

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 24-CR-60003-Williams/Hunt**

UNITED STATES OF AMERICA

v.

ERNEST BERNARD GONDER JR.,

Defendant.

MOTION FOR DOWNWARD VARIANCE AND SENTENCING MEMORANDUM

Mr. Gonder is to be sentenced following his plea of guilty to two counts of wire fraud in violation of 18 U.S.C. 1343. We respectfully request, the Court sentence Mr. Gonder to a term of probation for two years. In the PSR, The U.S. Probation Office finds that Mr. Gonder's sentencing range 10-16 months (see paragraph 94 PSR). We respectfully submit that a sentence below Mr. Gonder's advisory sentencing range would be sufficient but not greater than necessary to accomplish all the purposes of sentencing in light of Mr. Gonder's personal history and characteristics, including the fact that Mr. Gonder has no criminal history and is the "glue" that holds his extended family together.

PERSONAL BACKGROUND

Mr. Gonder's personal and family data is set forth on pages 11 through 14 of the PSR (see paragraphs 44-52 PSR). Suffice it to say that Mr. Gonder's background has demonstrated that he is a family man who not only support his wife and four children but also the two children of his deceased sister.

THE OFFENSE

Mr. Gonder pled guilty to the two counts described above. The facts surrounding this misconduct are set forth in paragraphs 12 through 23 of the PSR. It is evident that this criminal conduct was aberrational.

THE PRE-SENTENCE REPORT (PSR)

The US Probation Office found that Mr. Gonder's Guidelines imprisonment range was 10-16 months, based upon a total offense level of 12 and a criminal History Category of I (see paragraph 94 PSR). For reasons that will be explained at sentencing and in this Motion the Defendant's guideline range is overstated.

LETTERS

The defense will submit letter(s) received from Mr. Gonder's family members, which we ask the Court to review in order to gain a more complete understanding of Mr. Gonder's history and characteristics.

SENTENCING UNDER SECTION 3553

The Court is required to impose a sentence that is "sufficient but not greater than necessary" to achieve, the purposes of sentencing set forth in Title 18, USC§ 3553 (a) (2). Thus, a Sentencing Court is to impose the shortest sentence that achieves the purposes of sentencing.

In determining a sentence, the Court shall consider the factors set forth in section 3553 (a) including:

1. The nature and circumstances of the offense and the history and characteristics of the defendant.
2. The need for the sentence imposed:

- a. To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense.
- b. To afford adequate deterrence to criminal conduct.
- c. To protect the public from further crimes of the defendant and
- d. To provide the defendant with needed educational and vocational training, medical care, or other correctional treatment in the most effective manner.

We respectfully submit that a sentence of two years' probation and a \$5,000 fine will accomplish all of these above factors, based upon Mr. Gonder's personal history and characteristics, including the facts of this case.

THE NATURE AND THE CIRCUMSTANCES OF THE OFFENSE

We do not mean to minimize the seriousness of the offenses to which Mr. Gonder pled guilty. However, a term of incarceration in this case is too severe in view of the facts of this case and also in view of Mr. Gonder's devotion to his family and in view of his good deeds in the community.

THE HISTORY AND CHARACTERISTICS OF THE DEFENDANT

Mr. Gonder's offender characteristics are set forth in paragraphs 45 through 74 of the PSR.

**THE NEED FOR THE SENTENCE IMPOSED TO REFLECT THE
SERIOUSNESS OF THE OFFENSE, TO PROMOTE RESPECT FOR THE
LAW, TO PROVIDE JUST PUNISHMENT FOR THE OFFENSE, TO AFFORD
ADEQUATE DEFERENCE TO CRIMINAL CONDUCT AND TO PROTECT
THE PUBLIC FROM FURTHER CRIMES OF THE DEFENDANT**

A sentence of a two year probation and a \$5,000.00 fine would be sufficient but not greater than necessary to punish the defendant based upon the facts of this case.¹

CONCLUSION

For the foregoing reasons we respectfully submit that a downward variance, as requested would result in a sentence that is "sufficient but not greater than necessary" to accomplish the statutory purpose of sentencing.

Dated: April 29, 2024.

Respectfully submitted,

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¹ The U.S. Probation officer in this case has made this recommendation to the Court. We agree with this recommendation in view of the Defendant's stellar family community and personal history as set forth in the PSR.