UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 21-20415-Cr-KING/O'SULLIVAN

UNITED STATES OF AMERICA

v.

WILLIE CURRY

Defendant.
_________________________________/

GOVERNMENT RESPONSE TO DEFENDANT'S REQUEST FOR VARIANCE FROM ADVISORY SENTENCING GUIDELINES

COMES NOW the United States, by and through the undersigned Assistant United States Attorney, and files this Response to defendant Willie Curry's Motion for Downward Variance from the Advisory Sentencing Guidelines (DE: 23), stating as follows:

Factual Background and Procedural History

On June 24, 2020, the defendant, a full-time employee of Miami-Dade County, submitted an online application containing materially false information to the Small Business Administration ("SBA") seeking an Economic Injury Disaster Loan claiming that a small business he owned and operated had been significantly impacted by the COVID-19 pandemic. Based on that false application, the SBA approved and disbursed to the defendant's financial institution a $10,000 advance and a $150,000 low interest loan intended for the defendant. However, as explained in the Pre-Sentence Investigation Report ("PSR"), the defendant ultimately never was able to obtain any of this money because it was returned to the SBA by his financial institution (PSR at ¶¶17-18).

When the fraudulent nature of this application was discovered by law enforcement, the defendant was contacted and on April 23, 20201, he voluntarily met with federal law enforcement agents and gave a statement, admitting that he had grossly inflated the gross revenues, cost of goods sold, and number of employees to obtain the loan. Shortly thereafter, the defendant retained counsel and expressed his desire to resolve the matter by accepting responsibility, waiving indictment, and pleading guilty to an Information. Following through, on August 30, 2021, before Chief Magistrate Judge John O'Sullivan, the defendant entered a plea of guilty to a one-count Information (DE: 1) charging him with wire fraud, in violation of 18 U.S.C. §1343. DE: 14; 17.

The Advisory Sentencing Guidelines Range

Under the current post-*Booker* sentencing regime, 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 (after recommending the three-level reduction for acceptance of responsibility) to be level 14 (PSR at ¶32), with the defendant being in Criminal History Category I (PSR at ¶35), leading to an advisory Guidelines Zone D sentencing range of 15-21 months (PSR at ¶¶67, 72). The government agrees with this conclusion, and requests that the Court find the defendant's advisory Guidelines range to be 15-21 months imprisonment.

The defendant has now filed a motion asking this Court to grant "a downward variance and sentence [the defendant] below the Advisory Sentencing Guidelines to a maximum period of Six (6) months of incarceration." DE: 23 at 1. For the reasons that will be explained below, the government has no objection to a limited guided downward variance of one level to a Total Offense Level of 13, which would put the defendant within the Zone C advisory range of 12-18 months of incarceration, and to a low-end sentence of 12 months imprisonment, with 6 months to be served in imprisonment and the remaining 6 months to be served in community confinement or home detention, as allowed by USSG §5C1.1(2).

The §3553(a) Factors and Defendant's Request for a Downward Variance

Once the Court has determined the advisory Guidelines sentencing range, the next step is to consider the §3553(a) factors in determining and imposing a reasonable sentence. Although the Court may not simply presume that a sentence within the advisory Guidelines range is reasonable, the Supreme Court has recently reaffirmed that fact that "the Guidelines are to be the sentencing court's 'starting point and . . . initial benchmark'" and that sentencing courts "'*must* begin their analysis with the Guidelines and remain cognizant of them throughout the sentencing process'" *Molina-Martinez v. United States*, 136 S.Ct. 1338, 1345 (2016) (citation omitted; emphasis in original).

Pursuant to §3553(a), the relevant factors to be considered in imposing a sentence are: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to (A) reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense, (B) afford adequate deterrence to criminal conduct, (C) protect the public from further crimes by the defendant, and (D) provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (3) the types of sentences available; (4, 5) the advisory Guidelines sentencing range and any relevant policy statements; (6) the need to avoid unwarranted sentencing disparity; and (7) the need to provide restitution.

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 Information (DE: 1), Stipulated Factual Basis (DE: 16), and PSR (DE: 22), the defendant's offense was an effort to defraud the SBA out of COVID-19 relief funds intended to assist small business owners trying to deal with the financial hardships and business disruptions caused by the pandemic. Defrauding the government out of funds intended to help struggling small businesspeople is a serious offense, particularly since the defendant was a highly-paid county employee whose income was not affected by the pandemic and who was not suffering from any pandemic-related financial hardship. The money he would have fraudulently obtained would have reduced the pool of money available for those genuinely in need and actually entitled to the assistance.

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 very thorough PSR at ¶¶43-55, and elaborated upon in the defendant's motion, DE: 23 at 4-7, the defendant, apart from a minor brush with the law almost 30 years ago, PSR at ¶34, has been a productive law-abiding citizen, a supportive father to his children, and an individual devoted to helping the youth of his community. In addition, the defendant served his country for seven years in the United States Army, earning an honorable discharge.

While the defendant's service to his country and law-abiding life do not excuse his serious crime, the government does take note of the fact that the defendant's crime in this case appears to be an isolated episode, and not reflective of how the defendant, now 58-years old, has conducted himself throughout his life to this point. This was further reflected by the fact that the defendant voluntary met with the agent without retaining counsel, admitted his wrongdoing, and then almost immediately retained counsel to expeditiously resolve the matter by pleading guilty for his crime.

Section 3553(a)(2)

Section 3553(a)(2) is geared to ensuring that the sentence imposed serves the various purposes stated in subparts (A) – (D). Here, the recommendation of 6 months imprisonment combined with another 6 months of home confinement or community control, followed by a term of supervised release, on an otherwise law-abiding 58-year individual who immediately acknowledged his crime and quickly pled guilty sends a strong message that fraud of this type will not be tolerated, thereby deterring others from engaging in this conduct. Since this episode appears to be out of character for the defendant, the government also believes that this recommended punishment is sufficient to protect the public from the seemingly unlikely chance of future crimes by the defendant.

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

These subsections of §3553(a) require consideration of the types of sentences available, advisory Guidelines sentencing range and any relevant policy statements in determining the final sentence. The PSR lays out the advisory Guidelines and sentencing options in clear and concise terms, noting that without a variance, the defendant would be in Zone D, requiring the entire sentence to be served through imprisonment.

The government's recommended one-level downward variance would place the defendant in Zone C, allowing for the recommended "split" sentence of six months in imprisonment and six months in either home confinement or a community control setting, either of which would allow the defendant to obtain and maintain employment, allowing him to once again be a productive member of the community. As further support, the government notes that the loss figure for the $150,000 loan, without the separate $10,000 advance authorized by SBA, would have resulted in the defendant having a Total offense Level of 13, thereby allowing the government to recommend this same sentence without the need for a one-level downward variance.

Section 3553(a)(6), (a)(7)

These sub-sections focus on avoiding sentencing disparity and ensuring restitution Is made. Since the defendant ultimately received no money from the SBA, the SBA suffered no financial loss and restitution is not required. Nor is the government aware of any cases involving similarly situated defendants and crimes that would indicate that the recommended sentence in this case would cause unwarranted sentencing disparity.

Conclusion

After consideration of all the relevant advisory Guidelines and statutory factors within all the facts and circumstances of the offense and offender in this case, it is the government's position that the Court should grant a one-level downward variance, resulting in a Total Offense Level of 13 and Zone C advisory range of 12-18 months incarceration. If this Court does grant that variance, the government respectfully suggests that the reasonable and necessary sentence to provide just punishment and protect the public would be a period of incarceration of 12 months, with six months served in imprisonment and 6 months served in home confinement or community control, as allowed for by USSG §5C1.1(2).

WHEREFORE, the government respectfully requests that this Court use its discretion to grant a one-level downward variance to impose the above-described recommended sentence on the defendant.

Respectfully submitted,

JUAN ANTONIO GONZALEZ
UNITED STATES ATTORNEY

By: s/*Edward N. Stamm*
Edward N. Stamm (FL Bar #373826)
Assistant United States Attorney
U.S. Attorney's Office - SDFL
99 Northeast Fourth Street, 8th Floor
Miami, Florida 33132-2111
Telephone: (305) 961-9164
E-mail: edward.stamm@usdoj.gov