IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES	)	
	)	
v.	)	
	)	CRIMINAL ACTION NO.
CARLA JACKSON,	)	1:20-CR-296-5-JPB-CMS
Defendant	)	
	)	

SENTENCING MEMORANDUM
AND MOTION FOR DOWNWARD VARIANCE
AND DOWNWARD DEPARTURE

COMES NOW Defendant CARLA JACKSON, by and through undersigned counsel, and pursuant to 18 U.S.C. § 3553, 18 U.S.C. § 3582, 18 U.S.C. § 3584, and 18 U.S.C. § 3661, hereby submits this her "Sentencing Memorandum and Motion for Downward Variance and Downward Departure" for the Court's consideration in determining an appropriate sentence.

For the reasons contained herein, and as to be more fully argued at his sentencing hearing, Defendant respectfully requests that the Court grant Ms. Jackson a downward variance from the Presentence Investigation Report's (hereafter "PSR") estimated guideline sentence.

Defendant will ask that the Court consider a probation sentence, or a sentence that includes home detention or minimal custody time and believes such a resolution would be more than an adequate sentence under the guidelines and the factors set forth in 18 U.S.C. §3553(a).

In support of his motion for a downward variance, Defendant shows the following:

I. INTRODUCTION

Ms. Jackson was one of two defendants[1] in this case who proceeded to trial in February of this year. After a two-week long presentation of evidence and arguments, the jury deliberated and rendered guilty verdicts against Ms. Jackson on February 15, 2024.[2]

The (initial) presentence report ("PSR"), prepared by the United States Probation Office, set Ms. Jackson's Total Offense Level at 20, a Criminal History Category I, with a corresponding custody guideline range of 33 to 41 months.[3]

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[1] Co-defendant Teldin Foster also proceeded to trial.

[2] Ms. Jackson was charged in two counts of the Second Superseding Indictment, counts 46 and 47, charging her with (concealment) money laundering. At trial, Mr. Teldrin Foster was found guilty of all 41 counts he faced.

[3] U.S. Probation assigned Ms. Jackson a base offense level of 8 under USSG § 2S1.1(a)(2) and an additional 12-level increase using the loss table in USSG § 2B1.1(1)(G). It added another 2-point increase under USSG § 2S1.1(b)(2)(B) for being found guilty under 18 U.S.C. § 1956. Since Ms. Jackson had no criminal history points, she received a 2-point reduction pursuant to USSG §§ 4C1.1(a)(1)-(10) as a Zero-Point-Offender.

Both Ms. Jackson and the Government have filed objections to the initial PSR.

II. BACKGROUND

Determining a Reasonable Sentence

The primary directive in 18 U.S.C. § 3553(a) is for sentencing courts to "impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph 2." Section 3553(a)(2) states that such purposes are:

1. to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
2. to afford adequate deterrence to criminal conduct;
3. to protect the public from further crimes of the defendant; and
4. to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

In determining the minimally sufficient sentence, § 3553(a) further directs sentencing courts to consider the following factors:

1. the nature and circumstances of the offense and the history and characteristics of the defendant;
2. the kinds of sentences available;
3. the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
4. the need to provide restitution to any victims of the offense.

Other statutory sections also give the district court direction in sentencing.

Under 18 U.S.C. § 3582, imposition of a term of imprisonment is subject to the following limitation: "in determining whether and to what extent imprisonment is appropriate based on the Section 3553(a) factors, the judge is required to "recogniz[e] that imprisonment is not an appropriate means of promoting correction and rehabilitation"" (emphasis added).

Under 18 U.S.C. § 3661, "no limitation shall be placed on the information concerning the background, character, and conduct of [the defendant] which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence" (emphasis added).

In *United State v. Booker*, 543 U.S. 220 (2005), the United States Supreme Court directed the district courts to sentence defendants with due regard to the sentencing purposes and factors set forth in 18 U.S.C. § 3553. *Booker*, 543 U.S. at 245-46. While the Court is required to consider the ranges set forth in the Guidelines, the Court must fashion a sentence in light of other statutory concerns and determine a reasonable sentence. The Guidelines, which *Booker* made “effectively advisory,” *id*. at 245, “should be the starting point and the initial benchmark,” but district courts may impose sentences within the statutory limits based on appropriate consideration of all of the § 3553 factors. Specifically, judges are required to "impose sentences that reflect the seriousness of the offense, promote respect for the law, provide just punishment, afford adequate deterrence, protect the public, and effectively provide the defendant with needed training and medical care." *Id*. (citing 18 U.S.C. § 3553(a)(2)).

Overall, the sentencing court must impose a sentence that comports with all of these factors and is "sufficient, but not greater than necessary," to comply with the purposes set forth in 18 U.S.C. § 3553(a)(2). Thus, "extraordinary circumstances" are no longer required to justify a sentence outside the Guidelines Range, as long as the record shows that the judge considered the § 3553 factors and supported the sentence by facts applied to those factors. *Gall v. United States*, 552 U.S. 38 (2007). Thus, a district court shall fashion a reasonable individualized sentence based on § 3553 factors. *Pepper v. United States*, 131 S. Ct. 1229 (2011).

A. <u>Nature of the Offense</u>

This case involved twenty named codefendants as participants, in varying degrees and roles, who – according to the Government's charging document - fraudulently obtained monies through the Paycheck Protection Program ("PPP"), a program passed by Congress in response to the 2020 COVID-19 pandemic that affected the country and the world. The purpose of the PPP program was to provide funding for small businesses in the

United States and to their employees in the context of COVID-19 and its economic impact that caused market downturns, rising unemployment, and nationwide lockdowns.

Ms. Jackson's place in the Government's (Second) Superseding Indictment was very minor compared to other defendants in this case. She was charged in two of the sixty-three counts in the Indictment, counts 46 and 47, for the alleged money laundering of funds transferred into her business bank account (Management Resource Services Inc., hereafter "MRS Inc.") from the bank account of Gaines Reservation and Travel, an account managed by codefendants Andre Gaines and John Gaines.

Ms. Jackson never submitted a loan application for PPP funds and never fraudulently represented to any financial institution that she needed funds for any payroll, or other expenses related to her own business.

The Government, by charging Ms. Jackson in the underlying Indictment, believed that she knew that the funds transferred into her business bank account in June 2020 were funds fraudulently obtained by Gaines Reservation and Travel, and by codefendants Andre Gaines and John Gaines, and that by permitting these fund transfers, Ms. Jackson knowingly and intentionally laundered the monies in violation of 18 U.S.C. § 1956(a)(1)(B)(i).

Ms. Jackson denied the allegations of wrongdoing, but a jury determined otherwise at the conclusion of her trial in February.

B. History and Characteristics of the Defendant

Ms. Jackson is not a prototypical defendant.

She is highly educated and a business professional who has more than 26 years of experience in program management positions, including more than 19 years working for IBM Corporation as a senior program manager and senior business analyst. At the time of the alleged money transfers referenced in counts 46 and 47 of the Indictment, Ms. Jackson was gainfully employed and NOT someone seeking fraudulently obtained monies from the PPP program. During this time period (June 2020), Ms. Jackson was employed at DXC Technology in Atlanta, Georgia, making a $144,000 yearly salary (verified by U.S. Probation).[4]

Although the Government's evidence during trial showed that Ms. Jackson's separate company, MRS Inc., did not bring in significant income during 2020, that company's low income did not motivate Ms. Jackson to seek alternate – and illegal – means to supplement her income.

There is no evidence to support an argument that greed was a motivating factor in this case involving Ms. Jackson.

[4] See attached Exhibit "A" (copy of Ms. Jackson's resume')

Ms. Jackson would not need any extra money outside of her career occupation in program management. And she certainly would not have committed PPP loan fraud or money laundering to get her extra money.

The jury, as mentioned above, found otherwise in its verdict. But integral to the Government's case against Ms. Jackson was co-defendant John Gaines, someone who admitted to lying, cheating, and committing fraud in his life. And Mr. Gaines lied, cheated, and committed fraud against his ex-wife, Carla Jackson.[5] And she now suffers the legal consequences of that tragic relationship in this case.

If the Court or the Government were to believe that such an educated and professional background should somehow work against Ms. Jackson's argument for a lenient sentence, undesigned counsel would simply point the Court and the Government to innumerable instances where even very educated and professional women (or men) can be duped and betrayed by intimate partners, over years, and years, and years.

The PSR contains a good overview of Ms. Jackson's personal background and history. But Ms. Jackson asks the Court to also read through and consider the numerous letters submitted in support of her for

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[5] Among just some of the secrets that John Gaines kept from her during their 30 years of knowing each other, Ms. Jackson learned that Mr. Gaines had fathered multiple children outside of their marriage with different women.

sentencing hearing (see attached Exhibit "C" containing copies of 40 separate letters from friends, family members, and business professionals). Through all these letters, Ms. Jackson is shown to be an extremely honest, caring, charitable, dependable, hardworking, and loving person.

Ms. Jackson has no prior state or federal criminal convictions of any kind.

Ms. Jackson has no history of violence.

Ms. Jackson has no history of past fraud or theft.

Ms. Jackson has no history of past drug or alcohol abuse.

And, at the age of 56, Ms. Jackson is an extremely low risk for recidivism.

The "nature of the offense" and "history and characteristics of the defendant" all point to the rendering of a sentence below the recommended guideline range for Defendant.

C. <u>Other § 3553 factors</u>

Defendant believes that a downward variance from the estimated guidelines sentence referenced in the PSR will achieve the goals in imposing a sentence to reflect the seriousness of the offense, to provide just punishment, to deter future criminal conduct, and to protect the public.

Seriousness of the offense

Ms. Jackson does not dispute that PPP fraud is a serious crime. She does maintain that her role in this offense, as presented by the Government during trial, was at most, minimal or minor.

The need for adequate deterrence

Defendant expects that the Government will stress the important need for general deterrence for sentencing in white collar crime prosecutions and that a sentence of probation, for example, will not provide the same level of deterrence that the threat of incarceration in a federal penitentiary would.

As a broad statement about deterrence, that position may have some merit, but when applied to a specific defendant like Ms. Jackson, with her unique background, work experience, and complete lack of criminal history (no prior convictions), its importance fades quickly. A significant "below-guidelines" sentence would greatly dissuade Ms. Jackson from being involved with *any* Government-backed loan programs, or with any bank-financed loans that she was not directly involved with as an actual applicant.

Deterrence is admittedly important in the context of certain crimes that "may go easily undetected and unpublished." *See, e.g., United States v.*

McQueen, 727 F.3d 1144, 1158-59 (11th Cir. 2013). The Government, in filings for other defendants in this case, has argued this exact point and cited a statistic that approximately 12.3% of the PPP loans granted to small businesses, totaling $64.2 billion, have at least one indicator of potential fraud. (*See, e.g.*, Doc. 535, p. 12). The Government argued that ". . . because of the sheer number of PPP loans as well as the streamlined documentation necessary to obtain them, the United States is unlikely to detect and/or prosecute most individuals who obtained fraudulent PPP loans, . . . [and that [t]he need for general deterrence is therefore significant . . . ." *Id.*

The Government's argument for general deterrence is admittedly based, in large part, on the weak financial controls set into place for the PPP loan program (its "streamlined" nature). In other words, and somewhat paradoxically, because the Government set up a program woefully inadequate to spot fraudulent applications, we must punish every PPP defendant more harshly to deter the general public from taking advantage of this poorly established (and regulated) program. But the need for "general deterrence" for PPP loan fraud has significantly decreased as the SBA has investigated and identified many areas of improvement to the PPP loan process, and corrective actions have already been (and continue to be) implemented.[6]

The continuing need for "general deterrence" in the PPP loan landscape has changed, fundamentally, and any specific deterrence has already been accomplished as to Ms. Jackson, whose longtime career as a senior project manager for major companies is forever marred with the blemish of a felony conviction with all its attendant (and lifetime) collateral consequences.[7]

Defendant asks that the Court take all of Section 3553 factors into consideration for fashioning a proper sentence.

D. PSR GUIDELINES

Defendant filed objections to the initial PSR, including an objection to the loss amount assigned to her (and related total offense level),[8] and to the lack of a mitigating role adjustment under USSG § 3B1.2. Although not

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[6] *See* "COVID-19 Pandemic EIDL and PPP Loan Fraud Landscape," White Paper, Report 23-09, June 27, 2023, pp. 4-6. Copy attached as Exhibit "B".

[7] For a defendant like Ms. Jackson, who took decades building a successful professional career, providing "just punishment" for the offense in sentencing is amply provided for through the scarlet letter that a felony conviction brings, and the end of a long, successful work history.

[8] Defendant is withdrawing her objection to the loss amount calculated in the PSR (and her citation to *United States v. Banks,* 55 F.4th 246 (3d Cir. 2022)). The loss amount objections were made to paragraphs 82, 93, 95, and 103 in the initial PSR. Those paragraph objections are withdrawn.

included in her original PSR objections, Ms. Jackson has notified U.S. Probation that she also objects to the Government's argument for an obstruction enhancement under USSG § 3C1.1 (this objection was filed as part of the Government's response to the initial PSR).

Minimal (Mitigating) Role Adjustment under § 3B1.2

Ms. Jackson is asking the Court to apply a "minimal" mitigating role adjustment of four points pursuant to U.S.S.G. §§ 3B1.2(a), since Defendant is "plainly among the least culpable of those involved" in the underlying conduct in the group of twenty codefendants. (Application Note 4). 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 minimal participant." *Id.*

Two principles inform the determination of the defendant's role in the offense: (1) the defendant's role in the relevant conduct for which he is held accountable at sentencing; and (2) the defendant's role as compared to other participants role in that relevant conduct. *See United States v. De Varon,* 175 F.3d 9030, 940 (11th Cir. 1999) (*en banc*).

The decision about whether to apply a role reduction is "based on the totality of the circumstances" and is "heavily dependent upon the facts of the particular case." USSG § 3B1.2 cmt. n.3(C). The district court should consider to the extent applicable following non-exhaustive list of factors:

a. the degree to which the defendant understood the scope and structure of the criminal activity;
b. the degree to which the defendant participated in planning or organizing the criminal activity;
c. the degree to which the defendant exercised decision-making authority or influenced the exercise of decision-making authority;
d. the nature and extent of the defendant's participation in the commission of the criminal activity, including the acts the defendant performed and the responsibility and discretion the defendant had in performing those acts;
e. the degree to which the defendant stood to benefit from the criminal activity.

USSG § 3B1.2 cmt. n.3(C); *United States v. Valois,* 915 F.3d 717, 732 (11th Cir. 2019).

In the instant case, Ms. Jackson's role (in relation to John Gaines' and Andre Gaines' roles, and in relation to the roles of the remaining seventeen codefendants) was minimal.

a. There is no evidence showing that Defenant understood the scope or structure of the overall criminal activity in this case. And as to her role compared to Andre Gaines and John Gaines? The Gaines were solely responsible for submitting a fraudulent PPP loan application and receiving disbursed PPP funds. Ms. Jackson had no participation in drafting or preparing any such application or supporting documents.

b. There is no evidence showing that Ms. Jackson planned or organized the criminal activity. Again, this was John Gaines and Andre Gaines, or others in the broader conspiracy, of which Ms. Jackson was not a part.

c. There is no evidence that Ms. Jackson exercised decision-making authority or influenced such. There was no evidence presented at trial (emails, phone calls, phone evidence, letters, bank documents, etc.) that supports this factor.

d. Ms. Jackson's role in the offense – as shown by the Government's trial evidence – was that her business bank account for MRS Inc. was used by John and Andre Gaines to transfer money from Gaines Reservation and Travel to MRS Inc.'s bank account, money that originated from PPP loan proceeds and fraudulently obtained by John and Andre Gaines, not Carla Jackson.

e. The final factor – what Ms. Jackson stood to benefit from the alleged criminal activity – is unclear. Certainly, loan proceeds from the PPP loan obtained by Gaines Reservation and Travel (John and Andre Gaines) made their way into Defendant's business bank account. John Gaines directed Ms. Jackson to withdraw $30,000 and to get three cashiers' checks for $10,000 each. All three were made payable to entities related to John Gaines, as he directed Ms. Jackson to do. Additionally, the Government recovered the bulk of the PPP funds from Ms. Jackson's bank account on June 18, 2020 through a seizure order.

A review of these factors supports a finding that Defendant deserves a mitigating role adjustment. Ms. Jackson believes the role adjustment should be a 4-point reduction for a minimal participant under USSG § 3B1.2(a).

<u>Government argument for USSG § 3C1.1 enhancement</u>

The Government, in PSR objections it filed with U.S. Probation, is arguing for an enhancement to Ms. Jackson's offense level for obstruction under USSG § 3C1.1.

Defendant objects to this enhancement.

The Government's bases for requesting the enhancement appears to center on an indicted and convicted co-defendant, Andre Gaines, who was convicted in a related case (1:21-CR-206) of making a false statement to a federal officer (18 U.S.C. § 1001). And the Government does so through the use of a signed declaration by the same person convicted of giving false statements (Andre Gaines). Of note: the Government never called Andre Gaines as a witness for its case during trial, even though Andre Gaines' company was central to the transfer of PPP funds from Andre Gaines' business bank account (Gaines Reservation and Travel) to Ms. Jackson's business bank account (MRS Inc.).

The Court can rely on hearsay evidence during a sentencing hearing "so long as the evidence has sufficient indicia of reliability to support its probable accuracy, and provided that the defendant has 'the opportunity to rebut the evidence or generally to cast doubt upon its reliability.'" *United States v. Meyers*, 820 Fed. Appx. 958, 960-61 (11th Cir. 2020). In the present case, the Government is relying on a written declaration from a convicted liar and asking the Court to find that it has sufficient indicia of reliability without his live testimony.[9]

[9] Mr. Andre Gaines also received a five-year probated sentence.

The Court should demand more and require that Andre Gaines provide in-person testimony at the sentencing hearing on the issue of an obstruction enhancement argument, so that he can be subject to cross examination by defense counsel. Andre Gaines writing declarations from afar, and being a convicted liar, does not meet even a minimal standard for "sufficient indicia of reliability" for this or any court.

In addition to the Government's reliance on a signed document from Andre Gaines, and without his live in-court testimony, the Government also argues for an obstruction enhancement based on the Grand Jury subpoena return that was completed by Ms. Jackson for her company, MRS Inc.

The Government should recall, however, that during Special Agent Stites' cross examination during trial, Agent Stites was questioned by defense counsel about missing pages from the Grand Jury subpoena he left with Ms. Jackson when he conducted his knock-and-talk interview at her house. Agent Stites could not confirm that he gave a complete subpoena with Ms. Jackson, and Agent Stites admitted during his cross-examination testimony that the subpoena return sent back by Ms. Jackson had missing pages in it (pages 2 and 3, and possibly more pages). Agent Stites testified that he never contacted Ms. Jackson about these missing exhibit pages, and he admitted not noticing the missing pages or responses until his trial testimony in February of 2024.[10]

Defendant objects to an enhancement under USSG § 3C1.1 for obstruction and will provide additional argument at sentencing, as needed.

E. CONCLUSION

In submitting this memorandum and motion for downward variance, Ms. Jackson requests that the Court fashion a reasonable sentence taking into consideration all 18 U.S.C. § 3553 factors, and after hearing further argument from Defendant at her upcoming sentencing hearing.

Defendant is asking the Court to consider a sentence that includes either probation, home detention, or a minimal amount of custody time well below the applicable guideline range.

This 3rd day of May, 2024.

/s/ David D. Marshall
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[10] Defendant also notes that section "I" referenced in the cover page of Ms. Jackson's subpoena return, which section discusses communications, is also missing from the subpoena return sent back by Ms. Jackson, and not noticed by Agent Stites (what would appear to be page "7" but is missing). The subpoena sent to Ms. Jackson was incomplete, and now the Government argues that her responses were incomplete, justifying an obstruction enhancement. This is, respectfully, absurd.

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CERTIFICATE OF SERVICE

This is to certify that the foregoing was formatted in 13-point Book Antiqua, in accordance with Local Rule 5.1C, and was electronically filed this day with the Clerk of Court using the CM/ECF system, which will automatically send email notification to all parties of record.

This 3rd day of May, 2024.

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