

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
v.)	
)	Crim. No. 14-30013-MGM
MICHAEL DICENZO,)	
)	
Defendant.)	

**DEFENDANT MICHAEL DICENZO’S SUPPLEMENTAL
SENTENCING MEMORANDUM**

The Defendant, Michael DiCenzo, by and through his counsel, hereby submits this supplemental sentencing memorandum in support of his request for a downward variance from the recommended sentencing guideline range as calculated in the Presentence Report. By the time of sentencing, Mr. DiCenzo will have been on pre-trial supervision for more than ten years. During that time, Mr. DiCenzo has been in full compliance with all of his conditions of release.

I. Background

Mr. DiCenzo cooperated with the government almost immediately. He agreed to plead to an Information, sparing the government, the victims of his offenses, and other witnesses the time and expense of a grand jury presentation. He met with the government multiple times to explain his own involvement in the offenses and to help the government understand the complicated and convoluted financial transactions that he and Jeffrey Pierce structured to misappropriate money from Greylock Federal Credit Union (“GFCU”). Mr. DiCenzo’s cooperation was important to the government’s case against Mr. Pierce and undoubtedly contributed to Mr. Pierce’s decision ultimately to plead guilty to the charges he faced in his related case.

Pursuant to a Section 5K1.1 motion, the government recommended a reduction in Mr. DiCenzo's sentence of 40 percent from the low end of the applicable sentencing guidelines range. The government's recommendation was based solely on Mr. DiCenzo's cooperation and did not take into account other Section 3553(a) factors, such as Mr. DiCenzo's failing health. Mr. DiCenzo requested that he receive a sentence of probation in light of his cooperation and his personal history. This Court had previously sentenced Mr. Pierce to 20 months of imprisonment. Mr. Pierce's sentence later was reduced to "time served" due to the COVID-19 pandemic and he is serving the remainder of his sentence in home confinement.

Notably, Mr. Pierce received the lion's share of the misappropriated funds, did not cooperate with the government, and did not plead guilty in his own case for nearly eight years. Mr. DiCenzo's role admittedly was different from Mr. Pierce's in that he abused positions of trust, but, by contrast, Mr. DiCenzo demonstrated remorse for his offenses almost immediately and willingly placed his own case — and his life — on hold to be available as a witness for the government while Mr. Pierce's case worked its way through the criminal justice system. Mr. DiCenzo maintains that a sentence of probation with home confinement is an appropriate sentence in the present matter at this point for all of the reasons asserted by prior counsel in the context of the initial sentencing hearing and for the additional reasons set forth herein.

II. Mr. DiCenzo's serious and complicated health issues.

The initial sentencing hearing in this matter was suspended by the Court to provide Mr. DiCenzo with the opportunity to assemble and present evidence of his medical condition, particularly a medical summary of his various illnesses and his prognoses. The Court also afforded Mr. DiCenzo the opportunity to assemble materials to show how he used the funds he

improperly obtained. Unfortunately, Mr. DiCenzo does not have records demonstrating how he used his ill-gotten gains. His personal records were destroyed in a basement flood. Mr. DiCenzo, however, concedes that much of the money was used to fund his family's expenses at a time when his son was in and out of rehabilitation facilities, his daughter was going to school, and he and his then-wife were not earning enough money to cover the mounting costs of their personal expenditures. At the time he committed his offenses, Mr. DiCenzo found himself at mid-life without the ability to provide for the material needs of his family in the way he had hoped and expected to be able to do. He also was dealing with his son's persistent drug addiction and all of the stressors such a disease can impose on parents and a family. Mr. DiCenzo reports that his son took money from his parents on a regular basis, adding to the financial difficulties the family already was facing. It was in that context and under that level of stress and dejection that Mr. DiCenzo, an otherwise well-respected and law-abiding community oriented individual, made the ill-conceived decision to engage in the deceptive and illegal conduct to which he has pled guilty.

At the same time, Mr. DiCenzo's health began to decline significantly. His life-style habits and family predispositions to disease led his developing "dysmetabolic syndrome," a condition marked by obesity, type II diabetes mellitus, hypertension, dyslipidemia (abnormalities in blood fats), and an elevation in blood uric acid leading to attacks of gout. *See* Report of Jeffrey M. Korff, M.D., dated January 28, 2019, with an addendum dated July 6, 2020, which is attached as Exhibit A, p. 1. During his extended period of pre-trial and pre-sentence release, Mr. DiCenzo's health has continued to deteriorate. He now suffers from microvascular (small blood vessel damage) and macrovascular (large blood vessel) disease. *See id.* His microvascular

disease has “progressed rapidly,” leading to retinal damage and significant vision loss. *See id.* Mr. DiCenzo continues to receive injections in his eyes to try to preserve his vision. According to Dr. Korff, Mr. DiCenzo nevertheless remains at “relatively high risk for going blind,” due to his microvascular disease. *See id.*

Mr. DiCenzo’s microvascular disease has also caused him to suffer from damage to his peripheral nerves. *See id.* This condition can be arrested, but not reversed, through proper control of Mr. DiCenzo’s blood sugar levels, but the risk remains relatively high that Mr. DiCenzo will suffer “non-healing neuropathic foot ulcers that may require surgical amputation.” *Id.* Blood sugar levels are notoriously difficult to control in prison settings, due to variations in available diabetic care and issues with the nutritional quality of the foods offered, even with so-called diabetic diets. *See id.* at p. 2, and source cited. Thus, Mr. DiCenzo faces an increased risk of complications associated with his diabetic condition and microvascular-related co-morbidities if he were sentenced to a term of imprisonment. Those complications may lead to severe and permanent consequences, including potentially blindness and amputation, which would make Mr. DiCenzo’s time in prison utterly intolerable and highly unmanageable.

In addition to the microvascular complications referenced above, Mr. DiCenzo also is experiencing macrovascular disease as a result of his difficulties with blood sugar and blood fat control, high blood pressure, and past use of cigarettes. *Id.* at p. 2. Mr. DiCenzo’s macrovascular disease resulted in his suffering an aortic aneurysm that could have led to his sudden death. *Id.* He also suffers from vascular brain disease, which more recently resulted in his suffering a stroke, as well as congestive heart failure. *Id.* The complications of Mr. DiCenzo’s macrovascular disease would likely progress more quickly if he were placed in an

incarcerated setting, likely leading to his suffering serious medical outcomes, including potentially additional strokes, heart attacks or other heart failures, and sudden early death. These factors also militate in favor of Mr. DiCenzo being sentenced to a term of probation with home confinement rather than imprisonment.

Dr. Korff's report also reflects that Mr. DiCenzo is suffering from kidney damage that "progressed relatively rapidly between 2018 and 2019." *Id.* at p. 1. In his addendum, Dr. Korff noted that Mr. DiCenzo is now suffering "end stage renal failure," which Dr. Korff described as "irreversible." *Id.* at p. 3. Mr. DiCenzo's kidney disease has advanced to the point where he now requires regular hemodialysis "three times a week lifelong." *Id.* Such care and treatment would be difficult for Mr. DiCenzo to obtain in a prison setting and his incarceration also would be extremely expensive for the Bureau of Prisons to provide.

Mr. DiCenzo's complicated medical conditions — particularly his poor vision, neuropathy, kidney disease-related bone density loss, and complications of his recent stroke — also combine to leave him at a high risk of falling and suffering fall-related injuries. *See id.* at pp. 2 and 3. Mr. DiCenzo, however, no longer ambulates on his own. Due to persistent muscle weakness following the stroke he suffered in March, 2020, Mr. DiCenzo is now forced to use a wheelchair to move about. His medical issues have left him unable to work. He had to abandon his apartment recently and now resides permanently in Mt. Greylock Long Term Care Facility in Pittsfield. Dr. Korff has opined that Mr. DiCenzo "remains at high risk for further [] vascular events involving his brain and other organs." *Id.* at p. 3. In short, Mr. DiCenzo's life expectancy — particularly if he were placed in a prison setting — is not long. Dr. Korff reports that the average survival after first hospitalization for heart disease is two and one-half years. *Id.* Mr.

DiCenzo suffered just such an event in December, 2019. A prison sentence in the nature of what the government previously requested may likely result in Mr. DiCenzo spending his last days suffering from myriad medical ailments alone in a prison setting. His offenses, although serious, do not warrant such punishment.

The present COVID-19 pandemic and its rapid spread within the nation's prison population also supports a sentence of probation with home confinement for Mr. DiCenzo. The risk factors for severe consequences, including death, for those who contract COVID-19 are now well-known. The Centers for Disease Control has warned that individuals with health issues like those suffered by Mr. DiCenzo are at an increased risk of bad outcomes if they contract the disease.¹ Among the most concerning ailments are diabetes, chronic kidney disease, coronary disease, obesity, a history of smoking and cancer. *Id.* As is noted above, Mr. DiCenzo suffers from all of those risk factors. His age — which is over 65 years — also is a risk factor for severe complications from COVID-19.

The rate of transmission in the nation's prison system and the unique difficulties prisons face in preventing the introduction and spread of COVID-19 has been well-documented and has resulted in many instances of defendants being released early to home confinement from prison sentences being served.² As Dr. Korff noted in the context of reviewing Mr. DiCenzo's medical history, "it has become clear that incarcerated individuals are at high risk of suffering from the

¹ See Centers for Disease Control and Prevention, Coronavirus Disease 2019, *People with Certain Medical Conditions*, available at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html (last visited Oct. 8, 2020)).

² See Centers for Disease Control and Prevention, Mass Testing for SARS-CoV-2 in 16 Prisons and Jails — Six Jurisdictions, United States, April–May 2020, dated August 21, 2020, available at <https://www.cdc.gov/mmwr/volumes/69/wr/mm6933a3.htm> (last visited Oct. 8, 2020).

current SARS Corona Virus 2 pandemic. Patients such as Mr. DiCenzo are particularly vulnerable to contracting the virus and suffering its serious complications including death as a result of their incarceration.” In light of the particular risks Mr. DiCenzo would face if he were to contract COVID-19, a prison sentence is particularly harsh in the present circumstances.

III. Probation is an appropriate sentence under the circumstances.

Following the Supreme Court’s ruling in *United States v. Booker*, 543 U.S. 220 (2005), sentencing courts have been freed from a mandatory guideline regime and are encouraged to employ a broader approach to sentencing that encourages thoughtful application of the guidelines that emphasizes the factors set forth in 18 U.S.C. § 3553(a). In relevant part, 18 U.S.C. § 3553(a) directs the Court to consider at sentencing (a) the nature and circumstances of the offense and the history and characteristics of the defendant; (b) the need for the sentence imposed; (c) the kinds of sentences available, the recommended sentencing guidelines range, and pertinent sentencing policy statements; (d) the need to avoid unwarranted sentencing disparities; and (e) the need for restitution.

While a sentencing court must consider the properly calculated Guidelines sentencing range as a “starting point or initial benchmark” when imposing a sentence, the Court “may not presume that the Guidelines range is reasonable” and must “make an individualized assessment based on the facts presented.” *Gall v. United States*, 552 U.S. 38, 49-50 (2007). The Supreme Court emphasized that the “Guidelines are not only *not mandatory* on sentencing courts; they are also not to be *presumed* reasonable.” *Nelson v. United States*, 555 U.S. 350, 352 (2009) (emphasis in original). The Guidelines are meant to be but one factor among many to be considered. *Gall*, 522 U.S. at 59.

Sentencing requires a “more holistic inquiry” with the overarching principle being to “impose a sentence sufficient but not greater than necessary” to satisfy the purposes of Section 3553(a). *United States v. Rodriguez*, 527 F.3d 221, 228 (1st Cir. 2008). The First Circuit has directed sentencing courts to contemplate the “tapestry of factors” set forth in 18 U.S.C. § 3553(a) in determining the sentence that is “*minimally sufficient* to achieve the broad goals of sentencing.” *Rodriguez*, 527 F.3d at 228 (emphasis added). And the Supreme Court has observed that “3553(a) directs the judge to consider sentences other than imprisonment.” *Gall*, 552 U.S. at 59. In the present circumstances, the sentence requested by Mr. DiCenzo of probation with home confinement is the sentence that is “minimally sufficient” to serve the broad goals of sentencing set forth in Section 3553(a).

Mr. DiCenzo has spent the last decade of his life under the supervision and authority of the Court and the U.S. Probation department in a kind of probationary period. During that time, he has demonstrated his compliance with the law and his ability to abide by court-imposed conditions. He has not had a single violation of his conditions of release during that entire time. Other than the present offense, Mr. DiCenzo has led a law-abiding life. He has no prior criminal history and under the sentencing Guidelines is in the lowest criminal history category with zero points.

Mr. DiCenzo also has demonstrated his contrition for his illegal acts. He entered into a plea and cooperation agreement early in this case and he agreed to cooperate to assist the government. He agreed to repeated continuances of his sentencing hearing so that he could remain available to testify in Mr. Pierce’s, if needed. Those delays, which were not of Mr. DiCenzo’s making, resulted in his life being put on hold for years and years while Mr. Pierce’s

case worked its way through the criminal justice system. While awaiting sentencing, Mr. DiCenzo has lost his job, his marriage, his home, and his health. He subsists on Social Security disability payments. His son's addiction continues to cause Mr. DiCenzo distress, yet he continues to hope for his son's recovery. With few exceptions, Mr. DiCenzo's friends now shun him when they see him in town. He has lost his reputation and standing in the community where he once was seen as an important contributor.

Mr. DiCenzo's daughter, Sara Stewart, has now moved to South Carolina with her family. She provided a letter of support for her father in which she describes a parent who was always there for her, their family, and his community. She described her father as a man who volunteered for the March of Dimes after her premature birth and later was named "Man of the Year" in 2003. Mr. DiCenzo's selflessness was also demonstrated through his years of volunteer service for community organizations like the Jimmy Fund, Big Brothers/Big Sisters and Special Olympics. He was active in his church, Mt. Carmel Catholic Church, and the Mt. Carmel Holy Name Society, UNICO and the East Side Men's Club. According to Ms. Stewart, although her father "always put out family's happiness first," he could not prevent his son — his namesake — from turning to drugs. Mr. DiCenzo "spent the entire time since trying to help [his son] turn his life around."

Mr. DiCenzo's brother, Anthony DiCenzo, also provided a letter of support referencing Mr. DiCenzo's "gentle nature" and "many acts of kindness." He, too, noted the stress that his brother suffered as a result of "having to deal with the demands of a drug addicted son." Mr. DiCenzo's sister-in-law, Carolyn DiCenzo, described Mr. DiCenzo as being at the center of any family, church or charitable or community event. She noted that he was an active parent in the

lives of his children and that he was close to his own parents — “a constant presence” in their home and “eventually nursing home, making sure they had what they needed and were well taken care of.” She described watching as Mr. DiCenzo’s world fell apart due to his son’s addiction, noting that he and his now ex-wife spent what they could and borrowed money from family to try to provide treatment. She also noted that Mr. DiCenzo’s marriage failed as a result of the stress. Copies of all letters of support are attached as Exhibit B.

It is in that context when he and his family were struggling through his son’s opioid addiction that Mr. DiCenzo committed the current offenses. At the time of Mr. DiCenzo’s offenses, his son was deep into an addiction that started in his teenage years. The damage that such a problem does to a family is profound. Mr. DiCenzo found himself reeling, confused, and vulnerable. He entered mid-life unstable in his view of himself and his world. In that context, he made what he readily acknowledges were terrible choices when he began approving improper loans for Mr. Pierce and then taking kickbacks from him. He is remorseful for his conduct. He has already suffered significant punishment for his offenses. He has lost everything he had personally and financially. He forfeited his good name in the community where he was spent most of his life and he has entered the final stage of his life destitute and alone. At the initial hearing on Mr. DiCenzo’s sentencing, held on August 26, 2019, the government described Mr. DiCenzo as having demonstrated “genuine and sincere remorse.” *See* Transcript of Hearing, August 26, 2019, p. 10.

Mr. DiCenzo asserts that a sentence of probation with a period of home confinement serves the purposes of Section 3553(a) under the circumstances of his case. The proposed sentence accounts for the nature and circumstances of the offense, which clearly were serious but

represented an aberration from Mr. DiCenzo's otherwise law-abiding and community oriented life; the history and characteristics of the defendant, which include numerous charitable and community-oriented acts and a willingness to admit his guilt and cooperate with the government; and the need for the sentence to be imposed and the kinds of sentences available as well as the recommended sentencing guidelines range and pertinent sentencing policy statements. *See* 18 U.S.C. § 3553(a).

As is noted above, Mr. DiCenzo has been living under government supervision for a decade already without incident. Given his good conduct while on pre-trial and pre-sentence release and his complicated end-stage medical issues, it is clear that a prison sentence is not necessary for purposes of deterrence or incapacitation, nor is it necessary to punish Mr. DiCenzo or to provide for his rehabilitation. Mr. DiCenzo has recognized his wrongful conduct, is contrite and, more importantly, has demonstrated his capacity and re-dedication to living a law-abiding life. He has suffered some punishment already due to the natural consequences of his offense but also has been effectively serving a probationary sentence for a decade. Courts have routinely recognized that probation is a punishment. *See Korematsu v. United States*, 319 U.S. 42, 435 (1943); *United States v. Martin*, 363 F.3d 25, 37 (1st Cir. 2004); *United States v. Bynoe*, 562 F2d 126, 128 (1st Cir. 1977). Mr. Pierce received a sentence of 20 months, despite receiving the vast majority of the improperly obtained funds, and his sentence later was converted to home confinement due to risks associated with imprisonment and COVID-19. A sentence of probation with home confinement is the sentence that is "minimally sufficient" to address Mr. DiCenzo's offense. Combined with the decade Mr. DiCenzo has already spent under supervision, it

provides adequate punishment, deterrence and further allows for Mr. DiCenzo's continued rehabilitation. It is the appropriate sentence under the circumstances of this case.

IV. Conclusion

The sentence requested is an adequate punishment that will promote respect for the law, provide for the safety of the community, allow for Mr. DiCenzo's continued rehabilitation. His requested sentence, therefore, satisfies the directive that the sentence imposed be "minimally sufficient" to achieve the purposes of § 3553(a).

Respectfully submitted,

MICHAEL DICENZO,
Defendant

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CERTIFICATE OF SERVICE

I, Thomas J. O'Connor, Jr., hereby certify that on the 8th day of October, 2020, I caused a true copy of the foregoing to be served on the attorney for the government via ECF filing.

/s/ Thomas J. O'Connor, Jr.
Thomas J. O'Connor, Jr.