

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

UNITED STATES OF AMERICA

PLAINTIFF

v.

CRIMINAL ACTION NO. 3:21-CR-52-BJB

DINO GAUDIO

DEFENDANT

SENTENCING MEMORANDUM
ELECTRONICALLY FILED

Comes the Defendant, Dino Gaudio (“Dino”), by and through counsel, Brian Butler, and hereby submits the following sentencing memorandum in support of a sentence of one year (1) of probation with a \$10,000.00 fine:

Dino pled guilty to one count of interstate communication with the intent to exhort in violation of 18 U.S.C. § 875(d). Specifically, Dino pled guilty to sending a text message to University of Louisville Head Basketball Coach Chris Mack (“Mack”) to exhort the University of Louisville into paying his salary until his intended retirement date in September 2022.

Because Dino’s offense is a lower level felony offense (Class E), he is eligible for probation pursuant to 18 U.S.C. § 3561(c)(1). The statutory penalty range for 18 U.S.C. § 875(d) is from no incarceration up to a statutory maximum penalty of no more than two (2) years of incarceration. The Presentence Investigation Report (“PSI”) calculates Mr. Gaudio’s United States Sentencing Guideline (“Guidelines”) range at 27-33 months but the Guideline range is capped at the statutory maximum of 24 months.

Based upon the application of the factors in 18 U.S.C. § 3553(a) and the agreement of the

parties, the undersigned respectfully requests the Court sentence Dino to one (1) year of probation with a \$10,000.00 fine.

APPLICATION OF 18 U.S.C. § 3553(a)

Pursuant to 18 U.S.C. § 3553(a), the Court shall impose a sentence sufficient, but not greater than necessary, to comply the delineated sentencing considerations.

A. Personal History and Characteristics

1. *Family and Educational History*

Dino was raised in Yorkville, Ohio a small blue-collar steel town. His father worked in a steel mill for 44 years. His mother was a stenographer in the local hospital. Dino lived with his parents and brother in an apartment until he left home at 25 years old to get married.

Dino's father taught him a strong work ethic and a toughness that comes from earning a living in a steel mill. His father worked numerous shifts in the steel mill to provide for his family. Dino's mother taught him how to handle adversity with faith and grace. Dino's mother was diagnosed with colon cancer at the age of 38. She endured numerous surgeries and had a large portion of her intestines removed. Dino's mother has been a cancer survivor for 47 years. Her strength and resilience was a template for Dino when he was diagnosed with thyroid cancer in 2003 at the age of 46.

Dino was brought up in a strong Catholic household and for seven years in his youth served as an altar boy in the local parish. He was the first in his family to graduate from college where he earned a double bachelor's degree from Ohio University. He earned a degree in accounting, as well a degree in secondary education. Dino received his master's degree from

Xavier University in 1991. Academics have always been a priority for him as a student, as a parent and as a coach.

Dino is an exemplary family man, having been married to his wife Maureen for 39 years. Dino raised two loving and exceptional daughters. Dino's daughters both earned their undergraduate degrees from Wake Forest University. Kaylan, his oldest daughter, earned her law degree from the Elon School of Law and is a family law attorney in Charlotte, NC. His youngest daughter Alyssa, earned her law degree from the University of Virginia School of Law and is an attorney with a prominent law firm in New York City.

Dino's educational achievements exemplify the American Dream. His loving and successful family life are proof of his inherent decency and good character.

2. *Work History*

After college, Dino worked as an accountant for two years with the State Auditor's office in Ohio and at the corporate offices of Wheeling-Pittsburgh Steel Corporation. Subsequently, Dino determined that he wanted to teach and have a positive impact on the lives of young men and women. Dino left his accounting position and accepted a teaching and coaching position at Wheeling Central Catholic High School in Wheeling, WV for a starting salary of \$9,600 and a \$500 stipend for serving as the assistant basketball coach. Dino did not go into teaching and coaching for money or glory. He went into teaching and coaching because he wanted to devote his life to molding young men and women.

Dino taught at Central Catholic for six years and in 1987 joined the staff at Xavier University in Cincinnati, Ohio. Dino was hired by Pete Gillen, a Notre Dame assistant who was named the head coach at Xavier University in 1985. Again, money was not the motivation as

join his long-time friend Chris Mack at the University of Louisville. Dino remained at the University of Louisville until Mack declined to renew his contract.

Dino's career demonstrates that hard work coupled with passion can take you to unprecedented and unimagined heights. Dino literally went from barely making enough money to make ends meet at Central Catholic High School in order fulfill his dream of impacting young men and women's lives to being the head coach at the United States Military Academy, the head coach at an academically prominent Atlantic Coast Conference institution to being a college basketball mainstay at ESPN. Dino's long and successful work history strongly advocates for a sentence of one (1) year of probation with a \$10,000.00 fine.

3. *Medical History*

In 2003, Dino was diagnosed with thyroid cancer at the age of 46. After weeks of study and evaluations, it was determined that he needed to have his thyroid completely removed. There was also the concern that his cancer was present in the lymph nodes of his neck. Four weeks later at Wake Forest Baptist Hospital, Dino had his thyroid removed in a successful surgery.

Dino's past cancer coupled with a family history of cancer dramatically increases his risk for cancer to reemerge. Dino's need for repeated check-ups and close monitoring of his health also strongly advocates for a sentence of one (1) year of probation with a \$10,000.00 fine.

4. *Charitable Work*

Dino's cancer diagnosis led him to be an advocate in the fight against cancer. Dino regularly speaks to cancer organizations including promoting early and yearly cancer screenings. Dino has also reached out to numerous cancer patients over the years with words of hope on how to handle the news of a cancer diagnosis and a "game plan" for beating the disease.

Jeff Battle, assistant basketball coach at Providence College, has known and worked with Dino for 29 years. While working together at Xavier, Coach Battle's wife was diagnosed with cancer. Coach Battle wrote, "Dino was always there for me and my family supporting us and helping me get through a trying time in my life." Coach Battle further wrote, "It is because of these life changing situations that I know I can honestly say Dino is one of the best people that I've come across in my life." *Exh. 5.*

Alex Morris played for Dino at the United States Military Academy. Mr. Morris wrote that Dino "was one of the first people at my beside during my 5 surgeries." More tellingly, Mr. Morris wrote, "[W]hen my twin brother died of cancer years after graduating, Coach Gaudio was one of the first people to call me." Mr. Morris stated, "Coach Gaudio fervently believed in the mission of the United States Military Academy and always put character and doing the right thing over anything else." *Exh. 6.*

Fran McCaffery, University of Iowa's Head Basketball Coach, has known Dino for 31 years. In 2013, Coach McCaffery's son was diagnosed with thyroid cancer. Dino immediately got into contact with Coach McCaffery. Dino "facilitated two phone calls from Chris Paul, who is an NBA All Star, to Patrick who was having surgery." Paul was Coach McCaffrey's son's favorite player. Coach McCaffrey wrote, "[T]hose phone calls meant so much to our son." Coach McCaffrey further wrote, "When a parent has a child diagnosed with cancer, our lives change forever. The kindness and concern shown to Patrick by Dino Gaudio speaks directly to his character. My wife and I will always cherish our friendship with Dino." *Exh. 7.*

Mike Slazinski, father of former University of Louisville basketball player Quinn Slazinski, wrote, "My first opinion of Dino was he was an honest person and spoke from the

heart.” Mr. Slazinski soon learned that Dino was in his words “Godsent.” Mr. Slazinski’s wife was diagnosed with breast cancer. Mr. Slazinski wrote, “My wife had 6 months of treatment and Dino was the only person at Louisville to help Quinn through it. He called me several times to ask about my wife and we never discussed basketball or how Quinn was playing. He was simply reaching out to see how my wife was doing. Dino shared with my wife that he had cancer and how scared he was and how he got through the treatment. He was a godsent ...”

Exh. 8.

Aside from commitment to cancer patients and associated charities, Dino was also active in Feherty’s Troops First Foundation. Dino routinely invited injured warriors rehabbing at Walter Reed Medical Center to team dinners when his team was in the area. In 2015, Coach Gaudio participated in “Operation Hardwood” where he met with wounded soldiers at Walter Reed Medical Center then flew to Camp Arifjan in Kuwait to coach our soldiers, mentor them and participate in morale boosting for our service men and women. Richard Kell, Executive Director of Feherty’s Troops First Foundation, wrote, “I know Coach Gaudio to be a good man. The lives of not only his players but the Warriors who he has supported over the years are better because of his friendship and guidance.” *Exh. 9.* Dino has also been very active in helping inner-city youth in Charlotte. He assisted in starting and has continued to support charities focusing on using “the language of basketball” to help at risk children with their education. Ric Elias, who partnered with Dino in these efforts, wrote, “This program (pre-pandemic) was touching over 200 kids every day and Dino has made a great impact on Charlotte’s inner-city youth.” *Exh. 10.*

Dino has helped countless people and charitable organizations in his life. To me, the most telling is the private phone calls and private visits to those suffering from cancer. There is no glory or accolades in those private calls or visits. They are purely altruistic and speak volumes about Dino's character. Undoubtedly, Dino has made the world a better place and his life history advocates for a sentence of one (1) year of probation with a \$10,000.00 fine.

5. *Criminal History*

Dino is a criminal history category I. He has never previously been charged with a crime much less convicted of a crime.

6. *Character References*

Dino is universally described as a man of good character with a strong faith. He is credited with bringing people back to their Catholic Faith. He is credited with instilling values and discipline into his players. Several even credit him with preparing them for combat. He is dedicated, loyal and a tireless worker. He is compassionate and treats everyone with respect and dignity regardless of their position. He is ever present to help players, coaches, friends or anyone else when they are battling sickness and need a warm smile or helping hand.

Repeatedly, he is referenced as personifying the United States Military Academy's motto of "Duty, Honor, Country." It is difficult to envision such an amazing array of character letters spanning a life well lived. The quality of Dino's character literally jumps off the pages and supports our proposed sentence of one (1) year of probation with a \$10,000.00 fine. *See Exh. 11 (combination of numerous character letters).*

B. Nature and Circumstances of the Offense

Dino's relationship with Chris Mack began over 30 years ago. Dino coached Mack at Xavier University. Subsequently, Dino and Mack worked together as assistants at Xavier University and at Wake Forest. They developed a close relationship spending countless hours together preparing for games, scouting, recruiting and traveling on what were seemingly endless basketball related trips.

When Mack was an assistant at Xavier, then head coach Sean Miller accepted the head coaching position at the University of Arizona. Mack asked Dino if he would contact Mike Bobinski, the Xavier athletic director, and endorse him for the job. Dino and Mr. Bobinski had a long history and friendship. At the time, Dino's Wake Forest team was coming off of an exceptional year having won 24 games and at one point in the season was the #1 team in America. Dino spoke to Mr. Bobinski and gave Mack a strong endorsement. Mack was hired to replace Sean Miller as head coach at Xavier.

After several years as head coach at Xavier, Mack asked Dino about leaving Xavier to be the head basketball coach at the University of Louisville. Dino praised the University of Louisville. Dino told Mack that he believed the Yum Center may be the best venue in college basketball based upon his experiences broadcasting games at the Yum Center. He further told Mack that Louisville's fans were among the very best in America. Dino reminded Mack that Louisville had won National Championships in the past and that he could win another one. Mack accepted the job and asked Dino to join him as an assistant coach. Dino was working as an analyst at ESPN. Dino absolutely loved his job at ESPN but he also loved coaching. He gave up his career at ESPN to move to Louisville to help out an old friend.

Dino and Mack's relationship extended well beyond basketball. Their families vacationed together on multiple occasions including even staying together in the same rental home. On one occasion, Mack and his family skipped the Final Four to stay with Dino and his family in Charlotte. Dino and Mack often confided in one another about raising children, basketball, coaching today's youth and various job situations as they would arise. These men were more than long time professional colleagues. To Dino, Mack was a close and trusted friend.

At the end of Mack and Dino's second season at Louisville, COVID -19 became a life changing event for our nation. The Louisville basketball team was sent home from the ACC Tournament on March 14, 2020. Dino returned to his residence with his family in Mooresville, North Carolina. Dino returned to Louisville in August 2020 despite being advised by his physician not to return to the basketball program because of his pre-existing condition of thyroid cancer.

Even during the height of COVID, Dino continued making phone calls, participating in zoom calls and writing potential recruits to ensure Louisville's recruiting remained at a high level. In the five month period Dino was the lead recruiter for the Louisville coaching staff, Louisville secured commitments from Carlik Jones, first team All-ACC and second in player of the year voting in 2021; Gabe Wiznitzer, 6'11" center with over 24 Division 1 scholarship offers; Charles Minlend, Jr. who committed to Louisville despite receiving scholarship offers from Arizona and Gonzaga; and J.J. Traynor a 6'10" forward with professional potential. All four of these individuals were a part of Louisville's team during the 2020-21 season. Also, Dino's recruiting efforts reached into the 2021 high school graduating class which was rated #5

by 247 Sports. In the 2021 class, Dino was the lead recruiter for El Ellis, Tallahassee Community College (Durham, North Carolina), Bobby Pettiford, South Granville, Creedmore, North Carolina, and Eric Van der Heigen, Millbrook HS, Raleigh, North Carolina. Since Dino's departure from the University of Louisville, Pettiford and Van der Heidjian de-committed from Louisville and pursued their college careers elsewhere. Mack consistently praised Dino for his recruiting efforts as well as his coaching prowess.

COVID placed a tremendous stress on Louisville's coaching staff. Members of the staff had very different views about the severity of COVID and COVID protocols. The virus ran rampant throughout Louisville's program. Louisville had numerous players, coaches, including Mack, and others associated with the basketball programs contract COVID.

As a cancer survivor in his 60's, Dino was legitimately concerned about the ramifications of contracting COVID. More importantly, Dino's 85 year old mother, also a cancer survivor, lived with him in Louisville. Dino became so worried about the number of COVID cases in the Louisville basketball program that he sent his wife and mother back to North Carolina to live because he was afraid he would bring COVID home to them. As a result, Dino only saw his wife four times from December 5, 2020 through March 17, 2021. Dino spent Christmas Eve and Christmas Day in Louisville alone and apart from his family. The situation at Louisville made the year incredibly stressful for Dino and his entire family. Nonetheless, Dino fulfilled his coaching duties admirably and remained committed to the program's success.

As a result of the COVID outbreaks within Louisville's basketball program, several games were cancelled or postponed. When Mack contracted COVID in February 2021, Dino was named interim head coach by Mack and the University of Louisville's Athletic Director.

The game cancellations took a tremendous toll on Louisville's season as Louisville lost the opportunity to play several games in which Louisville was a favorite. As Louisville was the first team out of the NCAA Tournament field, even one or two more wins would have secured their place in the NCAA Tournament.

Aside from frustration and profound differences about how to manage COVID in order to keep everyone healthy and the team on the floor, Dino also wrestled with improprieties within Mack's program. Dino built an impeccable reputation in college basketball over his professional lifetime and had never been associated with NCAA violations or breaking NCAA rules. The NCAA investigation into Louisville's conduct under their previous coach is ongoing. Despite Louisville's basketball program's precarious position, NCAA rules continued to be violated. For example, Mack used graduate assistants, many of which were former professional and college players, to practice against his team in direct violation of NCAA rules in order to attempt to achieve an unfair competitive advantage in practice. A college basketball team is going to improve more in practice playing against top flight competition than against walk-on undergraduates. Additionally, Mack utilized a recruiting ploy by copycatting the ESPN 30 for 30 show by creating individualized recruiting videos for prized recruits in violation of NCAA rules.

Dino approached Mack on several occasions with concerns about NCAA rules violations. For example, Dino questioned Mack about running workouts which may have been in violation of NCAA COVID protocols in the early summer of 2020 before Dino returned to University of Louisville from North Carolina. On another occasion in the summer of 2020, Dino was contacted by a Louisville coach outside of the men's basketball program about Mack running

organized workouts in direct violation of NCAA rules and COVID protocols. Again, Dino brought the question of potential NCAA violations to Mack's attention via a phone call.

Despite the disagreements over COVID and the NCAA violations, Dino remained Mack's most trusted assistant. As previously noted, Mack named Dino interim head coach in February 2021 when he contracted COVID. Everything changed on March 14, 2021.

On March 14, coaches and players gathered to watch the NCAA Tournament Selection Show. As the evening wore on, it became increasingly clear that Louisville was going to fall just short of being selected to compete in the NCAA Tournament. The mood soured and Mack called a coaches meeting following the disappointing Selection Show.

Mack immediately began criticizing the players. He repeatedly stated that his players were not good enough to meet his expectations. Mack began threatening to pull players' scholarships. Dino jumped to the defense of Louisville's basketball players. Dino told Mack that he could not rescind scholarships because the basketball team did not fulfill his expectations and that they had to honor their commitments to the young men they recruited. Pointedly, Dino told Mack that had they not lost several likely wins from their schedule because of the number of COVID cases they would have been comfortably in the NCAA Tournament. To Dino, Mack was blaming his own failures on everyone else. It was particularly troubling that Mack was blaming his players. Nonetheless, Dino stopped short of calling Mack out for his failure to accept personal responsibility for a disappointing end to the season.

Dino certainly did not believe this Sunday night meeting was some sort of watershed in his relationship with Mack. Dino had a 30-plus year relationship with Mack which started with Dino as Mack's coach in the early 1990's. Their coach-to-player relationship progressed to

Dino serving as a coaching mentor. Dino was an experienced veteran assistant coach with Skip Prosser at Wake Forest, and Mack was a first year assistant in 2001. It was not uncommon for Dino and Mack to have spirited debates, discussions and arguments over many facets of their relationship. During their time together at Louisville, they did not have a typical employer, employee relationship. Dino certainly did not envision anything had changed between them when he was asked to meet with Mack on March 17, 2021.

On March 17, 2021, Mack asked Dino to meet with him in his office. Unbeknownst to his friend of 30 years, Mack taped his conversation with Dino. Mack informed Dino that he would not be renewing his contract which expired on April 30, 2021, because of “poor staff chemistry.” Dino was shocked, wounded and angry. He was slightly over a year from his anticipated retirement in September 2022. He was going to be left unemployed and without health insurance at nearly 64 years of age by someone he believed to be a close friend. Moreover, Dino left a beloved job at ESPN to come to Louisville to assist Mack. Dino had separated from his entire family in order to protect the health of his family while maintaining his commitment to the Louisville basketball program and his long-time friend Chris Mack. Dino had contributed significantly to the Louisville basketball program through his recruiting prowess, coaching experience and relationship with the players. Dino had always received glowing reviews from Mack. Despite all he had done and all he had sacrificed, Mack discarded him without notice at 64 years of age in what Dino perceived as a poorly veiled attempt to shift blame for his own failures on to Dino and Luke Murray, who Mack also dismissed on March 17.

Within this context, Dino confronted Mack about the continuing NCAA violations within the basketball program. Dino told Mack he was going to disclose the NCAA violations if he

was not paid a severance package as either a lump sum representing his salary through September 2022, which was Dino's anticipated retirement date, or continue to be paid monthly until September 2022. Knowing that he was recording the conversation, Mack implied a lack of knowledge about NCAA rules violations. This further inflamed Dino because he knew that was not accurate. It should be noted that on March 18, 2021 the University of Louisville self-reported violations to the NCAA.

Mack stated to Dino that he did not want to "f... up your livelihood." Mack stated, "I love you." Mack further stated, "I feel like I owe you." Mack stated, "I'm not trying to f... your family and your money. I love you." Mack agreed to pay Dino's severance package either through the University of Louisville or personally, if necessary.

After leaving Mack's office, Dino got increasingly angry that Mack had the audacity to imply a lack of knowledge about the recruiting videos which violated NCAA policy when it was Mack who had ordered team personnel to recruits' hometowns to film the recruiting videos. As such, Dino sent one of the 30 for 30 recruiting videos to Mack a couple of hours after their meeting to prove he knew Mack was being disingenuous. Subsequently that evening, Dino left Mack a voicemail delineating the details of their financial agreement.

The following day Dino came to the Louisville basketball offices to meet with Mack per their discussion and to clear the air. Dino thought they had agreed on a severance package. Dino was refused the opportunity to meet with Mack. Mack never gave Dino the opportunity to rescind his statements about only remaining quiet about the NCAA violations if he was provided a severance package. It is important to note that Dino did not retaliate by contacting the NCAA

but, rather, left campus as directed. Subsequently, Mack's surreptitious recording of their March 17 meeting was handed over to federal authorities.

What Dino did was unquestionably wrong and out of character. The aforementioned chronology of events should not be read as an excuse but, rather, as an explanation for why someone who has lived an exemplary life would snap and threaten to release damaging information if he was not paid what amounted to a severance package. As many of the attached character letters reference, Dino is ever remorseful for his actions and the embarrassment he has caused his family and friends. No one is more disappointed in Dino Gaudio than Dino Gaudio. Dino knows that he should have just walked away and calmed down before engaging with Mack.

But, it is important to consider that Dino's crime was an emotional reaction to a perceived betrayal by someone he had considered a close friend and by someone who Dino had helped countless times along the way. Dino never received any money from the University of Louisville and his payment request was not a random, extravagant number divorced from reality but, rather, represented payment of his salary for a little over a year until his anticipated retirement age. He was asking for what he believed he had earned and was morally owed, if not technically as his contract did not legally have to be renewed. Dino certainly went about advocating for a severance package in an improper and illegal way. However, the circumstances surrounding his offense explain his anger and why he reacted in such an uncharacteristic manner.

Dino felt as though he and Mack were family and sometimes with family we say things we should not say. Unfortunately, Dino made these statements and he was never given a chance to walk them back before the surreptitious tape was given to federal authorities. Nonetheless, Dino recognizes that his conduct was wrong and immediately took responsibility for his actions.

For all the aforementioned reasons, we respectfully submit that the nature and circumstances of the offense support a sentence of one (1) year of probation with a \$10,000.00 fine.

C. Need for the Sentence Imposed.

A one (1) year probated sentence with a \$10,000.00 fine is sufficient but not greater than necessary to accomplish the sentencing goals. A one (1) year probated sentence with a \$10,000.00 fine reflects the seriousness of the offense but also takes into account the unique circumstances of this case.

Dino has never previously committed an offense and no one believes he will ever commit a future offense. Dino has been convicted of a felony offense. Given Dino's life-long commitment to maintaining an untarnished reputation, this has been a horrific experience.

A felony conviction with a one (1) year probated sentence with a \$10,000.00 fine satisfies the deterrence criteria. Dino is specifically deterred. Dino immediately took responsibility for his actions and pled guilty by way of an Information. He is 64 years old and went 64 years without ever being so much as charged with a criminal offense. He will never repeat his conduct.

General deterrence is also satisfied by our requested sentence. Anyone who is aware of what has happened to Dino, specifically including the collateral consequences, would certainly be deterred from engaging in similar conduct and likely be ever mindful to let their anger and passion recede before speaking from a place of emotion brought about by a life-long friend's perceived betrayal.

The final statutory consideration for the Court to evaluate under "the need for the

sentence imposed” factor is how Dino can best receive any necessary training or treatment.

Without question, Dino benefits by continuing, without interruption, his current medical plan. It is certainly working given that Dino remains cancer free and any interruption to his access to top flight medical intervention, if necessary, could be devastating.

D. The Kinds of Sentences Available.

Dino is statutorily eligible for probation.

E. Need to Pay Restitution

There is no restitution. If the Court accepts the plea agreement as requested by the parties, Dino will be fined \$10,000.00.

F. Conclusion

One (1) year of probation with a \$10,000.00 fine is sufficient but not greater than necessary to accomplish the goals of sentencing. The plea agreement reflects the unusual circumstances of this case and seeks to reach a just resolution. Dino respectfully urges the Court to accept the agreement between the parties and sentence him to one (1) year of probation with a \$10,000.00 fine.

WHEREFORE, Dino Gaudio respectfully requests that the Court sentence him to one (1) year of probation with a \$10,000.00 fine.

Respectfully submitted,

/S/ Brian Butler

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CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing Sentencing Memorandum was electronically filed on August 11, 2021 with service to the Honorable Amanda Gregory.

/S/ Brian Butler

Brian Butler
Attorney at Law