

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

UNITED STATES OF AMERICA) Docket No. 3:21-CR-114
)
V.)
)
MAURICE KAMGAING)
)
_____)

DEFENDANT’S SENTENCING MEMORANDUM
AND REQUEST FOR A VARIANT SENTENCE

The defendant by and through his counsel, respectfully submits the following sentencing memorandum and request for variant sentence for the court’s consideration in the sentencing of this matter.

I.

Maurice Kamgaing (Hereinafter “Kamgaing”) does not present a risk to the community or to the public. Kamgaing has developed his company Apiagne, Inc. into a thriving business. Apiagne, Inc. is a global technology and consulting services company. Kamgaing uses Artificial Intelligence Solutions for Enterprise Applications, Cybersecurity, and Information Technology. Apiagne, Inc. is currently working on Cyber security projects for All State, MEPRO and Freddie Mac. The company has a contract with WePro contract starts January 3, 2022. Finally, the company is working towards finalizing contract with Apple. The business projection for 2022 is gross revenue over \$1,000,000.00 with current projects.

Apiagne, Inc., currently has six employees, not including Mr. Kamgaing, that will lose their employment if Mr. Kamgaing is incarcerated for any significant period of time. Mr. Kamgaing is the key employee having worked long, hard hours building Apiagne, Inc, and

without his expertise, Apiagne, Inc. will be forced to close. While the company has employees, it is Mr. Kamgaing the key figure in the company. Without his expertise in information technology, Apiagne Inc. would not be able to function. Mr. Kamgaing holds the following certifications¹:

- CompTIA A+ Essentials Certification
- CompTIA A+ IT Technician Certification
- CompTIA A+ Certified
- CompTIA Network+ Certified
- CompTIA Security+ Certified
- Microsoft Certified Professional (MCP) - Windows 7
- Microsoft Certified Solutions Associate (MCSA)
- Microsoft Certified Technology Specialist (MCTS)
- Microsoft Certified IT Professional (MCITP)
- ITIL v3 Foundation Certified
- ITIL v4, IT Service Strategy Certified
- ITIL v4, IT Service Design Certified
- ITIL v4, IT Service Transition Certified
- ITIL v4, IT Service Operation Certified
- ITIL v4, Continual Service Improvement Certified
- ITIL v4, Managing Across the Lifecycle Certified
- IT Service Management Certified Expert (V2011)
- Citrix Certified Administrator (CCA) – Virtual Applications & Virtual Desktops
- Citrix Solutions Advisor (CSA)
- Splunk Certified User
- Splunk Certified Power User
- Splunk Certified Administrator
- Splunk Certified Architect I
- Splunk Certified Architect II
- Splunk Enterprise Certified Architect
- Splunk Core Certified Consultant
- Enterprise Security Certified Admin
- Implementing IT Service Intelligence
- Splunk Accredited Security Sales Rep I
- Splunk Accredited Sales Rep I
- Splunk Accredited Sales Rep II
- Splunk Accredited Sales Engineer I
- Splunk Accredited Sales Engineer II
- Splunk Accredited IT App Sales Rep I
- Splunk Accredited Enterprise Security Implementation
- Using Splunk IT Service Intelligence

¹ See <https://kamgaing.com/certifications/>

Cisco SMB Engineer
Cisco Account Manager
Iron Stream for IBM i PPQ
Sales Professional Qualification Iron Stream

Mr. Kamgaing has become a leader in cutting edge cyber security. He utilizes machine learning (Artificial intelligence) to enhance cybersecurity for his clients. Mr. Kamgaing and his company have found solutions and implemented security systems for clients such as Bank of America, Wells Fargo, Ally Bank, Freddie Mac, and was in the running to win a contract for the United States Administrative office of the Courts.

A sentence within the guideline range will force the closure of Apiagne, inc., the employees being laid off and likely send Kamgaing into bankruptcy .

“It has been uniform and constant in the Federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.” *Koon v. United States*, 518 U.S. 81, 113 (1996). The question here is what that means here for a man who has worked tirelessly to achieve so much and involved himself in something very wrong and criminal but is otherwise a decent productive businessman in the Archdale community.

II.

Mr. Kamgaing entered a guilty plea to one count of Wire Fraud and One Count of money Laundering. These charges stem from his involvement with two Payroll Protection Plan loans. The United States Probation department prepared a presentence investigation report and determined that Mr. Kamgaing’s offense level is a 20 with a criminal history category of I. This calculation provides for an advisory guideline range of 33 to 41 months imprisonment.

Mr. Kamgaing applied for two PPP loans. One in the name of his company AKC Solutions and the other in the Name of Apiagne, Inc. The applications were done through bank of America's online system. At the time of the applications neither AKC Solutions nor Apiagne, Inc. had employee's other than Mr. Kamgaing. To support the loan application, Mr. Kamgaing provided false and misleading documents that indicated he had employees and a significant payroll. Bank of America Approved these two loans: one in the amount of \$650,000.00 and the other in the amount of \$856,463.00. Mr. Kamgaing used these funds to grow his company from a "one person working out of their home business" to a thriving business that employed to a total of fifteen employees at its height. Kamgaing used some of the loan proceeds to purchase 215 Balfour Dr. Archdale North Carolina which houses his company. Mr. Kamgaing has agreed as part of his plea to a \$1.5 Million dollar forfeiture and will likely lose the building² and \$650,000.00. As of the time of sentencing, Kamgaing has made four payments³ on the \$650,000.00 loan and reduced the outstanding balance down to \$597,831.16.

III.

Kamgaing was born in Cameroon Africa. He is from the Bamileke people and specifically the Baham Tribe.⁴ The Baham Tribe has its own local form of government that was established prior to colonialism and co-exists today with the modern government. The Baham

² The current tax value of 215 Balfour Dr. according to the Randolph County tax department is approximately \$1.8 million.

³ Payments were made on October 6, October 8, November 24, and December 7, 2021 each in the amount of History and characteristics of the defendant \$15,613.23.

⁴ The Bamileke are a Grassfields ethnic group. They make up the largest ethnic group in Cameroon and inhabit the country's western region. The Bamileke are subdivided into several tribes, each under the guidance of a King or fon.

Tribe is governed by a Tribal King and Nobility. Within the nobility there different titles or ranks. Maruice's Grandfather was a "Swoup."⁵ Swoup is the most senior rank within the Nobility. The rank of Swoup would be a close advisor to the king, akin to a cabinet member in the United States Government. Within the Baham Tribe it was assumed a successor was as qualified to hold the position as the person they replaced.⁶

Kamgaing was chosen to be his grandfather's successor when he was four years old. Maruice's grandfather passed when Kamgaing was five years old, elevating Maruice to the position of Swoup. Kamgaing's succession caused severe strife within his family. Kamgaing's biological father could not tolerate being out ranked by his five-year-old son and Kamgaing was forced to live with his maternal grandmother⁷.

From the age of five until the age of fifteen he lived with his grandmother. Kamgaing's grandmother used Kamgaing's position to advance her own agenda within the tribe.⁸ His grandmother fought against the traditional ways of the Baham Tribe such as not educating women. Traditionally, the tribe viewed education as a part of colonialism and, therefore, a threat

⁵ In the traditional language "Swoup" there is no direct translation to modern english, but in essence is a title of nobility that passes through succession once the Swoup passes away.

⁶ Succession and inheritance rules are determined by the principle of patrilineal descent. According to custom, the eldest son is the probable heir, but a father may choose any one of his sons to succeed him. An heir takes his dead father's name and inherits any titles held by the latter, including the right to membership in any societies to which he belonged. And, until the mid-1960s, when the law governing polygamy was changed, the heir also inherited his father's wives--a considerable economic responsibility. The rights in land held by the deceased were conferred upon the heir subject to the approval of the chief, and, in the event of financial inheritance, the heir was not obliged to share this with other family members.

⁷ Odett Guiakam, she was one of Kamgaing's grandfather's eight wives.

⁸ Maruice's grandmother opposed traditional tribal ideology such as multiple wives, no education and property rights for women.

which caused them to not educate their leaders. Women could not own property or inherit property from their family. Men were superior to women to the point where a five-year-old male child could order a grown woman around. Women were deemed subservient and forced to work and cook.

Due to his grandmother's opposition to the traditional values of the tribe and using Kamgaing's position, the traditional tribe leaders used Kamgaing's best friend to poison Kamgaing when he was just 14 years old. After surviving the assassination attempt, his grandmother sent him to live with his uncle in Yaounde, the capital city of Cameroon, when he was 15 years old. Kamgaing's uncle was the dean of the theological school in Yaounde and encouraged Kamgaing to abandon the tribal traditions and focus on education. For the next seven years, Kamgaing considered his uncle to be his second father. At the age of 20, Kamgaing was recruited by the Cameroon army due to his outstanding achievements. He was registered at the Cameroon ministry of defense. Kamgaing had an interest in technology and how technology was used in a military context. When he was 22 years old Kamgaing, was selected by the Cameroon Ministry of Defense and the United States Airforce to attend the United States Airforce Academy. Kamgaing started attending the United States Airforce Academy in 2002. Kamgaing graduated with a Bachelor of Science degree in economics from the United States Airforce Academy. During his time at the academy, Kamgaing received many notable awards. He was awarded jump wings after completing the academy parachuting program, and he was also awarded glider wings after completing the academy's glider program.

While in the United States, Kamgaing was first exposed to computers. Kamgaing spent most of his free time learning about computers and programming, testing them. He wanted to understand how the computer functioned and how they were able to talk to each other. He would

spend countless hours in his dorm room to experimenting with networking and programming. Once he figured out how they communicated, Kamgaing set his sight on developing a platform akin to skype so he could communicate with people back in Cameroon. Kamgaing started to take advanced computer science electives while pursuing his degree.

Upon graduation from the Airforce academy, The United States military's interest in Kamgaing was to have him re-immense himself into Cameroon Military, which he did in 2006. Prior to returning to Cameroon, Kamgaing married Anna his wife. Anna and Kamgaing returned to Cameroon where Kamgaing's initial assignment was working within the Cameroon Air Force Head Quarters. Kamgaing was first tasked with chief of IT for the air force only. This did not seem to sit well with the US military attaché who pushed to have Kamgaing reassigned into a position with greater access to overall military budgets and expenditures within the Cameroon military. Three months after his return to the Cameroon military Kamgaing was reassigned to *Quartier Generale*⁹ as *Commissaire De L 'air*.¹⁰ In this position, he was tasked with reporting back to the United States military attaché.

During this time, Anna became pregnant with their first child, Cindy. They presently have a total of five minor children. Also during this time, Kamgaing's mother died, leaving his youngest siblings orphaned and Kamgaing and his wife adopted three of his younger siblings.

While working as the Commissaire his interactions with high-ranking Cameroon military officials caused him to fear for his safety. The corrosive environment surrounding his position within the Cameroon Military coupled with having a pregnant wife, forced Kamgaing to leave Cameroon. Kamgaing and his wife were required to undergo an exit interview with the Vice

⁹ This is the Cameroon equivalent to the US pentagon

¹⁰ This position was the chief of military finance.

Ambassador. Kamgaing was instrumental to delivering assistance to the United States while assigned to the Cameroon military. Kamgaing was granted a visa to return to the United States in 2007. From 2007 until 2008 Kamgaing and his family lived with his wife's family in North Carolina. His first job in the United States was at Brookline furniture, loading and unloading furniture for \$8.25 an hour. In 2008 Kamgaing and his family moved to Charlotte, North Carolina where Kamgaing started doing computer repairs independently from home.

His company, AKC solutions was incorporated in 2008. The business was a computer repair business which dealt with website building, computer repair, etc. While this was going, in 2009, Kamgaing had a service call with a company named "ON24." Kamgaing was able to solve a networking problem in 30 minutes that the company had been grappling with for over a week. Kamgaing was offered a job with ON24 that same day. He worked for ON24 until 2011 when he returned to Cameroon.

Kamgaing stayed in contact with the military attaché in the Cameroon embassy. As the Cameroon presidential election was nearing, Cameroon Military, through the US embassy requested his return to Cameroon. The US embassy was coordinating Kamgaing's return into the Cameroon Military. Kamgaing returned to Cameroon to assist the United States, however, he assumed there was a risk of being executed upon his arrival. Kamgaing stayed in Cameroon for three months. While there, he coordinated meetings with military officials of Cameroon and reported back to the US military attaché at the US Embassy.

Upon his return to the United States Kamgaing continued working on his company AKC, INC. At the same time, ON24 eager for his to return to fix their IT related issues. In 2012, Mr. Kamgaing became a naturalized citizen. An opportunity arose within Bank of America for Kamgaing. He became a senior cyber security consultant for the bank. Kamgaing worked for

about 6 months as a consultant and was offered a position as a vice president in charge of managing cyber security and network services. He then left Bank of America to take a position with Wells Fargo working on “Splunk¹¹.” At that time, Wells Fargo was outsourcing the Splunk architecture, but Kamgaing was able to bring that in house, eliminating the need for outsourcing.

He later left Wells Fargo and worked for Ally Financial. Ally offered him a raise if he could do for them what he had done for Wells Fargo. During this time Kamgaing started exploring machine learning (artificial intelligence) and its integration into critical applications used within financial institution’s cyber security. Kamgaing developed, tested, and presented the program to Ally. Ally was so impressed by his IT skills that they approved a team of people to work with Kamgaing and approved a significant budget for his team.

In 2018, Worldwide Technology a Consulting firm reached out to Kamgaing and actively recruited him away from Ally financial. It was during his time with Worldwide technology, Kamgaing saw the opportunities that were available and in 2019 Kamgaing formed with Apiagne¹². And struck out on his own.

IV.

Research has consistently shown that while the certainty of being caught and punished has a deterrent effect, “increases in severity of punishments do not yield

¹¹ SPLUNK is software for searching, monitoring, and analyzing machine-generated big data, via a web-style interface. Splunk captures, indexes and correlates real-time data in a searchable repository from which it can generate graphs, reports, alerts, dashboards and visualizations. Splunk aims to make machine data accessible across an organization and identifies data patterns, provides metrics, diagnoses problems and provides intelligence for business operation. Splunk is a horizontal technology used for application management, security and compliance, as well as business and web analytics.

¹² Apiagne in his local dialect means “everything is well” it is a form of greeting.

significant (if any) marginal deterrent effects.” Michael Tonry, Purposes and Functions of Sentencing, 34 Crime & Just. 1, 28 (2006). “Three National Academy of Science panels . . . reached that conclusion, as has every major survey of the evidence.” Id.; *see also* 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.”).

V.

This Court must consider all “the kinds of sentences available” by statute, § 3553(a)(3), even if the “kinds of sentence . . . established [by] the guidelines” zones recommend only a lengthy prison term. See *Gall*, 552 U.S. at 59 & n.11.

Congress directed the Sentencing Commission to “insure that the guidelines reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense,” and the “general appropriateness of imposing a term of imprisonment on a person convicted of a crime of violence that results in serious bodily injury.” 28 U.S.C. § 994(j). Congress issued this directive in the belief that “sentencing decisions should be designed to ensure that prison resources are, first and foremost, reserved for those violent and serious criminal offenders who pose the most dangerous threat to society,” and that “in cases of nonviolent and nonserious offenders, the interests of society as a whole as well as individual victims of crime can continue to be served through the imposition of alternative sentences, such as restitution and community service.” See Pub. L. No. 98-473, § 239, 98 Stat. 1987, 2039

(1984) (set forth at 18 U.S.C. § 3551 note). Mr. Kamgaing is plainly not a “violent and serious offender” who “pose[s] the most dangerous threat to society.”

When the Sentencing Commission adopted the original guidelines in 1987, it “decided to abandon the touchstone of prior past practice” with respect to white collar offenses. Breyer, *supra*, 17 Hofstra L. Rev. at 22-23. The Commission required some form of confinement for all but the least serious cases, and adopted a fraud guideline requiring no less than 0-6 months and no more than 30-37 months for defendants in Criminal History Category I. See USSG § 2F1.1 (1987).

The Commission explained that “the definite prospect of prison, though the term is short, will act as a significant deterrent to many of these crimes, particularly when compared with the status quo where probation, not prison, is the norm.” USSG, ch. 1, intro., pt. 4(d) (1987); see also U.S. Sent’g Comm’n, *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the 29 Federal Criminal Justice System is Achieving the Goals of Sentencing Reform* 56 (2004) [hereinafter *Fifteen Year Report*] (Commission sought to ensure that white collar offenders faced “short but definite period[s] of confinement”). The Commission’s deterrence rationale was not based on empirical evidence. The empirical research regarding white collar offenders shows no difference between the deterrent effect of probation and that of imprisonment. See David Weisburd et al., *Specific Deterrence in a Sample of Offenders Convicted of White-Collar Crimes*, 33 *Criminology* 587 (1995). “[T]here is no decisive evidence to support the conclusion that harsh sentences actually have a general and specific deterrent effect on potential white-collar offenders.” Zvi D. Gabbay, *Exploring the Limits of the Restorative Justice Paradigm: Restorative Justice and White-Collar Crime*, 8 *Cardozo J. Conflict Resol.* 421, 448-49 (2007).

Moreover, the Commission quickly abandoned its original goal of ensuring “short but definite” sentences. Beginning just two years after the Guidelines went into effect, prison sentences for fraud offenders were steadily increased.

VI.

In determining the appropriate sentence, this Court must also consider “the need to provide restitution to any victims of the offense.” See 18 U.S.C. §3553(a)(7); see also, e.g., *United States v. Menyweather*, 447 F.3d 625, 634 (9th Cir. 2006) (acknowledging district court’s discretion to depart from guidelines to impose probationary sentence, since the “goal of obtaining restitution for the victims of Defendant’s offense . . . is better served by a nonincarcerated and employed defendant”); *United States v. Peterson*, 363 F. Supp. 2d 1060, 1061- 62 (E.D. Wis. 2005) (granting a variance so that defendant could work and pay restitution).

Mr. Kamgaing accepts responsibility for his wrongdoing and is sincerely remorseful for his conduct. He is deeply sorry for his actions and has begun to repay the PPP loan to Bank of America and intends to repay the loans. Mr. Kamgaing’s conduct was aberrant.¹³ Mr. Kamgaing lived a law-abiding life until the instant offense, at which time he was in his late 40’s. He is an active member of the community and a dedicated husband and father. His offense is completely uncharacteristic when viewed in the context of his entire productive adult life. At the time of the fraud, Mr. Kamgaing was working out of his home on a cybersecurity contract valued at over

¹³ The defendant is not arguing that he would qualify under USSG §5K2.20 for a departure.

\$300,000.00. He saw the PPP loan as a way to jumpstart his company and a way to have multiple employees.

VII.

This Court Should grant a variance from the advisory guideline range-based a on a combination of factors specific to mr. Kamgaing. Those factors include:

1. the aberrant nature of his conduct. See, e.g., *United States v. Howe*, 543 F.3d 128 (3rd Cir. 2008) (variance based on “isolated 12 mistake” in otherwise long and entirely upstanding life); *United States v. Hadash*, 408 F.3d 1080, 1084 (8th Cir. 2005) (defendant was a “law abiding citizen, who [did] an incredibly dumb thing”).

2. Family Ties and Responsibilities, while not ordinarily relevant as a ground for a departure. Mr. Kamgaing and his wife have five (5) children aged 14, 12,11,9 and 7. Mr. Kamgaing is also responsible for the six (6) employees of his company. Without Mr. Kamgaing’s ability to handle the sophisticated technical aspect of the business, the business will be forced to close, and those employee’s will lose their job. Of the six, one is a single mother of two and another takes care of his mother and two sisters.

3. Employment Record, another factor that is not normally relevant for a departure, however in this case it is significant. Since starting in the information technology sector mr. Kamgaing has maintained employment since 2009. During the period within which he made the fraudulent application for the PPP loans he was making \$215,000.00 a year working for Worldwide technology.

4. Mr. Kamgaing's military service, He graduated from the United States Airforce Academy then returned to his home country of Cameroon and continued to provide intelligence to the United States.

WHEREFORE, the defendant would respectfully request the court grant a variance below the advisory guideline range impose a "split sentence" under which the defendant serves a term of imprisonment followed by a period of home detention. Such a sentence would be sufficient but not greater than necessary in this particular case.

Respectfully submitted this the 30th Day of December 2021.

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CERTIFICATE OF SERVICE

I hereby certify that I this day have served a copy of this pleading upon the other parties to this action by CM/ECF Electronic Filing addressed to counsel for said parties.

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This the 30th day of December, 2021.

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