

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA : 3:18-CR-00193 (JCH)
 :
v. :
 :
LOUIS GOLDBERG : NOVEMBER 15, 2018

**MEMORANDUM IN AID OF SENTENCING AND
MOTION FOR DOWNWARD DEPARTURE**

The Defendant, Louis Goldberg, respectfully submits this Sentencing Memorandum and Motion for Downward Departure in support of his request for a non-guidelines sentence in connection with this matter. Mr. Goldberg’s sentencing is scheduled for November 29, 2018.

I. FACTUAL AND PROCEDURAL BACKGROUND

Mr. Goldberg was greeted by two IRS Special Agents on July 14, 2016 at his business, Goodcopy Printing in New Haven, Connecticut. He was informed that he was the subject of a criminal investigation regarding underpayment of payroll taxes for Goodcopy Printing and one of its employees, Ira Malkin. Mr. Malkin also happens to be Mr. Goldberg’s nephew. Mr. Goldberg was informed that the special agents had a search warrant for his business. He was also informed that the special agents did not have an arrest warrant and that he was free to leave at any time. Despite not being under arrest and being told that he did not have to participate in the search, Mr. Goldberg elected to stay on site and aide the special agents in their search of the

premises. He provided passwords, keys, and voluntarily answered questions regarding Goodcopy Printing and his employee Ira Malkin. An overview of the information provided by Mr. Goldberg during the initial search is attached hereto in the Memorandum of Interview. Exhibit 1. As evidenced by the Memorandum of Interview, Mr. Goldberg was extremely cooperative and provided the IRS special agents with a plethora of information when he was under no obligation to do so. In fact, Mr. Goldberg agreed to meet with Special Agent Nicholas Scorza for follow up questions after the initial search was completed. Exhibit 1. Mr. Goldberg cooperated without presence of counsel and without any arrangement regarding leniency. He cooperated as soon as the investigation began in a good faith effort to correct any wrongdoing he may have committed.

On September 6, 2018, Mr. Goldberg was arrested pursuant to an Information. He waived his right to an Indictment. (Waiver of Indictment – ECF #2). The Information charged Mr. Goldberg with one count of aiding and assisting filing a false tax return in violation of Title 26 U.S.C. Section 7206(2). (Information - ECF #1). The Information states that Mr. Goldberg agreed to improperly reduce Ira Malkin's reported sales commissions by the amount of personal expenses paid by Goodcopy Printing. Mr. Goldberg also agreed to deduct postage expenses from Mr. Malkin's wages even though said postage expenses were later reimbursed to Goodcopy Printing by the customer. This resulted in significantly reducing Mr. Malkin's reported wages and therefore reduced Mr. Malkin's Medicare payroll taxes. Mr. Goldberg personally signed

◇ Goodcopy Printing's quarterly-filed Form 941 with the IRS from 2003-2012 which underreported Mr. Malkin's wages.

On September 6, 2018, Mr. Goldberg appeared in Court before Magistrate Sarah A. Merriam. On that same date, he pled guilty to Count One of the Information and a plea agreement and 5K1.1 letter were presented to the Court. (ECF #5; #6). Mr. Goldberg was released on a \$20,000 Appearance Bond and ordered to abide by several conditions of release. (Conditions of Release - ECF #8). Mr. Goldberg has abided by his conditions of release and has remained at liberty during the pendency of these proceedings.

Mr. Malkin was arrested on February 27, 2018 for his role in the above detailed underreporting of Medicare payroll taxes. *See USA v. Ira Malkin*, 3:18-cr-00035 (JCH). According to the Information, Mr. Malkin was charged with one count of tax evasion in violation of Title 26 U.S.C. Section 7201. Mr. Malkin pled guilty on February 27, 2018, to one count of tax evasion. Mr. Malkin was charged with a more serious crime than Mr. Goldberg as Mr. Malkin was the ringleader and bullied Mr. Goldberg into following his wishes in his attempt to reduce his taxable income. The case against Mr. Malkin was largely supported through Mr. Goldberg's cooperation.

In accordance with the Plea Agreement, dated September 6, 2018, the Defendant and Government agree that Mr. Goldberg's guideline imprisonment range is between 10-16 months,

based upon a total offense level of 12 and his classification in Criminal History Category I. (Plea - ECF #6) The U.S. Probation Office agrees with the parties' calculation. The parties also agree that Mr. Goldberg owed \$40,490.44 in restitution to the IRS for Goodcopy Printing's share of Mr. Malkin's underpaid Medicare payroll taxes. (Plea - ECF #6). The parties further agree that Mr. Goldberg was also responsible for \$64,510.04 in interest and penalties related to the \$40,490.44 underpayment. On October 18, 2018, Mr. Goldberg paid the restitution and interest and penalties in full to the IRS which totaled \$105,000.58. Letter and payment to Special Agent Scorza, Oct. 18, 2018, Exhibit 2.

Base Offense Level	14
Acceptance of Responsibility	- 2
Total:	12

II. POST-BOOKER SENTENCING ANALYSIS

The Court is well-aware that since 2005 the United States Supreme Court has consistently stated that the Sentencing Guidelines are advisory only, and therefore, a district court must consider all of the factors set forth in 18 U.S.C. §3553(a) in a holistic manner. See Kimbrough v. United States, 552 U.S. 85 (2007); Gall v. United States, 552 U.S. 38 (2007); United States v. Booker, 543 U.S. 220 (2005).

Although the Guidelines may arguably remain “the starting point and initial benchmark” for sentencing, the court “may not presume that the Guidelines range is reasonable.” Gall, supra,

552 U.S. at 49. The Guidelines range is only one of the many factors to be weighed when selecting a disposition that is sufficient but not greater than necessary to satisfy the purposes and goals set forth in 18 U.S.C. §3553(a). In this regard, it is significant that the Court is no longer hemmed in by the traditional Guidelines departure analysis required under United States v. Crosby, 397 F.3d 103 (2d Cir. 2005). *See* United States v. Brown, 514 F.3d 256 (2d Cir, 2008). The primary objective for this sentencing, as with any sentencing, is to “make an individualized assessment based on the facts presented.” Gall, 552 U.S. at 597.

Although each factor of Section 3553(a) must be considered, a district court must not engage in a mathematical, isolated calculation of each factor. The Supreme Court “has emphasized that Section 3553(a) is more than a laundry list of discrete sentencing factors; it is, rather, a tapestry of factors, through which runs the thread of an overarching principle.” United States v. Rodriguez, 527 F.3d 221, 228 (1st Cir. 2008). That tenet, the parsimony principle, instructs district courts to “impose a sentence sufficient, but not greater than necessary” to accomplish the goals of sentencing. 18 U.S.C. § 3553(a). “In the final analysis, then, the gloss supplied by Kimbrough signifies that a district court should not evaluate a request for a variant sentence piecemeal, examining each section 3553(a) factor in isolation, but should instead consider all the relevant factors as a group and strive to construct a sentence that is minimally sufficient to achieve the broad goals of sentencing.” Rodriguez, 527 F.3d at 228. “This inquiry

should be guided by, but not made unflinchingly subservient to, the concerns expressed in the statute's various sub-parts." Id. In other words, if the Court believes that a lower sentence will be as effective as a higher sentence in serving the purposes of sentencing, it must choose the lower sentence. United States v. Ministro-Tapia, 470 F.3d 137 (2d Cir. 2006). Accordingly, when fashioning a sentence, the district court should consider the applicable Guidelines range, as well as those factors set forth in 18 U.S.C. §3553(a).

III. MR. GOLDBERG'S BACKGROUND

Mr. Goldberg stands before the Court as a 70-year-old, married, father of three children and grandfather of seventeen. He was born and raised in Baltimore, Maryland. His father worked as a salesman and his mother was a homemaker. Mr. Goldberg enjoyed an ideal childhood upbringing and had a very close relationship with his parents. He was the youngest child and was doted upon by his parents, grandparents and siblings. PSR ¶ 37.

Mr. Goldberg moved to New York City in 1970. He attended St. John's University and graduated with a master's in business administration. PSR ¶ 38. While in New York, Mr. Goldberg met his future wife, Edith Goldberg (Schwartz). Upon graduating from St. John's University, Mr. and Mrs. Goldberg, moved to Baltimore, Maryland to pursue a business venture. The couple only resided in Baltimore for eighteen months before relocating to New Haven, Connecticut in 1974, where they have lived ever since. PSR ¶ 39.

Upon moving to New Haven, Mr. Goldberg immediately went into business with his in-laws. His wife's family owned the Shoreline Motel in Milford, Connecticut. PSR ¶ 40. The Goldbergs sold the motel in 1978 and decided to use the proceeds to purchase Goodcopy Printing Center, Inc. in New Haven. PSR ¶ 41. Mr. and Mrs. Goldberg have dedicated their lives to Goodcopy Printing and have truly built a remarkable company.

For years, Mr. Goldberg has opened his company to those less fortunate than himself in an effort to make a small bit of difference in this world. He contracts through Goodwill and hires their clients with Down Syndrome. PSR ¶ 58. He hires convicted criminals and recovering addicts so they can get back on their feet. PSR ¶ 58. Mr. Goldberg's incredible generosity is best understood from the character references describing him as an employer. Letters, Exhibit 3. His employee, Mr. Michael Spinelli, wrote, "Louis helps his employees when they are in need, no questions asked. . . . I believe that his work ethic, knowledge, and personality are what makes him and his company a major asset to the City of New Haven." Letter, Exhibit 3. Ms. Joan Lindy, a friend, described Mr. Goldberg as an employer. She wrote:

He is generous to his staff keeping them on even when their health declines and interferes with their work. When one employee was seriously injured in a car accident, he saved his job and took him back after many months of recovery and rehabilitation. When another staffer suffered from cancer and could no longer work, he paid her health insurance.

Letter, Exhibit 3. He believes in second chances and does all that he can to provide opportunities to those who are traversing rough times. Such a dedication to his community is a testament to Mr. Goldberg's character.

In addition to his generosity in the workplace, Mr. Goldberg is also known throughout the community as a moral and well respected man. His Jewish faith guides him and his family in their quest to do all they can to give back to their community. The numerous character references, attached as Exhibit 4, all echo the same sentiment: Mr. Goldberg is the type of man we need more of in this world. His eldest daughter, Rivka Bogart, describes her father as, "kind, generous, and giving" and "someone who has no ego." PSR ¶ 48. Former Senator Joseph Lieberman describes Mr. Goldberg as a "very fine person with the highest standard of morality and integrity." Exhibit 4. Attorney Stuart Margolis states, "Lou has demonstrated to me his commitment to honesty and integrity and always exhibited high ethical standards and conduct in my association with him." Exhibit 4. Rabbi Michael Whitman writes:

Lou is highly respected in our community for being a do-er. Without making a show or asking for attention or reward, he just does what is right: giving generously of his time for Jewish and civic organizations and causes, advocating for Jewish education and strengthening Jewish life, and always looking to strengthen the wider New Haven community.

Letter, Exhibit 4. Rabbi Chaim Sampson describes Mr. Goldberg as, "honest, humble, caring and sensitive." Letter, Exhibit 4.

◇ In 1992, Mr. Goldberg offered his nephew, Ira Malkin, a commission sales job at Goodcopy Printing. PSR ¶ 44. Mr. Malkin is Mr. Goldberg's sister's son and he had recently graduated from college. Id. Eventually, Mr. Malkin advanced to the position of lead salesperson. PSR ¶ 84. At Mr. Malkin's request, Goodcopy Printing improperly reduced Mr. Malkin's earned commissions by the amount of personal expenses paid by Goodcopy Printing. PSR ¶ 84. This reduction resulted in underreported wage earnings to the IRS and therefore underpaid Medicare payroll tax liability. Id. This arrangement began in roughly 2003 at the request of Mr. Malkin and continued through 2012. Id. Mr. Goldberg has accepted responsibility for his inappropriate actions and realizes that he should not have allowed Mr. Malkin to talk him into underreporting wages. Since 2012, Mr. Goldberg and Goodcopy Printing have not had any further issues with the IRS or any other government entity. Id.

Mr. Goldberg has extensively cooperated with the government in prosecution of this case. Without the efforts of Mr. Goldberg, Mr. Malkin likely would not have pled guilty to tax evasion. Mr. Malkin's restitution to the government is over \$400,000. *See* Plea Agreement in USA v. Ira Malkin, 3:18-cr-00035 (JCH). In appreciation for Mr. Goldberg's assistance, the government has filed a Section 5K1.1 letter. *See* ECF #5.

◇

IV. A NON-GUIDELINES SENTENCE IS WARRANTED IN THIS CASE

The sentence called for by the guidelines under the PSI calculation is greater than necessary to satisfy the purposes of sentencing set forth in Section 3553(a). As detailed above and below, a sentence below the guideline range is “sufficient but not greater than necessary” pursuant to 18 U.S.C. Section 3553(a).

A. THE NATURE AND CIRCUMSTANCES OF THE OFFENSE AND THE HISTORY AND CHARACTERISTICS OF THE DEFENDANT STRONGLY SUPPORT A NON-GUIDELINES SENTENCE TO A PERIOD OF SUPERVISED RELEASE

Section 3553(a) requires the Court, to the extent possible, to closely examine who the Defendant is apart from the conduct at issue in the case. When juxtaposing Mr. Goldberg’s commitment and gracious acts throughout the New Haven community with the conduct that brings us before the court, it is clear that on occasion good people do bad deeds. Separate from the offensive conduct, Mr. Goldberg is a model citizen and a pillar in the Jewish community. He is a productive member of society and has employed countless people throughout his time as a business owner. He is a generous and caring man who, through his faith, protects and serves his neighbors.

Mr. Goldberg accepts full responsibility for his actions that bring us before this Court. It is with a heavy, yet hopeful, heart that he now stands before the Court asking for leniency. He is devastated by the impact this case has had on his family, his business, and his reputation in the

community. Most importantly, he has disappointed himself for failing to live up to his own expectations of living a righteous, and law abiding life.

Mr. Goldberg has not only taken full responsibility for his actions, he also aided the government in its case against Mr. Malkin. It would be difficult for any man to agree to aide in a case against a relative, let alone a close nephew. However, Mr. Goldberg recognized how wrong his actions were and the harm he caused by enabling Mr. Malkin. He allowed himself to be taken advantage of by his nephew and recognized that he should have had the courage to tell him no. In an effort to right the wrong he committed, he did everything within his power to help the government.

Incarcerating Mr. Goldberg for this offense would not further the ends of justice. Mr. Goldberg paid retribution in full. He also paid additional interest and penalties. He cooperated with the government in their case against Mr. Malkin. He provided information to the IRS special agents during the execution of the search warrant. Throughout this entire case, Mr. Goldberg has proven himself to be a kind, helpful man.

B. THE GOALS AND PURPOSES OF SENTENCING ARE SERVED BY A NON-GUIDELINES SENTENCE OF SUPERVISED RELEASE.

Section 3553(a) requires the Court to consider the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; to afford adequate deterrence to criminal conduct; to protect the

public from further crimes of the defendant; and to provide restitution. Importantly, “[t]his circuit has recognized repeatedly that in deciding whether to depart downward a sentencing court may consider any pre-sentence rehabilitation that a defendant has demonstrated as well as the likelihood that probation rather than prison will facilitate a defendant’s future rehabilitation.” United States v. K., 160 F. Supp. 2d 427, 442. Consideration of the Section 3553(a) factors warrants a below guideline sentence.

While imprisonment serves an important role in punishing offenders, it is not the only means to punish a defendant. In United States of America v. Willie Zimmerman, 2012 WL 3779387, *6 (Gleason, U.S.D.J.)(June 19, 2012 E.D.N.Y.), the Court noted that “[i]mprisonment is not the only way we punish. Supervised release brings with it a series of significant restrictions on a defendant’s liberty.” Offenders on supervised release:

may not leave the judicial district, move, or changes jobs without notifying and in some cases receiving permission from, their probation officer or the court. They must report regularly to their probation officer, permit unannounced visits to their homes, refrain from associating with any person convicted of a felony and refrain from excessive drinking.

Id. citing Gall v. United States, 552 U.S. 38, 48-49 (2007). Given that Mr. Goldberg has taken full responsibility for his actions and has fully paid restitution, a period of supervised release is more than sufficient punishment. Given Mr. Goldberg’s character, it is highly unlikely that he

will reoffend in the future. He is the last person who thought he would ever find himself before the Court under these circumstances.

Humble, caring and kind are just some of the ways in which his family and friends have described Mr. Goldberg. These descriptions make it all the more difficult to understand how he ended up before this Court, but provides us with evidence that Mr. Goldberg can lead a life that will not bring him back before this Court. A non-guideline sentence of supervised release will not lead to under-punishing Mr. Goldberg. Mr. Goldberg's actions have caused him such shame and embarrassment in his community that he has already punished himself beyond what a term of imprisonment could impose.

V. CONCLUSION

For all of the reasons set forth above, a below Guidelines sentence of supervised release is an appropriate sentence in light of his cooperation, character, and the Section 3553(a) factors. It is notable that the government is not requesting a period of incarceration. The relevant conduct clearly does not represent Mr. Goldberg's true character. As such, Mr. Goldberg respectfully asks this Court for leniency in granting his request for a sentence of supervised release.

/s/ Hugh F. Keefe

Hugh F. Keefe, Esq. ct05106

Hkeefe@ltke.com

Rosalie D. Louis, Esq.

rlouis@ltke.com

Lynch, Traub, Keefe and Errante, P.C.

52 Trumbull Street

New Haven, CT 06510

Tel. 203-787-0275

Fax.203-782-0278

CERTIFICATION OF SERVICE

I hereby certify that on NOVEMBER 15, 2018, a copy of the foregoing was filed electronically and served by mail on anyone unable to receive electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ Hugh F. Keefe

HUGH F. KEEFE, ESQ. ct05106