UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 23-20295-Cr-ALTONAGA/DAMIAN

UNITED STATES OF AMERICA

v.

ARASHIO HARRIS,

Defendant.
_________________________________/

GOVERNMENT'S RESPONSE TO DEFENDANT'S SENTENCING MEMORANDUM IN SUPPORT OF MOTION FOR DOWNWARD VARIANCE FROM THE UNITED STATES SENTENCING GUIDELINES AND RECOMMENDED SENTENCE (DE 18)

COMES NOW the United States, by and through the undersigned Assistant United States Attorney, and files this Response to defendant Arashio Harris' Sentencing Memorandum in Support of Motion for Downward Variance from the United States Sentencing Guidelines and Recommended Sentence, stating as follows:

Factual Background and Procedural History

The facts of this case are laid out in the Stipulated Factual Basis (DE 11) the defendant admitted to at his change of plea and in the Pre-Sentence Investigation Report ("PSR") (DE 20). This Response readopts and incorporates those facts herein, and will focus solely on those that government believes are most relevant to the sentencing determination this Court must make.

Throughout the year-long period of time that the defendant was engaged in his fraudulent activity, he was employed by the Miami-Dade Corrections and Rehabilitation Department ("MDCRD") as a Correctional Sergeant, earning approximately $9,200 per month. PSR at ¶¶ 16, 75; DE 11 at 1. At the same time, the defendant was the owner and president of both The Good Family Property Solutions Inc. ("Good Family") and Flying Lions LLC ("Flying Lions"), which were created under Nevada law by the defendant in 2015 and subsequently registered with the State of Florida. PSR at ¶¶ 76, 77; DE 11 at 1. It was these two entities that the defendant used to fraudulently obtain multiple large COVID-19 relief loans while he was still employed full-time with MDCRD.

In particular, the defendant, through Good Family, submitted a fraudulent application directly to the Small Business Administration ("SBA") seeking and obtaining an Economic Injury Disaster Loan ("EIDL") and an EIDL advance, which together totaled $23,500. PSR at ¶ 22; DE 11 at 5-6. He also submitted fraudulent applications in the name of Good Family for two Paycheck Protection Program ("PPP") loans, allowing him to fraudulently obtain a first draw PPP loan of approximately $129,275 in July 2020, and a second draw PPP loan of $129,276 in April 2021. PSR at ¶¶ 24- 27; DE 11 at 7-8. Finally, using Flying Lions, he fraudulently applied for and obtained from the SBA an EIDL of approximately $150,000. PSR at ¶ 23; DE 11 at 6.

These fraudulent applications contained numerous false statements, including misrepresentations about the companies' gross revenues, monthly payroll, and numbers of employees, all designed to cause the SBA and the private lenders to approve the loan applications and provide Harris' companies with large relief loans. As a result of these four fraudulent applications, the defendant obtained approximately $258,551 in PPP loan proceeds and approximately $173,500 in EIDL funding, for a total of approximately $432,051 in COVID-relief that he was not entitled to.

The Advisory Sentencing Guidelines Range

Under the current post-*Booker* sentencing regime, this Court is required to first compute an advisory Guidelines range, before it applies the 18 U.S.C. §3553(a) factors to determine the defendant's ultimate sentence. *See United States v. Crawford*, 407 F.3d 1174, 1178 (11th Cir. 2005). The PSR computed the Total Offense Level to be level 16, with the defendant being in Criminal History Category I, leading to an advisory Guidelines sentencing range of 21-27 months (PSR at ¶¶ 41, 44, 89). This is the same pre-variance advisory Guidelines sentencing range that the government and the defendant agreed to jointly recommend to the Court as part of the Plea Agreement. DE 10 at ¶ 7.

The §3553(a) Factors and Defendant's Request for a Downward Variance

Relying on the § 3553(a) factors, the defendant asks this Court to vary downward and impose a sentence of twelve (12) months of home confinement along with community service. DE 18 at 1. In his Motion, the defendant focuses primarily on: his dedication to his family; his community service efforts; his faith; and his health issues. DE 18 at 1-4. However, the defendant today filed, and the Court granted, a separate unopposed Zero-Point Offender Motion seeking a two-level downward variance based on the fact that a Zero-Point Offenders two-level downward adjustment will become effective on November 1, 2023.[1] DE 21, 22.

The Plea Agreement addresses the variance issue, with the government specifically agreeing to not oppose the defendant's request for a two-level downward variance, based on the Zero-Point Offender amendment, to an advisory Guidelines range of 15-21 months incarceration in exchange for the defendant expressly agreeing not to later seek a further downward variance based on that provision once it becomes effective

[1] The downward adjustment will be found at USSG § 4C1.1.

on November 1, 2023. However, the same paragraph of the Plea Agreement also expressly stated that while the government would not oppose a two-level variance down to a 15-21 month advisory sentencing range to reflect the upcoming Guidelines amendment, the government "remain[ed] free to oppose a variance sought on any other grounds." DE 10 at ¶ 9.

In light of the Court having now granted the two-level variance requested in DE 21, which the government believes results in an advisory Guidelines level 14 sentencing range of 15-21 months, the government will use that advisory Guidelines range as the starting point for its argument regarding the § 3553(a) factors. Considering all the facts and circumstances of this case and this defendant in light of the § 3553(a) factors, the government, for the reasons explained below, opposes the defendant's request for a non-incarceration sentence of 12 months home confinement, and instead respectfully suggests that the reasonable, necessary, and appropriate sentence in this case should be 15 months imprisonment.

Section 3553(a)(1) – The Nature of Defendant's Offense

The first part of §3553(a)(1) focuses on the nature and circumstances of the offense committed. As set out in the Information (DE: 1), Stipulated Factual Basis (DE: 11), and PSR, the defendant's offense spanned more than one year and involved using entities to fraudulently apply for and receive two PPP loans as well as two EIDLs and one EIDL advance, thereby obtaining approximately $432,000 in COVID-19 relief funds that he was not entitled to.

The programs providing these relief funds were designed to assist actual small business owners and their employees who were trying to deal with the real financial hardships and business disruptions caused to them by the pandemic. The EIDLs were funded and paid directly by the SBA, while the PPP loans from private lenders were guaranteed by the SBA, and in this case, the SBA reimbursed the lenders in full pursuant to the terms of that guarantee program. Abusing these well-intended COVID-related emergency relief programs by fraudulently obtaining multiple large loans to which he was not entitled clearly was a serious offense.

Here, the seriousness of the defendant's criminal conduct is enhanced not only by the fact that the defendant obtained multiple loans, but also by the fact that he was a State of Florida certified Miami-Dade Correctional Sergeant. The fact that the defendant was empowered and relied upon to play an important role in the criminal justice and rehabilitation system and instead chose to break the law for personal enrichment is a consideration that supports the government's request. Moreover, unlike those individuals whose employment or income was lost or seriously impacted by the pandemic, the defendant's full-time employment as an MDCRD Sergeant was unaffected by the pandemic and so this criminal activity cannot be minimized or excused as an aberrational response to an unexpected financial hardship caused by the COVID-19 crisis.[2]

Section 3553(a)(1) – The Defendant's History and Characteristics

The second part of §3553(a)(1) focuses on the history and characteristics of the

[2] For example, the PSR reflects that the defendant purchased a 2020 Ford F150 pickup truck for $58,547 on May 27, 2020. PSR at ¶ 81. This was after he applied for the Good Family EIDL and received the $9,000 EIDL advance and only days before he received the $14,500 in EIDL proceeds.

defendant. As reflected in the PSR, prior to engaging in the COVID-relief fraud to which he pled guilty, the defendant appears to have been a productive law-abiding citizen throughout his life. PSR at ¶¶ 42-48, 68-75. While this history does not excuse his serious crime, it is a factor to consider in setting the ultimate sentence, and was taken into account by the government in deciding to not oppose a limited two-level variance based on the soon-to-be-effective Zero-Point Offender adjustment and to recommend a sentence at the low end of the 15-21 advisory Guidelines sentencing range. Similarly, it should be a factor in the defendant's favor that he voluntary met with the agents early in the investigation, and after being notified of his target status, retained counsel to resolve the matter by pleading guilty for his crime.

The defendant also describes the numerous community service activities he engages in as well as those he intends to continue in the future. DE 18 at 2-3. These include an emphasis on helping young people avoid wrong choices. While these certainly are admirable activities, they cannot erase the fact that while he was counseling youth to avoid crime, he was committing his own crime, that being a more than one year-long fraud scheme that obtained $432,000 in COVID relief funds to which he was not entitled.

Section 3553(a)(2)

Section 3553(a)(2) is aimed at ensuring that the sentence imposed serves the various purposes stated in subparts (A) – (D), including imposing a sentence that reflects the seriousness of the offense and provides just punishment and promotes respect for the law, provides adequate deterrence, protects the public from a risk of recidivism, and provides the defendant with needed medical care in the most effective manner.

The undisputed seriousness of the defendant's criminal activity has already been discussed above. In light of that seriousness, the government believes that a crime of this nature should not merely result in home confinement and community service. Instead, it should include incarceration to truly provide just punishment and promote the needed respect for the law where the defendant repeatedly defrauded government relief programs set up to try to save small businesses and the jobs they provide.

Moreover, while the risk of recidivism appears low for this defendant, the government does not agree that a sentence of home confinement provides adequate deterrence to criminal conduct by others. Because potential offenders may consider the chance of ever being caught to be very low, if they see that those caught are not being imprisoned, but rather are only receiving home confinement and being ordered to pay the money back, it will send the wrong message to individuals who might be tempted to abuse government relief programs or otherwise commit fraud.[3] In contrast, the government believes its recommended sentence of 15 months in prison strikes a fair balance that sends a strong message of deterrence to others tempted by the lure of easy money but also fits within the mandate of imposing punishment that is sufficient but not greater than necessary to satisfy the proper purposes of sentencing.

In his Motion, the defendant also describes a litany of health conditions in support of his effort to avoid a sentence of incarceration. However, these medical conditions do

[3] The media has been rife with stories of frauds perpetrated by those who abused the relief programs created and/or funded by the CARES Act passed in the wake of the COVID-19 crisis.

not justify the very large variance the defendant is seeking here. To the extent the defendant needs medical attention, that can be provided by the Bureau of Prisons while the defendant is in custody. Indeed, the Bureau of Prisons successfully manages a large inmate population of all ages that includes numerous inmates with a litany of medical conditions. Moreover, the government notes that these medical conditions apparently did not prevent the defendant from maintaining his full time employment in the demanding position of an MDCRD Correctional Sergeant.

Section 3553(a)(3), (a)(4), (a)(5)

These subsections of §3553(a) require consideration of the types of sentences available, advisory Guidelines sentencing range and any relevant policy statements in determining the final sentence. The PSR lays out the advisory Guidelines in clear and concise terms, and also discusses the upcoming Zero-Point Offender two-level downward adjustment becoming effective November 1, 2023, and how it may be proper to make that adjustment in this case via a two-level downward variance. Indeed, the government is urging a sentence – 15 months incarceration – that is at the low end of the advisory Guidelines sentencing range that results from that two-level downward variance the Court granted today.

Section 3553(a)(6)

This sub-section focuses on avoiding sentencing disparity. The defendant cites no similar examples of criminal justice system supervisory employees using multiple corporate entities to fraudulently obtain numerous large COVID-relief loans totaling in excess of $400,000 receiving sentences of home confinement. Nor is there any other special factor present in this case that would raise the risk of sentencing disparity should a sentence at the low end of the new advisory Guidelines range be imposed.

Section 3553(a)(7)

This sub-section addresses the need to ensure that restitution is made. The 15 month sentence recommended by the government, with the real time served in prison likely to be reduced for good time credits, will provide meaningful punishment while still allowing the defendant to return to the community relatively quickly to seek employment and begin repaying the restitution that he owes to the SBA.

WHEREFORE, the government respectfully requests that this Court deny the defendant's request for a sentence of home confinement, and instead impose a sentence of 15 months incarceration, followed by a term of supervised release, along with restitution, a final order of forfeiture, and a $100 special assessment as mandated by law.

Respectfully submitted,

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