

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

UNITED STATES OF AMERICA)

v.)

Case No. 5-23-CR-00087-MHH-HNJ

JOHN DAVID SCOGGINS,)
Defendant)

DEFENDANT'S SENTENCING MEMORANDUM

John David Scoggins and his wife, Jennifer Corinne Scoggins, were charged by indictment (Doc. 1) with certain felony offenses relating to wire fraud in connection with applications for Paycheck Protection Program (PPP) loans. On November 21, 2023, he entered a plea of guilty to a single charge of conspiracy to commit wire fraud in violation of Title 18, *United States Code*, § 1349. The government agreed to move to dismiss at sentencing the remaining counts of the indictment.

The statutory range of punishment for the offense of conviction includes imprisonment for not more than twenty years, a fine of not more than \$250,000.00, a term of supervised release of not more than three years and a special assessment fee of \$100.00.

The United States Probation Office has prepared a pre-sentence investigation report (PSR) which includes, pursuant to the *United States Sentencing Guidelines*, calculation of a total offense level of 14 and a criminal history category of I, resulting in an advisory sentencing range from 15 months to 21 months.

Neither Mr. Scoggins nor the government have filed any objections to the PSR requiring the Court's consideration.

For the reasons set out in this memorandum, Mr. Scoggins asserts that a sentence lower than the advisory guidelines sentencing range is appropriate and would satisfy the statutory purposes of sentencing.

The Court is well familiar with the history and provisions of the United States Sentencing Guidelines, the effect of the *Booker* decision (*United States v. Booker*, 543 U.S. 220 (2005)) on the applicability of those guidelines, and the provisions of Title 18, *United States Code*, § 3553, regarding the purpose and policy behind federal sentences. In brief summary, while not required

to follow the sentencing guidelines, the Court *is* obligated to follow the “parsimony provision” mandated in §3553(a), which requires imposition of a sentence sufficient, *but not greater than necessary*, to comply with the sentencing purposes set forth in paragraph (2) of that subsection.

The parsimony provision is not merely another factor to be considered along with others set forth in §3553(a). Instead, it sets an independent limit on the sentence the Court may impose. *See United States v. Denardi*, 892 F.2d 269, 276-77 (3d Cir. 1989). Imposition of a sentence greater than necessary to meet the statutory purposes of sentencing is reversible even if it is within the advisory guideline range. *Id.*

The parsimony provision overrides the now-advisory policy statements in part H of the sentencing guidelines, which list as “not ordinarily relevant” to sentencing a variety of factors such as the defendant’s age, educational and vocational skills, mental and emotional conditions, drug or alcohol dependence and lack of guidance as a youth. *United States v. Phelps*, 366 F.Supp. 2d 580, 592-593 (E.D. Tenn. 2005). Therefore, sentencing courts now have a duty to consider many factors that the guidelines, if mandatory, would exclude from consideration.

Section 3553(a)(1) specifically requires the Court to consider “the history and characteristics of the defendant.” Accordingly, this Court must consider *all* such factors, even factors deemed irrelevant under the formerly mandatory guidelines, in determining the type of sentence that satisfies the sentencing mandate of the parsimony provision.

In accordance with § 3553 jurisprudence, Mr. Scoggins offers the following factors as relevant to the Court’s sentencing decision:

1. History and characteristics of the defendant

John David Scoggins was born in Fort Polk, Louisiana, on December 5, 1979. He had, to use his own word, a “rough” childhood. He was raised primarily by his mother and his stepfather, and he has no contact with his biological father. During his childhood he lacked the guiding hand of a father in his home. His stepfather appeared to favor his own biological children over his stepchildren. Although he later developed a close relationship with his (now deceased) stepfather, Mr. Scoggins described being abused as a child. His family struggled financially and he was required to go to work at a young age to help his family pay bills. PSR ¶ 52.

Mr. Scoggins left school after completing the tenth grade, and later earned his GED certificate. PSR ¶¶ 64, 65. Although he is able to read and write, he clearly exhibits diminished capacity to comprehend and understand complex matters. The PSR writer noted that, while he does not appear to qualify for a reduction in offense level as having played a minimal role in the offense of conviction, “he did not possess full knowledge or understanding of the scope and structure of the enterprise and the activities of his co-Defendant . . . who organized and led the conspiracy.” PSR ¶ 26.

Mr. Scoggins has fully complied with all conditions of pretrial release. PSR ¶ 9. He has done nothing to obstruct justice, and he has fully accepted responsibility for his actions. PSR ¶¶ 28, 29.

2. Physical health, mental health and substance abuse

Mr. Scoggins is in good physical health and does not have a significant, known history of diagnoses of mental health conditions. His mother took him to see a psychiatrist when he was twelve years old, but he does not know if he received a diagnosis. He has a history of depression, including situational depression relating to the instant case.

He does not have a substantial history of substance abuse, but the PSR writer noted that when he was an infant, his grandfather put alcohol in his bottle to help him go to sleep. PSR ¶ 59.

While not excusing his conduct, Mr. Scoggins's personal history, including his lack of paternal guidance as a child, are relevant to sentencing and must be considered by the Court pursuant to § 3553(a).

3. Acceptance of responsibility

Mr. Scoggins has accepted full responsibility for his actions without reservation or limitation. Having made a decision to accept responsibility, he entered a guilty plea as set out above. He also truthfully answered all questions posed by the PSR writer, and he has done nothing to obstruct justice. He has been polite, helpful and cooperative. He has expressed remorse over his actions.

4. Post-arrest efforts toward rehabilitation

Since his arrest on the instant charges, Mr. Scoggins has worked diligently to learn from his mistakes and to reform. He has performed community service work including using his carpentry skills to install siding on a wounded warrior's house and to lay flooring at a senior center without charging for his time or labor.

5. Plea agreement and recommendation by the government

Mr. Scoggins and the government executed a plea agreement, under the terms of which the government is obligated to recommend a custodial sentence at the low end of the applicable advisory sentencing guidelines range.

Plea agreements are generally looked upon with favor by parties and the Courts. Although the Court is not obligated to impose a sentence in accordance with a plea agreement, the Court is no doubt mindful that imposition of a sentence longer than that contemplated in the

agreement and recommended by the government would send a message to similarly-situated defendants and to counsel that plea agreements may not be beneficial, perhaps leading to fewer such agreements.

CONCLUSION

The sentencing mandates of Title 18, *United States Code*, § 3553(a), and the factors set out in this memorandum, suggest that a sentence substantially less than that proposed under the advisory sentencing guidelines would meet all statutory purposes of sentencing. Imposition of a longer sentence of incarceration would be greater than necessary to meet statutory sentencing purposes. Given his zero criminal history points, the nonviolent nature of this offense and the fact that his two small children will be without any parental care or guidance if he and his wife and codefendant are both incarcerated, he suggests that a probationary sentence or a sentence of substantially less than the low end of the guidelines would be appropriate. Such a sentence would be sufficient to address the mandates of § 3553(a).

In the event Mr. Scoggins is sentenced to a term of incarceration, he may request, at sentencing, that the Court permit him and his wife to serve staggered sentences so their children will be cared for.

Mr. Scoggins asks the Court to recommend to the Bureau of Prisons that he be incarcerated at a facility as close to his home in Huntsville, Alabama, as possible.

Respectfully submitted this 19th day of April, 2024.

/s/ Electronic Signature

Jerry S. Barclay
Attorney for Defendant
118 South Side Square
Huntsville, Alabama 35801
(256) 533-1127
jerry@jerrybarclay.com

Certificate of Service

I certify that I have filed the foregoing using the court's electronic filing system, which will provide notice to all appropriate persons and agencies.

/s/ Electronic Signature

Jerry S. Barclay