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

UNITED STATES OF AMERICA

v. **CRIMINAL NO. 2:22-cr-00161**

CALVIN BUTLER

UNITED STATES SENTENCING MEMORANDUM

The United States of America, by M. Ryan Blackwell, Assistant United States Attorney for the Southern District of West Virginia, submits this memorandum in aid of sentencing.

I. Introduction

Defendant, Calvin Butler, pled guilty to wire fraud, in violation of 18 U.S.C. § 1343. PSR ¶ 2. The United States has no outstanding objections to the Presentence Report ("PSR"). The Probation Officer correctly calculated the total offense to be 9. PSR ¶ 34. Defendant is in criminal history category II, and his advisory guideline range is 6-12 months' incarceration. PSR ¶ 57.

II. Sentencing Options

Defendant's adjusted offense level falls within Zone B of the Sentencing Table. Zone B sentences may be satisfied by (1) a sentence of imprisonment; (2) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in U.S.S.G. § 5C1.1(e), provided that at least one month is satisfied by imprisonment; or (3) a sentence of probation that includes a condition or combination of conditions that substitute intermittent confinement, community confinement or home detention for imprisonment according to the schedule in subsection (e). PSR ¶ 57.

Defendant is convicted of a Class C felony, which authorizes this Court to impose a term of probation of not less than one nor more than five years. PSR ¶ 93.

III. 18 U.S.C. § 3553(a) Factors

(A) Nature and Circumstances of the Offense

In late 2019, the Coronavirus Disease 2019 ("COVID-19") began spreading throughout the world. The novel disease brought with it sickness, death, and uncertainty on an unfathomable scale. Upon learning of COVID-19 and its potential impacts, the United States government implemented extraordinary measures aimed to protect its citizens. These measures attempted to protect the health, safety, and welfare of all people, while slowing the spread of the virus worldwide. Among the many measures implemented by the United States designed to lessen the impacts of COVID-19 was the Coronavirus Aid, Relief, and Economic Security ("CARES") Act. PSR ¶ 13. The CARES Act, in part, created the Paycheck Protection Program ("PPP"). *Id*. The PPP provided forgivable government-backed loans to all qualifying small businesses impacted by COVID-19 who used the loaned money on qualifying businesses expenses. PSR ¶ 14. The PPP's purpose was to provide an infusion of cash to businesses victimized by COVID-19, and to keep the U.S. economy afloat in the process. PSR ¶¶ 13-14.

During a time of unprecedented uncertainty, Defendant saw an opportunity to fraudulently enrich himself. Defendant caused a PPP loan application to be submitted, claiming that he operated a barbershop in his own name when he knew this to be false. PSR ¶ 19. Defendant's scheme included causing false IRS documents to be submitted in connection with the application. PSR ¶ 17. Defendant received $16,040 in PPP funds based on his scheme, which he used on himself. PSR ¶ 18.

The circumstances surrounding Defendant's criminal conduct are particularly troubling as he used a generational tragedy to enrich himself through fraud. The Court should give great weight to this factor in imposing a sentence within Defendant's advisory guideline range. *See Gall v. United States*, 552 U.S. 38, 59 (2007) (holding that it was "quite reasonabl[e]" for the sentencing court to have "attached great weight" to a 3553(a) factor.); *see also Kimbrough v. United States*, 552 U.S. 85, 111 (2007) (holding that an appellate court should not find the sentencing court's reliance on a single factor unreasonable, so long as the court imposes a sentence "sufficient, but not greater than necessary to accomplish the sentencing goals advanced in § 3553(a)(2)") (internal quotation marks omitted); *see also United States v. Pauley*, 511 F.3d 468, 476 (4th Cir. 2007) (permitting a district court to "reasonably accord significant weight to a single sentencing factor in fashioning its sentence").

(B) History and Characteristics of the Defendant

Defendant is twenty-five years old, and lives in Dunbar, West Virginia. PSR ¶¶ 43, 46 He received his General Education Diploma ("GED") in 2021 from Garnett Career Center. PSR ¶ 52. Defendant graduated from the Charleston School of Beauty in March of 2023. *Id.*

Defendant is in criminal history category II and has a history that includes a drug related conviction and a theft related conviction. PSR ¶¶ 37-38. Defendant admits to having a history of substance abuse including cocaine and marijuana use. PSR ¶¶ 50-51. Defendant continued to use controlled substances after being indicted for the instant offense. PSR ¶¶ 8-11. Currently, Defendant is receiving outpatient substance abuse treatment from Pyramid Counseling. PSR ¶ 51.

Defendant timely accepted responsibility for his actions and agreed to restitution for the offense of conviction. PSR ¶¶ 24, 103.

(C) The Need for the Sentence to Reflect the Seriousness of the Offense, Promote Respect for the Law, Provide Just Punishment, Provide Adequate Deterrence, and Protect the Public

Defendant exploited governmental efforts to aid those in need, for his own financial gain. While uncertainty and suffering increased worldwide, Defendant's bank account increased through fraud. Defendant's actions are serious, and their impact extends beyond this case. Each time federal benefits are obtained through fraud it misappropriates taxpayer dollars and shakes public confidence in government. Defendant's conduct demonstrates a disregard for the law and a fundamental failure to appreciate the purpose of COVID-19 relief funds.

A sentence within Defendant's advisory guideline range is needed to deter Defendant, and others, from engaging in similar conduct. Congress has recognized that general deterrence is particularly important in the context of white-collar crime. *United States v. Sample*, 901 F.3d 1196, 1200 (10th Cir. 2018) (citing *United States v. Martin*, 455 F.3d 1227, 1240 (11th 2006) ("[T]he Congress that adopted the § 3553 sentencing factors emphasized the critical deterrent value of imprisoning serious white collar criminals, even where those criminals might themselves be unlikely to commit another offense."); S. Rep. No. 98-225, at 76 (1983), *reprinted in* 1984 U.S.C.C.A.N. 3182, 3259 ("The second purpose of sentencing is to deter others from committing the offense. This is particularly important in the area of white collar crime.")). "[I]n enacting § 3553, Congress was especially concerned that prior to the Sentencing Guidelines, major white-collar criminals often were sentenced to small fines and little or no imprisonment." *United States v. Livesay*, 587 F.3d 1274, 1279 (11th Cir. 2009) (cleaned up).

Government program fraud is a deliberate and calculated crime of choice. It is therefore more susceptible to general deterrence. *United States v. Martin*, 455 F.3d 1227, 1240 (11th Cir. 2006) (finding that crimes that are "rational, cool, and calculated" rather than "crimes of passion or opportunity" are "prime candidate[s] for general deterrence") (citation omitted). Due to the prevalence of governmental program fraud, the United States often lacks the resources to investigate and prosecute all bad actors. Accordingly, general deterrence is a critically important to dissuading others from engaging in similar conduct. *See United States v. Morgan,* 635 F. App'x 423, 450 (10th Cir. 2015) ("General deterrence comes from a probability of conviction and significant consequences. If either is eliminated or minimized, the deterrent effect is proportionately minimized."). Defrauding governmental relief programs aimed at assisting those in need misuses taxpayer dollars and increases governmental cynicism. This Court should impose a sentence to deter Defendant and others from repeating this type of criminal conduct.

IV. Conclusion

Defendant used fraud and deception to profit from a generational tragedy. A sentence within Defendant's advisory guideline range of 6-12 months would be an appropriate sentence considering all the factors under 18 U.S.C. § 3553(a). The United States does not intend to call any witnesses at the sentencing hearing and believes the hearing can be conducted in thirty minutes.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that the foregoing "UNITED STATES SENTENCING MEMORANDUM" has been electronically filed and service has been made on opposing counsel by virtue of such electronic filing this 11th day of May, 2023 to:

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