UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CRIMINAL #24-CR-10007-MJJ

UNITED STATES

v.

GARDY ALEXANDRE

DEFENDANT'S SENTENCING MEMORANDUM

INTRODUCTION

Defendant Gardy Alexandre ["Alexandre"] comes before the Court for sentencing in this PPP loan fraud conspiracy case. Although he will be the first of three co-defendants to be sentenced, Alexandre is the least culpable according to the government's statement of offense conduct set forth in the Presentence Report. He is a 52 year-old college graduate who works as a tax preparer. Alexandre suffers from mental illness, including depression and anxiety, and has long struggled with alcoholism. While he has lived in the United States as a lawful resident alien for nearly forty years, he is a citizen of Haiti who faces likely deportation to that war-torn country upon the completion of his sentence. Alexandre understands that his participation in defrauding the government of pandemic loan assistance funds was a serious crime which merits some period of incarceration. For the reasons set forth herein, he respectfully requests that the Court exercise its discretion to impose a downward variance from the Advisory Guidelines Range and sentence him to a year and a day in the custody of the Attorney General, to be followed by three years of supervised release, along with restitution in an amount to be determined by the Court. Such a sentence is sufficient, but not greater than necessary, to fulfill the purposes set forth in 18 U.S.C. §3553(a)(2).

I. THE DEFENDANT'S BACKGROUND.[1]

Gardy Alexandre was born in Haiti and raised by his grandmother there. He was subjected to physical and psychological abuse by a relative as a child. In 1986, at age 14, he was sent to New York City to live with his mother. He graduated from high school, attended Ohio Wesleyan University, and transferred to Stony Brook University, where he starred on the Men's Soccer Team and graduated with a B.A. in 1995.[2]

Alexandre enlisted in the U.S. Army in 1998 and served until 2000, when he received a general discharge under honorable conditions. He has spent most of the last 20 years living in Florida, where he is currently self-employed as a tax preparer. He previously worked as an admissions adviser at Palm Beach State College. He has never been married and has four children, included two under the age of 14. He is fluent in three languages–English, French, and Creole. . His criminal history consists almost entirely of multiple OUI charges over the past two decades.

Alexandre has struggled with alcoholism for his entire adult life. He has been receiving treatment for alcoholism, a gambling disorder, depression, and anxiety from the Veterans Administration since 2019. His mental health appears to have worsened since his mother died in 2022. Facing both impending imprisonment and potentially lifelong separation from his children and family, Alexandre's struggle with anxiety and depression has worsened as he approaches his sentencing date. He continues to receive mental health treatment and is on several prescription medications

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[1] This section is based primarily on information set forth in the Presentence Report.

[2] An excerpt from the Men's Soccer Team record book, documenting that Alexandre still holds the all-time record for goals and points scored in a season, is appended hereto as Exhibit 1. He went by his middle name, "Greg", in college.

Although Alexandre has lived in the United States as a lawful resident alien for nearly four decades and his entire immediate family lives here as well, he never applied for or obtained U.S. citizenship. As a result, he faces the likely prospect of deportation to his native country of Haiti upon completion of his sentence. *See* PSR, ¶80. On information and belief, our government recently resumed deportations to that violent and chaotic place.

II. OFFENSE CONDUCT.

Alexandre's offense conduct, along with that of his two co-defendants, Adiana Pierre and Wallace Ford, is accurately set forth at ¶¶12-28 of the Presentence Report. As that report indicates, Alexandre first applied unsuccessfully for a PPP loan for his business, Palm Beach Community House. PSR, ¶19. Thereafter, Pierre recruited him and submitted his financial information to co-defendant Ford, who submitted a new PPP application for PBCH using fraudulent tax documents prepared by Ford. That loan was funded. PSR, ¶20. No false documents were prepared by Alexandre, and Alexandre had no contact with Ford..

At Pierre's behest, Alexandre also recruited other PPP borrowers in return for a fee (a percentage of the funded loan paid by the borrower). Alexandre submitted financial information of those additional borrowers to Pierre, who passed it on to Ford, who submitted PPP applications based on fraudulent documents he created. PSR, ¶¶21-23. Once again, Alexandre did not prepare or submit any false documents on behalf of any of these borrowers, though he did receive a commission when the loans were funded.

According to the PSR, the loss amount attributed to Alexandre is $1.455 million. PSR, ¶28 n.1. That figure, while significant, is approximately 20 percent of the loss amount of over $7 million attributed to his two co-defendants, Pierre and Ford. *Id.* Alexandre also received far less in payments from borrowers than his two co-defendants. PSR, ¶28. That, of course, does not negate or minimize his crime. It is, however, clearly relevant for purposes of proportionality.

III. ADVISORY GUIDELINE RANGE.

Alexandre agrees with Probation that his Total Offense Level under the U.S.S.G. is 18, and his criminal history score is 2, placing him in CHC II. Accordingly, the advisory guideline imprisonment range is 30-37 months.

The government has filed an objection to Probation's guidelines calculation, claiming that Alexandre's Total Offense Level is 19, rather than 18. The government's difficult-to-follow argument relies on the interplay between USSG §2B1.1 (fraud guideline) and §2S1.1 (money laundering guideline). The government claims that the base offense level should be seven, not six.

The government is mistaken. Money laundering proscribed under 18 U.S.C. §1957 is not referenced in §2B1.1, and §2B1.1(a)(2) states that the base offense level for offenses not listed in that guideline is six. Several sessions of this Court have sided with Probation's position, rather than the government's, on this knotty issue. *See, e.g., United States v. Njei*, No. 21-CR-10196-FDS ; *United States v. Iwuanyanwu,* No. 19-CR-10119-DJC ; and cases cited in the PSR Addendum, p. 39. In any event, to the extent that there is any ambiguity in applying the guidelines, the rule of lenity requires that the ambiguity be resolved in the defendant's favor. *United States v. Pinkham*, 896 F.3d 133, 138 (1st Cir. 2018).

IV. OTHER RELEVANT FACTORS.

A. Alexandre's CHC Overstates the Seriousness of his Criminal Record.

Alexandre's criminal history is set forth at ¶¶52-72. That record reflects his long history of arrests for driving under the influence of alcohol and related offenses. While driving under the influence is a criminal offense, in Mr. Alexandre's case those offenses stemmed from his longstanding struggle with alcoholism. That, of course, is no excuse, but it explains why he has a criminal record at all. In sum, CHC II substantially over-represents the seriousness of his criminal history, so a downward departure on that basis is warranted under U.S.S.G., §4A1.3(b)(1).

B. Alexandre's Immigration Status.

The likelihood that Alexandre will be deported to Haiti after living in the United States as a lawful permanent resident for the past four decades is not, strictly speaking, a sentencing factor under §3553(a). Yet such a life-altering and devastating collateral consequence seems relevant to fashioning an appropriate term of imprisonment, as well as to the need (or lack thereof) for specific deterrence in this case.

C. Alexandre's Depression.

Depression, a mood disorder with neurobiological underpinnings, causes "disrupted activity in the orbitfrontal areas of [] brains (the same areas used to make emotionally charged decisions) and dorsolateral areas (used for non-emotional decision making)." Sahakian, B., and LaBuzetta, J. *Bad Moves : How Decision Making Goes Wrong, and the Ethics of Smart Drugs,* p. 132, Oxford University Press USA-OSO, 2013. *ProQuest Ebook Central.* http://ebookcentral.proguest.com/lib/socal/detail.action?docID=l 141993. These neurobiological abnormalities result in impaired decision-making, increasing the likelihood that a person suffering from depression will make riskier and more impulsive decisions and suffer significant impairments in problem-solving, strategizing, and assessing the long-term consequences of decisions. *Id.* at 132-133. Alexandre's depression is not an excuse for his offense conduct, but it may help to explain why he went down that path.

D. Plea Agreement.

The plea agreement in this case provides that the government will recommend a sentence of incarceration of no more than 27 months, representing a downward variance from the advisory guideline sentencing range. While the Court, of course, is not bound by the recommendation of either party, the fact that the government is recommending a sentence below the applicable guideline range strongly suggests that Alexandre's offense is outside the heartland of a million-dollar fraud offense.

E. JSIN Information and PPP Fraud Sentences in this District.

According to the Judiciary Sentencing Information (JSIN) set forth in the Presentence Report at ¶130, defendants sentenced under §2S1.1 with a Final Offense Level of 18 and a Criminal History Category of II during the last five years received an average sentence of 19 months imprisonment.

A number of defendants convicted of comparable offenses involving fraudulent PPP loans have been sentenced in this District to date. They include: *United States v. Bernadin*, No. 22-CR-10110-IT (15 months incarceration for fraudulent loan of $419,000); *United States v. Buie*, No. 22-CR-0042-DPW (18 months incarceration for fraudulent loans totaling $285,000); *United States v. Vo,* No. 22-CR-10042-WDY (24 months incarceration for fraudulent loans over $15 million); *United States v. McIntyre*, No. 21-CR-10162-DJC (24 months incarceration for fraudulent loans totaling $679,000); and *United States v, Santana*, No. 22-CR-10221-FDS (29 months incarceration for fraudulent loan of $2.5 million).

V. DISCUSSION.

As the Court well knows, the core principle embodied in the sentencing statute, 18 U.S.C. §3553, is that the sentence imposed should be "sufficient, but not greater than necessary" to fulfill the purposes of sentencing set forth at §3553 (a)(2), including punishment, general deterrence, specific deterrence, and rehabilitation. In the absence of a binding plea agreement, the application of those criteria in a particular case is largely left to the Court's discretion.

The COVID pandemic was unique in modern American history. It affected everyone, some more than others. Those like Alexandre, who suffer from mental illness and substance abuse, faced particularly acute challenges when they were cut off from treatment. The PPP loan program, while highly beneficial to small businesses at a time of economic paralysis, also created an opportunity to commit fraud, and many succumbed to that temptation. That is not an excuse; it's a fact. And those who engaged in such fraud and got caught, like Alexandre, must face appropriate legal consequences for their offenses.

Gardy Alexandre didn't set out to commit PPP fraud. But when his co-defendant, Adiana Pierre, invited him to go down that road, he willingly accepted. He didn't falsify any financial documents, but he knew that the loan he received was not legitimate. He didn't falsify financial information or submit loan applications for anyone else, but he passed their financial information on to Pierre and received a cut of the proceeds when their fraudulent loans were funded.

The parties agree that Alexandre needs to be sentenced to prison, but for how long? Apart from the problems caused by his protracted alcoholism, he has lived an offense-free life, worked hard, and contributed to his community. He faces likely deportation to a violent and chaotic country he doesn't know when he completes his prison sentence. He has accepted responsibility for his misconduct and faces an uncertain and perhaps terrifying future. Under the circumstances, it is hard to fathom why it is either necessary or appropriate to consign him to federal prison for more than two years, as urged by the government.

VI. RECOMMENDATIONS.

The defendant respectfully recommends that he be sentenced to a term of a year and a day in the custody of the Attorney General. Such a sentence is sufficient, but no more than necessary, to fulfill the statutory sentencing objectives set forth in §3553.

He further requests that the Court recommend that he receive alcohol abuse and mental health treatment while in custody. He requests that the Court recommend that he be classified to serve his sentence at an institution in or near Florida, where his children reside. The defendant further recommends that he be placed on supervised release for a term of 24 months with special conditions of treatment for alcoholism and mental health and abstinence from alcohol and gambling. He further requests that restitution be ordered, as required by statute, and that the Court impose neither forfeiture nor a fine based on his inability to pay.[3]

Respectfully submitted,

GARDY ALEXANDRE

By his attorney,

/s/ James L. Sultan .

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[3] A copy of Alexandre's net worth statement is appended hereto as Exhibit 2.

CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF System will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on May 21, 2024.

/s/ James L. Sultan

James L. Sultan