

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF KENTUCKY
3 BOWLING GREEN DIVISION

4 UNITED STATES OF AMERICA,) Case No. 1:22-CR-00004-GNS
5)
6 Plaintiff,)
7)
8 v.)
9)
10 MANDY ELLEN BAUER,)
11)
12 Defendant.) May 17, 2022
13) Bowling Green, Kentucky

14 * * * * *

15 TRANSCRIPT OF SENTENCING
16 BEFORE HONORABLE GREG N. STIVERS
17 UNITED STATES DISTRICT CHIEF JUDGE

18 * * * * *

19 APPEARANCES:

20 For United States: David Weiser
21 U. S. Attorney's Office
22 717 West Broadway
23 Louisville, KY 40202
24 For Defendant: William M. Butler, Jr.
25 500 West Jefferson Street, Suite 1520
Louisville, KY 40202
Transcriber: Dena Legg, RDR, CRR, CCR-KY
Official Court Reporter
232 U. S. Courthouse
Louisville, KY 40202

[Defendant present.]

24 Proceedings recorded by digital recording. Transcript
25 produced by computer from audio recording that the Court
provided to transcriber.

1 (Begin proceedings in open court at 11:03 a.m.)

2 DEPUTY CLERK: Case Number 1:22-CR-4, United States of
3 America versus Mandy Ellen Bauer. We're here this morning for a
4 sentencing hearing.

5 MR. WEISER: Good morning, Your Honor. David Weiser
6 for the United States.

7 MR. BUTLER: Good morning, Your Honor. For the
8 record, my name is William Butler. I represent Ms. Bauer.

9 THE COURT: All right. Good morning, folks. Sorry
10 we're running late.

11 Mr. Butler, have you and Ms. Bauer had a chance to review
12 the presentence investigation report including any revisions?

13 MR. BUTLER: Yes, Your Honor.

14 THE COURT: Are there any objections to the report by
15 the defendant?

16 MR. BUTLER: Your Honor, we did have several
17 objections which have been addressed by probation and parole, I
18 guess, to our satisfaction.

19 THE COURT: Okay. Very well.

20 Any objections by the United States?

21 MR. WEISER: No, sir.

22 THE COURT: Very well. The court finds then that the
23 report's accurate. The total offense level is 14 with a
24 criminal history category of IV.

25 Is there an objection to that finding -- that specific

1 finding on behalf of the U.S.?

2 MR. WEISER: No, sir.

3 THE COURT: On behalf of the defendant?

4 MR. BUTLER: No objection to the calculation. I think
5 that's correct. When I have a chance to say a word, I want to
6 address the ten-level increase.

7 THE COURT: Yes, sir, I'll give you that chance right
8 now.

9 MR. BUTLER: Thank you.

10 Your Honor, the fact is that no money was received by
11 Ms. Bauer even though the probation and parole report, the PSR,
12 says that -- and it's completely correct that ten points was
13 added because of an attempt to get more than \$150,000.

14 THE COURT: She tried. She kept trying; right?

15 MR. BUTLER: Well, she filed a lot of forms. And, in
16 fact -- you know, I don't want to get away from acceptance of
17 responsibility, but she's told me, "I didn't know I was doing
18 wrong until it was explained to me, and then I saw it was
19 completely wrong."

20 THE COURT: All right.

21 MR. BUTLER: So, Your Honor, I've written a short
22 sentencing memorandum. Has the Court had a chance to look at
23 that?

24 THE COURT: I have. I have.

25 MR. BUTLER: And I think the sentencing memorandum --

1 the history and characteristics of Mandy Bauer, I think, says it
2 all. She's had a substance problem. She's been in a number of
3 abusive relationships. Of course, that's not gonna take away
4 from what she did, but I'd like the Court to consider that.

5 In paragraph 10 of the PSR, she was referred to Adanta for
6 substance abuse and mental health counseling. She has -- she
7 has complied with that, Your Honor, and I think that's really an
8 important thing to think about in giving a sentence that's
9 sufficient but not greater than necessary to meet the ends of
10 justice.

11 THE COURT: All right.

12 MR. BUTLER: She's continuing to follow through with
13 that. Given that, Your Honor, and her history and
14 characteristics, it's our request for a variance. And the
15 request is for a noncustodial sentence, Your Honor. She's gonna
16 owe a \$7,500 fine, which she has a job as a painter, and she
17 will be able to -- if the Court allows her to remain free,
18 she'll be able to make payments on that until that's paid.

19 THE COURT: All right.

20 MR. BUTLER: I think -- I think those are the main
21 points. If the Court would like me to verbalize what I've
22 listed as her history and characteristics, I can, but if the
23 Court has read that -- especially the letters from her two
24 daughters, I think, were really significant in letting the Court
25 know what her background has been. I think that's extremely

1 important in meting out a proper sentence.

2 THE COURT: I did read their letters and Terry Neagle,
3 the employer, I think.

4 MR. BUTLER: Yes.

5 THE COURT: Is she still working with that business?

6 MR. BUTLER: Yes.

7 THE COURT: All right. Does Ms. Bauer wish to address
8 the court?

9 MR. BUTLER: Yes.

10 THE COURT: All right. I'll let her go after
11 Mr. Weiser here.

12 Mr. Weiser.

13 MR. WEISER: Yes, sir. Thank you.

14 One of the tenets of criminal law is that we punish
15 defendants for their intent and their actions. We don't punish
16 defendants for the final result. And so if you try to kill
17 someone and you shoot at them and miss, you still get charged
18 with attempted murder and you still face the penalties for that
19 crime because it was your intent and your actions to murder
20 someone.

21 We charge someone in a fraud case like this because it was
22 Ms. Bauer's intent and it was her actions to steal this money
23 from the government. And this is not just money that's in a
24 normal program that exists from day-to-day. This is money
25 that's coming from the CARES Act when our nation was facing an

1 unprecedented pandemic. And we had businesses that were closed
2 down, and our whole society was really affected by it.

3 And we don't have unlimited resources. There were
4 businesses out there -- there were legitimate businesses out
5 there that needed money that were not able to obtain money
6 because there were limited resources available from the United
7 States Treasury.

8 And what we have here and unfortunately what we're gonna see
9 again in this court -- I can tell this Court that we have a
10 number of COVID-related fraud cases pending in our office; and
11 so you're going to see more of these down the road. This may be
12 the first one, but you have a particularly heinous financial
13 fraud case here because you have someone who is not only
14 stealing money but stealing money in a time of great peril for
15 our country and in a time when a number of businesses were not
16 able to survive because they couldn't get these funds. And
17 businesses going under means people are unemployed, means people
18 lose their livelihoods. They lose their housing. Their
19 children are affected. Their entire families are affected.
20 Their life savings are gone.

21 This is a particularly heinous attempt to take money from
22 those who truly needed it in a time of desperation in our
23 country. And the fact that she didn't ultimately receive any
24 money is of no import in this case.

25 She didn't file one fraudulent application for funds. She

1 filed nine fraudulent applications for various types of relief.
2 And so this is something that she kept trying to do over and
3 over --

4 THE COURT: Okay. This is --

5 MR. WEISER: -- again.

6 THE COURT: The crux of the case to me is -- when she
7 filed this first application on April 2nd of 2020, was that
8 denied?

9 MR. WEISER: So --

10 THE COURT: When was it denied?

11 MR. WEISER: What happened, Your Honor, was that she
12 filed a tax form -- if we look at the various charges -- I'm
13 gonna go to the charge here.

14 MR. BUTLER: Your Honor, I need to just break in for a
15 second. I apologize for interrupting Mr. Weiser.

16 THE COURT: All right. No, that's --

17 MR. BUTLER: But Ms. Bauer did operate a legitimate
18 business called Family Personal Sales. So it's --

19 MR. WEISER: Right. She bought furniture and
20 refurbished it.

21 MR. BUTLER: That's correct. I just want to make sure
22 the Court understands that she wasn't just -- she did operate a
23 legitimate business.

24 THE COURT: And I'll welcome information from both
25 sides because to me there's a difference between trying every

1 day to get \$10,000 for 30 days. Well, if you get -- if the
2 first application is denied and then you try it again the next
3 day and it's denied, you try it again the next day, I view
4 that -- it's akin to -- this is an example that pops into my
5 head: trying to steal candy out of a vending machine. You try
6 to steal a candy bar and you don't do it. The next day you go
7 back and you don't do it. The next day you don't do it. If you
8 finally on the 30th day get that candy bar, should you be
9 charged with trying to steal 30 candy bars? You're trying to
10 steal one candy bar 30 times. So address -- that is something I
11 would like to understand and I don't right now.

12 MR. WEISER: Sure, Your Honor. What happened is that
13 Ms. Bauer, in April, filed -- she filed with the IRS -- or was
14 it May?

15 THE COURT: April 2, 2020, was the first one with the
16 SBA.

17 MR. WEISER: That -- well, that's an SBA -- that's an
18 EIDL loan application.

19 THE COURT: Right.

20 MR. WEISER: So what happened was she had a number of
21 applications that were pending.

22 THE COURT: Were they -- I guess my question is were
23 they cumulative, or were they --

24 MR. WEISER: They were cumulative.

25 THE COURT: Okay.

1 MR. WEISER: They were stacked up. She's not asking
2 for 10,000 and didn't get it and then said, "Well, I still want
3 10,000. I'm gonna apply again."

4 THE COURT: Okay. All right.

5 MR. WEISER: And so ultimately she files with the IRS
6 to get -- to get the tax credits, the advance payment tax
7 credits. And the IRS notices discrepancies in what she's stated
8 in her forms and what -- her previous filings. And they say,
9 "This doesn't make sense."

10 When that is noticed, then they look up and they find out
11 that there are other applications in the pipeline for PPP loans
12 and EIDL loans. And, in effect, a red flag was put on those
13 applications. As it turns out, at least one of those
14 applications was about ready to get paid out when that happened,
15 but the IRS noticed this and was able to put a stop to the
16 payouts on these applications.

17 But what we don't have here is a situation like the candy
18 machine that you've spoken of where she's trying to get \$10,000
19 or \$7,000 over and over and over again. If you look, she's,
20 first of all, trying to get three different types of relief:
21 the EIDL loans, the PPP loans, and then the advanced payment of
22 tax credits. So those are three separate candy bars. It's like
23 trying to steal a Snickers over here and then a Reese's over
24 here. I mean, they're completely separate programs. So those
25 don't --

1 THE COURT: Separate vending machines; right?

2 MR. WEISER: Yes, different vending machines, and they
3 can't lump together. And then these are funds on top of funds
4 that she was trying to seek.

5 The dollar amounts of these loan applications aren't the
6 same. She's seeking sometimes more money, sometimes less money.
7 But what you find is that it's nine individual attempts to
8 obtain funds from these three various programs that were in
9 existence.

10 And so this is not -- sometimes we see people who make one
11 mistake. And then they realize there that I shouldn't have done
12 that. They don't do it again. That's not what happened here.
13 She kept filing fraudulent applications seeking a little bit
14 over \$230,000 in intended losses and because of that, that's why
15 she finds herself here. And the law doesn't care whether she
16 actually received the funds or not because it's punishing her
17 for what her attempt was, what her intent was, and what her
18 actions were and not whether or not she was successful.

19 And based on her lengthy criminal history, which involves
20 numerous financial crimes as well as some drug offenses -- it
21 also involves problems when she's been on probation and having
22 probation revoked, because of her extensive criminal history,
23 she's facing a longer sentence than she would if she were
24 someone who came in here with a clean record.

25 And so as a result, she ends up at an offense level of 14

1 with a criminal history of IV with a range of 27 to 33 months.
2 The United States is going to recommend a 27-month sentence in
3 this case pursuant to our plea agreement where we agreed to
4 recommend a sentence at the low end of the guidelines.

5 And we believe that sentence is -- a 27-month sentence, a
6 sentence within the guideline range, is appropriate in this case
7 and sets an important precedent for the future COVID fraud cases
8 that are gonna come before this court, recognizing the
9 seriousness of the offense, the time that this occurred and what
10 the circumstances were when this occurred. It's just punishment
11 for the multiple attempts to obtain funds fraudulently. It's
12 gonna promote respect for the law. It's also going to hopefully
13 provide a deterrent effect.

14 A lot of these programs are no longer in existence, but we
15 don't know what the future holds. We had Hurricane Katrina many
16 years ago where the United States was pushing out hundreds of
17 millions if not billions of dollars in relief funds, and we saw
18 a lot of fraud there. Now we've got COVID-19 where the United
19 States is pushing out hundreds of billions of dollars, and we've
20 got immense fraud in those programs.

21 There is going to be, unfortunately, another disaster at
22 some point in the future, and you would hope that you can deter
23 people who are on the edge and thinking about trying to steal
24 funds from the government that are --

25 THE COURT: Don't even try it; right?

1 MR. WEISER: -- so desperately needed by others.

2 THE COURT: Don't even try it?

3 MR. WEISER: Don't even try it. And that's --

4 THE COURT: So you're -- I'm gonna give Mr. Butler a
5 chance. You're saying though we should treat Ms. Bauer the same
6 as we should treatment somebody else who actually got the
7 \$230,000, got it and spent it?

8 MR. WEISER: Yes.

9 THE COURT: Same?

10 MR. WEISER: That is exactly what I'm saying, Your
11 Honor.

12 THE COURT: Well -- and I'm gonna ask Mr. Butler this
13 'cause here is a problem that I have. We seem to be having
14 problems today. But if Ms. Bauer had got -- if she had actually
15 received \$100,000 -- she's got a job, and one of the things that
16 would influence me would be societally are we better off putting
17 her in jail for 27 months or a lesser period so that she can
18 have an opportunity to pay that money back?

19 I will tell you, in most cases, that's -- that ability to be
20 able to pay that money back is something that I used to go
21 downward. And so in this case, I thought how ironic it is she
22 didn't get any money. So she's going to get the 27 months
23 because there's nothing to pay back. That I cannot square.
24 Maybe you can help me figure it out.

25 MR. WEISER: Well, Your Honor, there is certainly an

1 interest in getting victims repaid and particularly -- you know,
2 let's be honest. For the United States Government, \$230,000 is
3 a drop in the bucket. If you had --

4 THE COURT: Don't get me started, Mr. Weiser.

5 MR. WEISER: -- if you had -- but if you had an
6 individual victim and you had a \$230,000 loss, then it would be
7 very --

8 THE COURT: No, that's --

9 MR. WEISER: Very important.

10 THE COURT: These fraud cases that have embezzlers, it
11 happens all the time. I mean, and it's --

12 MR. WEISER: Yes.

13 THE COURT: So how are we better off sending the
14 defendant to prison for two years and leave the victim still out
15 the 100,000, \$200,000, or reduce the prison sentence so that the
16 defendant can start repaying that money?

17 It's always been in my view, especially somebody with a
18 minimal or no criminal history, which that distinguishes
19 Ms. Bauer, but in those cases I have frequently -- I'm not gonna
20 say always, but it's always been a motivation. I really think
21 we're better off having that person -- having the defendant out
22 of jail or with a shorter prison sentence so they can start
23 paying the money back. That's just -- and, again, that's the --
24 that's the tension I feel here because, like, well, she would
25 have been better off if she'd gotten \$50,000 because I would

1 say, you know, Mr. Neagle says she's doing a great job with this
2 home -- home repair business. We'd be better off societally
3 having her working and paying some of that money off and not
4 having to pay \$37,500 a year or whatever it is now to house her
5 in a prison.

6 MR. WEISER: And, Your Honor, I think -- I understand
7 where you're coming from, and I understand that that's a
8 difficult issue, but I guess we don't want -- we shouldn't want
9 to punish people differently based on whether or not they were
10 successful in their crime.

11 If you have two people who file false applications and one
12 of them got the \$230,000 and one of them didn't but they did the
13 exact same act with the exact same intent, their punishments,
14 given that it's the same criminal histories, should be the same.
15 On top of that --

16 THE COURT: So you're saying in my example -- so
17 Ms. Bauer tries to get a Snickers bar, a bag of Doritos, a bag
18 of candy -- she didn't get anything, but the person -- somebody
19 else follows her. They grab the Snickers bar. They get the bag
20 of Doritos. They get the candy. They should -- in the eyes of
21 the law, you think they should be treated exactly the same?

22 MR. WEISER: Exactly the same except for the
23 restitution order. So she won't have one and that person will.

24 THE COURT: Well, here it's even worse, and here's the
25 problem I have: No, the one that's got the restitution

1 obligation, I send them to prison for a shorter period of time
2 so they can start paying back the victim.

3 MR. WEISER: Well -- and that's the second factor.

4 THE COURT: It's a struggle. Maybe it's just a
5 dilemma. It is an enigma. Maybe there's just no solution to
6 it, but I think there is.

7 MR. WEISER: Well -- and I think the one thing to
8 address -- you know, I'm certainly in favor of trying to get
9 victims made whole, but the one thing to address is when we look
10 at that, when we focus on that factor, can this defendant repay
11 this victim if I leave them out of prison? First of all, what
12 it does is it puts a defendant with a higher paying job or a
13 better career in a better place than a defendant who's not
14 working or who has low skills and is -- and so it separates
15 defendants out based on that background, which I don't know
16 would be entirely fair for a -- for a defendant who had a
17 master's degree and committed this crime to get a lesser
18 sentence because they have a higher income potential and they
19 could repay their victim faster than someone who had maybe a
20 high school degree and was working for minimum wage.

21 THE COURT: So the less skilled you are, the greater
22 allowance because you're going to need more time to pay the
23 money back.

24 MR. WEISER: Well, it would certainly --

25 THE COURT: If you could go -- if you've got a

1 master's degree and you're making \$200,000 a year, you can pay
2 it back in six months. So that's -- you know, so you don't need
3 as big of a break. I do think you could make an allowance for
4 that, but --

5 MR. WEISER: Well, and the other thing though that I'd
6 like the Court to consider is that it -- if we focus on that, it
7 takes away from some of these other 3553(a) factors. It doesn't
8 focus then on the seriousness of the offense. It focuses on
9 whether this defendant can repay and how best to ensure that
10 repayment.

11 THE COURT: It's just one of the things -- just one
12 irony. This is just one factor. It just -- frankly, I don't
13 accept the notion that Ms. Bauer should be treated the same
14 having gotten zero money, having whiffed on all of these
15 attempts -- attempted thefts of government money to be treated
16 exactly the same as if all of these applications had been
17 granted. That's -- I just don't buy that.

18 The law -- maybe the law should, but I just -- I view
19 differently the person that got the candy and ate it and
20 repeated it over and over successfully than someone who whiffed
21 on all those attempts. They don't seem like -- in terms of when
22 it comes time to punish somebody, it seems to me like the
23 punishment should be less severe for someone who unsuccessfully
24 tried -- you know, submitted all of these false applications.

25 MR. WEISER: And I wish I could tell you that this

1 won't come up again, but you're gonna be seeing a number of
2 COVID fraud cases. You're gonna see cases where people got a
3 lot of money. You're gonna see cases like this one where they
4 didn't get a lot or much money. This is just the precursor for
5 a wave that's going to be with us for the next several years,
6 I'm afraid.

7 MR. BUTLER: Your Honor, thinking about when was this
8 -- when did these things happen, page 4 of the PSR shows that
9 her first loan application was April 2nd, 2020. Her last
10 application was July 1, 2020. So we have -- and when the Court
11 mentioned that a few minutes ago, it suddenly dawned on me that
12 that should be a factor to think about.

13 And all these -- as I told the Court what she told me, "I
14 didn't know I was doing wrong, but it was explained to me. Then
15 I knew I was doing wrong."

16 Here April 2nd, April 5th, 7th, 8th, 13th, 29th, May 29th,
17 June 29th, July 1, this is -- I think should be looked at in a
18 different light than someone who sits down and says, "Okay. I'm
19 gonna file nine different applications with a number of
20 different things. I'll just do it all at once and maybe I can
21 get 230,000."

22 Again, she had a legitimate business. She didn't do a good
23 job of paying things that were owed. For instance, I can tell
24 the Court that her 2022 -- or 2020 unemployment owed to the
25 State of Kentucky was \$1,890.68. There was -- there wasn't

1 anything wrong with that except her business didn't pay what it
2 was supposed to pay, and I think that's significant. It all
3 melds into the 3553, Your Honor.

4 THE COURT: All right. And does Ms. Bauer wish to
5 address the court?

6 All right. Yes, ma'am.

7 THE DEFENDANT: You want me to come up there?

8 THE COURT: Wherever you feel more comfortable. If
9 you're speaking from there, if you'd pull that microphone up to
10 you.

11 THE DEFENDANT: Okay. I didn't have anything
12 prepared. So I'll just speak from the heart. My past is bad.
13 It's not good, anyway. It's not pretty, but I served my time,
14 and I was determined to change.

15 In 2014, I -- I like furniture. I have a passion for it;
16 and so I started selling furniture, but I wanted it to all be
17 legal. So I applied for my business license in it, and I got
18 all that done. I decided to go back to school because I didn't
19 know anything about running a business, and I graduated in 2019
20 with a degree in business administration.

21 Now, all this time I -- I've got kids. I had a little boy,
22 and I'm a single -- you know, I was a single mom. And then when
23 COVID hit -- you know, I had employees. I've turned in -- like
24 you said, before COVID I was paying unemployment and stuff like
25 that in case, you know, something happened that an employee went

1 on unemployment. I was trying to do it all right.

2 And all this time my little boy, you know, is in school. So
3 now he has to go on home school, and I have to work around his
4 schedule. I needed help. You know, everything got shut down.
5 All the businesses got shut down. I needed some way to help pay
6 these employees because now I don't have any money.

7 I did apply. And the first one I applied to, the 7,200 he
8 was talking about, they sent me a letter saying they couldn't
9 accept it but asked me to turn in another one. I applied for
10 other things, but I did look it up to make sure I could.

11 The entire time I felt I was not doing anything wrong until
12 they explained it to me; and so I do accept responsibility, but
13 my intent wasn't to steal. I applied for a loan, something I
14 had to pay back. And the numbers were different because I was
15 applying for them sitting there with my kid and doing his
16 homework on a computer. So I was just roundabout figuring
17 because I figured if I do -- if I am accepted for a loan,
18 they're gonna go over it with me. I had to turn in all of my
19 paperwork from my previous tax years. I didn't -- I didn't
20 realize how important getting them numbers right were.

21 THE COURT: Well, let's start with this, ma'am: How
22 many employees did you have with this business?

23 THE DEFENDANT: Well, that's the thing. I had ten
24 people counting myself, counting my tax lady, counting the
25 people that I was giving 1099s to. And then I called one of the

1 places -- I think it was either NAV or Lendio, and what they do
2 is they're a middleman. You apply through them, but they send
3 it out to the lenders. And I called them and go over it with
4 them. I sent them -- send everything I need. They go over it
5 with me and they said, "No, you don't count yourself. You don't
6 count your tax lady, and you don't count the 1099 employees from
7 last year," they said, "but you count six of them." And so
8 that's why that number changed.

9 THE COURT: All right. I'm sorry for interrupting
10 you.

11 THE DEFENDANT: Sorry. But my intent was to get a
12 loan. It wasn't to steal money from anybody. It was to help
13 financially when I needed help financially, and I apologize.
14 Had I known that I didn't have the right to put in those loans,
15 I would not have put in for those loans. So I accept
16 responsibility.

17 THE COURT: All right. Mr. Weiser.

18 MR. WEISER: Your Honor, I believe this calls into
19 question acceptance of responsibility. She applied for over
20 \$230,000 in loans. I mean, if her business was killing it to
21 that extent, then she certainly wouldn't find herself in
22 financial problems, which clearly by her record -- she's been --
23 had financial difficulties all throughout her adulthood. She's
24 got a number of fraud cases.

25 I mean, the numbers that she provided, she says she spoke to

1 some -- someone who assisted in filling out these applications.
2 That's just garbage in, garbage out. They put down the numbers
3 that you tell them to put down.

4 The fact is that these applications were fraudulent. The
5 United States understands the Court's reluctance to punish
6 Ms. Bauer for the full extent of the loans because she didn't
7 receive any of the funds. I, like my colleague before me, am
8 bound to request a sentence at the low end of the guidelines,
9 but I would ask the Court, if your intent is to go below the
10 guidelines in this case, that a significant term of imprisonment
11 is still appropriate in a case like this.

12 THE COURT: All right. I'm gonna take a recess.

13 (Recess at 11:34 a.m. until 11:43 a.m.)

14 THE COURT: All right. Anything further, Mr. Butler?

15 MR. BUTLER: No, Your Honor. Thank you.

16 THE COURT: Very well. Mr. Weiser promises me more of
17 these cases, and I guess if this is a baseline, that's not a
18 good thing.

19 As I've indicated, the one huge thing I struggle with here
20 is equating in the eyes of the law, you know, attempted loss --
21 intended loss versus Ms. Bauer's actual receipt of this money.
22 And I frankly just -- I can't wrap my mind around just ignoring
23 that distinction, but I accept the guideline range of 27 to
24 33 months.

25 And, of course, starting from there, Ms. Bauer, it's my duty

1 to impose a sentence that's sufficient but not greater than
2 necessary to punish you for trying to steal this money from
3 these government programs not just once but nine times, a total
4 of 200 and something thousand dollars.

5 And I will tell you, there are two factors in this case that
6 tip the scales in terms of whether there'd be a period of
7 incarceration or not. One of them is your significant criminal
8 history. This is not your first rodeo. You've been in a lot of
9 trouble. You spent four years in prison. And as I usually say
10 to folks when they've never been in trouble, if you've never
11 been in trouble, then the first time you go to jail or to
12 prison, that's -- that should be the shortest time that it takes
13 to get somebody's attention. That hasn't worked with you.

14 And in conjunction with that -- and Mr. Butler cited to
15 paragraph 10 of the PSR, but this -- ultimately at the end of
16 the day, this is why I do think incarceration is necessary, and
17 that is, after you were released on bond on February 2 of this
18 year, you tested positive for meth. I mean two weeks later.
19 And you know what, if the probation folks had said, "No,
20 Ms. Bauer has done everything that we've asked her to do," that
21 would have made a huge impact on me, but that's simply not the
22 case.

23 And yet taking into consideration the fact that you didn't
24 get any money -- we have to deter people from trying to steal
25 money from these government programs. The United States

1 Government is trying to pump out money to people who need it,
2 and that need is defined by what the requirements of these
3 programs are. And to have somebody lying about their situation
4 to get that money, it's got to be punished. It's got to be
5 deterred.

6 And so in that regard, I do agree with Mr. Weiser, and I do
7 think that in this instance a sentence of one year and a day is
8 sufficient but not greater than necessary to punish you for
9 these repeated attempts to steal money from the government,
10 although you didn't get the money.

11 Because it's a year and a day, you will get credit, good
12 time credit, and I'm assuming you'll behave yourself while in
13 jail. So there'll be a reduction, I believe, of 15 percent for
14 the good time that you spend.

15 More importantly, as far as I'm concerned, you're gonna be
16 on supervision when you're released, and the United States
17 Probation Office is going to do everything they can to help you
18 stay out of trouble. They're gonna provide you support and make
19 sure you get the drug testing, the drug treatment, the mental
20 health treatment that you need. And I hope that you look at
21 that support as being intended to help you, not to punish you.

22 This is -- you know, this is not a happy day for anybody. I
23 don't want to send you to prison, but I do believe that the --
24 that the facts of this case warrant that, and it's still less
25 than half of what the guideline sentence would be.

1 While on supervision you'll have standard conditions to
2 abide by as well as special conditions, which include substance
3 treatment, drug testing, mental health treatment, and specific
4 financial conditions. The U.S. Probation Office will answer any
5 questions you may have about that. You'll be required to pay a
6 \$100 special penalty assessment fee --

7 THE DEFENDANT: Can I say one more thing, Your Honor?

8 THE COURT: -- for the single count of conviction.

9 THE DEFENDANT: Please.

10 THE COURT: Ma'am?

11 THE CLERK: It's not a single count of conviction.
12 There are nine counts.

13 THE COURT: I don't have the rest of that.

14 THE DEFENDANT: Can I say one more thing, Your Honor,
15 please?

16 THE COURT: Yes, ma'am, you may.

17 THE DEFENDANT: I didn't -- I didn't understand that I
18 wasn't able to apply for any of -- any of these because I had a
19 business, and that's what they were throwing out there. It's
20 for small businesses. So I thought I was able to apply and so
21 that's why I applied.

22 THE COURT: I understand that.

23 THE DEFENDANT: My son's autistic, and I take him to
24 school every day, and I bring -- I go pick him up every day. I
25 take care of my son. And I had him with me for six years, and

1 he's not been a day without me. And I fully take care of him,
2 and I'm a good momma and everybody will tell you I'm a good
3 momma and I work. Please, please, let me just have probation.
4 Please, Your Honor, for my son. We're getting him diagnosed
5 now. He's going through everything to get diagnosed and going
6 to doctors, and I'm doing all of that and working.

7 THE COURT: Yes, ma'am. Ms. Bauer, I've explained
8 things would be different -- they'd likely be different if your
9 compliance with your bond conditions had been complete. It
10 seems to me that you need time away from any sources of drugs
11 and then --

12 THE DEFENDANT: I agree.

13 THE COURT: -- when you're released from prison --

14 THE DEFENDANT: I agree.

15 THE COURT: -- you definitely need to have drug
16 treatment.

17 THE DEFENDANT: Please don't do this to my son.

18 THE COURT: Ma'am, this is not what I want to do.

19 THE DEFENDANT: He's --

20 THE COURT: Believe me.

21 THE DEFENDANT: -- he's had three grandparents took
22 from him within the last year, three grandparents. He's going
23 through a lot. Please don't take his momma. He's a momma's
24 boy. Please, Your Honor, please. I'll pay extra if I have to.
25 I'll take extra classes, just not my little boy. He's going

1 through so much.

2 THE COURT: Ma'am, my sympathy for you is great.

3 There is no question about that, and I'm --

4 MR. BUTLER: Your Honor, may she have self-report?

5 THE COURT: Yes, she may self-report.

6 MR. BUTLER: Thank you.

7 THE COURT: The sentence of a year and a day will be
8 for each of Counts 1 through 9 to be served concurrently for a
9 total term of a year and a day. The term of supervision will be
10 three years as to each of Counts 1 through 9 to be served
11 concurrently also for a total of three years.

12 You'll be -- the special penalty assessment fee of \$100 is
13 for each count of conviction for a total of \$900. Restitution's
14 not an issue in this case, and I am not gonna require the
15 defendant to pay a fine in this instance.

16 But having considered 18 U.S.C. Section 3553(a) of the
17 advisory guidelines, which produce a total offense level of 14
18 and a criminal history category of IV, the advisory guideline
19 ranges are 27 to 33 months' custody, a fine of 7,500 to \$75,000,
20 and one to three years of supervised release, as I previously
21 indicated, I think that a year and a day with no fine, followed
22 by three years of supervision, although it's below the advisory
23 guideline ranges, is sufficient but not greater than necessary
24 to comply with the purposes set forth in the statute.

25 Mr. Butler, are there any objections to the sentence

1 pronounced which have not previously been raised?

2 MR. BUTLER: No, Your Honor.

3 THE COURT: All right. Ms. Bauer agreed in her plea
4 agreement to waive her right to directly appeal her conviction
5 and sentence, and we've got a form for her to sign acknowledging
6 that.

7 Does the United States object to having Ms. Bauer
8 voluntarily report?

9 MR. WEISER: No, Your Honor.

10 THE COURT: All right.

11 All right. Mr. Butler, anything further?

12 MR. BUTLER: No, Your Honor. Thank you.

13 THE COURT: All right. Mr. Weiser?

14 MR. WEISER: No, sir. Thank you.

15 THE COURT: All right. Ms. Bauer, I wish you the best
16 of luck.

17 THE DEFENDANT: Thank you, Your Honor.

18 (Proceedings concluded at 11:53 a.m.)
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I am an official court reporter for the U.S. District Court for the Western District of Kentucky and certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the digital audio recording provided to me by the Court of the proceedings taken on the date and time previously stated in the above matter.

s/ Dena Legg
Official Court Reporter

November 16, 2022
Date