

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,

CASE NO. 0:20-CR-60139

V.

DAMION McKENZIE,

Defendant.

**DEFENDANT, DAMION McKENZIE'S OBJECTION TO PRESENTENCE  
INVESTIGATION REPORT AND REQUEST FOR DOWNWARD VARIANCE**

Defendant, DAMION McKENZIE, by and through undersigned counsel,  
files his objections and request for a downward variance as follows:

I. Offense Conduct

The Defendant believes that the Presentence Investigation Report (hereinafter referred to as "PSR") provides an accurate description of the conduct of Defendant McKenzie and his interaction with co-conspirators, P.J. Augustin and James Stote. Defendant disagrees and objects to the Probation Officer's conclusion however, that Defendant McKenzie acted as a manager or supervisor.

Defendant McKenzie had a pre-conspiracy business relationship with P.J. Augustin. Augustin provided representation to numerous professional athletes who frequented the so-called "Gentlemen's Club" where Defendant McKenzie worked. These athletes are paid salary during their sports season. Mr. Augustin would arrange off-season loans that would be re-paid when their salary checks would come in. Augustin also arranged a refinancing for the club owner that employed Defendant McKenzie.

Augustin was working to raise McKenzie's credit score and help him obtain a SBA loan. Augustin ultimately told McKenzie he could not get the SBA loan, but he could get a PPP loan. That's when Augustin introduced McKenzie to James Stote, a superb and talented con artist. Stote applied for McKenzie's PPP loan, using false figures backed by fraudulent documents. McKenzie was aware that the loan application was supported by fraudulent documents. McKenzie's PPP loan was denied.

Stote then told McKenzie that if he could refer him other applicants, then Stote would pay him 2.5% of the loan proceeds as a commission. Although McKenzie knew Stote was submitting fraudulent applications, he nevertheless referred business owners to Stote. This is the core fact upon which McKenzie recognized and understood that he needed to acknowledge criminal culpability.

Bring true to character, Stote soon stopped paying McKenzie any commissions. Still, McKenzie has accepted responsibility for the intended loss for all 12 applications cited by Stote from his referrals, including loans that were not funded.

The 12 loan referrals by McKenzie to Stote totaled \$4,640,430.00 in requested loans. McKenzie had no role in determining the amount of the loans. He did not provide any documentation. McKenzie simply provided Stote's telephone number and said to the prospective applicants to reference him as the referring person.

The loss amount of \$4,640,430.00 results in a 18 level increase to the adjusted offense level in this case. Defendant is not objecting to this adjustment. Defendant does object to the 3-level increase as a “manager or supervisor” under U.S.S.G. §3B1.1(b). There is no allegation that Defendant McKenzie managed or supervised any other participant in their conspiracy. He didn’t plan the offense and had no authority or control over others. He didn’t profit more than others and wasn’t even paid the promised 2.5% commission consistently. His referring of others to Stote is amply accounted for in the “intended loss” amount, over which he exercised no control.

## II. Offense Level Computation

McKenzie does not object to the calculation of the Base Offense Level of 7 or the enhancement of 18 for the intended loss amount. Defendant objects to the enhancement in PSR paragraph 48, characterizing him as a manager or supervisor.

The government continued to provide large volumes of discovery materials, including witness statements within one week of Defendant’s decision to plead guilty<sup>1</sup>. Defendant learned just days before his decision to plea that the mother of his children was to be a government trial witness when her statement was produced. The government’s decision not to recommend a third point for acceptance is an example of how a one-sided perspective distorts a fair analysis. Defendant’s decision to plead guilty was

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<sup>1</sup> Calendar Call was on 10/8/21. Government production 12 was sent on 10/4/21. (Two thumb drives) Production 13 was sent on 10/5/21 (two external hard drives). Production 14 was sent 10/6/21, including interview reports of Cross River Bank, Blue Vine, IRS Agent Beard and SBA Officer Althea Harris.

made promptly after discovery production allowed for a knowing and intelligent decision. The defendant hopes the Government will re-evaluate their position regarding the third point for acceptance.

Defendant believes he should be sentenced at a total offense level of 22, after receiving the third point for acceptance and removal of the role enhancement. At criminal history I, Defendant would be in a guidelines range of 41-51 months.

III. Request for Variance

Defendant requests the Court to consider a downward variance. The loss amount attributed to Defendant McKenzie greatly exceeds his personal gain from the conspiracy. Defendant could only have received 2.5% of the value of loans that were funded. The 18-level enhancement for intended loss, together with the role enhancement, creates a sentence that is excessive in view of the gain that could have been received by Defendant McKenzie. See United States v. Moran, 778 F3d 942, 983 (11<sup>th</sup> Cir. 2015); U.S.S.G. §3B1.2 Application Note 3(A).

WHEREFORE, Defendant, DAMION McKenzie files his objections to the PSR and requests this Court to consider his request for a variance.

Respectfully submitted,

/s/ Martin L. Roth  
Martin L. Roth, Esq.