IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. LUANA McNURLIN, Defendant.	Case No. 24-00029-10-CR-W-BP

GOVERNMENT'S SENTENCING MEMORANDUM

The United States of America, by and through its undersigned counsel, files its sentencing memorandum in this case. The presentence report calculated the sentencing range from 0 to 6 months, a fine ranging from $1,000 to $9,500, and mandatory restitution of $20,832. The government recommends a sentence of probation.

PROCEDURAL AND FACTUAL BACKGROUND

On June 6, 2024, Defendant Luana McNurlin pled guilty to Count One of the indictment, conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349. (PSR ¶ 1.) The maximum possible penalty for conspiracy to commit wire fraud is 20 years' imprisonment and a fine of $250,000. The defendant's offense conduct is outlined in paragraphs 4 through 9, and 19 of the PSR.

The defendant was part of a group of individuals organized by her acquaintance, Daisha Sanders, to submit fraudulent Paycheck Protection Program (PPP) loans. Daisha Sanders, on behalf of Ms. McNurlin, applied for the PPP loan which claimed Ms. McNurlin was the sole proprietor of a business that had a gross income of $144,080 and a net profit of $99,982 in 2019. In fact, the defendant did not have such a business, and it did not have any revenues in the year prior to the pandemic. On July 6, 2021, the defendant received a $20,832 PPP loan. On September 28, 2021, a PPP loan forgiveness application was filed with the Small Business Association claiming that all of the original loan was spent on payroll cost. The loan forgiveness application was approved, and the PPP loan was forgiven on October 5, 2021.

DISCUSSION

I. Sentencing Analysis

There are no outstanding objections to the presentence report and, therefore, the offense level would be 7, Criminal History Category I, resulting in a guideline range of 0 to 6 months. As this Court is aware, 18 U.S.C. § 3553(a) sets forth the factors to be considered in determining an appropriate sentence. In evaluating the appropriate sentence for this defendant, the United States notes the following:

Nature of the offense:

The defendant falsely applied for and received a $20,832 pandemic relief loan. These funds were intended to assist businesses that were impacted by the pandemic. While this amount is small compared to other pandemic relief fraud, the defendant should have been aware that this scheme was unlawful.

The history and characteristics of the defendant:

The defendant has no criminal history points and is self-employed as the owner/operator of LuLu's Hair Boutique.

Seriousness of the Offense, Deterrence, Protection, and Rehabilitation:

This was a serious offense and there is a need to deter the defendant and others from fraudulently taking advantage of emergency relief funds.

<u>Sentencing</u>:

As noted by the Court in *United States v. Anderson*, 664 F.3d 758, 764-765 (8th Cir. 2012), the analysis for reviewing the reasonableness of a sentence is well-settled:

> We review substantive reasonableness for an abuse of discretion, "'tak[ing] into account the totality of the circumstances, including the extent of any variance from the Guidelines range.'" *United States v. Feemster*, 572 F.3d 455, 461 (8th Cir. 2009) (en banc) (quoting *Gall v. United States*, 552 U.S. 38, 51, 128 S. Ct. 586, 169 L.Ed.2d 445 (2007)). If a sentence is outside of the Guidelines range, "we 'may consider the extent of the deviation, but must give due deference to the district court's decision that the § 3553(a) factors, on a whole, justify the extent of the variance.'" *Id.* at 461–62 (quoting *Gall*, 552 U.S. at 51, 128 S. Ct. 586) "Just because we 'might reasonably have concluded that a different sentence was appropriate is insufficient to justify reversal of the district court.'" *Id.* at 462 (quoting *Gall*, 552 U.S. at 51, 128 S. Ct. 586). "'[I]t will be the unusual case when we reverse a district court sentence ... as substantively unreasonable.'" *Id* at 464 (quoting *United States v. Gardellini*, 545 F.3d 1089, 1090 (D.C. Cir. 2008)).

As noted by Judge Colloton in his concurrence in *United States v. Burman*, 666 F.3d 1113, 1120 (8th Cir. 2012) *citing, Gall v. United States,* 552 U.S. 38, 50-51, 128 S. Ct. 586 (2007), the "proper measure of reasonableness under § 3553(a) is not whether the *variance* from an advisory guideline range is reasonable, but whether the *ultimate sentence* is reasonable in light of the § 3553(a) factors taken as a whole."

The issue presented to the Court then is what sentence is reasonable given the need to deter others who would engage in such illegal misappropriation of government emergency monies. The United States suggests that in this case a reasonable sentence would be probation.

A sentence within the guideline range would deter the defendant and send a message to others that such fraud schemes are unlawful and will be dealt with seriously by the United States District Court.

Respectfully submitted,

Teresa A. Moore
United States Attorney

By: */s/ Paul S. Becker*

Paul S. Becker
Assistant United States Attorney

Charles Evans Whittaker Courthouse
400 E. 9th Street, Suite 5510
Kansas City, Missouri 64106

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on October 29, 2024, to the Electronic Case Filing (CM-ECF) system of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

/s/ Paul S. Becker

Paul S. Becker
Assistant United States Attorney