

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

CHARLESTON DIVISION

UNITED STATES OF AMERICA

v.

Criminal No. 2:23-00123

SEAN PATRICK BOYD, JR.

DEFENDANT’S SENTENCING MEMORANDUM

Comes now the defendant, Sean Patrick Boyd, Jr., by Assistant Federal Public Defender Emily L. Szopinski, and submits this memorandum outlining the various 18 U.S.C. § 3553(a) factors for the Court’s consideration at his upcoming sentencing hearing. For the reasons set forth below, Mr. Boyd requests a sentence of probation.

I. 18 U.S.C. § 3553(a) Factors for Consideration

With a criminal history category of I and an adjusted offense level of 6, the advisory guideline range set forth in the Presentence Investigation Report (“PSR”) recommends a term of imprisonment between zero and six months with Zone A sentencing options. PSR ¶ 60. Mr. Boyd respectfully requests the Court impose a within-Guidelines sentence of probation and relies upon the following 18 U.S.C. § 3553(a) factors in support of a non-custodial sentence.

A. The nature and circumstances of the offense.

In 2021, Mr. Boyd was struggling financially due to the COVID-19 pandemic. He saw posts on social media advertising “free” money from the Government for

people who had a business.¹ Specifically, Mr. Boyd saw a post of a person claiming that they could assist Mr. Boyd in filling out the Paycheck Protection Program (PPP) loan application in order to get a cut of this “free” money. Mr. Boyd provided his information – including sensitive information, like his Social Security Number, identification card and bank account information – to this user to fill out the PPP forms on his behalf. Mr. Boyd turned a blind eye to the fact that he was not eligible for the funding, despite the fact that he had been running his own shoe business and submitted the forms falsely stating that a registered business, “Sean Boyd LLC”, received \$99,996 in gross income in 2020.

Mr. Boyd received PPP funds in the amount of \$20,832. Mr. Boyd does not believe he ever saw the full amount in his bank account and believes the user who filled out the PPP application on his behalf – and who had his bank account and routing numbers – took a portion of the money. Now, Mr. Boyd will be subject to restitution in the amount of \$23,817.79, which includes a processing fee and interest. This is a substantial amount of money to pay back; however, Mr. Boyd has already agreed to apply \$6,590.00 in funds that were improperly seized from him towards the restitution in his case and is off to a strong start in paying back the money he owes.²

¹ See, e.g., *Are PPP Loan Companies Legit? PPP Loans Are Being Aggressively (And I Suspect Deceptively) Marketed*, Medium (Mar. 23, 2021), available at <https://medium.com/web-design-web-developer-magazine/are-ppploan-companies-legit-ppp-loans-are-being-aggressively-and-i-suspect-deceptively-marketed-2fa99e7ec6fb> (last visited February 14, 2024).

² Notably, nearly three-quarters of PPP funds “flowed to the top fifth of household income.” See David Autor et al., *The \$800 Billion Paycheck Protection Program: Where*

B. The history and characteristics of the defendant.

1. Mr. Boyd's Childhood

Mr. Boyd grew up in Huntington, West Virginia. He was raised by his mother. His father has not had any contact with Mr. Boyd since he was three years old. Mr. Boyd has four siblings who he grew up with in Huntington. While Mr. Boyd does not recall any abuse or neglect in childhood, he recalls money being tight due to him being raised by a single mother of five children. While he always had food to eat, when bills went unpaid, utilities were often shut off in their home.

2. Mr. Boyd as a Father

Mr. Boyd is a proud father to his five-year-old daughter. Mr. Boyd co-parents with his daughter's mother, and the pair work out custody arrangements and financial support without any court involvement. Mr. Boyd typically has his daughter several days per week. She calls him every day when she gets out of school. A sentence of incarceration would significantly disrupt and negatively impact Mr. Boyd's ability to be a supportive father to his daughter, which is the highest priority in Mr. Boyd's life.³

Did the Money Go and Why Did It Go There?, Journal of Economic Perspectives (Spring 2022), available at <https://blueprintcdn.com/wp-content/uploads/2022/01/jep.36.2.55.pdf>. (last visited February 14, 2024)

³ "Incarceration of a parent normally causes major negative economic, social, and psychological consequences to the child, and may have life-long [adverse] repercussions." *United States v. G.L.*, 305 F.R.D. 47, 50 (E.D.N.Y. 2015) (collecting literature). If Mr. Boyd is given a custodial sentence, his daughter is likely to "suffer developmental harm . . . in the form of behavioral and educational difficulties" as a result of her absence, Sarah Abramowicz, *Beyond Family Law*, 63 Case W. Res. L.

3. Mr. Boyd's Future Plans

Mr. Boyd dropped out of high school when he was in 10th grade. Without a high school education, Mr. Boyd's employment opportunities have been limited. While he has worked several jobs at fast-food restaurants, these jobs have not provided stability for Mr. Boyd. Although he has not had a great deal of steady employment in the traditional workforce, Mr. Boyd has leaned into his entrepreneurial spirit and he has been selling shoes for several years. Mr. Boyd purchases special editions of shoes or shoes that are hard to find and resells them. Through this endeavor, Mr. Boyd earns enough money to support himself and his daughter. He recently registered his business, Young Baby Kicks, LLC. Mr. Boyd is interested in pursuing his GED in addition to continuing his shoe business. Mr. Boyd understands that he will owe a significant restitution payment and is eager to continue working to pay that off.

C. The need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct.

To date, the undersigned is aware of eight defendants in this district who have been sentenced for similar conduct. Of those eight defendants, two had loss amounts that were double that of Mr. Boyd's, and the other six had comparable loss amounts. Each of those eight defendants was sentenced to a term of probation. *See United States v. Malik Breckenridge*, Case No. 2:22-cr-00084 (S.D. W.Va. Nov. 17, 2022) (Berger,

Rev. 293, 321 (2012), along with a heightened risk of "diminished life chances and criminal involvement." Bruce Western & Becky Pettit, *Incarceration and Social Inequality*, Daedalus, Summer 2010, at 16.

J.) (sentencing defendant to a term of five years of probation with a total loss amount of \$41,666); *United States v. Alexis Ransom*, Case No. 2:22-cr-00122 (S.D. W.Va. Feb. 7, 2023) (Faber, J.) (sentencing defendant to a term of 5 years of probation with a total loss amount of \$42,250); *United States v. Tiffany Bowlin*, Case No. 2:22-cr-00205 (S.D. W.Va. May 4, 2023) (Copenhaver, J.) (sentencing defendant to a term of five years of probation with a total loss amount of \$20,833); *United States v. Calvin Butler*, Case No. 2:22-cr-00161 (S.D. W. Va. May 18, 2023) (Goodwin, J.) (sentencing defendant to a term of five years of probation with a total loss amount of \$18,540); *United States v. Aalik Wilsher*, Case No. 2:23-cr-00051 (S.D. W. Va. August 8, 2023) (Goodwin, J.) (sentencing defendant to a term of three years of probation with a total loss amount of \$20,459); *United States v. Daniel Satow*, Case No. 2:23-cr-00056 (S.D. W. Va. August 10, 2023) (Johnston, C.J.) (sentencing defendant to a term of five years of probation with a total loss amount of \$21,283); *United States v. Tamir Pratt*, Case No. 2:23-cr-00038 (S.D. W. Va. September 28, 2023) (Goodwin, J.) (sentencing defendant to a term of two years of probation with a loss amount of \$20,832); *United States v. Imeesha Bradley*, Case No. 2:23-cr-00112 (S.D. W. Va. January 19, 2024) (Faber, J.) (sentencing defendant to a term of five years of probation with a total loss amount of \$18,703).

Additionally, the Court should be cognizant of the unwarranted sentencing disparities that continue to impact black men. In a recent report, the Commission found that black male offenders continue to receive longer sentences than similarly situated white male offenders. U.S. Sentencing Comm'n, *Demographic Differences in*

Sentencing: An Update to the 2012 Booker Report, p. 2 (Nov. 2017).⁴ After conducting a multivariate statistical analysis, controlling for a wide variety of factors, the Commission found that black male offenders on average received sentences that were 19.1 percent longer than similarly situated white males during the data collection period 2012-2016. *Id.* This Court, as well as all other participants in the criminal justice system, should be vigilantly mindful of these racial disparities while carrying out their respective roles, and should consider the detrimental effect that incarceration has on a community.⁵ Moreover, Mr. Boyd is an instrumental part of his daughter's life. Research has shown significant detrimental effects on children when they have an incarcerated parent, such as an increased likelihood of anti-social behavior, drug use, school failure, unemployment, and mental health issues. *See* Patricia Allard and Judith Green, *Children on the Outside: Voicing the Pain and Human Costs of Parental Incarceration* (2011). Because of the prominent disparities

⁴ Available at https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf (last visited February 14, 2024).

⁵ *See United States v. Haynes*, 557 F.Supp.2d 200, 202-03 (D. Mass. 2008) (determining that, where a defendant was convicted of selling drugs and had a guideline range of 33-41 months, a time-served sentence was sufficient and stating: "While public safety certainly calls for the incapacitation of some, there is another side to the equation, which, after [*Booker*] may finally be given the serious consideration it deserves. The facts presented . . . force the Court to confront the inescapable fact that disadvantaged communities . . . are injured both by crime and by the subsequent mass incarceration of their young men. Courts may no longer ignore the possibility that the mass incarceration of nonviolent drug offenders has disrupted families and communities and undermined their ability to self-regulate, without necessarily deterring the next generation of young men from committing the same crimes." (citations omitted)).

in sentencing and prosecution of black men, black children are seven times more likely than white children to have a parent in prison. *Id.* The incarceration of black men has a downstream effect on their children, and this is especially true where, like Mr. Boyd, a parent is particularly involved with their children.

D. The need for the sentence to reflect the seriousness of the offense, promote respect for the law, and provide just punishment.

In outlining the duties of the United States Sentencing Commission, Congress made it clear that the Commission “shall insure that the guidelines reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense.” 28 U.S.C. § 994. Mr. Boyd has no prior criminal history and is a first-time offender with zero criminal history points. Accordingly, he has a very low risk of recidivism. *See* U.S. SEN’G COMM’N, Recidivism of Federal Offenders Released in 2010 (2021), <https://www.ussc.gov/research/research-reports/recidivism-federal-offenders-released-2010> (noting that recidivism data analyzed by the Commission suggest that offenders with zero criminal history points (“zero-point” offenders) have considerably lower recidivism rates than other offenders, including lower recidivism rates than the offenders in Criminal History Category I with one criminal history point); *see also* Report of U.S.S.C. (May 2004) “Recidivism and the ‘First Offender’” (“The analysis [of empirical data on re-offending] delineates recidivism risk for offenders with minimal prior criminal history and shows that the risk is lowest for offenders with the least experience in

the criminal justice system. Offenders with zero criminal history points have lower recidivism rates than offenders with one or more criminal history points.”).

A sentence of probation adequately reflects the seriousness of Mr. Boyd’s conduct and provides just punishment for his offense. As the Supreme Court has recognized, a sentence of probation is “a substantial restriction of freedom.” *Gall v. United States*, 552 U.S. 38, 48 (2007). Mr. Boyd will be closely monitored by the Probation Office for the entirety of his probationary term, and he is very aware that if he were to violate any term of probation, the Court could re-sentence him to a term of imprisonment within or above his suggested guideline range.

E. The kinds of sentences available and the sentencing guideline range.

Mr. Boyd’s sentencing Guideline range is between 0 and 6 months of imprisonment. The proposed sentence of probation falls within that Guideline range. Above all, a sentence of probation will allow Mr. Boyd to continue working and pay his restitution obligations, which Mr. Boyd is eager to do.

II. Conclusion

For the forgoing reasons, Mr. Boyd submits that a probationary sentence is sufficient, but not greater than necessary, to achieve the statutory sentencing purposes of 18 U.S.C. § 3553(a).

III. Time Needed for Sentencing

Mr. Boyd does not anticipate calling any witnesses to testify at the upcoming sentencing hearing and believes the hearing will last approximately thirty minutes.

Date: February 14, 2024.

Respectfully submitted,

SEAN PATRICK BOYD, JR.

By Counsel

**WESLEY P. PAGE
FEDERAL PUBLIC DEFENDER**

s/Emily L. Szopinski

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