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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,	)	
	)	
-VS-	)	DOCKET NO. 1:20-CR-00296-JPB
	)	
BERN BENOIT,	)	
	)	
DEFENDANT.	)	

TRANSCRIPT OF SENTENCING PROCEEDINGS
BEFORE THE HONORABLE J.P. BOULEE
UNITED STATES DISTRICT JUDGE
SEPTEMBER 8, 2021

APPEARANCES:

ON BEHALF OF THE GOVERNMENT:
TAL COHEN CHAIKEN, ESQ.
NATHAN PARKER KITCHENS, ESQ.
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ASSISTANT UNITED STATES ATTORNEY

ON BEHALF OF THE DEFENDANT:
ANTHONY O. EGBASE, ESQ.

STENOGRAPHICALLY RECORDED BY:

PENNY PRITTY COUDRIET, RMR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
ATLANTA, GEORGIA

(PROCEEDINGS HELD VIA ZOOM AT 10:19 AM., ATLANTA, GEORGIA)

COURTROOM DEPUTY CLERK: This is case number 20-CR-296, USA v. Benoit.

MR. EGBASE: Good morning, your Honor. Anthony Egbase on behalf of Mr. Bern Benoit. Bern Benoit is present with me as the Court can see via Zoom.

THE COURT: Good morning to both of you.

MR. KITCHENS: Good morning, your Honor. Nathan Kitchens on behalf of the government. I'm here as well with co-counsel Tal Chaiken and Siji Moore, as well as Special Agent Joe Stites of the FBI.

THE COURT: Good to see all of you as well.

And I believe we also -- we have Officer Ridley here as well, correct?

COURTROOM DEPUTY CLERK: Yes, sir.

MS. RIDLEY: Good morning, your Honor. Maria Ridley on behalf of the United States Probation Office.

THE COURT: Good morning.

All right. Under Section 2 of the Northern District of Georgia's General Order 20-04, the Court finds that this hearing cannot be further delayed without serious harm to the interests of justice.

And, Mr. Egbase, do I understand that your client consents to waiving his personal appearance before me and doing this hearing by video conference?

MR. EGBASE: Yes, your Honor, he does. And if I may just apologize, I know we are having difficulty this morning through video conference. It's all my fault. I feel terrible. It has absolutely nothing to do with my client.

I did not understand this was going to be an in-person hearing. I tried to read the rules as much as I can. It was the rules that started coming out -- the amendments that started coming out during the pandemic, post pandemic. We are still in pandemic actually.

I just don't know how I missed it, that this was supposed to be an in-person hearing. So it has absolutely nothing to do with my client, your Honor.

THE COURT: Okay. Very well. Well, apology accepted. And, of course, I won't hold any delays or any confusion against your client in any way or against you. I understand we all make logistical errors. So no big deal. And all is forgiven on that front.

Let me ask you, Mr. -- do you pronounce it Benoit?

THE DEFENDANT: Yes, sir.

THE COURT: Mr. Benoit, do you consent to doing this hearing by video conference and do you waive your right to have a personal appearance in front of me for this sentencing hearing?

THE DEFENDANT: Yes, your Honor.

THE COURT: Very well.

Mr. Benoit pled guilty on March 11th, 2021, to Count 7 of the indictment for conspiracy to commit bank fraud and wire fraud.

In accordance with Rule 32 of the Federal Rules of Criminal Procedure, the United States Probation Office has conducted a presentence investigation and prepared a presentence report, a copy of which has been provided to both the government and the defense.

Mr. Egbase, have you and your client had an opportunity to read and discuss the presentence report? And I think you're still muted, sir.

MR. EGBASE: Yes, we did, your Honor.

THE COURT: Thank you.

Do you have any questions about the presentence report or any amendments at this time?

MR. EGBASE: No questions, your Honor.

THE COURT: It appears from the record that there are no objections to the findings of fact or conclusions of law in the presentence report by the government or the defense.

Is that correct?

MR. KITCHENS: That's correct, your Honor.

MR. EGBASE: That's correct, your Honor.

THE COURT: All right. I did want to clarify, Mr. Egbase, whether you are seeking a departure or a variance or both. It looked to me from reading your sentencing

memorandum on behalf of Mr. Benoit that you were seeking both a departure and variance, is that correct?

MR. EGBASE: That's correct, your Honor.

THE COURT: What I want to clarify is on what grounds you're seeking the departure. It looked to me like there may have been some just typographical issues with your sentencing memorandum. The portion of it that seeks a departure on page six talks about his medical condition and a departure under 5H1.4, which would go to his physical condition, and that all made sense to me. But there is a small section at the bottom of page 10 and going to the top of page 11 that seems to perhaps be something that inadvertently got picked up from an earlier sentencing memorandum involving another client that goes to age, mental condition, military service, et cetera. I just wanted to make sure that that indeed was just a typographical error and that what you're seeking is a departure under just 5H1.4.

MR. EGBASE: I'm seeking departure under 5H1.4, your Honor. The Court is correct, that may have been inadvertently entered. But as I state in my brief as well, my client, Mr. Benoit, does have medical conditions and under that I'm seeking that -- I'm seeking the departure and a variance.

THE COURT: Understood. Departure and variance.

Given that you're seeking both a departure and a variance on those grounds, sometimes I'll address the

departure issue first and make a determination as to whether or not a departure is warranted and then go through the other portion of the sentencing hearing. But here, unless anyone objects, it would seem that the request for a departure and the request for the variance are overlapping fairly significantly, so I would recommend that I consider all of that together in the context of counsel's argument.

Does anyone object to my proceeding in that fashion?

MR. KITCHENS: No objection, your Honor.

THE COURT: Mr. Egbase?

MR. EGBASE: No objection, your Honor.

THE COURT: Very well. I will consider your argument on that departure along with the variance when I hear your argument as to the sentence.

Given that there are no objections, I will adopt the findings of fact and conclusions of law in the presentence report to which no objection has been made.

Based on the findings of facts and conclusions of law, the guideline calculations are as follows:

Base offense level of 7;

Adjusted offense level of 21;

Total offense level of 18;

Criminal History Category of I;

Recommended sentencing range of 27 to 33 months;

Fine guideline range of $10,000 to $2,210,434;

Term of supervised release of 2 to 5 years;

A special assessment of $100.

Any objection to the guideline calculations as stated by the Court?

MR. KITCHENS: No, your Honor.

MR. EGBASE: No objection, your Honor.

THE COURT: I will now hear from the parties as to recommendations for a reasonable sentence considering the 18 USC, Section 3553(a) factors and grounds for departure or variance as discussed.

I have reviewed -- in addition to the presentence report and the defense memorandum I have reviewed numerous character letters on behalf of Mr. Benoit sent in from various individuals.

Before we move on, are there any other documents or letters for the Court regarding sentencing for the Court's consideration?

MR. EGBASE: No, your Honor, except I would add that Mr. Benoit be given an opportunity to just address the Court for about two to three minutes.

THE COURT: Certainly. I'm going to go through that and, of course, give him that opportunity. I want to just make sure we don't have any other witnesses, and I want to hear arguments as well.

Mr. Kitchens, are there any victims present that wish

to speak or present evidence in connection with the evidence in this case?

MR. KITCHENS: There are not, your Honor. And we do not have any documents either.

THE COURT: All right. Very well.

And, Mr. Egbase, I know that Mr. Benoit would like to be heard, but are there any other witnesses on his behalf? And, again, I have read the numerous letters that were sent in on his behalf.

MR. EGBASE: No, your Honor.

THE COURT: Mr. Egbase, would you like to make any argument on behalf of your client regarding sentencing? I have, of course, reviewed your sentencing memorandum on behalf of him. I'll be happy to hear any additional argument that you have.

MR. EGBASE: Yes, your Honor. I just want to reiterate what I have in my sentencing memorandum already, your Honor.

In this matter, Mr. -- I have used the term or the terminology that Mr. Benoit is a victim in this case. I did receive an e-mail from the government yesterday, and specifically Mr. Kitchens, who took that to mean that Mr. Benoit is contesting the culpability in this case. That is not my intention. And that is not Mr. Benoit's intention. He does accept responsibility, but I have viewed this in the

context of the fact that he was suckered into this -- into this -- committing this crime based on his lack of sophistication.

At the very inception of the PPP program Mr. Benoit, as a business owner, was only interested in getting what he was entitled to. And I believe that is what the evidence and discovery has shown in this matter. But what happened was his advisor, Mr. Jerry Baptiste, gave him a blank form from -- whom happens to be a co-defendant now, gave him a blank form from other co-defendants that he signed. He never placed anything -- other than his name, address and business name, he never list any figure on the blank form. And every other thing was completed by the co-defendant, submitted to the appropriate agencies without his input on what was in that loan application.

And he was shocked to learn that when he received about 800,000 in his account. And he did question it. So his inability to stand by his conviction at that point and tell them I don't deserve this, take it back, is where the culpability really comes in. And in his words, he was assured that this money would be paid back and it was going to be invested in his business or buying PPP, or whatever, emergency equipment, and he fell for it.

So he's very remorseful. And I believe that he would express that himself to the Court. But the other issues that

I've asked the Court to consider is his medical conditions. And I believe during discovery we provided enough of that. And that was also presented to the presentencing officer.

And his lack of sophistication -- in conclusion, his lack of sophistication, his medical condition and -- his present medical condition, which he has been going through, I believe that that is what warrants a departure and variance in this case, your Honor.

THE COURT: All right. Thank you.

Mr. Benoit, I've had the benefit of hearing from your counsel, but if there's anything that you personally would like to say before I sentence you, I would be happy to hear from you, sir.

THE DEFENDANT: Your Honor, I just wanted to --

THE COURT: I'm sorry. If you could speak up a little bit, I'm having trouble hearing you.

THE DEFENDANT: Your Honor, I just wanted to say I'm very remorseful. This is not who I am. I don't have a record. You know, I try to be -- I try to do good always. And I don't know how I even got to this.

I have no words to express how deeply sorry that -- that it even happened. I got involved with people that, you know, I had no idea what their intentions were. And, you know, I know I'm not innocent at all. I'm just -- I'm sorry. And I...

THE COURT: Thank you. I want to make sure, you've just stated that you don't believe you're innocent at all, and that certainly was my --

THE DEFENDANT: Yeah.

THE COURT: -- takeaway from your plea hearing several months ago now. But given some of the arguments your counsel has made, I want to, before we go forward with the sentencing, make sure that you do, in fact, believe you are guilty of the crime charged and what you've pled guilty to several months ago now.

Do you have any reason to think you want to revisit that --

THE DEFENDANT: No, sir, your Honor. As I said, I'm guilty. I'm not innocent on my part for my involvement.

THE COURT: All right. Bear with me a moment.

COURTROOM DEPUTY CLERK: Mr. Benoit, if you can speak up a little bit louder so we can hear you, okay?

THE DEFENDANT: Okay.

THE COURT: All right. Mr. Kitchens, any response and thoughts on the plea and where we are at this point?

MR. KITCHENS: Yes, your Honor.

Let me start exactly with your questions about where I think we stand in light of some of the arguments made by Mr. Egbase and Mr. Benoit's statement.

As Mr. Egbase noted, we expressed some concern to him

yesterday based on some of the language in the sentencing memo where there was a statement that Mr. Benoit was an unwitting tool, that he was a victim in this matter, a victim of the circumstances, and that he accepted responsibility for his ignorantly induced conduct.

And similarly this morning I think you've heard that he did not know what various other people were doing, just submitted a blank form and did not know the overall aim of the other people he was working with.

Our understanding when we asked Mr. Egbase about this yesterday was that we understood this rhetoric from the sentencing memo was designed to express that Mr. Benoit was not the most culpable actor in the scheme. And the government readily agrees with that, fully agrees with it.

As your Honor knows, we certainly view Darrell Thomas as the most culpable person as he received the largest share of the proceeds from this loan.

Mr. Benoit, as he's noted in the argument this morning, was brought into the scheme by other people, Mr. Baptiste, as well as Charles Petty, another individual who was a co-defendant in this case. And those individuals passed along instructions to Mr. Benoit regarding how he should wire fraudulent funds when they were received into the account.

I apologize for my cough, your Honor.

It's my understanding that Mr. Benoit, despite that

language and despite some of the argument this morning, and it may be worth clarifying with him, does not deny that he knew at some point that the PPP loan that he applied for for Transportation Management was fraudulent. And that once he knew that and recognized it, then he continued to facilitate the loan.

There was never an allegation that he personally put in the false information, but there was an understanding and certainly an agreement that that would be the case and that he would proceed with the fraud. That's our understanding of what the evidence showed and what Mr. Benoit, at least in the plea hearing, agreed to.

It is also -- and we'll discuss this a little bit in my sentencing argument, I think it is undisputed in the PSR that he submitted roughly around the same time period a couple fraudulent Economic Injury Disaster Loans for two companies roughly in the same time span. So this was not an accident. This was something that -- three separate fraudulent loans in a very short period of time.

I think any claim that Mr. Benoit did not know what was going on rings false in light of the evidence that, you know, we have and that Mr. Benoit has previously admitted to.

So, you know, I'm happy to give the overall argument but just want to clarify with Mr. Egbase, on behalf of his client, that he still is in a position where he acknowledges

that he knew at some point that the loan that he was entering was, in fact, fraudulent and that after knowing that he continued to facilitate that fraudulent loan.

THE COURT: Mr. Egbase.

MR. EGBASE: Well, your Honor, if I may just add regarding the two other applications that Mr. Benoit --

THE COURT: And I'll tell you, I'm not worried about the two other applications. I'm worried just about the one at issue in this case.

MR. EGBASE: All right. Submit then, your Honor.

THE COURT: I'm sorry, can you repeat that.

MR. EGBASE: I said I submit, your Honor. I'm done at this point.

THE COURT: Do I take that to mean that you understand that your client did indeed at some point learn that the loan was fraudulent and continued to facilitate it despite your argument that he was not the most culpable actor? Is that correct?

MR. EGBASE: Yes. And I believe I hinted to that in my opening as well, in my argument.

THE COURT: Very well. And let me ask Mr. Benoit as well.

Mr. Benoit, do you agree that you at some point learned that this loan was fraudulent and afterwards continued to facilitate the loan?

THE DEFENDANT: Yes.

THE COURT: Very well.

Mr. Kitchens or Mr. Egbase, do either of you think any additional discussion of this most recent issue is warranted? One thing I can do is go back over the elements if anyone thinks that's necessary.

MR. EGBASE: Yes, your Honor. The only thing I want to add regarding that issue is that Mr. Benoit's conduct after the loan -- after the moneys were wired into his account did not benefit him substantially. He wired moneys to Baptiste and Mr. Thomas, I believe, who -- and shortly after doing that his account was frozen and the balance of the funds are simply forfeited to the government, your Honor.

THE COURT: Understood.

Here's what I'm going to do. And, Mr. Kitchens, I'll let you weigh in, but I'm actually inclined to go back over the elements in an abundance of caution unless you disagree or unless Mr. Egbase disagrees.

MR. KITCHENS: I have no objection to that, your Honor.

THE COURT: Ms. Walker, if you can please put Mr. Benoit under oath.

COURTROOM DEPUTY CLERK: Mr. Benoit, if you can raise your right hand for me.

(The defendant was duly sworn)

COURTROOM DEPUTY CLERK: Thank you. Please remember to speak up.

You can put your hand down and announce your name for the record.

THE DEFENDANT: Bern Benoit.

COURTROOM DEPUTY CLERK: Thank you, sir.

THE COURT: Thank you, Ms. Walker.

Mr. Benoit, let me, again, ask you a question I asked you just a few moments ago but now that you're under oath I want to ask you again, do you agree that at some point you realized that this loan at issue here was fraudulent and you continued to facilitate the loan after you knew that it was a fraudulent loan?

THE DEFENDANT: Yes, your Honor.

THE COURT: And I'm going to go back over the elements of what you've pled guilty to several months ago and ask you again if you agree that you're guilty based on these elements.

So, first off, as to conspiracy to commit bank fraud and wire fraud, do you admit that two or more persons in some way or manner agreed to try to accomplish a common and unlawful plan to commit bank fraud and wire fraud as charged in the indictment?

THE DEFENDANT: I do, your Honor.

THE COURT: And do you admit that you knew the

unlawful purpose of the plan and willfully joined in it?

THE DEFENDANT: I do.

THE COURT: As to bank fraud, do you admit that you knowingly carried out or attempted to carry out a scheme to defraud a financial institution or to get money, assets or other property from a financial institution by using false or fraudulent pretenses, representations or promises about a material fact?

THE DEFENDANT: I do, your Honor.

THE COURT: And do you admit that the false or fraudulent pretenses, representations or promises were material?

THE DEFENDANT: Yes.

THE COURT: Do you admit that you intended to defraud the financial institution?

THE DEFENDANT: Yes, your Honor.

THE COURT: And do you admit that the financial institution was federally insured?

THE DEFENDANT: Yes, your Honor.

THE COURT: As to wire fraud, do you admit that you knowingly devised or participated in a scheme to fraud someone by using false or fraudulent pretenses, representations or promises?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you admit that the false pretenses,

representations or promises were about a material fact?

THE DEFENDANT: Yes, your Honor.

THE COURT: And do you admit that you acted with the intent to defraud?

THE DEFENDANT: Yes, your Honor.

THE COURT: And, finally, do you admit that you transmitted or caused to be transmitted by wire some communication in interstate commerce to help carry out this scheme to defraud?

THE DEFENDANT: Yes, your Honor.

THE COURT: Very well.

I believe we've sufficiently addressed the issue at hand here. And I believe that Mr. Benoit continues to confess and admit to his guilt and the elements of the crime charged.

Does either counsel disagree or think that any additional study of this issue is warranted at this time?

MR. KITCHENS: No, your Honor.

MR. EGBASE: No, your Honor.

THE COURT: And just so the record reflects it, Mr. Kitchens and Mr. Egbase both said "no" or "no, your Honor," at the same time and it may not have gotten picked up perfectly by the record.

In that case, Mr. Kitchens, let me go ahead and let you respond as far as sentencing to the defense argument.

MR. KITCHENS: Thank you, your Honor.

We think in light of those statements, we are at a guideline range of 27 to 33 months, giving Mr. Benoit credit for acceptance of responsibility. And we understand, and we'll talk about this, that he has, you know, a certain view of his role. But our view is, and as he just confirmed, that he very much accepts that he understood that there was a fraud and that he worked to facilitate that loan. And we'll talk about really what would have been the benefits to him as part of that scheme.

But the government recommendation in this case is a 27-month sentence, which is the low end of that guidelines range. We think that low end properly accounts for Mr. Benoit's conduct after charging, which has been largely constructive, as well as his history and characteristics, which show fairly minimal criminal history and certainly nothing related to fraud before this.

But we do believe that a guideline sentence is necessary under Section 3553(a) to properly account for the seriousness of the offense, the need for deterrence, as well as the need to avoid unwarranted sentencing disparities.

So we understand the defendant's reasoning for his request for a downward departure or variance, but we don't think ultimately that it's supported by the facts in the law and that a guideline sentence here is appropriate.

In terms of the seriousness of the fraud, there's a

couple aspects of this. First is the fact that this was a scheme that targeted a government aid program at a time really of national crisis. And I don't think that is overstating it one bit.

What the defendant and his co-conspirators did is they exploited a COVID relief fund that by its very design was meant to streamline the normal due process for applying for loans and getting bank loans in order to get critical funds to small businesses in need as quickly as possible.

Your Honor I'm sure recalls kind of the fears that happened in the immediate aftermath of the pandemic sweeping through last March, from March 2020 when there was genuine fears about the economy collapsing, as the world entered a shutdown for the sake of public health. And we saw as a result that unemployment immediately skyrocketed to its worse levels since the Great Depression.

The Paycheck Protection Program was set up really as a lifeline for businesses and by extension their employees to incentivize employment and to try to address that problem and give people an opportunity to make a living and make their ends meet. The need at that time could not have been greater for those funds. And the program did that by both matching a massive amount of funding, hundreds of millions of dollars, with a streamlined application process that was designed to send relief to those most in need as quickly as possible.

The fact that in this case Mr. Benoit and his co-conspirators were willing to engage in a scheme that took advantage of those efforts by the government to keep our citizens, you know, able to make their ends meet underscores, I think, the extent of the greed involved in this scheme.

The dollar amount here to some extent really understates the harm because he did not just steal money from the government or from the bank in this case that ultimately extended the loan, but each dollar that was taken as a result of this PPP loan was a dollar that was not available to the intended beneficiaries of this relief program, which were the struggling small businesses that needed a lifeline and needed support to try to keep their employees on the payroll. This is a significant and serious offense that happened and really struck at a time when our nation was at one of its most vulnerable points.

The second aspect of this, and I've referenced this briefly earlier, was the fact that the defendant engaged in a separate unrelated scheme to apply for a fraudulent EIDL loan. That was the Economic Injury Disaster Loan program. And that's covered in paragraph 95 of the PSR, which there's no objection to that. It describes the fact that Mr. Benoit obtained two fraudulent loans under the EIDL program that exceeded about $250,000.

Now, he submitted that application right around the

same time period in which he submitted the PPP application that led to the charges in this case. It was a month before that he submitted the loan for Premier Choice Office Supplies for this EIDL program that happened a month before the PPP loan program that we're talking about in this case.

I think the fact that we're dealing with not one but three fraudulent loans really shows that this is a crime of deliberation and calculation over a period of time. This is not an isolated event, but this was a pattern of efforts by Mr. Benoit to take advantage of disaster relief programs set up by the government, which they saw essentially as an easy mark given the desperation to get those funds out to people who really needed the relief. And that in itself, again, supports a higher sentence.

I think all that ties into the second 3553(a) factor, which is the need for general deterrence given the nature of the crime. Now, I don't think specific deterrence is a particularly big factor here in light of the defendant's relatively minimal criminal history. But given the nature of the harm caused, the need for deterrence is high not because of the defendant's background but really because of the nature of the offense, and that's where general deterrence is a critical factor here.

The Eleventh Circuit has a long line of cases where it has noted the importance of general deterrence in fraud

cases, including the *Coleman* case and *Hays* case. And the reasoning behind that really holds true here, that these are really crimes of opportunity conducted by cool and rational actors that if they do not get a significant sentence that really expresses the message that they will be punished for engaging in this kind of conduct, they're likely to engage in a similar deliberation down the road and to try to do it in the future, or other people will look at that and decide, you know, cost benefits support trying to engage in a similar scheme. And I think that really is true in the case of these COVID relief programs.

As we discussed, the federal government really pushed to get the relief funds out as quickly as possible and that meant, of course, it came as a sacrifice, an oversight. I think an audit that came out from the Small Business Administration in December of 2020 found that there were over 2 million loans in its estimation that were approved for nearly $200 million of funding that were potentially not in conformance with the CARES Act requirements.

Another study, just looking in the news from a few weeks ago, reported that about 15 percent of the overall loans obtained from the PPP program were likely fraudulent.

The DOJ, of course, for its part, as well as its law enforcement partners, have been working constantly since last -- the spring of 2020 to uncover PPP loan fraud and to

really prosecute it in an effort to deter it. And for all that effort, you know, the department nationwide has managed to prosecute a few hundred people for PPP loan fraud, but we're at that point we're talking about a few hundred people compared to literally more than a million loans that likely were fraudulent. That means that the government's ability to enforce this as a criminal matter has barely been able to scratch the surface given that the full extent of the PPP fraud is likely something that will never be determined, much less prosecuted by the government, and that heightens the need in cases like this to send a proper message when that fraud is detected and is prosecuted.

The last factor I want to mention is the need to avoid unwarranted sentencing disparities. In this case the Court has sentenced one defendant already. That was Kahlil Green. Now, he is not similarly situated to Mr. Benoit, and it really is a result of a different history and characteristics of the two defendants.

Mr. Green, the Court may recall, had a fairly extensive criminal history. And as a result, he was in Criminal History Category 4. And his guidelines range was 41 to 51 months as a result. But he had the same role in the offense as Mr. Benoit. He was a business owner. His claims were very similar to Mr. Benoit's in terms of he provided the business name, had a rough understanding of what the scheme

was but did not fill in the particulars in terms of making the specific claims for the number of employees, the amount of revenue, various other facts like that.

And one other differentiating factor again is that Mr. Benoit in this case, unlike what the evidence showed with Mr. Green, applied for the separate fraudulent EIDL loans, which are discussed in paragraph 95.

Now, Mr. Green, he received a low-end sentence, which in his case was 41 months. And, again, the higher guidelines range appropriately reflected the fact that he had a more extensive criminal history.

It is the government's position that Mr. Benoit should similarly receive a low-end guideline sentence. It's appropriate given the nature of their very similar roles in the offense and their similar understanding of the wrongdoing that they conducted with the PPP scheme.

I'm going to just briefly address a couple of additional arguments that have been raised by Mr. Egbase both in the sentencing memorandum as well as his argument this morning. There was an effort in both, I think, by Mr. Benoit to somewhat minimize the harm that he caused by noting that he really did not receive funds as a result of this PPP loan fraud. I think the memo says that he did not touch or spend a cent on himself from the fraud.

The memo, to its credit, however, I think

acknowledges and concedes the reason why this was the case, which was that the government fairly early in its investigation froze the account where a substantial portion of the funds were still sitting at Mr. Benoit's disposal. And, in fact, I think the record again shows that Mr. Benoit would have retained a substantial amount of the funds if the government had not at an early stage detected the fraud and stopped the scheme.

Mr. Benoit himself in the interview with the government told Special Agent Stites with the FBI that his cut of the fraudulent loan was supposed to be about 20 percent of the loan proceeds. And there was an e-mail that was sent from Mr. Baptiste to Mr. Benoit that stated that his cut from the fraudulent loan would be over $300,000. And that's consistent I think if you look at the withdrawals that are discussed after the loan is funded in paragraph 92 of the PSR. And that shows that after the funds come in, the fraudulent funds come in from the loan application, that Mr. Benoit makes a series of transactions, transfers money to various other co-conspirators, and at the end of all that there's more than $300,000 left in the account.

According to the plea agreement it notes and recognizes that he had over $450,000 seized in two separate bank accounts in forfeiture as part of his role in the scheme. I think all of that means that -- it does not suggest that

Mr. Benoit deserves somehow a break because the government in this case was able to do its job and caught the fraud at an early stage before he was able to spend assets, launder the assets or do anything else to disburse the funds.

In addition to that, of course, there's this claim about Mr. Benoit's medical conditions. Those medical conditions are also discussed in the PSR itself. And I do not mean to minimize those conditions and how they affect Mr. Benoit when I would make an argument on this front. But I think the language from the guidelines in 5H1.4 is telling and instructive to the Court about how rare a downward departure is in these circumstances.

It notes that medical conditions essentially should be grounds for downward departure only if there's an extraordinary physical impairment, such as the case of a seriously infirmed defendant. And I also note that those health conditions need to be present in an unusual degree.

I think the cases interpreting the guidelines have shown how rare this applies in order to take a defendant like Mr. Benoit out of the heartland of many other defendants who also suffer from their share of physical ailments. I think the facts of the defendant's own cases help to underscore this in pages six through eight of his memo.

Just to cite some of the examples from those cases, you're dealing with one case with a double amputee that needed

medical care, a defendant that was recovering from a brain tumor and had ongoing health issues. There's a discussion of a 78-year-old defendant with depression and coronary artery disease.

The record here I think just in comparison to those other cases and the cases that find a downward variance or departure based on health conditions I think is just a far cry from those extraordinary physical impairments you see in those other cases.

He mentions the gastric sleeve from 13 years ago. There's no statement in either the PSR or medical evidence provided about how that could not be treated in BOP custody. The other conditions in terms of high blood pressure and depression are more recent conditions, but we also do not have any more documentation to describe really the impact of those as well as the inability of BOP to address that. And that's where I think, again, in addition to the missing medical documentation what we're missing from the argument is any showing that the Bureau of Prisons would be unable to care for the defendant when he's put in custody.

The Health Services Division of the Bureau of Prisons has more than 3,000 healthcare professionals, including 750 Public Health Service staff that are commissioned officers detailed from HHS. The Bureau of Prisons also has, of course, a record of treating inmates with serious health conditions,

including, of course, it has clinical practice guidelines for the treatment of depression.

As part of that, during the initial classification and designation stage after a sentence is imposed the Bureau of Prisons evaluates the medical care that may be needed by any defendant and assigns and makes to appropriate institutions that are capable of providing the medical care that may be required. It has in addition to that medical referral centers that it can send people outside of the prison system.

So these are not uncommon conditions that Mr. Egbase has raised. And there's no showing that the Bureau of Prisons medical facilities are unable to treat these conditions or that these conditions are so extraordinary that he would need to be treated outside of the BOP system.

If, however, there were ever a situation where his health conditions were not able to be addressed adequately in incarceration, there's still a fail-safe, which is in Section 3582(c). And that provides, again, the ability for the Bureau of Prisons to seek a modification or sentence reduction if there's a compelling reason for reduction, including the fact -- and I know the Court is well aware of this since there's been many pleas for this in light of the pandemic, changes that may result due to a defendant's health condition certainly can support a motion for a reduction if

it's determined that the Bureau of Prisons is not adequately suited to address those conditions.

So overall we believe that a guideline sentence, and specifically that low-end 27-month sentence, properly reflects the seriousness of the offense and the magnitude of the harm to the many, many businesses that would have needed those -- that desperately needed PPP loan funding, as well as reflecting the need for specific and general deterrence in this case. We think that's a fair result and we think that's a proper result under Section 3553(a).

THE COURT: Thank you, Mr. Kitchens.

Is there any other matter that the Court needs to take up or anything else from either side before I issue a sentence in this case, counsel?

MR. KITCHENS: Not from the government, your Honor.

MR. EGBASE: No, your Honor, except to just add that if the Court is inclined to impose incarceration, that Mr. Benoit is requesting electronic monitoring or home incarceration. And the reason for that is that -- I heard the government's arguments and we are still in a pandemic and Mr. Benoit has a preexisting condition. I don't think he'll be suitable to be in a group incarceration or in a prison at this point. I would like the Court to take that into consideration.

THE COURT: All right. Thank you, Mr. Egbase.

Mr. Benoit, if you could please stand, sir. Thank you.

Pursuant to the Sentencing Reform Act of 1984, it's the judgment of the Court that you, Bern Benoit, are hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 27 months custody as to Count 7.

You must pay to the United States a special assessment of $100 due immediately. The assessment should be paid to the Clerk, US District Court, Northern District of Georgia.

The Court finds that you do not have the ability to pay a fine and cost of incarceration. The Court will, therefore, waive the fine and cost of incarceration in this case.

It's further ordered that you shall make restitution in the amount of $1,105,217 for distribution to the following victims:

Cross River Bank Legal Department, 400 Kelby Street, 14th Floor, Fort Lee, New Jersey, 07024, legaldepartment@crossriverbank.com, $830,417;

Also the US Small Business Administration, the address will be provided by the government, in the amount of $274,800.

Restitution shall be paid in full immediately.

You must pay the above-noted financial penalties in

accordance with the schedule of payment sheet of the judgment.

Payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons Inmate Financial Responsibility Program, are to be made payable to the Clerk, US District Court, 2211 US Courthouse, 75 Ted Turner Drive, Southwest, Atlanta, Georgia, 30303.

Any balance that remains unpaid at the commencement of the term of supervision shall commence within 60 days after release from imprisonment on the following terms:

Payable at a rate of no less than 250 monthly to the US District Court Clerk.

You must notify the Court of any changes in economic circumstances that might affect the ability to pay this financial penalty.

The Court determines that you do not have the ability to pay interest and it's ordered that the interest requirement is waived for restitution.

Upon release from imprisonment you will be on a term of supervised release for five years. And I want to explain those terms to you as well, but, Mr. Benoit, you can be seated for that portion of my sentence.

You must comply with the mandatory conditions of release, including you must not commit another federal, state

or local crime.

You must not unlawfully possess a controlled substance.

You must refrain from any unlawful use of a controlled substance.

You must submit to one drug test within 15 days of release from imprisonment, and at least two periodic drug tests thereafter as determined by the Court.

You must cooperate in the collection of DNA as directed by the probation officer.

You must make restitution in accordance with 18 USC, Sections 3663 and 3663(a) or any other statute authorizing a sentence of restitution.

As part of your supervised release you must comply with the standard conditions of supervision. These conditions are imposed because they establish basic expectations for your behavior while on supervision and identify the minimum tools needed by a probation officer to keep informed, report to the court and bring about improvements in your conduct and condition. Standard conditions of supervision will be included in the judgment.

You must comply with the following special conditions during the term of supervised release:

You must make full and complete disclosure of your finances and submit to an audit of your financial documents at

the request of your probation officer.

You must provide your probation officer with full and complete access to any requested financial information and authorize the release of any financial information.

The probation office may share the financial information with the United States Attorney's Office.

You must not incur new credit card charges or open additional lines of credit without the approval of the probation officer.

You must participate in a mental health treatment program and follow the rules and regulations of that program.

Such program may require that you submit to an evaluation and/or testing. The probation officer, in consultation with the treatment provider, will supervise your participation in the program, provider, location, modality, duration, intensity and et cetera. You must pay all or part of the cost of the program based on your ability to pay unless excused by the probation officer.

You must take all mental health medication prescribed by your treating provider.

You must pay for all or part of the cost of medication based on your ability to pay unless excused by the probation officer.

You must refrain from excessive use of alcohol.

You must submit your person, property, house,

residence, vehicle, papers, computers, other electronic communications or data storage devices or media or office to a search conducted by a United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition.

An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you violated a condition of your supervision and that areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

You must permit confiscation and/or disposal of any material considered to be contraband or any other items which may be deemed to have evidentiary value of violations of supervision.

And given that this is a remote video conference, I assume that the defense is requesting a voluntary surrender. And I assume that the government does not oppose that voluntary surrender. Is that correct, Counsel?

MR. KITCHENS: We do not oppose it, your Honor.

THE COURT: And, Mr. Egbase, do you have any suggested time range for when he will surrender?

MR. EGBASE: I'm -- just a minute, your Honor. I would like to confer with my client, please.

THE COURT: Very well. If you'll mute your line.

(Pause in the proceedings)

MR. EGBASE: I'm back, your Honor, if the Court can hear me.

THE COURT: Yes.

MR. EGBASE: My client is requesting 30 days, your Honor.

THE COURT: Any objection, Mr. Kitchens?

MR. KITCHENS: No. No, your Honor.

THE COURT: Very well. The defendant is to report for service of sentence in 30 days -- no later than 30 days from today.

Release conditions previously established will continue to apply.

Failure to report for service of the sentence is a criminal offense.

The Court does not have the authority to select the detention facility but can recommend a specific detention facility and the Bureau of Prisons will ultimately decide.

Mr. Egbase, any particular requests on behalf of your client?

MR. EGBASE: Any facility that is close to the Los Angeles area, your Honor, is okay with my client.

THE COURT: Very well.

The Court recommends to the Bureau of Prisons that Mr. Benoit be confined in a facility as close to Los Angeles,

California, as possible. And the Court will note that he has significant family and friend ties in that area, so that's particularly warranted in this case.

The Court also recommends to the Bureau of Prisons that the defendant be placed in an institution with mental health counseling.

This sentence is made in view of the sentencing goals delineated in 18 USC, Section 3553(a), and the parties' arguments as to those factors, including:

The nature and circumstances of the offense and the history and characteristics of the defendant;

The need for the sentence imposed to reflect the seriousness of the offense, to afford adequate deterrence and to protect the public;

The kinds of sentences available;

The kinds of sentence in the sentencing range established for the applicable category of offense committed as set forth in the sentencing guidelines;

Any pertinent policy statement;

The need to avoid sentencing disparity;

And the need to provide restitution to victims.

This sentence meets the criteria of punishment, deterrence and incapacitation and is sufficient but not greater than necessary to comply with the directives of Section 3553(a).

Based on these considerations, I find that this sentence is just and appropriate, particularly based on several factors that I found particularly important. One is the amount at issue here, which was substantial; however, I recognize and accept the argument that Mr. Benoit was not the most culpable actor in this scheme.

It was also important to me to learn about Mr. Benoit, both in the presentence report as well as the many letters, Mr. Egbase, that you had sent in on behalf of Mr. Benoit. I thought those were very compelling. It painted a picture for me of someone who is a good friend and a good son, particularly to his mother.

I was also moved by the fact that he unfortunately grew up without having a father in his life, which is something that I see quite often in sentencing cases unfortunately. So I'm sorry that that was his situation as well.

MR. EGBASE: Thank you, your Honor.

THE COURT: And I'm also cognizant of his both physical and mental health issues; however, I do not think they rise to the level of being an extraordinary physical impairment such that would allow a departure under guidelines 5H1.4, nor do I believe the variance that was requested should be given in this case given my review of the various factors at issue. However, I'm cognizant of those physical and mental

impairments. And one reason I'm at the very low end of the guideline range is because I do take some pause really on the mental health aspect of it. I understand that he did have some issues fairly recently, and he's now in counseling with a psychiatrist that seems to be helping him.

So it's not lightly, I would like Mr. Benoit and you to know, that I issue a sentence that includes a term of confinement. In a perfect world he would keep sessions with the same -- with the same counselor. I'm hopeful that they'll be able to continue that counseling for him while he's confined but someone who can do hopefully as good of a job. But I'm wary of that and understand the situation certainly. Therefore, I will not be departing or varying in this sentence as announced.

Before I advise the defendant of his appeal rights, does the government or defendant have any further objections to the findings of the Court, the guideline calculation or to the sentence or the manner in which it's been pronounced?

MR. EGBASE: No, your Honor.

MR. KITCHENS: No objections, your Honor, but just want to note there's a consent preliminary order of forfeiture that's been entered in this case. That's Docket Number 101. And that covers two separate JPMorgan Chase Bank accounts. $431,408.28 in one account. And $30,025.08 in the other JPMorgan Chase account. We would just ask that the forfeiture

be incorporated as part of the judgment.

THE COURT: All right. Not hearing any objection from Mr. Egbase, I will grant that request.

And I think I said this, but in an abundance of caution I also note that this sentence meets the criteria of punishment, deterrence and incapacitation and is sufficient but not greater than necessary to comply with the directives of Section 3553(a).

Mr. Benoit, you can appeal your conviction if you believe your guilty plea was somehow unlawful or involuntary or if there is some other fundamental defect in the proceedings that was not waived by your guilty plea.

You also have a statutory right to appeal your sentence under certain circumstances, particularly if you think the sentence is contrary to law. However, a defendant may waive those rights as part of a plea agreement, and you've entered into a plea agreement which, with very limited exceptions, waives most of your rights to appeal the sentence itself. Such waivers are generally enforceable, but if you believe the waiver is unenforceable, you can present that theory to the Appellate Court.

With few exceptions, any notice of appeal must be filed within 14 days of a judgment being entered in your case.

If you're unable to pay the cost of your appeal, you may apply for leave to appeal in forma pauperis or without

payment of fees. If you so request, the Clerk of Court will prepare and file a notice of appeal on your behalf. On appeal you may also apply for court-appointed counsel.

If you have any further questions about your right to appeal, I'm sure that Mr. Egbase would be happy to advise you further on this matter.

Mr. Benoit, do you have any further questions about anything I've said today at this sentencing hearing, sir?

THE DEFENDANT: No, your Honor.

THE COURT: Counsel, anything else further that we need to discuss?

MR. EGBASE: No, your Honor.

MR. KITCHENS: No, your Honor.

THE COURT: All right. Good to see both of you.

Ms. Walker, Ms. Coudriet and Officer Ridley, thank you for your assistance in today's proceedings as well.

Mr. Benoit, best of luck to you, sir. I know that you have many people out there, friends and family, who care about you very much and that you're important to them and their lives. And I wish you future success. And I hope that you're able to complete this term of imprisonment without issue and get back to your family and friends that I know need you very much.

That concludes this proceeding.

Thank you, everyone.

(PROCEEDINGS REPORTED WERE CONCLUDED 11:20 AM.)

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C E R T I F I C A T E

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA

I do hereby certify that the foregoing pages are a true and correct transcript of the proceedings taken down by me in the case aforesaid.

This the 23rd Day of January, 2024.

PENNY PRITTY COUDRIET, RMR, CRR
OFFICIAL COURT REPORTER