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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

UNITED STATES OF AMERICA,)	Cause No. CR-21-7-H-BMM
)	
Plaintiff,)	
vs.)	
)	SENTENCING MEMORANDUM
KASEY JONES WILSON,)	
)	
Defendant.)	
)	
_____)	

I. INTRODUCTION

Kasey Jones Wilson, the above-named Defendant, by and through his counsel of record, Elizabeth T. Musick, comes before the Court for sentencing on one count of Bank Fraud, in violation of 21 U.S.C. § 1344, 18 U.S.C. §§ 1344(1) and (2) (Count IV) and one count of Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity, in violation of 18 U.S.C. § 1957, 18 U.S.C. § 1957(b)(1) (Count XI). Sentencing is currently set before this Court for March 23,

2022, at 11:00 a.m. As to these charges, Mr. Wilson faces a sentence on Count IV of not more than thirty (30) years imprisonment, a fine of \$250,000, and not more than three (3) years supervised release. On Count XI, Mr. Wilson faces a sentence of not more than ten (10) years imprisonment, a fine of \$250,000, and not more than three (3) years supervised release. Based upon amount of loss at issue in this case, the United States Probation Officer has calculated an advisory Guideline Range of forty-one to fifty-one months (Total Offense Level 15; Criminal History Category VI). For the reasons set forth herein, Mr. Wilson asserts that a sentence of three (3) years' probation is appropriate. Mr. Wilson will have spent 8 days in Federal custody while this matter has been pending.

II. ARGUMENT

The Supreme Court has preserved a key role for the Sentencing Commission in that the Guidelines serve as the “starting point and the initial benchmark” in imposing sentencing in district courts. *Kimbrough v. United States*, 128 S. Ct. 558, 574 (2007); see also *Rita v. United States*, 127 S. Ct. 2456 (2007). The Guidelines are intended to be advisory in nature.

In the instant case, the PSR calculates the total offense level at 15 points with a Criminal History Category of VI. Mr. Wilson asserts that due to the mitigating factors until 18 U.S.C. § 3553(a), a sentence of probation for three (3) years is appropriate, and Mr. Wilson respectfully requests that the Court sentence him

accordingly.

A. Mitigating Factors Under Title 18 U.S.C. § 3553(a).

The Sentencing Guidelines range “should be the starting point and initial benchmark” for determining an appropriate sentence; however, a district court may not presume that the Guidelines range is reasonable. *United States v. Gall*, 128 S. Ct. 586, 596 (2007). The Guidelines are to be given no more weight than any other factor contained in § 3553(a). *Gall*, 128 S. Ct. at 594. The Guidelines Range provides only an initial benchmark of a federal sentence. *Kimbrough*, 128 S. Ct. at 574. After *Booker*, *Gall*, and *Kimbrough*, district courts must try to break from the mechanical dependence on the Guidelines. See *United States v. Sedore*, 512 F.3d 819 (6th Cir. 200-8) (Merritt C.J., dissenting) (“This case is one more example of the continuing problem, the problem of guidelineism, or ‘guidelinitis,’ the inability of most federal courts to break their habit of mechanically relying just on the guidelines alone”).

Pursuant to 18 U.S.C. § 3553(a)(1), (2), the court in determining the particular sentence imposed shall consider the nature and circumstances of the offense and the history and characteristics of the defendant, the need for the sentence imposed to reflect the seriousness of the offense, and to provide deterrence and protect the public from further crimes of the defendant. A reasonable sentence would be one sufficient, but not greater than necessary to accomplish § 3553(a)(2)’s sentencing goals. *United*

States v. Ressam, 679 F.3d 1069, 1089 (9th Cir. 2012).

Further, under 18 U.S.C. § 3553(b), the District Court may impose a sentence outside of the guideline range if the court finds “there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described above.”

For the reasons set forth below, a sentence of three years’ probation is warranted in Mr. Wilson’s case.

B. The History and Characteristics of the Defendant.

The Guidelines sentencing range is calculated under the mandatory Guidelines system and disregards Mr. Wilson’s personal history and individual characteristics, which includes in pertinent part, a long history of drug addiction, lack of a father-figure through much of his upbringing, and mental health needs. “District Courts are not prohibited in all circumstances from considering a defendant’s drug addiction in choosing a reasonable sentence.” *United States v. Garcia*, 497 F.3d 1216, 1218 (9th Cir. 2007). Mr. Wilson’s criminal history is set forth in the PSR ¶¶ 64-83 and his personal characteristics are set forth in the PSR ¶¶ 84-128.

Mr. Wilson is twenty-nine (29) years old, and he has no children. PSR p. 3, ¶ 92. He has never been married, despite information from mental health records that

indicates that he has been married and divorced. PSR ¶ 92. Mr. Wilson had a challenging childhood, and his parents first separated when he was four years old, and he never had a consistent presence in his life. PSR ¶ 87. In addition to the lack of parenting by his own father, his mother had a series of relationships during his childhood which were damaging to Mr. Wilson's mental health as he matured. PSR ¶ 88.

Additionally, Mr. Wilson's father was verbally and mentally abusive to him when he was present during childhood, and he was possibly schizophrenic. PSR ¶ 90. Rather than treat his mental health needs with medications, Mr. Wilson's father used methamphetamine, which escalated his mental health condition. PSR ¶ 90.

Mr. Wilson has suffered from chronic anxiety and depression since the young age of 10, and he attempted suicide for the first time in 2015. PSR ¶ 99. He was also diagnosed with bipolar, manic depression, and insomnia at that time. *Id.* He attempted suicide for the second time in 2017, and he was hospitalized as a result. PSR ¶ 100. He attempted suicide a third time in 2019, and he was again hospitalized as a result. PSR ¶ 101. Mr. Wilson moved to Montana shortly after. *Id.*

Mr. Wilson has also suffered from substance abuse addiction for the majority of his life. He began using marijuana at the young age of ten, and by the time he was thirteen, he was a daily user. PSR ¶ 107. He first tried methamphetamine in 2013 or 2014, became addicted, and ultimately was addicted to methamphetamine

until sometime in March or April 2017. PSR ¶ 108. He has tried to get into drug treatment before; however, due to an extremely long wait for a bed date, he was not able to get into treatment. PSR ¶ 112. However, in the past two years, Mr. Wilson has gotten his life on track, he no longer uses drugs or alcohol, and he is working very hard to maintain his sobriety. He had one pretrial violation while this matter was pending, where he tested positive for marijuana on January 26, 2022, and he admitted to his pretrial officer that he had used marijuana on January 22, 2022, during a period of stress. PSR ¶ 106.

In turning to the offense conduct, Mr. Wilson was not the mastermind behind his crime. PSR ¶ 50. He was induced into taking out the PPP loan by his co-defendant, Trevor McLeod, and then after the commission of the offense, McLeod then coerced Mr. Wilson into handing over the majority of the loan funds to him. *Id.* Mr. Wilson is remorseful about the effect that his actions have had on his community, and especially on Valley Bank of Helena. *Id.* He wants the opportunity to work as hard as he can, so he can timely pay back the restitution that he owes. *Id.* He is a hard worker, and he has gotten his life on track in the past two years. *Id.* If given the opportunity to remain in the community, he will not be a danger to those around him for future financial crimes, and he will be able to work to pay off his restitution. *Id.*

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C. Criminal History Adequacy

At ¶ 146 of the Final PSR, Mr. Wilson should receive a downward departure pursuant to USSG § 4A1.3(b) because reliable information indicates that his criminal history category substantially over-represents the seriousness of his criminal history. The United States Probation Officer agrees with this, and has identified this as a possible area in which the Court may depart from the United States Sentencing Guidelines. The majority of his scorable criminal convictions are merely traffic citations, which would not ordinarily result in a scorable offense. Additionally, some of the convictions for Driving Under Restraint are ones which if they had been convicted in the state of Montana rather than the state of Colorado, Mr. Wilson would have only been subjected to a sentence of 0-48 hours, whereas in Colorado, he received a sentence of 30 day and a sentence of 90 days.¹ PSR ¶¶ 69-70. Mr. Wilson should not be unduly punished for the location of his crimes by receiving significant increased criminal history scores. Instead, the Court should provide him with a downward departure pursuant to USSG § 4A1.3(b) based on the PSR overstating his past criminal history and his propensity to commit crimes. Additionally, at ¶ 72 of the PSR, Mr. Wilson was only sentenced to 60 days on this case as part of a global settlement with the offense set forth in ¶ 71. Had he not been held on the offense set forth in ¶ 71, he would not have been sentenced to over 30

¹ Driving Under Restraint is the Colorado equivalent of Montana's Driving While Suspended or Revoked.

days for this offense, which would have resulted in a criminal history point of zero for this offense. For this reason as well, his criminal history category is overstated.

D. Need for Restitution

In order to timely pay the restitution that this Court will order in this matter, Mr. Wilson must receive a probationary sentence and maintain his current employment. In *United States v. Edwards*, the United States District of Montana sentenced Mr. Edwards to five years' probation, seven months of which was to be served under house arrest, and ordered restitution in the amount of \$102,696.07. *United States v. Edwards*, 595 F.3d 1004, at 1008 (9th Cir. 2010). The advisory Sentencing Guidelines range called for a sentence from twenty-seven to thirty-three months imprisonment. *Id.* The Government appealed, and the Ninth Circuit upheld the District Court's probationary sentence, finding that the District Court's rationale behind imposing a probationary sentence was sound. The Ninth Circuit noted that the District Court's analysis of each the factors in 18 U.S.C. § 3553(a) and evaluated whether or not the sentenced imposed was "substantively unreasonable." *Id.*, 595 F.3d 1004, at 1014-1015. The Ninth Circuit noted,

In accordance with § 3553(a)(1), considering the "nature and circumstances of the offense and the history of the characteristics of [Edwards]," the district judge observed that Edwards appeared to be a much changed individual "than the person who was somehow engaged in illegal conduct in Arizona." The district judge noted that the advisory sentencing range had been calculated based on the loss intended by Edwards rather than the actual loss. The district judge was of the view that the Guidelines range, which was calculated using the intended loss,

overstated the circumstances of Edwards's case. While acknowledging Edwards's felony conviction in Arizona, the district court was of the opinion that Edwards would not engage in similar conduct in the future and took special note of Edwards's sincerity during allocution.

The district court found that a probationary sentence and a requirement that Edwards make restitution payments satisfied the statutory requirement that the court “impose a sentence sufficient, but not greater than necessary.” 18 U.S.C. § 3553(a).

Id., 595 F.3d 1004, at 1010. Here, Mr. Wilson has also shown that he is a changed man. He is hardworking, remorseful, and wants to pay back his restitution as soon as possible. PSR ¶ 50. For these reasons, much like the Defendant in *Edwards*, a probationary sentence meets all of the § 3553(a) factors in Mr. Wilson’s case.

E. Amount of Restitution to be Ordered

The loss amount in this case is \$416,400 based on the amount of the loan Mr. Wilson received from Valley Bank of Helena. However, there is indisputable evidence that Mr. Wilson transferred, at the very least, \$301,398 of the total loan proceeds to his co-Defendant, Trevor McLeod. On July 1, 2020, Mr. Wilson provided Mr. McLeod with a Cashier’s check in the amount of \$249,898.00 at Mr. McLeod’s behest. USAO – 1075; *see also* Defendant’s Exhibit A, Step Above Management Glacier Bank Statement. Again on July 1, 2020, Mr. Wilson provided Mr. McLeod with a Cashier’s check in the amount of \$10,000 at Mr. McLeod’s request. *See* Defendant’s Exhibit B, Glacier Bank Printout. Then on July 20, 2020,

Mr. Wilson provided Mr. McLeod with a Cashier's check in the amount of \$15,000 on Mr. McLeod's demand. USAO – 0943. Subsequently on August 5, 2020, Mr. Wilson provided Mr. McLeod with yet another Cashier's check, this time in the amount of \$25,000, also at Mr. McLeod's direction. *Id.* Finally, on September 11, 2020, Mr. Wilson provided Mr. McLeod with a Cashier's check in the amount of \$1,500. USAO – 0954. The total amount of these transactions flowing from Mr. Wilson directly to Mr. McLeod is \$301,398. Mr. Wilson has no direct knowledge of what Mr. McLeod did with the funds transferred to him, only that they were otherwise squandered by Mr. McLeod. Mr. Wilson did not receive any of these funds back from Mr. McLeod. For this reason, Mr. Wilson's restitution should be in the amount of \$115,002. Mr. McLeod should be Ordered to pay the remaining \$301,398, of which he presumably received the sole financial benefit.

III. CONCLUSION

Mr. Wilson prays that the Court will consider this memorandum in imposing a sentence of three (3) years probation. Mr. Wilson further prays that the Court will Order restitution against him in the amount of \$115,002. If the Court determines that a custodial sentence is necessary in this matter, Mr. Wilson requests that if the sentences him to the custody of the Bureau of Prisons, that the Court recommend that he participate in the BOP's 500-hour Residential Drug Treatment Program. Last, Mr. Wilson requests that the Court run his sentence concurrently with his State

of Colorado Sentence in Montrose County Combined Court, Docket No. 2015CR239 and Mesa County District Court, Docket No. 2016CR5914.

DATED this 17th day of March, 2022.

KASEY JONES WILSON

By: /s/ Elizabeth T. Musick
ELIZABETH T. MUSICK
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2022, a copy of the foregoing document was serviced on the following persons by the following means:

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1. CLERK, UNITED STATES DISTRICT COURT
2. COLIN M. RUBICH
Assistant U.S. Attorney
Counsel for Plaintiff
3. KASEY JONES WILSON
c/o Elizabeth T. Musick
Defendant

/s/ Elizabeth T. Musick
ELIZABETH T. MUSICK