IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. CAMONTE HENDERSON, Defendant.	Case No. 23-00233-02-CR-W-BCW

GOVERNMENT'S SENTENCING MEMORANDUM

The United States of America, by and through its undersigned counsel, files its sentencing memorandum in this case. The government recommends a sentence of probation with a period of home confinement. The presentence report calculated the sentencing range from 8 to 14 months and mandatory restitution of $20,832.

PROCEDURAL AND FACTUAL BACKGROUND

On April 4, 2024, Defendant Camonte Henderson entered a plea of guilty to Count One of the indictment, conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349, before U.S. District Judge Wimes. (PSR ¶ 1.) The maximum possible penalty for conspiracy to commit wire fraud is 20 years' imprisonment. The defendant's offense conduct is outlined in paragraphs 4 through 10 of the PSR.

The defendant was part of a group of individuals organized by Renetta Golden-Larimore to submit fraudulent Paycheck Protection Program (PPP) loans. Mr. Henderson, aided by Renetta Golden-Larimore, submitted an application which claimed he was the sole proprietor of a business that had gross revenues of $225,001 and net income of $219,301 in 2020. In fact, the defendant did not have such a business, and it did not have any revenues in the year prior to the pandemic. On April 27, 2021, the defendant received a $20,832 PPP loan. On May 3, 2021, the defendant made a $3,000 cash withdrawal presumably to pay Renetta Golden-Larimore, and spent the remaining proceeds on personal expenses.

DISCUSSION

I. Sentencing Analysis

There are outstanding objections to the presentence report. The defendant objects to- the failure to apply a reduction for acceptance of responsibility based upon his violations of the bond condition that he not use a controlled substance. and, therefore, claims the offense level would be 9, Criminal History Category I, resulting in a guideline range of 4 to 10 months.

The defendant tested positive for marijuana use eight times and was a no-show on four other occasions. "The sentencing court may consider criminal conduct unrelated to the underlying offense in determining whether defendant qualifies for an adjustment for acceptance of responsibility. *United States v. McDonald,* 22 F.3d 139, 144 (7th Cir.1994) (reviewing cases in various circuits) (affirming denial of acceptance of responsibility where defendant used cocaine while awaiting sentence for counterfeiting); *United States v. O'Neil,* 936 F.2d 599, 600-01 (1st Cir.1991) (upholding denial of acceptance of responsibility where defendant used marijuana after committing mail theft); *United States v. Watkins,* 911 F.2d 983, 984 (5th Cir.1990) (affirming denial of acceptance of responsibility adjustment where defendant used cocaine while on release pending sentencing for forgery); *United States v. Scroggins,* 880 F.2d 1204, 1215-16 (11th Cir.1989), *cert. denied,* 494 U.S. 1083, 110 S.Ct. 1816, 108 L.Ed.2d 946 (1990) (holding "the district court acted well within its discretion in concluding that appellant's continuing use of cocaine cast doubt on the sincerity of his avowed acceptance of responsibility" for the underlying postal theft offense)." *United States v. Byrd*, 76 F.3d 194, 197 (8th Cir. 1996)

The continued use of marijuana in violation of the conditions of release supports the denial of a reduction for acceptance of responsibility.

As this Court is aware, 18 U.S.C. § 3553(a) sets forth the factors to be considered in determining an appropriate sentence. In evaluating the appropriate sentence for this defendant, the United States notes the following:

Nature of the offense:

The defendant falsely applied for and received a $20,832 pandemic relief loan. These funds were intended to assist businesses that were impacted by the pandemic. While this amount is small compared to other pandemic relief fraud, the defendant should have been aware that this scheme was unlawful.

The history and characteristics of the defendant:

The defendant has one criminal history point for possession of a controlled substance – marijuana – and therefore was not eligible for the Zero Point reduction.

Seriousness of the Offense, Deterrence, Protection, and Rehabilitation:

This was a serious offense and there is a need to deter the defendant and others from fraudulently taking advantage of emergency relief funds.

Sentencing:

As noted by the Court in *United States v. Anderson,* 664 F.3d 758, 764-765 (8th Cir. 2012), the analysis for reviewing the reasonableness of a sentence is well-settled:

> We review substantive reasonableness for an abuse of discretion, "'tak[ing] into account the totality of the circumstances, including the extent of any variance from the Guidelines range.'" *United States v. Feemster,* 572 F.3d 455, 461 (8th Cir. 2009) (en banc) (quoting *Gall v. United States,* 552 U.S. 38, 51, 128 S. Ct. 586, 169 L.Ed.2d 445 (2007)). If a sentence is outside of the Guidelines range, "we 'may consider the extent of the deviation, but must give due deference to the district court's decision that the § 3553(a) factors, on a whole, justify the extent of the variance.'" *Id.* at 461-62

> (quoting *Gall,* 552 U.S. at 51, 128 S. Ct. 586) "Just because we 'might reasonably have concluded that a different sentence was appropriate is insufficient to justify reversal of the district court.'" *Id.* at 462 (quoting *Gall,* 552 U.S. at 51, 128 S. Ct. 586). "'[I]t will be the unusual case when we reverse a district court sentence ... as substantively unreasonable.'" *Id* at 464 (quoting *United States v. Gardellini,* 545 F.3d 1089, 1090 (D.C. Cir. 2008)).

As noted by Judge Colloton in his concurrence in *United States v. Burman*, 666 F.3d 1113, 1120 (8th Cir. 2012) *citing, Gall v. United States,* 552 U.S. 38, 50-51, 128 S. Ct. 586 (2007), the "proper measure of reasonableness under § 3553(a) is not whether the *variance* from an advisory guideline range is reasonable, but whether the *ultimate sentence* is reasonable in light of the § 3553(a) factors taken as a whole."

The issue presented to the Court then is what sentence is reasonable given the need to deter others who would engage in such illegal misappropriation of government emergency monies. The United States suggests that a reasonable sentence would be probation with a period of home detention.

A sentence within the guideline range would deter the defendant and send a message to others that such fraud schemes are unlawful and will be dealt with seriously by the United States District Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on August 19, 2024, to the Electronic Case Filing (CM-ECF) system of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

/s/ Paul S. Becker

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Assistant United States Attorney