

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

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

DARRELL THOMAS,)

Defendant.)

CASE NO.: 1:20-CR-00296-JPB-AJB

DEFENDANT’S SENTENCING MEMORANDUM

COMES NOW, Defendant **DARRELL THOMAS**, by and through his undersigned counsel, and respectfully asks this Court to consider the information contained in this Memorandum when determining Defendant’s sentence. Defendant submits that upon a review of the sentencing factors contained in 18 U.S.C. § 3553(a), this Court should sentence Defendant to a term of imprisonment of forty-eight (48) months. In support of this sentence, Defendant shows as follows:

I. Sentencing Guidelines Objections

a. Role Enhancement

There is no evidence that Mr. Thomas was the “mastermind” of this criminal activity as stated in the initial PSR. While Mr. Thomas certainly participated in this criminal activity with others, he did not direct, control, supervise, or in any way exercise authority over any of the other individuals involved in the conspiracy. Therefore, he should not receive a four-

level role enhancement in this case.

b. Total Offense Level

In light of Mr. Thomas's objections to the PSR, Mr. Thomas's Total Offense Level should be 34.

II. Forty-Eight Months Imprisonment Is A Reasonable Sentence Under U.S.C. § 3553(a)

a. Mr. Thomas's History and Characteristics Support A Below-Guideline Sentence

Mr. Thomas is thirty-five years old with no prior criminal history. He is the father of three young children. The attached character letters attest to Mr. Thomas's support from and commitment to his family. *See* Character Letters, attached hereto as "Exhibit A". Mr. Thomas respectfully asks that this Court impose a below-guideline sentence in this case so that he can more quickly return to his family and resume the care of his children.

b. The Sentencing Guidelines Substantially Overstate the Seriousness of the Offense and Would Result in Punishment that is too Harsh and Greater than Necessary to Satisfy the Purposes of Sentencing

Mr. Thomas has pled guilty, accepted responsibility for his conduct, and has no prior criminal history. His offense conduct was of a limited duration and was nonviolent. Yet, despite these factors, Mr. Thomas is currently facing a sentencing range of 235 to 293 months. Such a lengthy sentencing range for this offense illustrates how ill-equipped the fraud sentencing guidelines are in generating reasonable sentences. The escalating enhancement in the Sentencing Guidelines loss table is out of line with enhancements elsewhere in § 2B1.1 and in the Guidelines as a whole. *See United States v. Adelson*, 441 F.

Supp. 2d 506, 512 (S.D.N.Y. 2006) (describing “the utter travesty of justice that sometimes results from the guidelines’ fetish with abstract arithmetic, as well as harm the guideline calculations can visit on human beings if not cabined by common sense”); *see also United States v. Parris*, 573 F. Supp. 2d 744, 754 (E.D.N.Y. 2008) (describing “the Sentencing Guidelines for white collar crimes” as “a black stain on common sense” and sentencing a defendant “to 60 months in the face of an advisory guideline range of 360 to life.”). In comparison, Thomas’s offense level under the Sentencing Guidelines as calculated in the PSR is disproportionate when considering Thomas’s actual conduct in context against the entire criminal code and the Guidelines as a whole. Therefore, a below guideline sentence is reasonable for Mr. Thomas.

c. The Need To Avoid Unwarranted Sentence Disparities Supports A Below-Guideline Sentence

As set forth above, Mr. Thomas’s guideline range in the initial PSR is 235 to 293 months. This range is drastically higher than any other sentence received thus far by Mr. Thomas’s co-defendants. Co-defendant Kahlil Green received a sentence of 41 months. Co-defendant Bern Benoit received a sentence of 27 months. Co-defendant Charles Petty received a sentence of 46 months. Co-defendant Charles Hill received a sentence of five years on probation. Co-defendant Charmaine Redding received a sentence of 27 months. There is no credible argument that Mr. Thomas’s conduct justifies a sentence over five times the longest sentence received by his co-defendants. Therefore, a below guideline sentence is reasonable for Mr. Thomas.

WHEREFORE, for the foregoing reasons, as well as additional arguments that Mr. Thomas will make at his sentencing hearing, Mr. Thomas respectfully requests a sentence of forty-eight (48) months imprisonment in his case.

This, the 29th day of April, 2022.

Respectfully submitted,

s/ Benjamin Black Alper

BENJAMIN BLACK ALPER

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CERTIFICATE OF COMPLIANCE

This is to certify that to the best of my knowledge this document has been prepared with one of the font and point selections approved by the Court in LR 5.1B, pursuant to LR 7. Specifically, the above-mentioned document has been prepared using Times New Roman font, 14 point.

This, the 29th day of April, 2022.

s/ Benjamin Black Alper

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_____	)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the above date, I electronically filed this document using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record.

Respectfully submitted,

s/ Benjamin Black Alper
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