

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES OF AMERICA	:	
	:	
v.	:	CASE NO. 1:21-CR-224
	:	
JAMES VICTOR PUNELLI	:	
	:	
Defendant.	:	

DEFENDANT’S POSITION ON SENTENCING

In accordance with this Court’s policy regarding guideline sentencing, 18 U.S.C. § 3553(a), and the remedial scheme set forth in *United States v. Booker*, 543 U.S. 220 (2005) and *United States v. Hughes*, 401 F.3d 540 (4th Cir. 2005), James Punelli, by counsel, respectfully submits his position on sentencing.

I. Summary of Defendant’s Position

This matter is before the Court for imposition of sentence pursuant to Mr. Punelli’s guilty plea to a two count Criminal Information as to the offenses of making false statements related to FEMA personal protective equipment (“PPE”) and theft of government funds through the Small Business Administration loan program, commonly referred to as the Economic Injury Disaster Loan Program (“EIDL”), in the amount of \$141,000.00.

There are no losses related to the false statement charge and it is agreed that the EIDL loss is \$141,000.00. The Presentence Investigation (“PSI”) is comprehensive and there are no substantive corrections or disputes. It is agreed the guidelines are correctly calculated at a net offense level of 12 with a criminal history category I. However, consistent with the Government’s sentencing recommendation, it is Mr. Punelli’s request that the Court consider a variance and the imposition of an appropriate period of probation, restitution, and, if the Court deems it necessary, a term of community service hours to be completed within the probationary period.

As to restitution, Mr. Punelli has worked exceedingly hard and has recognized it is his obligation to repay the government as soon as possible. Mr. Punelli's efforts have been successful. He has delivered \$141,000 – the full amount of his restitution obligation – to counsel, to be paid at the time the restitution order is entered by the Court.¹

II. Background

The PSI, Statement of Facts, and the Government's sentencing position well state Mr. Punelli's personal history, military service, family circumstances, and work history. From all of that, the Court can reasonably divine that this man is one of quality who, due to unprecedented times, financial failures, and pressures, deviated from a life of service and good work. Mr. Punelli has readily admitted his failures in business and personally, which took him to take the steps now causing him to restart his life as a convicted felon with few resources or back up beyond his own ability to work hard and succeed. Mr. Punelli is committed to doing just that.

A 1985 Naval Academy graduate who served five years of active duty and an additional seven years in the reserves, Mr. Punelli has been committed to service and from that career learned the value of hard work. It is in that light that Mr. Punelli became a successful entrepreneur, although as accurately relayed in the PSI, the burdens of his business, the uncertainty of the COVID-19 pandemic impact, and other financial pressures brought about the actions set forth in the Statement of Facts. While wrongful, the acts occurred during a desperate time for Mr. Punelli trying to save his company and livelihood. Clearly, he did not make acceptable decisions and for that he is now a convicted felon. James Punelli does not blame anyone else, make excuses, nor does he give any reason to believe he will be back before this or any Court for wrongful conduct.

¹ Counsel represents to the Court that the full amount of \$141,000.00 is being held the trust account of Greenspun Shapiro PC to be paid as restitution as directed by the Court.

III. PSR, Guidelines and Loss Calculation

For all the reasons underlying the Government's sentencing recommendation, guidelines of 10 to 16 months, driven solely by the loss amount, significantly overstate the seriousness of his offense and fail to account for Mr. Punelli's actual efforts to perform on the contract and supply desperately needed masks during an unprecedented international health emergency and for his long history of honorable service to this country.

IV. Application of the Sentencing Factors

A. Nature and Circumstances of the Offense and History and Characteristics of Mr. Punelli.

As stated in the PSI and Statement of Facts, during the early stages of the pandemic Mr. Punelli worked hard to provide the Government the much-needed personal protection items due to the COVID-19 pandemic. He worked exceedingly hard to bring the contract to fruition, but ultimately could not do so, operating in an environment where securing reliable supplies of face masks was highly unpredictable and contracts for PPE were routinely diverted to the highest bidder. And while Mr. Punelli truly believed he could deliver on the contract, he admittedly made representations that were not accurate during the process. There were, however, no losses that resulted from his false statements to FEMA.

With regards to the EIDL Loan transaction, Mr. Punelli applied for and received \$141,000.00 in loan benefits. As represented by his guilty plea to Count 2, Mr. Punelli made false representations in the EIDL application process. Mr. Punelli has continued to work and marshal his resources and is prepared to immediately pay the full amount of restitution.

As to all of the issues of concern to the Government, Mr. Punelli was approached by law enforcement and gave full statements and explanations about his actions at the earliest stage. He

did not ask for counsel to be present or otherwise deflect the agents' inquiries, despite knowing that he did not have to talk to law enforcement and certainly not without a lawyer present. To the contrary, Mr. Punelli stated what he did, explained his circumstances and reasoning, and cooperated fully. Even after counsel was retained, Mr. Punelli continued to be cooperative, providing additional information and explanations to investigations. It is clear that Mr. Punelli has and does fully accept responsibility for his actions and does not place blame on anyone else.

B. The Need for the Sentence Imposed to Reflect the Seriousness of the Offense, Promote Respect for the Law, Provide Just Punishment for the Offense, and Afford Adequate Deterrence.

The sentence jointly recommended by the parties sufficiently reflects the seriousness of the offense and is a just punishment for the offense conduct, while simultaneously meeting the goals of sentencing and promoting respect for the law. James Punelli stands before the Court as a convicted felon for life. His civil rights, including the right to vote and serve on a jury, have been lost. He has made his obligation to repay the government his number one priority, ahead of any of his other creditors. He knows that his restart to his employment and work career will be hampered by his convictions and that every action he takes must be to the highest standards.

There is also no question that the numerous consequences faced by Mr. Punelli as a result of his offense afford more than adequate general deterrence against similar conduct. Over the course of his lifetime, the felony convictions and loss of his earning potential, along with the collateral consequences of his conviction, are far greater punishments than a term of incarceration.

The myriad laws, rules, and regulations that discriminate against ex-offenders and prevent their reintegration into the community were poignantly described by Judge Frederick Block of the Eastern District of New York as "a form of 'civil[l] death' that send[s] the unequivocal message

that ‘they’ are no longer part of ‘us.’” *United States v. Nesbeth*, No. 15-CR-18 (FB), 2016 WL 3022073, at *1 (E.D.N.Y. May 24, 2016). The barriers raised by the ever-expanding collateral consequences, branding so many millions with the “Mark of Cain,” also carry with them new and potent deterrent effects. Surely, members of the public who learn of this case will be deterred from ever engaging in similar conduct. Mr. Punelli’s felony conviction and his underlying conduct will also remain instantaneously available to any person in the business world conducting an internet search or background investigation.

Finally, based on his personal history and the losses he has suffered, Mr. Punelli has shown that he poses no risk of reoffending. His letter to the probation officer accepting responsibility (Exhibit 1) is an emotional statement of his contrition and recognition of how far he has fallen. Letters from individuals who claim the good fortune to know him, speak of him as an honorable man, whose tireless dedication and distinguished service to this country have earned him the greatest respect. (Exhibit 2). All of these factors militate strongly in favor of a below-guidelines sentence and no active incarceration. A probationary sentence meets all of the traditional goals of sentencing decisions and is a just and appropriate sentence in this case.

C. The Need to Avoid Unwarranted Sentence Disparity.

Depending on the circumstances of each case evaluated discretely, this financial crime would reflect a probationary result in many instances in state and federal proceedings. A probationary sentence is not outside of the norm and does not reflect a disparit sentencing result.

CONCLUSION

Mr. Punelli's fall from grace has been hard and impactful. He now lives in a small apartment and his circumstances are humble. He depends on his children for assistance instead of being able to offer assistance to them.

Mr. Punelli's sole focus going forward is rebuilding his life and career in a productive and positive manner and being the best husband and father, he can be. With the unwavering support of his friends and family, he will undoubtedly succeed in that pursuit.

For all these reasons, James Punelli, by counsel, respectfully requests a probationary sentence. He surely understands what he has done and the need to assure this Court that he will never engage in such actions in the future.

Respectfully Submitted,
James Punelli,
By Counsel

GREENSPUN SHAPIRO PC

BY: _____/s/_____
Peter D. Greenspun
Virginia Bar No. 18052
3955 Chain Bridge Road
Second Floor
Fairfax, Virginia 22030
(703) 352-0100
(703) 591-7268
pdg@greenspunlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2022, I electronically filed the foregoing pleading with the Clerk of Court using the CM/ECF system, which then sent a notification of such filing (NEF) to the following:

Christopher Hood
Assistant United States Attorney
United States Attorney's Office,
Alexandria Division
2100 Jamieson Avenue
Alexandria, Virginia 22314
Christopher.hood2@usdoj.gov

/s/

Peter D. Greenspun

EXHIBIT 1

Statement of James V. Punelli

Regarding the charges to which I have pled guilty in this court, I accept full responsibility for my actions. As a Plebe at Annapolis, we were taught day one that the only answer to a failure, indiscretion, or mistake was “no excuse, sir”. Since this is how I was taught and previously acted throughout my life, I find it difficult to ask for any forbearance from the court regarding sentencing. It is however, my intention in this statement to present some idea of my state of mind at the time, what the repercussions have been to me personally irrespective of any sentence, and most importantly to accept responsibility for my actions.

During the time these events occurred I was undergoing a tremendous amount of stress financially in my businesses. I took actions and made statements that were known to me to be wrong at the time and in hindsight appear even more so. This is not an excuse for my actions, but a frank statement of how I acted improperly and inconsistently with my faith, guiding principles, and lifelong conduct. Previously I would not have thought myself capable of these actions; and in hindsight understand even more clearly how wrongly I acted.

I would like the court to know that I am quite chastened interiorly and, of course, in the eyes of the world. The loss and degradation already suffered is what weighs most heavily on me. The damage to my own self-respect, reputation, business and not least the loss of respect among my friends and family is the most devastating punishment I could suffer. I ask the court to take this into account when considering my sentence.

I accept responsibility for my actions. The sentence to be imposed by this court will be accepted with humility and in the spirit of reflection and atonement. Please know I am firmly resolved to act with integrity in everything I do from here on.

EXHIBIT 2

Victor J. Richardson
2301 Horseferry Ct.
Reston, VA, 20191

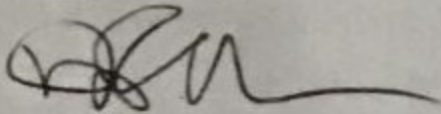
To whom it may concern

I've known Jim Punelli for over 41 years now. We met in the summer 1980 when we both joined the Navy and attended the Naval Academy Preparatory School in Newport, RI. Our friendship continued during our time at the U.S. Naval Academy and through to today. He and his wife are some of my best friends.

I've always known Jim to be a forthright and reliable friend, father and veteran who served his country well as a United States Marine. He raised 3 wonderful children with his wife and served and supported his family with dedication, love and faith in himself and God. He served as an officer in the U.S. Marine Corps with distinction and honor and has carries that same attitude and conviction to duty in his civilian life as well.

Given his past history as a veteran who served with honor, a father and what I know of him as one of my oldest and best friends, I recommend that you take this into account and all possible leniency be given during sentencing.

Respectfully

A handwritten signature in black ink, appearing to read 'VJR', with a long horizontal flourish extending to the right.

Victor J Richardson

Karl Scott
385 Homestead Road
Hillsborough, NJ, 08844

December 2nd, 2021

RE: Mr. James Punelli

To Whom it May Concern,

I am writing this on behalf of James "Jim" Punelli. Jim and I have been colleagues and friends for over nine years. In this time, he has proven to be of fine and responsible character. In general, Jim, a small business owner, is known for being a dedicated husband and father. As graduate of the Naval Academy, and former Marine Corps officer, his current situation is quite out of character for him.

I first became aware of Jim's solid character when my former company conducted demonstrations for his organization. As one of the principals in his company, he took the time to work with my team, ensuring that they had everything needed. Though he had personnel tasked with coordinating with the team, he leaned in at every opportunity to make sure things went smoothly, taking a personal interest in the well being of my team.

Since then, Jim and I have become good friends and have coordinated on a number of projects, many of which were humanitarian in nature. His tireless dedication to doing the right thing at all times is one of the primary reasons we have remained friends over the years.

Mr. James Punelli is an authentic, virtuous, and honorable man and has shown a steadfast and resolute demeanor in moving past this challenge in a constructive and successful manner. It is my hope that this letter will act as a positive and contributing factor when the court considers this matter.

Sincerely,



Karl Scott

01DEC2021

Re: Letter of Recommendation for James Punelli

To the Court:

Thank you for allowing me to write to you in behalf of James Punelli. Before my comments regarding him, I think it helpful to let you know my background. I have served in the Navy as a Cryptologic Officer and Defense Attaché and am retired at the rank of Commander. I am also retired from the Defense Intelligence Agency, where I was a Senior Intelligence Officer in the Defense Clandestine Service. This is critical to mention, since for my career in the Intelligence Community it was critical to be an astute judge of character.

In my years of knowing James, he has demonstrated superior character both personally and professionally. I am not privy to the exact details of this case, but to me it seems an aberration from the way in which he has conducted his life. James has always shown great care to do the right thing for his family, friends, and business associates. He served in the Navy and Marine Corps with distinction. Moreover, James continues to look for ways to serve with fidelity his family and others around him.

It is my hope that this letter will add some clarity to type of person for whom you are considering a sentence. In my opinion his heretofore outstanding character and service should mitigate the severity of punishment.

Thank you for considering my statements in this matter.

Best regards,

A handwritten signature in dark ink, appearing to be 'CJMB', with a long, sweeping horizontal line extending to the right.

Cynan J.M. Benedikt
CDR USN (Ret)