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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
	)	
CHARLES PETTY,	)	
	)	
DEFENDANT.	)	

TRANSCRIPT OF SENTENCING PROCEEDINGS
BEFORE THE HONORABLE J.P. BOULEE
UNITED STATES DISTRICT JUDGE
FEBRUARY 23, 2022

APPEARANCES:

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

ON BEHALF OF THE DEFENDANT:

KENNETH W. SHEPPARD, ESQ.

STENOGRAPHICALLY RECORDED BY:

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

(PROCEEDINGS HELD IN OPEN COURT AT 10:10 AM, ATLANTA, GEORGIA)

COURTROOM DEPUTY CLERK: This is the case of USA v. Charles Petty, Case Number 20-CR-296, Defendant 12.

MR. KITCHENS: Good morning, your Honor. Nathan Kitchens on behalf of the government. I'm here with AUSA Tal Chaiken as well.

THE COURT: Good to see both of you.

MR. SHEPPARD: Kenneth Sheppard on behalf of Mr. Petty, who is present in the courtroom.

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

Mr. Petty pled guilty on November 2nd of last year to Count 9 of the second superseding 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. Sheppard, have you and your client had the opportunity to read and discuss the presentence report?

MR. SHEPPARD: 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. SHEPPARD: We do not.

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 defendant, is that correct?

MR. KITCHENS: That is correct, your Honor.

MR. SHEPPARD: That is correct, your Honor.

THE COURT: 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 fact and conclusions of law the guideline calculations are as follows:

Base offense level of 7;

Adjusted offense level of 24;

Total offense level of 21;

Criminal History Category of III;

Recommended sentencing range of 46 to 57 months;

Fine guideline range of $15,000 to $1,660,834;

Term of supervised release of 2 to 5 years;

Special assessment of $100.

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

MR. KITCHENS: No, your Honor.

MR. SHEPPARD: No, 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. I have reviewed the presentence report.

Any other documents or letters for the Court from either side?

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

MR. SHEPPARD: Not from the defense, your Honor.

THE COURT: Are there any victims present that wish to speak or present evidence in connection with the sentence in this case?

MR. KITCHENS: No, your Honor.

THE COURT: Any witnesses on behalf of the defendant?

MR. SHEPPARD: No, your Honor.

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

MR. SHEPPARD: Only that -- yes. Would you like the argument now?

THE COURT: Yes. Go ahead.

MR. SHEPPARD: Your Honor, we had met with the state extensively. We did a proffer where we have provided information but none of it was sufficient to get us a 5K.

The United States Attorneys and I met extensively on this case and discussed everything about the case. And we jointly agree that the appropriate sentence -- I'm not going to say that.

I have agreed that the appropriate sentence is

46 months. And we are asking the Court to sentence Mr. Petty to the low end of the guideline range, 46 months.

THE COURT: All right. Thank you, Counsel.

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

MR. SHEPPARD: We do have a post-sentencing request as to placement.

THE COURT: What is that?

MR. SHEPPARD: Your Honor, we're asking that -- recommend that he be placed at the satellite prison camp by Miami. The reason why is there is an RDAP program there. And his wife will be working in that area. So we are asking for SCP Miami.

THE COURT: SCP Miami, correct?

MR. SHEPPARD: That's the information I have, your Honor.

THE COURT: Any objection to that from the government?

MR. KITCHENS: No objection, your Honor.

THE COURT: Mr. Petty, I know you asked your counsel to make that request, but anything else you would like to say?

THE DEFENDANT: No, that's it, just reiterating what he said. The biggest thing about getting to that location is

the RDAP program which will help, and they have a few other programs there. I think it's officially FCI Miami. It's either designation but it's the camp there. So it's listed as SCP Miami or FCI Miami camp.

Like I said, my wife will be down there working, that means I can have more access to my children and stepchildren while I'm down there. Other than that, I'm fine.

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

And does the government wish to respond?

MR. KITCHENS: Yes, your Honor.

THE COURT: Go ahead.

MR. KITCHENS: The government also agrees with the recommendation of 46 months. That is the low end of the guidelines and we think it is appropriate that the defense recommended that as well.

We think that ultimately that 46-month sentence at the low end appropriately accounts for his conduct after he was charged in this case as well as his history and characteristics. And we'll talk about that in just a little bit.

But the guideline sentence is necessary in our view because of the seriousness of the offense and the need for deterrence in this case.

In terms of the seriousness of the offense, I think there's two aspects of this. One, and certainly the Court is

well familiar with, which is just the nature of the overall scheme, targeting a government aid program at a time of crisis.

The defendant and his co-conspirators exploited this COVID relief fund near the onset of the pandemic that ultimately wrecked the economy. And the dollar amount here -- for each dollar that was essentially obtained in this loan, that was an additional dollar that was not available to companies that were truly in need and in dire straits trying to make ends meet as the economy collapsed through the pandemic. This was greed plain and simple by the defendant and his co-conspirators. And they did so at a time of national crisis.

The second aspect of this is that the defendant, as is reflected in the guidelines in the PSR, was in a leadership role, and that's a little bit different than some of the other defendants that we've seen previously in this case. He was not someone who was the direct loan applicant and provided his information for one of his companies to apply for a loan. He was someone that helped essentially in the middle to work with people that were higher up in the chain and communicated instructions to the loan recipient, Bern Benoit. By doing so, I think that reflected a level of sophistication beyond just your normal loan applicant.

Mr. Petty's role, and he knew exactly what he was

doing, was providing specific instructions about how the proceeds of that PPP loan should be distributed to other co-conspirators within the scheme. That is different. I think it reflects the seriousness of the defendant's role in that offense. And that is, again, appropriately accounted for in the guidelines. He received a three-level increase in the guidelines which had a significant effect in his overall guideline range here.

I think really the overriding factor, however, with Mr. Petty is the need for deterrence given the nature of the crime. We've talked I think previously in this matter the need for general deterrence, and that certainly is the case given the nature of white collar fraud crime in general and the Eleventh Circuit authority noting the importance of general deterrence. But also, of course, specifically with PPP loan fraud, the truth of the matter is that it is grossly under prosecuted just simply because there was such massive degrees of fraud that to the extent that we are able to prosecute it and catch people in the act that it's important to send the right message about that being improper conduct.

Here I think the most troubling factor, of course, is specific deterrence with Mr. Petty. This is a rare situation where the defendant is not a stranger to this courthouse. He was previously convicted in 2016 for a different bank fraud and wire fraud offense and ultimately sentenced in 2016.

I was the prosecutor in that underlying case for Mr. Petty in 2016. And this is a first in my career where I've had a defendant appear again before me. It's something I hope never to be repeated. You hope when we go through this process, and I know the Court has the same goal, that that's the only time we will see that defendant, that they will use the wake-up call from any prison time or whatever to improve their life and have a positive direction.

And this honestly is a factor that gave the government the most pause in this case. It certainly should have been a situation where he received a wake-up call. And the fact that he perpetrated new fraud is in many ways just inexcusable and hard to fathom his decisionmaking at the time.

Ultimately, however, I think that 46-month sentence is an appropriate recommendation in the guidelines range for several reasons in comparing it to the underlying offense.

First, the original fraud scheme, while I don't mean to diminish the seriousness of this fraud, but in some ways it was more serious and concerning. And this is described in part in the PSR in paragraph 105.

But the defendant in that case, he stole money from over 65 victims in that case. And, specifically, they were individuals that were seeking a line of credit. Many of those individuals were themselves in fairly desperate situations. In at least one instance they were trying to save their home

from going into foreclosure and they reached out based on Mr. Petty's advertisements and tried to get this line of credit. Many of those victims were vulnerable.

And while he was on bond in that case, he committed a new offense of bank fraud and basically took someone's identity, applied for a fraudulent bank loan and then obtained money from that while he was on pretrial release.

Those were all facts that were extremely concerning to the underlying sentencing court, and he received an appropriately high sentence for that.

The second factor I think is that the conduct after charging here I think was much more constructive than what happened the first time Mr. Petty was charged. And, again, I just discussed after that first arrest Mr. Petty's actions while on pretrial release was that he committed a new federal offense of bank fraud. Here, by contrast, after his arrest Mr. Petty essentially immediately reached out to us and expressed not only his interest in an early resolution but also his interest in meeting with us and giving us all the information he had.

He did, as Mr. Sheppard described, met with us and provided a full proffer. And he provided, in our view, truthful information in that proffer. We, as Mr. Sheppard noted, are not in the position yet where we think that would rise to the level of substantial assistance, but that is I

don't think through any fault of Mr. Petty. He gave us the information of what he had and described his involvement in the offense.

The last factor I think that supports the 46-month recommendation from the government is Mr. Petty, this is not the end of the road for him in terms of this underlying arrest. He is after this going to have a separate supervised release revocation hearing. And based on the guidelines, he is facing an additional guideline sentence of potentially more than a year in prison based on that role.

That's a proceeding that will take into account the fact that Mr. Petty committed this offense while on supervised release and he will -- it will be the government's recommendation that he should receive additional prison time based on that separate supervised release violation.

Overall, we think that 46-month sentence and recommendation in this instant case is the appropriate one in light of Mr. Petty's clear efforts after his arrest to try to essentially make amends, to come clean. And that is encouraging for the government that he hopefully realizes the fault of his ways and trying to do things in a constructive manner to assist the government and to avoid this sort of trouble again.

And so we believe that that is the fair result for Mr. Petty. And that it is also the just result given the

nature of the offense and his criminal history.

THE COURT: Thank you, Counsel.

I had forgotten to recognize our probation officer that's here. Good morning.

OFFICER RIDLEY: Good morning, your Honor.

THE COURT: How are you?

OFFICER RIDLEY: I'm doing well. How are you?

THE COURT: I'm well. Thank you.

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

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

THE COURT: And what about from the defense? Anything else, Mr. Sheppard?

MR. SHEPPARD: No, your Honor.

THE COURT: All right. Thank you.

Officer Ridley, do you know which -- what the camp is called exactly in Miami? I want to get it right for the record.

OFFICER RIDLEY: I believe it's FCI Miami.

THE COURT: What's that?

OFFICER RIDLEY: FCI Miami.

THE COURT: Thank you.

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

Pursuant to the Sentencing Reform Act of 1984, it's

the judgment of the Court that you, Charles Petty, are hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 46 months custody as to Count 9.

I'm going to read additional portions of your sentence, but you can have a seat for that part, sir.

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 or cost of incarceration. The Court will waive the fine and cost of incarceration in this case.

It's further ordered that you shall make restitution in the amount of $830,417 jointly and severally with Darrell Thomas, Bern Benoit, Jerry Baptiste, Teldrin Foster, Denesseria Slaton and Amanda Christian for distribution to the following victims:

Cross River Bank, $805,504.49;

US Small Business Administration, $24,912.51.

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 supervised release 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 is ordered that the interest requirement is waived for restitution.

If applicable, forfeiture of your right, title and interest in certain property is hereby ordered consistent with the plea agreement and verdict of forfeiture. The United States shall submit a proposed order of forfeiture forthwith.

I saw that there was a forfeiture clause. I don't think I've seen anything on that. Have I, Counsel?

MR. KITCHENS: That's correct, your Honor. And there's no specific assets that would be forfeited by Mr. Petty.

THE COURT: Very well.

Sir, upon release from imprisonment you'll be on

supervised release for a term of five years.

You must comply with the mandatory conditions of release.

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, Section 3663 and Section 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 probation officers 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 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 charges or open additional lines of credit without the approval of the probation officer.

You must participate in an alcohol and/or other substance abuse treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program.

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 submit to substance abuse testing to determine if you have used a prohibitive substance.

You must not obstruct, attempt to obstruct or tamper with any testing methods.

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

You must not use or possess any controlled substances without a valid prescription. If you do have a valid prescription, you must disclose the prescription information to the probation officer and follow the instructions on the prescription.

You must refrain from excessive use of alcohol.

You must not knowingly purchase, possess, distribute, administer or otherwise use any psychoactive substances, synthetic marijuana, synthetic cathinones, commonly referred to as bath salts, et cetera, that impair physical or mental functioning except with prior approval of the probation officer or a valid prescription from a licensed medical practitioner.

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 the 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.

At the conclusion of this proceeding, you'll be remanded to the custody of the US Marshal.

Although I do not have the authority to select your detention facility, I can recommend a detention facility. And I do so. I hereby recommend to the Bureau of Prisons that the defendant be housed at FCI Miami. And the reason for that is he will have family in that area and that will be more convenient for him to have contact with his family, which I think will be helpful to him as he hopefully proceeds through his sentence and on to supervised release.

The Court also recommends that he be housed in a facility with a substance abuse treatment program.

This sentence is made in view of the sentencing goals delineated in 18 USC, Section 3553(a) and, importantly, 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.

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

Mr. Petty, I will say that I think your attorney did an excellent job for you here. I mentioned that one thing I considered here is the parties' arguments as to those Section 3553(a) factors. Had not he and the government both recommended to me a 46-month sentence, I would have been more inclined to sentence you to 57 months, at the very highest end of the guideline, not the low end of the guideline.

As I reviewed this case and your criminal history, it did seem to me, as Mr. Kitchens argued, a very serious offense given the amount of money involved and the effects of that money having been stolen from the government, it did not go to some other company or companies that could have used it during our time of national crisis. And I think deterrence is

important here, both specific and in general.

I genuinely hope, though, sir, that you are able to see the error of your ways this time and that we won't see you back here yet again.

Before I advise the defendant of his appeal rights, does the government or defense 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.

MR. SHEPPARD: Just that I think there's more than one FCI Miami. This would be the FCI Miami Camp.

THE COURT: The Court respectfully recommends to the Bureau of Prisons that the defendant be housed at FCI Miami Camp. So, importantly, the camp, not any other FCI Miami.

Anything else, Counsel?

MR. SHEPPARD: Not at this time, your Honor.

THE COURT: Mr. Petty, you can appeal your conviction if you believe your guilty plea was somehow unlawful or involuntary or if there was 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 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. Sheppard would be happy to advise you further on this matter, sir.

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

THE DEFENDANT: I do not. I just thank you. And I echo your sentiments about my attorney for the record.

THE COURT: Very well.

Counsel, anything else we need to discuss?

MR. KITCHENS: Nothing further, your Honor.

MR. SHEPPARD: Nothing on behalf of the defense, your Honor.

THE COURT: All right.

Good to see all of you.

Ms. Pittman, Ms. Coudriet, to our court security officer, also I think I see deputy marshals or one deputy marshal, thanks to all of you.

And, Officer Ridley, thank you as well.

Mr. Petty, again, best of luck to you, sir. I sometimes wonder if what I say up here means anything --

THE DEFENDANT: It does.

THE COURT: -- but I genuinely hope that this time is the last time --

THE DEFENDANT: I do, too.

THE COURT: -- and that you're able to get things on track and be a productive member of society and a helpful person to your family.

THE DEFENDANT: Thank you, your Honor.

THE COURT: Good luck.

(PROCEEDINGS REPORTED WERE CONCLUDED AT 10:34 AM.)

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 2nd day of February, 2024.



PENNY PRITTY COUDRIET, RMR, CRR
OFFICIAL COURT REPORTER