

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 TRACY WADE'S MOTION FOR A DOWNWARD
BOOKER VARIANCE

Defendant, *Tracy 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, Mr. Wade states:

Background

Mr. Wade awaits sentencing after having been convicted of one count of conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349; two 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 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 Mr. Wade and his wife, Carolyn 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. Carolyn 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 indictment 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, Mr. Wade's total offense level is 11 and his 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. Mr. Wade is seeking such a sentence.

Argument and Memorandum of Law

Mr. Wade is a 52-year-old married man and a Marine Corps Veteran with no prior criminal convictions or arrests. PSIR ¶¶ 68-72, 77. He is the father of three adult children and one 11-year-old minor child. PSIR ¶¶ 78-80.

Mr. Wade has owned and operated the Wade Funeral Home for 13 years. PSIR ¶ 92. Additionally, Mr. Wade worked as a Broward Sheriff's Deputy for approximately 25 years. PSIR ¶ 103.

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 of 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, Mr. Wade is requesting that the Court impose a sentence other than a sentence of imprisonment. While the offenses of conviction are serious, the offenses involved no violence, weapons, controlled substances, or physical injury.

Other than his involvement in the instant offense and his twenty years of service as a Broward Sheriff Office Detention Deputy, Mr. 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

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

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*, 24-60003-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 Mr. 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).

Mr. Wade further submits that a sentence of imprisonment is not necessary to deter him from future criminal conduct. The United States Sentencing Commission has found that older individuals are substantially less likely to recidivate as compared with younger offenders. See U.S. Sentencing Comm'n, *The Effects of Aging on Recidivism Among Federal Offenders* (2017), <https://www.ussc.gov/research/research-reports/effects-aging-recidivism-among-federal-offenders> at 3. The Sentencing

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

Commission found that only 12.2 % of offenders between the age 50 and 59, who have some college education will reoffend. *Id.*, Appendix, A-39.

Mr. Wade has strong family and community support as evidenced by the letters sent to the Court by his friends and family. *See* (DE 217). The letters describe Mr. Wade as honest, generous and decent man who has made a positive impact on his 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 Mr. 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, Tracy Wade, respectfully requests that the Court grant his 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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