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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
	)	1:21-CR-00206-JPB
ANDRE LEE GAINES,	)	
	)	
DEFENDANT.	)	

TRANSCRIPT OF SENTENCING PROCEEDINGS
BEFORE THE HONORABLE J.P. BOULEE
UNITED STATES DISTRICT JUDGE
OCTOBER 5, 2021

APPEARANCES:

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

ON BEHALF OF THE DEFENDANT:
BRIAN MENDELSOHN, ESQ.

STENOGRAPHICALLY RECORDED BY:

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

COURTROOM DEPUTY CLERK: This is case 21-CR-206, USA v. Gaines.

MR. KITCHENS: Good afternoon, your Honor. Nathan Kitchens on behalf of the government. I'm here with my colleague AUSA Tal Chaiken, as well as Special Agents Joe Stites and Stefan Bublitz.

MR. MENDELSOHN: Good afternoon, Judge. Brian Mendelsohn here with Mr. Gaines.

THE COURT: Good to see you, Mr. Mendelsohn.

And good afternoon to you as well, Mr. Gaines.

OFFICER RIDLEY: Maria Ridley on behalf of the United States Probation Office.

THE COURT: Good to see you, Officer.

Mr. Gaines pled guilty on June 17th, 2021, to Count 1 of the information for false, fictitious and fraudulent statement and representation to a department or agency of the United States.

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. Mendelsohn, have you and your client had an opportunity to read and discuss the presentence report?

MR. MENDELSOHN: Yes, we have.

THE COURT: Do you have any questions about the presentence report or any amendments now other than what's been previously filed?

MR. MENDELSOHN: No, Judge.

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. MENDELSOHN: Yes, that's correct.

THE COURT: And I understand, Mr. Mendelsohn, that you are seeking a downward departure on various grounds, correct?

MR. MENDELSOHN: That's correct, Judge. I mean, it's -- I've asked for a downward departure and a downward variance. They're overlapping, so I think they -- they're one and the same in many ways.

THE COURT: Okay. Sometimes when they're not really overlapping, I will handle the departure requests first and hear argument from both of you on that and then move on. Other times when they are overlapping, it's my preference to just hear argument on everything at once, whether it's a departure or a variance or just general 3553(a) factors.

Is anyone opposed to just hearing argument on all of that later in this proceeding?

MR. KITCHENS: No, your Honor.

MR. MENDELSOHN: That's fine.

THE COURT: I would like to do this at least. I want to go over which grounds for departure you're seeking so I can just make sure that the record's clear on that.

And I wanted to note one additional ground that the Court is considering, I guess, on its own motion, and that is 5H1.11, which is military, civic, charitable or public service, employment-related contributions, record of prior good works to consider based on his 20 years of service to the Navy and his honorable discharge, a downward departure based on 5H1.11. And I'll be happy to hear from counsel from either side about the propriety of such departure when you make your arguments as to sentencing.

Other than that, Mr. Mendelsohn, it looked like 5H1.1, 1.3, 1.4 for starters, is that correct?

MR. MENDELSOHN: That's correct.

THE COURT: And in addition --

MR. MENDELSOHN: 5K2.20.

THE COURT: 5K2.20?

MR. MENDELSOHN: Yes.

THE COURT: And I think that was it. Are there any others?

MR. MENDELSOHN: That's it.

THE COURT: Okay. All right.

I will, therefore, adopt the findings of fact and conclusions of law in the presentence report with the understanding that I will consider the departure requests later in this proceeding.

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

Base offense level of 6;

Adjusted offense level of 14;

Total offense level of 12;

Criminal History Category of I;

Recommended sentencing range not more than five years imprisonment, $250,000 fine or twice the gain or twice the loss, whichever is greater;

Then fine guideline range of 5,500 to 55,000;

Term of supervised release of one to three years;

Special assessment of $100.

But I also had it as 10 to 16 months.

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

THE COURT: Okay. Agree, Mr. Mendelsohn?

MR. MENDELSOHN: Yes. That's correct.

THE COURT: So no objections to the guideline calculations as stated by the Court?

MR. KITCHENS: No objections, your Honor.

MR. MENDELSOHN: Yes, no objections.

THE COURT: All right. I may have some questions --

specific questions for you later, but let me go ahead and hear from counsel in a moment. Before I do, I want to let you know that I've reviewed the presentence report as well as the defense's sentencing memorandum.

Are there any victims that wish to be heard in this proceeding?

MR. KITCHENS: No, your Honor.

THE COURT: Any witnesses on behalf of the defendant?

MR. MENDELSOHN: No, Judge.

THE COURT: Any other documents or letters for the Court?

MR. KITCHENS: No, your Honor.

MR. MENDELSOHN: No.

THE COURT: Mr. Mendelsohn, would you like to make any argument on behalf of your client regarding sentencing?

MR. MENDELSOHN: Certainly.

THE COURT: Go ahead.

MR. MENDELSOHN: Judge, I believe I've laid out most of the arguments in the sentencing memo.

You know, it's kind of like the old days where we used to talk about downward departures. I haven't had to do that in awhile since these grounds are generally taken up by the downward variance grounds.

But, you know, on the departure issues, the Commission and the Supreme Court talked about cases that are

outside the heartland in order to qualify for the downward departure. So if it's a heartland case, it's really not a ground for a downward departure, but the unusual cases, the one's that are outside the heartland, are the ones that do qualify.

And, you know, the factors identified, the age, mental condition, physical health as well as the aberrant behavior are what they used to refer to as encouraged factors under the guidelines. So they identified these grounds as downward departures and encouraged them in certain situations where you have a defendant outside of the heartland in an extraordinary situation.

I think Mr. Gaines, given his medical conditions, his age and his physical conditions certainly is someone who is outside the heartland. He is very much atypical of the defendants that the Court sees in any of these cases.

I counted up I think it was 17 different physical ailments and 19 different medications. And, you know, the physical ailments are serious. He's had a number of strokes predating the incidents here in this case. Those strokes have affected his cognitive ability pretty substantially. I mean, he went from somebody who was able to successfully and honorably serve for 21 years in the military to somebody whose IQ on the IQ testing is now between the second and the eighth percentile. And I think that's a really significant drop.

Plus you add the cognitive difficulties associated with his executive functioning problems, his ability to reason and make those higher-level kinds of decisions and thinking. So, again, that's another extraordinary step.

And then when you factor in his age, at 67 he would be in the oldest couple percent of a prison population. And certainly with his medical issues and his physical issues, the cost of incarceration for him would be extraordinary, substantially higher than a normal inmate.

So as the guidelines talk about looking for alternate -- or less costly alternatives to incarceration, certainly a term of probation would be a less costly term -- alternative to incarceration.

So when you -- and I think when we're talking about the downward departure grounds, age, physical condition and mental condition, they sort of refer to each other where they say it's one thing if you're elderly, but if you're elderly and infirm, then you're really in the position to qualify for this. And I think Mr. Gaines certainly meets those definitions.

As to the issue of aberrant behavior under 5K2.20, I think his record really speaks for itself. Twenty-one years of honorable service in the Navy, his successful career at the post office, going 67 years without having even an arrest certainly shows that this is some behavior that is far outside

the norm for him.

Certainly I think the -- his cognitive deficits got him into this mess and contributed to his involvement in this situation. And so it is certainly aberrant and it's rolled up into the other deficits that he has.

So for all of those grounds I think he would qualify for a downward departure. Certainly there are also grounds for a downward variance under 3553 taking into account his history and characteristics and the circumstances of the offense.

And, you know, the Court did bring up his honorable service, his military civic record. Certainly 20 years of honorable service would qualify under the guidelines. And I would -- I kind of feel bad that the Court is picking up a departure ground that I didn't, but certainly I think he would fit right into that as well. And, of course, that also is a ground for a downward variance.

I talked about the difficulties in prison in the sentencing memo. I don't think I need to repeat a lot of those. I think it's obvious that he would be incredibly vulnerable in prison, just -- I don't know how he could even function quite frankly. And certainly would be an easy target for predators inside the prison system.

Also talked about a little bit in the sentencing memo, and I don't think it's the key point here, but he agreed

to the restitution in this case. I think that could have been an argument that we had. I mean, the loss amount -- the government agreed and the probation office found that the loss amount from the PPP part of the case did not apply here to these guidelines. And I think there would have been an argument that he wouldn't have been obligated for restitution. It could have gone either way potentially. But as part of his acceptance of responsibility he agreed to that.

Now, it's going to be burdensome for him, it's going to be something that he's going to have for a long time, but it's also something that he never, for lack of a better word, enjoyed the benefits of the money from that case. It all went to co-defendants who I think were the ones who lured him into this. And the money that was left sitting in his account was seized by the government. So, you know, he's not somebody who was out there buying fancy cars or doing any kind of big spending. The money was just sitting there.

So, despite that, he is still on the hook for the restitution, and I think that's a further ground for a variance. So we would ask the Court to vary down to probation.

THE COURT: All right. Thank you.

And, I'm sorry, I don't know if Mr. Gaines would like to make a statement on his own behalf, but let me explain to you, Mr. Gaines, I've read what your attorney has supplied to

the Court in a sentencing memorandum, and I've heard his arguments, but I would be happy to hear from you as well, sir, if you would like to say anything on your own behalf before I sentence you this afternoon.

THE DEFENDANT: No, I would not like to say anything.

THE COURT: Okay. Thank you, sir.

Mr. Kitchens.

MR. KITCHENS: Thank you, your Honor.

We ultimately agree with much of what Mr. Mendelsohn has said. And, in fact, we agree that a sentence of probation is ultimately the appropriate one here based on the consideration of the Section 3553(a) factors.

While I think we agree with that final destination, I think the parties disagree to some extent about the path to get there. We think appropriately that a downward variance should apply to basically get him to that probationary range rather than the downward departure. So I'll briefly discuss those downward departures before explaining the basis for why the government thinks that a downward variance is proper here.

For the various grounds that the -- I'll start with kind of the preliminary grounds that Mr. Mendelsohn has raised. His age, the mental and emotional conditions for Mr. Gaines, and then his physical condition as well.

Under the guidelines there's the same test ultimately for each of those, which is that the Court should consider a

departure if the issues based on age, mental condition or physical condition are present to an unusual degree that distinguishes the case from a typical case that the Court would see.

The downward departure under 5H1.4 adds a little bit more context and it notes that it may apply in the case of an extraordinary physical impairment or if a defendant is seriously infirmed. I think that consideration and what's described in the guidelines really shows the high legal bar that the Court needs to reach to find any of those downward departures apply.

We certainly think that they are significant facts regarding Mr. Gaines' conditions and his unique conditions that support a variance, and we'll discuss that. But I don't think it meets the high bar that's required for the Court to find that he meets one of those downward departure grounds.

I think Mr. Mendelsohn fairly notes in his sentencing memorandum that as a 67-year-old defendant Mr. Gaines would surely be on the older side of defendants that are in the prison system. That is certainly the case, the government agrees. However, it's also the case that we certainly have defendants in our district that are older. It is not uncommon in fraud cases that you will have defendants in their late 60s that are facing punishment for crimes that they did against others. It's not the case that every defendant who is in

their late 60s qualifies for a downward departure just based on their age.

Similarly with those physical conditions that are outlined in paragraphs 47 through 50 of the PSR, I think Mr. Mendelsohn fairly notes that, again, many of those conditions -- and there are a lot of them, some of them are significant and they are chronic issues. But I think based on the case law that have developed regarding a departure based on physical conditions, it would not qualify as extraordinary by themselves.

The cases interpreting the guidelines and this downward departure have really underscored how rare it is that this downward departure would apply. I think in *deVegter,* and the Eleventh Circuit certainly noted, that this was a discouraged ground for a downward departure.

The Court may recall in Mr. Benoit's sentencing some of the cases that were cited, I think they were mostly out-of-circuit cases, but they were cited describing some of the few instances where those type of departures would apply. And it was a case -- I think one was a defendant suffering from a brain tumor. And there was a 78-year-old with depression and coronary artery disease.

Other cases actually in the Eleventh Circuit have denied the application of a downward departure when the defendant similarly faced very serious health conditions,

things like lymphoma, renal kidney disease, Sickle cell anemia, HIV. The fact is that the way that the case law has developed it takes a truly extraordinary amount of physical infirmity for that downward departure to apply.

And then it's similar ultimately for the mental and emotional health downward departure. I think, again, the PSR outlines this and describes this very well in paragraphs 51 through 52. And then, of course, there's the report attached to the PSR as well. And those are significant issues. We do not diminish them in any way. And I think that, again, is an important factor in the government's ultimate sentencing recommendation. But based on the case law and how it is developed does not seem to meet the legal requirement of what is present in an unusual degree.

There's a case, just to give an example, *United States v. Astudillo-Carvajal*, that's 788 Fed.Appx. 677. It's an Eleventh Circuit case from 2019 where the district court there denied a request for downward departure when there was a finding that the defendant suffered from major depression, post-traumatic stress disorder, had low intelligence, various other cognitive issues. And the Eleventh Circuit noted it did not have jurisdiction essentially to review the denial of that downward departure. But I thought it was telling in that case with the district court, while it denied the downward departure, it ultimately varied downward 30 months in that

case. And I think that analysis is instructive and ultimately what the government recommends here in terms of the proper context in which to consider those unique history and characteristics of the defendant.

With the aberrant conduct downward departure under 5K2.20, there's also an Eleventh Circuit case that I think is instructive on this. It's *United States v. Orrega*, that's 363 F.3d, 1093. That's an Eleventh Circuit case from 2004. It, again, has very similar language in noting that that downward departure applies only in extraordinary cases. And it held that the commission of two criminal acts by, in that case, having two separate conversations with an undercover agent in an enticement case barred the defendant from receiving that particular downward departure under 5K2.20.

Here we don't disagree at all with Mr. Mendelsohn in terms of Mr. Gaines' lifetime of good acts in the community and his military service and civic service as well, but he did, in fact, commit two separate criminal acts as part of this 1001 offense. This was two separate calls and conversations containing false statements with Special Agent Joe Stites.

Paragraph 16 of the PSR describes the first one in which Mr. Gaines, when he was initially called by Agent Stites, reported that Gaines Reservation & Travel had five to six employees. And when at that point Special Agent Stites

noted the fact there was 69 employees listed in the PPP loan application for Gaines Reservation & Travel, Mr. Gaines said he needed to review the full documents. Now, of course, at that time Mr. Gaines knew full well that Gaines Reservation & Travel had no employees, and yet he made those false statements and said that he needed to review documents.

There's then a second call which is described in paragraph 17. And that occurs the same day but it's two separate incidents. And in that second call Mr. Gaines claimed that Gaines Reservation & Travel did, in fact, have 69 employees, that it had a large monthly payroll. And that, of course, and we do not dispute, that those were based on essentially, you know, items that Darrell Thomas coached him to say in response.

We do not, you know, again, have any dispute about that; however, there were two separate incidents in which Mr. Gaines provided false statements to Special Agent Stites. And based on that, the departure under 5K2.20 does not apply.

The Court notes 5H1.11 also could apply and provide a measure -- or reason for downward departure. I confess, I have not reviewed that and researched it to figure out cases that have interpreted it to see if it has been in a similar context.

But Mr. Gaines certainly does have significant military service, you know, more than two decades of service

for the Navy. I'm not sure, but ultimately, you know, the cases that have applied to that, it does have -- that same language about the military service has to be present in an unusual degree and it is otherwise discouraged. Again, that's consistent with our view, which is that the appropriate way to consider all of those factors for Mr. Gaines and all the things that would point towards a probationary sentence is taken through the lens of a downward variance rather than through a downward departure. And that is just simply as a result of how the case law has developed, that it is truly the rare case where a downward departure based on those grounds would apply.

And I think Mr. Mendelsohn himself ultimately, you know, recognized that in his sentencing memo where he notes that the Court could apply a downward variance based on very similar grounds without -- I think his words were apt, without essentially jumping through the hoop of finding a downward departure.

And that ultimately is the government's recommendation based on our full consideration of the Section 3553(a) factors. We do think a probationary sentence here is proper.

I think the primary thing that is guiding that recommendation is the history and characteristics of Mr. Gaines. And that I think has been eloquently stated by

Mr. Mendelsohn both in his sentencing memorandum as well as his argument today.

It is clear to us that while the -- each individual factor, even taken in combination of his age and health conditions and his cognitive issues, are not enough to meet kind of that legal bar of a downward departure. It is a significant factor not only in terms of his commission of the underlying offense, but also in terms of the outcomes that he could face and the propriety of the sentence that the Court would impose in terms of what he would be looking at and how he would respond to a prison sentence.

In terms of his commission -- how it affected his conduct in the commission of the offense, we certainly have heard defendants that have noted that they were duped by Darrell Thomas and others in certain cases, that they were roped into this scheme, maybe did not know each and every detail but yet still knowingly participated in the fraud.

We do think to some measure that that is true for even all those other defendants, that they were -- to some degree may have been misled by Darrell Thomas and others. But what distinguishes Mr. Gaines here from the other defendants and I think takes him out of the heartland of those other defendants is the unique role that his health conditions played in making him vulnerable. And that is I think the language that was highlighted specifically in Mr. Mendelsohn's

sentencing memo, that it essentially noted that he was exceptionally vulnerable to manipulation. He did not have any sort of understanding of the larger scheme. Was used essentially as a tool for others simply because he had a dormant corporation that he had funded and that was essentially taken advantage of by a family member.

As a result of that, you know, ultimately, as we learned more about the case, this is why I think the Court heard that we have a sentence being imposed not on an underlying participation in the PPP loan fraud but based on the lies that were told to Special Agent Stites.

We also agree with Mr. Mendelsohn that prison is not the proper environment for someone with Mr. Gaines' conditions. Mr. Gaines is not one who would benefit from the educational or vocational training at a prison facility. He's not someone that needs rehabilitation. He would have to receive medical care, of course, provided by the Bureau of Prisons. And that would be not only, as Mr. Mendelsohn notes, extremely costly for the government, but it would not ultimately serve a beneficial role really for the justice system in terms of either deterrence or rehabilitation for a defendant that is facing Mr. Gaines' unique circumstances.

The countervailing concern, of course, in many cases is the seriousness of the offense and the need to afford adequate deterrence. I don't think ultimately that the

government's recommendation of probation in this case diminishes the seriousness of the offense or the need for deterrence.

The fact, as I already noted, was that Mr. Gaines did not knowingly participate in the underlying PPP fraud. He is, of course, being sentenced just based on that false statement to the agents. And that is significant by itself. He did knowingly lie to Special Agent Stites. Mr. Gaines understood at the time the difference between the truth and a lie, he knew that he was lying to the federal agent, and he knew it was wrong when he did it.

Lying to a federal agent during an investigation can have meaningful consequences to the whole justice system. Those lies can be corrosive and they have a corrosive effect on others. It can impede the ability for law enforcement to detect and deter criminal conduct. And indeed criminal conduct in this case was ongoing after Mr. Gaines had this interview with Special Agent Stites.

So the nature of this offense itself is significant, and I don't mean to diminish the seriousness of it. And general deterrence is a fair factor for the Court's consideration to deter others from making similar lies.

But ultimately I think that our concern with those two factors is lessened for two reasons. First, again, is Mr. Gaines' health conditions that make him a very unique

defendant. And second is Mr. Gaines' conduct after sentencing in this case. I won't belabor the point because we've already I think on both sides discussed more details about Mr. Gaines' unique cognitive and physical conditions but it certainly affected his decision making here.

It is unlikely that a prison sentence here would deter those with the same condition. And those without the same condition would not be deterred either by sending Mr. Gaines to prison.

I think also that Mr. Gaines' conduct since he was charged in this case also shows not only his remorse but also constructive steps that he's taken that reaffirm really the lower need for deterrence and the fact that probation is proper here.

As Mr. Mendelsohn noted he agreed to pay full restitution here in this case. He pled early. He did not file any sort of motions. Furthermore, he provided, you know, a statement to the government clarifying his role in the offense and the role of others. All of those steps I think are constructive and show Mr. Gaines' acceptance of responsibility to a significant degree and his understanding of what he did was wrong. And it does not seem in light of all those circumstances that a sentence of imprisonment would serve either Mr. Gaines or the justice system.

So overall we agree with Mr. Mendelsohn that a

downward variance is proper. We think that it -- under the Section 3553(a) factors it reflects the history and characteristics of the defendant while also taking into account the seriousness of the offense and the need for deterrence.

We think it is a fair result based on the offense and it is the just result given Mr. Gaines' unique health conditions and making sure that, you know, he has accepted responsibility for his offense.

THE COURT: Thank you, Mr. Kitchens.

I'm attempted to ask you for a few of those case cites. I got some of them but not all of them, and I don't have realtime right now, but before I do that I'm going to ask Mr. Mendelsohn a question. I may not need them.

And I will say that I tend to agree with you, Mr. Kitchens, as to 5H1.1, age and 5K2.20, aberrant behavior. I think it's probably a closer call 5H1.3 as to mental health, 5H1.4, physical condition, and 5H1.11 as far as his military service. So I'm conditioned on my question for Mr. Mendelsohn here in a second, I may want some of those case cites, and I'm probably going to want to look at those cases. But I may not need to.

Mr. Mendelsohn, you've asked me for, on behalf of your client, a sentence of probation either via variance or via departure. Mr. Kitchens has stood up on behalf of the

government and said, your Honor, we agree there should be a variance to a probationary sentence here. If I were to agree with your argument and Mr. Kitchens' argument about variance and be prepared to sentence your client to a sentence of probation, would you be waiving your request for a departure or would you still want me to rule on the formality of the departure request?

MR. MENDELSOHN: I think the Court's determination that it would vary would probably moot out the departure request, so I would be happy to withdraw that.

THE COURT: Very well.

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

MR. KITCHENS: Just this is, again, sort of a formality, but to be clear again, we -- and this is consistent with the plea agreement, we will be dismissing the charges against Mr. Gaines that are in the original indictment. That's in case number 1:20-CR-296.

THE COURT: All right. Very well.

Mr. Gaines, if you could please stand, sir.

Pursuant to the Sentencing Reform Act of 1984, it's the judgment of the Court that you, Andre Lee Gaines, are sentenced to five years probation as to Count 1.

Sir, I'm going to read some other portions of your

sentence, but you can have a seat at this point, sir.

It's further ordered that the defendant shall pay to the United States a special assessment of $100 which shall be due immediately. The Court finds that the defendant does not have the ability to pay a fine, therefore, the Court will waive the fine in this case.

It's further ordered that the defendant shall make restitution in the amount of $806,710 to the Clerk of Court for distribution to the following victims:

Cross River Bank in the amount of $782,508.70. And the US Small Business Administration, $24,201.30.

And I will say to my able law clerk, I appreciate her writing out those numbers for me. I've had a sentencing recently with a lot of big numbers in it and she must have been here and heard me butcher those. So thank you.

Restitution shall be paid in full immediately. The Court determines that you do not have the ability to pay interest and it is ordered that the interest requirement is waived for restitution.

You must pay the above-noted financial penalties in accordance with the schedule of payment sheet of the judgment.

All criminal monetary penalties 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 30 days of this judgment 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.

You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of the time you are sentenced unless the probation officer instructs you to report to a different probation office or within a different time frame.

While on probation you must comply with the following mandatory conditions:

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.

The drug testing condition is suspended based on the Court's determination that you pose low risk of future substance abuse.

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

You must make restitution in accordance with 18 USC, Sections 2248, 2259, 2264, 2327, 3663, 3363(a) and 3664.

As part of your probation 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 probation officers to keep informed, report to the Court and bring about improvements in your conduct and condition. The standard conditions of supervision will be included in your judgment.

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

You must make full and complete disclosure of your finances and submit an audit to your -- of your financial documents at the request of your probation officer.

You must provide the 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 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 item which may be deemed to have evidentiary value of violations of supervision.

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 is a just and appropriate sentence, particularly in light of the defendant's age, his mental issues, his physical issues, the fact that other than this offense he has not engaged in criminal activity in his life to any degree.

I think also that his military service is important as I consider the history and characteristics of the defendant. The record will reflect that he served 20 years. I think it was '73 to '94, so it might have even been 21 years. I'm not sure what part of each year, but you served 20 years in the Navy, including overseas service, and was honorably discharged.

So, sir, I appreciate your service to our country and your willingness to take an oath to give your life so that the rest of us can live free.

However, this is still a serious crime and warrants punishment and warrants the punishment of probation.

But based on all of the 3553(a) factors, I do believe that it's warranted to vary downward here. Given that I have varied downward, I understand the defense has withdrawn their request for departure, so I do not reach the departure grounds.

Is that correct, Mr. Mendelsohn?

MR. MENDELSOHN: That is.

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

MR. KITCHENS: No objections, your Honor. Just two notes.

First, with the restitution order that your Honor imposed, I wanted to note that it should be joint and several with several other defendants that are in the indictment in 20-CR-296.

THE COURT: All right. Let me just put that on the record.

And, yes, that wasn't in the materials I received but that would seem to make sense. The restitution that I've announced earlier, and Mr. Mendelsohn I'm assuming you don't

disagree or have any argument on this, will be joint and several with the other defendants in indictment number --

MR. KITCHENS: 20-CR-296.

THE COURT: -- 20-CR-296.

Mr. Mendelsohn, is that correct?

MR. MENDELSOHN: That is correct. And I was actually going to bring up specifically John Gaines, Darrell Thomas and Carla Jackson.

THE COURT: The Court concurs. So noted.

You had something else, Mr. Kitchens?

MR. KITCHENS: We think -- those three I think, the additional defendants that were charged in connection with Gaines Reservation & Travel, of that loan, and the superseding indictment would include Teldrin Foster and we believe Jesika Blakely as well. We can double-check, but we think it's Jesika Blakely.

THE COURT: Mr. Mendelsohn.

MR. MENDELSOHN: That's fine. We dropped out of that case largely before the others were added, but to the extent these others participated in preparing the paperwork for that case, we would concur.

THE COURT: What I'll do is it will be joint and several with the other two names just mentioned by Mr. Kitchens as well, which are --

MR. KITCHENS: Teldrin Foster and Jesika Blakely.

THE COURT: Very well.

And, Mr. Kitchens, if you after getting back to your office realize that that's incorrect, please let us know and we'll correct that in the record.

MR. KITCHENS: We certainly will, your Honor.

THE COURT: Go ahead.

MR. KITCHENS: I was going to say just the second point real quick, but I believe the Court has also entered a consent preliminary order of forfeiture in this case. And we would just ask that the forfeiture be included, incorporated in the judgment and commitment order as well.

THE COURT: Okay. It will be.

And, Ms. Walker, have I already signed that or do you have it for me?

COURTROOM DEPUTY CLERK: I'll have to print it out for you, sir.

THE COURT: That will be included, and I will sign that at the conclusion of this proceeding.

Anything else from either side?

MR. MENDELSOHN: Nothing from the defense. Thank you.

MR. KITCHENS: Nothing else from the government.

THE COURT: Mr. Gaines, you can appeal your conviction if you believe that your guilty plea was somehow unlawful or involuntary or if there's some other fundamental

defect in the proceedings that was not waived by your guilty plea. You also have the 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 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. Mendelsohn would be happy to advise you further on this matter.

And Ms. Walker just advised me that I did sign the consent order it looks like on August 4th of this year.

Mr. Gaines, do you have any questions about anything that I've said at today's sentencing hearing, sir?

THE DEFENDANT: No, your Honor.

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

MR. KITCHENS: No, your Honor.

MR. MENDELSOHN: No, Judge. Thank you.

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

Ms. Walker, Ms. Coudriet, Officer and Officer Ridley, thank you as well.

Mr. Gaines, best of luck to you, sir. I think Mr. Mendelsohn did a fine job of advocating for you in this proceeding, both before me but as importantly I would say I'm sure in his communications with Mr. Kitchens. It made it an easy decision for me here that counsel for both the government and your counsel agreed on the results here.

I obviously considered the 3553(a) factors independent of their arguments, but one thing I always consider, and I believe the law requires me to consider, is the arguments they make as to those factors. And when, like here, they agree, it can sometimes be difficult for me to do anything but that under the facts, and that's what I thought was appropriate here.

I do applaud you for your service to our country. And I'm sorry that you got involved in this. I hope that you will be infinitely more careful going forward and make sure that you have close family or friends helping you and advising you as you go through the rest of your life so that no one

else hopefully will take advantage of your condition.

Does that make sense, sir?

THE DEFENDANT: Yes, your Honor.

THE COURT: Okay. Best of luck to you.

Everybody takes care.

That concludes this proceeding.

(PROCEEDINGS REPORTED WERE CONCLUDED AT 1:52 PM.)

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 29th Day of January, 2024.

Penny Pritty Coudriet

PENNY PRITTY COUDRIET, RMR, CRR
OFFICIAL COURT REPORTER