

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

* * * * * CR NO. 20-072-MSM
*
UNITED STATES OF AMERICA *
*
VS. * FEBRUARY 9, 2022
*
DAVID BUTZIGER *
*
* * * * * PROVIDENCE, RI

BEFORE THE HONORABLE MARY S. McELROY
DISTRICT JUDGE
(Sentencing Hearing)

APPEARANCES:

FOR THE GOVERNMENT: LEE H. VILKER, AUSA
U.S. Attorney's Office
50 Kennedy Plaza, 8th Floor
Providence, RI 02903

FOR THE DEFENDANT: JOHN L. CALCAGNI, III, ESQ.
Law Office of John L. Calcagni
72 Clifford Street, Ste 300
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Court Reporter: Denise P. Veitch, RPR
One Exchange Terrace
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1 VIA VIDEO CONFERENCE

2 9 FEBRUARY 2022 -- 10:00 A.M.

3 THE COURT: Good morning. We are on the record
4 for a sentencing hearing in the matter of the United
5 States v. David Butziger, Criminal Action 20-72. I ask
6 counsel to identify themselves for the record,
7 beginning with the Government, please.

8 MR. VILKER: Good morning, your Honor.
9 Lee Vilker for the United States.

10 THE COURT: Good morning, Mr. Vilker.

11 MR. CALCAGNI: Good morning, your Honor.
12 John Calcagni on behalf of Mr. Butziger.

13 THE COURT: Good morning, Mr. Calcagni.

14 Mr. Butziger, how are you this morning? You're
15 muted. That's okay.

16 THE DEFENDANT: I'm fine, your Honor, thank you.

17 THE COURT: Okay. So a couple of things before
18 we get started. It's important that you can see and
19 hear everything that's going on. If for some reason
20 you can't or something happens, interrupt, wave your
21 hands around, you're not going to get in trouble for
22 doing that. It's important that you hear and see
23 everything. Okay?

24 THE DEFENDANT: Yes, okay. Thank you.

25 THE COURT: Okay. Our normal procedure, as

1 everybody knows, is to have all defendants physically
2 present in the courtroom for a sentencing hearing, and
3 we are today conducting this hearing on Zoom because of
4 the ongoing pandemic, so for the last almost two years
5 the court's amended general orders regarding criminal
6 matters have existed to allow us to conduct hearings
7 such as this one. During the coronavirus pandemic the
8 court has found that a public health crisis exists and
9 that it is in the best interests of defendants, their
10 attorneys, court staff, the United States Marshals
11 Service and the public that human contact be minimized
12 to the greatest extent possible, while at the same time
13 we are attempting to permit the basic functions of the
14 court such as sentencing hearings to go forward and to
15 allow people to attend.

16 Do you understand all of that?

17 THE DEFENDANT: Yes.

18 THE COURT: Okay. So do you understand most
19 importantly that you have the right to be physically
20 present in open court for this sentencing proceeding?

21 THE DEFENDANT: Yes, your Honor, I do.

22 THE COURT: Okay. And that you have the right
23 to consult with your lawyer during the sentencing which
24 when you're in court happens because you're standing
25 next to him; but if you wish to speak to him during

1 this proceeding at any time, even if it's before you
2 answer a question, you let me know and we'll make
3 arrangements for the two of you to have a confidential
4 communication, and there's no penalty for that,
5 nobody's going to get annoyed about that. Do you
6 understand?

7 THE DEFENDANT: I do. Thank you.

8 THE COURT: You have the right to see and hear
9 everything, as I said, so just let us know if there's
10 something that's going on that you can't see or hear.
11 And most importantly, what happens here today is
12 binding on all of the parties, the same as it would be
13 if we were present in court together. Do you
14 understand that?

15 THE DEFENDANT: Yes, I do, your Honor.

16 THE COURT: Do you wish to waive or give up your
17 right to appear in person for your sentencing and
18 appear instead by video?

19 THE DEFENDANT: Yes.

20 THE COURT: Is there any reason that I should
21 not accept the waiver, Mr. Calcagni?

22 MR. CALCAGNI: Not of which I'm aware, your
23 Honor.

24 THE COURT: Mr. Vilker?

25 MR. VILKER: Me neither, your Honor.

1 THE COURT: Okay. I find that the Defendant has
2 knowingly and voluntarily waived his right to appear
3 physically at his sentencing and that requiring him to
4 be present would jeopardize his health, the public
5 health and safety, and the safety of those who would be
6 present with him during the court proceeding and during
7 his transportation. I find that further delay would
8 seriously jeopardize the interests of justice and I
9 accept the waiver, and we will proceed directly to
10 sentencing.

11 So Mr. Butziger, this is how we will proceed for
12 your sentencing hearing. First we will go over the
13 presentence report and deal with any objections, if
14 there are any. Then Mr. Vilker will make a
15 recommendation on behalf of the Government, and then I
16 will hear from your lawyer, Mr. Calcagni. Then if you
17 choose to say something, I will hear from you. You do
18 not have to say anything, and I certainly will not hold
19 it against you if you choose not to say anything, but
20 it is your opportunity if you wish to say anything
21 before I impose sentence, to speak to me. Do you
22 understand that?

23 THE DEFENDANT: I do, your Honor.

24 THE COURT: Okay. Are there -- let's begin with
25 the presentence report. So I'm in receipt of a

1 presentence report prepared by the Probation
2 Department. Have you reviewed this presentence report
3 with your attorney?

4 THE DEFENDANT: Yes, I have.

5 THE COURT: And did he answer any questions that
6 you had about that report?

7 THE DEFENDANT: He did, completely.

8 THE COURT: Okay. Good. Are there any
9 objections to the presentence report that are
10 outstanding?

11 THE DEFENDANT: Not by me, your Honor.

12 THE COURT: I'm sorry; I should have been clear.
13 Mr. Vilker.

14 MR. VILKER: No, your Honor. I did want to
15 point out to the Court that the Government did file a
16 motion in this case. I don't know if that's something
17 that you wanted to hear at this point or if it should
18 be on the public record.

19 THE COURT: Okay. We will not put that on the
20 public record at this time, but we can talk about it
21 off the record.

22 Mr. Calcagni, are there any objections?

23 MR. CALCAGNI: No, your Honor.

24 THE COURT: Mr. Vilker, is it appropriate at the
25 end of your recommendation or beginning of your

1 recommendation for us to go off the record?

2 MR. VILKER: That would be great, your Honor.
3 Thank you.

4 THE COURT: Okay.

5 So Mr. Butziger pled guilty to a one count
6 Information charging him with conspiracy to commit bank
7 fraud in violation of 18 USC 1349, which is a Class B
8 felony. The guideline range is calculated beginning on
9 page 7 -- 6 of the presentence report, and the base
10 offense level for that offense is 7, there's an agreed
11 intended loss that was between \$250,000 and \$550,000
12 and so that the intended loss total that's been
13 stipulated to in the plea agreement was \$543,959, and
14 that calls for a 12-level enhancement. There is a
15 two-level increase because of the use of fraudulent
16 IRS forms, and that so gives us an adjusted offense
17 level of 21. Mr. Butziger is awarded a two-level
18 reduction for acceptance of responsibility because he's
19 clearly demonstrated that acceptance.

20 And the Government, it is my understanding, is
21 moving for a third level because he has timely notified
22 them of his intent to plead guilty.

23 Is that correct, Mr. Vilker?

24 MR. VILKER: It is, your Honor.

25 THE COURT: So that the Court accepts that

1 motion on behalf of the Government, and your 21 level
2 offense level is reduced by three levels to an 18. You
3 have no criminal history and so you are awarded zero
4 criminal history points and that puts you in Criminal
5 History Category I, and the total resulting advisory
6 guideline range imprisonment is 27 to 33 months.

7 Is there anything about that, Mr. Vilker, that
8 the Government disagrees with?

9 MR. VILKER: No, your Honor.

10 THE COURT: Mr. Calcagni?

11 MR. CALCAGNI: No, your Honor.

12 THE COURT: Okay. So I will hear from the
13 Government. Do you want to go off the record first,
14 Mr. Vilker, or at the end of your argument.

15 MR. VILKER: I think first, your Honor. Thank
16 you.

17 THE COURT: We're going to go off the record so
18 I'm going to ask, I'm going to ask the clerk to remove
19 everybody except the Defendant, attorneys, court staff,
20 to the waiting room, please.

21 THE CLERK: Yes, your Honor.

22 THE COURT: Thank you. And Nisshy, you can
23 leave the interns that are with the court present.

24 THE CLERK: Is Mr. Rosenberg with the
25 U.S. Attorney's Office allowed, too?

1 THE COURT: That's up to Mr. Vilker.

2 MR. VILKER: Yes, your Honor.

3 THE COURT: Okay.

4 (Pause)

5 (SEALED PORTION BEGINS)

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

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10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 (SEALED PORTION ENDS)

18 THE COURT: Okay. We are back on the record in
19 the United States v. David Butziger.

20 Mr. Vilker, I'll hear from you the Government's
21 recommendation.

22 MR. VILKER: Your Honor, the Government is
23 recommending a sentence of 21 months imprisonment,
24 which is the midpoint of the new guideline range the
25 Court has set, and we do so based on two of the factors

1 that we think are the most relevant in 18 USC 3553 in
2 this case, the seriousness of the offense and the need
3 for deterrence.

4 Mr. Butziger, along with his Co-Defendant,
5 Mr. Staveley, decided to use the national emergency at
6 the very onset of the coronavirus crisis, decided to
7 use that emergency for his own benefit by stealing what
8 the government or attempting to steal what the
9 government was setting aside to help people who are in
10 desperate need for those funds. The one thing that
11 really became clear about Mr. Butziger from the very
12 beginning, all the way through to his interview with
13 the Probation Department in this case is he has --
14 although he accepts responsibility and acknowledges he
15 committed this crime, he continues to state how, and I
16 believe the exact words he used with the Probation
17 Department is he feels foolish because he got duped
18 into committing this offense; in effect pushing all the
19 blame for his own personal conduct onto Mr. Staveley.
20 Now, it's very unclear between Mr. Staveley and him who
21 was the first one that came up with this idea so early
22 in the pandemic. But even if it was Mr. Staveley's
23 idea originally, it really did not take much convincing
24 on his part to get Mr. Butziger to be an active
25 participant in it.

1 I just want to go through some of the facts of
2 Mr. Butziger's own conduct that shows, you know, how
3 significant of a role he played. On April 11th of 2020
4 Mr. Butziger e-mailed Mr. Staveley, quote, I can create
5 a bullshit 2020-Q1 for Oakland Beach, if you want.

6 That's the tax form that was necessary to submit
7 for the application. A few days earlier than that,
8 April 6th, 2020, Mr. Butziger himself submitted a false
9 application for his own company, Dock Wireless, in the
10 amount of \$105,381. In that application he claimed
11 that Dock Wireless had seven employees and a monthly
12 payroll in excess of \$42,000. He then submitted for
13 that company, his own company, a fraudulent 941 tax
14 form claiming that that company had \$126,000 in wages
15 during the first quarter of 2021.

16 On April 13th, 2020, Mr. Butziger submitted a
17 fraudulent Schedule C for his company, Dock Wireless,
18 to the bank indicating falsely that that company had
19 \$492,000 in receipts for the year 2020 and that it had
20 \$212,000 in labor expenses.

21 On April 27th of 2020, Mr. Butziger had an
22 undercover conversation, unbeknownst to him obviously,
23 with the FBI in which the FBI was posing as a bank
24 representative, and Mr. Butziger confirmed that all the
25 information he had provided on the PPP application for

1 Dock Wireless was true. He indicated that he had seven
2 employees and that he actually provided the names and
3 identities of these employees, who were actually not
4 full-time employees.

5 And the reason why I'm going through all these
6 facts, your Honor, is I wanted to make it very clear
7 that this is a Defendant who took active steps in his
8 efforts to obtain fraudulently these PPP funds. He
9 wasn't someone who was being led around by the nose by
10 his Co-Defendant, Mr. Staveley, and was somehow duped
11 into committing criminal conduct. This Defendant
12 knowingly engaged in this scheme to defraud the PPP
13 program. Any argument that, you know, perhaps he was,
14 you know, being misled or duped by Mr. Staveley is
15 severely undercut by the fact that \$106,000 of this
16 money was set to go into his own personal account for
17 his own personal company. He would have received
18 directly all of that money. So it's just disingenuous,
19 from the Government's perspective, to say that he's
20 somehow duped into criminal activity.

21 The harm in this case, your Honor, is the
22 attempted fraud on the bank and the PPP program, the
23 potential loss of that money -- fortunately this crime
24 was uncovered before anyone was paid out -- but also
25 the harm to the other members of the public. At that

1 point in time, when this country was reeling from the
2 onset of the COVID crisis and businesses were being
3 shut down left and right, people were desperate to get
4 their hands on this money. There was a shortage of it
5 at the time, and there were many businesses that were
6 left waiting, desperately trying to pay their employees
7 and keep their businesses open that didn't have access
8 to those funds at that time, and this Defendant simply
9 didn't care about that. He wanted to get those funds
10 for himself, and he didn't care about all the other
11 people desperately waiting in line for the money.

12 The bottom line, your Honor, in this case is
13 from the Government's perspective a non-jail sentence
14 would be unwarranted for a Defendant who tried to
15 actively capitalize on a national emergency. The
16 message needs to go out to this Defendant and to the
17 public that if you're going to attempt to defraud the
18 government in a time of national crisis in particular,
19 you're going to go to jail. It's that simple.

20 The other factor the parties need to consider is
21 the relationship between this Defendant and his
22 Co-Defendant, Mr. Staveley. Mr. Staveley got 56 months
23 in prison. There is no question that Mr. Butziger
24 deserves less than that. Mr. Staveley had a
25 significant criminal history that Mr. Butziger doesn't.

1 Mr. Staveley obstructed justice by fleeing;
2 Mr. Butziger did not. So there's no question
3 Mr. Butziger deserves significantly less jail time than
4 Mr. Staveley. The Government believes 21 months in
5 this case is the appropriate balance and appropriate
6 amount that Mr. Butziger should receive.

7 At the end of the day, your Honor, it's very
8 unclear even with the 21 month sentence how much of
9 that actual time this Defendant will end up serving
10 even if the Court were to impose that sentence. In
11 addition to the 15 percent of good time that would be
12 available to him, there's a very good chance that he
13 could end up being released early based on the First
14 Step Program, based on the ongoing efforts by the
15 Bureau of Prisons through the Justice Department to
16 release nonviolent offenders early. I recently had a
17 case before Judge Smith, a white-collar case in which
18 the defendant was sentenced to 18 months and was
19 released to home confinement just after four months
20 because there's a big push to release nonviolent
21 offenders, to lower incarceration rates. All this is
22 saying it's very unclear how much time Mr. Butziger
23 would end up serving no matter what sentence the Court
24 imposes, but at the end of the day we think a message
25 needs to go out that you're going to be sentenced to

1 jail if you try to take advantage of the government in
2 a time of national emergency.

3 So for those reasons, the Government is
4 recommending a sentence in the middle of this guideline
5 range of 21 months imprisonment.

6 THE COURT: Thank you, Mr. Vilker.

7 Mr. Calcagni.

8 MR. CALCAGNI: Your Honor, may I request a
9 breakout room, please.

10 THE COURT: Yes.

11 MR. CALCAGNI: Thank you.

12 THE COURT: You're welcome.

13 THE CLERK: One moment.

14 (Defendant and counsel exit proceedings)

15 THE CLERK: Your Honor, I'm going to stop the
16 recording for now and then turn it back on.

17 THE COURT: Yes. That's fine.

18 (Pause)

19 (Defendant and counsel rejoin proceedings)

20 THE COURT: Mr. Calcagni, did you have enough
21 time?

22 MR. CALCAGNI: Yes, I did, your Honor.

23 THE COURT: Okay.

24 MR. CALCAGNI: Thank you. May I have the
25 opportunity to speak at this time?

1 THE COURT: Of course.

2 MR. CALCAGNI: Thank you. First, your Honor,
3 respectfully I ask the Court today when imposing
4 whatever sentence it deems to be just and appropriate,
5 to determine the sentence based upon the written
6 submissions of the parties and the facts and
7 circumstances that you have before you this morning and
8 not on any speculation or conjecture as to how long of
9 that sentence to be imposed Mr. Butziger may serve or
10 under what or when conditions he may be released from
11 BOP. While Mr. Vilker does cite programs that are
12 available in the BOP that authorize early release of
13 inmates, I don't think that any of us have enough
14 knowledge or information about those programs or
15 Mr. Butziger to know whether or not he would benefit
16 from them if he were to be incarcerated. So I just
17 wanted to make that comment. I understood that
18 Mr. Vilker was referencing to the Court that even if
19 you thought that maybe his sentencing recommendation
20 was a little on the high side, he might not serve all
21 that time at the BOP; so I just thought it was
22 appropriate to bring that up.

23 The second thing I wanted to bring up was
24 Mr. Vilker's reference to Mr. Butziger's comment as set
25 forth in the presentence report about him being duped.

1 I took that comment head on in my written submission, I
2 think it's at page four, and it's important for the
3 Court to know that Mr. Butziger fully accepts
4 responsibility for his actions here, and I think the
5 Government knows that or it wouldn't have filed the
6 motion that it filed earlier.

7 When Mr. Butziger referenced being duped by
8 Mr. Staveley or by the circumstances, he was really
9 referring to two things: The first being that Staveley
10 introduced him to the scheme, and that's always been
11 his position from the very beginning, and secondly,
12 that Mr. Butziger and his family were also victimized
13 by Mr. Staveley, who falsified real estate transaction
14 documents, essentially taking a piece of property from
15 them that he had entered into a purchase and sales
16 agreement to acquire but never rendered any payment on.
17 And that was also brought to the Government's attention
18 at some point during the early stages of this case, and
19 there's currently, although I'm not personally
20 involved, there's currently a pending civil lawsuit
21 where Mr. Butziger and his family are represented.
22 They're plaintiffs in an action against Mr. Staveley to
23 reconvey this land that belonged to their family and
24 had been in their family for generations when
25 Mr. Staveley and others falsified and forged signatures

1 essentially to convey to Staveley a piece of property
2 that he never lawfully acquired. And that's what that
3 was all about, and I made reference to it in my
4 sentence memo so I thought it would be appropriate to
5 provide you with that context.

6 Your Honor, listen, Mr. Butziger made some
7 serious bad judgment in this case that brings him
8 before the Court, and if you look at the volume and the
9 quality of the written sentencing submission I hope you
10 can reach the conclusion that Mr. Butziger's actions in
11 this case are entirely inconsistent with his overall
12 character. He has no criminal history. He comes from
13 a very loving and supportive family. He's an educated
14 man. He has had successful business interests, and
15 Mr. Butziger made an absolute, absolute misstep by
16 choosing to get involved in this fraud scheme.

17 And he's already suffered greatly. Mr. Butziger
18 has always enjoyed a very favorable reputation in this
19 community. He's lost friends over it. His businesses
20 have lost customers over it, and he has lost various
21 federal benefits and privileges in the form of licenses
22 that allow his business to provide services to federal
23 agencies on secure facilities like Coast Guard bases,
24 Navy bases and the like.

25 For some people who come before this Court,

1 having a federal conviction isn't such a big deal to
2 them, but to Mr. Butziger it's everything. The federal
3 conviction that he has and will sustain from this case
4 is going to be a true scarlet letter that is going to
5 jeopardize many future opportunities, has already
6 adversely impacted his current circumstances, and that
7 experience alone has humbled this man who I truly
8 believe is deeply remorseful for his actions and by
9 objective circumstances has attempted to do everything
10 he can since his arrest to make good on it, to show
11 everyone that he's learned, that he can be
12 rehabilitated, and that he has done everything he can
13 to mitigate that conduct.

14 Of course sending him to BOP is an option that's
15 available here today, one that the Government, perhaps
16 Probation are advocating for, but I would suggest to
17 the Court a period of home detention would serve the
18 same interests. To incarcerate Mr. Butziger would
19 ultimately cause the dissolution of the small business
20 that he owns and operates in my estimation would cause
21 him to further regress than has already been inflicted.

22 So I would suggest to the Court when you look to
23 the totality of the circumstances of this Defendant and
24 the conduct that he's engaged in and his post-arrest
25 conduct, I would implore the Court to not impose a BOP

1 sentence here today.

2 THE COURT: Thank you, Mr. Calcagni.

3 Mr. Butziger, this is the opportunity for you to
4 speak to the Court if there's anything you would like
5 to say before I impose sentence.

6 THE DEFENDANT: Yes, your Honor, I would just
7 like to make one statement.

8 THE COURT: Sure.

9 THE DEFENDANT: Your Honor, I am deeply sorry,
10 filled with remorse and deeply ashamed of my actions.
11 I'm also mostly sorry to my family and friends for the
12 embarrassment, shame and hardship my actions caused
13 them. I know it will take a long time to rebuild the
14 trust I've shattered, but I am determined. I want to
15 ask your forgiveness for my actions, and I hope you can
16 find it in your hearts to forgive me.

17 I wish to begin rebuilding the trust I have
18 broken and want to continue to do what I've been doing
19 since my egregious error in judgement so many months
20 ago. I understand what caused me to consider this
21 course of action, and I know it will never happen
22 again. There was no excuse for my actions. I accept
23 full responsibility for what I've done. I've worked
24 hard my entire life, and until this incident I have
25 never been in trouble with the law.

1 My family and friends mean everything to me, and
2 I have let them down. I recognize I have been a bad
3 role model through my conduct. I have spent my life
4 helping others and using my expertise to make the
5 public safer. I wish to continue this as soon as
6 possible and to continue supporting the advancement of
7 the students to achieve their goals. Thank you, your
8 Honor.

9 THE COURT: Thank you, Mr. Butziger.

10 Before I impose a sentence I'd like to just
11 explain some of the factors that the Court needs to
12 take into account in determining the appropriate
13 sentence in any case. Under 18 USC 3553 the Court
14 needs to consider the nature and circumstances of the
15 offense and the history and characteristics of the
16 defendant, the need for the sentence to serve various
17 purposes of sentencing as well as the kinds of
18 sentences available, the advisory sentencing guidelines
19 and any pertinent policy statements issued by the
20 Sentencing Commission, as well as the need to avoid
21 unwarranted sentencing disparities among defendants
22 with similar records who have been found guilty of
23 similar conduct. So I need to take each of those into
24 effect. And I consider your attorney's remarks, your
25 own remarks, and the remarks and recommendation of

1 counsel for the Government.

2 Under Section 3553 the Court must impose a
3 sentence that is sufficient but not greater than
4 necessary to comply with the purposes of sentencing.
5 And so there's a balancing act, essentially,
6 Mr. Butziger, and I'm going to go through those
7 purposes and address them one at a time.

8 The deterrence is the first one, and it's both
9 specific deterrence of you, but it's also general
10 deterrence of the public; and while you have no prior
11 criminal record, it's important that the Court take
12 into account the effect of a sentence on other members
13 of the public who might be tempted to attempt the same
14 amount -- the same type of offense, and so there is
15 some benefit in sentencing you for general deterrence
16 purposes, but I don't think for specific deterrence
17 there's any need for incarceration.

18 One of the things I take into account is the
19 protection of the public, and I don't believe that the
20 public is in danger from you; you're 53 years old and
21 you have not committed prior criminal acts.

22 Your personal circumstances and the need for any
23 rehabilitation, the circumstances of this offense are
24 despicable. They just are. We were in the middle of a
25 crisis and you and Mr. Staveley sought to take

1 advantage of that for your own gain. But this is your
2 first offense and you have no history of fraud, and
3 while perhaps your wording of "duped" was not the
4 appropriate wording, I understand what you and your
5 attorney are saying is that you were sort of led down
6 the garden path by Mr. Staveley, who does have a
7 history of fraud and did have a different approach to
8 being caught by federal authorities than you did. And
9 so you're responsible for your own conduct, you weren't
10 tricked in any way, but you made bad decisions based on
11 what I have no trouble believing was a scheme that
12 wasn't entirely of your own construction.

13 The last sort of purpose of sentencing that I
14 need to consider is the need for punishment, and so
15 serious fraud requires a loss of liberty. But given
16 your age, your lack of prior criminal record and your
17 acceptance of responsibility, the fact that this was
18 the first time that you have done anything like this,
19 as well as the fact that you have accepted
20 responsibility, you are a productive member of society,
21 you, as I understand it, participate in helping your
22 parents who are elderly, I don't think that actual
23 physical incarceration makes sense in your case.

24 The sentence disparity with Mr. Staveley, who
25 did receive a significant sentence given the -- his

1 sentence, I don't think that the disparity between his
2 sentence and not incarcerating you is significant given
3 the fact that he had a significant history of prior
4 fraud, he did not accept responsibility in the way that
5 you did, he fled the jurisdiction and blamed others for
6 his fleeing of the jurisdiction, and even at his
7 sentencing he blamed the banks for the crime that he
8 had committed.

9 So I think the appropriate sentence in this case
10 is home detention, and I think that it's appropriate to
11 sentence you to supervised release of three years, with
12 the first six months in home detention with radio
13 frequency monitoring, which means that you'll be
14 restricted to your residence every day, and your
15 exceptions to detention would only be employment,
16 education, religious services, medical treatment,
17 substance abuse or mental health treatment, as well as
18 attorneys visits, court appearances, court obligations,
19 and activities pre-approved by the Probation Office.
20 And you shall pay all or part of the cost of monitoring
21 based on your ability to pay, which will also be
22 determined by the probation officer.

23 There's no restitution in your case, but I am
24 going to impose a fine, Mr. Butziger. I think that a
25 fine might send a more directed message to you than

1 would anything else, so I'm imposing a \$5,000 fine in
2 this case and I am imposing a special assessment of
3 \$100.

4 In addition to the standard conditions of
5 probation, I am requiring you to provide all access to
6 all financial information requested by the supervising
7 probation officer, including, but not limited to,
8 copies of all of your federal and state income tax
9 returns, and all of your tax returns must be filed in a
10 timely manner. You are not to open any new lines of
11 credit, which include leasing any vehicle or other
12 property, or using any existing credit resources
13 without the prior approval of the supervising probation
14 officer until you satisfy all of your financial
15 obligations with the Court. You are to maintain one
16 personal checking account and one business checking
17 account, and all of your income, monetary gains, or
18 other pecuniary proceeds will be deposited into the
19 business account. Your personal account will be used
20 for payment of all personal expenses. Records of all
21 other bank accounts including business accounts are to
22 be disclosed to your supervising probation officer upon
23 request. You will not transfer, sell, give away, or
24 otherwise convey any asset with a fair market value in
25 excess of a thousand dollars without the approval of

1 your supervising probation officer until all of your
2 financial obligations are satisfied, court obligations
3 are satisfied, and you will not enter into any gambling
4 establishment without the probation of the United
5 States -- permission of the probation officer for the
6 court.

7 You are to cooperate with the United States
8 Probation Office in the investigation and approval of
9 any position of self-employment, including any
10 independent entrepreneurial or freelance employment or
11 business activity. I believe that that encompasses all
12 of the requirements of sentencing.

13 You did have the right to appeal your conviction
14 or sentence, but waived or gave up that right should
15 the sentence that this Court imposed be within or below
16 the advisory guideline range. This sentence is below
17 the advisory guideline range, and so you have waived or
18 given up your right to appeal. If you think that I am
19 incorrect about this you need to speak to Mr. Calcagni
20 because any appeal needs to be filed within 14 days.

21 Is there anything further?

22 MR. VILKER: No, your Honor. Thank you.

23 THE COURT: Ms. Picozzi, would you like
24 Mr. Butziger to stay on?

25 THE PROBATION OFFICER: Yes, yes, just for a

1 moment, your Honor. But I would also like to just make
2 certain that the Court was imposing a time-served
3 sentence.

4 THE COURT: I apologize.

5 THE PROBATION OFFICER: Thank you, your Honor.

6 THE COURT: So the sentence should actually be
7 time served, as you were arrested and detained for a
8 period of time, and with three years of supervised
9 release, the first six months to be served in home
10 detention, as I outlined earlier.

11 MR. CALCAGNI: Your Honor, when will the home
12 detention begin? Will that begin today?

13 THE COURT: I believe that's why you need to
14 stay on, you and your client should stay on and talk to
15 Ms. Picozzi about that.

16 MR. CALCAGNI: Very well. Thank you.

17 THE COURT: Okay. Is there anything further
18 from the Government?

19 MR. VILKER: No, your Honor.

20 THE COURT: Thank you, Mr. Vilker.

21 Mr. Calcagni, from the Defendant?

22 MR. CALCAGNI: No, your Honor.

23 THE COURT: Mr. Butziger, I wish you good luck.
24 Take the requirements of probation seriously because
25 you won't be given another opportunity to get away

1 without being incarcerated, okay?

2 THE DEFENDANT: Okay.

3 THE COURT: All right. Everyone have a good
4 day.

5 MR. CALCAGNI: You, too. Thank you.

6 (Adjourned)

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C E R T I F I C A T I O N

I, Denise P. Veitch, RPR, do hereby certify
that the foregoing pages are a true and accurate
transcription of my stenographic notes in the
above-entitled case.

/s/ Denise P. Veitch
Denise P. Veitch, RPR
Federal Official Court Reporter

March 17, 2022
Date