

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 22-CR-80157-AHS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DEREK JAMES ACREE,

Defendant.

SENTENCING MEMORANDUM

COMES NOW the Defendant, **DEREK JAMES ACREE**, through his undersigned attorney, and respectfully submits his sentencing memorandum.

INTRODUCTION

The defendant pled guilty to a one-count Indictment, charging Conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349.

A stipulated factual basis was submitted in support of his guilty plea. In the stipulation, Mr. Acree acknowledged his wrongdoing, accepting full responsibility for his actions, He agreed to make restitution in the amount of \$1,262,600.

The government and defense agreed to jointly recommend that the Court neither depart upward nor downward, nor seek a variance from the applicable Guidelines. According to the PSI calculations, based upon a total offense level of

22 and a criminal history category of I, the guidelines imprisonment range is 41-51 months. [See PSI paragraph 94).

Objection to 16-level enhancement

Mr. Acree subsequently filed a singular objection to the Guidelines calculation challenging the loss calculation. [D.E. 18] The government filed a response contending that the loss calculation was properly computed and urging this Honorable Court to overrule the objection. [D.E. 22]

Mr. Acree, acknowledges, that in the plea agreement the parties agreed, *inter alia*, that the defendant should receive a 16-level upward adjustment based on a loss of more than \$1,500,000 but not greater than \$3,500,000 pursuant to Section 2B1.1(b)(1). Prior to filing his objection, undersigned counsel notified the government that he readily acknowledged the agreed upon 16-level adjustment in the plea agreement, but respectfully, was filing the objection because the caselaw supporting the objection was issued after the plea agreement, and the defense desired to perfect the record on the issue, in the event that the 11th Circuit ultimately ruled in the same manner as the Third Circuit.¹

Mr. Acree in no way seeks to undermine the agreed upon terms of his plea agreement, to which he is grateful to the government for agreeing, but files the loss enhancement objection based on the evolving nature of the law pertaining to “actual

¹ See *United States v. Banks*, 55 F.4th 246, 19-3812, 2002 WL 17333797 (Nov. 30, 2022).

vs. intended loss” and as stated, to perfect the matter in the event the law changes favorably in this Circuit.

Mr. Acree’s overall character and life’s experiences

The instant sentencing memorandum is meant to provide this Honorable Court with an understanding of Mr. Acree’s upbringing and life’s experiences, as well as to characterize the nature of the facts and circumstances which bring him before the Court for sentencing.

To be clear, Mr. Acree knowingly and intentionally violated the laws against wire fraud. This is indisputable. Further, nobody held a gun to his head or otherwise forced or coerced him to do what he did. Moreover, as a practicing attorney, he certainly knew better. He has disgraced himself, and embarrassed himself and his family. His 11-year old son has been affected by his actions, and Mr. Acree will miss out on some very important time, watching his son grow and develop and also miss out on co-parenting him during some very formative years.

Notwithstanding his obvious culpability and criminal responsibility, a review of the PSI report shows that Mr. Acree grew up under arduous and difficult circumstances that warrant consideration by this Honorable Court. Further, the expert reports prepared by Dr. Neville Marks and Mr. Stanley McKnight support that Mr. Acree has learned from his mistakes and is on a far better path and moving forward in a positive direction. [D.E. 21]. These positive developments since his

arrest support that, the likelihood of his engaging in future criminal activity is minimal.

Mr. Acree's business partner, identified in the PSI as CCI possessed a far superior skill set, and was the guiding force behind the business ventures. Mr. Acree met CCI approximately 10 years ago when they were both employed with a joint venture between 2 multi-national corporations. CCI demonstrated a strong knowledge of the industry and was instrumental in the day-to-day business operations. Mr. Acree placed him on a "pedestal of sorts", working diligently under CCI's direction. Mr. Acree absolutely should have stood up to CCI, when prompted to engage in wrongdoing, and failed to do so. For this failure to act, he is deeply regretful and feels a profound sense of remorse. Once again, this in no excuse for Mr. Acree's actions, however, it can fairly be said that CCI had a negative influence on Mr. Acree, and this coupled with the financial stress of the business ventures and the overall impact of operating a business during the height of Covid factored into Mr. Acree's failed judgment and criminal conduct.

Mr. Acree grew up in a very difficult and dysfunctional environment. His parents ultimately divorced; after years of alcohol abuse in a very hostile home. Mr. Acree witnessed his father engage in violent outbursts, due to struggles with Mr. Acree's mom. Mr. Acree would often run and hide during these outbursts.

Mr. Acree was sexually molested by his grandfather on one occasion; and his mother often fondled his penis from the age of 7 to 12. The horror of this prolonged and continual abuse cannot be overemphasized, and justifies imposition of a sentence at the low-end of the guidelines. *See U.S. v. Mapp*, 2007 WL 485513 (E.D. Mich Feb. 9, 2007) (Sentencing Court decreased sentence based in part on defendant's upbringing where his parents never married and frequently physically abused each other. He hid in closets or outside for hours and his grandmother took custody of him at age 5 and raised him.)

In *Santosky v. Kramer*, 455 U.S. 745, 789 (1982) (Rehnquist, J., joined by Burger, C.J., White, and O'Connor, J., dissenting), the Supreme Court stated that "[i]t requires no citation of authority to assert that children who are abused in their youth generally face extraordinary problems developing into responsible, productive citizens". Those profound words uttered by the Court four decades ago, ring as true as ever.

Title 18, United States Code, Section 3553 (a) governs the Court's analysis as to an appropriate sentence.

Title 18, United States Code, Section 3553 provides in pertinent part:

a) Factors To Be Considered in Imposing a Sentence.— The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

- (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;

A balancing of the 3553 (c) factors justifies a low-end guideline sentence of 41-months. Mr. Acree will be receiving a prison sentence for the first time. See generally *U.S. v. Qualls*, 373 F. Supp. 2d 873, 877 (E.D. Wis. 2005) (generally a lesser prison term is sufficient to deter one who has not been subject to prior lengthy incarceration).

Mr. Acree' individual characteristics, his difficult upbringing, and the need for mental health and substance abuse counseling support that a sentence of 41-months is sufficient but not greater than necessary to comply with the sentencing factors in 3553 (c). Additionally, Mr. Acree respectfully requests that the Court recommend that he enroll in and participate in the RDAP program, to address his alcohol problem as supported by the expert reports of Dr. Neville Marks and Mr. Stanley McKnight. [DE 21]

CONCLUSION

For the reasons stated above, Mr. Acree respectfully requests that this Honorable Court enter a sentence at the low-end of the Guidelines, of 41-months

imprisonment followed by supervised release and that a recommendation be made by this Honorable Court that he be placed in the RDAP program.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 31, 2022, I electronically filed the foregoing document with the Clerk of Court using CM/ECF.

/S/_____
Christopher A. Haddad, Esq.