

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-60173-CR-WILLIAMS

UNITED STATES OF AMERICA

Plaintiff,

v.

CAROLYN DENISE WADE and
TRACY D. WADE,

Defendant,

/

DEFENDANT CAROLYN WADE'S MOTION FOR A DOWNWARD
BOOKER VARIANCE

Defendant, *Carolyn Wade*, through counsel, respectfully requests that the Court impose a sentence below the advisory guideline imprisonment range pursuant to 18 U.S.C § 3553 and *United States v. Booker*, 543 U.S. 220, 125 S.Ct. 738 (2005). In support thereof, Ms. Wade states:

Background

Ms. Wade awaits sentencing after having been convicted of one count of conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349; one count of wire fraud, in violation of 18 U.S.C. § 1343; one count of general conspiracy in violation of 18 U.S.C. § 371; and three counts of false statements against to the Small Business Association (SBA), in violation of 15 U.S.C 645(a). (DE 183). The counts of conviction were charged in a superseding indictment which alleged that Ms. Wade and her husband, Tracy Wade, with conspiring to fraudulently obtain Paycheck Protection Program (PPP) loans

provided by the Small Business Administration during the COVID-19 Pandemic. (DE 88).

Ms. Wade was one of seventeen Broward Sheriff Deputies accused of falsifying paperwork to obtain PPP loans or Economic Disaster Loans (EIDL). *See* 17 Broward deputies charged in pandemic loan fraud, South Florida Sun-Sentinel, updated October 12, 2023, <https://www.sun-sentinel.com/2023/10/12/multiple-broward-sheriffs-employees-facing-indictments-over-pandemic-relief-fund-misuse/> Ms. Wade was originally charged with only one count of wire fraud for fraudulently obtaining a loan in the amount of \$20,833. (DE 3).

Ms. Wade was tried on the original indictment in May of 2024. The Court declared a mistrial after the Jury was unable to reach a unanimous verdict. (DE 72). During the first trial, Mr. Tracy Wade testified that a third party, Haydee Rivero, helped him obtain a PPP loan and he encouraged his wife to also obtain a PPP loan. Thereafter, the government filed a superseding charging both Mr. and Mrs. Wade with various offenses related to fraudulent obtaining two PPP loans. (DE 88). The total amount of both loans was \$41,666. Presentence Investigation Report (PSIR) ¶ 51.

The United States has prepared a PSIR which includes a calculation of a recommended advisory guideline sentence pursuant to the United States Sentencing Guidelines Manual. According to the PSIR, Ms. Wade's total offense level is 11 and her criminal history category is I. At offense level 11, and criminal history category I, the advisory guideline imprisonment range is 8 to 14 months in Zone B of the Sentencing Table.

Because the advisory guidelines imprisonment range is in Zone B of the Sentencing Table, the Guidelines authorize a sentence other than imprisonment. *See* PSIR ¶ 105. Also, Ms. Wade has filed an objection to the offense level computation based on the loss attributable to her and argues that the offense level should be 9 rather than 11. At offense level 9, the advisory guideline imprisonment range is 4 to 11 months in Zone B of the Sentencing Table.

Argument and Memorandum of Law

Ms. Wade is a 49-year-old married woman with no prior criminal convictions or arrests. PSIR ¶¶ 68-72. Accordingly, Ms. Wade has zero criminal history points. She is the mother of two adult children and one 11-year-old minor child. PSIR ¶¶ 79 and 82. Prior to her arrest in this case, Ms. Wade had been employed by the Broward Sheriff's Office for twenty years as a detention deputy. PSIR ¶¶ 90 and 92.

In *Booker v. United States*, 543 U.S. 220, 125 S.Ct. 738 (2005), the Supreme Court excised the statutory provision in 18 U.S.C. § 3553 that made the Sentencing Guidelines mandatory, thereby rendering them advisory. *Id.* at 244-46, 125 S.Ct. at 756-57. While this Court must still correctly calculate the guideline range, there is no presumption that a guideline sentence is a reasonable and appropriate sentence. *Gall v. United States*, 552 U.S. 38, 49-50, 128 S.Ct. 586, 597 (2007). The Court must make an individualized assessment based on the facts presented. *Id.*

When fashioning such a sentence, the sentencing court must consider the factors set out in 18 U.S.C. § 3553(a). Those factors are:

- 1) The nature and circumstances of the offense and the history and characteristics of the defendant;
- 2) The need for the sentence imposed-
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant; and
 - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- 3) The kinds of sentences available;
- 4) The advisory guideline range;
- 5) Any pertinent policy statements issued by the Sentencing Commission;
- 6) The need to avoid unwarranted sentence disparities; and
- 7) The need to provide restitution to any victims of the offense.

The statute contains an overarching provision instructing district courts to impose a sentence sufficient, but not greater than necessary to accomplish the goals of sentencing. *See Kimbrough v. United States*, 552 U.S. 82, 101, 128 S.Ct. 558, 570 (2007) citing 18 U.S.C. § 3553.

It has been a uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crimes and punishment to ensue. *Pepper v. United States*, 131 S.Ct. 1229, 1239-40 (2010).

Both Congress and the Sentencing Commission have expressly preserved the traditional discretion of sentencing courts to conduct an inquiry broad in scope, largely unlimited either as to the kind of information they may consider, or the source from which it may come. *Pepper*, 131 S.Ct at 1240. Congress could not have been clearer in directing that “[n]o limitation ... be placed on the information concerning the background, character, and conduct of a defendant that a district court may receive and consider for the purpose of imposing an appropriate sentence.” *Id.* citing 18 U.S.C. § 3661.

In this case, Ms. Wade is requesting that the Court sentence her to a term of probation. While the offenses of conviction are serious, the offenses involved no violence, weapons, controlled substances, or physical injury. As stated earlier, Ms. Wade has no prior criminal convictions or prior arrests.

Other than her involvement in the instant offense and her twenty years of service as a Broward Sheriff Office Detention Deputy, Ms. Wade has had no prior involvement in the criminal justice system.

One of the goals of sentencing is to avoid unwanted sentencing disparities. The vast majority of Broward Sheriff Officers that were convicted of fraudulently obtaining PPP loans were sentenced to a term of probation.¹ For instance, in *United States v.*

¹ Alexandra Acosta, 23-60170-Cr-Scola sentenced to 4 months imprisonment

George Anthony, III 23-80168-Cr-Cannon, sentenced to 1 year probation

Katrina Brown, 23-60169-Cr-Altman, sentenced to 3 years’ probation

Rorie Brown, 23-60174-Cr-Williams, sentenced to 1 year probation

Keshondra Davis, 23-60184-Cr-Altman, sentenced to 2 years’ probation

Allen Dorvil, 23-60185-Cr-Moore sentenced to 2 years’ probation

Gonder, 24-60003-KMW, a Broward Sheriff Office Lieutenant was convicted of fraudulently obtaining PPP loans totaling \$168,248.41. That defendant was sentenced to a 5-year term of probation. *United States v. Gonder*, 24-600003-Cr--KMW (DE 30).

Closer to home, Haydee Rivero, the co-conspirator in the instant case was sentenced to a 36-month term of probation in case number 24-60124-Cr-RS (DE 33). Ms. Rivero created and uploaded false IRS schedule C forms that were included in the PPP loan applications for Mr. and Mrs. Wade, and several others, and caused losses to the SBA totaling \$229,163. PSIR ¶ 52. Furthermore, it was Haydee Rivero that solicited Tracy Wade to apply for a PPP loan.

Another factor listed in § 3553 is the need to provide restitution to any victims in the case. Here, Mr. and Mrs. Wade have already paid the \$41,666.00 in restitution to be ordered in this case. (DE 216).

Ritchie Dubuisson-23-60183-Cr-Martinez sentenced to 5 years' probation

Keith Dunkley -23-60197-Cr-Smith sentence to 1 year probation

Alexis Greene 23-60182-Cr-Dimitrouleas sentenced to time serve 1 day, 3 years supervised release.

Jewell Johnson 23-60172-Cr-Martinez sentenced to 5 years' probation

La'Keitha Lawhorn, 23-60171-Cr-Bloom – sentenced to time served 1 day, 3 years' supervised release

Ancy Morancy, 23-60191-Cr-Bloom – sentenced to 2 years' probation

Derrick Nesbitt, 23-60193-Cr-Bloom – sentenced to 5 years' probation

Jean Pierre-Toussant, 23-60189-Cr-Moore – sentenced to 1 year probation

Marcus Powell, 23-60192-Cr-Gayle – sentenced to 1 year probation

Stephanie Smith, 23-60203-Cr-Bloom (Cohn) -sentenced to 7 months imprisonment

Ms. Wade has strong family and community support as evidenced by the letters sent to the Court by her friends and family. See (DE 217). The letters describe Ms. Wade as a generous, compassionate and a pillar of her community.

A sentence of probation is a statutorily permissible sentence. PSIR ¶ 110. Additionally, because the advisory guideline imprisonment range is in Zone B of the Sentencing Table, the minimum advisory term of imprisonment can be satisfied by a sentence of probation that includes a condition of home detention. PSIR ¶ 105; USSG § 5C1.1(c)(3).

Moreover, because Ms. Wade received an adjustment under USSG § 4C1.1 and the advisory guideline imprisonment range is in Zone B, a sentence other than imprisonment is encouraged. PSIR ¶ 106. If a defendant is a nonviolent first offender, and the applicable guideline range is in Zone A or Zone B of the Sentencing Table, the Court should consider imposing a sentence other than imprisonment. USSG § 5C1.1, comment. (n.3); *see* 28 U.S.C §994(j).

Conclusion

Based on the foregoing facts, arguments and citation to authorities, the defendant Carolyn Wade respectfully requests that the Court grant her motion for Downward Booker Variance and impose a sentence other than imprisonment.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing pleading was electronically filed with the Clerk of the Court via CM/ECF. I also certify that the foregoing pleading was served electronically on this date on all counsel of record via Notice of Electronic Filing generated by CM/ECF on January 15, 2025.

Respectfully submitted,

/s/ Daryl E. Wilcox.---
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