IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

NEWPORT NEWS DIVISION

UNITED STATES OF AMERICA

v. **4:21 CR 71**

MARLON McKNIGHT

<u>DEFENDANT MARLON McKNIGHT'S SENTENCING MEMORANDUM</u>

COMES NOW the defendant, Marlon McKnight, through counsel, pursuant to United States Sentencing Commission, Guidelines Manual, Section 6A1.2, and represents that he has received the Probation Office's pre-sentence report ("PSR") and that he does not dispute any of the factors or facts set out therein. In addition, McKnight submits this Sentencing Memorandum in support of his request for a sentence of home confinement. This provides an individualized sentence that is "sufficient, but not greater than necessary" to achieve the purposes of sentencing set forth in 18 U.S.C. Section 3553(a)(2) and accounts for the mitigating factors present in this case including McKnight's personal history and the offense characteristics. Since this would be in the nature of a downward variance, McKnight hereby moves for that downward variance.

As the Supreme Court stated in *Rita v. United States*, 551 U.S. 338, (2007), "the upshot is that sentencing statutes envision both the sentencing judge and the Commission as carrying out the same basic Section 3553(a) objectives, the one at retail, the other at wholesale." 551 U.S. at 348. Above all, a court's final determination of a sentence must reflect "Section 3553(a)'s overarching instruction to 'impose a sentence sufficient, but not greater than necessary' to accomplish the sentencing goals advanced in Section 3553(a)(2), "namely, retribution, deterrence, incapacitation, and rehabilitation. *See Kimbrough v. United States,* 552 U.S. 85, 101 (2007).

McKnight would respectfully suggest that the appropriate sentence in this case is home electronic monitoring for 21 months. There is no question that McKnight was wrong in applying for COVID business loans, especially after his previous conviction. However, unfortunately, everyone else was doing it in prison and at the Halfway House. He succumbed to peer pressure. He only actually got one EIDL loan for around $35,000 and used it to help his transition back into post-prison life. He did not go to the Bahamas or buy fancy jewelry. He paid rent and other living expenses.

On August 11, 2021, he was issued a CDL learner's permit from the Virginia DMV. On October 18, 2021, he was issued his actual CDL license. He did, in fact, try to start his own trucking business, getting loads by bidding on-line in a fashion somewhat similar to that which an Uber driver does. However, once he was arrested and put on pre-trial probation, that arrangement would not work since he could not easily and readily leave the state. So, he has taken employment with a trucking company and earns a salary, which is quite good. In a sense, the loan money he received was used for exactly the purpose for which the loans were designed. He got on his feet, re-established himself, and is now earning a good wage and being a productive member of society.

As to the second and third EIDL loans as well as the PPP loan, other folks encouraged him to apply for these, which make up the attempts that gets his loss figure up to 105K. Another person actually did all the paperwork for McKnight and has done these scams with many other people. That person either has been or will be prosecuted. McKnight did know better and should have said no. He did sign the applications knowingly. This is not an excuse, but possibly, a mitigating factor. Yes, he should have known better especially after just getting out of prison, but he got out of prison in the middle of the pandemic. Those were very difficult, scary times, full of so much uncertainty for everyone. He was in some ways grasping for some sort of lifeline, wrongly. He cannot erase that. However, If his loss amount was only $35,000, he would have only received an additional four points, not eight, and his total guideline points would have been 10, calling for a sentence of 10-16 months.

McKnight acknowledges that it could be said that a sentence of home incarceration does not necessarily satisfy the deterrence prong of the statutory considerations. However, as to Marlon individually, he is on probation and can be sent back to prison upon any violation, however minor. He is on the right track now. As for general deterrence, the message which this would send is that if you do turn yourself around and have done everything right since you messed up, you can be given another chance.

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of June, 2022, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel of record.

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