

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA :
 :
V. : CASE NO.: 1:20-CR-00072-MSM-LDA
 :
DAVID BUTZIGER :

DEFENDANT’S SENTENCING MEMORANDUM

Defendant, David Butziger, by and through counsel, submits this memorandum to aid the Court with imposing a sentence that is “sufficient, but not greater than necessary” to achieve the statutory sentencing purposes of 18 U.S.C. § 3553 (a). For the reasons below, Mr. Butziger requests a sentence of supervised release.

I. BACKGROUND

This case stemmed from a criminal investigation into Mr. Butziger and his Co-Defendant, David Staveley, submitting fraudulent loan applications under the federal Paycheck Protection Program (“PPP”). Mr. Butziger engaged in this conduct at the urging and encouragement of Mr. Staveley, who educated him about PPP and hatched the fraud scheme.

On May 4, 2020, Mr. Butziger was charged by way of a criminal complaint with (1) Conspiracy to Make False Statement to Influence the SBA, in violation of 18 U.S.C. § 371; (2) Conspiracy to Commit Bank Fraud, in violation of 18 U.S.C. § 1349; and (3) Bank Fraud, in violation of 18 U.S.C. § 1344 (2).¹ He was arrested on May 5, 2020, initially appeared before the Court that same day, and was released on \$10,000.00 unsecured bond with conditions.²

On June 12, 2020, Mr. Butziger waived his right to a preliminary hearing.³ On August 27, 2020, in accordance with a plea agreement, the government filed a criminal information against

¹ PSR, ¶.1.

² PSR, ¶.2.

³ PSR, ¶.3.

him that charged Conspiracy to Commit Bank Fraud, in violation of 18 U.S.C. § 1349.⁴ He appeared before the Court for both an arraignment and a change of plea hearing on September 18, 2020.⁵ He waived his right to a grand jury indictment and tendered his guilty plea.⁶ The Court accepted both his waiver and plea, and adjudged him guilty.⁷ Mr. Butziger is next scheduled to appear for sentencing on Monday, December 20, 2021.⁸

II. THE PRESENTENCE REPORT

U.S. Probation issued its final presentence report (PSR) related to this case on December 14, 2021. The PSR calculates Mr. Butziger's total offense level at 18⁹ with a criminal history category of I.¹⁰ Accordingly, his advisory sentencing guidelines range is 27-33 months.¹¹ The Defense has no objections to the final PSR.

III. SENTENCING FACTORS AND CONSIDERATIONS

The District Court is required to fashion a sentence that is "sufficient, but not greater than necessary" to achieve the statutory purposes of punishment set forth in 18 U.S.C. § 3553 (a). *United States v. Booker*, 543 U.S. 220 (2005). Sentencing should begin with a calculation of the applicable sentencing guidelines range. *Gall v. United States*, 128 S. Ct. 586, 596 (2007) (*citing Rita v. United States*, 127 S. Ct. 2456, 2480 (2007)). The guidelines calculation is a starting point and initial benchmark for the Court to consider, however, it is not the only sentencing consideration. *Id.*

⁴ PSR, ¶.4.

⁵ PSR, ¶.5.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ PSR, ¶.33 and 63.

¹⁰ PSR, ¶.36 and 63.

¹¹ PSR, ¶.63.

A Court may not presume the guidelines range is reasonable but must make an individualized assessment of each defendant based upon the facts presented in each case. *Gall*, 128 S. Ct. at 597 (emphasis added). After both parties are afforded an opportunity to argue for whatever sentence they deem appropriate, the Court must then consider the factors¹² of 18 U.S.C. § 3553 (a) to determine the most appropriate sentence for the instant case. *Id.* In the instant case, Mr. Butziger asks the Court to consider the following information in support of his sentencing recommendation.

A. Seriousness of Offense and Post-Arrest Conduct

The seriousness of Mr. Butziger's conduct cannot be understated. Fortunately, since none of the loan applications he submitted were approved, there was no financial loss to any victim.¹³ In addition to his admitted crime, Mr. Butziger asks the Court to be mindful of his post-arrest conduct. Since being charged, he has done virtually everything possible to mitigate his misconduct. He was initially taken into custody by authorities without incident. Mr. Butziger was then honest, cooperative, and forthright with them about his actions. He waived many of his important legal rights to expedite this prosecution, including accepting responsibility. His actions

¹² To determine an appropriate sentence that is sufficient, but not greater than necessary, the Court shall consider:

- (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 or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) the kinds of sentences available;
- (4) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines;
- (5) any pertinent policy statement issued by the Sentencing Commission;
- (6) the need to avoid unwarranted sentence disparities among the defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense. 18 U.S.C. § 3553 (a).

¹³ PSR, ¶.74.

were in stark contrast to Mr. Staveley who fled the jurisdiction, staged his own suicide, and sought to evade both authorities and his own prosecution.¹⁴

B. Acceptance of Responsibility

Mr. Butziger deeply regrets the choices he has made in the past, which bring him before this Court. He is both apologetic and ashamed by his actions. He fully accepts responsibility. In its submission, the government comments on a statement Mr. Butziger made during his presentence interview where he states he was “duped.” This statement should not be interpreted to mean that Mr. Butziger shifts the blame for his own actions to Mr. Staveley. David Butziger acknowledges his own wrongdoing and participation in submitting both false loan applications and supporting tax documentation. In the presentence interview, his point was and remains that David Staveley, who has a history of deception, introduced him to this scheme.

Mr. Butziger and his family are also victims of Mr. Staveley. The Co-Defendant entered into a contract to purchase property from the Butziger family, known as the Remington House and its adjoining parking lots. After the purchase and sales agreement was signed, Mr. Staveley failed to render the initial deposit or follow through on the sale. However, during the criminal investigation of this case, falsified documentation was recovered, indicating that Mr. Staveley forged signatures and conveyed the land to himself, without ever completing the purchase. For this reason, Mr. Butziger and his family feel as though they were duped by Mr. Staveley.

C. History and Characteristics of the Defendant

Mr. Butziger has no criminal history whatsoever. He is age 53, was born and raised in Warwick, and is one of two (2) children born to Arnold and Rosaland Butziger. Mr. Butziger’s

¹⁴ Mr. Butziger truthfully denied having any knowledge or information as to Mr. Staveley staging his own death, or his whereabouts after doing so. Statements to the contrary by Mr. Staveley’s attorney are unsupported by any evidence. The government will concede this assertion.

father, Arnold Butziger, is currently age 77. His mother, Rosaland, is age 76. Both parents are retired teachers who live in Warwick and enjoy good health.¹⁵ Mr. Butziger has lived with his parents since 2012. He assists them on a daily basis, to include managing bills, food shopping and preparation, cleaning, repairs, and more. Mr. Butziger's brother, John, is age 50, married with children and lives in East Greenwich, RI. He is the vice president of a medical design company in Massachusetts.¹⁶ Mr. Butziger's family is aware of his legal situation and continue to remain fully supportive of him at this difficult time.

In 1995, Mr. Butziger married Julie Gillis. Sadly, Mr. Butziger's wife suffered from mental health issues following two (2) miscarriages. This resulted in her having violent episodes towards Mr. Butziger and an attempted suicide. After several failed attempts at marriage counseling, Mr. Butziger and Ms. Gillis divorced in 2007.¹⁷ Since then, Mr. Butziger has remained single, never remarried, and does not have any children.

Mr. Butziger graduated from Toll Gate High School in Warwick, RI in 1986. Thereafter, he attended the University of Rhode Island from 1987 to 1988, where he studied engineering. However, he did not earn a degree. He also took classes at the University of Connecticut and received a certification from the U.S. Coast Guard Auxiliary.¹⁸

Mr. Butziger derives legitimate income from a variety of sources. First, he runs technical and logistical support for gymnastic meets. Second, he performs mechanical work and boat repair.¹⁹ Third, since 2010, Mr. Butziger has worked for a company that performs drug testing and

¹⁵ PSR, ¶.43.

¹⁶ PSR, ¶.44.

¹⁷ PSR, ¶.45.

¹⁸ PSR, ¶.52.

¹⁹ PSR, ¶.53.

medical compliance standards for boating companies.²⁰ This is necessary for the companies to meet Coast Guard safety standards. Fourth, in 2015, he started Dock Wireless, which is a company that offers telecommunication services and wireless internet networks for boats and marinas.²¹ This company remains in existence, but has not done much business in a while, primarily due to COVID-19. Fifth, he operates Ocean State Technology Group, which provides information technology (IT) support for other companies.²² Essentially, Mr. Butziger works for himself in most of these capacities, with the exception of the drug testing.

Prior to the instant misconduct, Mr. Butziger held a number of certifications, which he has lost as collateral consequences of his conviction. For instance, he held a Master's License, Able Seaman, Towing and Sailing Endorsements, and Standards of Training Certification and Watchkeeping (STCW) with firefighting and lifesaving endorsements, all of which allowed him to captain vessels at sea.

He was also a proud member of the U.S. Coast Guard Auxiliary. He joined this organization in 2007 and volunteered thousands of hours of his time assisting the Coast Guard with public education on boating safety, vessel safety checks, and marine patrols. He also trained others in towing, boat handling, life-saving measures, and safety. During his tenure with the Auxiliary, Mr. Butziger held various leadership positions.

Lastly, Mr. Butziger held a USA Gymnastics Certification that enabled him to coach gymnasts and run gymnastic events. He organized and oversaw many gymnastic events, tutored countless students, and assisted many high school students with obtaining college athletic scholarships. These were all very important various aspects of Mr. Butziger's personal and

²⁰ https://www.andersonkelly.com/services_substance_abuse_programs

²¹ <https://www.dockwireless.com/>

²² <https://www.zoominfo.com/c/ocean-state-technology-group/472633226>

professional lives. Mr. Butziger hopes to one day regain the trust of others, and rebuild damaged relationships, in effort to regain the position(s) and esteem within the community that he once enjoyed.

D. The Need for the Sentence Imposed to Reflect the Seriousness of the Offense.

Mr. Butziger's admitted actions amount to serious misconduct by any measure. The Defense concedes that punishment for his actions is warranted. However, both the government's recommendation and the advisory guidelines range are greater than necessary to achieve the factors set forth in 18 U.S.C. §3553. For someone like Mr. Butziger with no criminal history or prior experience with incarceration, and whose misconduct has not resulted in any financial loss or victimization, the Defense suggests that jail is not warranted. The collateral consequences of a felony conviction are sufficient to punish Mr. Butziger for his actions. The likelihood of him reoffending is extraordinarily low. Statistically, rates of recidivism decrease with age.²³ "[O]ffenders over age 50 have a recidivism rate of 9.5%."²⁴ As a reminder, Mr. Butziger is 53 years-old and poses little to no risk for reoffending in the future.

E. Promote Respect for the Law, Provide Just Punishment for the Offense, Afford Adequate Deterrence to Criminal Conduct and to Protect the Public from Further Crimes of the Defendant.

A lengthy prison sentence, is not necessary to achieve this multi-faceted sentencing objective for Mr. Butziger. This case represents Mr. Butziger's first and last negative encounter with the criminal justice system. While his admitted misconduct ran afoul of the law, he is hopeful that the Court will take mercy upon him and allow him to prove that he has learned from

²³ Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines, A Component on the Fifteenth Year Report on the U.S. Sentencing Commission's Legislate Mandate, May 2004, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/researchpublications/2004/200405_Recidivism_Criminal_History.pdf.

²⁴ Id. at Section F, para 2.

his mistakes. Mr. Butziger has no history or reputation for violence and is not an affiliate of any gang or criminal organization. Further, he has lived more than 50 years without violating the law, which is a strong predictor of future behavior.

While on pretrial release, Mr. Butziger has remained fully compliant with all conditions. He also has moved the Court, numerous times, to modify his conditions of release, to allow him travel throughout the East Coast states for work reasons, which the Court allowed. With these allowances of modification and additional freedom, he has remained fully compliant with all conditions of his pretrial release. His behavior under these conditions is a strong indicator of his likelihood of success once placed on supervised release. His overall conduct from the time of his arrest up to and including the present time signifies his respect for the law, self-rehabilitation, and likelihood of future, law-abiding behavior, such that he poses no risk to the community or does not need jail to keep him from reoffending.

F. Provide the Defendant with Needed Educational or Vocational Training, Medical Care, or Other Correctional Treatment in the Most Effective Manner.

This sentencing factor has no real impact on Mr. Butziger. A jail sentence is not required to provide him with any education or vocational training, medical care, or other correctional treatment. Mr. Butziger is both educated and has significant business experience. This combination of factors renders him suitable for continued employment and law-abidingness if allowed to remain in the community.

IV. ATTACHMENTS

- A. Statements of Support;
- B. Resume;
- C. Coast Guard Citations;
- D. Coast Guard Certificates of Achievement;

E. Photos.

V. CONCLUSION

Based upon the foregoing, Mr. Butziger respectfully asks the Court to impose a sentence of supervised release, which he contends is “sufficient, but not greater than necessary” to achieve the objectives of 18 U.S.C. § 3553(a). Should the Court conclude that stiffer punishment is warranted for Mr. Butziger, he asks the Court to consider home detention as an alternative to a BOP commitment. This alternative, if deemed necessary, could provide Mr. Butziger with the added punishment, advocated for by the government, while still enabling him to work and maintain what remains of his businesses.

Respectfully submitted this 16th day of December 2021.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered Participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as nonregistered participants on December 16, 2021.

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