a different outcome at the time of sentencing for the defendant. Furthermore, in United States V Brandon Dupree, case number 19-13776, this court ruled that "under the plain text of §4131.2, conspiracy to commit a drug offense is not a controlled substance offense". USSG §4B1.2(b). Indeed, the text doesn't not mention any inchoate offenses, so the provision is unambiguous and there is no occasion to resort to the commentary. See Kisor, 139.S.Ct at 2415. Thus, under §4131.2 plain text, a conspiracy offense does not qualify as a "controlled substance offense." Moreover, when the commission was not interpreting §4131.2's text, it was adding to the text. Application 1 is, therefore, also unenforceable for that reason. See Stinson, 508 US at 45. Accordingly the court erred when it sentenced Mr. Dupree as a career offender.

In holding to the contrary, the panel relied on Smith, in which this court concluded without reasoning that Application 1 "does not run afoul of the constitution, nor is it in consistent with, or a plainly erroneous reading of sections 4131.1 or 4131.2" 54F.3d at 693.

But out-of-circuit cases show that this court decided Smith incorrectly and that the Eleventh Circuit's current rule thus creates a circuit split on this issue. Specifically, the en bane Third Circuit, the en bane Sixth Circuit, and the D.C. Circuit have held that Application Not 1 is unenforceable because it adds to 4131.2 text. United States V Nasir, 982 F.3d144(3d Cir. 2020)(en banc); United States V Havis, 927 F.3d 382,386 (6th Cir. 2019)(en banc); United States V Winstead, 890 F.3d 1082.1092(DC Cir. 2018). The Third Circuit's en banc decision in Nasir is particularly instinctive.

In Nasir, the Third Circuit explained that Application Note 1 expanded the definition of "controlled substance offense," and in that light of the Supreme Court's recent decision in Kiser, the court had to reconsider whether to give Application Note 1 binding effect after considering all the traditional tools of statutory construction.

The grant of rehearing en banc suggest that this court may likely follow the lead of the cases noted above and revisit its body of law interpreting this and similar guideline commentary in light of Kisor.

We're that to occur, then the sentencing in the defendant's case would be subject to remand because the defendant was sentenced based on guideline loss amount which was unreasonably determined under guideline commentary based on so called “intended loss” not actual loss. Christian’s loss amount was determined based on an incorrect concept of “intended loss” grafted onto, again, an ambiguous guideline which only spoke of loss.

That rehearing en banc in Dupree may also affect the defendant’s guideline issue is clear from the Sixth decision in United States V Ricardo, 989 F.3d 476 (6th Cir 2021. Only the guidelines (not the commentary) must go through notice-and - comment rule making 28 U.S.C. &994(x). So if the commission could freely amend the guidelines by amending the commentary, it could avoid these notice-and-comment obligations. The healthy judicial review that Kisor contemplates thus will restrict the commission’s ability to do so.

United States V Ricardi, 989 F 3d 476, 481-482, 484-85(6th Cir. 2021).

In conclusion of the ground, counsel should have argued that the guideline definition means loss means what it says loss, and it was error to apply the commentary which enhanced the guideline level based on intended loss, and therefor her case must be remanded for resentencing based on actual loss.

Losses caused by conduct that falls outside the temporal scope of the acts of conviction, and "every dollar must be supported record evidence." (Sharma, 703 F .3d at 323' see also 18 U.S.C 3664(e).The burden of demonstrating the amount of loss sustained by a victim as a result of the offense shall be on the attorney for the government. The mandatory restitution to the victims of certain crimes statues "limits restitution to the actual loss directly and proximately caused by the defendant's offense of conviction.(Sharma, 703 F .3d at 323.) The only record evidence the Government would have had would have been the defendant's actual bank account statement which would have shown the wire for the $55,00. The Government would have not met the burden of factual proof to demonstrate an actual loss amount of $835,000 on behalf of the defendant.

Ground 4:

Counsel was ineffective due to not objecting to the submission of "intent and willful" element. The defendant lacked the knowledge and intent to participate in a fraudulent scheme. According to Black's Law dictionary "actus no facet reom, nisei mens sit rea" means act does not make a man guilty unless he be so intention. " The defendant made known to counsel that based on the phone call that was held on or around January/February 2020 with codependents she believed that she was working as a referral source, referring small business owners to them via email. She was instructed to retrieve basis information from them and send them to Mrs

Slaton. This information included; name, addresses (business and personal), phone number (business and personal) and business, email address, and social security card, driver's license, and bank account, as well as a bank letter or voided check, and bank statement. They slated that these loans were government backed and that they had tax attorneys and accountants on board to prepare the applications. These were the only documents the defendant provided. The defendant did not know these individuals personally she had net them via Facebook in July of 2019. To act with "intent to defend means to act "knowingly and with the specific intent to use false or fraudulent pretenses, representations or promises to cause loss or injury. Proving intent to deceive alone, without the intent to cause loss or injury is not sufficient to prove intent to defraud. 827 F.3d;; United States v Takhalov.

The defendant believed at the time that she was assisting small business owners to obtain legitimate back loans backed by the government. her fault lies in not questioning the manner and means in which her defendants were applying for and obtaining said loans. She did not see the application for Transportation management's loan which was processed prior to the Ian for Advertising and Then Some. It was at this time that she questioned the co-defendants about information that was incorrect on the loan application. This is when she realized something was not quite right. In Pereira v United States, the United States Supreme Court held that the requirement for active participation is satisfied when a person actively participates in a criminal venture with full knowledge of the circumstances constituting the charged offense. Pereira v United States, 347 U.S. 1, 12, 74 S.Ct 358,98L.Ed.435. "The Government must establish that the defendant agreed to jointly undertake the activities with the third person, and that the particular crime was within the scope of that agreement. See United States v Evbuomwan, 992 F .2d 70,74(5th Cir .1993) As the sentencing commentary to the sentencing guidelines explain: {The}scope of the " jointly undertaken criminal activity" is not necessarily the same as the scope of the entire conspiracy, and hence relevant conduct is necessarily the same for every participant. In order to determine the defendant's accountability for the conduct of others...the court must first determine the scope of the criminal activity the defendant agreed to jointly undertake (i.e. the scope of the specific conduct and objectives embraced by the defendant's agreement.) In doing so, the court may consider any explicit agreement fairly inferred from the conduct of the defendant and others. Accordingly, the accountability of the defendant for the acts of others is limited by the scope of his or her agreement to jointly undertake the particular criminal activity. Acts of others that were not within the scope of the defendant's agreement, even if those acts were known or reasonably foreseeable to the defendant, are not relevant conduct. (U.S.S.G 1B1.3cmt. 3.(B). The defendant had no knowledge of the fraudulent 941's bank statements that her co-conspirators created, had made for supplied to this scheme. Her counsel should have further should have pointed or acknowledge this fact. “Intent is normally a question of fact to be resolved at trial.” See Morissette v United States, 342 U.S. 246 274,72 S. Ct. 240 96 L. Ed. 22 (1952). “Where intent of the accused is an ingredient of the crime charged its existence is a question. The defendant was advised to plead guilty without seeing the discovery’s/material evidence and without a trial that could have ended in an acquittal if the this only evidence held against her were the three exhibits shown to her on the day of the sentencing hearing. She was denied the opportunity for trial. Again Morrisette held that “the existence of such intent was not to be presumed as a matter of law, but was to (pg 289) be found by the jury upon the isolated act of taking.”

The United States v Vernon 593 Fed Appx 883

“To commit a conspiracy offense under 18 U.S.C.S. &1349 a defendant must knowingly and willfully join an unlawful scheme to defraud. The government may prove the defendant’s knowledge of the scheme through circumstantial evidence.” Counsel here lacked the material evidence to guide the defendant to a guilty plea or to advise her of a trial. Had counsel challenged the sufficiency of the government’s evidence.

Ground 5:

Counsel was ineffective due to withdrawing role enhancement objection; for role enhancement as a recruiter prior to sentencing and not discussing this strategy. With defendant, which yet again affected her guideline range.

"The proponent of the downward adjustment always bears the burden of proving a migrating role in the offense by a preponderance of the evidence. This principle has been recognized by every circuit. It falls to the district court, then, to evaluate the evidence presented and deterrent whether this burden has been satisfied." Counsel failed to file a motion for an evidentiary hearing so that the defendant could measure for herself the government's material evidence regarding her role in this scheme. While she did refer Rick McDuffie as far as sending his information over to her co-defendant Mrs. Slaton, him coming to her office because he did not have a scanner in his office, did not in fact designate her as a recruiter. The defendant did not hold any sort of sphere of influence over McDuffie and never know or spoke to the owners of Transportation Management. However, she did forward their information for Charles McKnight to Mrs. Slaton. Mr. McKnight could have sent this email himself. As he introduced the defendant to Mrs. Slaton. Also, as soon as the defendant was made known about the scheme by her bank, she informed Mr McDuffie to not move forward with his loan. Defendant upholds that she was not essential to the conspiracy." Newly amended U.S. Sentencing Guidelines Manual 3Bl.2 now states that a defendant who does not have a proprietary interest in the criminal activity and task should be considered for the minor role reduction, and the fact that a defendant performs an essential or indispensable role in the criminal activity is not determinative. Again, the defendant was paid a referral fee for referring Transportation Management, but she lacked the scope, structure, planning and organizing of the scheme. She was only told to gather and email business information to Mrs. Slaton, which she did do, and Mr McDuffie came to her office only to use her scanner. This was something he could have done on his own in his office if he had a scanner. Due to this objection withdrawal prior to sentencing, the defendant maintained a 3 point recruiting role enhancement. However, under U.S. Sentencing Guideline Manual 3131.2 subsection(a), this provision, "the defendant's lack of knowledge or understanding of the scope and structure of the enterprise and of the activities of others is indicative of a role as a minimal participant. The defendant was not aware that her co-defendants would be creating falsified or fraudulent documents to obtain these loans. She was never told, given, emailed, seen any 941's, or bank statements that was submitted to lenders. Therefore, the defendant's offense level would have decreased by 3 levels because she would have fallen between a minimal (a) and minor participant in this scheme. Thus again changing her guideline calculation at sentencing.

In United States v Quintero-Leyva, 823 F.3d 519 (9th Cir. 2016) the Ninth Circuit, remanded for re-sentencing a case where the record was unclear as to....whether [the] district court, in denying defendant a minor role reduction, considered all of the factors set forth in amended guideline governing the minor role reduction; counsel again was ineffective for not asking the court to consider these factors as well as not anything to object to this enhancement.

Ground 6:

Counsel was ineffective for failure to argue 3553(a) factors "the need to avoid unwarranted sentencing disparities among defendant with similar conduct." (18 U.S.C.S. 3553 -6).

While counsel did file a sentencing memorandum on behalf of the defendant he failed to object to the government's sentencing recommendation on or before the day of sentencing which also speaks to ground 1 and 3 of this motion. Had counsel and the defendant reviewed discovery as well as had counsel argued for sentencing under the actual loss amount on behalf of the defendant, the loss amount once successfully argued for sentencing under the actual loss amount on behalf of the defendant, the loss amount once successfully argued would have been $830,417, which would have also been the equivalent of the defendant's restitution, thus resulting in a lower sentencing guideline range.

Upon reviewing various cases from both the 11th District and others, there have been substantial variances in sentencing with defendant's with similar conduct and similar records. In United States Vs Crowther, the defendant was sentenced to 27 months of imprisonment, followed by 36 months of supervised release and restitution in the amount of $2,068,700. The court granted Crowther a generous downward variance to just 37 months from his 63-78 month guideline range. Doc 179 at 130, 154-60. (11th Cir. 2021). In United States v Gilroy, the defendant was sentenced to 19 months imprisonment and 3 years of supervised release, $100.00 assessment, and $919,565.03 in restitution. The sentence was over 40% below the bottom of her guideline range of 33-41 months and the sentence imposed was based on actual and not intended loss. (United States v Gilroy, 10th District.) Furthermore, in United States v Charmaine Redding, the defendant, was sentenced to 27 months imprisonments, 3 years of supervised released and $1,159,138.31 in restitution as well as a $100 assessment. (United States v Charmaine Redding, 11th District, 2021.) This sentence was also based on actual loss. Counsel never made a point to object to the loss calculation which had a substantial bearing on the defendant's guideline range in her (PSR), thus affecting her sentence (eventual sentencing), thus furthering prejudice in the defendant's case. In United States v McCoy, 981 F.3d.271, 286 (4th 2020) it was affirmed that the consideration of the gross disparity between defendant's sentences and the sentences Congress now believes to be an appropriate penalty for the defendant's conduct." A prisoner's sentence may present an extraordinary and compelling basis for relief if the prisoner would receive a dramatically lower sentence than the one that they are serving" "were they sentenced today." (United States v Elzey 09-CR-0288, 2022 U.S. District Lexis Nexis 19515-2022 WL 316 717 at 2DMd. February 2, 2022) Quoting United States v Decater F. Supp 3d.320.384(D.Md.2020) aff'd sub nom. McCoy 981 F.3d 271).

The defendant asks for relief on the grounds that defendants in like situations, received lower sentences. This circuit and other circuits hold that sentencing disparities is grounds for relief.

Conclusion

It is with the aforementioned grounds that I ask this court to grant me relief and an evidentiary hearing at which time these factors will be able to be argued fully.

Respectfully submitted,

Amanda Christian

Amanda Christian

Case Citations:

United States v Sharma, 703 F .3d 318,323 (5th Cir. 2012)

United States v Fisher, 640 F.3d 645,648 (5th Cir. 2011)

United States V Frazie, 387 .2d 1244(11th Cir. 2004)

Maryland: Washington v State,951 A 2d 885(Md. App. 2008)

Brady V Maryland, 373 U.S. 83,87,83 S. Ct. 1194, 10L.E 2d 215(1963)

United States v Banks, No 19-3812 (3d Cir. 2022)

Pereira v United States,347, U.S. 1,12,74, S. Ct. 358, 98L. Ed 435

Morissette v United States, 342 U.S. 246, 274, 72 S. Ct. 240 96L Ed. 22(1952)

United v Takhalov, 827 F .3d 1307

United States v Vernon, 593 F. 883

United States v Quintero-Leuyva, 823 F. 3d 519 (9th Cir. 2016)

United States v Souffrant, 517 Fed App'x 803, 821 (11th Cir. 2013)

United States V Ricarrdi. 989 F 3d 476,486 (6th Cir. 2021)

United States v Fulford , 662 F. 3d at 1177

United States v Jackson, 3d F 4th 1294, 1305 (11th Cir. 2022)

Webster v Fall, 266 U.S. 507,511,45 S. Ct. 148, 69 L. Ed. 411 (1925)

United States v Baldwin, 774, F .3d 711,727,-28 (11th Cir. 2011)

United States v Barrington, 648 F. 3d 1178, 1197-98(11th Cir. 2011)

United States v Fisher No.3: 19cr076, 2021 U.S. Dist. Lexis 89548, 2021 WL 1886000 at 1-2(N.D.Fla May 11, 2021)

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