

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

CHARLESTON DIVISION

UNITED STATES OF AMERICA

v.

Criminal No. 2:22-00084

MALIK BRECKENRIDGE

DEFENDANT’S SENTENCING MEMORANDUM

Now comes the Defendant, Malik Breckenridge, through counsel, Assistant Federal Public Defender Rhett H. Johnson, and submits this Sentencing Memorandum. Breckenridge pled guilty to one count of wire fraud in violation of 18 U.S.C. § 1343 relating to a fraudulent claim for Paycheck Protection Plan (“PPP”) funds. In total, Breckenridge received \$41,666.00 in PPP monies. Presentence Report (“PSR”), ¶ 100. With a total offense level of 11 and a criminal history category I, the guideline range is 8 to 14 months, with Zone B sentencing options. PSR, ¶ 54. In view of his guideline range and the other 18 U.S.C. § 3553(a) factors, Breckenridge requests that this Court impose a sentence of probation. Should this Court feel it is necessary to impose some term of confinement to achieve a just sentence, Breckenridge asks this Court to fashion it in a way that will permit him to continue full-time employment through either home-confinement or intermittent confinement. *See* U.S.S.G. § 5C1.1(c).

A. Presentence Report Objections

There are no remaining objections to the presentence report.

B. 18 U.S.C. § 3553(a) Factors for Consideration

1. Malik Breckenridge is 26 years old. His criminal history score is zero. He grew up in Charleston, West Virginia, where he, along with his younger sister, were primarily raised by their mother. After completing the residential program at the Mountaineer Challenge Academy, Breckenridge graduated from Capital High School in 2014. PSR, ¶ 46. After high school, he briefly attended Potomac State College and Glenville State University. PSR, ¶ 47. Later in 2020, he obtained a certification in fiber optics from Bridge Valley Community College in Charleston, West Virginia. *Id.*

2. As set forth in the PSR, in the Spring of 2021, Breckenridge made the regrettable decision to apply for a PPP loan despite being ineligible for such monies. PSR, ¶ 17. He received two separate wire transfers in the amount of \$20,833. When confronted by law enforcement, Breckenridge readily admitted his wrongdoing.

3. While on pretrial release, Breckenridge has maintained consistent employment. *See* PSR, ¶¶ 48-49. He currently resides with his younger sister in Charleston, West Virginia. PSR, ¶ 41. They both lived together with their mother, Malechra Pannell, until she passed away in September 2021 due to the coronavirus. This was a devastating blow to both Breckenridge and his younger sister, as both were extremely close with their mother. Since that time, they have leaned on one another for support.

4. Breckenridge asks this Court to fashion a probationary sentence in this matter. The instant offense is Breckenridge's first and only criminal conviction.

Because it is a felony conviction, the attendant collateral consequences will follow him the rest of his life. Probation has been historically utilized to allow a convicted person who is considered “a good social risk ... the opportunity for rehabilitation and to “give young and new violators of law a chance ... to escape the contaminating influence of association with hardened or veteran criminals in prison.” Brent E. Newton, *The Story of Federal Probation*, Am. Crim. L. Rev. 311 (2016) (emphasis added) (internal quotations omitted); *see also Korematsu v. United States*, 319 U.S. 432, 435 (1943) (Probation is intended to restore offenders who are good social risks to society); *Berman v. United States*, 302 U.S. 211, 213 (1937) (“Probation is concerned with rehabilitation, not with the determination of guilt.”). Congress itself directed the Commission to “ensure that the guidelines reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense.” 28 U.S.C. § 994(j).

Breckenridge’s offense was a crime of opportunity the presented him with the ability to obtain a significant amount of money with little effort. A comparable opportunity is unlikely to present itself, and Breckenridge understands that if it does, and he commits a similar transgression, any future pleas for leniency will ring resoundingly hollow.

C. Conclusion

For the reasons contained herein, Breckenridge submits that a probationary sentence, that includes a condition that he make efforts to pay restitution in regular

installments, along with additional proposed conditions set forth in the PSR, is sufficient, but not greater than necessary to achieve a just sentence in this matter.

D. Witnesses to be Called and Estimated Time Needed for Sentencing

Counsel does not intend to call any witnesses at sentencing. The hearing should take no longer than thirty minutes.

Date: October 27, 2022.

Respectfully submitted,

MALIK BRECKENRIDGE

By Counsel

WESLEY P. PAGE
FEDERAL PUBLIC DEFENDER

s/Rhett H. Johnson

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