IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	CRIMINAL NO. 3:22-CR-5-DJN
	)	
DEREK GEORGE SPENCER,	)	
	)	
	)	
Defendant.	)	

UNITED STATES' POSITION ON SENTENCING

The United States of America, by and through its attorneys, Jessica D. Aber, United States Attorney for the Eastern District of Virginia, Kenneth R. Simon, Jr. and Michael C. Moore, Assistant United States Attorneys, hereby submits its position with respect to the sentencing of defendant Derek George Spencer ("Spencer").

After earning three separate felony fraud convictions alongside co-conspirators at both the state and federal level, the defendant concocted and orchestrated a multi-year bribery scheme while imprisoned. He did so by recruiting his then-girlfriend and working alongside a corrupt prison official. In addition to committing this bribery offense, the defendant undertook a bank fraud conspiracy as well. The defendant's actions make clear that he simply has no respect for the law and should be deterred from engaging in future criminal conduct while serving a sentence within the Bureau of Prisons.

The United States concurs with the Probation Officer's determination that the defendant has a total offense level of 17, a criminal history category of III, and an applicable guideline range of 30-37 months' imprisonment.

For reasons more fully explained below, the United States respectfully asks this Court to impose a sentence of 37 months. Such a sentence properly reflects the factors referenced in 18 U.S.C. § 3553(a).

I. BACKGROUND

Derek George Spencer, also known as "Dee," "Bruce Wayne," and "George Spencer," was an inmate serving a sentence at FCI Petersburg-Low. Presentence Investigation Report ("PSR"), ECF No. 59, ¶ 16. Jones was a girlfriend of Spencer's. *Id.* Unindicted Co-Conspirator 1 (UC-1) was employed by the BOP as a correctional officer (CO) at FCC Petersburg. *Id.* UC-1 assisted Jones with the smuggling of contraband (including tobacco, cellular phones, chargers, earphones, creatine pills, Suboxone, and synthetic marijuana) into FCI Petersburg-Low. *Id.* Between August 4, 2019 and December 19, 2019, Jones had 136 phone calls with UC-1. *Id.* Jones delivered contraband to UC-1 to bring into FCC Petersburg and made payments to UC-1 as compensation for UC-1's smuggling of contraband into FCC Petersburg. *Id.* On November 23, 2019, a CO located a contraband iPhone at FCC Petersburg. *Id.* The iPhone was sent to the Bureau of Prisons (BOP) Lab for a forensic analysis. *Id.* In April 2020, the BOP Lab completed the forensic analysis on the contraband phone and provided the report to staff at FCC Petersburg. *Id.* The analysis indicated the iPhone belonged to FCC Petersburg inmate Spencer. *Id.* The following text messages dated between September and November 2019 are between the contraband phone utilized by inmate Spencer to Jones, who was listed in the contraband phone as "Ty," with associated telephone number ***-***-3260:

- 9/28/2019 - Contraband Phone to Ty: How many in the strip or how long is it? They sell for 5$ on the street, in here for 40.
- b. 9/28/2019 - Ty to Contraband Phone: $10 on the street per strip. They melt under the tongue and most people take 1/4th or half of a strip. $10 on the street, bro sold his on the inside for $75 each. Thry [sic] come in a box of like 30 individually wrapped. Oh idk this is a prescription medication. You can buy this over the counter.
- c. 09/28/2019- Ty to Contraband Phone: [A media message containing screenshot images of various packages of Suboxone obtained from a Google internet search with search terms of "image of suboxone film."]
- d. 10/15/2019- Contraband Phone to Ty: I told him,,to not send it. Ask [UC- 1] how we looking And text [UC-1],,tell I need him
- e. 10/15/2019 -Ty to Contraband Phone: Bc If he told you he'll be ready in a few then he'll reach out to me when he's ready. I don't wanna keep pressing him.
- f. 10/15/2019 - Contraband Phone to Ty: Im gonna stop asking do things for me because it seems like it's a problem and then you wanna tell me the way you want to do things,,smh
- g. 10/16/2019 - Ty to Contraband Phone: I'm just not the type to press no one period! U just spoke to him the day before and he told you he was "Almost" ready, not Ready tomorrow. So why would I keep texting him for him to tell me the same thing-"I'll let you know when I'm ready." As you know you're in control of nothing but yourself and you keep worrying that man isn't gonna make him move no faster as you see. Just CHILL and when he is ready he has my number, you have 7 months left just ride it out. You have the rest of your life to MAKE MONEY the right way!....
- h. 10/28/2019 - Contraband Phone to Ty: We may have to give it to [UC-1] with the bag

- i. 11/14/2019 - Contraband Phone to Ty: Benjamin told me what was going on with [UC-1]
- j. 11/16/2019 - Contraband Phone to Ty: I hate to say it but we may have to return all the stuff if ole boy is still not ready
- k. 11/16/2019 - Ty to Contraband Phone: Yeah I know and I have to see if them Cigarettes can be returned it's been months now. You can keep the roids for when you come home. I should fcb be able to return them phones to family dollar.
- l. 11/16/2019 - Contraband Phone to Ty: Understandable just try to see what you can do and he said he still didn't respond back to you yet right? I haven't seen them around so he might be still Hurt I'm trying to see if I can get somebody else
- m. 11/18/2019 - Ty to Contraband: Bae he responded This from him: Hey just seeing this my phone screen was broke money been funny been out of work for awhile so just getting to my phone. I'm ok won't be back to normal for a couple weeks but I'm doing good just trying to keep my head above water.
- n. 11/18/2019 - Contraband Phone to Ty: Let him know if there's anything that you need or my help with ,Or anyone You think I could get the ball rolling on to try to send you something while you down?
- o. 11/18/2019 - Ty to Contraband Phone: He said: Ok will do I could use some bread but I'm gonna try another option before that because it will be mid December before I be back and don't want to put a burden on no one until then. Quarter changes in a couple weeks don't want to get paid or get work and may can't make a move just yet because all new people. Forreal there is no one that can be trusted until I get back for the safety of him just sit tight

- p. 11/22/2019 - Contraband Phone to Ty: Now all I need is [UC-I] to get on the job Look at those receipts when you get a chance and see what the return policy is please
- q. 11/22/2019 - Ty to Contraband Phone: Why I was just in here looking for them for these phones. My dad gonna pay for one be his phone broke and he just came home today.
- r. 11/22/2019 - Contraband Phone to Ty: Because I want to make sure we have time to get the money back in case he's not going to be ready
- s. l l/22/2019 - Ty to Contraband Phone: Yeah its over 60 days this stuff was purchased in September. I used my bank card and I have the amounts from the ledger I kept.
- t. 11/22/2019 - Contraband Phone to Ty: So what does the receipt say
- u. 11/22/2019 - Ty to Contraband Phone: It doesn't say, all I can do is call the store and ask. The other 2 was from Walmart so I'm hoping I can take them back. You are at a lost with the cigarettes- they have a 24 hr policy on tobacco

Id.

On July 1, 2020, Spencer was interviewed by special agents from the FBI and DOJ Office of Inspector General. *Id.* During the interview, Spencer made the following admissions: (1) UC-1 brought cellular telephones, tobacco, creatine, and K2 into FCC Petersburg for Spencer; (2) cellular telephones sold for between $800 and $1000 at FCC Petersburg; (3) cigarettes sold for between $100 and $150 per pack of cigarettes; (4) K2 sold for approximately $1,200; (5) UC-1 provided Spencer with approximately 30 cellular telephones; (6) Jones paid UC-1 for facilitating the introduction of contraband on behalf of Spencer; (7) Jones met with UC-1 in person to exchange contraband and bribe payments; and (8) UC-1 worked with other inmates at FCC Petersburg to introduce contraband. *Id.*

Using her Cash App account on August 10, 2019 and August 26, 2019, Jones sent UC-1 $2,000 and $1,0000, respectively, as payment for UC-1's role in the prison contraband scheme. Acting at the direction of Jones, N.D. sent $1,000 to UC1. *Id.* On August 5, 2020, an FBI Special Agent sought and obtained a search warrant on the residence and vehicle belonging to Jones. *Id.* On August 6, 2020, law enforcement executed those search warrants. *Id.*

During the execution of the search warrant, law enforcement recovered various items demonstrating Jones's involvement in both a bank fraud and prison contraband scheme. Specifically, law enforcement recovered: (1) a spreadsheet titled "Operation OT"" that outlined the costs spent on the contraband that entered the prison; (2) 5 Cigarette cartons containing 10 cigarette packets each; (3) One receipt from Dollar General for 3 Simple Mobile Phones; (4) 2 boxes of testomix (400 mg 10 mL); (5) 2 boxes of Turinabol (10 mg 100 tablets); (6) 9 syringes and 20 needles; (7) I box of anavar (10 mg 100 tablets); (8) 2 boxes of Body nutrition (10 mL vials); (9) 2 boxes of AXA Med Clenbuterol Hydrochloride (40 mcg 100 tablets); (10) 2 boxes of AXA Med Boldenone (200 mg 10 ML vials); (11) 3 boxes of Anadrol (50mg 60 tablets); (12) I box of Proviron (25 mg 50 tablets); and (13) Black AXA Med box containing 58 capsules. *Id.*

In addition, law enforcement recovered a Monthly billing statement for Capital One Card xxxx xxxx xxxx 7966 in the name of "Bruce Wayne," a First Premier Bank Card xxxx xxxx xxxx 0327 in the name of "Bruce Wayne," a Discover Card xxxx xxxx xxxx 7769 in the name of "Bruce Wayne," and a Capital One Card xxxx xxxx xxxx 4152 in the name of "Bruce Wayne." *Id.*

During the execution of the search warrant, Jones stated that the aforementioned items recovered in her home was intended for UC-1. *Id.* Jones further provided that she met with UC-1 on several occasions to pay UC-1 for bringing in contraband to FCC Petersburg. *Id.* With respect to the credit cards and bank statements recovered, Jones stated that Spencer used her address for correspondence from banking institutions, as Spencer needed to create a "new credit profile" in the name of Bruce Wayne so that Spencer could enjoy good credit when released from prison. *Id.* Jones also provided consent for the search of her cellular telephone. *Id.* A forensic examination of that cellular telephone revealed 216 text messages between Jones and F.H. (the girlfriend of another FCC Petersburg inmate) between July 2019 and September 2019 discussing the incarceration of their boyfriends and the processes of obtaining phones to send into their boyfriends' facilities and money exchanges. *Id.*

In one representative text message between Jones and F.H., Jones wrote, "I'm sending you $750. Second phone sold and Gucci needs it in the morning." *Id.* In the text messages, Jones also tells F.H. that Jones has done this before (that is, smuggling cell phones into FCC Petersburg) and paid on her check card for Spencer to turn on the phone once it was inside the prison. *Id.* Jones's cellular telephone also showed communications with Spencer on his contraband prison phone. *Id.*

On January 5, 2022, Spencer was charged in seven-count Indictment with Conspiracy (Count One), Bribery of Public Officials (Count Two), Conspiracy to Commit Bank Fraud (Count Three), and Bank Fraud (Counts Four through Seven). PSR ¶ 1. The defendant pleaded guilty to Count Two on February 23, 2022. PSR ¶ 2.

II. Position on Sentencing

Federal courts imposing sentence are called upon to engage in a multi-step process, analyzing both the procedural and substantive contours of sentencing. The first step in the process—the procedural concerns—requires that a district court correctly "calculate[] the defendant's advisory Guidelines range, consider[] the 18 U.S.C. § 3553(a) factors, analyze[] the arguments presented by the parties, and sufficiently explain[] the selected sentence." *See United States v. Hames*, 757 F. App'x 244, 245 (4th Cir. 2018) (citing United *States v. Lynn*, 592 F.3d 572, 575–76 (4th Cir. 2010)).

"Next, the court must 'determine whether a sentence within that range serves the factors set forth in § 3553(a) and, if not, select a sentence [within statutory limits] that does serve those factors.'" *United States v. Diosdado-Star*, 630 F.3d 359, 363 (4th Cir. 2011) (*quoting United States v. Moreland*, 437 F.3d 424, 432 (4th Cir. 2006)). Specifically, Section 3553(a)(1) directs sentencing courts to "impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in" that section. These include: (1) the nature and circumstances of the offense, as well as the history and characteristics of the defendant; (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for law, 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 the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. 18 U.S.C. §§ 3553(a)(1), (a)(2)(A)-(D). In weighing these factors, the court is directed to consider the kinds of sentences available, pertinent policy statements, and the need to avoid unwarranted sentencing disparities. 18 U.S.C. § 3553(a)(3)-(6).

A consideration of each of these factors warrants a sentence of 37 months.

A. *Nature, Circumstances, and Seriousness of Offense*

At the time of defendant's offense in this case, he was serving a 48-month sentence stemming from a federal bank fraud conviction and three convictions for aggravated identity theft. PSR ¶ 51. Notably, the defendant's probation officer assessed a four-point aggravated role enhancement in that case for being a leader and organizer of that offense which involved five or more participants.[1] Having stood before a federal district court judge, pleaded guilty for significant federal offenses, and then earned a 48-month sentence, the defendant not only paid a

[1] Undersigned counsel is seeking additional information about the Court's final determination on that enhancement.

correctional officer to break the law but committed much the same fraud activity as he has done in the past while imprisoned. As he did before, the defendant spearheaded this criminal activity. As this Court is familiar, these bribery contraband schemes necessarily require outside associates of inmates to participate. In this case, the defendant called on his then-girlfriend to make payments to the correctional officer as well as deliver contraband. This behavior is in keeping with the defendant's past criminal activity where he recruits and oversees others engaged in a criminal scheme.

This egregious crime runs counter to a central focus of the Bureau of Prisons—to ensure that those punished for violations of criminal laws serve their sentence in a safe, lawful manner so as to later reenter society and be productive members of that society. In the name of making money, the defendant placed FCI Petersburg employees and others in danger by trafficking controlled substances as well as cellular telephones. And he used those with a duty to discharge the Bureau of Prisons' mission to successfully undertake his criminal enterprise.

A consideration of each of these factors warrant a sentence of 37 months.

B. *History and Characteristics of the Defendant*

The defendant is a 47-year-old man from Philadelphia, Pennsylvania with a criminal history category of III stemming from multiple felony fraud convictions. PSR, Part B. The defendant was not assessed seven criminal history points stemming from his past fraudulent conduct because they are outdated. PSR ¶¶¶ 47, 48, 49. Unlike many defendants who come before the Court, this defendant was raised in a loving family where his needs were met. PSR ¶ 69. Moreover, his siblings all appear to have lived law-abiding productive lives. PSR ¶ 68. In fact, one of his siblings is a cardiologist in Virginia.

While defendant was imprisoned for his most recent fraud conviction, he committed several infractions. Records reflect that the defendant sustained the following violations while in custody: Possessing Non-hazardous Tool (cigarettes) on May 23, 2018; and Possessing Hazardous Tool (cellular phone) and Refusing to Obey an Order (ran from staff after phone confiscated) on July 20, 2018. The violations resulted in loss of privileges (commissary, visitation and phone), loss of good conduct time (53 days) and disciplinary segregation (45 days). PSR ¶ 51. BOP records also reflect that in October 2020, the defendant was administered a wheelchair due to reported problems with his legs. However, on October 9, 2020, the defendant admitted that he did not have a problem with his legs and had only obtained the wheelchair because he was "seeing someone in Health Services." PSR ¶ 51. The defendant stated that using the wheelchair was an excuse to carry on a relationship with someone in Health Services. He subsequently jumped two feet off the ground, landed, kicked up his right leg and said, 'See, I'm fine.'" PSR ¶ 51.

The defendant's behavior while incarcerated pales in comparison with his pattern of conduct while released. Over the course of approximately 15 years, the defendant committed three separate serious felony offenses involving fraud.[2]

First, the defendant and another individual attempted to purchase a motorcycle valued at $14,000 by applying for a credit card, presenting a fake identification card, and signing a false name. PSR ¶ 48. When officers arrived, defendant freed himself by kicking the officer twice in the legs. Defendant was sentenced two 11.5 months to 23 months in custody for theft by deception and one year of probation for falsification to authorities and resisting arrest.

Within five months of that offense, defendant was arrested for his involvement in a fraudulent scheme between April 1999 and October 1999. PSR ¶ 49. Over the course of that

[2] This representation does not include his conviction for contributing to the delinquency of a minor by using a 14-year old juvenile female during the commission of a fraud offense for which he was prosecuted in Federal Court.

scheme, defendant was affiliated with a group that made and used counterfeit payroll checks and false identifications to illegally withdraw money from banks in the Eastern District of Virginia and elsewhere. The defendant had individuals who worked directly for him. The defendant would give those individuals the counterfeit payroll checks and direct them to cash the checks at area banks using the falsified student identification cards. The defendant's primary job was that of a controller of the so-called "runners." The total loss amount in the case was $88,859.37. Defendant was sentenced to 48 months in prison.

Defendant found himself clear of a conviction until he was arrested for the most serious offense committed until the charge in this case. PSR ¶ 51. From July 2011 through March 2013 the defendant, in conjunction with several codefendants, participated in a scheme to defraud TD Bank. The defendant provided false identification documentation that contained the names of legitimate TD Bank customers but the photographs of the codefendants. The defendant obtained the bank's customers' account information including their names, addresses, dates of birth, account information and Social Security numbers. Based on his role in overseeing this scheme which involved 5 or more people, the defendant was assessed a four-point enhancement for his aggravated role in the offense. Defendant earned a 48-month sentence for this offense.

And then, after earning his most serious sentence to date, the defendant concocted and orchestrated a multi-year bribery scheme while incarcerated that undermined the criminal justice system as well as the safety of prison officials as well as other inmates. To account for the defendant's noted recidivism, the Court should impose a sentence of 37 months.

C. *A High-End of the Guideline Range Sentence Serves the Factors of § 3553*

1. Seriousness of the Offense; Provide Adequate Punishment

The defendant—a twice-convicted federal fraudster—determined that he would not abide by the rules of the prison facility that housed him nor the laws of the United States. When a federal judge in Pennsylvania sentenced the defendant in 2018, he faced a sentencing guideline range of 51-63 months for bank fraud and 24 months to run consecutively on each of three aggravated identity theft charges. *See United States v. Spencer*, 2:15-cr-00562-TJS, ECF No. 46. The defendant was ultimately sentenced to a total sentence of 48 months. This leniency garnered no good-faith effort at rehabilitation from this defendant. Rather, he thumbed his nose again at the justice system. In this instance, he manipulated those around him and concocted a scheme that undermined the criminal justice system by bribing correctional officers. The societal harm done with offenses like Spencer's is a further erosion of trust between the public and those empowered to fairly administer justice.

As the Eleventh Circuit eloquently stated:

> Bribery cannot properly be seen as a victimless crime, for in a sense it threatens the foundation of democratic government. Putting aside the financial havoc it can cause, bribery tears at the general belief of the citizenry that government officials will carry out their duties honestly, if not always competently. And that harm, though it may at times appear intangible, is real.

United States v. Hayes, 762 F.3d 1300, 1309 (11th Cir. 2014). The same is true here.

A sentence of 37 months reflects the seriousness of the defendant's offense and need to provide adequate punishment.

2. Need to Deter Future Criminal Conduct and Promote Respect for the Law

This factor weighs strongly in favor of a high-end of the guideline range sentence. This defendant is a quintessential recidivist. His fraud offenses span much of his adult life. And while imprisoned in this case, he committed similar conduct. The most serious sentence the defendant had imposed prior to this offense—4 years—did not deter his criminal conduct. To the contrary, he committed multiple federal offenses while incarcerated.

In addition to specific deterrence, the Court's sentence should deter those similarly situated. Recidivists felons incarcerated within the federal Bureau of Prisons must know that contraband schemes that place correctional officers and others at risk will not be tolerated.

A sentence of 37 months appropriately accounts for the need to deter criminal conduct by the defendant and other recidivists who commit serious federal crimes while incarcerated.

3. Need to Protect Public from Defendant's Future Criminal Conduct

Although the defendant comes to this Court with a criminal history Category of III because he is not assessed 7 points for serious crimes that are outdated, *see* PSR ¶¶¶ 47, 48, 49, defendant is a bonafide recidivist who has shown no respect for the law or for the harm caused to others by his criminal conduct. By and large they demonstrate that the defendant is committed to making money no matter the harm done to others around him. Whether free or incarcerated, the defendant has turned to fraud to support himself. This time he also turned to corrupting those close to him and using a corrupt prison official to undertake a prison contraband scheme.

A sentence of 37 months appropriately accounts for the need to protect the public from future crimes of the defendant.

4. Need to Avoid Unwarranted Disparities

A high-end sentence for a recidivist fraudster who, while serving his most serious sentence to date, engages in a bribery and bank fraud scheme will not result in an unwarranted disparity between the defendant and other similarly situated defendants.

III. CONCLUSION

For the reasons stated above, the United States submits that a sentence of 37 months is reasonable and accounts for each of the factors set forth in 18 U.S.C. § 3553(a).

Respectfully submitted,

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