IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

UNITED STATES OF AMERICA

v. **Criminal No. 2:22-cr-00161**

CALVIN BUTLER

DEFENDANT'S SENTENCING MEMORANDUM

Defendant, Calvin Butler, by his counsel, submits this Memorandum outlining the various 18 U.S.C. § 3553(a) factors for this Court's consideration at his upcoming May 18, 2023, sentencing hearing.

A. Legal Objections:

On February 21, 2023, Mr. Butler appeared before this Court and tendered his guilty plea to the offense of wire fraud in violation of 18 U.S.C. § 1343. Mr. Butler has no objections to the Probation Officer's calculations for his total offense level (11) or his criminal history category (II). The advisory guideline range for Mr. Butler is 6 to 12 months, which falls within Zone B of the Sentencing Table. The restitution amount which Mr. Butler owes to the Small Business Administration ("SBA") is $18,540 which includes a $2,500 fee paid to Prestamos CDFI, LLC, the company which processed the fraudulent PPP loan application. Mr. Butler would request this Court, pursuant to 18 U.S.C. § 3612(f)(3), to waive the collection of any statutory post-judgment interest on the restitution obligation in view of the defendant's other outstanding debts as well as the fact that he is currently earning $10 an hour working at his current employer, Gino's Pizza. (PSR ¶ 55).

B. <u>18 U.S.C. § 3553(a) Factors for Consideration</u>

The advisory guideline range for Mr. Butler's case would seek to impose a term of imprisonment that would be significantly greater than necessary for purposes of punishing Mr. Butler for his criminal conduct. Mr. Butler ask this Court to consider imposing a downward variance and impose a sentence of five years of probation. A probation sentence would provide a longer period where Mr. Butler could work and earn money that can be applied towards his restitution obligation. Mr. Butler would rely upon the following factors in support of the suggested sentence:

(1) This Court can consider the nature and circumstances of Mr. Butler's offense conduct as not necessarily warranting a custody sentence. Mr. Butler's conduct began shortly after this nation's second year of dealing with the COVID-19 pandemic where millions of Americans were financially impacted by the resulting closures of businesses. In April of 2021, Mr. Butler was getting behind on the monthly rent for the home which he shares with his girlfriend and her thirteen-year-old brother. He was 23 years old and was financially supporting his two-year-old son with whom he has shared custody with the child's mother. Mr. Butler had seen numerous posts on his Instagram account and other social media outlets where the Federal Government had been handing out millions of dollars to small businesses

through forgivable PPP loans.[1] One particular post offered to prepare the necessary paperwork for a PPP loan application in exchange for $2,000 of the loan that was subsequently awarded. Mr. Butler knew that he was not eligible to receive a PPP loan because he did not own a business. Nevertheless, Mr. Butler gave in to the alluring temptation of getting "free money" to alleviate some of his financial stress. He proceeded to provide nearly all of his personal and online account information to an unknown person whose Instagram username was "4dripzz." It was Mr. Butler's understanding that "4dripzz" would complete and submit the PPP loan application using the information that he had provided. Mr. Butler had expressed an interest in becoming a barber and was about to start an eighteen month program offered through the Charleston School of Beauty Culture. Nevertheless, the submitted PPP loan application falsely stated that Mr. Butler was a self-employed owner of his own barbershop which generated a gross income of $77,000 in 2019.

In June of 2021, Mr. Butler received an email indicating that the PPP loan had been approved and that the funds in the amount of $16,040 had been deposited in his Huntington Banks checking account. Mr. Butler withdrew $15,000 of this deposit, which he used to pay some bills, purchase a used car, and take a brief excursion to

---

[1] *See* Jim Dee, *Are PPP Loan Companies Legit? PPP Loans Are Being Aggressively (and I Suspect Deceptively) Marketed,* Medium (Mar. 23, 2021), *available at* https://medium.com/web-design-web-developer-magazine/are-ppploan-companies-legit-ppp-loans-are-being-aggressively-and-i-suspect-deceptively-marketed-2fa99e7ec6fb (last visited May 5, 2023).

Myrtle Beach with his girlfriend.[2] Mr. Butler did not submit any follow up requests to the SBA to forgive the received PPP loan. Mr. Butler is ashamed of his conduct and intends to fully pay back the PPP funding which he should have never sought to obtain.

(2) Mr. Butler's personal history and characteristics would support the proposed probation sentence. Mr. Butler was raised in Philadelphia, Pennsylvania, and experienced a rough childhood which involved circumstances that were outside his ability to alter or otherwise control. When Mr. Butler was four or five years old, he recalls that his mother suffered a crippling stroke which left her unable to care for her children.[3] When Mr. Butler was eight years old, his father entered a guilty plea in this district to the felony offense of possession with the intent to distribute more than five grams of crack cocaine and possession of a firearm in connection with a drug trafficking offense.[4] As a result, Mr. Butler did not have the benefit of having a father

[2] It has been estimated that nearly three-quarters of issued PPP funds went to the top fifth of household income. The majority of PPP loans issued in 2020 went to business owners and shareholders as opposed to employees. *See* David Autor et al., *The $800 Billion Paycheck Protection Program: Where Did the Money Go and Why Did it Go There?,* Journal of Economic Perspectives, Spring 2022, at 56-57, https://blueprintcdn.com/wp-content/uploads/2022/01/jep.36.2.55.pdf (last visited May 5, 2023).

[3] Mr. Butler recalls that his mother passed away in 2010.

[4] *United States v. Calvin Butler*, Crim. No. 2:06-00044. The sentence imposed on February 5, 2007, was a term of imprisonment of 108 months on the crack count to be followed by a 60 month consecutive term for the gun count. Dkt. No. 107. On May 20, 2008, the retroactive application of the reduction in crack cocaine sentencing resulted in a reduction of Mr. Butler's sentence to 87 months on the crack count and a consecutive 60 month term on the 924(c) gun count. Dkt. No. 131. Pursuant to the Fair Sentencing Act of 2010, on December 20, 2011, the Court further reduced the imposed sentence for the crack count to 70 months. Dkt. No. 150.

figure in his home environment and lived in a foster care environment from age 6 to 17. (PSR ¶ 55). In 2016, Mr. Butler moved from Philadelphia to South Charleston, West Virginia, in order to be with his father after his release from his first federal conviction.[5]

Mr. Butler did not graduate high school, but he did obtain his GED in March of 2021. Mr. Butler has been someone who has previously maintained employment in whatever minimum wage jobs he could find. (PSR ¶ 54). In July of 2021, Mr. Butler enrolled in the Charleston School of Beauty Culture so that he could become a licensed barber. He took on additional student loan debt to pay for these classes and apparently still owes $4,500 on his last bill to the college. Mr. Butler graduated from the program in March of 2023, however, the college is withholding his work permit and diploma pending payment of the remaining owed tuition. Once Mr. Butler gets that bill paid, he hopes to maintain full time employment as a barber.

(3) This Court should also consider that Mr. Butler's willingness to enter into one of this district's first plea agreements concerning PPP fraud has placed him at a disadvantage relative to more recent prosecutions. In cases with nearly identical facts and loss amounts, the Government has adopted a new policy of permitting defendants to plead guilty to the offense of receipt of stolen money (18 U.S.C. § 2315)

---

[5] Mr. Butler began his supervised release term in this district on September 8, 2015. Mr. Butler is currently serving a 65 month term of imprisonment as a result of his September 4, 2018 guilty plea to possession with intent to distribute a quantity of methamphetamine in Case No. 2:18-cr-00176. According to the BOP website, Mr. Butler is due to be released from custody on December 23, 2023.

instead of a wire fraud count (18 U.S.C. § 1343). One of these cases is currently before this Court and involves Mr. Butler's brother, Tamir Pratt, where the charged loss amount was $20,832.[6] As the receipt of stolen property offense carries a ten year, as opposed to a twenty year, maximum sentence, the later defendants start at a lower base offense level of 6. Such a reduction in Mr. Butler's case would have reduced his advisory range to fall within Zone B instead of Zone C of the Sentencing Table.

(4) The proposed probation sentence would adequately reflect the seriousness of Mr. Butler's conduct and provide incentives for rehabilitation. This is Mr. Butler's first felony conviction and will remain on his record for the rest of his life. Mr. Butler can remain employed and begin to start setting aside payments towards his restitution obligation. The suggested five year term of probation would provide more time for Mr. Butler to be required to make these monthly payments thereby increasing the chances that the obligation will be ultimately will be paid back in full. Mr. Butler will also continue participating in out-patient drug treatment as he understands that any violations of the term of probation could result in this Court re-sentencing him to a term of imprisonment that is within or above his advisory guideline range.

[6] *See United States v. Tamir Pratt,* Case No. 2:23-cr-00038.

Respectfully submitted this 11th day of May, 2023.

CALVIN BUTLER

By Counsel

WESLEY P. PAGE
FEDERAL PUBLIC DEFENDER

s/David R. Bungard
David R. Bungard, Bar Number: 5739
Assistant Federal Public Defender
Office of the Federal Public Defender
300 Virginia Street, East, Room 3400
Charleston, West Virginia 25301
Telephone: (304) 347-3350
Facsimile: (304) 347-3356
E-mail: david_bungard@fd.org