

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

5:23-CR-94-2D

MONICA FAYE BARNES,

Defendant.

JULY 28, 2023
SENTENCING HEARING

**(Pursuant to Standing Order 22-SO-1, portions of all guilty
plea and sentencing transcripts are restricted.)**

BEFORE THE HONORABLE JAMES C. DEVER III
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

On Behalf of the Government:

DAVID BERAKA, ASSISTANT U.S. ATTORNEY
U.S. Attorney's Office
150 Fayetteville Street, Suite 2100
Raleigh, North Carolina 27601

On Behalf of the Defendant:

DAVID WILLIAM LONG, ESQ.
POYNER SPRUILL, LLP
301 Fayetteville Street, Suite 1900
Raleigh, North Carolina 27601

AMY M. CONDON, CRR, RPR, CSR
Official Court Reporter
United States District Court
Raleigh, North Carolina
Stenotype with computer-aided transcription

1 (Friday, July 28, 2023, commencing at 9:26 a.m.)

2 P R O C E E D I N G S

3 THE COURT: We'll next take up the sentencing of
4 Monica Barnes.

5 (Pause in the proceeding.)

6 THE COURT: Good morning, Mr. Long. Are you and
7 Ms. Barnes ready to proceed?

8 MR. LONG: We are, Your Honor.

9 THE COURT: Mr. Beraka, is the United States ready?

10 MR. BERAKA: Yes, Your Honor. Thank you.

11 THE COURT: At this time I'd ask that Ms. Barnes be
12 sworn or affirmed.

13 (The defendant, Monica Faye Barnes, was duly sworn.)

14 THE COURT: Ms. Barnes, do you understand that
15 having been sworn, that your answers to my questions are
16 subject to the penalty of perjury; and if you were to lie to
17 me, you could be prosecuted for perjury or for making a false
18 statement?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Have you taken any kind of medicine or
21 any other substance in the last 48 hours that affects your
22 ability to hear and understand this proceeding?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: Do you know why you're here today?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Mr. Long, do you have any reason to
2 doubt Ms. Barnes' competence to go forward today?

3 MR. LONG: I don't, Your Honor.

4 THE COURT: Does the United States have any reason
5 to doubt Ms. Barnes' competence to go forward today?

6 MR. BERAHA: No, Your Honor.

7 THE COURT: Based on Ms. Barnes' answers to my
8 questions, my observations of her, and the answers from
9 counsel, I find that she is competent.

10 Ms. Barnes, you're here today having entered a plea
11 of guilty to the charge of conspiracy to commit wire fraud.
12 You entered a plea of guilty to that charge pursuant to a plea
13 agreement. I hereby accept the plea agreement.

14 The sentencing guidelines are no longer mandatory;
15 they're advisory. Nevertheless, I'm to take into account the
16 now-advisory guidelines.

17 I do this by initially making findings of fact and
18 calculating an advisory guideline range. I'll then consider
19 any motion that might be made that might move that range
20 either up or down. I'll then consider all arguments that
21 Mr. Long makes, both here in court and the ones he's made in
22 the memo he submitted, any statement you'd like to make, and
23 the arguments of the Assistant United States Attorney.

24 I'll then determine your sentence and I'll announce
25 it here in court today. That'll be the process we'll follow.

1 Mr. Long, did you receive a copy of the presentence
2 report?

3 MR. LONG: We did, Your Honor.

4 THE COURT: Ms. Barnes, did you speak with your
5 lawyer, Mr. Long, about that report?

6 THE DEFENDANT: I did, Your Honor.

7 THE COURT: At this time the Court directs that the
8 presentence report be placed in the record under seal.

9 In accordance with Rule 32 of the Federal Rules of
10 Criminal Procedure, the Court accepts as accurate the
11 presentence report, except as to matters in dispute as set
12 forth in the addendum.

13 I have reviewed the entire report, including the
14 addendum. The addendum does contain one objection from the
15 Government as to the restitution amount. I think that
16 objection is well-taken, and so I'll sustain that objection.

17 Are there any objections from the defense?

18 MR. LONG: None, Your Honor.

19 THE COURT: No other objections from the Government?

20 MR. BERAKA: That's right, Your Honor.

21 THE COURT: For purposes of Booker and its progeny
22 the total offense level is 13, the criminal history category
23 is I, the advisory guideline range is 12 to 18 months.

24 Does the defense object to that advisory guideline
25 range?

1 MR. LONG: We don't, Your Honor.

2 THE COURT: Does the Government object to that?

3 MR. BERAKA: No, Your Honor.

4 THE COURT: All right. I'll hear first from
5 Mr. Long, then I'll hear from Ms. Barnes, and then I'll hear
6 from Mr. Beraka, and I'll give Mr. Long the last word.

7 Mr. Long.

8 MR. LONG: Thank you, Your Honor.

9 As you mentioned, I submitted a sentencing
10 memorandum, as I typically do in these cases. I'm going to
11 deviate a little bit from that because I'm going to say
12 something in addition to that this morning, if I can.

13 Minnie's Banana Cups and Catering Service was a
14 pre-existing legitimate business in Wilson prior to COVID. It
15 was the type of business the PPP program was designed to
16 benefit.

17 Like many, Ms. Barnes was particularly vulnerable
18 during COVID and was a sitting duck when the vultures swooped
19 in with their too-good-to-be-true offer. The Whitaker group
20 prepared the fraudulent paperwork, which Ms. Barnes willingly
21 signed, on behalf of her business. As a result, the business
22 received \$145,000 plus in PPP funds and thus became a
23 statistic in the more than 15 million in PPP loans the
24 Whitaker group fraudulently placed.

25 For all of this, Ms. Barnes' business paid the

1 Whitaker group more than \$36,000. She stands before this
2 Court for sentencing as a result.

3 She accepts full responsibility. I have discussed
4 alternative sentencing. You know, the woman has never backed
5 away from work in her life as you can tell from the letters
6 that were attached to the sentencing memorandum, as well as
7 from the PSR. She has worked all her life and she will do
8 everything in her power to pay back this restitution, albeit
9 an enormous sum.

10 The dilemma is, you know, she's going to lose her
11 business if she gets active time and that will inhibit her
12 ability to repay. So it's the dilemma that this Court sees on
13 a regular basis.

14 I would ask that the Court consider, as I have in my
15 sentencing memorandum, some alternative sentencing with
16 community service. She does -- already does an awful lot of
17 community service; she can do more. And I would ask the Court
18 just to consider some kind of alternative sentencing in this
19 case.

20 THE COURT: Thank you.

21 At this time I'll hear from Ms. Barnes, if you'd
22 like to make a statement, ma'am.

23 THE DEFENDANT: Yes, sir.

24 Dear Judge James Dever, my name is Monica Barnes,
25 owner and sole proprietary of Minnie's Banana Cups and

1 Catering Service.

2 Before starting my business in 2016, I worked for
3 nearly 20 years at Branch Banking and Trust, BB&T, in the IT
4 section of mortgage.

5 In 2009, I earned an Associate's degree in business
6 management; and in 2013, I completed my degree in information
7 technology, a Bachelor of Science.

8 In July 2020, I accepted a position back in IT at
9 Truist, formerly BB&T, where I currently work today.

10 My dreams of cooking stems from my fond memories of
11 my mother who officially called Minnie. At a very early age,
12 she trained me how to cook up -- cook until her untimely
13 death. In honor of my mother, my business is now owned to
14 serve in the community and surrounding areas, but also to give
15 back to my community by providing free food on certain days to
16 feed those who are in need.

17 In addition to community outreach, Minnie's Banana
18 Cups provide hot meals during lunch hours and deliver lunches,
19 dinners, and cater church events, community colleges,
20 weddings, reunions, and so much more.

21 I accept full responsibility for my involvement, but
22 feel that I preyed -- I was preyed upon as a small business
23 and now I'm here pleading for mercy today.

24 I do understand the seriousness of this matter, and
25 I sincerely apologize. Please understand that it was not my

1 intention to be a part of anything fraudulent or anything that
2 would compromise my integrity.

3 As I am sure you are aware, I have never been in any
4 trouble with the law. I wish to continue to run my business
5 as I have so much more to offer to the community. I have
6 worked extremely hard for many years to build my brand, and I
7 would like to continue to run and grow my business to its full
8 potential.

9 Judge Dever, thank you for giving me this
10 opportunity to be heard. I hope that I have said something
11 today that has made a positive difference in your judgment.

12 THE COURT: Thank you, ma'am.

13 At this time I'll hear from Mr. Beraka on behalf of
14 the United States.

15 MR. BERAKA: Yes, Your Honor. Thank you.

16 Again, the Government in this case is going to
17 advocate for a custodial sentence within the guidelines, most
18 importantly, to avoid unwarranted sentencing disparities where
19 we have so many defendants in this scam who engaged in nearly
20 identical conduct.

21 Ms. Barnes is another defendant here who has
22 otherwise led an upstanding lifestyle. I don't believe that
23 she's going to re-offend. I think this is out of character
24 for her; but nonetheless, it's an extremely serious offense
25 involving a six-figure loss to the Government of an extremely

1 important program, and the need for deterrence can be greater
2 where we have just -- every several months there's a new kind
3 of total figure of the amount of COVID fraud nationally and
4 every time we see that, I worry that it's going to give --
5 it's going to give pause for the next time -- the next time
6 the national legislature is called on to be generous.

7 I know the Court, the Court has emphasized how
8 generous it has been and will be, and I hope that's the case
9 but these types of cases certainly compromise that.

10 As I said, I don't believe that Ms. Barnes is a
11 danger to the community. I don't think she's likely to
12 re-offend; but based on the nature and circumstances of the
13 offense, the need for deterrence, the need to avoid
14 unwarranted sentencing disparities, a guideline sentence is
15 appropriate, Your Honor.

16 THE COURT: Thank you.

17 Mr. Long, anything else? And any recommendations?

18 DEF ATTY: Nothing, Your Honor.

19 (Pause in the proceeding.)

20 THE COURT: All right, Ms. Barnes. The Court
21 recognizes its obligation to impose a sentence sufficient but
22 not greater than necessary to comply with the purposes set
23 forth in the statute.

24 I have considered all arguments that Mr. Long has
25 made, both here in court and in the memo. I have considered

1 your statement, ma'am. I have considered the position of the
2 United States. I have considered the advisory guideline
3 range.

4 Among other things, I'm to consider the nature and
5 circumstances of the offense and the history and
6 characteristics of the defendant, the need for the sentence
7 imposed to reflect the seriousness of the offense, to promote
8 respect for the law, and to provide just punishment; the need
9 for the sentence imposed to deter others who might choose to
10 engage in the criminal behavior that brings you here; the need
11 for the sentence imposed to protect the public from further
12 crime by you; the need for the sentence imposed to provide you
13 with needed educational or vocational training, medical care,
14 or other correctional treatment in the most effective manner;
15 the need to avoid unwarranted sentencing disparities.

16 The statute lists numerous other factors. I've
17 considered all those factors, although I won't mention each
18 one individually.

19 As for the nature and circumstances of the offense,
20 you did participate in this conspiracy to commit wire fraud.
21 As Mr. Long mentioned and Mr. Beraka mentioned, Congress set
22 up a system of PPP loans as a result of the pandemic to assist
23 small businesses who were adversely affected by COVID. And
24 the system, as with many government programs, is fundamentally
25 based on the honor system. It's based on people not lying,

1 not cheating, not stealing, people being virtuous, people not
2 trying to get something for nothing. And I think we have a
3 history in this nation, and I don't think that history is
4 going to change notwithstanding the rampant fraud in this
5 program, that when the least among us are hurting, we will set
6 up systems in our -- through our government, our national
7 government to help people. And those systems will
8 fundamentally be based on honesty and people being truthful
9 and people not lying and people not prioritizing greed over
10 virtue. And yet, that's what we have here.

11 I mean, you in your allocution said that you felt
12 you were preyed upon. As I understand it from reading your
13 report, it was your son, Dontrell, who got you involved in
14 this and shame on him for that.

15 But you also said, "It was not my intention to be
16 part of anything fraudulent." Well, filling out completely
17 fraudulent documents or signing them is being part of
18 something abjectly, absolutely, unequivocally fraudulent. It
19 is shameful behavior.

20 I've taken into account the arguments that you don't
21 have a criminal history, and you don't. It is a shame that
22 someone as intelligent and hardworking as you, you've got your
23 Associate's degree, your BS degree, had a career at BB&T and
24 Truist, had this other business, but decided to -- decided
25 essentially that your integrity could be bought for a little

1 more than \$100,000.

2 It's always interesting to see from where I sit what
3 is the price, what is the price, what can a person be bought
4 for? How many pieces of silver does it take to buy somebody?
5 And here we know, right? Here we know, a little more than
6 \$100,000. What does the fraudster say? Hey, you get this
7 money, you lie and you pay us \$36,000 and you get to keep a
8 little more than \$100,000 that you know you're not entitled
9 to.

10 And I think in these cases it's critically important
11 as a matter of general deterrence because I do not think this
12 nation's generosity is going to change. We will continue as a
13 people to try to help the least among us. And we will do it
14 through government programs that are based on the honor
15 system, based on people not lying to get money they don't
16 deserve. And as a result, everyone should know when they
17 think about it, if they think, "Hey, I'm going to lie to get
18 money I'm not entitled to," if they come here, they should
19 know you're going to prison.

20 And that's fair, because everybody is on notice.
21 Everybody is on notice. And I think it will stop some people.
22 I hope it does, because, as I said, I don't think our
23 generosity is going to change. We are always going to try and
24 help folks if there's a hurricane, there's another natural
25 disaster, heaven forbid, if there's another pandemic, that we

1 as a people will try and help folks.

2 And we do it in other programs like Medicare and
3 Medicaid. We have systems -- we cannot possibly hire enough
4 auditors on the front end to say, Oh, yeah, all of this is
5 honest. It all checks out. No. They pay. And sadly, there
6 have always been with us and always will be with us those who
7 prioritize greed over other things, and those who do that in
8 connection with programs like this are going to go to prison.

9 So I'm not going to impose a noncustodial sentence.
10 I don't think that would meet the objective of general
11 deterrence, and I don't think it would be just punishment
12 because there undoubtedly were people who were approached with
13 this scheme who said, "These are lies. This isn't true. I'm
14 not entitled to that money. I'm not going to submit this
15 paperwork." And good for them for doing the right thing. But
16 I suspect some of those people said, "Look at my neighbor, she
17 lied and got that money and she got this and that and paid
18 this and that and I didn't do it and I'm struggling, and I
19 don't think that's fair." But them doing the right thing and
20 hearing that justice is done on the back end I suspect will
21 help validate for them that they, in fact, did the right thing
22 by choosing not to lie, by choosing not to let greed rule the
23 day when they made these types of decisions.

24 So having fully considered the entire record in the
25 case, all the 3553(a) factors, all the arguments that have

1 been made by each side, it's the judgment of the Court that
2 Monica Faye Barnes is hereby committed to the custody of the
3 Bureau of Prisons to be imprisoned for 12 months and one day.

4 Upon release from imprisonment, you'll be placed on
5 supervised release for three years.

6 After carefully considering the provisions of
7 3583(d) and 3553(a), you shall comply with the mandatory and
8 standard conditions of supervision adopted in the Eastern
9 District of North Carolina as referenced in the governing
10 standing order.

11 The Court finds that those conditions reasonably
12 relate to the 3553(a) factors, impose no greater deprivation
13 of liberty than necessary under 3553(a), and comport with
14 Fourth Circuit cases to include U.S. v. Singletary, 984 F.3d
15 341 (4th Cir. 2021).

16 You shall comply with the following special
17 conditions which the Court imposes based on statutory
18 requirements, the nature of the offense conduct, your history
19 and characteristics, the need to pay restitution and to
20 adequately supervise you based on these factors, including the
21 restitution amount:

22 You shall submit to financial or consumer credit
23 counseling as directed by probation.

24 You shall not incur new credit charges or open
25 additional lines of credit without approval of probation.

1 You shall provide probation with access to any
2 requested financial information.

3 You must make restitution in accordance with 18
4 U.S.C., Section 3663 and 3663(a) or any other statute
5 authorizing restitution.

6 You shall cooperate in the collection of DNA as
7 directed by probation.

8 The drug testing conditions required by 18 U.S.C.,
9 Section 3608 are suspended based upon my determination that
10 you impose a low risk of future substance abuse.

11 You shall pay a special assessment of \$100, which is
12 due immediately.

13 You owe restitution to the Small Business
14 Administration in the amount of \$153,711.46.

15 You're without the ability to pay interest,
16 therefore, interest is waived. Any payment that is not
17 payment in full shall be divided proportionately among the
18 victims named.

19 You shall be held jointly and severally liable for
20 restitution along with your co-defendants in this and related
21 cases to include Dontrell Rayshare Barnes, in that same
22 amount; Quentin Allen Jackson, in that same amount; Schunda
23 Coleman, in that same amount; Edward Sheldon Whitaker, in that
24 same amount. However, no further payment shall be required
25 after the sum of the amount actually paid by all defendants

1 has been fully covered as to the compensable victim injuries.

2 I'm not going to impose a fine in light of the
3 restitution.

4 Payment of restitution shall be due and payable in
5 full immediately. However, because you can not pay in full
6 immediately, you'll pay through the Inmate Financial
7 Responsibility Program in installments of \$25 a quarter.

8 Having considered your financial resources and
9 ability to pay, I order that any balance still owed at the
10 time of release shall be paid in installments of \$200 a month
11 to begin 60 days after your release from prison.

12 At the time of your release, probation shall take
13 into account your ability to pay restitution and the Court can
14 make any needed modification of the payment schedule.

15 I do think I properly calculated the advisory
16 guideline range, but I announce pursuant to U.S. v.
17 Gomez-Jimenez, 750 F.3d 370 (4th Cir. 2014) and U.S. v.
18 Hargrove, 701 F.3d 156 (4th Cir. 2012), that I'd impose the
19 same sentence as an alternative variant sentence if I have in
20 any way miscalculated the advisory guideline range.

21 This is the sentence sufficient but not greater than
22 necessary for Monica Barnes.

23 In imposing this sentence, I've carefully considered
24 all the arguments Mr. Long made for a different sentence.
25 I've rejected the arguments. Even if I haven't parroted back

1 each specific argument, I think -- and I've explained my
2 balance of the 3553(a) factors and rejected his arguments for
3 a different balance and a noncustodial sentence.

4 I recommend FCI Alderson.

5 I recommend vocational/educational opportunities.

6 You can appeal your conviction if you believe that
7 your guilty plea was somehow unlawful or involuntary or if
8 there's some other fundamental defect in the proceeding that
9 was not waived by your guilty plea.

10 You also have a statutory right to appeal your
11 sentence under certain circumstances, particularly if you
12 think your sentence is contrary to law.

13 However, you did enter into a plea agreement that
14 contains an appellate waiver. In light of your sentence, I
15 believe you've waived your right to appeal.

16 If you believe the waiver is unenforceable or
17 inapplicable for any reason, you can present that theory to
18 the Appellate Court.

19 With few exceptions, any Notice of Appeal must be
20 filed within 14 days of the judgment being entered on the
21 docket in your case.

22 If you're unable to pay the cost of an appeal, you
23 may apply for leave to appeal *in forma pauperis*.

24 If you so request, the Clerk of Court will prepare
25 and file a Notice of Appeal on your behalf.

1 What's the Government's position on liberty status?

2 MR. BERAHA: Your Honor, the Government would have
3 no objection to a self-report.

4 THE COURT: All right. I gather you want her to be
5 able to self-report?

6 MR. LONG: I do, Your Honor.

7 THE COURT: All right. Ms. Barnes, I will allow you
8 to self-report. What that means is -- I've recommended that
9 you serve your sentence at FCI Alderson which is the closest
10 Federal Bureau of Prisons facility for women. It's up in West
11 Virginia.

12 I'm not sure that's where the BOP is going to
13 designate you to; they might designate you to a different
14 facility. But by allowing you to self-report, you are
15 promising not to engage in any criminal conduct between now
16 and then, and then to appear at the facility on time. You
17 can't be one second late, wherever they designate you to. It
18 lets you get your affairs in order between now and that date
19 before you go serve your sentence.

20 Do you understand that, ma'am?

21 THE DEFENDANT: I do, Your Honor.

22 THE COURT: Mr. Long, you may come get the
23 paperwork.

24 (Pause in the proceeding.)

25 THE COURT: All right, Ms. Barnes. I have signed

1 the order allowing you to self-report. So you'll be notified
2 when and where to report.

3 Again, you have to report on time. You cannot be
4 one second late. If you are late, you're subject to further
5 imprisonment.

6 You will need to speak with the probation officer
7 before you leave court here this morning.

8 Anything else from the defendant?

9 MR. LONG: Nothing from us, Your Honor.

10 THE COURT: Anything else from the United States?

11 MR. BERAKA: No, Your Honor.

12 THE COURT: I thank counsel for their work in this
13 case. That'll conclude the matter of Ms. Barnes.

14 Good luck to you, ma'am.

15 * * *

16 (The proceedings concluded at 9:51 a.m.)
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1 UNITED STATE DISTRICT COURT
2 EASTERN DISTRICT OF NORTH CAROLINA
3
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5 CERTIFICATE OF OFFICIAL REPORTER
6

7 I, Amy M. Condon, CRR, RPR, CSR, Federal Official
8 Court Reporter, in and for the United States District Court
9 for the Eastern District of North Carolina, do hereby certify
10 that pursuant to Section 753, Title 28, United States Code,
11 that the foregoing is a true and correct transcript of the
12 stenographically reported proceedings held in the
13 above-entitled matter and that the transcript page format is
14 in conformance with the regulations of the Judicial Conference
15 of the United States.
16
17

18 Dated this 19th day of October, 2023.
19

20 *Amy M. Condon*

21 /s/ Amy M. Condon
22 Amy M. Condon, CRR, CSR, RPR
23 U.S. Official Court Reporter
24
25