UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 25-cr-20001-Cr-HUCK/LOUIS

UNITED STATES OF AMERICA

v.

GEORGE ARESTUCHE,

Defendant.
_________________________________/

GOVERNMENT'S SENTENCING MEMORANDUM

COMES NOW the United States, by and through the undersigned Assistant United States Attorney, and files this Sentencing Memorandum, stating as follows:

Factual Background

The facts of this case are laid out in the Stipulated Factual Basis, DE 17, and in the very thorough Pre-Sentence Investigation Report ("PSR") prepared by U.S. Probation Officer Karla Bonilla, DE 27 at ¶¶ 11-16. This Sentencing Memorandum readopts and incorporates those facts herein, and notes that as previously reported to Officer Bonilla, the government has no objections to the PSR.

At the time the defendant, George Arestuche ("defendant"), committed his violation of 18 U.S.C. § 371, he was employed full-time by the Miami-Dade Aviation Department ("MDAD") as an airport refrigeration/AC mechanic. PSR at ¶¶ 13, 56; DE 17 at 1. Regarding his criminal activity, from July 2020 through August 2020, the defendant and an unindicted co-conspirator conspired to defraud the Small Business Administration ("SBA") by fraudulently obtaining for the defendant an SBA Economic Injury Disaster Loan

("EIDL") and EIDL advance, with the defendant agreeing to pay the co-conspirator a large fee for preparing and filing the fraudulent EIDL application on his behalf. As a result of this fraudulent application, the defendant fraudulently obtained from the SBA $149,900 in EIDL proceeds and a $10,000 EIDL advance, after which the defendant paid the co-conspirator approximately $17,275 from these proceeds as his fee.

The Advisory Sentencing Guidelines Range

This Court is required to first compute an advisory Guidelines range before it applies the 18 U.S.C. § 3553(a) factors to determine the defendant's ultimate sentence. *See United States v. Crawford*, 407 F.3d 1174, 1178 (11th Cir. 2005). The PSR computed the Total Offense Level to be level 11, with the defendant having zero criminal history points and being in Criminal History Category I, leading to an advisory Guidelines Zone B sentencing range of 8-14 months. PSR at ¶¶ 31, 34, 69. In addition, the PSR notes that Guidelines § 5C1.1, Application Note 10(A), states that a sentence other than imprisonment is generally appropriate for a defendant in Zone B who receives the Zero-Point Offender reduction. PSR at ¶ 71.

The Government's Recommendation and the 18 U.S.C. § 3553(a) Factors

Looking at the facts and circumstances of this case and this defendant, it is the government's position that a sentence of probation with special conditions including home detention, community service and restitution, is the reasonable and necessary sentence satisfying the purposes of § 3553(a). With the permission of the Court, the government will provide its recommendations relating to the specific terms of the sentence at the upcoming sentencing hearing.

Section 3553(a)(1) – The Nature of Defendant's Offense

The first part of §3553(a)(1) focuses on the nature and circumstances of the offense committed. As set out in the Stipulated Factual Basis and PSR, the defendant, despite maintaining his MDAD employment during the COVID-19 pandemic, fraudulently obtained approximately $159,900 in COVID-19 relief funds that he was not entitled to. This is a serious offense, albeit a one-time incident for the defendant.

Section 3553(a)(1) – The Defendant's History and Characteristics

The second part of §3553(a)(1) focuses on the history and characteristics of the defendant. As reflected in the PSR, this factor supports the conclusion that a low-end probationary sentence is sufficient to achieve the purposes of sentencing for this defendant. Prior to engaging in the COVID-relief fraud conspiracy to which he pled guilty, the defendant was a productive law-abiding citizen, having only minor prior brushes with the law over 25 years ago. While this history does not excuse his crime, it is a factor to consider in setting the ultimate sentence, particularly here, where the option of probation is within the advisory Guidelines range.

Section 3553(a)(2)

Section 3553(a)(2) is aimed at ensuring that the sentence imposed serves the various purposes stated in subparts (A) – (D), including imposing a sentence that reflects the seriousness of the offense and provides just punishment and promotes respect for the law, provides adequate deterrence, and protects the public from a risk of recidivism.

Here, the government respectfully suggests that the § 3553(a)(2) factors are satisfied by a probationary sentence that includes the special conditions mentioned earlier. While the defendant's criminal conduct was serious, it was limited to one incident, and after being approached by law enforcement, he quickly accepted responsibility, retained counsel, and agreed to resolve this matter via a pre-indictment plea to an Information. In addition, looking at the incident and the defendant's history, it appears that the risk of recidivism appears very low for this defendant. As such, it is the government's view that admitting his guilt via a pre-indictment felony plea and paying more than $50,000 back to the SBA prior to sentencing establish that a probationary sentence is sufficient to provide just punishment, promote the needed respect for the law, and provide deterrence.

Section 3553(a)(3), (a)(4), (a)(5)

These subsections of §3553(a) require consideration of the types of sentences available, the advisory Guidelines sentencing range, and any relevant policy statements in determining the final sentence. Here, the government's recommendation is within the advisory range applicable to the defendant.

Section 3553(a)(6)

This sub-section focuses on avoiding unwarranted sentencing disparity. Here, the government is unaware of any sentencing disparity concerns that would arise from a sentence of probation, which would be within the advisory Guidelines range. Indeed, there have been numerous cases where otherwise law-abiding defendants have received sentences of probation for fraudulently obtaining COVID-relief loans.

Section 3553(a)(7)

This sub-section addresses the issue of restitution. The defendant acknowledged his mandatory restitution obligation in the plea agreement. DE 16 at ¶ 9. And, in addition to his regularly scheduled monthly EIDL repayments, he has already made two additional voluntary payments of $25,000 since entering his guilty plea, taking a meaningful step towards fulfilling his restitution obligation.

WHEREFORE, the government respectfully requests that this Court impose a sentence of probation with special conditions, with the government's recommendation to be provided in more detail at the sentencing hearing.

Respectfully submitted,

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