

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA

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V.

CAUSE NO. SA-17-CR-381 DAE

STANLEY P. BATES

DEFENDANT’S SENTENCING MEMORANDUM

TO THE HONORABLE DAVID EZRA, SENIOR UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TEXAS:

Stanley P. Bates asks this Court to take into consideration his extraordinary military service, acceptance of responsibility and cooperation, and his pretrial rehabilitation when deciding upon “a sentence [that is] sufficient, but not greater than necessary.” 18 U.S.C. § 3553(a). He also asks that the Court consider his continuing legal objections to the “abuse of trust” enhancement, “leader/organizer” enhancement, and the “obstruction of justice” enhancement. Based on any or all of the foregoing legal and factual grounds, he asks for a sentence below the advisory Guidelines range.

I.

Unlike his codefendants, Mr. Bates did not stand before this Court contesting his guilt or maligning his codefendant’s character. Instead, he pleaded guilty. He offered the Government his assistance. Now, he seeks to tell his story.

A. Mr. Bates’s Story

At the age of 16, Mr. Bates left his home, not that he had much of a home left to leave. His mother was serving a two-year sentence for theft by check. His siblings were struggling to make ends meet. During the last two years of high school, Mr. Bates worked three jobs and lived in a

trailer by himself. Upon graduation, he immediately enlisted in the United States Marine Corps. While serving in the Marine Corps, Mr. Bates was awarded numerous awards and recognitions. One of those medals includes the Navy Marine Corps Medal, which is the highest non-combat decoration. *See* Exhibit 1 (Awards and Recognitions); *see also* letters of support separately submitted to the Court. He was also awarded the following medals and decorations: Navy and Marine Corps Achievement Medal (twice); Marine Corps Recruiting Ribbon; Good Conduct Medal (twice); Sea Service Deployment Ribbon (twice); Armed Forces Expeditionary Medal; Navy Unit Commendation (four time); Humanitarian Services Medal (twice); Certificate of Commendation (five times); Meritorious Mast (eight times); Navy and Marine Corps Overseas Service Ribbon; Letter of Appreciation (five times); and the Marine Corps Expeditionary Medal. *See* Exhibit 1 and Presentence Investigation Report (PSR), para. 104. Mr. Bates was honorably discharged in 2002.

In 2002, Mr. Bates took a job as a cars salesman in Harlingen, Texas. Through hard work, Mr. Bates worked his way up to a general manager. Eventually, he earned the position of platform manager. In 2010, Mr. Bates founded a small advertising company, B&B Advertising. Mr. Bates spent his spare time scouting oil and gas rig sites. He would take beer and a hibachi grill to drill sites to network with workers. Janice Hoppe, *FourWinds Logistics*, Energy & Mining International, www.emi-magazine.com/sections/profiles/1083-fourwinds-logistics (last visited Jul. 31, 2018). Mr. Bates was studying an industry he hoped to break into. Through research and networking, he identified problems that the blue collar men faced at these drill sites. He then thought of solutions to fix some of these problems. This is how he came up with the idea of launching a sand fracking company. *Id.*

The company he ended up creating was an ambitious one. FourWinds Logistics (hereinafter “FourWinds”) was created because Mr. Bates saw that frac sand was in high demand but very low supply due to the logistical challenges that surrounded its extremely long distance transport. *Id.* What this resulted in was a product that had a very high potential for profit, and a new market niche that few had identified yet.

In 2012, when FourWinds was started, Mr. Bates invested his own money. Initially, Mr. Bates used his earnings from B&B Advertising to pay for all costs associated with FourWinds, such as, salaries, health insurance, and business expenses. *See e.g.* Exhibit 2. He hired friends, former business associates, and former Marines. He had experience as a car salesman, general manager, and platform manager. He drew on these experiences to generate excitement and interest in his new business venture. Once Mr. Bates had the company up and running, it became clear that in order to expand into the sand fracking industry, he was going to need more liquid capital. He secured lines of credit and began seeking investors. *Id.* Mr. Bates used his research, networking, and observations to introduce a new concept to the sand fracking industry—bringing the “mail tracking” idea from USPS and applying it to his business so that drilling companies could track their frac sands. This could have been the beginning of a story of hard work and success, an outsider bootstrapping himself into a highly closed-off industry, but it instead became a fiasco. It became a fiasco due to bad market timing, bad advice, and bad choices.

Bad Market Timing. Frac sand, which at the time of FourWinds’s founding was a commodity that was in high demand throughout the country for its use in fracking, collapsed in value. *See e.g.* Zoe Biller, *The Future of the Frac Sand Market*, MARKET RESEARCH BLOG (Dec. 1, 2016), <https://blog.marketresearch.com/the-future-of-the-frac-sand-market> (last accessed Jul. 31, 2018); *see also* Joe Taschler, *Oil price war catches state’s frac sand mines in the crossfire*,

JOURNAL SENTINEL Interactive (Jan. 17, 2015), <http://archive.jsonline.com/business/oil-price-war-catches-states-frac-sand-mines-in-the-crossfire-b99426314z1-288923781.html/> (last accessed Jul. 31, 2018). A global drop in oil prices meant the entire niche that FourWinds was founded to fill, closed up nearly overnight. Previously it had been predicted that frac sand prices would continue to skyrocket by almost ninety percent. Instead, the price plummeted. FourWinds was left holding the bag of a commodity crash. All of FourWinds's investment in infrastructure for the transport of frac sand (along with contracts with eight mining and warehouse companies and three bare companies) became suddenly worthless.

Bad Advice. Before the market had crashed, Mr. Bates had employed Carlos Uresti as his personal attorney and corporate attorney.¹ Mr. Bates told Mr. Uresti about his vision for the company and his need for a fresh infusion of capital to take advantage of a new opportunity in frac sand. Mr. Uresti offered to procure investors for Mr. Bates, as long as he was paid a percentage of each investment. At that time, Mr. Bates was not aware of Mr. Uresti's fraudulent behavior towards his client, Denise Cantu. Mr. Bates did not know that Mr. Uresti was alleged to have bribed judges or engaged in other public corruption. Mr. Bates, having invested all of his money into FourWinds was seeking advice and support in order to make his business venture a success. Up until this point, Mr. Bates was not living a lavish lifestyle. He was not using cocaine. Instead, he was traveling to job sites, negotiating sales, and putting in long hours to make FourWinds a success. Mr. Bates recognized that he needed help. He is not an attorney. He has no experience being a Chief Financial Officer. Indeed, of his codefendants, Mr. Bates has the least experience and knowledge about operating a business of this sort. Of his codefendants, Mr. Bates has the least formal education.

¹ During the midst of Mr. Uresti serving as Mr. Bates's corporate counsel, Mr. Bates hired Mr. Uresti to help him with a child support issue.

He knew this, and this is ultimately why he employed Mr. Uresti. In turn, Mr. Uresti and Nico LaHood strongly insisted that Mr. Bates employ Mr. Cain.

Before the market crashed, Mr. Uresti advised Mr. Bates that in order to make it through the tough times they just needed more investors. As Mr. Uresti continued to take cuts of each investment, he brought more money to the failing business and convinced Mr. Bates to do the same. As noted by several witnesses, in hindsight, Mr. Uresti's advice to Mr. Bates as FourWinds's corporate counsel was self-serving. During this time period, Mr. Uresti served as Mr. Bates's child support attorney, Ms. Cantu's personal attorney, corporate counsel for FourWinds, escrow attorney for the IOLTA accounts and other accounts, and broker for the joint venture agreements. These various roles directly conflicted with each other. Mr. Uresti's actions in this case reflect that conflict. Mr. Uresti ensured that he would continue to get commissions and fees regardless of what happened to FourWinds. Ultimately, Mr. Uresti told Mr. Bates that in order to keep the business alive, Mr. Bates would have to take extraordinary steps—illegal steps. Had Mr. Bates testified, he would have informed the Court that Mr. Uresti, FourWinds's corporate counsel at the time, advised him to alter the bank records. Mr. Bates does not blame Mr. Uresti for his actions. He recognizes that he was the one that ultimately made bad choices. He only asks that the Court understand that his business plan was not a Ponzi scheme before 2014. It was never designed by Mr. Bates to be a Ponzi scheme. It was a business plan that failed because of bad market timing, bad advice, and bad choices.

Bad Choices. What happened ultimately comes down to Mr. Bates himself. Mr. Bates got caught up in a lifestyle that he thought he needed to have in order to bring investors to the table. While Mr. Bates has a considerable amount of experience being a salesman, managing stable businesses, and even starting up small businesses, at the time he started FourWinds he had no

experience operating a business in the oil and gas industry. None of his many medals, awards, or distinguished service recognitions prepared him for the operation of a multimillion-dollar oil and gas business. He did not have experience managing the amount of money that ended up in the accounts of FourWinds. The twelve pack of beer he used to bring to drill sites to network with blue collar workers became a highball glass of whiskey he brought to office rooms for business meetings with white-collar administrators. He started to use cocaine. He started to network in places like strip clubs. It is unsavory and he regrets it. He recognizes now, in hindsight, that it escalated until it was completely out of control. Mr. Bates became desperate. He started misusing his persuasion skills and business sense. With the curtain closing on FourWinds due to the market downturn, and with outstanding contracts and lines of credit still hanging over him, the lavish lifestyle he had adopted in order to impress potential investors became a massive liability.

He then made the choices that brings him before the court. Mr. Bates acknowledges that he made very bad choices. It was a confluence of events that in no way excuses him or reduces his responsibility. Mr. Bates is remorseful for his actions and the damage he caused others.

As noted by the numerous letters of support separately submitted to the Court, Mr. Bates is hardworking. Mr. Bates has the ability to earn the money needed to pay back the victims of this crime. Unlike his codefendants, Mr. Bates pleaded guilty to the crime and acknowledged his guilt. Unlike his codefendants, Mr. Bates ultimately cooperated fully with the Government and offered his help. Mr. Bates was ready and willing to cooperate with the Government pre-indictment. He wanted to cooperate and help the Government at the time his prior attorney, Karl Basile, represented him. Only after current counsel was appointed was Mr. Bates able to cooperate with the Government, which is what he wanted to do from the start. Mr. Bates was ready and willing to be called to the stand to testify against his codefendants at their trial. Mr. Bates has not obstructed

the investigation or prosecution of this case. Instead, he attempted, from the start, to help the Government. By doing so, he saved the Government resources and shortened the length of the trial.

While on pretrial release, Mr. Bates has complied with all of his conditions of pretrial release. He is now sober, and has been for three years. He has consistently found work even though it has been difficult. One of his jobs involved providing disaster relief in Houston after the hurricane. Mr. Bates would like the opportunity to work and repay his victims, and he cannot repay his victims while behind bars. Mr. Bates asks this Court to take into consideration not only the offense conduct and his personal history and characteristics, but also his desire to work and pay back the victims.

II.

B. Continuing Objections and Factors for Variance.

Mr. Bates submitted a detailed list of objections to the Probation Officer, the Government, and the Court. Based on the revisions to his PSR, he maintains his objections to the “leader/organizer” enhancement and the “obstruction of justice” enhancement. He also objects to the “abuse of trust” enhancement, which was added to the PSR at the time the PSR was revised. He maintains that his total sentencing range should be no more than 51 to 63 in light of his legal objections. Alternatively, he asks the Court to consider his legal objections as grounds for a variance pursuant to 18 U.S.C. § 3553(a).

Mr. Bates was not a leader/organizer. The federal illegal conduct in this case amounts to e-mails he and Mr. Uresti sent to investors containing altered bank records. Mr. Uresti advised Mr. Bates to make those alterations. The Government’s evidence shows Mr. Uresti being at FourWinds at the time these altered documents were created and the Government’s evidence

shows Mr. Uresti sent the e-mails containing those altered documents to Ms. Cantu shortly thereafter. Furthermore, the PSR as well as trial testimony make clear that around the time these events took place, Mr. Uresti was receiving fees and commissions on the investments and he was in the process of losing Ms. Cantu as a client. His advice to Mr. Bates regarding the creation of fraudulent documents was self-serving. To the extent that this Court is inclined to give Mr. Bates a “leader/organizer” enhancement, he asks that the Court consider adding two-levels to his total offense level instead of the four levels recommended in the PSR.

Mr. Bates did not obstruct the investigation or prosecution of this case. To the contrary, he has offered to help the Government from the start. As noted above, Mr. Bates pleaded guilty in a timely fashion and stood ready to testify against his codefendants. Mr. Bates’ statement to Ms. Jacobs was not to hinder any proceeding. Indeed, it did not. Even assuming Mr. Bates advised Ms. Jacobs to testify carefully about the employment contract that Mr. Cain took when Mr. Bates fired him, his statement to Ms. Jacobs has no bearing on the fraudulent conduct that is the foundation of this case. Mr. Bates has acknowledged from the start that his alteration of bank records was fraudulent and wrong.

Mr. Bates objects to the belated inclusion of the “abuse of trust” enhancement. At the time of the PSR’s creation, Probation did not believe the “abuse of trust” enhancement applied. It appears from the Addendum to the Presentence Report that the Government advised Probation that it believed the “abuse of trust” enhancement applies. However, defense counsel was not given a copy of the Government’s objections, nor was it aware that the Government was taking such a position. Mr. Bates objects to the application of the “abuse of trust” enhancement because it does not apply based on the evidence in this case. He did not abuse a position of trust or use a specialized skill. His offense conduct involved misleading investors with a fraudulent bank record. This

conduct is accounted for in his offense level. He did not have a specialized skill that facilitated his misrepresentation. His conduct does not fit within any of the examples provided in USSG § 3B1.3.

Finally, Mr. Bates ask this Court to take into consideration the sentencing disparity these enhancements create in this case. As a result of these enhancements, Mr. Bates's Guidelines are higher than or comparable to, Mr. Uresti's and Mr. Cain's advisory Guidelines. This is so even though Mr. Bates is the only codefendant to have pleaded guilty and cooperated with the Government.

III.

Mr. Bates asks the Court to consider a sentence below the advisory Guidelines range based on his extraordinary military service, acceptance of responsibility and cooperation, and his rehabilitation while on pretrial release. Additionally and/or alternatively, he asks this Court to take into consideration his continuing legal objections as grounds for a variance in light of 18 U.S.C. § 3553(a).

Respectfully submitted.

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of August, 2018, I electronically filed the foregoing Defendant's Sentencing Memorandum with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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