

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOCKET NO: 0424 2:24CR00114-001

GARY LOMAX,

Defendant.

DEFENDANT'S SENTENCING MEMORANDUM

Defendant Gary Lomax, by counsel, submits his sentencing memorandum. The Presentence Investigation Report correctly calculates an advisory U.S.S.G. range of 4-10 months' imprisonment based upon a Total Offense Level of 8 and a Criminal History Category of II. The Presentence Investigation Report notes that Mr. Lomax is eligible for not less than one nor more than five years of probation.

Mr. Lomax submits that a sentence of non-incarceration is sufficient to satisfy the purposes of sentencing and asks the Court to vary downward and impose a sentence of probation, home confinement or some combination thereof.

I. Section 3553(a)(1): The nature and circumstances of the offense and the history and characteristics of the Defendant.

A. Nature and Circumstances of the Offense

Mr. Lomax pled guilty to a single-count Information charging him with violating 18 U.S.C. § 641 for falsely applying for and receiving unemployment compensation between April and June of 2020, when he was employed as a car salesman, thereby causing a loss of \$8,760 to Workforce West Virginia and the Federal Pandemic Unemployment Compensation

program. Additionally, Mr. Lomax has admitted his relevant conduct includes fraudulently obtaining \$20,832 in PPP loan proceeds from the Small Business Administration in May of 2021.

Mr. Lomax knows that his conduct was wrong. He deeply regrets his decisions and actions, He offers no excuses and knows there are none. Nevertheless, the context of his actions is important. During the global pandemic, Mr. Lomax was unemployed for a time and lawfully drew unemployment compensation benefits. When he returned to work selling cars, his compensation was greatly diminished and he struggled to make ends meet. Mr. Lomax, who suffers from diagnosed anxiety, was worried about his future, especially within the setting of the widespread social and economic uncertainty present during the global pandemic. Mr. Lomax was worried about how he would pay his debts and support himself and his disabled ex-wife, with whom he shares a home. He worried about how he would pay their rent, which was several months behind. Although none of these financial pressures or anxieties justify falsely obtaining unemployment benefits or PPP loan proceeds, they provide context for the environment in which Mr. Lomax made the terrible decisions which have led to a federal felony conviction. Mr. Lomax did not utilize the funds he wrongfully obtained for luxury purchases, but rather used the funds to pay his debts and personal living expenses, including several months of back rent.

B. History and Characteristics of Defendant

Mr. Lomax is a 62 year-old non-violent offender with a limited and distant prior criminal history. He has been gainfully employed most of his adult life, including 30 years working for a heating and cooling company where his duties included lifting heavy

equipment, to which Mr. Lomax attributes his significant back problems. He has been unemployed since 2021 due to his health.

Mr. Lomax's medical conditions, as detailed in paragraph 58 of the Presentence Investigation Report, include congestive heart failure, and a host of back and leg problems, as well as insomnia, post-COVID chronic shortness of breath, anxiety, depression, night terrors and claustrophobia. He is prescribed numerous medications. He needs surgery to implant a spinal stimulator with the goal of managing his lumbar radicular pain. Following this surgery, he will require twelve weeks of recovery and/or postoperative care.

Mr. Lomax lives in a rented home with his ex-wife Yvonne Litton in Hurricane, West Virginia. Although he is no longer married to Ms. Litton, they share several adult children and are "family." Ms. Litton suffers from progressively worsening multiple sclerosis. Mr. Lomax is her primary caregiver. In a letter to the Court, Ms. Litton detailed the ways in which Mr. Lomax cares for her, including cooking for her, bringing her food (which she cannot carry), grocery shopping, helping her with bathing and bathroom trips and driving her to her medical appointments. Ms. Litton writes that, "without his help, I don't know what I would do."

Ms. Litton's thoughts are echoed by her and Mr. Lomax's daughter, Lindsey Meddings, who, in a letter to the Court, states that her father is her mother's primary caregiver, including stabilizing her mother as she walks, assisting if she falls, and helping her with her daily tasks which are becoming progressively more difficult for her to complete on her own.

Mr. Lomax looks forward to putting his criminal case behind him, and would be grateful if he could do so in a manner which would allow him to continue to care for Ms. Litton.

II. Section 3553(a)(2)(A-C): need for the sentence to reflect the seriousness of the offense; promote respect for the law, and provide just punishment for the offense; afford adequate deterrence to criminal conduct; and protect the public.

Mr. Lomax submits that a downward variance sentence of probation is sufficient to satisfy the purposes of sentencing established by Congress in 18 U.S.C. §3553(a). Although the United States Sentencing Guidelines recommend a relatively short sentence of imprisonment in this case, Mr. Lomax is statutorily eligible for a sentence of between one and five years of probation, and the United States Sentencing Guidelines do not advise that Mr. Lomax should be ineligible for probation. The United States Supreme Court has noted that offenders on probation are “subject to several standard conditions that substantially restrict their liberty.” *Gall v. U.S.*, 522 U.S. 38, 48 (2007). A sentence of probation, which will substantially restrict Mr. Lomax’s liberty, is sufficient, but not greater than necessary, to adequately reflect the considerations listed in 18 U.S.C. § 3553(a)(2). Mr. Lomax has fully complied with the terms of his pretrial bond, indicating that he is amenable to supervision.

Mr. Lomax’s age (62 years) is indicative of a low chance of recidivism, and weighs in favor of a downward variance in this case. The United States Sentencing Commission has studied recidivism rates among offenders and found that “a federal offender’s age and criminal history were closely correlated with their likelihood of reoffending.” *See* Recidivism and Federal Sentencing Policy, Recidivism and Federal Offenders: A Comprehensive Overview. In a study of 25,431 federal offenders, the Sentencing Commission found that “for each age group studied, the older the age group, the lower the re-arrest rate.” *Id.* For offenders aged over 60 years, like Mr. Lomax, the re-arrest rate was 16%, as compared to 67.6% for offenders younger than 21 years old at the time of arrest. *Id.* The Sentencing Commission, noted that “[s]tudies have repeatedly shown

older offenders to have a lower risk of reoffending and the Commission's study confirmed this finding." *Id.*

Mr. Lomax's significant medical conditions and need for a back surgery to manage his pain symptoms weigh in favor of a downward variance for a sentence of probation or home confinement, which would allow him to obtain necessary medical treatment in the most effective setting, particularly given his age.

Mr. Lomax's service as the primary caregiver for his ex-wife, Ms. Litton, also weighs in favor of a downward variance. If Mr. Lomax is incarcerated, Ms. Litton will lose the essential caretaking Mr. Lomax provides to her every day. A sentence of probation or home confinement would allow Mr. Lomax to continue to provide essential caretaking to Ms. Litton.

Mr. Lomax's conduct, which led to his conviction, has caused him considerable stress, anxiety and shame. He understands that financial crimes are serious crimes. He is prepared to accept the Court's determination of a just punishment for him.

III. Section 3553(a)(2)(D): That the sentence imposed reflects the need to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

As stated, Mr. Lomax's medical conditions and need for treatment would be most effectively addressed in a setting other than incarceration.

IV. Section 3553(a)(3): The kinds of sentences available.

Although the United States Sentencing Guidelines recommend a short term of imprisonment in this case, Mr. Lomax is eligible for not less than one nor more than five years' probation under 18 U.S.C. § 3561(c)(1), and the Sentencing Guidelines do not recommend that he be ineligible for probation, as is sometimes the case even when a defendant is statutorily eligible for probation. The Court may fashion a sentence which includes a term of probation, including

special conditions of home confinement. In Mr. Lomax's case a sentence of probation is sufficient, but not greater than necessary, to satisfy the purposes of sentencing.

Dated: November 6, 2024

Respectfully submitted,

GARY LOMAX

By Counsel:

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