IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA	)	
	)	
	)	
v.	)	**Case No. 3:21-cr-132**
	)	
KEON TAYLOR	)	
	)	

DEFENDANT KEON TAYLOR
SENTENCING MEMORANDUM

PRELIMINARY STATEMENT

Defendant Keon Taylor acknowledges his poor choices in this case. He takes full responsibility for his conduct and seeks an opportunity to renew his commitment to his young children and loving family. In light of the United States Sentencing Guidelines ("U.S.S.G.") and other factors, as further discussed below, Mr. Taylor requests that this Court impose a fair sentence that is at the low end of the applicable guidelines range.

SECTION 3553(a) FACTORS

As this Court is well aware, the Fourth Circuit counsels district courts to consult the United States Sentencing Guidelines prior to making a sentencing determination, but also encourages courts to recognize the non-binding nature of those Guidelines. *United States v. Hughes*, 401 F.3d 540, 546-47 (4th Cir. 2005). After considering the recommended Guidelines range, district courts should analyze the factors in Section 3553(a) before imposing a sentence. *Id.*

1. **18 U.S.C. § 3553(a)(1): "the nature and circumstances of the offense and the history and characteristics of the defendant"**

(a) "History and characteristics of the defendant"

Mr. Taylor was born in Charlotte, North Carolina on December 23, 1990. He is the younger of two children born to Linda and Ernest Taylor, and has three half-siblings as well. Mr. Taylor's parents divorced when he was very young, and he was primarily raised by his mother. When he was roughly ten years old, he was uprooted from North Carolina and moved to Louisiana to live with his father – which left him with little to no substantive supervision at a very critical age – but after two years returned to living in Charlotte with his mother. Despite this unsettled upbringing, Mr. Taylor says he was loved at home and remains close to his mother to this day, but has had minimal contact with his father since high school.

Mr. Taylor is the father of four children (ages 11, 8, 5, and 3). He provides financial support for all four and has attempted to provide the same supportive home that his mother provided for him.

Mr. Taylor completely and unreservedly accepts the responsibility of his role in the crimes for which he is before this Court. He knows that this lapse in judgement has tarnished his life and hopes to minimize the impact it will have on his family. When provided with the opportunity to engage in fraud, he acknowledges that he should have acted as a responsible citizen but the lure of easy money was too tempting. Mr. Taylor now recognizes that he should have refused that temptation and acknowledges that he will face the consequences associated with his failure to do so.

(b) "Nature and circumstances of the offense"

White collar crimes are economic crimes that are non-violent and do not carry the same risk of recidivism as other offenses, particularly where a defendant has already suffered from

committing the offense. *See, e.g., United States v. Smith*, 2009 WL 249714, at *4 (N.D. Ohio, Feb. 2, 2009) (noting that white collar defendant was unlikely to reoffend due to nature and circumstances of the offense and prosecution, including the negative impact on his financial situation). This is a key reason for why the type of fraud to which Mr. Taylor has pled often sees defendants receive sentences at or below the Guidelines range: in 2012, nearly 50% of fraud offenders received a sentence below the Guidelines range and for crimes with losses much higher than Mr. Taylor's – with a loss table amount of $7 to $20 million – that number rises to 72.6%. *See, e.g.*, United States Sentencing Commission, *Sentencing & Guideline Application Information for § 2B1.1 Offenders* 4, 8 (2013).

Mr. Taylor will regret engaging in wire fraud and aggravated identity theft for the rest of his life. However, he has accepted responsibility. He deeply regrets his actions and that they were contrary to the principles which he has attempted to instill in his children, and hopes that he can still encourage them to follow a better path.

2. **18 U.S.C. § 3553(a)(2): "the need for the sentence imposed to provide just punishment, to afford adequate deterrence, and to protect the public from further crimes of the defendant"**

Mr. Taylor understands that the sentence imposed on him is needed to provide just punishment, adequate deterrence, and to protect the public from further crimes. However, Mr. Taylor's prior record consists largely of traffic violations, and indicates that he poses no physical risk to the public at large. Indeed, Mr. Taylor has already been punished for this crime, in the way of explaining his actions, and the consequences of these actions, to his family members and, most painfully, to his children. And courts have properly taken these circumstances into account when crafting an appropriate sentence. *See, e.g., United States v. Stewart*, 590 F.3d 93, 141 (2d Cir. 2009) (holding that sentencing court properly considered collateral consequences of the conviction

itself in sentencing the defendant); *United States v. Anderson*, 533 F.3d 623, 633 (8th Cir. 2008) (affirming that sentencing court properly considered the defendant's "atypical punishment such as the loss of his reputation"); *United States v. Roth*, 2008 WL 686783, at *1-3 (N.D. Ill. Mar. 11, 2008) (imposing sentence of probation, despite a Guidelines range of 63 to 78 months, in part because "[t]he publicity regarding her conduct ha[d] obviously caused her great embarrassment and humiliation").

Further, the goal of deterrence has already been served in this case in many ways by the various consequences Mr. Taylor has suffered from his plea. A modest sentence, without the incorporation of unnecessary enhancement, will still suffice to ensure, as various courts and studies have acknowledged, that the goal of deterrence is realized. *See, e.g.*, *Stewart*, 590 F.3d 93 at 141 ("[T]he need for further deterrence and protection of the public is lessened because the conviction itself already visits substantial punishment on the defendant."); *United States v. Adelson*, 441 F. Supp. 2d 506, 514 (S.D.N.Y. 2006) (sentencing fraud defendant to 42 months instead of Guidelines sentence of life imprisonment in part because "there is considerable evidence that even relatively short sentences can have a strong deterrent effect on prospective 'white collar' offenders"), *aff'd*, 301 F. App'x 92 (2d Cir. 2008); Michael Tonry, *Purposes and Functions of Sentencing*, 34 CRIME & JUST. 1, 28-29 (2006) (noting that three National Academy of Science panels and "every major survey of the evidence" has reached the conclusion that "increases in severity of punishments do not yield significant (if any) marginal deterrent effects"); Zvi D. Gabbay, *Exploring the Limits of the Restorative Justice Paradigm: Restorative Justice and White Collar Crime*, 8 CARDOZO J. CONFLICT RESOL. 421, 447-48 (2007) ("[C]ertainty of punishment is empirically known to be a far better deterrent than its severity.").

3. **18 U.S.C. § 3553(a)(6): "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct"**

Here, a sentence at the bottom of the Guidelines range is appropriate to avoid sentencing disparities. Studies of fraud sentencings show that most offenders convicted of high-value fraud offenses are sentenced at or below the bottom of the Guidelines range. Indeed, this Court has done the same. For example, in *United States v. Murphy*, the Court varied substantially – from 51 months to 26 months – based largely on the need to avoid unwarranted sentencing disparities. *See* Dkt. No. 168 at 105:24-107:4, *United States v. Murphy*, Case No. 3:12-cr-235 (W.D.N.C. May 18, 2015). And the conduct at issue in *Murphy* was far more severe – there, the defendant conspired with others for approximately eight years to pay kickbacks and rig the bidding process for various municipal finance contracts.

A wide array of other cases illustrate why a sentence at or below the Guidelines range is merited. In *United States v. Gupta*, 904 F. Supp. 2d 349, 353-55 (S.D.N.Y. 2012), the defendant was convicted by a jury of securities fraud with a loss amount of $5 million – however, despite a Guidelines range of 78 to 97 months, the court sentenced the defendant to 24 months. In *United States v. Farha*, No. 8:11-cr-00115 (M.D. Fla. 2014), the defendant was convicted by a jury of healthcare fraud resulting in a loss of $11 million – but again, even though the Guidelines range was 121 to 151 months, the court sentenced the defendant to 36 months imprisonment. Similarly, *United States v. Litvak*, No. 3:13-cr-00019-JCH (D. Conn. July 23, 2014), saw a Guidelines range of 108 to 135 months for fraud with losses up to $7 million, but the court imposed only a 24-month sentence. These amounts far outstrip Mr. Taylor's actions at issue in this matter.

IMPACT OF PLEA AGREEMENT – OPPOSITION TO TWO LEVEL ENHANCEMENT

Mr. Taylor's plea agreement allowed for the possibility that the United States may seek, and the defendant may oppose, a two-level variance because the offense involves fraud in connection with major disaster or emergency benefits, similar to the enhancement applicable under U.S.S.G. § 2B1.1(b)(12).

A small part of the crime to which Mr. Taylor has pled involved EIDL benefits, which were augmented by a national emergency declared by the president due to the Covid-19 pandemic. However, the bulk of the conduct at issue in Counts 1 and 11 (the counts for which Mr. Taylor is being sentenced) primarily involved fraud related to unemployment insurance benefits, not EIDL benefits – and the unemployment benefits were authorized under the CARES Act, Pub. L. No. 116-136, not the Stafford Act. As such, a two-level enhancement would be inappropriate layering on of excessive incarceration – particularly where an additional 24 months is already guaranteed to be layered onto his sentence – where the conduct is only partially connected to an emergency declaration under the Stafford Act. *See* Sentencing Memorandum of the United States, *United States v. Jackson*, Case No. 3:20-cr-112, Dkt. No. 31, W.D. Ohio (government sought to remove two level enhancement under the Stafford Act where guilty plea involved only some fraud under the Stafford Act, even though the loss in question totaled millions of dollars).

CONCLUSION

An analysis of the § 3553(a) factors – including the non-violent nature of Mr. Taylor's crime, and his focused outlook on his responsibilities to his family – demonstrates that a sentence at or below the United States Sentencing Guidelines is warranted. Additionally, a two level enhancement under U.S.S.G. § 2B1.1(b)(12) is unwarranted.

Respectfully submitted this 4th day of March, 2022.

s/ Brian S. Cromwell
Brian S. Cromwell
North Carolina State Bar No. 23488
Marshall G. Jones
North Carolina State Bar No. 53996
PARKER POE ADAMS & BERNSTEIN LLP
620 South Tryon Street, Suite 800
Charlotte, North Carolina 28202
Telephone: (704) 372-9000
Facsimile: (704) 334-4706
briancromwell@parkerpoe.com
marshalljones@parkerpoe.com
Counsel for Defendant Keon Taylor