

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

UNITED STATES OF AMERICA, ) DOCKET NO. 3:15-cr-87-1  
 )  
 vs. )  
 )  
 MICHAEL F. EGAN, III, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

TRANSCRIPT OF SENTENCING HEARING  
BEFORE THE HONORABLE ROBERT J. CONRAD, JR  
UNITED STATES DISTRICT COURT JUDGE  
DECEMBER 8, 2015

APPEARANCES:

On Behalf of the Government:

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Official Court Reporter  
United States District Court  
Charlotte, North Carolina

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P R O C E E D I N G S

TUESDAY, DECEMBER 8, 2015:

(Court called to order at 2:04 p.m.)

THE COURT: Good afternoon, everyone.

MR. ZOLOT: Good afternoon.

MR. FOSTER: Good afternoon.

THE COURT: We're here in the matter of United States v Michael Egan for sentencing.

Are the parties ready to proceed?

MR. FOSTER: Yes, Your Honor.

MR. ZOLOT: Yes, Your Honor.

THE COURT: Mr. Egan pled guilty before a magistrate judge on April 23rd at a hearing in which he answered questions under oath, and based upon his answers the magistrate judge found that his plea was knowingly and voluntarily made. There were no objections to this finding and the court will adopt it here today.

Do the parties stipulate that there is a factual basis to support the entry of a plea of guilty, and that the court may rely upon the offense conduct set forth in the presentence report to establish that factual basis?

MR. FOSTER: Yes, Your Honor.

MR. ZOLOT: Yes, Your Honor.

THE COURT: Based upon that stipulation, the court finds that there is a factual basis to support the entry of

1 the plea of guilty.

2 Mr. Egan, if you would please stand. I have a few  
3 questions to ask you about the presentence report which was --  
4 the final report was issued December 3rd. It doesn't appear  
5 to have any changes with respect to the guidelines from the --  
6 the revised final report was December 3rd. The final report  
7 was filed on August 25th.

8 I don't think, Mr. Foster, there's any difference  
9 with respect to the guideline computation.

10 MR. FOSTER: That's correct, Your Honor. I agree.

11 THE COURT: Mr. Egan, have you had a chance to  
12 review the presentence reports in this case?

13 THE DEFENDANT: I have, Your Honor.

14 THE COURT: Do you believe you understand them?

15 THE DEFENDANT: Yes, sir. Yes, Your Honor.

16 THE COURT: Have you had enough time to go over the  
17 presentence report with your attorney?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: All right. You may sit down at this  
20 time.

21 Mr. Foster, I don't believe there were any  
22 objections to the presentence report.

23 MR. FOSTER: That's correct, Your Honor.

24 THE COURT: So for purposes of consulting the  
25 advisory guidelines, before any consideration of variance or

1 departure, it appears that the correct offense level is a 17,  
2 a criminal history category I, with an advisory guideline  
3 range of 24 to 30 months.

4 Do the parties agree those are the correct  
5 guidelines to consider?

6 MR. FOSTER: Yes, Your Honor.

7 MR. ZOLOT: Yes, Your Honor.

8 THE COURT: Be glad to hear from you, Mr. Foster, on  
9 behalf of Mr. Egan at this time.

10 MR. FOSTER: First, Your Honor, I would like to put  
11 on the record my objection to the court's consideration of  
12 some matters submitted by third parties.

13 I was just notified this morning that the court was  
14 looking at these materials from two people, a massive tome of  
15 documents submitted by Garth Ancier and a letter from a person  
16 named Greg Snider.

17 My objections are several. First, nothing we  
18 submitted on the defense side named either one of these  
19 individuals. They're not --

20 THE COURT: There is a statement submitted by your  
21 client, which I believe does reference the information  
22 contained in the disputed materials. I think in terms of the  
23 presentence report, I think there is some reference by your  
24 client. On page 9 of the presentence report there does appear  
25 to be a reference to Mr. Ancier by your client.

1           MR. FOSTER: Well, I guess what I really meant was,  
2 nothing we submitted in the massive amount of stuff that I  
3 submitted to the court refers to him or to this other person,  
4 Greg Snider, neither clearly qualifies as a victim in the  
5 case. None of this documentation is being offered by the  
6 government. It has not been vetted or produced by probation.  
7 It's not in the presentence report. So I submit it's  
8 irrelevant and it's unfair for the court to consider this  
9 under the circumstances just being notified this morning of  
10 all these materials that were being considered by the court.

11           THE COURT: What do you do with 18, United States  
12 Code, Section 3661 which says, No limitation should be put on  
13 the type of material the court may receive or consider in  
14 terms of sentencing?

15           MR. FOSTER: Well, Your Honor, I think there's still  
16 an issue as to fairness and due process that, you know,  
17 someone who is not a party to the case, and neither party's  
18 offering the documentation, sort of short circuits the process  
19 and goes directly to the court to submit something to serve  
20 their own purposes. It seems to open the door to just about  
21 anybody submitting anything to the court.

22           THE COURT: In terms of the due process argument, I  
23 had understood the call from my chambers to you today was a  
24 belt and suspenders type of thing. I had understood that you  
25 had been made privy to this material prior to today's hearing.

1           MR. FOSTER: Yes, Your Honor. But I asked that if  
2 the court was going to consider. That I be notified so I  
3 could deal with it. And I had heard nothing since  
4 November 2nd or 3rd until this morning. So that's what I'm  
5 referring to.

6           THE COURT: All right.

7           MR. FOSTER: So those are my objections, Your Honor.

8           THE COURT: Does the government intend to rely upon  
9 that material in any way?

10          MR. ZOLOT: No, Your Honor. To be candid with the  
11 court, I see it as potentially relevant in the 3553(a) factors  
12 for Mr. Egan, but we are not relying on that information.

13                 The reason we're not relying on it, Your Honor, is  
14 because this is a product of a really contentious litigation  
15 between parties that are both interested. And to be honest,  
16 Your Honor, there are a lot of allegations back and forth in  
17 that litigation and I could not -- the government could not  
18 come to the truth of any of it.

19                 So the reason why we did not submit it on our own or  
20 rely on it in any way is because, you know, there's a lot of  
21 interested parties and we can't make heads or tails of any of  
22 the truth of the allegations that are swirling around it.

23           THE COURT: In light of that position, Mr. Foster,  
24 the court has received the information and understood that you  
25 had made -- been made privy to it, and out of an abundance of

1 caution allowed you to review what the court had received.

2           It appears to the court that the government is not  
3 relying upon it in any way, and you have the court's  
4 commitment that the court will not rely upon it in any way in  
5 determining a 3553(a) factor.

6           MR. FOSTER: All right. Thank you, Your Honor.

7           So, Your Honor, the --

8           THE COURT: I will, though, make it a sealed part of  
9 the court record having received it. I don't know what else  
10 to do with it other than to do that.

11           MR. FOSTER: All right. Your Honor the -- I  
12 apologize for having submitted such massive materials to the  
13 court, but I received all of these items. I've actually  
14 screened out and not produced everything. But the massive  
15 nature of this stuff, I think, speaks to the truth of the  
16 matter about my client's recovery and what he suffered through  
17 and what he's done about it.

18           And of course we're not contending that this gives  
19 him some excuse for having committed the crime. He's not  
20 contending that. It doesn't justify what he did. He doesn't  
21 believe that either.

22           However, I think this also goes very much to the  
23 3553(a) factors about what is the appropriate sentence under  
24 the circumstances.

25           I mean, obviously I know the court has to deal with



1 general and specific deterrence. It also has to make sure  
2 that the public is protected from further crimes, and that the  
3 sentence reflects the seriousness of the offense.

4           However, 3553(a) also mentions providing the  
5 defendant with needed educational or vocational training,  
6 medical care, or other correctional treatment in the most  
7 effective manner, and to consider the kinds of sentencing  
8 available.

9           As the court knows, I'm asking the court to -- a  
10 downward variance below the low end of the guideline range,  
11 which is 24 months. In the plea agreement the government  
12 recommended -- or agreed to recommend the low end of that  
13 guideline range, which is 24 months. The parties also agreed  
14 that the parties could seek a variance, which is what I've  
15 done.

16           As the court knows, what I'm seeking is something  
17 below 24 months and asking the court to consider fashioning a  
18 sentence, that while punishes my client and teaches him a  
19 lesson, also doesn't damage his recovery which society has an  
20 interest in as well. It's not just him avoiding the negative  
21 consequences of incarceration, it's making it more likely that  
22 he will be a productive, functioning citizen who will not,  
23 sort of, fall off the recovery wagon and do anything like this  
24 in the future.

25           I think in the letters and the psychiatric

1 examination I submitted from Dr. Goldstein and also his  
2 psychotherapist Annise Prewitt also speak to this. They spent  
3 considerable time with my client, and know where he's coming  
4 from; what he's been through; and the great strides he's made  
5 since then.

6           As the court knows, since he -- I mean, many people  
7 in their letters have attested to this fact that, you know,  
8 when he left Charlotte and drove back to Las Vegas in July of  
9 2012, a sort of cold turkey stopping of consuming substances,  
10 and got into AA and got into treatment, and by all measures  
11 he's done everything right since. He's not fallen off the  
12 wagon.

13           Once this case got into the court system, he's been  
14 tested numerous times, never failed a test, never missed a  
15 test. As the court knows, his pretrial release officer out in  
16 Las Vegas termed him a model -- a model person on pretrial  
17 release.

18           So that shows that my client is someone who is not a  
19 risk of reoffending. He's someone who can and will comply  
20 with the court's orders, and who is currently on a very  
21 reconstructive path of getting to the point where he can fully  
22 recover from what he suffered in the long past, as well as the  
23 alcoholism which became extreme, in which it was something  
24 that he was experiencing during the time the offenses in this  
25 case were committed.

1           I know one of the witness statements in this case  
2 indicated that at one point in New York they saw that my  
3 client was stealing bottles of alcohol out of the business  
4 liquor cabinet, or whatever, and was passed out drunk. This  
5 was something that was ongoing and a constant contributor to  
6 what happened in this case.

7           And again, Mr. Egan fully accepts that he has to be  
8 punished, and bears responsibility for this, and we'll hear  
9 from him later on that. But I think the issue here is to find  
10 a sentence that doesn't destroy him or set his recovery so far  
11 back and contribute to him taking some steps backward.

12           THE COURT: It's a difficult argument to make in  
13 some respects, despite the almost \$300,000 in fraud, due to  
14 fraudulent statements, multiple victims, over a long period of  
15 time, prison would throw Mr. Egan off track in a way that  
16 would be harmful, but yet there is no risk of reoffending.  
17 And so it seems to me that in making the first argument, it's  
18 hard to make that second argument.

19           If prison -- if an otherwise suitable prison  
20 sentence is bad in this case because Mr. Egan is so fragile,  
21 but yet he doesn't -- he's not a risk of reoffending it seems  
22 to me that the first argument negates the second one.

23           MR. FOSTER: Well, Your Honor, I'm not saying he's  
24 no risk. I'm saying he's a very low risk. And I'm saying --  
25 I think if I said that I misspoke. I think what I meant to

1 say is that incarceration would set his recovery back. And to  
2 that extent I don't know what effect that would have on his  
3 risk of reoffending. I mean, that's beyond my expertise but,  
4 you know --

5 THE COURT: Well, it seems that you're making the  
6 link between the alcoholism and the addiction and the conduct.  
7 And you're saying that the sobriety is a fragile thing. Then  
8 the risk of that conduct recurring seems to be greater in this  
9 case.

10 MR. FOSTER: Actually, I wasn't referring so much to  
11 sobriety as I was his post-traumatic stress disorder recovery  
12 with Annise Prewitt. That's what I was talking about would be  
13 disrupted by the incarceration.

14 I think he's got such a strong track record of the  
15 last three and a half years of being sober, I don't think  
16 there's much concern about incarceration causing him to come  
17 out and begin consuming substances again. It's really more  
18 about steady progress on his psychotherapy, as I think noted  
19 by both Annise Prewitt and Dr. Goldstein.

20 As the court knows, my client is 33 years old. He  
21 has no criminal record. He's never been convicted of  
22 anything. And I won't belabor what we've documented pretty  
23 heavily about what he suffered through in his teen years.

24 THE COURT: I'm convinced you've made a strong case  
25 for a traumatic teenage period of time that has resulted in

1 the diagnosis that Dr. Goldstein has rendered.

2 MR. FOSTER: Thank you, Your Honor.

3 And I think, Your Honor, just to summarize a lot of  
4 these letters, I think several points come out of this. My  
5 client's number one is, his own personal dedication to  
6 recovery. Secondly, his own -- the role he's played in  
7 assisting and mentoring others in their recovery from similar  
8 things; not just the alcoholism, but running into people who  
9 in that context of recovery from alcoholism, also disclosed  
10 that they too were sexually abused at some point in their  
11 lives, and helping them feel that it's okay to disclose that  
12 and come to terms with that.

13 He does have a great support system with him in Las  
14 Vegas. His mother Bonnie Mound who is here today. His fiance  
15 Jennifer Mangelsen who is here today in the back row there --  
16 not the back row but the second row. As well as -- if you  
17 could just raise your hand. Stacey Wells who is Jennifer's  
18 best friend. And the three of them -- the two of them and my  
19 client grew up together in Nebraska from childhood forward.  
20 Jim Turner, if you could raise your hand, wrote a letter to  
21 the court. Tom Bowls wrote a letter to the court. Pastor Bo  
22 Brink who wrote a letter to the court. Fred Ryan who wrote a  
23 letter to the court. And Allene Bianchi who wrote a letter to  
24 the court.

25 So almost all these people are in Las Vegas.

1 Certainly his fiance, his mother, Mr. Turner and the pastor  
2 are all, as well as Ms. Bianchi, all in Las Vegas. He has a  
3 very strong web of support to ensure that if there was ever a  
4 moment when he stumbled, there's people there to catch him and  
5 help him back on course again.

6           There's also another letter from a psychologist,  
7 Michael Gillum, who is with the Let Go Let Peace Come  
8 Foundation, whose experience in dealing with adult victims of  
9 childhood sex abuse, also concurring with his opinion that the  
10 effect of incarceration would have a negative effect on his  
11 recovery.

12           Peter Harland, an attorney from Nebraska, has known  
13 him since childhood who recites he has personal expression of  
14 remorse for what he did in this case.

15           The letters from Jan and Patrick -- I'm sorry, Jan  
16 and Fred Ryan about their son who suffered the unfortunate  
17 demise, having essentially a stroke that's left him disabled,  
18 essentially, due to a cold turkey alcohol stop associated  
19 apparently with resorting to alcohol after the abuse he  
20 suffered through.

21           And particularly the point of all that is, the role  
22 my client has played in supporting Mark Ryan after that  
23 happened to him, and really going out of his way to give him  
24 support and help him, knowing what he suffered through and  
25 helping in his rehabilitation.

1           THE COURT: A lot of that came through on the DVD  
2 that you submitted to the court.

3           MR. FOSTER: Right.

4           THE COURT: That was reviewed and I will take that  
5 into consideration.

6           MR. FOSTER: Thank you, Your Honor.

7           So, Your Honor, I'm going to -- there's three people  
8 here who I'm going to have speak very briefly. But just to  
9 conclude, I think, I don't need to speak very long today  
10 because I've provided the court with so much in writing. But  
11 I think, you know, these days there's more recognition that  
12 incarceration is not always the right answer, the right  
13 punishment, and that our country may tend to overuse that.  
14 And I think this case might be an example, where based on the  
15 circumstances of my client, you know, that there's some other  
16 form of restraint and punishment that can be found by the  
17 court that provides the law enforcement-deterrence-punishment  
18 aspect, and still enable my client to continue to recover from  
19 the things that he's suffered from in the past. So that's  
20 what we're asking the court to consider.

21           And I have three people who would briefly like to  
22 speak, Your Honor. The first of those is Mr. Jim Turner.

23           THE COURT: Good afternoon.

24           MR. TURNER: Good afternoon, Your Honor. My name is  
25 James Turner. I reside in Las Vegas, Nevada. I'm very

1 privileged to know Michael Egan, and I've known him since June  
2 28, 2012. Please allow me to illustrate the relation I have  
3 with Michael. I am his sponsor in Alcoholics Anonymous. I  
4 met Michael on his second meeting of Alcoholics Anonymous in  
5 Las Vegas, Nevada. What I observed three and a half years ago  
6 was a young man full of despair, hopelessness, fear, anxiety,  
7 and very much of a lost soul. I knew shortly after talking  
8 with him he was a broken down young man.

9           Mike called me every morning and attended our noon  
10 men's stag meeting on a daily basis. Mike had a strong desire  
11 to stay sober. He came to meetings armed with a notebook and  
12 a pencil. It appeared to me he had a sponge for knowledge.  
13 Shortly after meeting him he asked me if I would sponsor him.  
14 Michael and I have developed an incredible relationship, and  
15 have a common bond of alcoholism and desire to stay sober one  
16 day at a time.

17           I would like to speak about Mike's involvement at  
18 the treatment center where I am employed. Mike attends the  
19 speaker panel meetings. Mike's currently sponsoring a few men  
20 from the treatment center who are living in halfway houses.

21           Mike's message instills hope in the new guys. He  
22 carries an incredible message. Mike makes himself available  
23 not only to help me, but he is always there to extend his hand  
24 to the new guys.

25           Michael has nearly three and a half years of



1 sobriety, and I am extremely proud of this young man from  
2 where he has come and from where he is today.

3 Michael has dreams and aspirations of attending  
4 college and studying to be a trauma therapist, or employed in  
5 the recovery field.

6 Michael is very remorseful for his behavior during  
7 the heat of his addiction, and has a genuine desire to make  
8 his wrongs right. This young man has lived two lives in one  
9 lifetime. I am only one of many who have witnessed the  
10 beautiful transformation. I may be Mike's sponsor, but he is  
11 my hero. And I hope that you will see Mike as the man he is  
12 today, and allow him to continue his journey on this amazing  
13 path back to a life he very much deserves.

14 MR. FOSTER: Thank you.

15 THE COURT: Mr. Turner, how long have you been  
16 involved in the AA program?

17 MR. TURNER: I just celebrated five years clean and  
18 sober, November 30.

19 THE COURT: And how many folks like Mr. Egan have  
20 you sponsored?

21 MR. TURNER: I sponsor six guys.

22 THE COURT: Six?

23 MR. TURNER: Six guys.

24 THE COURT: Well, thank you for all that you do.

25 MR. TURNER: Thank you, sir.

1 MR. FOSTER: Pastor Paul Brink.

2 PASTOR BRINK: Your Honor, I met Michael Egan about  
3 three and a half years ago. His Aunt Candace was attending  
4 our church. And when Michael arrived in Las Vegas, it was  
5 natural that his aunt would invite Michael to join her. And  
6 so I met Michael at our church, and we became friends. We  
7 started going out for coffee at least once a week to talk. I  
8 wanted to be an encouragement to him. And in those  
9 conversations we talked a lot about what I call the "tortured  
10 years" in California when he was sexually abused by  
11 pedophiles. And then we also talked about what I call his  
12 "lost years" in North Carolina when he was so addicted to  
13 alcohol. And then mostly we have been talking about what I  
14 call his "recovery years" since he arrived in Las Vegas, and  
15 the new life that he's beginning to -- or that he's continuing  
16 to grow into as he's there. And so my goal as Michael's  
17 friend and pastor has been to help him draw on God's power and  
18 love and forgiveness as key ingredients in the process of his  
19 healing.

20 In conclusion -- I'm sorry. I should also just  
21 mention that I'm thankful that he's very active in our church.  
22 He doesn't just worship regularly. He also forms part of the  
23 team that -- it's called -- he goes down to Las Vegas Rescue  
24 Mission to serve the homeless. He also has made a video,  
25 especially for our congregation so that the members and

1 friends of our congregation can be encouraged by the  
2 recuperation that he has experienced and is experiencing. And  
3 he's also going to be involved in a drama this coming Sunday.  
4 So we're -- I'm just very thankful for what's happening in his  
5 life.

6 And in conclusion, I just wanted to say that I'm  
7 proud of his strong dedication to making restitution to those  
8 who were financially injured in this -- in the North Carolina  
9 situation.

10 And I'm excited about his ongoing recovery from  
11 sexual abuse and his ongoing rehabilitation from alcohol  
12 abuse.

13 And finally I'm very thankful for the ways that the  
14 Lord is using Michael to become a blessing to the lives of  
15 others today and in the future.

16 So thank you very much.

17 THE COURT: With respect to the restitution efforts,  
18 what efforts are you aware of in that regard?

19 PASTOR BRINK: I'll just give you an example, that  
20 there may be some finances that may come into Michael's life.  
21 And he is dialoguing about the possibility of using some of  
22 those to begin the process of restitution.

23 THE COURT: Thank you.

24 PASTOR BRINK: Thank you, sir.

25 MR. FOSTER: Just for the court's information, Your

1 Honor, I believe that's my client's reference to possible  
2 legal settlements that may come out of some pending  
3 litigation.

4 Bonnie Mound.

5 MS. MOUND: Good afternoon, Your Honor.

6 THE COURT: Good afternoon.

7 MS. MOUND: My name is Bonnie Mound, and I'm the  
8 proud mother of Mike Egan. I'm proud because of the adversity  
9 he has faced, and the complete turnaround he has made over the  
10 past three and a half years. I'm very grateful he's alive  
11 because we know others who suffered the same childhood sexual  
12 abuse and are now dead.

13 Children are a special blessing from God. When you  
14 first look into their eyes, you have all these hopes and  
15 dreams for them.

16 Unfortunately my son's dreams were shattered when a  
17 group of men in a Hollywood pedophile ring tortured and  
18 sexually abused my son for a two-year period. They robbed  
19 Mike of his innocence and youth. They didn't take his life,  
20 but they took the life from within him. After I found out I  
21 contacted the police, FBI, and the Los Angeles Rape Crisis  
22 Center. Justice was not served. Matter of fact, the wealthy  
23 and powerful pedophiles had it all shoved under the rug.

24 (Holding up a picture.)

25 This is my son Mike --

1 THE COURT: I saw that on the video.

2 MS. MOUND: -- who was tortured and sexually abused  
3 and viciously raped for a two-year period.

4 Up until three and a half years ago my son numbed  
5 his pain by drinking excessively. He doesn't even recall much  
6 of his life from age 15 years until almost 30 years.

7 When I drove Mike to his first AA meeting, I sat out  
8 in the car crying for the hour he was inside. I begged God to  
9 save my precious son. Over the past three and a half years  
10 I've been very blessed. My son attends AA one to three times  
11 daily, and works with his trauma therapist each week. Mike's  
12 spirituality has reawakened and he's very active with his  
13 church family. Mike volunteers at the rescue mission and  
14 leads AA meetings. He speaks frequently at treatment centers  
15 and sponsors and co-sponsors some of the men with addiction  
16 problems.

17 I agree with the professionals in the field of  
18 psychology who stated that incarceration would destroy and  
19 dismantle the three and a half years of Mike's incredible  
20 turnaround. Mike is not a threat to the community.

21 What God provides most is forgiveness.

22 Please understand that Mike's mental and medical  
23 condition contributed to the events. If incarcerated, it's  
24 unlikely that Mike will receive the needed counseling and  
25 treatment. To take Mike away from his support structure of

1 his trauma therapist, AA support family, church family, and  
2 family and friends, would destroy what Mike has achieved.

3 The past three and a half years my son has made a  
4 difference in the community by helping others. I feel Mike  
5 has already saved lives. God has a special purpose for him.

6 I pray, Judge Conrad, that you have mercy on Mike  
7 and see all the good he's done and will continue to do.

8 Please keep him with his current support structure  
9 so that he may continue on his path of recovery and healing.

10 Thank you.

11 THE COURT: Thank you.

12 MR. FOSTER: That's all we have, Your Honor. My  
13 client would like to address the court at the appropriate  
14 time.

15 THE COURT: Mr. Egan, you don't have to say  
16 anything, but if there's anything you wish to tell me I'll be  
17 glad to hear from you.

18 THE DEFENDANT: Good afternoon, Your Honor.

19 My name is Michael Egan, and I am a survivor of  
20 childhood sexual abuse. I stand before you today as a  
21 33-year-old man, who over the last three and a half years has  
22 turned his life completely around.

23 Three and a half years ago I drank on a daily basis  
24 to cope with the pain of my childhood sexual abuse and to numb  
25 my feelings. I was a broken man, emotionally and spiritually.

1 I sincerely regret what I have done to the victims in this  
2 case. And I'm very remorseful for my actions. It is my  
3 intention to make my wrongs right, and I am hopeful that one  
4 day I'll be able to make full restitution.

5 I'm not trying to find excuses for the things I've  
6 done wrong. However, I do feel that the torture and sexual  
7 abuse I suffered as a child, affected my decision making. In  
8 addition, the severity of my alcoholism contributed to me  
9 making bad choices.

10 With the help of my trauma therapist, AA and my  
11 church, I began on a road of recovery and healing. Under the  
12 most difficult of situations, I have remained sober for three  
13 and a half years. I've been in trauma therapy two and a half  
14 years. My journey to heal is difficult, but with the grace of  
15 God I will make a difference in this world. I feel I'm here  
16 to pay it forward and feel my cooperation in the film "Open  
17 Secret," shows my genuine willingness to help others.

18 My support structure is invaluable to me. My faith,  
19 my pastors, trauma therapist, family and friends, and the  
20 close knit family I have formed in AA have made my recovery  
21 possible. With my trauma therapist, I've learned different  
22 ways to cope with the trauma I suffered as a child. I no  
23 longer drink to numb that pain.

24 Your Honor, so much of my life was stolen from me.  
25 From the age of 15 to 29 years old I didn't know how to live.

1 I lived in fear, embarrassment, and worthlessness. I'm  
2 learning how to live again today, and today I want to live.  
3 God has a plan for me and I will use my experience, strength  
4 and hope to help other survivors of childhood sexual abuse,  
5 and to help those who turn to alcohol or substance abuse.

6 I am hopeful that the people who I have harmed in  
7 this case, can find it in their hearts to forgive me. I am  
8 working on and learning that if I don't forgive those who  
9 harmed me as a child, it will prevent me from continuing my  
10 journey toward health and wholeness.

11 Your Honor, I can do a lot of good in this world.  
12 I've read a lot over the last three and a half years, and a  
13 saying that's always had a very strong impact on me is,  
14 "Whoever saves one life, saves the world entire." I want to  
15 help people today who have been where I've been, and I want to  
16 save lives.

17 I've learned the two most important days of a  
18 human's life are:

19 One, the day they're born; and

20 Two, the day they find out why and what their  
21 purpose is.

22 I walk with a purpose today, and will make my wrongs  
23 right. I am truly sorry for my behavior. And I'm asking for  
24 you and the victims in this case to please have mercy on me.

25 Thank you.



1 THE COURT: Thank you.

2 Mr. Zolot.

3 MR. ZOLOT: Thank you, Your Honor.

4 Your Honor, with the court's permission I would like  
5 call one witness for the 3553(a) factors.

6 THE COURT: You may.

7 MR. ZOLOT: Frank Muniz.

8 FRANK ROBUSTIANO MUNIZ, GOVERNMENT WITNESS, SWORN

9 DIRECT EXAMINATION

10 BY MR. ZOLOT:

11 Q. Good afternoon.

12 A. Hello.

13 Q. Could you please state your name for the record?

14 A. Frank Robustiano Muniz.

15 Q. Spell your last name, please.

16 A. M-u-n-i-z.

17 Q. And how old are you?

18 A. Fifty-four.

19 Q. Okay. And what state do you reside in?

20 A. Las Vegas, Nevada.

21 Q. And are you familiar with the Defendant Michael Egan?

22 A. Yes I am.

23 Q. How are you familiar with Mr. Egan?

24 A. He was my son-in-law.

25 Q. Okay. Could you explain that relationship?

1 A. So he met my daughter.

2 Q. Who is your daughter?

3 A. Destini Muniz, at that time.

4 Q. Okay.

5 A. That blossomed into a -- more than that, and they ended  
6 up getting married, and Michael became my son-in-law.

7 Q. And when did Mr. Egan and your daughter get married?

8 A. April of -- sorry, March of 2005.

9 Q. Okay. And when did you -- when did you start really  
10 knowing Mr. Egan?

11 A. Almost immediately. I mean, literally, my daughter went  
12 out with him, and within a week I met him.

13 Q. And when was that?

14 A. That would have been 2003.

15 Q. Okay. And when did your daughter and Mr. Egan get  
16 divorced?

17 A. I want to say it was 2012.

18 Q. Okay. And sir, before you go any further with the facts,  
19 were you subpoenaed to be here today?

20 A. Yes.

21 Q. Okay. Did you want to come today?

22 A. Definitely not.

23 Q. Okay. During the -- could you explain where Mr. Egan and  
24 your daughter lived during their time of their marriage to  
25 give the court some sort of frame of reference for what you're

1 going to testify about.

2 A. Well, I mean, they lived in Las Vegas for a period of  
3 time at a couple different homes. And then from there they  
4 moved to -- I believe it was Vail, Arizona. And then from  
5 Vail, Arizona they came back to Las Vegas for a period of  
6 time. And then in 2007 -- I want to say it was -- they moved  
7 to North Carolina.

8 Q. Okay. And did Mr. Egan ever live in your house?

9 A. Not permanently. I mean, he -- basically, he was  
10 allowed -- I mean -- when they were dating -- once they got  
11 married they -- I mean, he didn't live in our home while they  
12 were dating. When they got married there were times where  
13 they were in flux and they did stay with us, and at that point  
14 Michael had free rein of the house. I mean he was -- he was  
15 the son I never had.

16 Q. Okay. So -- and let's talk about that.

17 How do you -- how would you describe your relationship  
18 first at the time when they were married? How did you -- what  
19 was your relationship with Mr. Egan and how did you feel about  
20 Mr. Egan?

21 A. I mean, honestly, from the time I met him to the time  
22 they moved to North Carolina, my feelings hadn't changed at  
23 all. I mean, he was my best friend. I loved him. And I even  
24 said back then, more than I did my own daughter, because of  
25 the attention that I got. And we just were inseparable. I

1 mean, I just absolutely adored him and wanted to spend every  
2 waking moment with him.

3 Q. Okay. And how do you feel about him today after  
4 everything that's gone on?

5 A. I mean, I think it's almost unfair to say today. I mean,  
6 there was what happened starting in 2007, which was why I  
7 framed it to 2007, you know, because that's when Michael moved  
8 to North Carolina, and that was the first incidence of him  
9 using credit cards of mine.

10 Q. Okay. So why don't we talk about that first and we'll  
11 come back to that question.

12 A. Okay.

13 Q. Did -- did there come a time around 2007 when you found  
14 out that Michael Egan was, without permission and authority,  
15 spending your money and utilizing your accounts?

16 A. Absolutely.

17 Q. Okay. Can you, as best you can, sort of recall the  
18 progression of how this happened?

19 And without getting into all the credit cards that were  
20 used and all the various things, sort of give the court a  
21 sense of what went on.

22 A. I mean, in general it started out what seemed to be  
23 innocent -- I shouldn't say innocent, but **it started out with**  
24 **their move across the country and all the hotel stays across**  
25 **the country were put on to my -- one of my credit cards.**

1 Q. Did you approve that?

2 A. No.

3 Q. Was that your daughter doing that?

4 A. No. She didn't know anything about that, and I know that  
5 for a fact. And then it progressed, and it started getting  
6 worse. And next thing you know it wasn't just credit cards,  
7 it became banking accounts, checking accounts, savings  
8 accounts, and so forth.

9 Q. How would Mr. Egan utilize your accounts?

10 A. He would somehow be able to get my account numbers, and  
11 be able to acquire funds out of those accounts.

12 Q. Okay. And did this put you in any -- well, let me start  
13 with, in total, how much of you -- have you done a full  
14 accounting of how much you believe Mr. Egan stole from you?

15 A. Between what was done by the forensic accountants and  
16 then for myself, the -- over and above what they came up with,  
17 yeah, I have.

18 Q. What is that estimated number?

19 A. It's a little bit north of --

20 MR. FOSTER: Objection. Lack of foundation.

21 THE COURT: Overruled.

22 THE WITNESS: I'm sorry.

23 THE COURT: Go ahead.

24 THE WITNESS: It's a little bit north of \$300,000.

25 Q. Okay. And could you talk about some of the most

1 egregious incidents of his stealing that you recall?

2 For instance, let me direct your attention to a \$50,000  
3 payment that had to do with your retirement account.

4 A. So I had a corporate American Express card that was for  
5 company business use only for the company I worked for. And  
6 that card got -- you know, got a lot of money put on to it,  
7 and I was immediately notified by my company that it had  
8 occurred. Because I wasn't traveling much at the time, so my  
9 credit card had no balance. And they notified me that I was  
10 being pink slipped and put on potential termination unless I  
11 paid back that loan within 30 days -- or paid back that charge  
12 that appeared on my credit card within 30 days.

13 Q. Do you know how Mr. Egan got access to your American  
14 Express corporate card?

15 A. No idea.

16 Q. Okay. And what was the result -- what did you have to do  
17 to sort of make good on that?

18 A. The only thing I could do. I went and I pulled money out  
19 of my pension -- not pension, sorry, my retirement account,  
20 and had that moved over immediately to my -- what would have  
21 been my checking account.

22 Q. Did something happen to the movement of those funds? Did  
23 the first \$50,000 ever reach your retirement -- American  
24 Express card?

25 A. No.

1 Q. What happened to it?

2 A. It -- it was -- when it went into my bank to draft the  
3 check to send to the company to get me out of hot water,  
4 because they basically told me I would be terminated if it  
5 wasn't paid off within 30 days, and when I went to go get the  
6 money, the money was gone.

7 Q. And who do you believe took that money?

8 A. We have all the -- what do you call those -- the after  
9 bank statements and reverse sided checks, and the wire  
10 transfers, and where they were sent. So, I mean, we've got  
11 all that information. It was taken by Michael.

12 Q. Okay. And so now you're in the hole the first \$50,000,  
13 and how did you then -- what did you do then to actually pay  
14 back --

15 A. I drove down to California, went to the provider of my  
16 retirement -- after I knew that they had the check ready --  
17 and I went down, picked it up, brought it back to Vegas,  
18 converted it, and mailed the check off to my corporate office.

19 Q. Okay. So let's talk about how you knew it was Mr. Egan  
20 that stole all this money besides you seeing the wires go to  
21 him that you just testified to.

22 Did you ever -- did you ever confront Mr. Egan about  
23 this, all the theft?

24 A. Almost every time.

25 Q. And would he admit it?

1 A. He was very apologetic. You know, I'm so sorry. I'm  
2 just, you know, in a hard place, and I was desperate and, you  
3 know.

4 And every single time I would say, How can you do this to  
5 me? I'm so sorry. He goes, Just remember this all -- he  
6 goes, We're going to look back on this. He goes, We're going  
7 to laugh and be on the beach and I'm going to pay you back in  
8 full and this, you know, this will be all behind us. And it  
9 just -- I -- I -- I guess I wanted to believe him.

10 At that point it had become so invasive that I never -- I  
11 mean, this is the worst part. I never told my wife what was  
12 going on because I figured it was just going to get resolved  
13 and it would disappear and it would all be nice and clean, and  
14 it wasn't.

15 Q. What did Mr. Egan tell you that led you to believe that  
16 he was going to be able to pay you back?

17 A. I mean, over the years I knew him, I had -- I knew that  
18 he had been on the phone with various influential  
19 institutions, and I heard of dollar amounts of monies that he  
20 had coming in, or that had come in and --

21 Q. From what? Where was this money coming from, did he tell  
22 you?

23 A. The one that I -- or two, I guess, that I know of is, one  
24 was from an MGM settlement that got paid out in stock.

25 Q. And the other one?



1 A. The other one was his balance that had been locked up and  
2 he had -- could not gain any access to any of his funds with  
3 Goldman Sachs.

4 Q. Okay. Did he explain to you why he couldn't access his  
5 Goldman Sachs funds?

6 A. That there was some litigation going on, and that his  
7 funds had been frozen, and that he didn't have access to any  
8 of his money. But that when that freed up and everything was  
9 cleared, that I'd get all my money back and that, you know, it  
10 be back to normal.

11 Q. Did you ever get any of your money paid back by Mr. Egan?

12 A. Not a penny.

13 Q. Okay. Was there -- did any -- did the theft result in  
14 anything to do with the potential foreclosure on your house?

15 A. Yeah.

16 Q. Can you explain to the Judge about that.

17 A. It came down to, we were penniless. I mean, we literally  
18 reached a point where we were down to zero, and we were 68  
19 days -- it was over 60 and just before 90 days of losing the  
20 home. And, you know, that was really part of the timing when  
21 I had to tell my wife what was going on, because I needed to  
22 get more cash to be able to get us out of losing the house.

23 Q. Where did you take that cash from?

24 A. My -- at that point I was fired. I no longer had access  
25 to anything. My wife took over all the finances.

1 Q. Where did that money come from?

2 A. Out of one of her accounts. She had her accounts that  
3 were all in her name. We had completely separately accounts.

4 Q. Okay. When you -- had you told your daughter any of  
5 this?

6 A. Not a word.

7 Q. Okay. And why didn't you tell your daughter or confront  
8 her or tell your wife, either or both?

9 A. I didn't tell my wife because I really assumed in my  
10 heart that Michael was going to be good on it and it would  
11 disappear and it would be back to normal and I wouldn't have  
12 to say anything, which was a mistake in hindsight. But that  
13 was that.

14 But then I did tell my daughter after I had told my wife.  
15 And the reason I didn't tell my daughter during this entire  
16 time was because she was happy. I mean, she loved Michael. I  
17 loved Michael. You know, and it reached a point where I truly  
18 felt -- I didn't know where it stood.

19 So I was afraid that if I told my daughter and confronted  
20 her that she might -- I might be estranged from my own  
21 daughter and that she may side from Michael. And I was really  
22 afraid that I would lose a daughter and lose a son in the  
23 process, and that I'd be out both. I mean, I was just --  
24 fear.

25 Q. So when you told your wife, what year was this? Do you

1 remember the -- or at least month and year?

2 A. April 2010.

3 Q. And what happened when you revealed everything to your  
4 wife? And I don't mean between your relationship.

5 A. Yeah. Yeah. No, I'm not talking about in the  
6 relationship. It was not a pretty sight. I mean, basically I  
7 was called on the carpet for being deceitful. For not -- not  
8 trusting in our relationship. That I should have brought it  
9 all up to her. I mean, it -- all the things that I should  
10 have done with the most wonderful woman I've ever met in my  
11 life, I absolutely never should have done that to her.

12 Q. Did your wife then cause a conversation to happen between  
13 the two of you and Mr. Egan?

14 A. Oh, absolutely.

15 Q. Okay. And what was the substance of that conversation?

16 A. The basic substance was, You touch one more penny of our  
17 money -- to Mr. Egan -- If you touch one more penny of our  
18 money, it will not go unnoticed and it will -- you know, we  
19 will call you on it from here on out with any legal means  
20 possible to make sure that we're remedied.

21 Q. Did he steal money from you after that confrontation?

22 A. Oh, no.

23 Q. Okay. Now I think there -- to back up a little bit, I  
24 think -- I want to talk about a little bit about -- **did you**  
25 **become aware at some point that Mr. Egan had set up a shadow**

1 account with credit agencies in your name?

2 A. No. There was just -- there was circumstances that were  
3 incredibly -- how would you put it? I mean, for me -- when  
4 this all was going on, I kept moving my money. So, like,  
5 okay. Fine. I'll change my account. I'll open up a new BOFA  
6 account. And the next thing you know, money started  
7 disappearing from there. So I finally reached a point and  
8 said, That's it. I'm going to a completely different bank.  
9 And I opened up an account. And again, within a couple of  
10 days it was gone.

11 So there was only -- when I contacted Equifax, TransUnion  
12 and Experian, or the credit agencies, I was advised that the  
13 only way that that could possibly happen is for an account to  
14 have been made in my name with my social, and that that gave  
15 visibility to where my potential monies were.

16 Q. Okay. There's are -- I wanted to ask you -- change  
17 subjects for a second and talk about the time you spent with  
18 Mr. Egan and his use of alcohol or any controlled substances.

19 What would you say was -- during the time you knew him  
20 and spent time with him, so from '03 when he moved to North  
21 Carolina in 2007, what would you say Mr. Egan's alcohol  
22 consumption was like?

23 A. I mean, when the times we were together, very limited. I  
24 mean, I -- we -- we weren't big -- at least in my mind we  
25 weren't big drinkers. I mean, we would have a party, we would

1 have a couple of drinks. But it was never anything in excess.

2 Q. Did you see anything that led you to believe that he had  
3 an alcohol problem?

4 A. Not until much later.

5 Q. When would that time be, much later?

6 A. It would have been probably, at least that I was told  
7 from my daughter, within six months of them separating.

8 Q. So that was around 2012?

9 A. That would have been around -- yeah, 2012. June, you  
10 know, like January to June 2012.

11 Q. Okay. One last thing for you. It may take me a minute  
12 to turn on this thing. If I get this up and running I'm going  
13 to ask to you look at a document.

14 This is Government's Exhibit 1 for the record, and I'm  
15 going to zoom out.

16 I've highlighted a few things, but in general, what is  
17 Government's Exhibit 1?

18 THE COURT: Yeah.

19 MR. FOSTER: Can you turn on the monitors over here?

20 THE COURT: Yeah, it's not coming up anywhere.

21 MR. ZOLOT: It's not my fault, Your Honor. I'm  
22 sorry.

23 Mark, can you see now?

24 MR. FOSTER: Yeah.

25 Q. (By Mr. Zolot:) Can you see this document?

1 A. Yes.

2 Q. Do you recognize it?

3 A. Uh-huh. Yes.

4 Q. And what is this document?

5 A. It's my -- they call it 401(k) or my pension -- not  
6 pension, my retirement plan for when I was working for D&M.

7 Q. Okay. And I just want to -- is this the correct -- I'm  
8 putting my finger on it -- the correct contract number 449104?

9 A. Yeah, I mean, because I was shown this by Doug Curran's  
10 office back a long time ago. So yes, they had me go through  
11 this document with a fine tooth. So yes, that is my contract  
12 number for my account that I had with D&M Holdings for them to  
13 put my monies as I earned them.

14 Q. Okay. And this -- by Doug Curran's office, you meant the  
15 FBI office showed you this?

16 A. That is correct, yeah.

17 Q. And where did you keep these statements in your house?

18 A. Didn't use to be the best filer. Typically in a stack on  
19 top of the file cabinet. So it was loose. Some things were  
20 filed. Some things weren't. Things like this that were not  
21 bills, basically, just pile up for a period of time. But they  
22 would be -- either be up in our closet in our master bedroom  
23 or downstairs in my office.

24 Q. Based on where they were located, could Mr. Egan have  
25 access to these documents?

1 A. I mean, he always had free rein of the house. There was  
2 never -- I mean, it wasn't like, well you can't go here. You  
3 can't go there. I mean, you know, to me he was like my son.  
4 Why would I ever do that and put limitations on his -- I mean,  
5 granted, some of that did change after 2007 when all the money  
6 started -- but prior to that, no.

7 MR. ZOLOT: Okay. Your Honor, I would offer  
8 Government's Exhibit 1 into evidence subject to connection  
9 with Government's Exhibit 2.

10 THE COURT: Any objection?

11 MR. FOSTER: No, Your Honor.

12 THE COURT: Let it be admitted.

13 (Government's Exhibit No. 1 was received into  
14 evidence.)

15 MR. ZOLOT: Thank you, Your Honor.

16 Q. I'm going to show you Government's Exhibit 2 here. And  
17 it's going to be a little hard to see so I'm going to zoom in  
18 at parts.

19 Does this appear to be an altered version of your  
20 retirement account statement?

21 A. Yes.

22 Q. Okay. Is this the same contract number where I'm  
23 pointing my finger?

24 A. Yes.

25 Q. What name appears where your name appeared before on this

1 statement?

2 A. Now it's Michael F. Egan.

3 Q. And before where it said, D&M Holdings Human Resources,  
4 what is does it say now under Lisa M. Capler?

5 A. Goldman Sachs.

6 Q. Where it used to say, you know, \$55,000 what does it say  
7 in the amount in the account?

8 A. Says, I wish, in my regard, \$7.555 million.

9 MR. ZOLOT: Okay. Offer Government's Exhibit 2 into  
10 evidence, Your Honor.

11 THE COURT: Let it be admitted.

12 (Government's Exhibit No. 2 was received into  
13 evidence.)

14 Q. Have you had contact with Mr. Egan since the 2010 --  
15 since you confronted him about the money?

16 A. Well, yeah.

17 Q. Okay.

18 A. I saw him when I flew down to North Carolina to fly my --  
19 or not fly -- to move my daughter out of the house. To help  
20 Mike pack up and get his belongings out of the house. And  
21 then move my daughter to an apartment. So I did have  
22 interaction with him there, and that was one of the times  
23 that -- one of the few times that I at least witnessed that he  
24 was not of good judgment at that point.

25 Q. Do you mean inebriated?



1 A. Inebriated, upset. I mean, because he was losing me --  
2 essentially losing me, losing my daughter and, you know, he  
3 didn't want to really be near me. But he had definitely been  
4 in excess for those few days while I was there.

5 Q. And have you had -- subsequent to, I guess, the divorce  
6 and then his arrest on these charges, have you relatively  
7 recently had contact with him in Las Vegas?

8 A. About a year. It was about a year ago now. I was  
9 getting my car washed on a Saturday, which was probably the  
10 first time in five years I'd gotten my car washed. And all of  
11 a sudden Mike just kind of trots up and says, Hello. We  
12 hugged, told each other we missed each other. And I  
13 immediately told him, I said, Whoa. My car came out first.  
14 You stay here. I'm rushing back to the house. I said, I'll  
15 be right back, there's a couple things I've got to get for  
16 you. And I darted back to my home, grabbed the two dogs.  
17 Cause he just -- just like I loved his dogs, he loved mine.  
18 But I also grabbed two huge boxes of memorabilia of Mike's  
19 youth that his mother Bonnie had sent to him at one point.  
20 And I didn't want -- I know if I was a kid I wouldn't have  
21 wanted to have lost that stuff.

22 So even though everything that had transpired between us,  
23 those two huge boxes of memories as a child, I guess, I did  
24 not want those to disappear. And I immediately went, got  
25 them, brought them back, and we said hello to the dogs and

1 traded those things and then about a week later we met for  
2 breakfast at Blueberry Hill.

3 Q. Okay.

4 A. So, yes, I have seen him.

5 Q. Okay.

6 A. And it was enjoyable, as always.

7 MR. ZOLOT: Okay. Your Honor, I have no further  
8 questions. I tender the witness.

9 THE COURT: Any cross?

10 MR. FOSTER: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. FOSTER:

13 Q. So Mr -- I'm getting confused about how you say your  
14 name, is it Muniz?

15 A. That's perfect.

16 Q. Okay. So Mr. Muniz, you mentioned in the early part of  
17 your testimony that you did not want to come to Charlotte  
18 today, correct?

19 A. I mean, even though what happened, yes, that's correct.  
20 If it would have been my preference, I would have preferred  
21 not to have to come.

22 Q. And before coming upstairs to the court, you had a -- you  
23 ran into Mr. Egan downstairs and you hugged him; is that  
24 correct?

25 A. Absolutely.

1 Q. So you still have some level of affection for him?

2 A. When you have a child, which I have accepted him as my  
3 own, you have that -- I always forget the word for it where  
4 you have this love that is unconditional. Once he -- between  
5 2003 and 2007, so I had four solid years with him, it was  
6 unconditional love. I'm sorry, when you have a son, no matter  
7 what they do, you love them forever and I can't really let  
8 that go. So being here and having to say these things is  
9 hurtful.

10 Q. All right. Now, the time period during which he did  
11 various -- took your money in various ways without your  
12 permission, that was all between the year 2007 and 2000 when?

13 A. April 2010.

14 Q. Okay. So, like, during that three-year period?

15 A. Correct.

16 Q. Okay. So that sounds like that was the same period that  
17 he was -- after he and Destini had moved from Las Vegas to  
18 North Carolina.

19 A. That is correct.

20 Q. So that entire time that he was doing this he was in  
21 North Carolina?

22 A. Living in North Carolina, yes. But we would go on  
23 cruises. You know, I mean, there were still things that we  
24 did together as a family.

25 Q. Now, if I understand what you've said, each time this

1 happened, you wanted to believe that he would pay you back and  
2 it wouldn't happen again. You never reported this to the  
3 police, did you?

4 A. Did not report it to the police. The only one time that  
5 I really called -- I mean, I called him on the carpet every  
6 single -- not every time. Because I mean, there would be one  
7 or two back to back and then I would call him on it. I would  
8 say, Michael, how can you keep doing this to me? You know,  
9 I'm sorry. I just -- you know, and it would go back and  
10 forth.

11 But the one time -- I'm sorry. I'm losing my train of  
12 thought.

13 Q. I asked -- the question was about calling the police. So  
14 maybe that will help you.

15 A. Oh, yeah. So the one time was with that Southwest Visa  
16 card. So I did not call the police, but I did get Mike on the  
17 phone with me talking to Southwest Visa and I said, You are  
18 taking over financial responsibility for this card. And he's  
19 like, Okay. Okay. And went through the formality with them  
20 so that it wouldn't go down as fraud against him. And right  
21 at the very end of it, you know, he -- they didn't approve  
22 him, and I ended up having to still retain that particular  
23 loss.

24 Q. And back in -- three years ago, actually, in early  
25 December of 2012, you were interviewed by FBI Agent Doug

1 Curran who's in the courtroom today, right?

2 A. Yes.

3 Q. Okay. So the FBI was investigating Mr. Egan's conduct  
4 that you've talked about today, as long ago as three years  
5 ago?

6 A. Yes.

7 Q. Once Mike and Destini moved to North Carolina in 2007,  
8 the only time you saw him was on occasional trips?

9 A. I would fly out to see them regularly. You know, if I  
10 went to work in Jersey, when I was done I would fly through  
11 Charlotte, stay for a few days. They would fly out to Vegas.  
12 We would see them on holidays.

13 I mean, it was still -- I mean, you have to understand,  
14 the only thing or only thread other than still loving him --  
15 the only thread I had of potential of getting my money back  
16 was not to estrange Michael. I mean, if I kept him close and  
17 kept him loved and, you know, and basically never did anything  
18 to harm him, then in my heart told me at some point he's going  
19 to be good on this.

20 Q. And so as far as you know, you were asked by Mr. Zolot  
21 about observing his drinking patterns back in -- between 2003  
22 and 2007. After 2007 your only opportunity to observe --  
23 you're having trouble hearing me?

24 A. No. No. Just --

25 Q. Your only opportunity after 2007 to observe him and see

1 whether he was sober or not, was on the occasions when there  
2 were trips, either to Las Vegas or you said a cruise or  
3 something like that, correct?

4 A. It was either us getting together, wherever that might  
5 have been. There was only -- well, there was one time that I  
6 know of after that, that he had absolutely, I guess, left  
7 evidence of intense drinking at my house, and that was when he  
8 flew out with Robbie --

9 Q. Bragg (ph. sp.).

10 A. Which was a -- is that his last name, Bragg? Rod flew  
11 out with Robbie to Las Vegas during Halloween time and came  
12 over to my house, and during that particular trip I found 12  
13 to 16 beer bottles in my garage.

14 Q. Okay.

15 MR. FOSTER: I have no further questions.

16 THE COURT: Any redirect?

17 MR. ZOLOT: No, Your Honor.

18 THE COURT: You may step down --

19 THE WITNESS: Thank you.

20 THE COURT: -- be excused.

21 Is that the only witness you have?

22 MR. ZOLOT: Yes, Your Honor. I do have one victim  
23 who would like to speak, to address the court.

24 THE COURT: All right. I'll be glad to hear from  
25 that person.

1 MR. ZOLOT: Ms. Anna Balcerzak.

2 MS. BALCERZAK: Good afternoon, Your Honor.

3 My name is Anna Balcerzak. I'm the wife of John  
4 Balcerzak, who's my husband. He's unfortunately not present  
5 because he's at work. So I apologize for him not being here.

6 This was a very tragic situation for my husband and  
7 I, and our entire family. We lost over \$130,000 with Mike  
8 Egan. We borrowed \$80,000 credit line to invest with him from  
9 our father-in-law, who is about to lose his house on this  
10 credit line. So we will forever be paying interest to the  
11 bank, and stay in debt much longer, due to the fraud of Mike  
12 Egan. Another \$50,000 that we had to take out of our  
13 children's college fund that we had lost as well.

14 At this time, the time of the situation that's been  
15 going on, I was also eight and a half months pregnant, so you  
16 can understand how emotionally nervous and how emotional I  
17 was, obviously, through that hard time.

18 As a Christian woman I forgive Mike Egan for what he  
19 has done. But the harm and the loss of our money and  
20 emotional strain will never be forgotten, as much as we have  
21 tried to forget.

22 So I guess I'm asking for justice to be here. And I  
23 hope Mike can fully realize what he has done, and what he has  
24 caused to people that had no idea who he was at that time. I  
25 hope and pray that he will fully realize the damages he has

1 caused, and will make a full restitution to make this right.

2 THE COURT: How were you connected to Mr. Egan?

3 MS. BALCERZAK: We were not connected. We were  
4 introduced through a friend of -- our mutual friend Rich  
5 Bywater, who is not present, but he introduced us to Mike  
6 Egan.

7 THE COURT: And in a financial context?

8 MS. BALCERZAK: Correct. Us to be investors into  
9 the business -- I guess he pictured us to be very  
10 successful -- and that he was part of, which later realized it  
11 was not true.

12 THE COURT: All right. Thank you.

13 MS. BALCERZAK: Thank you.

14 MR. ZOLOT: Your Honor, I have a few exhibits I  
15 would like the court to consider, if I may just hand them up  
16 en masse. Mr. Foster has a copy. And I would like to just  
17 address them, give them some context, briefly.

18 THE COURT: All right.

19 MR. ZOLOT: Thank you. This is Government's Exhibit  
20 3 through 7.

21 (Government's Exhibit No. 3, 4, 5, 6 & 7 were  
22 received into evidence.)

23 MR. ZOLOT: Your Honor, Government's Exhibit 3 and 4  
24 are -- 3 is Mr. Egan's Edward Jones account. That's his true  
25 and accurate Edward Jones account.



1           Government's Exhibit 4, which is blurry because this  
2 is the only copies we got from victims, is a forged copy of  
3 Mr. Egan's, the same statement forged to show a balance of  
4 \$877,000.

5           This is sort of overlaid on top of what Mr -- we  
6 introduced into evidence with Mr. Muniz. Mr. Muniz's  
7 retirement account, was the primary account that Mr. Egan used  
8 to defraud all the investors, and I'll get into that in a  
9 minute. But between these two accounts, this is what he  
10 showed victims, and actually even showed a lawyer to convince  
11 the lawyer that he had assets, and then on his behalf right  
12 asset vouching letters to potential investors.

13           Government's Exhibit 5 is an email. At the top it  
14 shows Agent Doug Curran's email because it was sent to him.  
15 Lower down it shows an email from Mr. Egan to his lawyer, at  
16 the time Mr. Feldman, who we also consider a victim in this  
17 case. And it shows his other asset lie, his third type of  
18 asset lie. Between the Edward Jones statement and what  
19 Michael Egan purported to be his Goldman Sachs statement was  
20 this statement, this email which I've highlighted, but  
21 essentially told people he had \$13 million.

22           As the fraud scheme progressed, he told people that  
23 his \$7 million had matured because of gains, capital gains to  
24 \$13 million. And this was used, as well, to lull investors,  
25 and to convince his lawyer, Mr. Feldman to write letters on

1 his behalf saying he had \$13 million in assets to backstop his  
2 loans if anything went wrong.

3 Government's Exhibit 6 is a biography that Mr. Egan  
4 and Mr. Feldman, his lawyer, came up with where they --  
5 Mr. Egan convinced Mr. Feldman that he had all these assets,  
6 and that he worked for -- and I'll talk about a minute -- of  
7 Paul Tudor Jones who is a hedge fund manager, a billionaire in  
8 New York City. And he held himself out to be this rich guy  
9 who was looking for investments, and they were going around  
10 pitching to multiple businesses. Luckily most of them did not  
11 go anywhere or you would have a lot more victims. But this  
12 was Mr. Egan, the biography he wrote for himself, basically  
13 stating that he owned a casino in Las Vegas -- which was a  
14 complete lie, and he told a lot of people this. That he was  
15 partners with his brother. That he owned -- he was an owner  
16 in this business, the Fright Dome, which was a partial truth,  
17 but not completely true. That he had an international import  
18 business. That it was importing more than 50 million in  
19 products. That he had extensive contacts in China. And the  
20 lies go on and on.

21 Of course this is important, Your Honor, because  
22 these were all the same lies he told the investors.  
23 Mr. Balcerzak, by the way, Your Honor, Anna and John Balcerzak  
24 were the largest single investor with approximately \$130,000  
25 for Mr. Egan.

1           And then finally, Your Honor, very late in the  
2 prosecution we came across Government's Exhibit 7, which  
3 Mr. Egan completely forged. This is Mr. Tudor Jones, Paul  
4 Tudor Jones, who is the billionaire, legitimate billionaire  
5 investor. And Mr. Egan used to tell people he worked for a  
6 Mr. Tudor Jones and that he had his backing. That he was also  
7 friends and business partners with Jerry Richardson, with Ken  
8 Lewis from Bank of America. He would just -- came up with  
9 these schemes concocted to lull investors into investing with  
10 him.

11           He went to an extreme extent in this case and  
12 actually forged a letter purportedly to be from Mr. Tudor  
13 Jones. We confirmed with his lawyers that this is indeed a  
14 forgery. This was one of Mr. Egan's schemes that never went  
15 anywhere, luckily, where he was trying to convince an  
16 architect in Los Angeles, who was a friend of his, to get  
17 involved in this scheme, investment scheme. And obviously the  
18 court sees it, purports to say that Mr. Egan has the backing  
19 of Mr. Tudor Jones for millions and millions of dollars.

20           I show the court all this to sort of explain the  
21 3553(a) factors and the witnesses' testimony, and also to  
22 rebut a lot of the things you've seen that Mr. Foster has  
23 proffered to the court, and also you've seen in exhibits.

24           I want to say to the court, first, I think Mr. Egan  
25 was the conman's conman. Reality and truth bore no obstacles

1 to his selfish pursuits. He -- I take at face value the  
2 evidence that Mr. Egan was abused as a child. I also take at  
3 face value that at some point Mr. Egan developed an alcohol  
4 problem.

5           However, Your Honor, this just can't explain his  
6 behavior. The nexus between those incidents, those traumatic  
7 experiences and his fraud, just isn't there. There has to be  
8 something deep down inside of Mr. Egan that has no relevance  
9 to his abuse, to be such a convincing and conniving conman.

10           Mr. Egan, the way he committed fraud, Your Honor,  
11 was the way Mr. Muniz portrayed it. That's why I thought it  
12 was so important for you to hear from him. He would go to his  
13 closest friends, his loved ones, and those were the people he  
14 defrauded and took advantage of.

15           Mr. Egan is an incredibly likeable man, apparently,  
16 and he used that to every advantage. All these people,  
17 Mr. Balcerzak, they became friends and they would go on  
18 boating trips together. All of these investors, that's how he  
19 lulled them. That's how he groomed them. He became their  
20 best friend, their buddy, and kept telling them -- feeding  
21 them lies over and over again.

22           And, Your Honor, **he's a master conman** because he  
23 never really went out and asked for money originally. He  
24 would groom them for months, sometimes years before he then  
25 said, Oh, well maybe there's an opportunity you can get

1 involved in. And he was smart enough to not ask for too much.  
2 And he went after, generally speaking, relatively well heeled  
3 people. So these were successful businessmen that he was able  
4 to con, so you know his con was good.

5 He obviously forged all these documents. Your  
6 Honor, this was a schemer, a planner, and you just can't  
7 explain away that behavior by saying that he was abused or  
8 that he had alcohol. An alcoholic wouldn't be able to  
9 function and do all this, and forge, you know, very seemingly  
10 good letters from Tudor Jones. I mean, it just doesn't --  
11 those two don't match, necessarily.

12 The fact that he was under the influence of alcohol  
13 all the time. I could tell you that most of the witnesses we  
14 talked to, we asked about Mr. Egan's alcohol use, and most of  
15 them said they rarely saw him drink. They would have a few  
16 beers. They never saw him incredibly intoxicated. The  
17 exceptions to that are when he took people to Vegas, and then  
18 he did get significantly inebriated.

19 Your Honor, Michael Egan was such a good fraudster  
20 that what he was able to do, was that he would convince two  
21 different sophisticated parties that the other was an investor  
22 that had money. And so he would play them off each other.

23 For example, he went out to Binion's of Four Queens  
24 Hotels, which are on the old Vegas strip. They were of a need  
25 of money because they're the old casinos and they needed to

1 renovate. And they went to Michael thinking he had all this  
2 capital and all these connections. And Michael let them  
3 believe that he did. And that he was going to bring investors  
4 for them to renovate the hotels.

5 He would then go to our victims in this case and  
6 say, Let me bring you out to Vegas to show you all the big  
7 stuff I'm involved, all the casinos I own and I'm involved  
8 with where I'm an investor, and all the projects I'm involved  
9 with. And he would get the rooms comped at the hotels,  
10 because the hotel owners were thinking that Michael was  
11 bringing -- Mr. Egan was bringing big investors out. And then  
12 when he brought the investors out, they would go out there,  
13 again, thinking that, you know, each other -- the other was  
14 the big fish. And he would do this regularly. He did it  
15 to -- he had victims fly out to Las Vegas and played off  
16 another victim to get court side Laker's tickets. Same thing.

17 Sophisticated, sophisticated scheme that cannot be  
18 explained away, merely because he was abused or that he was an  
19 alcoholic.

20 Your Honor, I think specific deterrence, Mr. Foster  
21 hit on it, is very important in this case. Mr. Egan was  
22 incredibly selfish. He only thought about himself. I have no  
23 confidence that whatever is deep inside of Mr. Egan that  
24 allows him to just look people in the eye, the ones he loves  
25 and lie to them, just boldface terrible, incredible lies, that

1 that's going to change because he's getting PTSD treatment, or  
2 that he's in AA. That's something deep inside of him that's  
3 part of his character. And that's what the government is  
4 concerned about, about letting him off without jail time. I  
5 believe he has to face the inside of a jail for specific  
6 deterrence, because I think he'll do it again.

7           Your Honor, also, I'm very concerned with the  
8 arguments that Mr. Egan's making about the fact that his  
9 background with childhood abuse somehow puts him apart from  
10 other defendants.

11           Your Honor, as this court knows from the thousands  
12 of cases that come before you, in almost all of the cases that  
13 the court sees, there's been some sort of childhood trauma,  
14 whether it be sexual abuse, the loss of a loved one, you know,  
15 violence committed against the defendant at an early age, that  
16 leads them down the criminal path. I don't see any which way  
17 Mr. Egan is set apart from any of those defendants that we see  
18 before this court on regular basis, whether it be a gun case,  
19 a drug case, or a fraud case.

20           And I just don't see how he's different than  
21 similarly situated defendants under the 3353(a) factors.

22           So, Your Honor, I proffer all this evidence to ask  
23 the court to sentence Mr. Egan to what we believe is the fair,  
24 just and right sentence in this case, which is 24 months  
25 imprisonment.

1 MR. FOSTER: Can I respond briefly, Your Honor?

2 THE COURT: You may.

3 MR. FOSTER: The government called Mr. Muniz as a  
4 witness testifying about 3553(a) factors, and that's totally  
5 appropriate. I have no problem with that. But I think the  
6 point is, this didn't rebut something we're raising.  
7 Mr. Zolot keeps saying, we're explaining away his behavior.  
8 We're not explaining it away. We're explaining it. One of  
9 the partial contributors to what he did were these things he's  
10 been through. But we've been very clear all along. He  
11 embraces what he did. He accepts what he did, and he wants to  
12 make right by it and redress his wrongs.

13 I think it's important for the court to understand  
14 that Mr. Muniz's testimony about everything that he was, in a  
15 sense, victimized through, this was known to the government  
16 before this case was brought. It was in the discovery. We're  
17 well acquainted with it. It ties in with the factual basis  
18 that some of the things that were taken from him were used --  
19 those documents were used to defraud victims in this case.  
20 This is nothing new or outside the box. It's part of the four  
21 corners of this case. So the government was well aware of  
22 this. They did not charge that as part of the conduct or  
23 included in the loss amount. So I think that just needs to be  
24 understood by the court.

25 And most of everything, the exhibits and other



1 things that Mr. Zolot are arguing, are again, all within the  
2 four corners of what's in the discovery and what's known about  
3 this case. It is the offense conduct. We don't run from  
4 that.

5 Mr. Egan admits he lied, he cheated, he  
6 misrepresented things to people. We're not trying to avoid  
7 that conclusion. He pled guilty.

8 But the question now is, what is the appropriate  
9 sentence that serves all those sentencing factors? And I  
10 don't think the fact that we recounted the offense conduct  
11 changes much of anything because we know he did that. And  
12 everything that Mr. Muniz talked about, all happened during  
13 the same timeframe of the charges in this case, between 2007  
14 and within 2012. So it's not like this was separate and  
15 outside the charges in this case.

16 So for that reason, again, I would assert this  
17 doesn't change anything. It's all, of course, proper for the  
18 court to consider as part of the offense conduct, but it's not  
19 something that undermines the conclusion that my client does  
20 have needs and issues that most defendants that the court sees  
21 do not have, and they should be taken into consideration in  
22 fashioning a sentence that is sufficient but not greater than  
23 necessary in this case.

24 Thank you, Your Honor.

25 THE COURT: Thank you.

1           Mr. Egan, if you would please stand.

2           I've considered the information in the presentence  
3 report. I've consulted the advisory guidelines, listened to  
4 the arguments of the attorneys, received the letters of  
5 support, and also the testimony here today; Mr. Egan's  
6 sponsor, his pastor, his mother. Considered the testimony  
7 of -- not the testimony, but the diagnosis of Dr. Goldstein  
8 with respect to the complex PTSD diagnosis. The letter by Ms.  
9 Prewitt, the psychotherapist with respect to the effect of  
10 incarceration on his recovery, Mr. Egan's recovery.

11           Considered the over three years of sobriety, the  
12 involvement with AA. The very commendable mentoring within  
13 that program, and the evidence of transformation which many of  
14 the witnesses in writing and here today in court have  
15 described with respect to Mr. Egan.

16           I've considered the argument concerning the negative  
17 effect of incarceration on Mr. Egan's rehabilitation, his  
18 model status as a pretrial releasee, in light of the argument  
19 for variance, and in light of the 3553(a) factors, including  
20 the goal of rehabilitation in a most effective manner.

21           I've considered, as well, the very serious nature of  
22 the offense. This is a long-term fraud scheme involving  
23 numerous acts of deception and fraud, the creation of  
24 fraudulent documents, fraudulent statements, the predatory  
25 nature of the stealing of the money, guaranteed loan to

1 someone who is recovering from brain surgery and had a stroke.  
2 The testimony -- I'm going to butcher the name, Ms. Balcerzak,  
3 concerning the line of credit on the house, which jeopardized  
4 the ownership the children's college fund, the stress on she  
5 and her husband with respect to her pregnancy. I've  
6 considered all of that in fashioning a sentence.

7 Pursuant to the Sentencing Reform Act of 1984, it is  
8 the judgment of the court that the Defendant Michael Egan,  
9 III, is hereby committed to the custody of the Bureau of  
10 Prisons to be imprisoned for a term of 24 months.

11 A sentence of 24 months is sufficient but not  
12 greater than necessary to accomplish the sentencing objectives  
13 of Section 3553(a), including the need for the imposed  
14 sentence to reflect the seriousness of the offense, promote  
15 respect for the law, just punishment, adequate deterrence, and  
16 importantly, to protect the public from further crimes of the  
17 defendant.

18 Taking, as I said, into consideration, his history  
19 and characteristics and the serious nature of the offense.

20 The 24-month sentence is a low end of the guideline  
21 range chosen by the court to take into account the arguments  
22 in mitigation, including the reduced mental capacity, the  
23 effect of incarceration, years of sobriety, and the goals of  
24 rehabilitation.

25 The court considered a variant sentence, even a

1 variance to some form of punishment other than prison, but  
2 believes that the amount of money, the number of victims, the  
3 fraud, the multiple acts of fraud, and the defendant's cunning  
4 in preying on innocent victims all require an active sentence.  
5 And a sentence at the low end of the guideline range is the  
6 sufficient but not greater than necessary point chosen by the  
7 court.

8           The court calls to the attention of the custodial  
9 authorities that Mr. Egan has a history of mental health  
10 issues and recommends that he be allowed to participate in any  
11 available mental health treatment program while incarcerated.

12           The court calls to the attention of the custodial  
13 authorities that Mr. Egan has a history of substance abuse,  
14 and recommends that he be allowed to participate in any  
15 available substance abuse treatment program while  
16 incarcerated, and if eligible, receive the benefits of 18,  
17 United States Code, Section 3621(e)(2).

18           The court recommends a designation to a facility  
19 equipped to handle the psychiatric issues that have been  
20 raised with the court through the testimony and through the  
21 exhibits.

22           The court further recommends that Mr. Egan be  
23 allowed to participate in any educational or vocational  
24 programs.

25           Upon release from imprisonment Mr. Egan shall be

1 placed on supervised release for a term of two years.

2           Within 72 hours of release from the custody of the  
3 Bureau of Prisons, the defendant shall report in person to the  
4 probation office in the district to which he is released. And  
5 while on supervised release, he shall not commit another  
6 federal, state or local crime, and shall comply with the  
7 standard conditions that have been adopted by the court in the  
8 Western District of North Carolina. And shall comply with the  
9 following additional conditions:

10           He shall submit to a mental health evaluation  
11 treatment program under the guidance and supervision of the  
12 U.S. Probation Office, and remain in treatment and maintain  
13 any prescribed medication until discharged by the program with  
14 the approval of the U.S. Probation Office.

15           He shall have no direct or indirect contact, at any  
16 time, for any reason, with the victims or affected parties in  
17 this matter unless provided with specific written  
18 authorization to do so in advance by the U.S. Probation  
19 Office.

20           Further ordered that he pay to the United States a  
21 special assessment of \$100, due and payable immediately.

22           Further ordered, having determined the amount of  
23 restitution owed to each victim, the defendant shall make  
24 restitution pursuant to 18, United States Code, Section  
25 3663(a), as directed by the United States District Court, to

1 the victims and in the amounts set forth in paragraph 81 of  
2 the presentence report.

3 The court orders that the victim's recovery is  
4 limited to the amount of their loss, and Mr. Egan's liability  
5 for restitution ceases if and when the victims receive full  
6 restitution.

7 Any payment that is not payment in full shall be  
8 divided proportionately among the victims named.

9 In light of the restitution award, the court will  
10 not impose a fine or interest in this case.

11 The defendant shall forfeit any interest he  
12 possesses in any property seized by law enforcement as a  
13 result of this investigation.

14 Payment of the criminal monetary penalty shall be  
15 due and payable immediately.

16 The court has considered the financial and other  
17 information contained in the presentence report and finds that  
18 the following is feasible:

19 If the defendant is unable to pay any monetary  
20 penalty immediately, then during the period of imprisonment,  
21 payment shall be made through the Federal Bureau of Prisons  
22 Inmate Financial Responsibility Program.

23 And upon release from imprisonment, any remaining  
24 balance shall be paid in monthly installments of no less than  
25 \$100, to commence within 60 days until paid in full.

1           Throughout the period of supervision the probation  
2 officer shall monitor Mr. Egan's economic circumstances and  
3 report to the court with recommendations as warranted, any  
4 material changes that affect his ability to pay any court  
5 ordered penalty.

6           Other than what we've already discussed, is there  
7 any legal reason why the sentence should not be imposed as  
8 stated?

9           MR. FOSTER: No, Your Honor.

10          MR. ZOLOT: No, Your Honor.

11          THE COURT: Let it be imposed.

12          MR. FOSTER: Your Honor, two things. I would ask  
13 the court to recommend that the Bureau of Prisons designate my  
14 client as close as possible to his home in Las Vegas.

15          THE COURT: Mr. Foster, before you get to the second  
16 thing, I will make that part of the judgment, but subordinate  
17 to the designation recommendation concerning psychiatric  
18 facilities.

19          MR. FOSTER: All right. And the second was to allow  
20 him to self report to the Bureau of Prisons.

21          THE COURT: What says the government?

22          MR. ZOLOT: Your Honor, I have not received any  
23 information that Mr. Egan has conducted any criminal conduct  
24 or bad behavior since pleading guilty, so there's no  
25 opposition from the government based on that.

1 THE COURT: Ms. Hood.

2 PROBATION OFFICER: That is correct, Your Honor. I  
3 have no other information. He was very compliant.

4 THE COURT: Very well. Let me take that up after I  
5 advise Mr. Egan of his appellate rights.

6 I believe there's a consent order of --

7 MR. ZOLOT: Yes, Your Honor. We have submitted a  
8 Motion for Consent Order of Forfeiture, Your Honor.

9 THE COURT: That's Document No. 11. Have I executed  
10 that?

11 MR. ZOLOT: You did order forfeiture, Your Honor.

12 THE COURT: Then I will make the Consent Order of  
13 Forfeiture part of the judgment by reference -- incorporated  
14 by reference in this case.

15 MR. ZOLOT: Thank you, Your Honor.

16 THE COURT: Mr. Egan, you can appeal your conviction  
17 if you believe that your guilty plea was somehow unlawful or  
18 involuntary, or if there's some other defect in these  
19 proceedings that was not waived by your guilty plea.

20 You also have a right to appeal your sentence under  
21 certain circumstances, particularly if you think the sentence  
22 is contrary to law. Any notice of appeal must be filed within  
23 14 days from the entry of judgment. And if you are unable to  
24 pay the cost of an appeal, you may apply for leave to appeal  
25 with no cost to you. And if you request, the Clerk of Court



1 will prepare and file a notice of appeal on your behalf.

2           The court recommends that you talk to your attorney  
3 about these appeal rights, especially about the impact on  
4 these rights of any waiver of appeal provision in your plea  
5 agreement.

6           But do you understand these rights as I've just  
7 explained them to you?

8           THE DEFENDANT: Yes, Your Honor.

9           THE COURT: Very well. The decision the court has  
10 to make at this point is whether to remand you to the Marshals  
11 at this time to begin serving your sentence, or to allow you  
12 to stay out on release until the Marshals designate a facility  
13 and a time for you to report.

14           The probation office indicates that you've been a  
15 model pretrial release customer of theirs, and that weighs in  
16 favor of you being allowed to self report.

17           Some of the language in the psychiatric reports and  
18 some of the arguments concerning the adverse effect of  
19 incarceration paint a different picture and gives the court  
20 pause that sometime between now and the date you're supposed  
21 to self report that you'll act in a way inconsistent with  
22 those terms and conditions of release, and so that's a  
23 struggle the court is going through.

24           The easiest thing is just to remand you and let you  
25 begin serving your time now and not have to worry about the

1 continued compliance with the terms and conditions of  
2 continued release.

3 If I were to let you self report, are you able to  
4 give the court assurances that you will be as good going  
5 forward in terms of your compliance as you've been to this  
6 date?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Mr. Foster, what assurance can I have  
9 that if any of those who are involved in his support system  
10 notice any deviation from compliance, that the probation  
11 office would be made aware of that?

12 MR. FOSTER: Well, Your Honor, I think I've educated  
13 my client on this process, and he indicates that based on his  
14 predicted security level in the BOP and the offenses that he's  
15 been convicted of, he's not going to a penitentiary, he's  
16 going to some lower level thing. So he has all the incentive  
17 in the world to report into such a facility when directed to,  
18 as opposed to going in now and being in Mecklenburg County  
19 jail and suffering through what is far more onerous. So I  
20 think that's a huge incentive.

21 And I think everybody in this row here would stand  
22 up and take a vow to report it to the pretrial release  
23 officer, immediately, if they find him doing anything contrary  
24 to full compliance as he's already been doing.

25 THE COURT: Very well. Mr. Egan, you will be

1 allowed to self report. That means that when the Marshals  
2 designate a facility and a time to report, that you'll be  
3 allowed to report on your own, as long as you stay in strict  
4 compliance with your terms of release. It's in your best  
5 interest for the reasons Mr. Foster indicated for you to do  
6 that.

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And for other reasons.

9 And so you'll be allowed to self report as long as  
10 you stay in compliance. Do you understand?

11 THE DEFENDANT: I understand, Your Honor.

12 THE COURT: Anything further from either side?

13 MR. ZOLOT: No, Your Honor.

14 MR. FOSTER: No, Your Honor.

15 MR. ZOLOT: Oh, Your Honor, yes. There was an  
16 outstanding indictment.

17 THE COURT: 3:14-cr-253.

18 MR. ZOLOT: Yes, Your Honor. We move at this time  
19 to dismiss that indictment against Mr. Egan.

20 THE COURT: I'll grant that.

21 MR. ZOLOT: Thank you.

22 THE COURT: All right. This matter is concluded.

23 Mr. Egan, you're free to go at this time.

24 (The matter is concluded at 3:41 p.m.)

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1 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
2 CERTIFICATE OF OFFICIAL REPORTER

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I, Laura Andersen, Federal Official Court Reporter, in and for the United States District Court for the Western District of North Carolina, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this the 11th day of December, 2015.

S/Laura Andersen  
Laura Andersen, RMR  
Federal Official Court Reporter