UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

CASE № 23-CR- 60119-AHS-4

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TERRI SHANA DAVIS,

Defendant.

_________________________________/

DEFENDANT DAVIS'S MEMORANDUM IN AID OF SENTENCING

TERRI SHANA DAVIS by and through the undersigned counsel, and pursuant to Rule 32 (f) of the Federal Rules of Criminal Procedure, Rule 88.8 of the Local Rules for the Southern District of Florida, and the due process clause of the Fifth Amendment to the United States Constitution, respectfully submits this Memorandum In Aid of Sentencing in order to provide information to assist the Court in fashioning a sentence based upon the Defendant's guilty plea that is "sufficient but not greater than necessary" to achieve the statutory purposes of punishment as required by 18 U.S.C. §3553.

STATEMENT OF FACTS

1. On January 12, 2024, Terri Shana Davis appeared before the Court and entered a plea of guilty to Count 16 of the Indictment. Count 16 charged the Defendant with Aggravated Identity Theft, in violation of Title 18, United States Code Section 1028A(a)(1).
2. Subsequent to the entry of the Defendant's plea a Presentence Investigation Report (PSR) was prepared. The report is approximately twenty-nine (29) pages in length. The Defense has not objected to the facts contained within the PSR but seeks in this Memorandum to

provide the Court with insight as to who this individual, this human being, is. We do not seek to diminish the allegations of wrongdoing perpetrated by Ms. Davis. We offer to address the underlying issues of who Terri Shana Davis is to allow the Court the opportunity to better appreciate the individual who stands in the dock.

3. The Sentencing Guideline Offense Level, calculated by the United States Probation Office, is a term of imprisonment required by statute of two years' incarceration.
4. Counsel for the Defendant has spoken with Assistant United States Attorney David A. Snider, counsel for the government, who – with his supervisor's blessing – anticipates the government will file a 5 K1.1 pursuant to the Federal Sentencing Guidelines.
5. The sentencing in this matter is scheduled for Thursday, April 18, 2024.

INTRODUCTION

This Sentencing Memorandum seeks to provide the Court with a more complete picture of the human being who stands before the Court. It is presented to address lapses within the PSR and more accurately reflect who Terri Shana Davis is. Terri Shana Davis is a thirty-four-year-old married mother of two born in Monroe, Louisiana. Raised in a hardscrabble rural community, she was reared by a single mother with her siblings. She became pregnant at age fifteen and gave birth to a son Khyng. She left high school and eventually earned a GED. The father of her child was abusive, and the pair separated when she turned eighteen years old. It was a life commenced and confronted with a narrow horizon with limited possibilities. The combination of these dismal life circumstances preordained a difficult life journey.

FAMILY

Terri was raised by her mother who worked as a caregiver for families. Her mother relied upon government assistance in the form of Section 8 housing and food stamps. Terri shared her home with her brother and sister. Her father was not a part of her life, nor did he provide any financial assistance. In 1999, when Terri was in fifth grade, the family including aunts, uncles, and cousins, moved from Louisiana to Georgia. Thirteen people shared a two-bedroom house. Terri continued her schooling when at fourteen she met Derrell Jordan also fourteen. At fifteen she gave birth to her son Khyng. Derrell was abusive and eventually went to prison for a drug charge. The family has described their relationship as toxic. Eventually, Khyng went to live with Derrell's mother. Terri lived with her mother until she turned twenty-one years of age, earned her GED, and began a string of minimum wage jobs. She met Acevedo Roberts in 2012. They began dating and their child Owen was born in 2017. Terri and Acevedo were married in 2020. Owen was diagnosed with Type 2 autism. His condition requires his parents to engage in constant surveillance of his daily life activities. Terri has prioritized Owen's life and serves as vice president of the PTA in Owen's school. She travels from work to Owen's school at least three times per week to assist the teachers in providing care for Owen.

CRIMINAL HISTORY

Prior to her surrender for the crime alleged, Terri did not have a criminal history which places her into a "Criminal History Category" of 1.

DEFENDANT'S CULPABILITY

Terri from day one acknowledged her culpability and has expressed remorse. She supplied personal identification information she was able to obtain from her position at work and provided that information to an individual who then passed it on to the named defendants in the indictment. Terri does not know any of the individuals charged in the indictment. The individual she obtained the information for paid her $7/identity and she received approximately $1000. Long before the government came to her doorstep, she quit providing the information. Her involvement with the scheme lasted approximately four months.

Why? Why did she elect to betray her employer and break the law? A child with special needs, her car was repossessed, and facing eviction from her home she became vulnerable to the entreaties of a co-worker who knew her situation. This is not an excuse but an explanation.

MITIGATING ROLE §3B1.2

Based upon the Defendant's role in the offense her offense level should be decreased. Terri's role in the offense could best be described as a "finder." She did not create the scheme and received instructions from another. She was recruited into the endeavor by this individual who was responsible to the principals who reaped millions of dollars. The Application notes in §3B1.2 provide: Applicability of Adjustment. - (A) Substantially Less Culpable than Average Participant – "…Likewise, a defendant who is accountable under §1B1.3 for a loss amount under §2B1.1…that greatly exceeds the defendant's personal gain from the fraud offense or who had limited knowledge of the scope of the scheme may receive an adjustment under this guideline." It is a fact based determination and in (C) the Notes provide a list of factors for the court to consider including: the degree to which the defendant understood the scope and structure of the criminal activity; the degree to which the defendant participated in planning or organizing the criminal activity; the degree to which the defendant exercised decision-making authority; and, the degree to which the defendant stood to benefit from the criminal activity. Terri received his "marching orders" from others and received less than any other participant in the scheme. It is our view that Terri was a minimal participant and should receive a decrease of four levels in the guideline calculation.

LETTERS OF SUPPORT[1]

As John Donne observed "No man is an island, Entire of itself…" – Terri is attached and committed to her family as they are to her – "Every man is a piece of the continent, A part of the main." The attached letters (including Terri's) demonstrate Terri's meaning in the lives of her family. Each member of her family is well aware of her misconduct and is pained by it. The letters describe a young woman who overcame challenges in her life. They demonstrate who Terri is today.

TITLE 18 U.S.C. §3553(a) SENTENCING FACTORS

When imposing sentence, the Court is required to consider all the factors set forth 18 U.S.C. § 3553(a) in determining what is a reasonable sentence in each case. See, United States v. Booker, U.S. 220 (2005); Rita v. United States, 551 U.S. 338 (2007). The Supreme Court has stressed that the district courts are not to treat the guidelines as presumptively reasonable. See, United States v. Hunt, 459 F.3d 1180 (11th Cir. 2006) (explaining that courts "may determine, on a case-by-case basis the weight to give the Guidelines, so long as that determination is made in reference to the remaining § 3553(a) factors that the court must also consider in calculating the defendant's sentence"). In fact, the Hunt Court explained that there are "many instances where the Guideline range will not yield a

[1] The letters of Support are attached to this Memorandum as an exhibit.

reasonable sentence." Id. at 1184. Terri's case represents just such a case. The primary directive in Section 3553(a) is for sentencing courts to "impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph 2." The Court is well aware of § 3553(a) sentencing factors. We have sought to highlight Terri's situation considering these factors, particularly, her criminal history category (no intersection with law enforcement until this matter), her age (29 at the time of the crime), her upbringing, and her role in the scheme. Further, her post criminal conduct work demonstrates an individual who is responsible and law-abiding.

CONCLUSION

The government's offer of a plea to a single count of the Indictment was accepted by the Defendant. Terri owned up to her culpability. Is Terri irredeemable? Can we entirely eliminate the possibility that she is subject to redemption? "Redemption" means to deliver by paying a price.[2] What is the price Terri should have to pay for her actions?

The statute requires a sentence of 24 months, that is, two years' incarceration - for a non-violent, non-drug related crime with no identifiable victims which she committed at the age of twenty-nine.

Again, we anticipate the government filing a 5K1.1 motion to unshackle the court in its ability to impose a sentence without a minimum mandatory.

If the government follows through with the motion the Defendant respectfully requests that this Court impose a sentence at the low end of the Sentencing Guidelines. The Defendant believes that such a sentence meets the sentencing criteria of 18 U.S.C. §3553(a) particularly considering her criminal history category, her limited role in the conspiracy,

[2] Redemption is the English translation of the Greek word *apolutrosis*, meaning "to purchase in the marketplace."

her limited education, her age, her acceptance of responsibility, and an appreciation and understanding of the arc of her life. Further, a reduction under 4C1.1 is appropriate for a first-time offender and a finding that an adjustment for mitigating role as a minimum participant is appropriate as well. Terri Shana Davis believes that such a sentence appropriately takes into account her history and characteristics, properly punishes her for her involvement and most certainly provides adequate deterrence for similar action in the future.

Respectfully submitted,

MICHAEL R. BAND, P.A.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of April 2024 a true and correct copy of the foregoing Sentencing Memorandum was furnished to all counsel on the list of counsel designated to receive electronic filings in this case.

s/ *Michael R. Band*

MICHAEL R. BAND