

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION**

**UNITED STATES OF AMERICA**

**UNDER SEAL**

**v.**

**LINDA WILSON,**

**Defendant.**

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**SENTENCING MEMORANDUM**

Linda Wilson is the twenty-six year old daughter of Haitian immigrants. She's a student at Barry University, having worked her way through Miami Dade College and earned an Associate in Arts degree. Much of the time she was going to school she worked, as well. She is the mother of a two-year old daughter. To a great extent, her guideline range has been determined on the basis of the entire loss generated by Lucas Cleveland's scheme in the case before this Court and by Henry Luther's scheme in the South Florida case. For that reason, it overstates Ms. Wilson's culpability. She cooperated with investigators prior to her arrest and met just last week with the Assistant United States Attorney prosecuting the case against Henry Luther. Given these circumstances, a sentence below the guideline range calculated by the defense would be "sufficient, but not greater than necessary" to fulfil the goals of sentencing established by Congress. 18 U.S.C § 3553(a).

Std.  
Intro.

Parsimony

*Sentencing Guideline Calculations*

Sub-Heading

At 41 to 51 months, the guideline range proposed in the presentence investigation report is more than double the 15 to 21 months calculated by the defense in its response to the draft report. Much of the difference hinges upon whether this Court considers Ms. Wilson's conduct in the South Florida case as relevant conduct. The defense is aware that many of these issues were discussed at

the sentencing hearing of the co-defendant, Susan Doran. In the end, however, counsel for Ms. Doran abandoned or did not pursue objections to the issues of whether the Luther case was relevant conduct, the number of victims, and whether the case involved the use of an authentication feature. Doc. 83, pp. 43-52. Nonetheless, either range would result in a sentence that is longer than necessary to fulfill the goals of sentencing.

*Ms. Wilson's History*

Sub-Heading

Ms. Wilson's mother came to the United States from Haiti just a few years before Ms. Wilson was born. Ms. Wilson was raised by her mother and her godmother, with little involvement from her father. PSR ¶54. Growing up, Ms. Wilson "took on the role as a second parent in the house," caring for her sister and helping support the family. Ex. 1. Ms. Wilson's mother "is not the best English speaker," and Ms. Wilson has always assisted her mother as a translator and helped her "fill out important documents." *Id.* Ms. Wilson started Miami-Dade College in the Spring of 2008, and it took her more than four years to earn her Associates in Arts degree. Ex. 2. There was nearly a two-year break after her first semester, and there were courses that she had to retake because of the low grade she initially made. *Id.* She persevered, though, all with the hope of eventually becoming a nurse. She has attended Barry College since the fall of this year and has been provisionally accepted into the nursing program at Barry College, the school having given her another semester to increase her grade point average to the requisite 3.2.

Doc.

She, her fiancé, her mother, and her two-year old daughter, all live in the condominium that Ms. Wilson was able to secure with the mortgage given her by Luther. If Ms. Wilson serves a prison sentence, Ms. Wilson's fiancé, who is the child's father, and Ms. Wilson's mother, will be responsible for caring for the child.

Patricia M. Wald is a retired judge for the United States Court of Appeals for the District of Columbia. In 1995, when she was still on the Bench, she wrote an article that appeared in the Federal Sentencing Reporter. She concluded the article with a paragraph critical of what was, then, the limited consideration permitted by the Sentencing Commission of the importance of parenting:

The perennial law and order debate that goes on nationally focuses on the rights of society first as the individual offender to justify higher sentences, abolition of parole and even the death penalty. That same concern for society militates towards a sentencing policy that attempts in a small subset of first offender, non-violent parent prisoner cases to consider the welfare of the children. Neither Congress nor the Sentencing Commission has yet come forth with a convincing rationale why parenting should not be a legitimate consideration in the sentencing of low-risk offenders. It is ironic for a society whose leaders talk endlessly of family values to categorically deny the safe harbor of a parent to some of its most needy children.

Other  
Sources

Patricia M. Wald, “*What About the Kids?*”: *Parenting Issues in Sentencing*, 8 Fed. Sent. 137, 139 (Nov./Dec. 1995). While the Sentencing Guidelines no longer limit courts from considering an individual’s status as a parent of a young child, Judge Wald’s observation remains as compelling as it was in 1995.

Ms. Wilson’s daughter will still be able to live in the same home and will benefit from the continued care of her father and grandmother. Nonetheless, any prison sentence, and especially a sentence in accord with the range calculated in the draft presentence report will surely have a detrimental effect on the child. Researchers concede that they still “do not know very much about the complex ways in which children behave when a parent is incarcerated.” Creasey Hairston,

*Kinship Care When Parents Are Incarcerated: What We Know, What We Can Do* 11 (2009).<sup>1</sup>

Children, though, do suffer consequences when a parent goes to prison:

Parental incarceration affects individual children in different ways; each as a unique response to their parents' absence. Nevertheless, several common responses have been found across numerous studies. Children's reactions to parental incarceration reflect normal responses to crisis and trauma. Some children exhibit externalizing behavior such as aggression and disobedience; others internalize and are fearful or sad. Some engage in excess of crying or regressive behavior such as bed-wetting. Among younger children, emotional withdrawal, anxiety, anger and hostility toward care givers are more pronounced . . . Some responses and behaviors are short-termed and are more prevalent when a parent first leaves home. But when children do not receive the support and help they need, social and emotional problems may endure or even escalate.

Other  
Sources

*Id.* at 10.

Then, too, apart from the hardship children suffer from the incarceration of a parent, a mother's concern for her child seems to reduce the risk of recidivism:

Even though the [Sentencing] Commission found that the recidivism risk of women in lower criminal history categories does not vary dramatically from that of men, it remains lower. Existing data indicate that women's recidivism rate may be connected to their family and child care responsibilities . . . Since many of the offenders with young children also constitute lower recidivism risks in light of their offense of conviction and their prior criminal records, sentencing judges should at least be allowed to consider the impact of a prison sentence on families and minor children.

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<sup>1</sup>The paper by Ms. Hairston was prepared for the Annie E. Casey Foundation. The Foundation describes itself as "a private charitable organization dedicated to helping build better futures for disadvantaged children in the United States." [www.aecf.org/AboutUs.aspx](http://www.aecf.org/AboutUs.aspx). Ms. Hairston's paper is available at the Foundation's webpage, specifically at: <http://www.aecf.org/KnowledgeCenter/Publications.aspx?pubguid=%7B3BA4FD1F-C884-4A88-80B6-A0F640823FC6%7D>.

Nora V. Demleitner, *Smart Public Policy: Replacing Imprisonment with Targeted Non-Prison Sentences and Collateral Sanctions*, 58 Stan. L. Rev. 338, 352 (2005).<sup>2</sup> Other Sources

*Loss Amount Fails to Reflect Culpability* Sub-Heading

Ms. Wilson did benefit from participation in both the Cleveland scheme and the Luther scheme. She estimates that she received about \$10,000 from Cleveland and that she passed an equal amount on to Ms. Doran. In the Luther case, Luther provided her with a mortgage for her home and a car loan. In connection with the mortgage, he paid \$8,000 towards the down payment and added that to the loan amount. As was apparently his approach with others, he provided money. Ms. Wilson estimates that Luther gave her roughly \$5,000 over the period of about a year.<sup>3</sup> The Luther loss amount, though, as calculated in the draft presentence report, is many times that figure at almost \$130,000. PSR ¶ 25.<sup>4</sup> The loss, alone, for the Cleveland case comes to almost \$87,000, which is still many times the benefit actually received by Ms. Wilson. PSR ¶ 19.

Had Ms. Wilson been the one that planned and orchestrated the scheme and received the \$217,000 used in the guideline calculations, her guideline range would be exactly as it stands. That is the case because, “loss under the guidelines is effectively a proxy for evaluating culpability.”

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<sup>2</sup>Given Ms. Wilson’s lack of any criminal history or arrests, she already falls in “the most empirically identifiable group of federal offenders who are the least likely to re-offend.” United States Sentencing Commission, *Recidivism and the “First Offender”* (May 2004) 17. That’s the case because, those like Ms. Wilson, who have no arrests have an even lower rate of recidivism than those individuals in Criminal History Category I who have an arrest history. *Id.* The Sentencing Commission’s report is available at: [http://www.ussc.gov/Research/Research\\_Publications/Recidivism/200405\\_Recidivism\\_First\\_Offender.pdf](http://www.ussc.gov/Research/Research_Publications/Recidivism/200405_Recidivism_First_Offender.pdf). Other Sources

<sup>3</sup>Ms. Wilson discussed the benefits she received during last week’s interview with the Assistant United States Attorney and the agents in Miami.

<sup>4</sup>This amount includes \$46,109 worth of checks cashed by Ms. Doran. PSR §25.

United States v. Watt, 707 F.Supp. 2d 149, 155 (D. Mass. 2010). “Sometimes [however, that approach] is appropriate, and sometimes it is not.” *Id.* See also, United States v. Mueffelman, 400 F.Supp. 2d 368 (D. Mass. 2005) (“issues concerning the blameworthiness of a defendant found guilty of fraud are more complex than simply measuring the amount of the loss”); United States v. Milne, 384 F.Supp. 2d 1309, 1312 (E. D. Wis. 2005) (“With their almost singular focus on loss amount, the guidelines sometimes are insufficiently sensitive to personal culpability.”). In Ms. Wilson’s case, the loss amount fails to reflect her limited role and is not a valid proxy for evaluating her culpability. Indeed, “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,” 18 U.S.C. §3553(a)(2)(A), would be frustrated by a sentence that treats Ms. Wilson as if she had planned the scheme and profited by amounts that include the profit made by Cleveland and Luther.

*Ms. Wilson’s Cooperation*

Ms. Wilson is aware of the sentence this Court imposed upon her co-defendant, Ms. Doran. The transcript of that proceeding reflects that the Court chose to limit Ms. Doran’s sentence to a period of home detention, in part, because of the assistance provided by Ms. Doran. The United States Attorney’s Office deemed Ms. Doran’s assistance as substantial, and the Court appropriately took that assistance into account. It is Ms. Wilson’s understanding that the assistance came in the form of Ms. Doran’s willingness to testify against Ms. Wilson.

While that assistance was undoubtedly of value to the Government, the defense believes that Ms. Wilson’s assistance and acknowledgment of her participation was, at least, the equal of Ms. Doran’s. Ms. Doran’s assistance was of value to the Government because of Ms. Wilson’s reluctance to admit that she knew she was aiding Mr. Cleveland in an unlawful scheme, something, to judge

by the plea colloquy, that Ms. Doran struggled with, as well. Doc. 46, pp. 14-23. From the beginning, though, Ms. Wilson admitted assisting Mr. Cleveland in cashing the checks and admitted enlisting the assistance of Ms. Doran. She spoke with IRS Special Agent Patrick Brandon, on December 15, 2010, the day after Ms. Doran spoke with him. Ms. Wilson gave Agent Brandon a detailed accounting of what occurred. Ex. 3.<sup>5</sup> On March 11, 2011, Ms. Wilson spoke with Secret Service Agent Mark Walton and IRS Special Agent Jaime Manjarres about the Luther case. Ex. 4.<sup>6</sup> Last week, she met with those same agents and Assistant United States Attorney Michael Berger for a further debriefing in the Miami office of the United States Attorney. To Ms. Wilson's knowledge, Ms. Doran has not met with the agents regarding the Luther investigation. Doc.

*Conclusion*

Sub-  
Heading

The defense contends that the guideline range should be substantially less than the range that appears in the presentence report. Regardless of the Court's final decision, though, her circumstances justify a sentence substantially below even the 15-21 months calculated by the defense. Her role as a parent and the hardship that her daughter will suffer is a valid consideration, especially given Ms. Wilson's lack of any criminal history and what is, objectively, her reduced risk of committing another criminal offense. The overstatement of her culpability that results from relying upon the loss that she had no participation in is an equally compelling reason, as is her

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<sup>5</sup>Exhibit 3 is the December 15, 2010, Memorandum of Interview prepared by Internal Revenue Service Special Agent Patrick Brandon. The Government provided the document to the defense as part of the discovery. The hand-written notes and underlining are the efforts of the undersigned.

<sup>6</sup>Exhibit 4 is the March 11, 2011, Memorandum of Interview prepared by Internal Revenue Service Special Agent Jaimie Manjarres. The Government provided the document to the defense as part of the discovery.

acknowledgment from the beginning of her role in the offense and her efforts at providing the Government with information about the offense. For all these, reasons Mr. Wilson requests that this Court impose a sentence below the advisory 15-21 month guideline range.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing has been forwarded by hand delivery to Assistant United States Attorney, Winifred Nesmith, 111 N. Adams Street, Tallahassee, this 12th day of December, 2012.

Respectfully submitted,

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